

SCHEDULE 2

Regulation 3

Application of Schedule B1 to charitable incorporated organisations

“SCHEDULE 2

Regulation 3A

Housing Administration

PART 1

Application of Schedule B1 to CIOs during housing administration

Introductory

1. The applicable provisions of Schedule B1 to the Insolvency Act 1986 are to have effect in relation to a housing administration order that applies to a CIO as they have effect in relation to an administration order under that Schedule that applies to a company, but with the modifications set out in—

- (a) paragraph 1(3) of Schedule 1, and
- (b) this Schedule.

2. The applicable provisions of Schedule B1 to the Insolvency Act 1986 are paragraphs 1, 40 to 49, 54, 59 to 68, 70 to 79, 83 to 91, 98 to 107, 109 to 111 and 112 to 116.

General modifications of the applicable provisions

3. Those paragraphs are to have effect as if—
- (a) for “administration application”, in each place, there were substituted “housing administration application”,
 - (b) for “administration order”, in each place, there were substituted “housing administration order”,
 - (c) for “administrator”, in each place, there were substituted “housing administrator”,
 - (d) for “enters administration”, in each place, there were substituted “enters housing administration”,
 - (e) for “in administration”, in each place, there were substituted “in housing administration”, and
 - (f) for “purpose of administration”, in each place (other than in paragraph 111(1)), there were substituted “objectives of the housing administration”.

Specific Modifications

4. Paragraph 1 is to have effect as if—
- (a) for sub-paragraph (1) there were substituted—
 - “(1) In this Schedule “housing administrator”, in relation to a CIO, means a person appointed by the court for the purposes of a housing administration order to manage the CIO’s affairs, business and property.”, and
 - (b) in sub-paragraph (2), for “Act” there were substituted “Schedule”.
5. Paragraph 40 is to have effect as if sub-paragraphs (1)(b), (2) and (3) were omitted.

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6. Paragraph 42 is to have effect as if sub-paragraphs (4) and (5) were omitted.
7. Paragraph 43 is to have effect as if sub-paragraph (5) were omitted.
8. Paragraph 44 is to have effect as if sub-paragraphs (2) to (4), (6) and (7)(a) to (c) were omitted.
9. Paragraph 46(6) is to have effect as if for paragraphs (a) to (c) there were substituted “the date on which the housing administration order comes into force.”.
10. Paragraph 47 is to have effect as if—
 - (a) for sub-paragraph (3)(d), there were substituted—
 - “(d) a person who is or has been during that period an officer or employee of a company, or a charity trustee or employee of a CIO, which is or has been during that year a charity trustee of the CIO.”, and
 - (b) sub-paragraph (5) were omitted.
11. Paragraph 49 is to have effect as if—
 - (a) in sub-paragraph (2)(b) for “objective mentioned in paragraph 3(1)(a) or (b) cannot be achieved” there were substituted “objectives of the housing administration should be achieved by means other than just a rescue of the CIO as a going concern”,
 - (b) sub-paragraph (3)(b) were omitted, and
 - (c) in sub-paragraph (4), after paragraph (a) there were inserted—
 - “(aa) to the Secretary of State and the Regulator of Social Housing.”.
12. Paragraph 54 is to have effect as if the following were substituted for it—
 - “54.—(1) The housing administrator of a CIO may on one or more occasions revise the proposals included in the statement made under paragraph 49 in relation to the CIO.
 - (2) If the housing administrator thinks that a revision is substantial, the housing administrator must send a copy of the revised proposals—
 - (a) to the Charity Commission,
 - (b) to the Secretary of State and the Regulator of Social Housing,
 - (c) to every creditor of the CIO, other than an opted-out creditor, of whose claim and address the housing administrator is aware, and
 - (d) to every member of the CIO of whose address the housing administrator is aware.
 - (3) A copy sent in accordance with sub-paragraph (2) must be sent within the prescribed period.
 - (4) The housing administrator is to be taken to have complied with sub-paragraph (2) (d) if the housing administrator publishes, in the prescribed manner, a notice undertaking to provide a copy of the revised proposals free of charge to any member of the CIO who applies in writing to a specified address.
 - (5) A housing administrator who fails without reasonable excuse to comply with this paragraph commits an offence.”
13. Paragraph 60 has effect as if after sub-paragraph (2) there were inserted—
 - “(3) The housing administrator of a CIO has the power to act on behalf of the organisation for the purposes of provision contained in any legislation which confers a power on the organisation or imposes a duty on it.
 - (4) In sub-paragraph (3) “legislation” has the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016.”.

