



Department  
for Business  
Innovation & Skills

CHANGES TO THE DIVIDEND  
AND INTEREST CAPS FOR  
COMMUNITY INTEREST  
COMPANIES

Response to the CIC  
consultation on the dividend and  
interest caps

10 DECEMBER 2013

# Contents

<b>Contents .....</b>	<b>2</b>
<b>2. Introduction .....</b>	<b>5</b>
<b>3. Analysis of Responses.....</b>	<b>12</b>
<b>4. Summary of Responses .....</b>	<b>13</b>
Question Eighteen.....	13
Question Nineteen .....	18
Question Twenty .....	23
Question Twenty One .....	28
<b>5. Additional Comments.....</b>	<b>33</b>
<b>6. Conclusion .....</b>	<b>34</b>
<b>7. Next Steps .....</b>	<b>35</b>
<b>Annex A: List of questions .....</b>	<b>36</b>
<b>Annex B: List of Respondents.....</b>	<b>37</b>
<b>Annex C: List of participants in the Technical Panel .....</b>	<b>39</b>
<b>Annex D: List of source material.....</b>	<b>40</b>
<b>Annex E: Impact Assessment.....</b>	<b>41</b>



# 1. Foreword

---

This document is part of a Government response to the consultation. This is because some of the proposed changes are legislative rather than regulatory.

Ensuring that the community interest company (CIC) model remains relevant, fit for purpose and able to deliver continued benefit in a changing world is a key part of my work. Throughout my 6 years as the Regulator of Community Interest Companies I have taken a keen interest in hearing what people think of the model. What works and what doesn't. With over 8,000 CICs now on the public register they are recognised as a force for good and as bona fide businesses which trade, deliver services and secure contracts they are changing the social landscape. Access to investment however remains an issue and I continue to hear that there are some potential barriers to investment.

This is not new, concerns had been voiced previously and in 2009 I undertook a review of the caps on investment. This consultation which canvassed over 3,000 CICs and key professional and representative bodies concluded that the caps were unduly complicated and restrictive. The results were persuasive but because of the relative newness of the model I decided to proceed with caution. I made a number of small but important changes; raising the dividend and interest caps and making the process simpler by removing the reference to the Bank of England base rate. At the time I said I would gather evidence and return to the subject in 3 years time and I have.

In my time as Regulator, I have been struck by the fact that the percentage of CICs that have adopted the limited by shares model has changed little over the last 8 years and remains under 25%. The changes I introduced in 2010 did not result in increased take-up which is disappointing and supports the view that there are still issues with the model.

In November 2012, the CIC Association in partnership with the CIC Office ran a survey which gave an opportunity for every CIC (shares and guarantee) to comment on the caps. The CIC team issued 7085 letters inviting CICs to complete a detailed online questionnaire on the CIC Association website. The CIC Association prepared a report on its findings, which was presented to the Technical Panel. This concluded that consideration should be given to removing the peg to the initial paid up value of the share and increasing the performance related interest cap to 20%.

In addition to this, the Cabinet Office had consulted the sector on barriers to social enterprise through the 2012 Red Tape Challenge on Social Investment which indicated a

need to review investment into CICs. This message was reinforced by the Technical Panel which met to discuss the findings of the CIC Association survey. Subsequent meetings with representative bodies such as Big Society Capital and Bates Wells Braithwaite persuaded me to start work on the framework of the consultation in late February.

Fate intervened with an announcement by the Chancellor in the 2013 Budget that the Government would be launching a consultation on the design of a new tax relief for investment in social enterprise. As this consultation resonated with my own and as the target audience would be primarily the same I spoke to HM Treasury to see if we could run a joint consultation. They were more than happy to oblige and I have been part of the Treasury's Working Group throughout the consultation.

In 2009, I asked 17 questions, this time I wanted the consultation to be more focussed and concentrated on just 4 questions, which I hoped would help me to fully understand the challenges facing community interest companies and the issues to be addressed. The consultation period ran from 6 June 2013 to 6 September 2013.

I would like to take this opportunity to thank everyone for taking the time to respond to the consultation. In particular it was helpful to receive comments from representative organisations reflecting the collective views of their membership.

I have given detailed consideration to the comments and I propose to make a number of changes which I believe will make CICs the model of choice.

Offering a shares model for enterprises with a social purpose was a bold and imaginative step when it was set up and I intend to ensure that it continues to offer a great opportunity to entrepreneurs who want to use it to grow their business for maximum community and social benefit.



**Sara Burgess**  
**Regulator of Community Interest Companies**

---

## 2. Introduction

---

- 2.1** The Chancellor announced at Budget 2013 that, following consultation on design the Government will introduce a new tax relief for investment in social enterprise. The consultation will cover the investees and types of investment eligible for the relief, and the tax reliefs themselves. At the same time a review into the dividend and interest caps had been conducted by the Regulator of Community Interest Companies.
- 2.2** On 6 June 2013, HM Treasury and the Regulator of Community Interest Companies (the Regulator) launched the consultation on social investment tax relief.<sup>1</sup> The Government was not consulting on the rate of relief; this will be announced by the Chancellor at Budget 2014. The Government was also not consulting on which investors would be eligible for the tax relief; the relief will be available to individuals only.
- 2.3** The consultation included questions relating to the caps in place for community interest companies and sought the views and evidence from organisations and individuals who had an interest in, or were likely to be affected by, a change in the general level of caps on dividend payments and performance related interest. This part of the consultation has been led by the Regulator. The consultation closed on 6 September 2013.
- 2.4** This document sets out the intentions of the Regulator following the consultation on proposals for changes to the caps on dividend payments and performance related interest paid as contained in Part 6, regulations 17 to 22 of the Community Interest Company Regulations 2005 (the Regulations).<sup>2</sup> The Regulator's decision takes account of the responses to that consultation as well as wider evidence gathered from within the sector.

## Background

- 2.5** Community Interest companies were created under the Companies (Audit, Investigations and Community Enterprise) Act 2004.<sup>3</sup> The rules governing the

---

<sup>1</sup> Available at: <https://www.gov.uk/government/consultations/consultation-on-social-investment-tax-relief>

<sup>2</sup> Available at: <http://www.legislation.gov.uk/ukxi/2005/1788/contents/made>

<sup>3</sup> Available at: <http://www.legislation.gov.uk/ukpga/2004/27/contents>

operation of community interest companies were detailed in the Community Interest Company Regulations 2005 (the Regulations).

- 2.6** The community interest company is a new type of company designed for enterprises with social purpose that want to use their profits and assets for public good.
- 2.7** Community interest companies are subject to an asset lock<sup>4</sup> to ensure that their assets and profits are dedicated to community purposes. One of the main elements of the asset lock is the dividend and interest caps which strike a balance between encouraging people to invest in the company and ensuring that the profits of the community interest company are used to the benefit the community.
- 2.8** Community interest companies operate on the principle that any dividends, or performance related interest paid, should not be disproportionate to the amount invested and the profits made by the company.
- 2.9** The number of community interest companies on the public register at 30 November 2013 was 8666. Of these 78% had adopted the limited by guarantee model which does not allow dividend payments and 10% had adopted the limited by shares, schedule 2 model. This model allows uncapped dividend payments to asset locked bodies.
- 2.10** The number of community interest companies that had adopted the limited by shares, schedule 3 model at the 30 November 2013 was 1107, representing 12% of the total number on the public register. These community interest companies are subject to the dividend cap.
- 2.11** All community interest companies, whether limited by guarantee or limited by shares are subject to the cap in place for performance related interest.
- 2.12** The Regulator has authority under regulation 22(3) of the Regulations,<sup>5</sup> subject to the approval of the Secretary of State, to set a new share dividend cap, aggregate cap or interest cap. This may result in a change to the level of any of the caps and, or the way they are expressed:
- 22(3) The Regulator may from time to time, with the approval of the Secretary of State, set a new share dividend cap, aggregate dividend cap, or interest cap
- 2.13** Since taking up her post in September 2007, the Regulator in her dealings with the sector had gathered anecdotal evidence that the rules by which community interest companies operate and in particular the dividend and interest caps in place affected

---

<sup>4</sup> Available at: <http://www.bis.gov.uk/cicregulator/guidance/chapter-6>

<sup>5</sup> Available at: <http://www.legislation.gov.uk/ukxi/2005/1788/regulation/22/made>

the incentives for investors to make social investments. They were deemed to be restrictive and complex.

