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Guidance

Practice guide 14A: charitable incorporated organisations

Updated 20 December 2019

Applies to England and Wales

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Please note that HM Land Registry's practice guides are aimed primarily at solicitors and other conveyancers. They often deal with complex matters and use legal terms.

1. Introduction

1.1 New form of corporate body

The charitable incorporated organisation is an alternative legal form for a charity. Part 11 of the Charities Act 2011 creates the basic legal framework, complemented by the Charitable Incorporated Organisations (General) Regulations 2012, the Charities Act 2011 (Charitable Incorporated Organisations) (Constitutions) Regulations 2012 and the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012. Regulations to enable the conversion of existing charitable companies and community interest companies to charitable incorporated organisations came into force on 1 January 2018 (although applications for conversion of community interest companies will apparently not be accepted until September 2018 and further guidance is expected from the Charity Commission).

A charitable incorporated organisation is a corporate body which is not a company incorporated under the Companies Acts; it is therefore not subject to company regulation. Neither its existence nor any charges it creates have to be registered at Companies House. However, a charge over land created by a charitable incorporated organisation will have to be completed by registration under the Land Registration Act 2002 in order to take effect at law (section 27(2) of the Land Registration Act 2002). Like a limited company, a charitable incorporated organisation can buy, sell, lease, mortgage or charge, or otherwise dispose of, property in its own name. Its members may have either no liability at all or only limited liability for its debts.

As a result of the introduction of the charitable incorporated organisation, there are now 4 main legal structures available for charities.

- trust (governing document: trust deed/declaration or Charity Commission scheme, though a trust can also be created by a will)
- unincorporated association (governing document: normally, constitution or rules)
- company limited by guarantee (governing document: either a memorandum and articles of association (where the company was formed before September 2009) or articles of association (where the company was formed since September 2009))
- charitable incorporated organisation (governing document: constitution)

1.2 Creation and charity status

A charitable incorporated organisation comes into existence upon registration with the Charity Commission and is given a charitable incorporated organisation registration number. All charitable incorporated organisations are non-exempt charities which must register with the Charity Commission, regardless of levels of income, and therefore an exempt charity cannot be a charitable incorporated organisation. A charitable incorporated organisation must have a principal office in England or Wales (separate provisions govern Scottish charitable incorporated organisations), an address for service (this can be the principal office) and registers of members and trustees, and it must submit an annual return and accounts.

Either a charitable incorporated organisation's status will be evident as part of its name ("charitable incorporated organisation" or Welsh equivalent) or, if not, its status must be apparent in all locations, communications and conveyances described in section 211 of the Charities Act 2011. The Charity Commission's register of charities will also make it clear that the organisation is a charitable incorporated organisation. Failure to comply carries a criminal sanction for the trustees, and contracts and conveyances by the charitable incorporated organisation that do not comply may be unenforceable.

1.3 Constitution and trustees

Section 206 of the Charities Act 2011 requires the charitable incorporated organisation's constitution to contain certain provisions and the 2 model forms of constitution set out in the Charities Act 2011 (Charitable Incorporated Organisations) (Constitutions) Regulations 2012 (foundation model and association model) meet the statutory requirements.

A "foundation" charitable incorporated organisation has no separate members from its charity trustees (meaning the trustees are the members). An "association" charitable incorporated organisation has separate voting members other than its charity trustees. The charitable incorporated organisation's members may resolve to amend its constitution but not so that the charitable incorporated organisation ceases to be a charity; any amendments are not effective until registered with the Charity Commission (sections 224(2), 225 and 227 of the Charities Act 2011). Charity Commission consent is required for some amendments, including changes to the voluntary winding up/dissolution clause, and any provision authorising a benefit to the charity trustees or members or persons connected to them. All charitable incorporated organisations must keep a register of trustees and association charitable incorporated organisations must also keep a register of members.

A charitable incorporated organisation must have at least one trustee (section 206(2)(b) of the Charities Act 2011). Corporate trustees are legally permissible but the Charity Commission recommends that trustees be individuals (who must be over 16 years old) and also recommends that, where the charitable incorporated organisation will have corporate members, it should not have a combination of corporate and individual trustees (see Notes to clause 9 and clause 12 respectively of the 2 forms of constitution in the Charities Act 2011 (Charitable Incorporated

Organisations) (Constitutions) Regulations 2012). Both forms of model charitable incorporated organisation constitution included in the Charities Act 2011 (Charitable Incorporated Organisations) (Constitutions) Regulations 2012 appear to require the charity trustees to be “natural persons”.

A person cannot be a trustee while disqualified by virtue of, for example, conviction for any offence involving dishonesty or deception, or bankruptcy, or removal from office as trustee for misconduct or mismanagement (full details are in section 180(2) of the Charities Act 2011, as amended by regulation 5 of the Charitable Incorporated Organisations (Consequential Amendments) Order 2012). However an act done by a disqualified person as charity trustee of a charitable incorporated organisation is valid notwithstanding the disqualification (regulation 32 of the Charitable Incorporated Organisations (General) Regulations 2012).

1.4 Powers

Subject to the terms of its constitution, a charitable incorporated organisation has power to do anything which furthers its purposes or is conducive or incidental to doing so (section 216(1) of the Charities Act 2011). Although this is made subject to anything in the charitable incorporated organisation’s constitution, the constitution cannot include a provision that would restrict the charitable incorporated organisation’s ability to dispose of its property (regulation 14 of the Charitable Incorporated Organisations (General) Regulations 2012). Powers are exercised by the charitable incorporated organisation’s trustees. The Charity Commission’s 2 model charitable incorporated organisation constitutions restate the broad statutory power but also include a short list of specific powers, including power to borrow and to charge all or any part of the charitable incorporated organisation’s property as security for a loan. In the introductory notes to both of the model constitutions, the Commission states: “To simplify the charitable incorporated organisation framework, there is currently no provision for charitable incorporated organisations to issue debentures, or for a register of charges (mortgages etc) over charitable incorporated organisation property.”

The Charitable Incorporated Organisations (General) Regulations 2012 apply (as modified) most of Part 4 and section 32 of the Trustee Act 2000 to charitable incorporated organisations, so that charitable incorporated organisation trustees may delegate functions to an agent. These include investment of the charitable incorporated organisation’s assets, including the management, creation or disposition of an interest in land held as an investment. The Charity Commission’s model charitable incorporated organisation constitutions widen the Trustee Act 2000 powers to enable the charitable incorporated organisation trustees to delegate any of their powers or functions to committees, subject to certain safeguards.

1.5 Service of documents

Documents may be served on a charitable incorporated organisation by leaving them at, or sending them by post to, its principal office as shown in the register of

charities. Service on a trustee or interim manager (for interim managers see [Intervention by the Charity Commission](#)) is effected by leaving them at, or sending them by post to, the service address for that person shown in the charitable incorporated organisation's register of charity trustees. A document will be validly served if sent to the address shown within a period of 14 days from and including the date of inspection, even if the address subsequently changes (regulations 47 and 48 of the Charitable Incorporated Organisations (General) Regulations 2012).

