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STATUTORY INSTRUMENTS

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**2012 No. 3013**

**CHARITIES, ENGLAND AND WALES**

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

*Made - - - - 5th December 2012*

*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<sup>(1)</sup>.

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<sup>(2)</sup>;

“the 2011 Act” means the Charities Act 2011;

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

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(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](#).

(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 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)(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 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).

(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.

**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<sup>(9)</sup> 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<sup>(10)</sup>;
- (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<sup>(11)</sup>, 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

<sup>(9)</sup> 1978 c.30.

<sup>(10)</sup> 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.

<sup>(11)</sup> Section 84(1)(c) was repealed by S.I. 2007/2194, Schedule 4, paragraph 39(2) and Schedule 5.

for the dissolution of the CIO had been made under regulation 5 of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012”.

### **Offences under the Companies Acts**

**15.**—(1) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Act)(**12**) 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(13).

#### **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.

## **PART 4**

### **APPLICATION OF PROPERTY ON DISSOLUTION UNDER PART 3**

#### **Vesting of property to official custodian on dissolution**

**23.—**(1) On the dissolution of a CIO under Part 3, all relevant property vests in the official custodian.

(2) For the purposes of this regulation “relevant property” includes any property and rights whatsoever (including leasehold property) vested in or held on trust for the CIO immediately before its dissolution.

(3) But “relevant property” does not include—

- (a) any property held by the CIO on trust for any other person;
- (b) any property held by the CIO on trust for any special purposes of the CIO;
- (c) any property vested in or held on trust for the CIO if—
  - (i) the CIO, or the charity trustees (as the case may be) had, before its dissolution, complied with the constitutional directions in respect of that property; but
  - (ii) in accordance with those directions, the transfer or other disposition of that property would only take effect on the dissolution of the CIO.

(4) Subject to regulation 25, any property which vests in the official custodian under this regulation is held by the official custodian on trust for the charitable purposes of the CIO immediately before its dissolution.

**Disposal of property vested in official custodian**

**24.** The official custodian may not dispose of any property which vests in him under regulation 23 otherwise than—

- (a) in accordance with an order of the Commission under regulation 26; or
- (b) by disclaiming title to it under regulation 27.

**Power of Commission to specify charitable purposes etc.**

**25.—**(1) The Commission may by order specify the charitable purposes, charity or charities (as the case may be) for which the official custodian holds the property of a CIO on trust.

(2) In determining what charitable purposes, charity or charities to specify the Commission must have regard to—

- (a) the constitutional directions included in the CIO's constitution immediately before its dissolution;
- (b) the desirability of securing that the property of the CIO is applied for charitable purposes which are close to the charitable purposes of the CIO immediately before its dissolution; and
- (c) the need for the property to be applied for charitable purposes which are suitable and effective in the light of current social and economic circumstances.

(3) The Commission may not make an order under this regulation until 3 months after the date on which the CIO was dissolved.

(4) Section 88 of the 2011 Act (publicity relating to schemes) applies to an order under this regulation as it applies to an order under that Act to establish a scheme for the administration of a charity.

(5) The Commission may determine that either or both of the publicity requirements in section 88(2) of the 2011 Act is or are not to apply if it is satisfied that compliance with the requirement or requirements is unnecessary in a particular case.

**Power of Commission to make vesting order**

**26.—**(1) Where property is held by the official custodian in accordance with an order made under regulation 25, the Commission may by order make provision for the vesting of all or any of that property—

- (a) in a charity or, in such shares as it considers appropriate, in any two or more of the charities specified in the order made under regulation 25; or
- (b) in a charity or, in such shares as it considers appropriate, in any two or more charities which, in the Commission's view, further the charitable purposes specified in the order made under regulation 25.

(2) An order under this regulation may be made at the same time as an order under regulation 25.

(3) Any order made under paragraph (1) may give such directions as the Commission thinks necessary or expedient in consequence of the provision made by the order.

(4) A person acting in conformity with an order made under this regulation, or giving effect to anything done in pursuance of such an order, is not liable for any loss occasioned by so acting.

(5) A person is not excused from acting in conformity with an order made under this regulation by reason of the order having been in any respect improperly obtained.

### **Disclaimer of property by official custodian**

27.—(1) Where property vests in the official custodian under regulation 23 the official custodian may by notice disclaim title to any or all of that property.

(2) A notice for the purposes of this regulation—

- (a) may be in such form as the official custodian thinks fit; but
- (b) must be signed by, or on behalf of, the official custodian.

(3) The official custodian may disclaim property under this regulation whether or not the Commission has made an order under regulation 25.

(4) The right to disclaim property under this regulation may be waived by or on behalf of the official custodian by an express waiver or by the official custodian taking possession of the property.