14. Paragraph 68 is to have effect as if—
- (a) in sub-paragraph (1), for paragraphs (a) to (c) there were substituted—
 - “the proposals as—
 - (a) set out in the statement made under paragraph 49 in relation to the CIO, and
 - (b) from time to time revised under paragraph 54,for achieving the objectives of the housing administration.”, and
 - (b) in sub-paragraph (3), for paragraphs (a) to (d) there were substituted “the directions are consistent with the achievement of the objectives of the housing administration.”
15. Paragraph 73 is to have effect as if—
- (a) sub-paragraphs (2)(c) and (d) were omitted, and
 - (b) in sub-paragraph (3) for “or modified” there were substituted “under paragraph 54”.
16. Paragraph 74 is to have effect as if—
- (a) for sub-paragraph (2) there were substituted—
 - “(2) If a CIO is in housing administration, a person mentioned in sub-paragraph (2A) may apply to the court claiming that the housing administrator is acting in a manner preventing the achievement of the objectives of the housing administration as quickly and efficiently as is reasonably practicable.
 - (2A) The persons who may apply to the court are—
 - (a) the Secretary of State;
 - (b) with the consent of the Secretary of State, the Regulator of Social Housing;
 - (c) a creditor of the CIO.”,
 - (b) sub-paragraphs (6)(b), (ba) and (c) were omitted,
 - (c) after sub-paragraph (6) there were inserted—
 - “(7) In the case of a claim made otherwise than by the Secretary of State or the Regulator of Social Housing, the court may grant a remedy or relief or make an order under this paragraph only if it has given the Secretary of State or the Regulator a reasonable opportunity of making representations about the claim and the proposed remedy, relief or order.
 - (8) The court may grant a remedy or relief or make an order on an application under this paragraph only if it is satisfied, in relation to the matters that are the subject of the application, that the housing administrator—
 - (a) is acting,
 - (b) has acted, or
 - (c) is proposing to act,in a way that is inconsistent with the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.
 - (9) Before the making of an order of the kind mentioned in sub-paragraph (4)(d)—
 - (a) the court must notify the housing administrator of the proposed order and of a period during which the housing administrator is to have the opportunity of taking steps falling within sub-paragraphs (10) to (12), and
 - (b) the period notified must have expired without the taking of such of those steps as the court thinks should have been taken,and that period must be a reasonable period.

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(10) In the case of a claim under sub-paragraph (1)(a), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner that unfairly harms the interests to which the claim relates,
- (b) remedying any harm unfairly caused to those interests, and
- (c) steps for ensuring that there is no repetition of conduct unfairly causing harm to those interests.

(11) In the case of a claim under sub-paragraph (1)(b), the steps referred to in sub-paragraph (9) are steps for ensuring that the interests to which the claim relates are not unfairly harmed.

(12) In the case of a claim under sub-paragraph (2), the steps referred to in sub-paragraph (9) are—

- (a) ceasing to act in a manner preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable,
- (b) remedying the consequences of the housing administrator having acted in such a manner, and
- (c) steps for ensuring that there is no repetition of the conduct preventing the achievement of the objectives of the housing administration as quickly and as efficiently as is reasonably practicable.”

17. Paragraph 75(2) is to have effect as if after paragraph (b) there were inserted—

“(ba) a person appointed as an administrator of the CIO under the provisions of this Act, as they have effect in relation to administrators other than housing administrators.”.

18. Paragraph 78 is to have effect as if sub-paragraph (2) were omitted.

19. Paragraph 79 is to have effect as if—

(a) for sub-paragraphs (1) and (2) there were substituted—

“(1) On an application made by a person mentioned in sub-paragraph (2), the court may provide for the appointment of a housing administrator of a CIO to cease to have effect from a specified time.

(2) An application may be made to the court under this paragraph—

- (a) by the Secretary of State,
- (b) with the consent of the Secretary of State, by the Regulator of Social Housing, or
- (c) with the consent of the Secretary of State, by the housing administrator.”.

(b) sub-paragraph (3) were omitted.

20. Paragraph 83 is to have effect as if—

(a) sub-paragraph (2) were omitted;

(b) in sub-paragraph (3), after “may”, there were inserted “, with the consent of the Secretary of State or of the Regulator of Social Housing.”.