2. Making applications (general)

2.1 First registration

An application for first registration should be made by (or on behalf of) the charitable incorporated organisation in whose name(s) the estate is to be registered. In the case of unregistered estates that become subject to a first legal mortgage, rule 21 of the Land Registration Rules 2003 enables the mortgagee to apply for first registration.

[Form FR1](https://www.gov.uk/government/publications/first-application-registration-fr1) (<https://www.gov.uk/government/publications/first-application-registration-fr1>) must be used if the application is for first registration of a freehold estate or for first registration of a leasehold estate where the freehold is not registered.

For further information generally on applications for first registration, see [practice guide 1: first registrations](#) (<https://www.gov.uk/government/publications/first-registrations>).

2.2 Dispositions of registered estates

For dispositions of registered estates, there is no restriction on who may apply for registration of the disposition to the charitable incorporated organisation.

Applications must be made using [form AP1](#) (<https://www.gov.uk/government/publications/change-the-register-ap1>), including grants of leases out of a registered estate.

2.3 Restrictions, charity statements and charity certificates

In addition to the requirements of the Land Registration Act 2002 and the Land Registration Rules 2003, you need to take into account the requirements of the Charities Act 2011 when making applications to register dispositions in favour of or by charitable incorporated organisations.

Charitable incorporated organisations are non-exempt charities and are subject to the jurisdiction of the Charity Commission. Subject to certain exceptions (see sections 117(3), (4)(a) and 124(9) and (10) of the Charities Act 2011) the trustees of non-exempt charities are generally allowed to sell, mortgage or otherwise dispose of the charity's land without an order of the court or of the Charity Commission if they follow the correct procedures.

All dispositions in favour of a charitable incorporated organisation must contain a statement that the charitable incorporated organisation is a non-exempt charity and referring to the restrictions on dispositions imposed by the Charities Act 2011. These statements are described below in [Registration of charitable incorporated organisations as proprietors/dispositions in favour of charitable incorporated organisations](#).

All dispositions by a charitable incorporated organisation must contain an appropriate statement, and may also need to contain a certificate by the trustees, as described in [Dispositions by charitable incorporated organisations](#).

The statements enable the registrar:

- when registering a charitable incorporated organisation as proprietor of land, to enter an appropriate restriction (section 123(2) of the Charities Act 2011), and
- when registering a disposition by a charitable incorporated organisation, to be satisfied that the restriction has been complied with

Other restrictions must be applied for using [form RX1](#) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>) as explained in the relevant sections of this guide.

For further information on restrictions generally, see [practice guide 19: notices, restrictions and the protection of third party interests in the register](#) (<https://www.gov.uk/government/publications/notices-restrictions-and-the-protection-of-third-party-interests-in-the-register>).

3. Registration of charitable incorporated organisations as proprietors/dispositions in favour of charitable incorporated organisations

Registration of a proprietor vests the legal estate in that registered proprietor (section 58 of the Land Registration Act 2002). Generally, third parties acting in good faith may assume that a registered proprietor has full power to enter into any disposition authorised by the Land Registration Act 2002, unless the register contains a restriction or other entry to the contrary (section 26 of the Land Registration Act 2002). The term 'disposition' includes the grant or release of an easement.

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3.1 Documents/evidence required on registration of charitable incorporated organisation

- [Form AP1 \(https://www.gov.uk/government/publications/change-the-register-ap1\)](https://www.gov.uk/government/publications/change-the-register-ap1) (or [form FR1 \(https://www.gov.uk/government/publications/first-application-registration-fr1\)](https://www.gov.uk/government/publications/first-application-registration-fr1), if first registration).
- If the charitable incorporated organisation's registration number is not supplied, a certified copy (or screen print) of the Charity Commission's registration certificate (for a prescribed clauses lease, the charitable incorporated organisation registration number should be quoted in LR3).
- The address for service of the charitable incorporated organisation. The address for service stated in the disposition in favour of the charitable incorporated organisation or in the application form will be entered in the register and will then be used for the service of any notices (rules 197 and 198 of the Land Registration Rules 2003). You should, therefore, take care to use an address, or addresses, where such notices will be received by the charitable incorporated organisation, such as the service address as prescribed by the Charitable Incorporated Organisations (General) Regulations 2012. If a disposition contains covenants or declarations by the charitable incorporated organisation as disponent, or an application for a restriction, it should also be executed by the charitable incorporated organisation.

Note

It is not clear whether rule 183 of the Land Registration Rules 2003 applies to charitable incorporated organisations. Because of this ambiguity and the requirement in regulation 14 of the Charitable Incorporated Organisations (General) Regulations 2012 that a charitable incorporated organisation's constitution must not include any restriction that would deprive the charitable incorporated organisation of its ability to dispose of its property, HM Land Registry's policy is not to require a certificate in form 8 in Schedule 3 to the Land Registration Rules 2003 or sight of the charitable incorporated organisation's constitution. The charitable incorporated organisation's registration number must however be supplied.

Property of an unincorporated charity which is registered as a charitable incorporated organisation vests in the charitable incorporated organisation (section 210 of the Charities Act 2011) and the vesting must be completed by registration (section 27(5) of the Land Registration Act 2002).

The provisions of rules 176, 179 and 180 of the Land Registration Rules 2003 will apply to dispositions in favour of, or by, a charitable incorporated organisation, as explained further below.

3.2 Form of the disposition

Transfers of registered land in favour of a charitable incorporated organisation must be in one of the forms in Schedule 1 to the Land Registration Rules 2003.

Transfers of the whole of one or more titles should be made on [form TR1](https://www.gov.uk/government/publications/registered-titles-whole-transfer-tr1) (<https://www.gov.uk/government/publications/registered-titles-whole-transfer-tr1>), [form TR2](https://www.gov.uk/government/publications/registered-titles-under-power-of-sale-whole-transfer-tr2) (<https://www.gov.uk/government/publications/registered-titles-under-power-of-sale-whole-transfer-tr2>), [form TR5](https://www.gov.uk/government/publications/portfolio-of-titles-whole-or-part-transfer-tr5) (<https://www.gov.uk/government/publications/portfolio-of-titles-whole-or-part-transfer-tr5>) or [form AS1](https://www.gov.uk/government/publications/whole-of-registered-title-assent-as1) (<https://www.gov.uk/government/publications/whole-of-registered-title-assent-as1>). The numbers of the corresponding forms for transfers of part are [form TP1](https://www.gov.uk/government/publications/registered-titles-part-transfer-tp1) (<https://www.gov.uk/government/publications/registered-titles-part-transfer-tp1>), [form TP2](https://www.gov.uk/government/publications/registered-titles-under-power-of-sale-part-transfer-tp2) (<https://www.gov.uk/government/publications/registered-titles-under-power-of-sale-part-transfer-tp2>), [form TR5](https://www.gov.uk/government/publications/portfolio-of-titles-whole-or-part-transfer-tr5) (<https://www.gov.uk/government/publications/portfolio-of-titles-whole-or-part-transfer-tr5>) and [form AS3](https://www.gov.uk/government/publications/part-of-registered-title-assent-as3) (<https://www.gov.uk/government/publications/part-of-registered-title-assent-as3>).