(5) A notice of disclaimer is not effective unless it is signed within 3 years after—

- (a) the date on which the fact that the property may have vested in the official custodian under regulation 23 first comes to the notice of the official custodian; or
- (b) if ownership of the property is not established at that date, the end of the period reasonably necessary for the official custodian to establish ownership of the property.

(6) If an application in writing is made to the official custodian by a person interested in the property requiring the official custodian to decide whether or not to disclaim, a notice of disclaimer is not effective unless it is signed within 12 months after the application is made or such further period as may be allowed by the court.

(7) The official custodian must within 14 days after signing a notice of disclaimer—

- (a) send a copy of it to—
  - (i) the Commission; and
  - (ii) any person who has given notice to the official custodian claiming to be interested in the property; and
- (b) publish it in such manner as the official custodian thinks fit having regard in particular to the manner in which the Commission published any notice relating to the CIO under any provision of Part 3 of these Regulations.

### **Effect of a disclaimer by official custodian**

28.—(1) Where any property is disclaimed, it is treated as not having vested in the official custodian under regulation 23.

(2) A disclaimer operates so as to terminate, from the date the notice of disclaimer is signed, the rights, interests and liabilities of the CIO in or in respect of the disclaimed property.

(3) A disclaimer does not, except so far as is necessary for the purpose of releasing the CIO from any liability, affect the rights or liabilities of any other person.

### **Disclaimer of leaseholds**

29.—(1) A disclaimer of property of a leasehold character does not take effect unless a copy of the notice under regulation 27 has been served (so far as the official custodian is aware of their addresses) on every person claiming under the CIO as underlessee or mortgagee and either—

- (a) no application under regulation 30 is made with respect to that property within 14 days of the day on which the copy of the notice was served; or
- (b) where such an application has been made, the court directs that the disclaimer shall take effect.

(2) If the court directs that the disclaimer shall take effect, it may make such order as it thinks fit with respect to fixtures, tenant's improvements and other matters arising out of the lease.

#### **Power of court to make vesting order**

**30.**—(1) The court may make an order under paragraph (2), on such terms as it thinks fit, on the application of a person who—

- (a) claims an interest in the disclaimed property; or
- (b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer.

(2) An order under this paragraph is an order to vest the disclaimed property in, or require its delivery to—

- (a) a person entitled to it (or a trustee for such a person); or
- (b) a person subject to a liability as is mentioned in paragraph (1)(b) (or a trustee for such a person).

(3) An order under paragraph (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimed property.

(4) On an order being made, the property comprised in it vests in the person named in the order without conveyance, assignment or transfer.

#### **Protection of persons holding under a lease**

**31.**—(1) The court must not make an order under regulation 30 vesting property of a leasehold nature in a person ("P") claiming under the CIO as underlessee or mortgagee except on terms making P—

- (a) subject to the same liabilities and obligations as those to which the CIO was subject under the lease; or
- (b) if the court thinks fit, subject to the same liabilities and obligations as if the lease had been assigned to P.

(2) Where the order relates to only part of the property comprised in the lease, paragraph (1) applies as if the lease had comprised only the property comprised in the order.

(3) A person claiming under the CIO as underlessee or mortgagee who declines to accept a vesting order on such terms is excluded from all interest in the property.

(4) If there is no person claiming under the CIO as underlessee or mortgagee who is willing to accept an order on such terms, the court may vest the CIO's estate or interest in the property in any person who is liable (whether personally or in a representative character, and whether alone or jointly with the CIO) to perform the lessee's covenants in the lease.

(5) The court may vest that estate and interest in such person freed and discharged from all estates, incumbrances and interests created by the CIO.

#### **Land subject to rentcharge**

**32.** Where, in consequence of the disclaimer, land that is subject to a rentcharge vests in any person ("P"), neither P nor P's successors in title are subject to any personal liability in respect of sums becoming due under the rentcharge, except sums becoming due after P, or some person claiming under or through P, has taken possession or control of the land or has entered into occupation of it.

## PART 5

### RESTORATION OF A CIO TO THE REGISTER

#### Restoration by Commission

**33.**—(1) The Commission may restore to the register any CIO which it removed from the register under regulation 16 or 18.

(2) The Commission may restore a CIO under this regulation of its own motion or on the application of any person who was a charity trustee of the CIO immediately before its dissolution.

(3) Where the Commission has made an order under regulation 26 vesting in a charity or charities all of the property which is or was held on trust by the official custodian under regulation 23, the Commission must not restore the CIO to the register unless—

- (a) all appeal rights in connection with that order have been exhausted;
- (b) any appeal brought in connection with that order has been discontinued before it was finally determined; or
- (c) the period within which any appeal, or any subsequent appeal, may have been made has expired.

