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STATUTORY INSTRUMENTS

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**2012 No. 3013**

**The Charitable Incorporated Organisations  
(Insolvency and Dissolution) Regulations 2012**

**PART 3**

**DISSOLUTION OTHERWISE THAN UNDER THE INSOLVENCY ACT 1986**

**Dissolution by Commission on application of CIO**

**4.—(1)** The Commission may, on the application of a CIO, dissolve the CIO by removing it from the register.

(2) Such an application is referred to in this Part as an application for dissolution and must be made in accordance with regulation 5.

**Application for dissolution**

**5.** An application for dissolution—

- (a) must be made on the CIO's behalf by the charity trustees or by a majority of them; and
- (b) must contain—
  - (i) a copy of the resolution passed in accordance with the procedure prescribed in regulation 6;
  - (ii) a declaration, made by or on behalf of the charity trustees of the CIO, that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
  - (iii) a statement, made by or on behalf of the charity trustees of the CIO, setting out the way in which any property vested in, or held on trust for, the CIO has been or is to be applied on dissolution in accordance with its constitutional directions.

**Dissolution resolution**

**6.—(1)** The resolution to make an application for dissolution (“a dissolution resolution”) must be passed by the members—

- (a) at a general meeting of the CIO—
  - (i) by a 75% majority of those voting (including those voting by proxy or by post, if voting that way is permitted); or
  - (ii) where the CIO's constitution permits the members to make decisions otherwise than by voting, by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting; or
- (b) unanimously, otherwise than at a general meeting.

(2) Subject to paragraph (4), where a dissolution resolution is to be proposed at a general meeting of a CIO the person calling the meeting must give notice of not less than 14 days to—

- (a) all members of the CIO entitled to vote at the meeting or, where the CIO's constitution permits the members to make decisions otherwise than by voting, all members entitled to take part in the decision to be made as to whether to pass the resolution at the meeting; and
- (b) any charity trustee of the CIO who is not also a member of the CIO entitled to vote at the meeting or, where the CIO's constitution permits the members to make decisions otherwise than by voting, who is not also a member entitled to take part in the decision to be made as to whether to pass the resolution at that meeting;

and the notice must contain particulars of the dissolution resolution that is to be proposed.

(3) For the purpose of calculating the period of notice to be given under paragraph (2) the following are to be excluded—

- (a) the day of the meeting; and
- (b) the day on which notice is given.

(4) If a qualifying majority agrees, a dissolution resolution which is to be proposed at a general meeting may be passed without the notice provisions in paragraph (2) being satisfied.

(5) Where a dissolution resolution is passed otherwise than at a general meeting it is treated as having been passed on the date on which the last member agreed to it, unless the CIO's constitution provides that it is to be treated as having been passed on a later date.

(6) In this regulation—

“qualifying majority” means—

- (a) in relation to a CIO whose members take decisions by voting, a majority in number of the members having a right to attend and vote at the meeting, who together represent not less than the requisite percentage of the total voting rights at that meeting of all the members;
- (b) in relation to a CIO where the CIO's constitution permits the members to make decisions otherwise than by voting, all of the members having the right to attend the meeting and take part in the decisions to be made at the meeting;

“requisite percentage” means 90% or such higher percentage (not exceeding 95%) as may be specified in the CIO's constitution for the purposes of this regulation.

### **Notice to be given before dissolution**

7.—(1) The Commission must not dissolve a CIO under regulation 4 until 3 months after the publication by the Commission, in such manner as it thinks fit, of a notice stating that it has received an application for dissolution from the CIO.

(2) The Commission must not dissolve the CIO if, within the period mentioned in subparagraph (1), any person has shown cause why the Commission should not dissolve the CIO.

### **Application not to be made if CIO procedures not completed**

8.—(1) The charity trustees must not make an application for dissolution if—

- (a) the CIO has any debts or other liabilities which have not been settled or otherwise provided for in full; or
- (b) any decision which must be taken for the purpose of giving effect to the constitutional directions has not been taken.

(2) Subsections (5) to (7) of section 1004 of the Companies Act 2006 (offence of applying for a company to be struck off in contravention of requirements of that section)(1) apply in relation to

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(1) 2006 c.46.

an application by a charity trustee in contravention of paragraph (1) as they apply in relation to an application in contravention of that section.

(3) Section 1004(6) of that Act, in its application by virtue of paragraph (2), has effect as if for “that he did not know, and could not reasonably have known, of the existence of the facts that led to the contravention” there were substituted—

- “(a) if the CIO had outstanding debts or other liabilities at the time the application was made, that the accused reasonably believed all of the CIO’s debts or other liabilities had been settled in full or otherwise provided for;
- (b) if a decision required to be taken for the purpose of the constitutional directions had not been taken, that the accused reasonably believed the necessary decision had been properly taken.”.

