

|  |
| --- |
|  |
| Transferring the assets of an unincorporated organization to a CIO |
|  |
| OG715-4 |
| Last Updated: 7/07/2015  Last Reviewed: 16/04/2013 |
|  |
|  |

|  |
| --- |
|  |

**Contents**

[OG 715-04 CIO: Transferring the assets of an unincorporated organisation to a CIO 2](#_Toc126227477)

[Policy Statement/Overview 2](#_Toc126227478)

[Summary of the guidance 3](#_Toc126227479)

[Casework Guidance 3](#_Toc126227480)

[B1 Top ten tips – transferring assets to a CIO from an unincorporated charity 3](#_Toc126227481)

[B2 Can an unincorporated charity move to a CIO structure? 4](#_Toc126227482)

[B3 Transferring assets of an unincorporated charity to a CIO where there is no permanent endowment or other property held on special trusts 4](#_Toc126227483)

[B3.1 Process the trustees follow 4](#_Toc126227484)

[B3.2 Power in the governing document 5](#_Toc126227485)

[B3.3 Using s267-272 6](#_Toc126227486)

[B3.4 Using a pre-merger vesting declaration 6](#_Toc126227487)

[B3.5 What we need to do 6](#_Toc126227488)

[B4 Transferring assets of an unincorporated charity that has permanent endowment or special trust property 7](#_Toc126227489)

[**B4.1 Process the trustees follow** 7](#_Toc126227490)

[B4.2 Power in the governing document 8](#_Toc126227491)

[B4.3 Using s268 (altered by s273) 9](#_Toc126227492)

[B4.4 Using a pre-merger vesting declaration (s310) 9](#_Toc126227493)

[B4.5 What we need to do 10](#_Toc126227494)

[Charts 10](#_Toc126227495)

[C1Transferring assets from an unincorporated charity to a CIO - which power to use... 11](#_Toc126227496)

[C2 transferring assets a CIO using provisions in the governing document (gifting assets to the CIO) 11](#_Toc126227497)

[C3 Transferring assets using s267 11](#_Toc126227498)

[C4 Transferring assets including permanent endowment using s273 11](#_Toc126227499)

[Legal/Policy/Accountancy Framework 11](#_Toc126227500)

[E1 When can an unincorporated charity move to the CIO structure? 11](#_Toc126227501)

[E2 Transferring property in furtherance of the charity's objects 12](#_Toc126227502)

[E3 Power under s267/s273 to transfer all property of an unincorporated charity to one or more CIOs 12](#_Toc126227503)

[E3.1 No upper threshold limit on use of the power 12](#_Toc126227504)

[E3.2 Purposes to be substantially similar 13](#_Toc126227505)

[E4 Using a pre-merger vesting declaration under s310 13](#_Toc126227506)

[Q & A 16](#_Toc126227507)

[F1 Can any unincorporated charity move to a CIO structure? 16](#_Toc126227508)

[F2 Is transferring assets to a CIO the same as incorporating to a company charity? 16](#_Toc126227509)

[F3 What considerations will we need to take into account when registering a new CIO? 16](#_Toc126227510)

[F4 Is there any income limit above which an unincorporated charity cannot use s267-272 power to transfer property to a CIO? 16](#_Toc126227511)

[F5 Can an unincorporated charity transfer permanent endowment to the CIO? 17](#_Toc126227512)

[F6 What do we need to take into consideration when registering a new CIO where the trustees intend to transfer the assets of an unincorporated charity? 17](#_Toc126227513)

[F7 What do we need to consider when assessing a transfer of property? 17](#_Toc126227514)

[F8 What issues do unincorporated charities need to consider when transferring property to a CIO? 17](#_Toc126227515)

# OG 715-04 CIO: Transferring the assets of an unincorporated organisation to a CIO

# Policy Statement/Overview

An unincorporated charity can move to a CIO structure by transferring its assets (including permanent endowment) to a new CIO registered for that purpose. Some unincorporated charities may be able to use provisions in their governing document to do this. Where trustees cannot use provisions in the governing document or where there are none, there are some specific provisions in the Charities Act that trustees may be able to use.