A lease granted in favour of a charitable incorporated organisation must contain the clauses prescribed by rule 58A and Schedule 1A to the Land Registration Rules 2003 where the lease is a disposition of a registered estate in land and is required to be completed by registration under section 27(2)(b) of the Land Registration Act 2002. The registration number of the charitable incorporated organisation should be inserted in LR3.

For further guidance see [practice guide 64: prescribed clauses leases](https://www.gov.uk/government/publications/prescribed-clauses-leases) (<https://www.gov.uk/government/publications/prescribed-clauses-leases>).

3.3 First registration of a charitable incorporated organisation

When a charitable incorporated organisation, being a non-exempt charity, applies for first registration voluntarily under the provisions of section 3 of the Land Registration Act 2002 or following an event that triggers compulsory registration under section 4 of the Land Registration Act 2002, in circumstances where that event is not a disposition for the purposes of the Charities Act 2011 (such as the transfer of a qualifying estate on or in consequence of the appointment of a new trustee which triggers compulsory first registration under section 4(1)(aa) of the Land Registration Act 2002.), there will not be a deed containing the statement required by sections 122(2) and 125(1) of the Charities Act 2011. In these circumstances, an application must be made, using [form RX1](https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>), for the entry of a restriction in Form E (rule 176(2) of the Land Registration Rules 2003).

3.4 Statement required in a disposition to a charitable incorporated organisation

Section 122(8) of the Charities Act 2011 requires any conveyance, transfer or lease in favour of a charitable incorporated organisation to contain a statement relating to that charitable incorporated organisation. Any other disposition that will result in an estate being held by, or in trust for, a charitable incorporated organisation is also required to contain a similar statement. If the disposition is required to be

registered by virtue of section 27 of the Land Registration Act 2002 or triggers the requirement for first registration under section 4 of the Land Registration Act 2002 the statements must be in the form prescribed by rule 179 of the Land Registration Rules 2003 (section 123 of the Charities Act 2011). Where an exempt charity holds land on trust for a charitable incorporated organisation, this form of statement is required as the restrictions on disposition imposed by sections 117-121 of the Charities Act 2011 will apply.

Note

The effect of Schedule 8, paragraph 3(1), to the Charities Act 2011, is that rule 179 should be read as if the statement for a non-exempt charity is:

‘The land transferred (or as the case may be) will, as a result of this transfer (or as the case may be), be held by (or in trust for) (charitable incorporated organisation), a non-exempt charity, and the restrictions on disposition imposed by sections 117-121 of the Charities Act 2011 will apply to the land (subject to section 117(3) of that Act).’

3.5 Registered number and status of a charitable incorporated organisation

If the disposition is in favour of a charitable incorporated organisation the disposition or the application (or panel LR3 for a prescribed clauses lease) must state the charitable incorporated organisation’s registered charity number. The disposition must show the charitable incorporated organisation’s status describing it as a charitable incorporated organisation, if this is not apparent from its name.

3.6 Entry of charitable incorporated organisation as proprietor

We will enter the name and address of the charitable incorporated organisation in the register, with its charitable incorporated organisation registration number as follows:

‘(date) Proprietor: [Name of charitable incorporated organisation] [CIO Regn. No. xxxxxx] of 101 Hereward Street, Fenbury, Hertland, GH3 4YX.’

3.7 Non-exempt charity restriction

As charitable incorporated organisations are non-exempt charities, section 123(2) of the Charities Act 2011 imposes an obligation on the registrar, when registering a disposition in favour of a charitable incorporated organisation, to enter a restriction that reflects the powers of the proprietor.

The statement in the disposition, as mentioned above, will state that the charitable incorporated organisation is a non-exempt charity. The appropriate restriction is in Form E as set out in Schedule 4 to the Land Registration Rules 2003 (rule 176 of the Land Registration Rules 2003). The effect of Schedule 8, paragraph 3(1), to the Charities Act 2011 is that Form E should be read as:

‘No disposition by the proprietor of the registered estate to which sections 117-121 or section 124 of the Charities Act 2011 applies is to be registered unless the instrument contains a certificate complying with section 122(3) or section 125(2) of that Act as appropriate.’

3.8 Other restrictions

Where there are any other limitations on the powers of a particular charitable incorporated organisation, you should consider applying on [form RX1](https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>) for an appropriate restriction to be entered in the register. However, the Charitable Incorporated Organisations (General) Regulations 2012 provide (rule 14) that a charitable incorporated organisation’s constitution cannot include any provision that would restrict its ability to dispose of its property. The charitable incorporated organisation’s trustees are given power to manage the affairs of the charitable incorporated organisation and for that purpose to exercise all the powers of the charitable incorporated organisation (section 216 of the Charities Act 2011).

3.8.1 Provisions regarding the payment of capital money

It does not appear that a charitable incorporated organisation has trust corporation status. Where a charitable incorporated organisation is a sole or a custodian trustee, it must apply for a Form A restriction (rule 94(2) of the Land Registration Rules 2003). It is for you to apply for the restriction, either in the disposition to the charitable incorporated organisation or on [form RX1](https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>) (rule 178(2) of the Land Registration Rules 2003). This will ensure compliance with section 27(2) of the Law of Property Act 1925.

3.8.2 The Official Custodian for Charities (‘Official Custodian’)

Where land is vested in the Official Custodian, who is being registered as proprietor as a result of a vesting order made under section 76 of the Charities Act 2011 (formerly section 18 of the Charities Act 1993), you must lodge with the application either:

- a certified copy of an order of the court made under section 90(1) of the Charities Act 2011 (formerly section 21(1) of the Charities Act 1993), or
- a certified copy of an order of the Charity Commission made under sections 69(1)(c) or 76(3), Charities Act 2011 (formerly sections 16 or 18, Charities Act 1993) (rule 178(1) of the Land Registration Rules 2003.)

Where the land has vested in or transferred to the Official Custodian under section 69 or section 90 of the Charities Act 2011 (or section 16 or section 21(1) of the Charities Act 1993), registration will be completed as follows:

‘(date) Proprietor: The Official Custodian for Charities on behalf of (name of charitable incorporated organisation) of (address of charitable incorporated organisation).’

Where the land has vested in the Official Custodian by virtue of an order made under section 76(3) of the Charities Act 2011 (or section 18 of the Charities Act 1993), the address for service entered in the register will be that of the Official Custodian.

In addition to a Form E restriction, when the Official Custodian is being registered as proprietor as a result of a vesting order made by the Charity Commission under section 76(3) of the Charities Act 2011 (or section 18 of the Charities Act 1993) a further restriction is required. An application, using [form RX1](#) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>), must be made for entry of this restriction which will be in Form F (rule 178 of the Land Registration Rules 2003). The effect of Schedule 8, paragraph 3(1), to the Charities Act 2011, is that Form F should now be read as:

‘No disposition executed by the trustees of [name of CIO] in the name and on behalf of the proprietor shall be registered unless the transaction is authorised by an order of the court or of the Charity Commission, as required by section 91(4) of the Charities Act 2011.’