**2.14** In March 2009, the Regulator launched a consultation, inviting views on a number of these rules. The elements of the original caps were as follows:

- 35% maximum aggregate dividend cap – limit on distributable profits
- dividend per share maximum – Bank of England base rate + 5%
- performance related interest maximum - Bank of England base rate + 4%

**2.15** The consultation considered the possibility of changes to the caps in order to ensure that they were achieving their aim of striking a balance between encouraging investment and maintaining the integrity of the asset lock.

**2.16** The responses to the consultation informed the Regulator on the impact of these rules on investment. It resulted in the following changes to the dividend cap and interest cap:

- 35% maximum aggregate dividend cap – no change
- dividend per share maximum – uplifted to 20%
- performance related interest maximum - uplifted to 10%
- reference to Bank of England base rate removed

**2.17** The “*Regulator’s response to the consultation on the dividend and interest caps*”<sup>6</sup> published in January 2010, announced that the Regulator would monitor the effect of the changes and would consider that evidence in the next review. The next review would take place within 3 years.

**2.18** As part of the next review the Regulator would gather evidence of the impact of these changes. She would engage in a dialogue with relevant bodies and give consideration to establishing a standing committee of experts in the finance field (the Technical Panel) who will be available on an ad hoc basis to advise on these issues.

---

<sup>6</sup> Available at: <http://www.bis.gov.uk/assets/cicregulator/docs/consultations/10-1386-community-interest-companies-consultation-caps-response>

- 2.19** The Technical Panel was formally established in 2010 and has met on 7 occasions. It comprises CICs, practitioners, academics, financial and investment advisors and key players in the sector (Annex C).
- 2.20** In November 2012 a survey run by the CIC Association was sent to 7085 CICs to help inform the Regulator's thinking on the next steps by reviewing the previous changes.
- 2.21** The CIC Association survey was supported by an event hosted at Hub Westminster with Stephen Lloyd of Bates Wells Braithwaite on 14 December 2012. The Association also fed the results of its *2012 CIC Annual Survey Snapshot*, into the survey together with information gathered from follow up interviews with CICs and stakeholder groups
- 2.22** The recommendations of the survey<sup>7</sup> as presented to the Technical Panel were:
- remove the peg to the initial paid up value of a CIC share; and
  - increase the performance related loan interest to 20%
- 2.23** This, combined with submissions to the Cabinet Office in respect of the 2012 Red Tape Challenge on Social Investment, indicated that there was an appetite to return to the question of barriers to investment.
- 2.24** Following a meeting with the Technical Panel in February 2013, the Regulator concluded that there was a case for consulting on further changes to encourage greater investment in CICs.
- 2.25** In March 2013, the Chancellor announced in the 2013 Budget that following consultation on design, the Government will introduce a new tax relief for social enterprise.
- 2.26** The new tax relief will help social enterprises to grow and innovate as they continue to tackle entrenched social problems.
- 2.27** Following discussions with HM Treasury it was agreed that the consultation which would run from 6 June 2013 to 6 September 2013 would run jointly with the Regulator and would additionally seek views on the Regulations Part 6, regulation 17 to 22, which deal with the caps on dividend payment and performance related interest paid.
- 2.28** The results of the consultation together with evidence gathered from working parties, workshops and meetings with key players in the sector would help inform the Regulator on Next Steps

---

<sup>7</sup> CIC Association Survey: [A fair Share – 2012 Review of the Dividend Caps](#)

## Consultation Process

- 2.29** Views on the proposed changes to the dividend cap and interest cap were invited from a wide range of sources including CICs, individuals, organisations and representative and professional bodies. The Regulator especially invited comment from those directly involved in investing in, or seeking investment for, social enterprises.
- 2.30** The Government established a sector-focused working group<sup>8</sup> which operated at official level and met to discuss the proposed changes to the dividend cap and interest cap. The Regulator attended in an official capacity.
- 2.31** The Regulator ran a workshop for CICs, social enterprise advisors and financial investors on 8 August 2013 inviting analysis and comment to the four questions raised in the consultation. The workshop concluded:
- The current dividends are too complex
  - A single maximum aggregate dividend cap is preferred
  - The maximum aggregate dividend cap to be kept at 35%
  - The link to initial paid up value to be removed
  - There was no clear appetite to change the interest cap
- 2.32** The workshop also took the opportunity to consider the annual community interest report (form CIC34) its role and purpose and whether it should be made more robust and demanding. Discussions centred on improving the template, sharing best practice and making sure the form was easy to complete.
- 2.33** The Regulator met with individuals and organisations throughout the consultation period inviting analysis and comment. These included Bates Wells Braithwaite, Big Society Capital and NCVO and the Regulator is grateful for the input of all concerned.
- 2.34** The Regulator also considered independent research reports dealing with social investment access and wider developments in the sector to help inform her decision (Annex D)

---

<sup>8</sup> Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/223852/social\\_investment\\_tax\\_relief\\_working\\_group\\_terms\\_of\\_reference.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/223852/social_investment_tax_relief_working_group_terms_of_reference.pdf)

- 2.35** A further meeting was convened with the Technical Panel on 13 November 2013 to consider the findings of the consultation. The opportunity was taken to discuss emerging themes and probable courses of action. The meeting was attended by CICs, academics, practitioners, investment bodies and key membership organisations.
- 2.36** The Panel were provided with a summary of the responses to each question and asked to consider the decisions that they would make based on these findings and to identify any wider issues emerging from such decisions. It was not expected that consensus would be reached on each and every question.
- 2.37** The discussions were wide ranging and the following points were noted:
- there should be a single cap
  - the dividend per share cap should be removed
  - there was divided opinion on the findings regarding the maximum aggregate dividend cap some arguing to increase, others to decrease
  - there was agreement that the findings supported changing the interest cap but the Panel were divided on whether to increase or remove the cap
  - the peg to the paid up value of the share in respect of the maximum dividend per share should be removed

#### Wider Issues

- there was a call for improved evidence based decision making and a greater understanding of the factors influencing investors and entrepreneurs
- there was a perception that few CICs were aware of the consultation and any changes made by the Regulator needed to be widely publicised, together with a full explanation of the reasons for the changes
- the primacy of the community and the need to protect the CIC brand was referenced throughout the meeting
- the Panel believed that there was a lack of understanding about share capital within CICs and the guidance issued by the Regulator needed to be updated and improved
- there was concern that changes to the caps may attract investors and entrepreneurs to the model for the wrong reasons and the Panel sought assurances that the Regulator's Office would be strengthened to meet these challenges

**2.38** The Regulator would like to place on record her appreciation and thanks for the advice and feedback that she received from the Technical Panel, which helped inform her decision making.