### **Application not to be made if other procedures not completed**

9.—(1) The charity trustees must not make an application for dissolution if—

- (a) a voluntary arrangement in relation to the CIO has been proposed under Part 1 of the 1986 Act(2) and the matter has not been finally concluded;
- (b) the CIO is in administration under Part 2 of that Act(3);
- (c) an interim moratorium is in effect in relation to the CIO under paragraph 44 of Schedule B1 to that Act(4);
- (d) the CIO is being wound up under Part 4 of that Act(5), whether voluntarily or by the court, or a petition under that Part for the winding up of the CIO by the court has been presented and not been finally dealt with or withdrawn;
- (e) a receiver, manager or interim manager of the CIO’s property has been appointed.

(2) For the purposes of paragraph (1)(a), the matter is finally concluded if—

- (a) no meetings are to be summoned under section 3 of the 1986 Act;
- (b) meetings summoned under that section fail to approve the arrangement;
- (c) an arrangement approved by meetings summoned under that section, or in consequence of a direction under section 6(4)(b) of that Act(6), has been fully implemented; or
- (d) the court makes an order under section 6(5) of that Act revoking approval given at previous meetings and, if the court gives any directions under section 6(6) of that Act, the CIO has done whatever it is required to do under those directions.

(3) Subsections (4) to (6) of section 1005 of the Companies Act 2006 (offence of applying for a company to be struck off in contravention of requirements of that section) apply in relation to

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(2) Part 1 of the 1986 Act was amended by the Insolvency Act 2000 (c.39), Schedule 1, paragraphs 2 to 10 and Schedule 2, paragraphs 1 to 10; and by the Enterprise Act 2002 (c.40), Schedule 17, paragraphs 10 to 12.

(3) Part 2 of the 1986 Act was substituted by the Enterprise Act 2002, section 248(1).

(4) Schedule B1 to the 1986 Act was inserted by the Enterprise Act 2002, section 248 and Schedule 16. It was amended by the Courts Act 2003 (c.39), Schedule 8, paragraph 299; by S.I. 2003/2096, article 2; by S.I. 2005/879, regulation 2(4); by S.I. 2007/2974, regulation 65(2); by S.I. 2008/1897, regulation 4; and by S.I. 2010/18, article 4(2).

(5) Part 4 of the 1986 Act was amended by the Companies Act 1989 (c.40), section 60(3); by the Insolvency Act 2000, sections 10 and 11; by the Enterprise Act 2002, sections 252 and 253 and Schedule 17, paragraphs 14 to 18, and Schedule 26; by the Courts Act 2003, Schedule 8, paragraphs 295 and 296; by the Civil Partnerships Act 2004 (c.33), Schedule 27, paragraph 112; by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraph 186; by the Companies Act 2006 (c.46), section 1282; by S.I. 1986/1996, Schedule, Part 1; by S.I. 1994/2421, article 14; by S.I. 1999/1820, Schedule 2, paragraph 85; by S.I. 2001/1090, Schedule 5, paragraph 15; by S.I. 2002/1240, regulation 8; by S.I. 2002/1555, article 15; by S.I. 2006/3429, regulation 7(1); by S.I. 2007/2194, Schedule 4, paragraph 40; by S.I. 2008/1897, regulation 5(1); by S.I. 2009/864, article 3; by S.I. 2009/1941, Schedule 1, paragraph 75; and by S.I. 2010/18, articles 5 to 7 and 10.

(6) Section 6 of 1986 Act was amended by the Insolvency Act 2000, section 2(a) and Schedule 2, paragraph 7(6). There are further amendments to section 6 not relevant to these Regulations.

an application by a charity trustee in contravention of paragraph (1) as they apply in relation to an application in contravention of that section.

#### **Restrictions following application for dissolution**

- 10.** In any case where an application for dissolution has been made, the CIO must not—
- (a) engage in any activity except one which is necessary or expedient for the purposes of—
    - (i) proceeding with the application;
    - (ii) giving effect to any decision made under the constitutional directions; or
    - (iii) complying with any statutory requirement; or
  - (b) otherwise incur any debts or other liabilities.

#### **Property received after making application for dissolution**

- 11.** If property is received by the CIO after the date on which the application for dissolution was made, the charity trustees must give notice to the Commission and either—
- (a) withdraw the application; or
  - (b) send to the Commission a statement, made by or on behalf of the charity trustees of the CIO, setting out the way in which the property has been or is to be applied on dissolution in accordance with its constitutional directions.

