
STATUTORY INSTRUMENTS

2012 No. 3012

**The Charitable Incorporated
Organisations (General) Regulations 2012**

PART 6

CHARITY TRUSTEES: APPOINTMENT, POWERS AND DUTIES

Eligibility for appointment as charity trustee

31.—(1) Only a person who has attained the age of 16 years is eligible to be appointed as a charity trustee of a CIO.

(2) Paragraph (1) does not affect the validity of an appointment that is not to take effect until the person appointed attains that age.

(3) Where the office of charity trustee of a CIO is held by a corporation sole, or otherwise by virtue of another office, the appointment to that other office of a person (“A”) who has not attained the age of 16 years is not effective also to make A a charity trustee of the CIO until A attains the age of 16 years.

(4) Subject to paragraph (5), in any case where the operation of paragraph (3) means there is not a sufficient number of charity trustees to conduct the business of the relevant CIO in accordance with its constitution, the CIO may appoint such other person as it considers fit to act as charity trustee until A attains the age of 16 years.

(5) A CIO may not appoint any person to act as charity trustee under paragraph (4) if that person is disqualified from being a charity trustee by—

- (a) any provision of these Regulations; or
- (b) section 178 of the 2011 Act.

(6) An appointment of a charity trustee made in contravention of this regulation is void.

(7) Nothing in this regulation affects the liability of a person (“A”) under any provision of these Regulations or the 2011 Act if A purports to act as a charity trustee of a CIO although A could not, by virtue of this regulation, be appointed as such a charity trustee.

Validity of acts of charity trustee

32.—(1) Subject to paragraph (2), the acts of a person (“A”) as a charity trustee of a CIO are valid even if it is afterwards discovered that—

- (a) there was a defect in A’s appointment;
- (b) A was disqualified from holding office;
- (c) A had ceased to hold office;
- (d) A was not entitled to vote on the matter in question; or
- (e) where the CIO’s constitution permits the charity trustees to make decisions otherwise than by voting, A was not entitled to take part in the decision on the matter in question.

- (2) Paragraph (1)(d) and (e) apply only in favour of (as the case may be)—
- (a) the CIO; and
 - (b) any party, other than A or the CIO, to an agreement or transaction entered into as a consequence of—
 - (i) A voting on a matter on which A was not entitled to vote; or
 - (ii) where the constitution permits the charity trustees to make decisions otherwise than by voting, A taking part in a decision in which A was not entitled to take part.
- (3) This regulation does not affect the application of sections 183 and 184 of the 2011 Act (criminal and civil consequences of acting while disqualified).

Delegation and appointment of nominees etc. by charity trustees

33.—(1) The provisions of the Trustee Act 2000(1) (“the 2000 Act”) specified in paragraph (2) apply in relation to a CIO as they apply to a charitable trust but with the modifications specified in paragraph (3).

- (2) The provisions of the 2000 Act which apply are—
- (a) Part 4 (agents, nominees and custodians) other than sections 11(2), 12(3), 13(3) to (5), 18, 25(2) and 27; and
 - (b) section 32 (remuneration of agents, nominees and custodians).
- (3) The modifications are—
- (a) any reference to a charitable trust or a trust is to be read as a reference to a CIO;
 - (b) any reference to the trustees of a trust or to the trustees is to be read as a reference to the charity trustees of a CIO;
 - (c) any reference to property or assets subject to the trust, or of the trust, is to be read as a reference to the property or assets of a CIO;
 - (d) any reference to the acquisition of property which is to be subject to the trust is to be read as a reference to the acquisition of property by a CIO;
 - (e) any reference to the trust instrument is to be read as a reference to CIO’s constitution;
 - (f) any reference to a provision of the 2000 Act is to be read as a reference to a provision of that Act as it applies in relation to CIOs;
 - (g) any reference to trust funds is to be read as a reference to the funds of a CIO;
 - (h) any reference to section 12(3), 13(5) or 18 is omitted;
 - (i) in sections 14(1) and 20(1) the reference to sections 29 to 32 is to be read as a reference to section 32;
 - (j) in sections 14(3)(b) and 20(3)(b) the words “or any beneficiary” are omitted;
 - (k) in sections 16(3) and 17(4) references to a CIO having a custodian trustee are omitted;
 - (l) any reference to the duty of care applicable to a trustee under paragraph 3 of Schedule 1 to the 2000 Act is to be read as a reference to the duty of care in section 221(2) of the 2011 Act (duties of charity trustees);
 - (m) the reference in section 11(3)(d) to any other function prescribed by an order made by the Secretary of State is to be read as a reference to any function prescribed by an order made by the Secretary of State under that provision in relation to a charitable trust and any such order applies in relation to a CIO in so far as it applies to a charity which is not an exempt charity with appropriate modifications;

(1) 2000 c. 29. There are amendments to the Act not relevant to these Regulations.

- (n) in section 19(4) the words “which is not an exempt charity” are omitted;
- (o) in section 25(1) the words “subject to subsection (2)” are omitted.

Duty not to accept benefits from third parties

34.—(1) A charity trustee (“T”) of a CIO must not accept a benefit from a third party conferred by reason of—

- (a) T being a charity trustee; or
- (b) T doing (or not doing) anything as a charity trustee.

(2) Benefits received by T from a person by whom T’s services (as charity trustee or otherwise) are provided to the CIO are not regarded as conferred by a third party.

(3) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(4) In this regulation “third party” means a person other than the CIO, an associated body corporate, or a person acting on behalf of the CIO or an associated body corporate.