**2.39** The consultation invited comment on the following four questions:

#### QUESTION EIGHTEEN

<b>The Double Cap</b>	Is the double cap, (aggregate at 35% and dividend cap – maximum 20 percent) on distribution by CIC limited by shares too cumbersome? Does it therefore discourage investment or setting up such a CIC? How and why?
-----------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### QUESTION NINETEEN

<b>Changing the Caps</b>	If there were to be a change to the caps, should one or both of the caps be removed or increased? Please give reasons and explain how this should be done. Would this change allow protection of community assets?
--------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### QUESTION TWENTY

<b>The Initial Paid Up Value</b>	What would be the effect of changing or removing the peg to the initial paid up value of shares? Would this affect the statutory asset lock and the protection of community assets? If so, please say why. How should the value of shares be determined – by the market, by inflation by a specified percentage?
----------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

#### QUESTION TWENTY ONE

<b>The Interest Cap</b>	Should the performance related interest cap be raised or removed, and what impact would that have on the protection of community assets?
-------------------------	------------------------------------------------------------------------------------------------------------------------------------------

## 3. Analysis of Responses

---

### Number of responses received

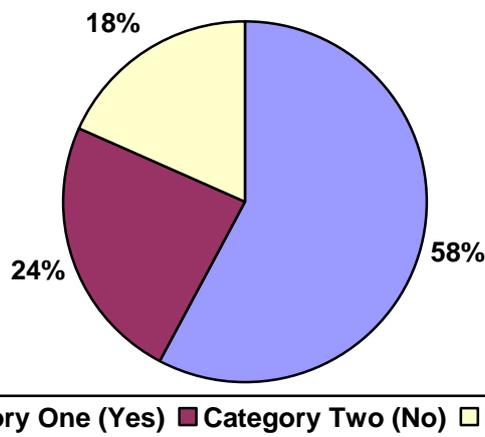
- 3.1** The full consultation received 81 responses in total, of these 38 directly responded to the 4 questions raised by the Regulator of Community Interest Companies. Of those that responded to the Regulator's questions they included funding organisations (7 responses) professional bodies (12 responses), representative bodies (9 responses), CICs (6 responses), central and local government (2 responses) and individuals (2 responses).
- 3.2** A significant number of responses were from membership organisations representing the views of their wider membership or organisations that consulted others. These included the Charity Law Association, NCVO, the Social Enterprise Mark and Social Enterprise UK.
- 3.3** A number of issues were raised during this consultation, which fell outside the scope of this consultation. These issues will be considered and may be discussed further with interested parties.
-

## 4. Summary of Responses

### Question Eighteen

#### Summary of response

QUESTION EIGHTEEN	
<b>The Double Cap</b>	Is the double cap, (aggregate at 35% and dividend cap – maximum 20 percent) on distribution by CIC limited by shares too cumbersome? Does it therefore discourage investment or setting up such a CIC? How and why?



- 4.1** The full consultation received 81 responses of which 38 responded directly to the questions raised by the Regulator of Community Interest Companies. The majority of the respondents (22) felt that the double cap was too cumbersome and was perceived as a barrier to investment. Funding organisations, investment bodies and community interest companies featured heavily in this category.
- 4.2** Of the remaining respondents, 9 did not feel the double cap was cumbersome and 7 did not have a view. Organisations from, or working closely with, the co-operative sector featured heavily in this category.

## Category One - YES

- 4.3** Generally it was felt that the caps discouraged entrepreneurs from setting up CICs. Several respondents referred to social entrepreneurs seeking commercial funding steering away from CICs, fearing that the caps may make it difficult for them to attract capital. One respondent viewed the share model as an under-used structure with great potential but felt that its complexity acted as a psychological barrier to many entrepreneurs and investors. A view shared by a number of respondents was that the caps prevent the appropriate balance between risk and reward deterring the more risky investments.
- 4.4** The need to make the model more attractive to investors was a view shared by most respondents. Several commented that investors do not see CICs as viable social investments because of the negative consequences and the red tape associated with the double cap. One respondent argued that the current restrictions are unattractive to investors because they are prevented from sharing in any potential upside resulting from their investment; it is without reward. Another felt strongly that the constraints actively discouraged the high risk development capital the sector needs to support growth and fully utilise investment, as they penalise those that take risks.
- 4.5** Whilst agreeing that the caps were burdensome, one respondent felt that the main discouragement was not the rate of dividend return but the lack of tax incentive. Another questioned the reason for caps on distribution and returns for shareholders based on invested capital. One respondent felt that the double cap needed to be considered alongside the use of de minimus and the proposed cap of €200,000 per investee. If this limit were to be introduced they would recommend changes to the caps.
- 4.6** Referring to the changes introduced in 2010, one respondent said the caps are no doubt simpler to apply since they were changed to fixed percentages, but determining the dividend cap for any given share still involves finding out whether it is paid up and to what value.
- 4.7** Quotes:
- “The double cap is unnecessarily complicated and disincentives investors, particularly because of the dividend cap’s link to the nominal share price”
- “The current return and distribution caps make it difficult for CICs to attract investment. The funds we manage have not yet invested in a CIC and are very unlikely to do so if the current restrictions remain”
- “The double cap is a disincentive for certain investors and any reduction on the restrictions to which a CIC is subject would improve its usefulness as a legal form that allows the growth of a sustainable social enterprise”

## Category Two - NO

**4.8** There were a number of concerns about the potential damage to the sector if the social purpose of CICs were to be diluted, making them more like their commercial counterparts. Many of the respondents did not want to see the sector associated with speculative and profit driven investment.

**4.9** There were also concerns about the asset lock. One respondent did not believe that either cap discouraged investment in the social enterprise sector, adding that if distribution prior to winding up is encouraged; the asset lock essentially becomes meaningless. Another felt strongly that the unintended consequences of removing the caps would be to decrease the asset lock to social benefit and as a result donations to social enterprises.

**4.10** One commented on the relative newness of the model adding that there is little evidence at present that the maximum aggregate dividend cap on its own or in combination with the dividend per share cap is too burdensome or prohibiting private investment. Another agreed that the caps might be burdensome but was not yet convinced that this limits investment.

**4.11** Quotes:

“During our discussions it was felt that CICs are quite simple and it has to have a cap otherwise it is open to abuse”

“Recent feedback from members indicates that “recognition of social enterprise” is a crucial benefit of the CIC status and the current status quo”

## Regulators response to Question 18

**4.12** Whilst celebrating the undoubted success of CICs, there continues to be concern about the take up of the share model. Over 95% of ordinary companies are limited by shares, this contrasts sharply against less than 25% of CICs, while accepting the CIC model is still new, 8 years is long enough to indicate the share model in its current form is unattractive. When the Regulator is told that social entrepreneurs seeking capital avoid CICs; we need to listen. When this same message is repeated by major investors; we need to take action.

**4.13** A report<sup>9</sup> prepared for the City of London and Big Society Capital concluded that CICs were severely capped in the amount of share dividend and performance related interest that can be paid out. It added that a proactive response from the

---

<sup>9</sup> Available at: The Role of Tax Incentives in Encouraging Social Investment  
<http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Pages/The-role-of-tax-incentives-in-encouraging-social-investment.aspx>

CIC Regulator to the on-going consultation on CIC caps is vital to optimise the benefit from any tax change.