When CIO is first launched, this type of registration will be in the first phase of registrations we will consider.

Staff will need to assess these cases through the risk framework but generally speaking they will be low risk, and our role will usually be to ensure that the proper processes have been adequately followed. The following key policy considerations are relevant:

When assessing an application for registration of a new CIO:

* where possible, we should encourage trustees to use the provisions in their charity's governing document to make the transfer
* where there is no power in the governing document and the trustees use the provisions of s267-272 (or s267, 273-274 if there is also permanent endowment) we will follow the principles set out in OG519 when assessing their notification of proposal to transfer

Caseworkers may also wish to see advice available to the public on our [website](https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure#about-corporate-structures)

# Summary of the guidance

This guidance covers:

* an outline of the process trustees can use when transferring assets from an unincorporated charity to a new CIO, and when our involvement is necessary
* the alterations to the provisions in s267 (or s273) of the Charities Act that apply when transferring assets from an unincorporated charity to a CIO
* the provisions that relate specifically to pre-merger vesting declarations involving transfers from an unincorporated charity to a CIO

This guidance does not go into detail about the full considerations we will make at registration or transfer of property notification/application.

This guidance also does not cover conversion of a charitable company to CIO for which there will be specific regulations. These are still to be finalised and this process will not be available to charitable companies for some time after CIO is introduced.

# Casework Guidance

## B1 Top ten tips – transferring assets to a CIO from an unincorporated charity

* An unincorporated charity can transfer all its assets, including permanent endowment, to a CIO set up for that purpose – there is nothing to stop an unincorporated charity dividing its assets between more than one CIO
* The chart in C1 sets out the powers available to trustees depending on their situation
* Where possible the charity should use the provisions in its governing document to make the transfer – see chart C2
* Where there is no power in the governing document, the charity can use the provisions in s268 of the Charities Act (or s273 if there is permanent endowment) – see chart C3 or [C4](https://ogs.charitycommission.gov.uk/g715a004.aspx#tab4#heading_toc_VT_24); alternatively there may be an implied power to transfer assets and undertaking to another charity as a charitable application in furtherance of the transferring charity’s purposes (care needs to be taken by the trustees to ensure this is not being used to avoid using a dissolution clause or other express power)
* There is no upper income limit for charities wishing to use s268 power when transferring assets to a CIO as there is for other transfers but the power is not available to charities with designated land (i.e. land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity)
* The trustees can also use a pre-merger vesting declaration to make the transfer
* s310 allows a pre-merger vesting declaration to be used to transfer all property, including permanent endowment, to a CIO - see section E4
* Many of the considerations we will need to make are set out in other guidance – see the references/links in the text
* When transferring assets to a CIO using the power in section 268, the purposes of the receiving CIO must be substantially similar to the purposes of the unincorporated charity making the transfer; when transferring assets to a CIO other than under section 268, the extent to which the purposes of the receiving CIO need to be the same or similar to the purposes of the unincorporated charity making the transfer will depend on the power being relied on for the transfer - see section E3.2
* When registering a new CIO for the purpose of transferring to it the assets of an unincorporated charity, we will apply the same considerations as any other new CIO

## B2 Can an unincorporated charity move to a CIO structure?

No, but it may be able to transfer its assets and activities to a new CIO established for that purpose. (However, no application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity within the meaning of s22 of the Charities Act)

The process is set out in the next sections of this guidance.