4. Dispositions by charitable incorporated organisations

4.1 Background

Non-exempt charities need to go through certain procedural steps before disposing of land (sections 117-121, 124 and 125 of the Charities Act 2011.). For a brief explanation, see [practice guide 14: charities - advice for applications to be sent to HM Land Registry](#) (<https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry>).

As already explained in [Non-exempt charity restrictions](#), in the case of registered land the requirements of the Charities Act 2011 are reflected by entering the appropriate restriction, in Form E, in the register.

Provided that any disposition by a charitable incorporated organisation contains the relevant non-exempt charity statement and a certificate if necessary, as explained

in the following sections, the requirements of the restriction in Form E will be met and the disposition can be registered.

4.2 The statement required in the disposition

Since a charitable incorporated organisation is a non-exempt charity the deed effecting the disposition must contain a statement about the estate, the charitable incorporated organisation and the nature of the transaction. This is required by section 122(2) of the Charities Act 2011 for dispositions other than mortgages and by section 125(1) of the Charities Act 2011 for mortgages. The statement to be included in any disposition or mortgage depends on whether or not the disposition is one falling within section 117(3)(a)-(d) of the Charities Act 2011 (or in the case of a mortgage whether it is one falling within section 124(9)).

Under section 124(9) of the Charities Act 2011 there is no restriction on mortgages for which general or special authority is expressly given as mentioned in section 117(3)(a) or for which the authorisation or consent of the Secretary of State is required as mentioned in section 117(3)(b).

Rule 180 of the Land Registration Rules 2003 sets out the various forms of statement to be included in dispositions of registered estates and in dispositions of unregistered estates that will require the estate to be registered, depending on whether or not the disposition is a mortgage, and whether or not it is subject to the restrictions imposed by sections 117-121 or 124 of the Charities Act 2011.

The effect of Schedule 8, paragraph 3(1) to the Charities Act 2011 is that rule 180 of the Land Registration Rules 2003 should be read as if the statements to be included in the deed are as follows.

For a disposition other than a mortgage, either:

‘The land transferred (or as the case may be) is held by [(proprietors) in trust for] (CIO), a non-exempt charity, and this transfer (or as the case may be) is not one falling within paragraph (a), (b), (c) or (d) of section 117(3) of the Charities Act 2011, so that the restrictions on disposition imposed by sections 117-121 of that Act apply to the land.’

or

‘The land transferred (or as the case may be) is held by [(proprietors) in trust for] (charitable incorporated organisation), a non-exempt charity, but this transfer (or as the case may be) is one falling within paragraph (a), (b), (c) or (d) (as the case may be) of section 117(3) of the Charities Act 2011.’

For a mortgage by a charitable incorporated organisation, either:

‘The land charged is held by (or in trust for) (charitable incorporated organisation), a non-exempt charity, and this charge (or mortgage) is not one falling within section 124(9) of the Charities Act 2011, so that the restrictions imposed by section 124 of that Act apply.’

or

‘The land charged is held by (or in trust for) (charitable incorporated organisation), a non-exempt charity, but this charge (or mortgage) is one falling within section 124(9) of the Charities Act 2011.’

In addition, a mortgage by a charitable incorporated organisation that results in an application for first registration (section 4(1)(g) of the Land Registration Act 2002) should also contain the following statement.

‘The restrictions on disposition imposed by sections 117-121 of the Charities Act 2011 also apply to the land (subject to section 117(3) of that Act).’

4.3 The certificate required in the disposition

Where a charitable incorporated organisation is registered as proprietor of an estate a Form E restriction will have been entered in the register. The effect of this restriction is to require that, in addition to the appropriate statement referred to above, a disposition by the charitable incorporated organisation must also contain a certificate where either the restrictions on dispositions imposed by sections 117-121 of the Charities Act 2011 apply or, if it is a charge, the restrictions imposed by section 124 of the Charities Act 2011 apply. For further information see [practice guide 14: charities - advice for applications to be sent to HM Land Registry](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry) (<https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry>).

The certificate should normally follow the appropriate statement in the deed effecting the disposition. The Land Registration Act 2002 does not prescribe any particular wording but the certificate must meet the requirements of sections 122(3) or 125(2) of the Charities Act 2011. The form of the certificate depends on whether the charitable incorporated organisation has power under its constitution to make the disposition and has complied with the relevant provisions of the Charities Act 2011, or whether the disposition has been sanctioned by an order of the court or the Charity Commission.

For a disposition (not being a charge) made other than pursuant to an order of the court or the Charity Commission the certificate should be on the following lines.

‘(Description of charitable incorporated organisation trustees and capacity in which they certify) certify that they have power under its constitution to effect

this disposition and that they have complied with the provisions of the said sections 117-121 so far as applicable to this disposition.'

For a charge made other than pursuant to an order of the court or the Charity Commission the certificate required should be on the following lines.

'(Description of charitable incorporated organisation trustees and capacity in which they certify) certify that they have power under its constitution to effect this charge and that they have obtained and considered such advice as is mentioned in section 124(2) of the said Act.'

Where the disposition has been sanctioned by an order of the Charity Commission or the court, the certificate required should be on the following lines.

'(Description of charitable incorporated organisation trustees and capacity in which they certify) certify that this disposition (or charge) has been sanctioned by an order of the Charity Commission (or the Court).'

Where a person acquires an interest in an estate for money or money's worth under a disposition containing any of the certificates described above, it shall be conclusively presumed that the facts are as stated in the certificate (sections 122(4) and 125(3) of the Charities Act 2011).

4.4 Who gives the certificate?

The certificate must be given by the charitable incorporated organisation's trustees (sections 122(3) and 125(2) of the Charities Act 2011.) so they will need to execute the disposition or charge in order to give the certificate. Section 177 of the Charities Act 2011 defines 'charity trustees' as the persons having the general control and management of the administration of the charity. Where the charity is a charitable incorporated organisation these persons will be the trustees of the charitable incorporated organisation.

4.5 How should the charitable incorporated organisation trustees be described?

Where the trustees of the charitable incorporated organisation are giving the certificate, they may be described as:

'The trustees of the charitable incorporated organisation (or use term by which charity is generally known, for example the society, the association, the board, the council, the fund), being the persons who have the general control and management of its administration.'

In these cases it is usual for 2 (or more, if desired) of the trustees to be authorised to execute the deed on behalf of them all (see [Execution formalities](#)). There is no need to give the names of all the trustees. If there is no delegated authority all the trustees should be named in the certificate and should execute the deed.

4.6 Unregistered land

Where an unregistered estate is held by or in trust for a charitable incorporated organisation, the owners' powers to dispose of it are restricted in much the same way as they would be if their title were registered. Therefore, when examining a title on first registration, we will apply the principles outlined above as if the appropriate restriction had applied to the charitable incorporated organisation disposing of the estate. We will be able to determine whether a certificate is appropriate because the requirement that the disposition contains statements about the land, the charity and the nature of the disposition also applies to conveyances, mortgages and leases of unregistered land. We therefore recommend that any disposition of an unregistered estate by a charitable incorporated organisation to which sections 117-121 or 124 of the Charities Act 2011 applies should contain a certificate along the lines of one of those set out in this section when it is appropriate to the circumstances of the disposition.