- 4.14** There remains a need to strike a balance between rewarding investors and delivering benefit to the community. The CIC remains the model of choice for thousands of social enterprises because of the ethos and values associated with CICs and these qualities are shared by all, whether they have adopted the shares or guarantee model. CICs are united by a desire to help the community and are happy to be regulated to ensure they do so.
- 4.15** The concerns of those who feel that social purpose will be diluted and CICs will become more commercialised if changes to the caps are made are understood but the decisions that are made today will not affect this. The asset lock will remain in place, CICs will continue to be regulated and they will operate with openness and transparency.
- 4.16** It is important to remember that changes to the dividend cap will only affect those CICs that have opted for the limited by share model, schedule 3 which allows dividend payments to private investors; this represents just 12% of all CICs. Over 78 % have opted for the limited by guarantee model and the remaining 10%, the limited by shares schedule 2 model, which allows uncapped dividend payments to asset locked bodies only.
- 4.17** To be a going concern businesses need investment and they need to make a profit and CICs are no different. They operate with a social purpose and use their assets (which include profits and surplus) to promote those aims but they need to be able to attract investment and at the present time because of the restrictions in place, many are prevented from doing so.
- 4.18** The conditions need to be created where investors are persuaded to invest in CICs and the passion and enthusiasm of its founding members are rewarded. CICs are principally driven by social return and the capital return to investors will never be as attractive as its commercial counterparts, nor would they want to be.
- 4.19** The booklet “A brief Handbook on Social Investment”<sup>10</sup> published by the City of London recognises that investors in social outcomes weigh up the balance between the social and financial returns which they expect from an investment, according to their priorities. They will often accept lower financial returns in order to generate greater social impact. There is a need however to ensure that the return for investing in CICs is not so low that it acts as a disincentive.

---

<sup>10</sup> Available at: <http://www.cityoflondon.gov.uk/business/supporting-local-communities/Documents/a-brief-handbook-on-social-investment.pdf>

- 4.20** This year the CIC office will incorporate 2,500 CICs; they also expect to dissolve close to 1,000. Most will have been trading less than 3 years and many will cite lack of investment as the reason for failure. These are compelling statistics which need to be addressed.
- 4.21** This failure rate is set against the backdrop of a discussion paper published by the City of London<sup>11</sup> which calculated that around £30,220 of investment will create or safeguard a social venture, whilst £1,840 will create or safeguard one net additional FTE job at regional level. It added that every £0.28 of social investment will generate £1 of additional GVA (Gross Value Added).
- 4.22** The decision has taken into full consideration the proposed tax relief for social investment and the need to ensure that the CIC model is attractive to investors. The Centre for the Study of Financial Innovation<sup>12</sup> argues that as a means for promoting investment the model offers no advantages and, indeed is at a disadvantage to other legal forms. They added that CICs do not enjoy Gift Aid and other tax advantages of charities, nor the reduced obligations on share issues enjoyed by IPS’.
- 4.23** The Regulator has listened to the issues raised regarding investment by CICs and Investors, the Technical Panel and at the workshops, seminars and meetings attended throughout the UK, not only during the course of this consultation but over the last 6 years. The Regulator has also listened to those who are concerned about changes but on balance feels that there is a need to take action.

## Conclusion

**That the double cap is cumbersome and is discouraging investment and those wishing to set up a CIC. The steps that will be taken to address this are outlined in Question 19.**

---

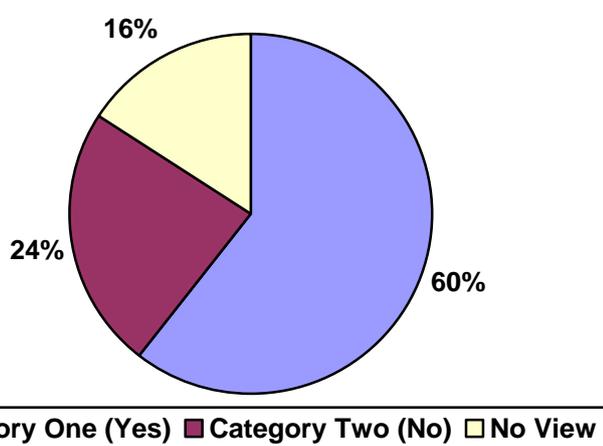
<sup>11</sup> Available at: Growing the Social Investment Market: The Landscape and Economic Impact  
<http://www.cityoflondon.gov.uk/business/economic-research-and-information/research-publications/Pages/Growing-the-social-investment-market.aspx>

<sup>12</sup> Available at: Investing in Social Enterprise: the role of tax incentives.  
<http://www.nesta.org.uk/library/documents/Investing-in-Social-Enterprise.pdf>

## Question Nineteen

### Summary of response

QUESTION NINETEEN	
<b>Changing the Caps</b>	If there were to be a change to the caps, should one or both of the caps be removed or increased? Please give reasons and explain how this should be done. Would this change allow protection of community assets?



- 4.24** The full consultation received 81 responses of which 38 responded directly to the questions raised by the Regulator of Community Interest Companies. The majority of the respondents (23) felt that there should be a change to the caps. There was however a divergence of opinion on how this should be done. Most favoured a single cap, although a small number opted for an increase in the caps. Funding organisations, investment bodies and community interest companies featured heavily in this category.
- 4.25** Of the remaining respondents, 9 did not want to see any changes to the caps and 6 did not have a view. Organisations from, or working closely with, the co-operative sector featured heavily in this category.

### Category One - YES

- 4.26** Generally there was agreement that the double cap was restrictive, difficult to understand and in need of reform. The majority of the respondents (20) felt that a

single cap would be simpler to understand for entrepreneurs and investors. Simplifying the current restrictions or reducing the burden for CICs was considered key to improving take-up of the structure and attractiveness to investors. One felt strongly that if investors did not have any guarantees or security against the downside risk, then they should not have additional limitations placed on the upside, through the dividend cap.

**4.27** Of the twenty that favoured a single cap, fifteen wanted the dividend cap to be removed and ten of these opted to keep the maximum aggregate dividend cap at its current level. Three wanted to see the cap increased up to 49%, reducing the amount to be reinvested from 65% to 51%.

**4.28** Whilst agreeing that change was necessary a number of respondents would like to see the Regulator consult further. One recommended that the maximum aggregate dividend cap should be maintained at 35% and below that would support the removal of the dividend cap only once further consultation had been carried out. Another declared a preference for the removal of the dividend per share cap but felt that research would be necessary to assess the attitude of funders before doing so.

**4.29** Quotes:

“We would support the removal of the dividend cap entirely and leaving in place the aggregate cap”

“We believe that a 35% aggregate cap serves the purpose of protecting the community interest and also has the de facto effect of limiting the dividend so it may be possible to remove the dividend cap”

“The current dividend caps and pegs to initial paid up value of the shares are burdensome and discourage investment. There should be one cap and the aggregate cap should be increased to 49%”

## Category Two - NO

**4.30** Generally there was concern that any changes would weaken the asset lock and jeopardise the standing of the social enterprise sector. Most respondents did not wish to see the CIC structure becoming more associated with the commercial sector. Another felt that protection was the priority and any change could reduce that. Referring to the wider consultation on social investment tax relief, one respondent stated that the model should be left alone so long as HMRC can come up with a qualifying instrument that is not shares.