## B3 Transferring assets of an unincorporated charity to a CIO where there is no permanent endowment or other property held on special trusts

### B3.1 Process the trustees follow

* Trustees of the unincorporated charity will **first** need to register a new CIO. We will consider an application in the same way as for any other new registration application. (However, no application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity within the meaning of s22 of the Charities Act)
* The **next step** will be to transfer the assets of the unincorporated charity to the new CIO. An unincorporated charity may:
  + have provisions in its governing document to transfer its assets or may have an implied power to apply its assets in furtherance of its objects – see section B3.2 - many charities will be able to use this route
  + use the power in s268 – see section B3.3 - where it has power to make such a transfer, a transferring charity may either
    - * make its own arrangements or
      * make a s310 pre-merger vesting declaration – see section B3.4

to transfer all of its property to a CIO

* **After this**:
  + if they wish to, apply to register the transfer as a merger

or

* + if they are keeping a shell charity, apply for a linking direction for the original charity with the CIO

More detail of how the trustees do this are set out in the next sub-sections.

### B3.2 Power in the governing document

There will usually be a power in the governing document or an implied power to transfer assets and undertakings to another charity.

Where a charity is transferring all its assets and undertaking to another charity, it will usually use:

* a 'dissolution clause' that explains:
  + how to bring the charity to an end
  + what must be done with the property
  + how the decision is to be made

The dissolution might require a vote by members (so they could vote against the motion to dissolve)

or

* a power to merge, without first getting our consent:
  + in such a case the purposes of the merging charities do not necessarily have to be the same but they must be compatible – that is, the recipient charity (the CIO) must have purposes that are suitable given the terms of the dissolution clause or other power being used by the transferring charity (see section E3.2)

See [section D (particularly sections D3, D6 and D7) of *Collaborative Working and Mergers* **(CC34)**](https://www.gov.uk/government/publications/collaborative-working-and-mergers-an-introduction-cc34).

In using this power the trustees will:

* need to follow the provisions/procedures in the governing document – this will usually involve putting a resolution to its members
* transfer the assets to the CIO
* notify us of the dissolution of the unincorporated charity using the online form

or

* retain the charity as a shell – in which case they might apply for a linking direction. Note that if the shell charity is not linked, then the requirement to file separate accounts and an Annual Return for the shell charity continue to apply. If the CIO acts as trustee of the unincorporated charity and the unincorporated charity retains any land, it may be necessary for the CIO to be a trust corporation. The easiest way to achieve this is for us to appoint the CIO as trustee of the unincorporated charity.

The trustees might also want voluntarily to register the transfer as a merger, in which case they use the online form – they can't keep a shell charity in this case.

**Using an implied power**

While it may be possible for trustees to transfer assets and an undertaking in order to further the charitable purposes of the transferring charity, care needs to be taken to ensure that this is not used in order to avoid using the dissolution clause or another more appropriate power in the governing document.

### B3.3 Using s267-272

Under CIO legislation the £10k upper income limit, which usually applies with s268, does not apply when transferring assets to a CIO – an unincorporated charity of any income may use this power in these circumstances except where it has designated land. See section E3.

The trustees will:

* put a resolution to the members – this needs a 2/3 majority to pass it
* notify us of the resolution
* if we do not object to the resolution, at the end of the 60 day period (or that period as modified by requirement of the Commission) beginning with the date we received a copy of the resolution, settle liabilities and transfer the assets
* dissolve the charity in accordance with the provisions of the governing document and notify us using the online form unless they are keeping it as a shell

The trustees might want voluntarily to register the transfer as a merger, in which case they use the online form – they can't keep a shell charity in this case.

### B3.4 Using a pre-merger vesting declaration

In either of the above cases, the trustees might want to use a pre-merger vesting declaration to merge the CIO and the unincorporated charity. If so they must notify us of the merger and they will not be able to keep a shell charity.

### B3.5 What we need to do

The process steps that trustees follow, as set out above, mean that there are a series of actions we will deal with in different functions.