4.7 Where a certificate is not required

There will be some occasions when a certificate should not be included in a deed because the disposition is not subject to the restrictions on disposition imposed by sections 117-121 or, if a charge, to section 124 of the Charities Act 2011. These are dispositions referred to in section 117(3) of that Act and charges to which the provisions of section 124 are disapplied by section 124(9) of that Act.

These types of dispositions will have one of the second of the alternative statements referred to above in [The statement required in the disposition](#), depending on whether or not the disposition is a charge.

4.8 Complying with restrictions

4.8.1 Form E

This restriction will be complied with if the disposition contains the relevant statement and, if needed, a certificate as mentioned above in [The certificate required in the disposition](#).

4.8.2 Form F

A restriction in Form F in Schedule 4 to the Land Registration Rules 2003 (before 14 March 2012 the restriction entered in the register referred to section 22(3) of the Charities Act 1993 rather than section 91(4) of the Charities Act 2011. Such a restriction should now be read as if it referred to section 91(4).) will have been

entered in the register when an order under section 76 of the Charities Act 2011 (or section 18 of the Charities Act 1993) has been made and the Official Custodian has been registered as proprietor. If there is a subsequent disposition by the Official Custodian then, regardless of which version of the restriction appears in the register, an order of court or of the Charity Commission will be required to authorise the disposition (section 91(4) of the Charities Act 2011). If this is the case, the disposition should include a certificate stating that it has been sanctioned by an order of the Charity Commission or of the court, as appropriate (sections 122(3)(a) and 125(2)(a) of the Charities Act 2011). If there is no order of the court or the Charity Commission, the Official Custodian will need to seal the deed effecting the disposition.

The restriction does not apply to dispositions executed by the Official Custodian.

4.8.3 Form A

If the charitable incorporated organisation proprietor is a sole or custodian trustee and a Form A restriction appears in the register a second trustee will need to be appointed to join in any disposition under which capital money arises, since a charitable incorporated organisation is not a trust corporation.

4.8.4 Other restrictions

Other restrictions will be satisfied by producing evidence that the disposition complies with the terms of the restriction. The evidence will take the form of a certificate if the restriction calls for one or a copy of the required consent or order should be lodged if appropriate. If no consent or order is required in the circumstances, the position should be explained in an accompanying letter.

4.9 Cancellation of restrictions

Where there is a restriction in the register in Form E, Form F or one of the previous versions referred to in [practice guide 14: charities: advice for applications to be sent to HM Land Registry \(https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry\)](https://www.gov.uk/government/publications/charities-advice-for-applications-to-be-sent-to-land-registry) then this will be cancelled automatically (no separate application to cancel the restriction is required) where an application is made to register a transfer by the proprietor provided that:

- the restriction has been complied with, and
- the other aspects of the application are in order.

However, if a charitable incorporated organisation will remain as proprietor following a disposition, such as a lease or a charge, or following amalgamation or conversion, any charity restriction will remain in the register.

5. Keeping the register up to date

5.1 Introduction

Estates owned by charities tend to be held for a long time. During this ownership many events may occur that affect the charity's powers, status and trustees. A charitable incorporated organisation might change its name or address for service, or amalgamate with (or transfer its property to) another charitable incorporated organisation, or the Charity Commission may intervene. If any of these changes occur the register must be updated to reflect the current position. For change of name and amalgamation and transfer of undertakings see further below.

5.2 Intervention by the Charity Commission

The Charity Commission has extensive powers by order to intervene in the administration of non-exempt charities (particularly under section 76 of the Charities Act 2011). Broadly, the powers are exercisable to ensure the proper administration of charities and to protect charity property against misconduct or mismanagement. They include a power to appoint an interim manager to act as receiver and manager in respect of the property and affairs of a charity. These provisions apply to charitable incorporated organisations.

Where an interim manager is appointed the order may confer on them such powers and duties as are specified in the order and provide for those powers to be exercised by them to the exclusion of the charitable incorporated organisation trustees. See [Execution formalities](#) as to the execution of documents in such a case.

Where any application is made to the registrar pursuant to any such order you must produce a certified copy of the order.

The Charity Commission may also, by order, appoint new trustees or vest land in the Official Custodian. If an order under section 76 of the Charities Act 2011 vests an estate in the Official Custodian, an application must be made for entry of a restriction in Form F in the register (rule 178 of the Land Registration Rules 2003. and see [The Official Custodian for Charities](#). This will prevent the charitable incorporated organisation's trustees from exercising their powers in the name of the Official Custodian without authorisation.

6. Dissolution of a charitable incorporated organisation

6.1 Insolvent winding up (Part 2 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012)

If a charitable incorporated organisation's assets are insufficient to meet its liabilities it will be insolvent. Part 2 of the Charitable Incorporated Organisations

(Insolvency and Dissolution) Regulations 2012 apply (with modifications) the Insolvency Act 1986 to charitable incorporated organisations, so that the full range of insolvency and dissolution procedures applicable to registered companies apply to charitable incorporated organisations. It is unlikely that an administrative receiver would be appointed for a charitable incorporated organisation, since no such receiver can be appointed in relation to a security created after 15 September 2003 and the exceptions to this do not apply to charitable incorporated organisations except in so far as they may be registered social landlords.

Like company directors, the charitable incorporated organisation's trustees may incur personal liability in certain limited circumstances and may have to contribute to the charitable incorporated organisation's assets on dissolution if they allow the charitable incorporated organisation to continue to trade while insolvent (wrongful trading). Depending on the charitable incorporated organisation's form of constitution, its members (and ex-members) may also be liable to contribute on its winding up.

The Insolvency Act 1986 provisions relating to moratorium following a voluntary arrangement (Schedule 1A), avoidance of dispositions following commencement of winding up (section 127), stay of proceedings once a winding up order is made (section 130(1)) (with requirement, as under section 130(2) that such order must be sent to the Charity Commission for entry in the charitable incorporated organisation's records), fraud and misconduct (sections 206-208), fraudulent and wrongful trading (sections 213 and 214), transactions at an undervalue (section 238), preferences (section 239), avoidance of certain floating charges (section 245) and debt avoidance (section 423) all apply to charitable incorporated organisations, as modified by the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The court may direct the vesting of the charitable incorporated organisation's property in a liquidator (section 145 of the Insolvency Act 1986, as modified). Otherwise, however, it is not made clear what happens to the assets of a charitable incorporated organisation which is wound up and dissolved under the Insolvency Act 1986 procedures and whether the provisions of section 1012 of the Companies Act 2006 would apply.

For further guidance on company winding up see [practice guide 35: corporate insolvency](https://www.gov.uk/government/publications/corporate-insolvency) (<https://www.gov.uk/government/publications/corporate-insolvency>).