**4.31** Quotes:

“Removing or significantly changing the caps would move the model towards the profit distribution model of the private sector companies, which would dissuade share holder investors who wish to invest in a social venture”

“We do not think the removal of the aggregate cap would be appropriate as this would negate the asset lock. For the same reason, the cap on dividends per share should not exceed 20%”

## Regulators response to Question 19

- 4.32** Over the last 8 years very few CICs have declared dividends and almost all without exception calculated the sum payable incorrectly. This illustrates the complexity of a system which has to first calculate the maximum aggregate dividend and then dividend per share, with reference to the paid up value, of which 20% is the maximum payable.
- 4.33** Contrast this with the conventional method of allocating a fixed amount per share, with shareholders receiving a dividend in proportion to their shareholding. Making the system easier to understand is the message not only from investors but also those who work in the CICs. They want to share in the success of the CIC and receive reward for the time, effort and energy that they have invested, particularly during the difficult early years.
- 4.34** The responses have been considered alongside the feedback previously received and the Regulator is not persuaded that increasing either of the caps is the best way forward. It did not achieve the desired result in 2010 and would not do so today. If the percentage of the dividend cap was increased, for example, to 40%, the inherent problem would still exist, regardless of whether the link to the paid up value is removed. It would continue to be an additional cap on top of the aggregate cap and the complexity of calculating this and the 40% dividend per share would remain; see example below:
- 4.35** Example:
- A CIC has 4 founding directors all hold a single share, there are no other shares issued. The CIC makes £2858 distributable profits at year end, which after taking the aggregate cap into account leaves £1000 available for dividend payments. Because of the dividend per share cap the director is only allowed 40% of the paid up value of their share. If the value of the share is £1 the director will receive 40p. To receive the full dividend payment the director would need to hold 625 shares.
- 4.36** Raising the aggregate cap from 35% to 49% simply increases the amount of distributable profit available for a dividend. Whilst this is a view shared by some, it would not resolve the issues associated with the dividend cap and would only serve to reduce the sums made available for the benefit of the community.
- 4.37** The government response in the “Community Interest Company Regulations 2005 - Response to the Consultation”<sup>13</sup>, explained that the double cap was designed to safeguard community assets, prevent excessive rates of return and align the interests of shareholders more closely with the interests of other stakeholders. These sentiments hold true today and the overwhelming majority of CICs meet these needs but not because of the double cap.

---

<sup>13</sup> Available at: <http://www.bis.gov.uk/files/file14631.pdf>

- 4.38** As referenced earlier, only 11% of CICs are subject to the dividend cap. All CICs however are subject to the asset lock which prevents the transfer of assets for less than market value. This also ensures that any assets remaining after dissolution are distributed to asset locked bodies.
- 4.39** Additionally, they are required to file a community interest report each year, which provides details of the company's activities and how it has benefited the community. It also asks the CIC to detail any asset transfers, director's remuneration, dividend payments and stakeholder engagement. The report is placed on the public register and is available to view or download. Many stakeholders take advantage of this facility to monitor the activities of CICs and are free to contact our office if they have concerns.
- 4.40** CICs have been operating over 8 years and with the benefit of this experience, the Regulator believes that it is the above measures, combined with the light touch regulatory approach, that ensures that the concerns expressed by the legislators are met and whilst the double cap may play a part it is not significant.
- 4.41** The current aggregate cap ensures that 65% of the distributable profits is reinvested back into the CIC or used for the benefit of the community it was set up to serve. The Regulator has a key responsibility in protecting the CIC model and views the aggregate cap as an integral part of the asset lock. It is the Regulator's opinion that the aggregate cap should remain and that the cap of 35% is set at the correct level.
- 4.42** In stating this, the Regulator has listened closely to the views of others that the aggregate cap should be increased but believes that it is important that the primacy of community benefit is maintained and that the interests of investors will be met by the other changes that will take effect.
- 4.43** With regard to the dividend per share cap, the view expressed by the majority of respondents is that it needs to be removed. On its own it is extremely complex, when combined with the aggregate cap it is unworkable. It acts as a disincentive to those wishing to set up CICs and those wishing to invest in CICs and is a contributory factor to the high failure rate.
- 4.44** Consideration has been given to increasing the percentage of the paid up value of the share once again but the percentage was increased to 20% in 2010 and this failed to make a significant difference because the underlying issues remained. Having a single aggregate cap will remove the complexity and offer a fair reward whilst continuing to protect community assets.
- 4.45** The concerns of those who feel that social purpose will be diluted and CICs will become more commercialised if changes are made are noted but the Regulator is content this will not happen. Retaining the aggregate cap at the current level and removing the dividend per share cap will ensure that the CIC model is better able to compete against ordinary companies who do not have such restrictions. It will continue to operate with a social purpose and will be regulated to ensure that it

does so. Returns to investors will continue to be capped but will no longer be prohibitive.

- 4.46** The Regulator has the power under section 22(3) of the Community Interest Company Regulations to set a new dividend per share cap but does not have the power to remove the dividend per share cap as this requires a change to the legislation. This power rests with the Secretary of State for Business, Innovation and Skills.
- 4.47** The Regulator will monitor the effect of the decision to remove the dividend per share cap and retain the maximum aggregate dividend cap at the level of 35% and undertake a review three years from the date the legislation to remove the dividend per share cap is passed.

## **Conclusion**

**The maximum dividend per share cap should be removed.**

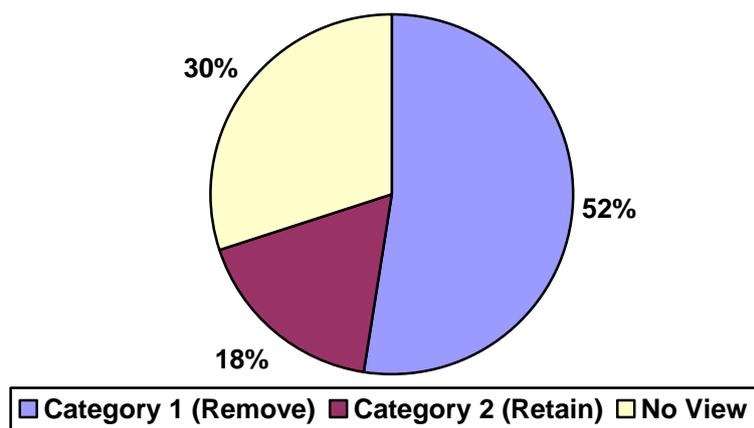
**The maximum aggregate dividend cap should remain and the current cap of 35% should be retained.**

---

## Question Twenty

### Summary of response

QUESTION TWENTY	
<b>The Initial Paid Up Value</b>	What would be the effect of changing or removing the peg to the initial paid up value of shares? Would this affect the statutory asset lock and the protection of community assets? If so, please say why. How should the value of shares be determined – by the market, by inflation by a specified percentage.



**4.48** The full consultation received 81 responses of which 38 responded directly to the questions raised by the Regulator of Community Interest Companies. The majority of the respondents (21) were in favour of removing the peg to the initial paid up value of the share. Funding organisations, investment bodies and community interest companies featured heavily in this category.

Of the remaining respondents, 7 were in favour of keeping the peg linked to the paid up value of the share and 10 did not have a view. Organisations from, or working closely with, the co-operative sector featured heavily in this category.

## Category One - YES

- 4.49** There was broad agreement that the peg was a barrier to investment and limits the development of an equity market. One respondent held the view that its removal would allow capital investment in the CIC market, enabling share value to increase in line with the growth of the CIC. Another felt that the peg prevented a secondary market from developing and failed to reward the “patient” investors and social entrepreneurs.
- 4.50** Sharing in the success of the CIC and being rewarded for “sweat equity” was a view of a number of respondents. One commented that the peg provides no potential for capital growth and prevents the founders of the CIC in sharing in its growth or to be rewarded for the “sweat-equity” that they put in especially at the start-up phase of the CIC. This view was echoed by another respondent who noted that the peg impedes the founding entrepreneurs in sharing in its growth (i.e. obtain sweat equity) and they effectively cannot sell shares back to the CIC through redemption or to a third party investor at any premium.
- 4.51** Addressing the need to attract investors, one respondent commented that the peg is unattractive because it means that the price of shares is effectively always set at the initial amount providing no potential for capital growth. Another referring to their own survey added that investors view the restrictions on share redemption and capital gains as barriers to organisational growth.
- 4.52** Many of the respondents considered that the changes should not impact on the asset lock and that the assets would continue to be protected. In supporting the removal of the peg, one respondent recognised that the CIC will still be subject to a requirement that community assets may not be sold at an undervalue. Another felt that making shares responsive to market forces, would only work if both caps remain in place. One respondent commented that the aggregate cap is the most important element of the asset lock; changing the ways shares are valued should not compromise this but rather help to attract more investment.
- 4.53** Quotes:
- “The removal of the peg will make buying CIC shares a more attractive prospect for new shareholders and investors, and thus better ensure that community benefit is maintained through continued and growing activity and retention of community assets”
- “Removing the pegs to initial paid up value of the shares will provide greater flexibility and significantly better access to capital and ensures that CIC limited by shares can effectively utilise the new tax relief”
- “The peg should be removed; critically this needs to be achieved in a way which does not affect the statutory asset lock. We would advocate that the removal of the cap should be accompanied by increased reporting on the community benefits achieved, particularly for CICs in receipt of more than a threshold level of external capital e.g. £1m”
- 4.54** The majority of the respondents believed that the share value should be market driven. A small number favoured other indicators such as the RPI, inflation, or a