* We consider the application to register the new CIO. This will be in Registration as usual
* In many cases, after registering the new CIO, trustees will use the dissolution or transfer provisions in their charity’s governing document to transfer their property. If the trustees are not using provisions in their governing document and instead are using the provisions in s267-272, we consider the resolution to transfer the property from the unincorporated charity to the CIO – see OG519 – this will be dealt with in First Contact (or possibly in Operations) as usual
* If we accept the application for a new CIO, we:
  + register the new CIO
* If the trustees are not keeping a shell charity, First Contact will remove the old charity from the register after the transfer upon application by the trustees of the old charity
* Where the trustees have notified us of a merger of charities First Contact will add it to the Register of Mergers

or

* if they have used a pre-merger vesting declaration First Contact will:
  + register the merger
  + remove the old charity from the register

or

* If the trustees have not used a pre-merger vesting declaration and are not voluntarily registering the merger and wish to keep a shell charity, they apply to First Contact as usual and we make a linking direction for the original charity with the CIO if requested provided the CIO becomes the managing trustee. Unless the shell charity holds land, it may not be necessary for the CIO to be a trust corporation. This means that the charity can make the necessary arrangements for the CIO to become trustee rather than us appointing the CIO as trustee.

## B4 Transferring assets of an unincorporated charity that has permanent endowment or special trust property

**B4.1 Process** the **trustees follow**

* Trustees of the unincorporated charity will **first** need to register a new CIO. We will consider an application in the same way as for any other new registration application. (However, no application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity within the meaning of s22 of the Charities Act)

The **next step** will be to transfer the assets of the unincorporated charity to the new CIO. An unincorporated charity with permanent endowment may:

* + have provisions in its governing document to transfer its assets in furtherance of its objects – see section B4.2 – if this is the case the trustees can use this route

Once it has established it has the power to transfer at least its unrestricted assets, it may

* + make a s310 pre-merger vesting declaration, amended by regulation 61 of the CIO General Regulations – see section B4.4

to transfer all of its property to a CIO.

**After this:**

* If they wish to, apply to register the transfer as a merger

N.B. They should not need to keep a shell charity because the permanent endowment or special trust will in any event constitute a separate charity.

### B4.2 Power in the governing document

If the trustees have the power in the governing document to transfer assets and undertakings in furtherance of the objects of the charity, we encourage them to use it. It is not so common in charities with permanent endowment to have this power as it is envisaged that the charity will always retain the property.

However, if there is such a power it is usually in:

* a 'dissolution clause' that explains:
  + how to bring the charity to an end
  + what must be done with the property
  + how the decision is to be made

The dissolution might require a vote by members (so they could vote against the motion to dissolve)

or

* a power to merge, without first getting our consent
  + in such a case the purposes of the charities do not necessarily have to be the same but they must be compatible – that is, the recipient charity (the CIO) must have purposes that are suitable given the terms of the dissolution clause or other power being used by the transferring charity (see section E3.2)

Whether special trusts, restricted funds and permanent endowment which are being transferred retain their trusts will depend on the terms of the express power to transfer these. If the trusts of this property are retained, it follows that they are kept separate and ring-fenced where this is legally required – often with replacement trustee(s) (likely to be the recipient CIO).

See [section D of *Collaborative Working and Mergers* **(CC34)**](https://www.gov.uk/government/publications/collaborative-working-and-mergers-an-introduction-cc34).

In using this power the trustees will:

* need to follow the provisions/procedures in the governing document – this will usually involve putting a resolution to its members
* transfer the assets to the CIO
* notify us of the dissolution of the unincorporated charity using the online form

N.B. They should not need to keep a shell charity because the permanent endowment or special trust will in any event constitute a separate charity.

The trustees might also want voluntarily to register the transfer as a merger, in which case they use the online form – they can't keep a shell charity in this case.

### B4.3 Using s268 (altered by s273)

Under CIO legislation the £10k upper income limit, which usually applies with s268, does not apply when transferring assets to a CIO – an unincorporated charity of any income may use this power in these circumstances except where it has designated land. See section E3.

s273 uses the provisions in s268 but alters them to include the transfer of all the charity's property including permanent endowment. In using this power the trustees will:

* put a resolution to the members – this needs a 2/3 majority to pass it
* notify us of the resolution
* if we agree with the resolution, settle liabilities and transfer the assets
* after transfer the unincorporated charity will cease to exist and the trustees will notify us using the online form so we can remove it from the register

The trustees might want voluntarily to register the transfer as a merger, in which case they use the online form.