6.2 Solvent winding up (Part 3 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012) and other cases

Alternatively, under Part 3 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012, the Charity Commission may dissolve a solvent charitable incorporated organisation where the charitable incorporated organisation trustees apply for dissolution. Part 3 dissolutions are expected to be more common than those under Part 2. The trustees must:

- arrange for the charitable incorporated organisation members to make a dissolution resolution at a general meeting
- make a declaration that the charitable incorporated organisation's debts and liabilities have been settled or otherwise provided for in full
- make a statement setting out how any property and rights vested in, or held in trust for, the charitable incorporated organisation have been or will be applied on dissolution in accordance with its constitution confirm that no liquidator is acting.

The Charity Commission must enter notice of the dissolution application in the charitable incorporated organisation's register entry.

A charitable incorporated organisation is automatically dissolved and ceases to exist when it is removed from the register of charities; normally this will be 3 months from the date when the Charity Commission publishes notice of the application for dissolution. Where the Charity Commission removes a charitable incorporated organisation from the register of charities it must publish notice of removal and the date of removal.

The Charity Commission itself may also dissolve, under Part 3:

- a moribund charitable incorporated organisation (that is, one which appears not to be in operation)
- a charitable incorporated organisation which it considers no longer to be a charity, or
- a charitable incorporated organisation which is being wound up under the Insolvency Act 1986 but either no liquidator is acting or the charitable incorporated organisation's affairs are fully wound up or the liquidator has made no returns for 6 consecutive months

The charitable incorporated organisation is then normally removed from the register and dissolved 3 months after the Charity Commission publicises notice of intention to dissolve it.

6.2.1 Application of property of a charitable incorporated organisation dissolved under Part 3

Part 4 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 makes provision for the application of the property of a charitable incorporated organisation on its dissolution through the Part 3 procedure.

On dissolution, remaining property of the charitable incorporated organisation (other than property held by the charitable incorporated organisation on trust for any other person or for any special purposes of the charitable incorporated organisation, or property which falls to be dealt with, on dissolution, in accordance with directions made by the charitable incorporated organisation before it was dissolved) vests automatically in the Official Custodian (regulation 23) to be held on trust for the same purposes as the charitable incorporated organisation had before dissolution. Apart from disclaimer (see [Disclaimer by the Official Custodian](#)) the Official Custodian can dispose of the property only in accordance with an order

of the Charity Commission that specifies the purposes or charities for which the property is held on trust by the Official Custodian (regulation 25), and the commission may make an order vesting property held by the Official Custodian in a charity or charities (regulation 26). This ensures that any property that the charitable incorporated organisation has not disposed of prior to its dissolution is applied for the same or similar charitable purposes (“cy-près”).

6.2.2 Application to register dissolution of a charitable incorporated organisation under Part 3

The form of application will vary depending on whether it is made by or on behalf of the Official Custodian, or follows a vesting order made by the Charity Commission.

6.2.2.1 Vesting in the Official Custodian

The vesting of property in the Official Custodian would appear to be a transfer by operation of law falling within section 27(5)(b) of the Land Registration Act 2002 and so not required to be completed by registration. (Any subsequent disposal of the property by the Official Custodian would be a registrable disposition.) However, application may be made in [form AP1](#) (<https://www.gov.uk/government/publications/change-the-register-ap1>) to bring the register up to date by showing the Official Custodian as proprietor (together with an application for a Form F restriction). Alternatively, a request may be made to the registrar to enter a note in the register as to the dissolution of the charitable incorporated organisation, pursuant to rule 185 of the Land Registration Rules 2003, accompanied by a certificate as to publication by the Charity Commission of notice of dissolution of the charitable incorporated organisation.

6.2.2.2 Vesting order made by the Charity Commission

Application will need to be made in [form AP1](#) (<https://www.gov.uk/government/publications/change-the-register-ap1>) to register the vesting order as a transfer by operation of law, as the order would not fall within one of the exemptions in section 27(5)(a)-(c), together with an application in [form RX1](#) (<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>) for any appropriate restriction(s).

6.2.2.3 Evidence required

- the members’ resolution to wind up.
- the declaration by the charitable incorporated organisation trustees that all its debts have been settled or provided for in full.
- the statement of the charitable incorporated organisation trustees as to the application of its property on dissolution.
- a certificate as to publication by the Charity Commission of notice of dissolution.
- a certified copy of any vesting order made by the Charity Commission, accompanied by an application for an appropriate restriction in [form RX1](#)

<https://www.gov.uk/government/publications/enter-a-restriction-registration-rx1>).

We will need only certified copies of deeds or documents you send to us with HM Land Registry applications. Once we have made a scanned copy of the documents you send to us, they will be destroyed. This applies to both originals and certified copies.

Where the Charity Commission itself dissolves a charitable incorporated organisation, then the members' resolution and the declaration and certificate of the charitable incorporated organisation trustees will not be required.

6.3 Disclaimer by the Official Custodian

Regulation 27 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 provides for the Official Custodian to disclaim property that is vested in it. Regulations 28-32 set out the effects of disclaimer, and various protections in relation to leasehold land and other parties.

Disclaimed property is treated as never having vested in the Official Custodian, and the rights, interests and liabilities of the charitable incorporated organisation in respect of the property are terminated, but the regulations are silent as to what happens thereafter and it is not clear whether the property vests in the Crown or one of the Duchies by analogy with section 1012 of the Companies Act 2006.

A disclaimer of leasehold property will not take effect until a copy of the notice of disclaimer has been served (so far as the Official Custodian is aware of the addresses) on every mortgagee or underlessee of the charitable incorporated organisation and either:

- no application for a vesting order is made to the court within 14 days of service of the notice of disclaimer
- an application has been made but the court orders that disclaimer shall take effect.

If the court makes a vesting order the property vests automatically in the named person(s) without any conveyance, assignment or transfer. If the property is subject to a rentcharge the new owner is not liable for any sums owing before they take possession or control or enter into occupation.

6.4 Restoration of a dissolved charitable incorporated organisation

Part 5 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 makes provision for the restoration of a dissolved charitable incorporated organisation to the register of charities. It sets out the powers of the Charity Commission (regulation 33) and the court (regulation 34) to restore a dissolved charitable incorporated organisation to the register of charities.

Where the court makes an order for restoration, the order takes effect from the date of its delivery to the Charity Commission.

Restoration is effected with the former name of the charitable incorporated organisation unless the court or the Charity Commission orders otherwise (regulation 37). The commission must publish notification of the restoration (regulation 38). Upon restoration, the charitable incorporated organisation is treated as never having been dissolved (regulation 39). Its former property, which vested in the Official Custodian on dissolution, automatically re-vests in the restored charitable incorporated organisation (regulation 40) and an application should be made in [form AP1 \(https://www.gov.uk/government/publications/change-the-register-ap1\)](https://www.gov.uk/government/publications/change-the-register-ap1) to reflect this re-vesting (section 27(5) of the Land Registration Act 2002 applies), accompanied by a certified copy of the order of the court, or a certified screen shot from the Charity Commission website as appropriate, and a conveyancer's certificate as to the date when the order took effect.

7. Change of name of a charitable incorporated organisation

The Charity Commission has power to require a non-exempt charity to change its name (sections 42, 43 and 44 of the Charities Act 2011).