(4) The Commission must not restore the CIO to the register after the end of the period of 6 years from the date of dissolution.

#### Restoration by the court

**34.**—(1) On an application under this regulation the court may, if it considers it just to do so, order that a CIO is restored to the register.

(2) An application may be made to restore a CIO—

- (a) that has been dissolved under Chapter 9 of Part 4 of the 1986(14) Act, as it applies to CIOs; or
- (b) that is treated as having been dissolved under paragraph 84(6) of Schedule B1 to that Act, as it applies to CIOs.

(3) An application may be made by—

- (a) the Commission;
- (b) any person who was a charity trustee of the CIO immediately prior to its dissolution;
- (c) any person having an interest in land in which the CIO had a superior or derivative interest;
- (d) any person having an interest in land or other property—
  - (i) that was subject to rights vested in the CIO; or
  - (ii) that was benefitted by obligations owed by the CIO;
- (e) any person who but for the CIO's dissolution would have had a contractual relationship with it;
- (f) any person who has a potential legal claim against the CIO;
- (g) any manager or trustee of a pension fund established for the benefit of employees of the CIO;
- (h) any person who was a member of the CIO immediately prior to its dissolution (or the personal representatives of such a person);

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(14) Chapter 9 of Part 4 of the 1986 Act was amended by [S.I. 2006/3429](#), regulation 3(1)(d).

- (i) any person who was a creditor of the CIO at the time of its dissolution;
  - (j) any former liquidator of the CIO; or
  - (k) any other person appearing to the court to have an interest in the matter.
- (4) If the court orders that the CIO is restored to the register—
- (a) the Commission must restore the CIO to the register; and
  - (b) the CIO is treated as restored to the register on delivery to the Commission of a copy of the court order.

### **Time limit for applying to court**

**35.**—(1) Subject to paragraph (2), an application to the court to restore a CIO to the register may not be made after the end of the period of 6 years from the date of dissolution.

(2) An application may be made at any time for the purpose of bringing proceedings against the CIO for damages for personal injury.

(3) The court must refuse an application under paragraph (2) if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.

(4) In making that decision the court must have regard to its power under regulation 36 to direct that the period between the dissolution of the CIO and the making of the order is not to count for the purposes of any such enactment.

(5) For the purposes of this regulation—

- (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition; and
- (b) references to damages for personal injury include any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934<sup>(15)</sup>.

### **Court order with directions**

**36.**—(1) Where a court orders the restoration of a CIO to the register, it may give such directions and make such provision as seems just for placing the CIO and all other persons in the same position (as nearly as may be) as if the CIO had not been dissolved.

(2) Despite paragraph (1) the court may not give any directions or make any provision in relation to the matters covered by regulation 41.

### **CIO’s name on restoration**

**37.**—(1) Subject to paragraphs (2) and (3), a CIO is to be restored to the register with the name it had immediately before it was dissolved.

(2) Where—

- (a) the CIO is to be restored to the register following an application to the court; and
- (b) the order made by the court specifies a new name for the CIO on restoration,

the CIO must be restored to the register with that name.

(3) Where—

- (a) the CIO is to be restored to the register otherwise than following an application to the court; and

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(15) 1934 c.41.

(b) the Commission is satisfied that it would, were an application being made for the registration of the CIO with the name it had immediately prior to its dissolution, refuse to register the CIO on the grounds specified in section 208(2)(a) of the 2011 Act, the CIO must be restored to the register with a new name specified by the Commission.

(4) Where—

- (a) the CIO is restored to the register with a new name specified by the court, and
- (b) the Commission is satisfied that it could, were an application being made for the registration of the CIO with the new name, refuse to register the CIO on the grounds specified in section 208(2)(a) of the 2011 Act,

the Commission may give a direction to the charity trustees of the CIO requiring the name of the CIO to be changed, within such period as is specified in the direction, to such other name as the charity trustees of the CIO may determine with the approval of the Commission.

(5) The Commission may not give a direction under paragraph (4) after 12 months from the date of the CIO's restoration to the register.

(6) Sections 43 and 44 of the 2011 Act apply to a direction made under paragraph (4) as they apply to a direction made under section 42(1) of that Act.

#### **Notification of restoration to the register**

**38.**—(1) Where a CIO is restored to the register the Commission must publish notice of the restoration in such manner as it thinks fit.

(2) A notice published by the Commission under paragraph (1) must state—

- (a) the name of the CIO; and
- (b) the date on which the restoration took effect.

(3) Where a CIO is to be restored to the register with a name other than the name it had immediately before it was dissolved, the notice published by the Commission must include—

- (a) the name with which the CIO is restored to the register; and
- (b) the name the CIO had immediately prior to its dissolution.