specified percentage. One respondent commented that determining the share value by percentage may lead to share value increasing quicker than asset value and adjustments for inflation would be the only workable solution if adjustments are made.

**4.55** One respondent wanted to see the cap set by reference to market value since this will give it flexibility and, in theory, link the desirability of a CICs shares to its success. Another felt strongly that market forces should dictate the transfer, sale and price of shares. One respondent believed that the peg had adverse consequences on any secondary potential market because any investor will prefer to buy new rather than existing shares, adding that the peg should be to transaction costs i.e. determined by the market. Cautioning against using the market, one respondent felt the market is not sufficiently mature, nor is use of equity and share structures sufficiently common for reliable market based valuations.

**4.56** *Quotes*

“By removing the peg to the initial paid up value of shares and having recourse to a reasonable assessment at market value, the value of shares will reflect a more reasonable balance between the legitimate interests of investors and the need to embed social value”

“Nominally the shares would be valued on a Net Asset Value basis but practically they will always be valued by the market”

“The value of shares should always be determined by the market”

## Category Two - NO

**4.57** We received 7 responses in favour of keeping the peg linked to the initial paid up value of shares.

One respondent felt that removal of the peg may lead to misuse of the company assets as they may be encashed to pay profits out of the business to shareholders. Another felt that without the peg the cap is effectively removed and the asset lock rendered impotent. One respondent felt strongly that the removal of the peg would introduce major financial administration costs.

**4.58** *Quote:*

“This will over time bring ownership of the CIC to be increasingly in the hands of profit seeking investors who will look for other ways to undermine the asset lock”

## Regulators response to Question 20

**4.59** The first consultation in 2009 asked 16 questions relating to the dividend, aggregate and performance related interest cap. There were no questions relating to the paid up value of shares. This change in emphasis illustrates the maturity of the brand and the emergence of a secondary market for CICs.

**4.60** The paid up value is defined in regulation 2 as:

“Paid up value” means, in respect of any share in a company the sum of-

- (a) so much of the share’s nominal value as has been paid up; and
- (b) any premium on that share paid to the company

**4.61** The maximum dividend per share is defined in regulation 18 as:**Maximum dividend per share**

18 (1) The maximum dividend per share for a financial year is the dividend which a relevant company declares on a share when the total amount of dividend declared on that share for that year (when expressed as a percentage of the paid up value of the share) equals that share’s applicable share dividend cap.

**4.62** The regulations determine that the dividend per share is fixed by reference to the paid up value of the share. This has the effect of making the shares illiquid because if the shares were to be purchased by a new shareholder they would only be able to receive a dividend based on the initial paid up value.**4.63** The decision to remove the maximum dividend per share cap also removes the link to the paid up value of the shares, as dividend payments will no longer be expressed as a percentage of the paid up value.**4.64** It is therefore not necessary to change legislation further to remove the peg to the paid up value of the share.**4.65** The peg to the initial paid up value has limited the development of an equity market. It has contributed to the perception that members of CICs cannot share in the success of the CIC and adds to the layers of complexity surrounding dividend payments.**4.66** Removing the peg to the paid up value of the share will ensure shares can be traded and the members of CICs can be rewarded for their “sweat equity”. It is likely that shares in CICs will increase in value and a secondary market will emerge, as a result.**4.67** The market should determine the value of each share and with a number of our CICs that is already happening. The decision to remove the dividend per share cap means that the share valuation, whether it is by RPI, the market or paid up value, is no longer a factor in the dividend payment. This brings simplicity to the process.**4.68** The concerns of those who feel that removing the link to the paid up value of shares will result in the CIC becoming profit driven and the asset lock weakened are understood but the Regulator is content this will not happen. The aggregate cap will remain at 35% and this will ensure that the majority of the CIC’s profits will be used to benefit the community that it was set up to serve. The asset lock will also remain in place which will prevent the CIC from transferring any of its assets for less than the market value.**4.69** Example:

A CIC has 4 founding directors all hold a single share, there are no other shares issued. The CIC makes £2858 distributable profits at year end, which after taking the aggregate cap into account leaves £1000 available for dividend payments. A dividend of £250 per share is declared.

**4.70** This above example illustrates how CICs will operate in the future where:

- capital returns will be understood by the investor and the CIC
- dividends will no longer be determined by reference to paid up value
- shares in CICs will be tradable and a secondary market will emerge
- members share in the CICs success and be rewarded for “sweat equity”
- the aggregate cap ensures that 65% of profits are reinvested into CIC

**4.71** The Regulator will monitor the effect of the decision to remove the peg to the paid up value of the shares and undertake a review three years from the date the legislation to remove the dividend per share cap is passed.

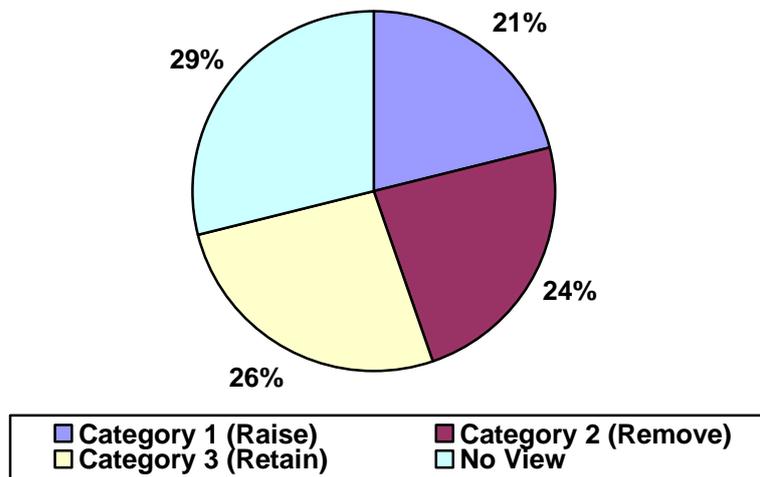
## **Conclusion**

**The decision to remove the maximum dividend per share cap has removed the need to make any further changes to the legislation in respect of the peg to the initial paid up value of the share.**

## Question Twenty One

### Summary of response

QUESTION TWENTY ONE	
<b>The Interest Cap</b>	Should the performance related interest cap be raised or removed, and what impact would that have on the protection of community assets?



**4.72** The full consultation received 81 responses of which 38 responded directly to the questions raised by the Regulator of Community Interest Companies. The respondents were divided on this question, 8 were in favour of increasing the cap, 9 were in favour of removing the cap and 10 were in favour of retaining the cap. The remainder (11) did not have a view.