#### **Trustees to give notice of application for dissolution**

**12.—(1)** The charity trustees who make an application for dissolution on behalf of a CIO must secure that, within 7 days beginning with the day on which the application is made, notice of it is given to every person who at any time on that day is—

- (a) a member of the CIO;
- (b) an employee of the CIO; or
- (c) a charity trustee of the CIO.

(2) Paragraph (1) does not require notice to be given to any charity trustee who is party to the application.

(3) The notice must state—

- (a) the date on which the application for dissolution is made;
- (b) the names of the charity trustees making the application.

(4) The duty imposed by this regulation ceases to apply if the application is withdrawn before the end of the period for giving notice.

(5) Subsections (4) to (7) of section 1006 of the Companies Act 2006 (offence of failing to comply with duty to provide copy of striking off application in respect of a company to members, employees etc) apply in relation to a failure by a charity trustee to perform the duty imposed by paragraph (1) as they apply in relation to a failure to perform the duty imposed by that section.

(6) Section 1006(7) of that Act, in its application by virtue of paragraph (5), has effect as if paragraph (b)(ii) were omitted.

#### **Notice of application for dissolution: how to be given**

**13.—(1)** The following provisions have effect for the purposes of regulation 12.

- (2) Notice of an application for dissolution is treated as being given to a person (“P”) if it is—

- (a) delivered to P;
- (b) left at P's proper address; or
- (c) sent by post to P at that address.

(3) For the purposes of paragraph (2) above and section 7 (service of documents by post) of the Interpretation Act 1978(7) as it applies in relation to that paragraph, the proper address of a person is—

- (a) in the case of a body corporate incorporated in the United Kingdom, its registered or principal office;
- (b) in the case of a body corporate incorporated outside the United Kingdom—
  - (i) if it has a place of business in the United Kingdom, its principal office in the United Kingdom; or
  - (ii) if it does not have a place of business in the United Kingdom, its registered or principal office;
- (c) in the case of an individual, that individual's last known address.

#### **Circumstances in which application must be withdrawn**

**14.**—(1) This regulation applies if an application for dissolution has been made and before it is finally dealt with or withdrawn—

- (a) an application to the court for an administration order in respect of the CIO is made under paragraph 12 of Schedule B1 to the 1986 Act(8);
- (b) an administrator is appointed in respect of the CIO under paragraph 14 or 22 of Schedule B1 to that Act or a copy of notice of intention to appoint an administrator of the CIO under either of those provisions is filed with the court;
- (c) there arise any of the circumstances in which, under section 84(1) of that Act(9), the CIO may be voluntarily wound up;
- (d) a petition is presented for the winding up of the CIO by the court under Part 4 of that Act;
- (e) a receiver, manager or interim manager of the CIO's property is appointed; or
- (f) the CIO incurs any liability contrary to regulation 10.

(2) A person who, at the end of the day on which any of the events mentioned in paragraph (1) occurs, is a charity trustee of the CIO must immediately notify the Commission that the event has occurred and withdraw the CIO's application.

(3) Subsections (5) to (7) of section 1009 of the Companies Act 2006 (offence of failing to withdraw striking off application in respect of a company) apply in relation to a failure by a charity trustee to perform the duty imposed by paragraph (2) as they apply in relation to a failure to perform the duty imposed by that section.

(4) Section 1009(6) of that Act, in its application by virtue of paragraph (3), has effect as if for "the company had made an application under section 1003" there were substituted "an application for the dissolution of the CIO had been made under regulation 5 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012".

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(7) 1978 c.30.

(8) Paragraph 12 of Schedule B1 was amended by the Enterprise Act 2002, Schedule 16 (as amended by S.I. 2003/2096, article 2(2)), and by the Courts Act 2003, Schedule 8, paragraph 299.

(9) Section 84(1)(c) was repealed by S.I. 2007/2194, Schedule 4, paragraph 39(2) and Schedule 5.

**Offences under the Companies Acts**

**15.**—(1) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Act)(**10**) apply to an offence under that Act committed by virtue of regulation 8, 9, 12 or 14 as they apply to an offence under the Companies Acts—

- (a) section 1127 (summary proceedings: venue);
  - (b) section 1128 (summary proceedings: time limit for proceedings);
  - (c) section 1129 (legal professional privilege);
  - (d) section 1131 (imprisonment on summary conviction in England and Wales: transitory provision); and
  - (e) section 1132 (production and inspection of documents where offence suspected).
- (2) In their application to CIOs those sections have effect as if—
- (a) for references to a company there were substituted references to a CIO;
  - (b) for references to an officer of a company there were substituted references to a charity trustee of a CIO;
  - (c) provisions relating only to Scotland or Northern Ireland were omitted;
  - (d) references to the Secretary of State were omitted.