### B4.4 Using a pre-merger vesting declaration (s310)

Regulation 61 of the CIO General Regulations alters s310 of the Charities Act to make special provision enabling unincorporated charities with permanent endowment to transfer all their property, including the permanent endowment, to a CIO – see section E4.

If the unincorporated charity has permanent endowment as all or part of its assets that it wants to transfer using a pre-merger vesting declaration, the trustees will:

* settle any liabilities
* make a pre-merger vesting declaration under s310 of the Charities Act (as amended by General Regulation 61) – this transfers all the property of the original charity to the new CIO
* notify us of the merger so we can:
  + add it to the Register of Mergers
  + remove the unincorporated charity from the Register of Charities

The pre-merger vesting declaration will:

* transfer property that is not permanent endowment to the CIO to be held as part of its corporate property
* vest in the CIO legal title to the permanently endowed property, to be held on its original trusts
* appoint the CIO as trustee for the permanent endowment trust and give it the powers of a trust corporation for that trust

This also means that the CIO and the permanent endowment or special trust are treated as a single charity for registration and accounting purposes, so they won't need to register separately or file separate accounts. The permanent endowment or special trust is treated as a restricted fund within the accounts of the CIO. The CIO is also a trust corporation as regards the permanent endowment or special trust which is necessary if the trust property includes land.

### B4.5 What we need to do

The process steps the trustees follow, set out above, mean that there are a series of actions we will deal with in different functions.

We consider the application to register the new CIO. This will be in Registration as usual

* In some cases, after registering the new CIO, trustees will use the dissolution or transfer provisions in their charity’s governing document to transfer the property. If the trustees are not using provisions in their governing document or an implied power, we consider the resolution to transfer the property from the unincorporated charity to the CIO under section 268 – see OG519 – this will be dealt with in First Contact (or possibly in Operations) as usual
* If we accept the application for a new CIO we:
  + register the new CIO

* After transfer of assets and permanent endowment or special trust property First contact will remove the old charity from the register
* Where the trustees have notified us
  + of a merger,

or

* + they have used a pre merger vesting declaration, First contact will:
  + register the merger
  + remove the old charity from the register

N.B If permanent endowment or special trust property is being retained on the original trusts it will not usually be necessary to keep a shell charity.

If, unusually, a Scheme is needed because of the particular circumstances of the trusts, this will be dealt with by Operations.

## Charts

### C1Transferring assets from an unincorporated charity to a CIO - which power to use...

[C1 Transferring assets from unincorporated charity to CIO - which power to use... - pdf](https://ogs.charitycommission.gov.uk/Library/Charts/715-04%20C1%20Transferring%20assets%20to%20CIO%20-%20which%20power%20to%20us.pdf)

[C1 Transferring assets from unincorporated charity to CIO - which power to use... - text version in Word](https://ogs.charitycommission.gov.uk/Library/Word_docs/g715a004%20C1%20text%20version%20flowchart.doc)

### C2 transferring assets a CIO using provisions in the governing document (gifting assets to the CIO)

[C2 Transferring assets to a CIO using provisions in the governing document (gifting assets to the CIO) - pdf](https://ogs.charitycommission.gov.uk/Library/Charts/715-04%20C2%20Transferring%20assets%20to%20CIO%20-%20using%20power%20in%20gd.pdf)

[C2 Transferring assets to a CIO using provisions in the governing document (gifting assets to the CIO) - text version in Word](https://ogs.charitycommission.gov.uk/Library/Word_docs/g715a004%20C2%20text%20version%20flowchart.doc)

### C3 Transferring assets using s267

[C3 Transferring assets using s267 - pdf](https://ogs.charitycommission.gov.uk/Library/Charts/715-04%20C3%20Transferring%20assets%20using%20s267.pdf)

[C3 Transferring assets using s267 - text version in Word](https://ogs.charitycommission.gov.uk/Library/Word_docs/g715a004%20C3%20text%20version%20flowchart.doc)