### Category One - RAISE

**4.73** There was broad agreement in this category that the cap needed to be raised to encourage more investment. One respondent believed that cap was set at a reasonable rate for low risk finance but if a more entrepreneurial approach is sought then the cap had to be increased. Several wanted to see the cap raised in line with the dividend cap; others were keen to see it aligned with the aggregate cap.

**4.74** Quotes

The interest cap should be consistent with the dividend cap to ensure that there is no discrimination between companies limited by share and limited by guarantee

The cap should fall under the same rules on aggregate dividend cap applied to distributable reserves

## Category Two - REMOVE

**4.75** The respondents in this category felt strongly that the cap was restrictive and should be removed. There was broad agreement that the cap was complex and difficult to understand; one commented that it should be removed for the sake of simplicity and flexibility. Arguing that CICs were purposive and regulated, one respondent wanted the cap removed leaving the judgement on such matters to those best placed to exercise it.

### 4.76 Quotes

“An outward outlook where the assets are grown and enhanced is better than one focussed on restrictions and protectionism. There is enough protection in the asset lock and the required statutory declarations from the directors”

“The cap should be removed in its entirety to increase the capacity of CICs to obtain appropriate and affordable finance in the flexible form they need”

## Category Three - RETAIN

**4.77** The majority of respondents in this category wanted to see the cap remain at its current level. One respondent did not wish to see the caps changed before the tax relief on social investment was introduced. Several respondents felt that the interest cap provided protection of community assets and should not be raised or removed.

### 4.78 Quotes

“The performance related interest cap seems to be adequately high certainly in comparison to most trading SMEs for it not to need raising or removing”

“The current cap seems an appropriate level on which to base the level of debt. It is hard to assess whether the changing of this figure would impact on the protection of assets”

## Regulators response to Question 21

**4.79** It is worth emphasising that CICs have the same borrowing powers as any other company and generally will be able to borrow and pay normal commercial rates of interest to lenders<sup>14</sup>.

---

<sup>14</sup> Available at : <http://www.bis.gov.uk/cicregulator/guidance/chapter-6>

- 4.80** The consultation is not concerned with normal lending of this type but with the circumstances where the interest payable on debt is linked to the performance of the CIC. This debt is regarded as similar to equity shares and is sometimes referred to as debt with equity characteristics.
- 4.81** The ability to pay uncapped interest on such debt would circumvent the asset lock and in order to prevent this, the payment of such performance related interest is subject to a cap. The initial cap was set at 4% above the Bank of England base lending rate.
- 4.82** This figure of 4% above the base rate reflected the finding in the Bank of England report<sup>15</sup> on the financing of social enterprises that banks typically charge 2-4% over base rate for loans and overdrafts to organisations similar to CICs. The caveat with this comparison however is that these are not the normal type of loans or overdrafts.
- 4.83** This type of borrowing is considered high risk by investors as the return is dependent on the success, or otherwise, of the company and it may be a while before the lender would see a return on its investment. Access to this type of patient capital is central to the development and growth of many companies.
- 4.84** All CICs are asked to provide details on their community interest report<sup>16</sup> of any performance related interest loans that they have entered into. These reports are filed each year with the company accounts and are reviewed by the CIC Office.
- 4.85** As there was perceived disquiet with the debt financing amongst investors and there had been little evidence of CICs taking advantage of the performance related loan, the Regulator decided to consult in 2009 on whether the cap was set at the correct level.
- 4.86** It was clear from the result of the consultation that this type of debt financing was underused by CICs and this was due, in part, to the low rate of interest and the complexity of calculation due to the reference to the Bank of England base rate.
- 4.87** This was addressed by increasing the interest rate to 10% and removing the link to the Bank of England base rate. The legislation was amended to read:

10% of the average amount of a CIC's debt or sum outstanding under a debenture issued by it, during the 12 month period immediately preceding the date on which the interest on that debt or debenture becomes due (determined in accordance with Schedule 4 of the CIC Regulations 2005)<sup>17</sup>

---

<sup>15</sup> Available at:

[http://www.bankofengland.co.uk/publications/Documents/financeforsmallfirms/financing\\_social\\_enterprise\\_report.pdf](http://www.bankofengland.co.uk/publications/Documents/financeforsmallfirms/financing_social_enterprise_report.pdf)

<sup>16</sup> Available at: <http://www.bis.gov.uk/cicregulator/forms-introduction/index/cic-reports-accounts>

<sup>17</sup> Available at: <http://www.legislation.gov.uk/ukxi/2005/1788/schedule/4/made>

- 4.88** This determined that the capital return to investors would be calculated as a percentage of the turnover of the CIC but would be capped to 10% of the amount of debt remaining.
- 4.89** Example:
- The CIC borrows £150k and agrees the interest of 25% based on turnover. For the first few years the company has low turnover and nominal amounts are paid. In time the company has a turnover of £50k and the debt is £140k. The repayment of £12.5 k is not capped as it falls inside the limit of £14k i.e. 10% of the outstanding loan.
- 4.90** Whilst these changes were designed to make this type of debt financing more attractive the evidence continued to suggest that performance related interest loans were viewed as restrictive by investors.
- 4.91** The Centre for the Study of Financial Innovation in its report<sup>18</sup> concluded that some in the sector argue that quasi-equity carries more than half the risk level of equity and the 10% return cap should be closer to the 20% dividend cap.
- 4.92** There was an almost equal response to raising or removing the cap. With the same proportion either having no view or wishing to retain the cap at the current level.
- 4.93** The Regulator has considered these views but is not persuaded that the cap should remain at its current level because there is clear evidence that it is acting as a disincentive to investors. CICs need to access patient capital and the current cap is preventing that. The concerns of those who feel that social purpose will be diluted and CICs will become more commercialised if we make this change are understood but the Regulator is content this will not happen.
- 4.94** The Regulator is also not persuaded that the cap should be removed and allow unrestricted interest payments. Whilst supportive of the need to encourage more investment the Regulator is not prepared to allow the asset lock to be circumvented in this way. Companies sometimes accept high interest returns in order to secure loans and we need to guard against the risk that the assets of a very successful CIC may be depleted in this way.
- 4.95** A balance has to be struck between the interests of the CIC and its community and that of investors. Investors in social outcomes understand this but there is a need to ensure that that the caps are not so low that they are prohibitive and the current evidence suggests that they are.

---

<sup>18</sup> Available at: Investing in Social Enterprise: The role of Tax incentives  
<http://www.nesta.org.uk/library/documents/Investing-in-Social-Enterprise.pdf>

**4.96** It has therefore been decided to increase the caps for performance related interest from 10% to 20%. This will help CICs access investment but will also ensure that the assets of the company will continue to be protected and the interests of the community will be paramount.