(c) for sub-paragraph (4) there were substituted—

“(4) On receipt of a notice under sub-paragraph (3), the Charity Commission must publish it in such manner as it thinks fit.

(4A) In determining the manner in which to publish the notice under sub-paragraph (3) the Charity Commission must have regard in particular to—

- (a) the location of the principal office of the CIO,

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- (b) the area in which the CIO operates, and
 - (c) the charitable purposes of the CIO.”.
 - (d) in sub-paragraph (6) for “registration” substitute “publication” and for “registered” substitute “published”.
- 21.** Paragraph 84 is to have effect as if—
- (a) in sub-paragraph (1), for “to the registrar of companies” there were substituted—
 - “(a) to the Secretary of State and the Regulator of Social Housing, and
 - (b) if directed to do so by either the Secretary of State or the Regulator of Social Housing, to the Charity Commission.”,
 - (b) sub-paragraph (2) were omitted,
 - (c) for sub-paragraph (3), there were substituted—
 - “(3) On receipt of a notice under sub-paragraph (1)(b), the Charity Commission must publish it in such manner as it thinks fit.
 - (3A) In determining the manner in which to publish the notice under sub-paragraph (1)
 - (b) the Charity Commission must have regard in particular to—
 - (a) the location of the principal office of the CIO,
 - (b) the area in which the CIO operates, and
 - (c) the charitable purposes of the CIO.”,
 - (d) in sub-paragraphs (4) to (6), for “(1)”, in each place, there were substituted “(1)(b)”,
 - (e) in sub-paragraph (4), for “registration” substitute “publication”, and
 - (f) in sub-paragraph (6), for “registration” substitute “publication”.
- 22.** Paragraph 87(2) is to have effect as if for paragraphs (a) to (d) there were substituted “by notice in writing to the court”.
- 23.** Paragraph 89(2) is to have effect as if for paragraphs (a) to (d) there were substituted “to the court”.
- 24.** Paragraph 90 is to have effect as if for “Paragraphs 91 to 95 apply” there were substituted “Paragraph 91 applies”.
- 25.** Paragraph 91 is to have effect as if the following were substituted for it
- “**91.** The court may replace the housing administrator on an application made—
 - (a) by the Secretary of State,
 - (b) with the consent of the Secretary of State, by the Regulator of Social Housing, or
 - (c) where more than one person was appointed to act jointly as the housing administrator, by any of those persons who remain in office.”.
- 26.** Paragraph 98 is to have effect as if sub-paragraphs (2)(b) and (ba), (3) and (3A) were omitted.
- 27.** Paragraph 99 is to have effect as if—
- (a) in sub-paragraph (4), for the words from the beginning to “cessation”, in the first place, there were substituted “A sum falling within sub-paragraph (4A)”,
 - (b) after that sub-paragraph there were inserted—
 - “(4A) A sum falls within this sub-paragraph if it is—

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- (a) a sum payable in respect of a debt or other liability arising out of a contract that was entered into before cessation by the former housing administrator or a predecessor,
 - (b) a sum that must be repaid by the CIO in respect of a grant that was made under section 109 of the Housing and Planning Act 2016 before cessation,
 - (c) a sum that must be repaid by the CIO in respect of a loan made under that section before cessation or that must be paid by the CIO in respect of interest payable on such a loan,
 - (d) a sum payable by the CIO under section 111 of that Act in respect of an agreement to indemnify made before cessation, or
 - (e) a sum payable by the CIO under section 113 of that Act in respect of a guarantee given before cessation.”, and
- (c) in sub-paragraph (5), for “(4)” there were substituted “(4A)(a)”.
- 28.** Paragraph 100 is to have effect as if sub-paragraph (2) were omitted.
- 29.** Paragraph 101(3) is to have effect as if after “87 to” there were inserted “91, 98 and”.
- 30.** Paragraph 103 is to have effect as if—
- (a) in sub-paragraph (2) the words from the beginning to “order” were omitted and for paragraph (a) there were substituted—
 - “(a) the Secretary of State,
 - (aa) the Regulator of Social Housing, or”,
 - (b) after that sub-paragraph there were inserted—
 - “(2A) The consent of the Secretary of State is required for an application by the Regulator of Social Housing for the purposes of sub-paragraph (2).”, and
 - (c) sub-paragraphs (3) to (5) were omitted.
- 31.** Paragraph 106(2) is to have effect as if paragraphs (a), (b), (f), (g), (i) and (l) to (n) were omitted.
- 32.** Paragraph 109 is to have effect as if “or 108” were omitted.
- 33.** Paragraph 111 is to have effect as if—
- (a) in sub-paragraph (1) the definitions of “holder of a qualifying floating charge”, “the purpose of administration” and “unable to pay its debts” were omitted,
 - (b) in that sub-paragraph, at the appropriate places there were inserted—
 - ““court”, in relation to a CIO, means the court having jurisdiction to wind up the CIO;”,
 - ““housing administration application” means an application to the court for a housing administration order under Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,
 - ““housing administration order” has the same meaning as in Chapter 5 of Part 4 of the Housing and Planning Act 2016;”,
 - ““objectives”, in relation to a housing administration, is to be read in accordance with section 96(4) of the Housing and Planning Act 2016;”, and
 - ““prescribed” means prescribed by housing administration rules within the meaning of Chapter 5 of Part 4 of the Housing and Planning Act 2016.”,
 - (c) after sub-paragraph (3) there were inserted—