### C4 Transferring assets including permanent endowment using s273

[C4 Transferring assets including permanent endowment using s273 - pdf](https://ogs.charitycommission.gov.uk/Library/Charts/715-04%20C4%20Transferring%20assets%20inc%20pe%20using%20s273.pdf)

[C4 Transferring assets including permanent endowment using s273 - text version in Word](https://ogs.charitycommission.gov.uk/Library/Word_docs/g715a004%20C4%20text%20version%20flowchart.doc)

# Legal/Policy/Accountancy Framework

## E1 When can an unincorporated charity move to the CIO structure?

When it is first launched we will phase the registration of CIOs – the first types of registration we will consider are:

* new organisations setting up as CIO
* new CIOs set up with the intention of transferring to it/them the property of an unincorporated charity

(These may be further phased by level of income of the existing unincorporated charity)

* Regulation 5 of the General Regulations states that no application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity within the meaning of s22 of the Charities Act

This guidance is about registering one or more CIOs with the intention of transferring to it/ them all the property of an unincorporated charity and then usually dissolving the original charity. In many ways this is similar to incorporating an unincorporated charity to a charitable company but in the case of a CIO there is no involvement with Companies House.

## E2 Transferring property in furtherance of the charity's objects

In many, and possibly most, cases the trustees will be able to transfer the assets of their unincorporated charity in furtherance of the charity's objects. There are advantages to the trustees to use this method:

* the trustees do not have to give public notice unless required to do so by the governing document
* using the provisions in the governing document, it is unlikely they will need a two thirds majority to pass a resolution as required if using s267 powers – and anyway it is likely the great majority or even all the trustees/members will be in favour of the transfer if they are intending to become a CIO
* they do not have to send us notification of the transfer – we will not be involved unless the trustees wish voluntarily to register the transfer as a merger

The trustees may decide to dissolve the unincorporated charity after the transfer or, in some cases, retain it as a 'shell' charity. The trustees might consider this second option useful where they have concerns about future legacies. Alternatively, the trustees might wish to register the transfer as a merger to try to ensure that future gifts to the transferor charity (the unincorporated charity) takes effect as a gift to the transferee (the CIO) – see section 5 of OG 60 A1.

Where there is permanent endowment as part of the property and no provisions in the governing document to transfer it, the trustees may wish to transfer all the non-permanently endowed property of the old charity then appoint the CIO as trustee of the remaining permanently endowed trust. This is, perhaps, not very likely as there are mechanisms for the trustees to transfer permanent endowment – see sections E3 and E4.

## E3 Power under s267/s273 to transfer all property of an unincorporated charity to one or more CIOs

### E3.1 No upper threshold limit on use of the power

s267(2)] of the Charities Act states that s267(1)(a) does not apply when an unincorporated charity transfers assets to a CIO. This means that there is no upper limit (currently £10,000 for other transfers – ie not to a CIO) in relation to a resolution to transfer property to a CIO when using the power in s267 of the Charities Act – any unincorporated charity of any income can use the power.

Where there is permanent endowment the charity will need to use the power of s267 in accordance with s273. (Alternatively, or in addition, they may also use a pre-merger vesting declaration – see section E4.)

### E3.2 Purposes to be substantially similar

Broadly speaking, the objects of the receiving CIO (the transferee) must be substantially similar to those of the unincorporated charity (transferor). But exactly what is required depends on the circumstances.