**4.97** The Regulator will monitor the effect of the decision to increase the interest cap for performance related interest and undertake a review three years from the date the legislation to remove the dividend per share cap is passed

## **Conclusion**

**That the interest cap in place for performance related interest should be increased from 10% to 20%.**

## 5. Additional Comments

---

- 5.1** A number of issues were raised during the consultation and at meetings held by the Regulator, which fell outside the scope of this consultation and in some instances outside the Regulator's powers. The issues will be considered and may be discussed further with interested parties including the Government:
- 5.2** Whilst the Regulator's website is generally well received, it was felt that there should be clearer guidance on the application of the caps and the transferability of shares. One respondent felt that there was considerable misunderstanding regarding the fact that the value of CIC shares can rise and fall. They added that the widespread perception among social entrepreneurs, investors and infrastructure bodies is that CIC shares are not allowed to be sold for more than their paid up value. Although this is not the case, they concluded that the current guidance relating to CICs does little to counter this misunderstanding. Clearer guidance along with a publicity campaign is needed to challenge this misperception.
- 5.3** A number of respondents wanted to see enhanced reporting requirements for CICs especially those that obtained significant amounts of equity investment. One respondent argued that the community interest report should document how the assets are put to good use together with a reconciliation of movements at year-end. Whilst there was broad agreement that the report could be improved, it was unclear from comments received whether any changes should be statutory or voluntary.
- 5.4** Ensuring that the Regulator was sufficiently strengthened in order to effectively support and regulate social CICs was a concern felt by a number of respondents. One fully supported greater use of the CIC structure subject to ensuring that the Regulator has sufficient resource, capacity and capability to be able to act as an effective regulator for a large and growing sector. Others welcomed the current assurance that the Regulator brings by checking and challenging the social aims and adherence to the ethos and values of social enterprise.
-

## 6. Conclusion

---

It has been concluded that:

- the maximum dividend per share cap should be removed
- the maximum aggregate dividend cap should be retained at 35%
- the maximum interest rate for performance related interest should be increased from 10% to 20%

### **Additional options to be taken forward**

The Regulator will also take forward the following:

- we will improve the guidance on the CIC website as we transfer to Gov.UK
  - we will recommend that the annual community interest report reflects the activity and impact of the business and review the layout of the form to encourage fuller responses
  - we will ensure that the CIC office is sufficiently resourced to enable it to meet increased demands for registration. It will also be resourced sufficiently to allow it to have the capacity and capability to regulate effectively and to ensure that confidence in the CIC brand is maintained.
-

## 7. Next Steps

---

In light of the responses received in the consultation the Regulator seeks to take forward changes to dividend and interest caps and to:

- publish the response to the consultation and make available for response
- draw up secondary legislation for parliamentary debate and seek parliamentary approval
- publish a timetable for implementation
- inform all CICs and interested parties of the changes affecting them directly
- publish all changes on CIC's website and in the Regulator's Annual Report
- publish in the Gazette

As part of the review which will take place three years after the legislation to remove the dividend per share has been passed, the Regulator will gather evidence of the impact of these changes. The results of the introduction of the Social Investment Tax Relief will also inform the Regulator as part of her decision making process.

# Annex A: List of questions

---

## QUESTION EIGHTEEN

<b>The Double Cap</b>	Is the double cap, (aggregate at 35% and dividend cap – maximum 20 percent) on distribution by CIC limited by shares too cumbersome. Does it therefore discourage investment or setting up such a CIC? How and why?
-----------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## QUESTION NINETEEN

<b>Changing the Caps</b>	If there were to be a change to the caps, should one or both of the caps be removed or increased. Please give reasons and explain how this should be done. Would this change allow protection of community assets?
--------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## QUESTION TWENTY

<b>The Initial Paid Up Value</b>	What would be the effect of changing or removing the peg to the initial paid up value of shares. Would this affect the statutory asset lock and the protection of community assets. If so, please say why. How should the value of shares be determined – by the market, by inflation by a specified percentage?
----------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## QUESTION TWENTY ONE

<b>The Interest Cap</b>	Should the performance related interest cap be raised or removed, and what impact would that have on the protection of community assets?
-------------------------	------------------------------------------------------------------------------------------------------------------------------------------

---

## Annex B: List of Respondents

1	AAT	27	Golden Lane Housing/Royal Mencap Society	53	Shared Impact
2	ABCUL	28	Hogan Lovells International	54	Social Enterprise Mark
3	Anthony Collins Solicitors	29	Holden and Partners	55	Social Enterprise UK
4	Arts Council England	30	ICAEW	56	Social Finance
5	Bates Wells Braithwaite	31	Impetus – Private Equity Foundation	57	Social Investment Business Group
6	Big Society Capital	32	Institute of Fundraising	58	Social Investment Forum
7	Bridges Ventures	33	Investing for Good	59	Social Investment Scotland
8	British Equity and Venture Capital Association	34	Iridescent Ideas	60	Somerset Co-operative Services
9	CDFA	35	Kabin	61	Sporta
10	Charity Aids Foundation	36	LendLocal	62	The Big Life Group
11	Charity Finance Group	37	Marie Curie Cancer Care	63	The British Film Institute
12	Charity Law Association	38	Mazars	64	The Charity Bank
13	Charity Retail Association	39	Midlothian Council	65	The Fair Banking Foundation
14	Charity Tax Group	40	MP for Warwick	66	The North East Social Enterprise Partnership
15	City of London	41	Mydex Data Services	67	The Scottish Government
16	Co-operative Business Consultants	42	National Housing Federation	68	The Worker Co-op Council
17	Co-operatives UK./ Locality	43	NCVO	69	Triodos Bank
18	Deloitte	44	Neil Coulson Associates	70	UKSIF
19	Energy4All	45	Paradigm Norton Financial Planning	71	UnLtd
20	Ernst & Young	46	Plunkett Foundation	72	Veale Wasbrough Lizards
21	Falkirk Council	47	Precision Accounts	73	Vonne (Voluntary Organisations Network)
22	Federation of Small Businesses	48	PWC	74	Wales Co-operative Centre
23	For Entrepreneurs Only	49	River Capital Partners	75	What Next
24	Francis Clark LLP	50	RW Blears LLP	76	Withers
25	Gateshead Council	51	Sage UK	77	Wragge & Co
26	Golden Lane Housing/Royal Mencap Society	52	Scope	78	Wrigley Solicitors

We have received a number of responses from private individuals as well as requests for anonymity from several respondents.

---

# Annex C: List of participants in the Technical Panel

---

1	Georgia Brown	Department for Business Innovation and Skills
2	Sara Burgess	Regulator of Community Interest Companies
3	Charlotte Chung	Social Enterprise UK
4	Steve Cronin	Unity Trust Bank
5	Mike Deacon	Asset Based Finance and Leasing
6	Professor Simon Denny	Northampton University
7	Lucy Findlay	Social Enterprise Mark CIC
8	Tom Fox	UnLtd
9	Gareth Hart	Iridescent CIC
10	Heidi Harris	Harris and Harris CIC
11	Rachel Holmes	Charity Law Association
12	John Mulkerrin	CIC Association
13	Rob Parker	Cabinet Office
14	Charlotte Ravenscroft	NCVO
15	Abbie Rumbold	Bates Wells and Braithwaite
16	Simon Rowell	Big Society Capital
17	John Shepherd	Birbeck University

---

## Annex D: List of source material

---

1	Ten reforms to grow the social investment market	July 12
2	Growing the social investment market: Investor readiness in the UK	July 12
3	A brief handbook on social investment	September 12
4	Priming the pump: A case for a sector based approach to impact investing	September 12
5	The code of good impact practice	March 13
6	The role of tax incentives in encouraging social enterprise	March 13
7	Breaking the binary: Policy guide to scaling social innovation	May 13
8	Developing impact bonds	June 13
9	The Social Value Act Quick Guide	June 13
10	Growing the social investment market: The landscape and economic need	July 13

---

# Annex E: Impact Assessment

---

The measures announced in this Response to the Consultation are deregulatory and the Impact Assessment will be published with the Regulations.

---

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication available from [www.bis.gov.uk/cicregulator](http://www.bis.gov.uk/cicregulator)

Any enquiries regarding this publication should be sent to:

The Regulator of Community Interest Companies  
Room 3.68, Companies House  
Cardiff CF14 3UZ  
Tel: 02920 346228

If you require this publication in an alternative format, email [cicregulator@companieshouse.gov.uk](mailto:cicregulator@companieshouse.gov.uk), or call 02920 346228.

**CIC/13/1333**