“(4) For the purposes of this Schedule a reference to an appointment under a housing administration order includes a reference to an appointment under paragraph 91 or 103.”

PART 2

Other Modifications

General modifications

- 34.**—(1) References within sub-paragraph (2) which are contained—
- (a) in the Insolvency Act 1986 (other than Schedule B1 to that Act), or
 - (b) in other legislation passed or made before the Insolvency of Registered Providers of Social Housing Regulations 2017 come into force+,
- include references to whatever corresponds to them for the purposes of this paragraph.
- (2) The references are those (however expressed) which are or include references to—
- (a) an administrator appointed by an administration order,
 - (b) an administration order,
 - (c) an application for an administration order,
 - (d) a CIO in administration,
 - (e) entering into administration. and
 - (f) Schedule B1 to the Insolvency Act 1986 or a provision of that Schedule.
- (3) For the purposes of this paragraph—
- (a) a housing administrator of a CIO corresponds to an administrator appointed by an administration order,
 - (b) a housing administration order in relation to a CIO corresponds to an administration order,
 - (c) an application for a housing administration order in relation to a CIO corresponds to an application for an administration order,
 - (d) a CIO in housing administration corresponds to a CIO in administration,
 - (e) entering into housing administration corresponds to a CIO entering into administration, and
 - (f) what corresponds to Schedule B1 to the Insolvency Act 1986 or a provision of that Schedule is that Schedule or that provision as applied by Part 1 of this Schedule.

Modifications of the Insolvency Act 1986

35. The following provisions of the Insolvency Act 1986 are to have effect in the case of a CIO in housing administration with the following modifications.

36. Section 5 is to have effect as if after subsection (4) there were inserted—

“(4A) Where the CIO is in housing administration, the court must not make an order or give a direction under subsection (3) unless—

- (a) the court has given the Secretary of State or the Regulator of Social Housing a reasonable opportunity of making representations to it about the proposed order or direction, and
- (b) the order or direction is consistent with the objectives of the housing administration.

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(4B) In subsection (4A) “in housing administration” and “objectives of the housing administration” are to be read in accordance with Schedule B1 to this Act, as applied by Schedule 2 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.”

37. Section 6 is to have effect as if—

(a) after subsection (2) there were inserted—

“(2AA) Subject to this section, where a voluntary arrangement in relation to a CIO in housing administration is approved at the meetings summoned under section 3, an application to the court may be made—

(a) by the Secretary of State, or

(b) with the consent of the Secretary of State, by the Regulator of Social Housing, on the ground that the voluntary arrangement is not consistent with the achievement of the objectives of the housing administration.”,

(b) in subsection (4), after “subsection (1)” there were inserted “or, in the case of an application under subsection (2AA), as to the ground mentioned in that subsection”, and

(c) after subsection (7) there were inserted—

“(7A) In this section “in housing administration” and “objectives of the housing administration” are to be read in accordance with Schedule B1 to this Act as applied by Schedule 2 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.”.

38. Section 129(1A) is to have effect as if the reference to paragraph 13(1)(e) of Schedule B1 includes section 100(1)(e) of the Housing and Planning Act 2016.”