EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013) and the Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/3014), build on provisions in Part 11 of the Charities Act 2011 ("the 2011 Act") relating to charitable incorporated organisations ("CIOs"). The provisions were introduced by the Charities Act 2006 but are consolidated in the 2011 Act.

The Regulations make provision for the registration, constitution and administration of CIOs, and in relation to CIOs generally.

Part 2 deals with issues to do with registration. A charity which would be exempt from registration with the Charity Commission cannot apply to be a CIO (regulation 5). The registration provisions in Part 4 of the 2011 Act apply to CIOs but with modifications (regulation 6): the register of charities must contain the name of every CIO, and other particulars as required or specified by the Charity Commission; the trustees of a CIO must notify the Charity Commission within 28 days of any changes; the registration of a CIO can be challenged on the grounds that the CIO is not a charity, but otherwise registration is conclusive proof of charity status. Although section 34 (removal of charities from register) is not applied to CIOs, provision is made in the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 for the Charity Commission to dissolve a CIO where it is not in operation or is no longer a charity. The Charity Commission can specify how applications for registration are to be made, including specifying that applications must be made in a particular form, such as electronic (regulation 7). Where a CIO's constitution is to include provision for entrenchment (that is, a more onerous procedure for amending the constitution than would otherwise apply), this must be specified in the application (regulations 8 and 9). Charity trustees applying to amalgamate two or more CIOs must confirm that the accounting records of the existing CIOs will be transferred to the new CIO (regulation 10).

Part 3 deals with the constitution of a CIO. Regulation 13 makes provision for matters that must be covered by the constitution, over and above the requirements imposed on CIOs by section 206 of the 2011 Act. Regulation 15 enables a CIO to include in its constitution provision for entrenchment, and sets out when and how it may do this. Regulation 16 stipulates the date on which a constitutional amendment takes effect, where the constitution does not deal with the point and the resolution to amend is made otherwise than at a general meeting of the CIO (if it is made at a general meeting, it takes effect on the date of the meeting (section 224 of the 2011 Act)).

Part 4 makes provision as to how a CIO is to make contracts and execute documents and deeds, and as to the use of a common seal.

Part 5 concerns the maintenance of registers of charity trustees and members. The requirements depend on whether the CIO is a foundation CIO (where the same persons are its members and its charity trustees) or an association CIO (any other CIO). All CIOs are required to keep a register of charity trustees; an association CIO must also keep a separate register of members (regulation 26).

Parts 1 and 2 of Schedule 1 set out what information the registers must contain. Both members and trustees must provide an address where documents can be served on them, which need not be their residential address, and could be the address of the "principal office" of the CIO (the address of the CIO as recorded in the register of charities). Part 3 of Schedule 1 provides that a CIO must update its registers within 28 days of a change. The registers must be kept available for inspection (by those with rights of access) at the CIO's principal office, or, where the charity trustees have passed a resolution to that effect, at an alternative address.

Part 4 of Schedule 1 deals with rights of access to the registers. Members and charity trustees of a CIO have the right to inspect or be provided with a copy of the CIO's register of members where they want to see their own entry, or where the request is for the purposes of carrying out their duties as a member or charity trustee of the CIO. The register of members is only accessible to the public in limited circumstances. Any person has the right to inspect or be provided with a copy of the register of trustees, however. The CIO may charge a reasonable fee for allowing inspection or providing a copy of a register (other than for a trustee or member requesting their own entry or requesting for the purpose of carrying out their duties). The CIO may refuse access to an entry in a register of trustees if the Charity Commission has given a dispensation to withhold the personal details of the trustee in question.

The Charity Commission can order a CIO to rectify its register of members where it has determined that the membership of the CIO is different from that specified in the register (regulation 27); and the Court can order rectification of the register where it is not being kept up-to-date (regulation 28). The register of members is to be evidence of the matters in it (regulation 29), and there is a 10-year limit on claims against a CIO arising from entries on the register (regulation 30). For the purposes of each of these provisions, the register of trustees kept by a foundation CIO is treated as its register of members.

Part 6 deals with the appointment, powers and duties of charity trustees, including eligibility to be a charity trustee. It applies (with modifications) provisions of the Trustee Act 2000, so allowing the charity trustees of a CIO to appoint agents, nominees and custodians.

Part 7 sets out how a CIO is to call, conduct and record meetings of charity trustees and members.

Part 8 specifies how documents are to be served on CIOs and on the charity trustees of CIOs.

Part 9 deals with how documents are to be sent or supplied by or to a CIO, including how a CIO and the Charity Commission are to communicate with each other, where the communication is authorised or required for the purposes of any charity law provision. Documents and information can be sent or supplied in either hard copy or electronic form to a CIO (Schedule 2). Documents or information can be sent or supplied by a CIO (including between CIOs) in either hard copy or electronic form, including through a website (Schedule 3). The Charity Commission can specify its requirements as to the form of documents or information to be supplied to it by a CIO, and the manner in which a document or information is to be sent (regulation 54).

It is a criminal offence for a CIO to undertake activities with the intent to defraud creditors or other third parties, or for other fraudulent purposes (regulation 60).

Regulation 61 makes it easier for an unincorporated charity to transfer property held on special trusts to a CIO by modifying the 2011 Act merger provisions. Where an existing unincorporated charity wishes to transfer all of its property to the CIO, property held on special trusts (including permanent endowment) can be transferred automatically to the CIO to be held on the same trusts, with the CIO appointed as corporate trustee of the property, and with a direction that they are to be treated as a single charity for the purposes of registration, accounts, reports and returns under the 2011 Act.

Where a CIO elects under section 133 of the 2011 Act not to prepare a full statement of accounts, but instead to prepare a receipts and payments account and a statement of assets and liabilities, regulation 62 requires it to provide certain additional information by way of notes to the statement of assets and liabilities.

Schedule 4 makes consequential amendments to secondary legislation to (i) enable the Charity Commission to require a charity that is not a CIO to change its name (under section 42 of the 2011 Act) if it includes in its name the words "charitable incorporated organisation" or the Welsh equivalent; and (ii) provide that no charity which is constituted as a CIO is excepted from registration.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.