A charity can change its name by its own decision. Where the charity is a registered charity it must notify its change of name to the Charity Commission.

Whether or not the change of name was compulsory, you should make an application in [form AP1 \(https://www.gov.uk/government/publications/change-the-register-ap1\)](https://www.gov.uk/government/publications/change-the-register-ap1) for alteration of the register to change the name of the charitable incorporated organisation in the register. A certified copy of any new certificate issued by the Charity Commission must be lodged. There is currently no fee payable for this application.

We will need only certified copies of deeds or documents you send to us with HM Land Registry applications. Once we have made a scanned copy of the documents you send to us, they will be destroyed. This applies to both originals and certified copies.

8. Conversion into a charitable incorporated organisation

Unincorporated charities and charitable trusts that wish to become charitable incorporated organisations will first have to set up a new charitable incorporated organisation and then transfer their assets to it and dissolve the unincorporated charity. Such transfer would appear to be subject to registration under section 27(2) of the Land Registration Act 2002 in order to take effect at law. Charity Commission guidance suggests that, where the unincorporated charity is transferring permanent endowment land, a vesting declaration should be made

under section 310 of the Charities Act 2011; if the charity has designated or 'specie' land, a Charity Commission scheme will be required.

The Charities Act 2011 also makes provision for conversion of the following charitable corporate bodies into a charitable incorporated organisation but not all the enabling regulations have yet been made.

8.1 Charitable company

The Charitable Incorporated Organisations (Conversion) Regulations 2017 enable existing charitable companies and community interest companies to convert to a charitable incorporated organisation and came into force on 1 January 2018. A charitable company with any level of annual income can apply to the Charity Commission to convert into a charitable incorporated organisation. Any shares in the company (unusual, in practice, as charitable companies are usually limited by guarantee) must be fully paid up and the company must not be an exempt charity.

The company must supply the Charity Commission with a resolution to convert to a charitable incorporated organisation, the proposed constitution of the charitable incorporated organisation and a resolution to adopt that proposed constitution.

If approved by the Charity Commission, the Commission will provisionally register the charitable incorporated organisation in the register of charities and send relevant documents to Companies House, asking for removal of the company from the register of companies. The registrar of companies will then remove the company from the register and the Charity Commission will complete registration of the charitable incorporated organisation (sections 232 and 233 of the Charities Act 2011). Both registers should be updated at the same time, so that the date of the company's conversion to a charitable incorporated organisation (as shown on the public register of charities) will match the date of removal of the company from the register of companies. With effect from 1 January 2018 all charitable incorporated organisations will be included in Companies House's Register of Business Names. Converting charitable companies will retain their existing charity number. However, the regulations make no provision for charges registered against a charitable company that is applying to convert, and there is no public register of charges over the property of charitable incorporated organisations. If the applicant company has fixed or floating charges not yet satisfied, it will not be possible to register a statement of satisfaction with Companies House after conversion so the charge would remain listed against the name of the company indefinitely (although the company's details in the Companies House register would show that it had converted to a charitable incorporated organisation).

A vesting declaration under section 310 of the Charities Act 2011 is not required to transfer the property of the former company to the charitable incorporated organisation. The transfer will effectively happen by operation of law without the need for a documentary transfer, but should be completed by registration, pursuant to section 27(5) of the Land Registration Act 2002.

An application to alter the converting charitable company's details in the register should be made in [form AP1 \(https://www.gov.uk/government/publications/change-the-register-ap1\)](https://www.gov.uk/government/publications/change-the-register-ap1), accompanied by copies of the certificate of cancellation of the company's registration at Companies House, and a copy of the registration entry in the public register of charities. The application should be described on the form AP1 as 'Alteration of the register' pursuant to section 27(5) of the Land Registration Act 2002.

8.2 Community interest company

Section 234 of the Charities Act 2011 enables a community interest company to convert and be registered as a charity. Regulations to enable this came into force on 1 January 2018, together with those for conversion of charitable companies (see above), and as from 1 September 2018 by community interest companies can convert directly to charitable incorporated organisations. A community interest company cannot be a charity and so it would gain charitable status by converting to a charitable incorporated organisation.

A vesting declaration under section 310 of the Charities Act 2011 is not required to transfer the property of the former community interest company to the charitable incorporated organisation. The transfer will effectively happen by operation of law without the need for a documentary transfer, but should be completed by registration, pursuant to section 27(5) of the Land Registration Act 2002.

An application to alter the converting community interest company's details in the register should be made in [form AP1 \(https://www.gov.uk/government/publications/change-the-register-ap1\)](https://www.gov.uk/government/publications/change-the-register-ap1), accompanied by a copy of the certificate of cancellation of the company's registration at Companies House and a copy of the registration entry in the public register of charities. The application should be described on the form AP1 as 'Alteration of the register' pursuant to section 27(5) of the Land Registration Act 2002.

8.3 Community benefit society (formerly industrial and provident society)

On 1 August 2014, existing industrial and provident societies became registered societies under the Co-operative and Community Benefit Societies Act 2014, being either co-operative societies or community benefit societies, depending on what conditions of registration they fulfilled. Section 229 of the Charities Act 2011 (which came into force on 1 January 2018) enables a society to convert to a charitable incorporated organisation but no regulations have yet been made. However a society cannot convert if it has a share capital but any shares are not fully paid up or if it is an exempt charity. Only community benefit societies can have charitable status, and those that do not are exempt charities, and so cannot convert unless their exempt status has been removed. There is currently no legislation to enable a charitable community benefit society to cease to be exempt and register as a charitable incorporated organisation. In practice, subject to the terms of the society's governing document, it might be possible to wind up the society and

transfer its assets to a charitable incorporated organisation but the exempt charity would cease to exist.

9. Amalgamation (merger) of charitable incorporated organisations

9.1 Charity mergers generally

The Charities Act 2006 established a register of charity mergers, maintained by the Charity Commission. Registration of a merger is a “relevant charity merger”, which will usually be one of two types (as described by the Law Commission in Chapter 11 of its report “Technical Issues in Charity Law” (Law Com no. 375)):

- a ‘Type 1’ merger – where existing charity A transfers all its property to existing charity B (or to existing charity B and (an)other existing charity/ies) and then ceases to exist, or
- a ‘Type 2’ merger – where existing charities A and B (or more than 2 existing charities) transfer all their property to a new charity (C), and A and B (and any other) then cease to exist

A relevant charity merger cannot occur where a “shell” original charity (for example, A) is retained, unless that original charity is retained to hold permanent endowment property.

