Draft Regulations laid before Parliament under section 348(2) of the Charities Act 2011 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No. 0000

CHARITIES, ENGLAND AND WALES

The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012

Made - - - - ***

Coming into force in accordance with regulation 1

The Minister for the Cabinet Office makes the following Regulations in exercise of the powers conferred by sections 245 and 347(3) of the Charities Act 2011(**1**).

In accordance with section 348(4) of that Act the Minister has consulted such persons and bodies of persons as the Minister considers appropriate.

A draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 348(2) of that Act.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 and come into force on the twenty eighth day after the day on which they are made.

Interpretation: general

2.—(1) In these Regulations—

"the 1986 Act" means the Insolvency Act 1986(**2**);

"the 2011 Act" means the Charities Act 2011;

(**1**) 2011 c.25. Regulations under sections 223 and 245 are to be made by the Minister (section 247). For the definition of "the Minister" see section 353.

(**2**) 1986 c.45.

"constitutional directions" means the directions included in the CIO's constitution in accordance with section 206(2)(c) of the 2011 Act.

(2) For the purposes of these Regulations "body corporate" includes a body incorporated outside the United Kingdom but does not include—

(a) a corporation sole; or

(b) a partnership that, whether or not a legal person, is not regarded as a body corporate under the law by which it is governed.

PART 2

APPLICATION OF THE INSOLVENCY ACT 1986

Application of the Insolvency Act 1986 to CIOs

3. The Schedule (which makes provision concerning the application to CIOs of the 1986 Act and subordinate legislation made under that Act) has effect.

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 sub-paragraph (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)(**3**) apply in relation to 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(**4**) and the matter has not been finally concluded;

(b) the CIO is in administration under Part 2 of that Act(**5**);

(c) an interim moratorium is in effect in relation to the CIO under paragraph 44 of Schedule B1 to that Act(**6**);

(d) the CIO is being wound up under Part 4 of that Act(**7**), 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(**8**), has been fully implemented; or

(**3**) 2006 c.46.
(**4**) 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.
(**5**) Part 2 of the 1986 Act was substituted by the Enterprise Act 2002, section 248(1).
(**6**) Schedule B1 to the 1986 Act was inserted by the 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).
(**7**) 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.
(**8**) 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.

(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 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.