(3) In its application to CIOs section 1132(3)(b) has effect as if for “the secretary of the company, or such other officer of it” there were substituted “such charity trustee of the CIO”.

**Dissolution of CIO which is not in operation**

**16.**—(1) If the Commission has reasonable cause to believe that a CIO is not in operation it must send the CIO a letter inquiring whether the CIO is in operation.

(2) If it does not receive an answer within 1 month after the date of the letter the Commission must, no later than 2 months after the date of the letter, send the CIO a second letter inquiring whether the CIO is in operation.

(3) The second letter must refer to the first letter and state that, if an answer is not received to either letter within 1 month after the date of the second letter, the Commission will publish notice of its intention to dissolve the CIO.

(4) If the Commission—

- (a) receives an answer to either letter to the effect that the CIO is not in operation; or
- (b) has, after 1 month beginning with the date of the second letter, not received any answer to either letter,

the Commission must publish, in such manner as it thinks fit, notice of its intention to dissolve the CIO after 3 months from the date of the notice unless it is shown that the CIO is in operation or will be in operation within a reasonable period of time.

(5) The Commission must send the CIO a copy of the notice published under paragraph (4).

(6) No earlier than 3 months after the publication of the notice of intention the Commission must dissolve the CIO by removing it from the register, unless it is satisfied that—

- (a) the CIO is in operation; or
- (b) the CIO will be in operation within a reasonable period of time.

(7) In this regulation the date of a letter is the date on which it is sent.

### **Dissolution of CIO which is no longer a charity**

17.—(1) If the Commission no longer considers a CIO to be a charity it must publish, in such manner as it thinks fit, notice of its intention to dissolve the CIO after 3 months beginning with the date of the notice unless cause is shown to the contrary.

(2) The Commission must send the CIO a copy of the notice published under paragraph (1).

(3) No earlier than 3 months after the publication of the notice of intention the Commission must, unless cause has been shown to the contrary, dissolve the CIO by removing it from the register.

### **Dissolution of CIO which is being wound up**

18.—(1) If a CIO is being wound up and—

(a) the Commission has reasonable cause to believe that no liquidator is acting or that the affairs of the CIO are fully wound up; and

(b) the returns required to be made by the liquidator have not been made for a period of 6 consecutive months,

the Commission must publish, in such manner as it thinks fit, notice of its intention to dissolve the CIO after 3 months beginning with the date of the notice unless cause is shown to the contrary.

(2) The Commission must send the CIO and the liquidator (if any) a copy of the notice published under paragraph (1).

(3) No earlier than 3 months after the publication of the notice of intention the Commission must, unless cause has been shown to the contrary, dissolve the CIO by removing it from the register.

### **Procedure for dissolution: delivery of letters and notices**

19.—(1) This regulation applies for the purpose of determining the manner of delivery of letters and notices to be sent under regulation 16, 17 or 18.

(2) The letter or notice must be sent to the CIO at its principal office as it appears on the register of charities.

(3) If the Commission has reasonable grounds to believe that sending the letter or notice to the CIO's principal office as it appears on the register of charities is unlikely to bring it to the attention of the charity trustees, the Commission must also send it to any other address the Commission has for the CIO.

(4) If the Commission has reasonable grounds to believe that sending the letter or notice to any other address it has for the CIO is unlikely to bring it to the attention of the charity trustees, the Commission must also send it to each charity trustee of the CIO for whom the Commission has an address.

(5) If there are no charity trustees for whom the Commission has an address, the Commission must also send the letter or notice to any member of the CIO for whom the Commission has an address.

(6) A notice to be sent to a liquidator may be addressed to the liquidator at the liquidator's last known place of business.

(7) The Commission may send a letter (other than a letter under regulation 16(3)) or notice by electronic means to an electronic address if the intended recipient has agreed that the Commission may send documents or other information by electronic means to that address.

(8) In this regulation "electronic means" has the meaning given by regulation 4 of the Charitable Incorporated Organisations (General) Regulations 2012(11).

### **Date of dissolution**

**20.** If the Commission removes a CIO from the register under this Part, it is dissolved on the date on which it is removed.

### **Notice to be given of dissolution**

**21.—**(1) If the Commission dissolves a CIO under this Part the Commission must publish a notice stating the date on which the CIO was dissolved.

(2) The notice under paragraph (1) must be published by the Commission in the same manner as any notice published in relation to the CIO under regulation 7, 16, 17 or 18 (as the case may be).

### **Liabilities and powers unaffected by dissolution**

**22.** Despite the dissolution of a CIO under this Part—

- (a) the liability (if any) of every charity trustee and member of the CIO continues and may be enforced as if the CIO had not been dissolved; and
- (b) the court continues to have the power to wind up the CIO.