Mechanisms to effect the merger and transfer of charity land include:

- a transfer (in form TR1) (although a transfer to a charitable company on incorporation or merger may amount to a “substantial property transaction” under section 190 of the Companies Act 2006, requiring Charity Commission consent under section 210 of the Charities Act 2011)
- a Charity Commission vesting order (under section 272 of the Charities Act 2011):
 - where an unincorporated charity (C1) resolves to transfer its assets to another charity (C2) under section 268 of the Charities Act 2011, section 272(2) anticipates that C1’s trustees will execute the necessary transfer documentation, but
 - C2 can request the Charity Commission to make a vesting order or scheme (a scheme will be required if the unincorporated transferor charity is transferring ‘specie’ land and will then be closed)
- pre-merger vesting declaration (under section 310 of the Charities Act 2011) (intended as a simpler means of transferring property from an unincorporated charity – trust, or unincorporated organisation – to the transferee charity on merger or incorporation):
 - but the declaration can be used only in respect of a “relevant charity merger” (so the original transferor charity must cease to exist after the transfer, unless

permanent endowment is held, as section 310 does not apply to permanent endowment), and

- a section 310 vesting declaration does not override the requirement for a transfer of land to be registered to take effect at law (section 27 of the Land Registration Act 2002); the declaration would have to be registered at HM Land Registry, so it might be more expedient simply to execute a form TR1 instead (section 310(4) also makes it clear that where title to the land is registered the declaration needs to be registered in order to take effect at law)
- section 310 does not confer on charities a power to merge; a section 310 vesting declaration is a mechanism to effect the transfer of assets in the case of a relevant charity merger but relies on the transferor charity having power to merge

9.2 Charitable incorporated organisation mergers

The Charities Act 2011 contains separate provisions (sections 235 – 239 and 240 - 244) to facilitate the amalgamation of charitable incorporated organisations, which are similar to the process under section 268 that applies to unincorporated charities. The Charity Commission's consent is required for all mergers of charitable incorporated organisations.

- Sections 240 – 244 apply where an existing charitable incorporated organisation transfers its property to another existing charitable organisation (a 'Type 1' merger).
- Sections 235 – 239 apply where 2 existing charitable incorporated organisations transfer their assets to a new charitable incorporated organisation set up for this purpose (a 'Type 2' merger).

Where the transferee is a charitable incorporated organisation, the effect of section 310 Charities Act 2011 appears to be modified by regulation 61 of the Charitable Incorporated Organisations (General) Regulations 2012, so that:

- section 310 vesting declarations can be used to transfer permanent endowment land and special trust property, and
- the transferee charitable incorporated organisation is treated as a trust corporation

However, where the transferor charity is a charitable incorporated organisation, section 310 does not apply and a vesting declaration is not appropriate, since:

- when the Charity Commission approves a 'Type 1' merger (CIO1 to CIO2), CIO1's assets transfer automatically, by virtue of section 244(1)(b) of the Charities Act 2011
- when the Charity Commission approves a 'Type 2' merger (an amalgamation of CIO1 and CIO2 into new CIO3), CIO1 and CIO2's assets transfer automatically, by virtue of section 239(2) of the Charities Act 2011, and any gift expressed as a gift to either CIO1 or CIO2 that takes effect after the registration of new CIO3 takes effect as a gift to new CIO3; the 'old' CIO1 and CIO2 are dissolved

It appears therefore that section 310 can apply where the transferee charity is a charitable incorporated organisation (as envisaged by the Explanatory Notes to the Charitable Incorporated Organisations (General) Regulations 2012) but, because of the effect of sections 235 and 244 Charities Act 2011, section 310 does not operate where the transferor charity is a charitable incorporated organisation nor where both the transferor and transferee charities are charitable incorporated organisations.

In the case of a 'Type 1' merger (sections 240 – 244 of the Charities Act 2011), HM Land Registry will require evidence of the Charity Commission's approval of the merger to accompany an application to register the vesting of the charity's property by operation of law under section 27(5) of the Land Registration Act 2002.

In the case of a 'Type 2' merger (sections 235-239 of the Charities Act 2011), HM Land Registry will require a copy of the Charity Commission's approval of the merger and a copy of the entry made in the register of charities pursuant to section 238 (showing the names of the new charitable incorporated organisation and those of the 'old' charitable incorporated organisation(s) that have amalgamated into it) to accompany an application to register the vesting of the charities' property by operation of law under section 27(5) of the Land Registration Act 2002.

In the case of merger where regulation 61 applies and a section 310 pre-merger vesting declaration is made, the vesting declaration should be lodged with an application for registration, in order to take effect at law. Where a restriction affects the title, the necessary consent or certificate must also be lodged. If the property is leasehold and the property register contains a restriction on alienation, evidence of the landlord's consent to the merger is required, since the vesting declaration will be ineffective unless consent has been obtained.

10. Transfer of undertaking of a charitable incorporated organisation

A charitable incorporated organisation may resolve (by unanimous written resolution of members, or by 75 per cent majority at a general meeting) to transfer all of its property, rights and liabilities to another charitable incorporated organisation specified in the resolution (section 240 of the Charities Act 2011). Provided that the resolution is confirmed by the Charity Commission, the transfer is effected and all the property, rights and liabilities of the transferring charitable incorporated organisation become those of the transferee charitable incorporated organisation; the transferring charitable incorporated organisation is dissolved. Any gift expressed as a gift to the transferring charitable incorporated organisation automatically takes effect as a gift to the transferee charitable incorporated organisation (section 244 of the Charities Act 2011).

11. Execution formalities

11.1 General

By virtue of regulations 19-25 of the Charitable Incorporated Organisations (General) Regulations 2012, the execution formalities for charitable incorporated organisations mirror those for execution by a limited company under the Companies Act 2006. Contracts may be made either:

- by a charitable incorporated organisation, in writing under its common seal (though a charitable incorporated organisation does not have to have a seal)
- on behalf of a charitable incorporated organisation, by a person acting under its authority, express or implied

Deeds may be executed by a charitable incorporated organisation either:

- by affixing its common seal (if it has one)
- by having the deed signed by at least 2 of its trustees (or, where it has a sole trustee, by that trustee)

In favour of a purchaser, a document executed by a charitable incorporated organisation has effect as a deed if the document makes it clear on its face that it is intended to be a deed and is delivered. Delivery is presumed on execution, unless a contrary intention is proven (see paragraphs 20(4), 20(5) and 21(3) of the Charitable Incorporated Organisations (General) Regulations 2012).

A charitable incorporated organisation may, by an instrument executed as a deed, give a person either a general or a specific power as its attorney to execute deeds and documents on its behalf.

Suggested forms of execution are set out in [practice guide 8: execution of deeds](https://www.gov.uk/government/publications/execution-of-deeds) (<https://www.gov.uk/government/publications/execution-of-deeds>).

11.2 Execution by interim managers appointed under section 76 of the Charities Act 2011

If the Charity Commission appoints an interim manager under section 76 of the Charities Act 2011, the register of charity trustees must record the appointment and the manager's name, service address and date of appointment (paragraphs 4(4) and (5) of the Charitable Incorporated Organisations (General) Regulations 2012).

An interim manager appointed by the Charity Commission can deal with land only to the extent permitted by the order of the Charity Commission by which they were appointed. A certified copy of that order must, therefore, be produced with any application to register a disposition by an interim manager.

12. Things to remember

We only provide factual information and impartial advice about our procedures.
[Read more about the advice we give](#)

<https://www.gov.uk/government/publications/hm-land-registry-service-standards/our-service-standards#advice>).

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