* **Unincorporated charity without permanent endowment**
  + The purposes or any of the purposes of the CIO (the transferee) receiving the assets must be similar to the purposes or any of the purposes of the unincorporated charity making the transfer (transferor) – s268(3)

* **Permanently endowed unincorporated charity transferring to a single CIO**
  + The purposes of the transferee CIO must be substantially similar to the purposes of the transferor charity – s274(3)

* **Permanently endowed unincorporated charity transferring to two or more CIOs**
  + The purposes of all of the transferee CIOs taken together must be substantially similar to all the purposes of the transferor charity

and

* + each of the proposed transferee CIOs must have purposes which are substantially similar to one or more of the purposes of the transferor charity – s274(4)

For what we mean by 'substantially similar', see section E3.3 under the Legal/Policy/Accountancy Framework tab of OG519

## E4 Using a pre-merger vesting declaration under s310

Regulation 61 of the CIO General Regulations amends s310 (pre-merger vesting declarations) and s312 ("Transferor" and "transferee" etc, in s310 and s311) of the Charities Act. Subsection (4) of regulation 61 also assigns trust corporation status to a CIO where permanent endowment is transferred to it.

The effect of General Regulation 61 is to permit the vesting of all the property of an unincorporated charity including permanent endowment in the CIO without the need for any further document transferring it. It also means that the permanent endowment property and the CIO are to be treated as a single charity for the purposes of registration and accounting/reporting. This is important because s287 of the Charities Act provides for special trusts (in this case the permanent endowment property) not to constitute a charity for accounting and reporting purposes under Part 8 of the Act.

**General Regulation 61 – Pre-merger vesting declarations under section 310: application to CIOs**

Regulation 61 is set out here. Within this we have inserted the wording of s310 and s312 as amended by regulation 61.

**62.** – (1) Sections 310 (pre-merger vesting declarations) and 312 ("transferor" and "transferee" etc in s.310 and s.311) of the 2011 Act (apply  in relation to a relevant charity merger under Part 16 of that Act where the transferee is a CIO with the following modifications.

*(The subsequent subsections of regulation 61 then make changes to s310 and s312 of the 2011 Act. If the changes are applied to the wording of these sections, they then read as follows - added or changed wording in non-italic - and at the end is added the wording from section 4 of regulation 61.)*

***310 Pre-merger vesting declarations***

*(1) Subsection (2) applies to a declaration which –*

*(a) is made by deed for the purposes of this section by the charity trustees of the transferor ,*

*(b) is made in connection with a relevant charity merger, and*

*(c) is to the effect that (subject to subsections (3) and (4) all of the transferor's property* including any permanent endowment or other property held on special trust which is specified in the declaration ("specified trust property") *is to vest in the transferee on such date as is specified in the declaration ("the specified date").*

*(2) The declaration operates on the specified date to vest the legal title to all of the transferor's property* including specified trust property *in the transferee, without the need for any further document transferring it.*

*This is subject to subsections (3) and (4).*

The transferee shall hold specified trust property on the same trusts, so far as is reasonably practicable, on which the property was held immediately before the merger.

*(3) Subsection (2) does not apply to –*

*(a) any land held by the transferor as security for money subject to the trusts of the transferor (other than land held on trust for securing debentures or debenture stock),*

*(b) any land held by the transferor under a lease of agreement which contains any covenant (however described) against assignment of the transferor's interest without the consent of some other person, unless that consent has been obtained before the specified date, or*

*(c) any shares, stock, annuity or other property which is only transferable in books kept by a company or other body or in a manner directed by or under any enactment.*

*(4) In its application to registered land within the meaning of the Land Registration Act 2002, subsection (2) has effect subject to section 27 of that Act (dispositions required to be registered).*

(5) Where specified trust property vests in the transferee by virtue of subsection (2), unless the Commission directs otherwise the specified trust property and the transferee are to be treated as a single charity for the purposes of Parts 4 and 8 of this Act.

***312 "Transferor" and "transferee" etc. in s310 and s311***

*(1) In sections 310 and 311 –*

*(a) any reference to the transferor, in relation to a relevant charity merger, is a reference to the transferor (or one of the transferors) within the meaning of section 306.*

*(2)* In sections 310 and 311, any reference to the transferee, in relation to a relevant charity merger, is a reference to*-*

*(a) the transferee (within the meaning of section 306), if it is a company or other body corporate, and*

*(b) otherwise, the charity trustees of the transferee (within the meaning of section 306).*

**Regulation 61.** – (4) Where a CIO holds specified trust property as trustee by virtue of section 310 as modified by this regulation, the CIO is to be treated for the purposes of the provisions identified in paragraph 3 of Schedule 7 to the 2011 Act (application of certain enactments to trust corporations) as if it were a corporation appointed by the court to be trustee

**Notes to some of the sections/subsections above**

* The term 'a relevant charity merger' is set out in 306(1) and is explained in section 2 of OG 60 A1

* 310(4) refers to the Land Registration Act 2002 – very briefly the reference here means that if the land is registered, the transfer is not complete until the relevant registration requirements are met – see [section 27 of the Land Registration Act 2002](http://www.legislation.gov.uk/ukpga/2002/9/section/27)

* 312(1)(b) – in the unaltered s312 this sub-section restricts use of the provisions to the transferor's unrestricted property, ie excludes permanent endowment property. The sub-section 312(1)(b) is removed in this version, altered by regulation 62, allowing permanent endowment to be transferred from an unincorporated charity to a CIO when using this process

General Regulation 61(4) – The result of this is to make a CIO a trust corporation when it has had permanent endowment transferred to it (as when we appoint a corporation to be a trustee)

## Q & A

### F1 Can any unincorporated charity move to a CIO structure?

Yes – by registering a new CIO and transferring the assets of the unincorporated charity to it. There is nothing to stop an unincorporated charity dividing its assets between more than one CIO – see section B1.

### F2 Is transferring assets to a CIO the same as incorporating to a company charity?

No – see sections B3.2, B4.2 and E1. There are, however, some similar considerations that trustees should keep in mind.

The CIO will be a new legal entity and it will have a new registered charity number. Trustees will need to:

* inform banks, funders and suppliers of the transfer
* ensure that any existing contracts are assigned to the CIO

In addition:

* trustees need to follow the proper procedures to transfer permanent endowment – see section B4
* if the unincorporated charity has a defined benefit pension scheme, it is likely that the transfer to the CIO may be regarded as a cessation event by the Pensions Regulator – the trustees should read our guidance on [Defined Benefit Pensions Schemes](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/353959/Defined_benefit_pension_schemes_questions_and_answers.pdf)

We recommend trustees to refer to our guidance [Incorporating an existing charity as a company](https://www.gov.uk/change-your-charity-structure#convert-an-unincorporated-charity-to-a-charitable-company) which gives more information on issues for them to consider.

### F3 What considerations will we need to take into account when registering a new CIO?

This is set out in OG715-2 and caseworkers should follow that guidance when considering an application for a new CIO.

### F4 Is there any income limit above which an unincorporated charity cannot use s267-272 power to transfer property to a CIO?

No – the threshold limit of £10,000 on an unincorporated charity using s267 power to transfer assets does not apply when transferring assets to a CIO. Consequently any unincorporated charity can use the power of s267 (or s273 in the case of a charity with permanent endowment as all or part of its assets) to transfer its property to a CIO.

See section E3

### F5 Can an unincorporated charity transfer permanent endowment to the CIO?

Yes – if there are provisions in the governing document allowing this to happen, we encourage trustees to use these provisions. Trustees can also transfer permanent endowment to the CIO using either:

s267 as altered by s273 – see sections B4.3 and E3

or

s310 a pre-merger vesting declaration as altered by regulation 62 of the CIO General Regulations – see sections B4.4 and E4

### F6 What do we need to take into consideration when registering a new CIO where the trustees intend to transfer the assets of an unincorporated charity?

This is the same as registering any new CIO.

### F7 What do we need to consider when assessing a transfer of property?

This is set out in OG519 and caseworkers should look at that guidance when considering a notification to transfer property from an unincorporated charity to a CIO. Caseworkers will not need to make any considerations connected with the charity's income as there is no upper income limit when using s267/s273 to transfer property from an unincorporated charity to a CIO.

### F8 What issues do unincorporated charities need to consider when transferring property to a CIO?

No application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity within the meaning of s22 of the Charities Act. However, where an unincorporated charity can transfer property to a CIO, see F2