#### **Effect of restoration**

**39.**—(1) A CIO which is restored to the register is treated for all purposes as having continued in existence as if it had not been dissolved.

(2) Paragraph (1) does not affect the validity of anything done by the charity trustees of the restored CIO before its restoration in reliance on consent given by the Commission in accordance with section 131(3) of the 2011 Act (preservation of accounting records) or section 134(3) of that Act (preservation of statement of accounts or account and statement).

#### **Property to vest in restored CIO**

**40.** On the date of restoration any property of the CIO which is vested in the official custodian vests in the restored CIO.

#### **Accounts, reports and returns of restored CIO**

**41.**—(1) In its application to a relevant financial year of a restored CIO, Part 8 of the 2011 Act (charity accounts, reports and returns) is to be read subject to the provisions of this regulation.

(2) The following provisions do not apply unless the Commission requests that the accounts, annual report or annual return (as the case may be) for that year are prepared—

- (a) section 132(1) (requirement to prepare statement of accounts);
- (b) section 138(2) (requirement to prepare group accounts);
- (c) section 162(1) (requirement to prepare annual report);
- (d) section 169(1) (requirement to prepare annual return).

(3) The charity trustees must transmit to the Commission, within 10 months from the date of any request under paragraph (2), the accounts, annual report or annual return (as the case may be). The following provisions are modified accordingly—

- (a) section 163(1) (requirement to transmit annual report to Commission); and
- (b) section 169(3) (requirement to transmit annual return to Commission).

(4) Where the Commission requests that accounts are prepared, but not an annual report, a copy of the relevant auditor's or examiner's report must be transmitted to the Commission with the accounts as if section 164 (documents to be transmitted with annual report) applied.

(5) The Commission's power in the following provisions applies only where the accounts have not been audited within 10 months from the date of the Commission's request—

- (a) section 146(1)(a) (power to require accounts to be audited);
- (b) section 153(1)(a) (power to require group accounts to be audited).

(6) In the following provisions the requirement is to preserve for at least 6 years from the date of the Commission's request—

- (a) section 134(1) (preservation of statement of accounts or account and statement);
- (b) section 140(1) (preservation of group accounts).

(7) The charity trustees are not guilty of an offence under section 173 (offences of failing to supply certain documents) in relation to a failure to transmit an annual report or annual return unless the Commission has requested that the annual report or annual return (as the case may be) is prepared for that year.

(8) For the purposes of this regulation "relevant financial year" means a year other than—

- (a) a financial year of the CIO in relation to which the period for transmission to the Commission, under section 163 (transmission of annual reports to Commission in certain cases), of the annual report for that year ended before the dissolution of the CIO;
- (b) a financial year of the CIO which began after restoration of the CIO.

5th December 2012

*Nick Hurd*  
Parliamentary Secretary  
Cabinet Office



## SCHEDULE

Regulation 3

## APPLICATION OF THE INSOLVENCY ACT 1986 TO CIOs

**Application to CIOs of the 1986 Act**

1.—(1) The provisions of the 1986 Act specified in sub-paragraph (2) apply in relation to CIOs as they apply in relation to companies registered in England and Wales with—

- (a) the general modifications set out in sub-paragraph (3);
- (b) the substitution of the provision specified in sub-paragraph (4) for section 84 of that Act(16);
- (c) the substitution of the provision specified in sub-paragraph (5) for section 122 of that Act(17);
- (d) the substitution of the provision specified in sub-paragraph (6) for section 154 of that Act;
- (e) the further modifications specified in the Table in sub-paragraph (7); and
- (f) any other necessary modification.

(2) The specified provisions of the 1986 Act are—

- (a) Parts 1 to 4(18) other than—
  - (i) section 28;
  - (ii) Chapters 2 and 3 of Part 3;
  - (iii) sections 72B to 72F, 72GA, 76 to 78, 83, 93, 105, 111, 113, 120, 121, 124A to 124C, 138, 142, 157, 161, 162, 169, 185, 193, 198, 199 and 204;
  - (iv) paragraphs 3, 4A to 5, 21, 23 and 44 of Schedule A1(19);
  - (v) paragraphs 9, 111A to 116 of Schedule B1(20);
  - (vi) paragraph 19 of Schedule 1(21);
  - (vii) paragraph 3 of Schedule 4(22);

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(16) There are amendments to section 84 not relevant to these Regulations.

(17) There are amendments to section 122 not relevant to these Regulations.

(18) 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. Part 2 of the 1986 Act was substituted by the Enterprise Act 2002, section 248(1). Part 3 of the 1986 Act was amended by the Companies Act 1989 (c.40), Schedule 16, paragraph 3, and Schedule 24; by the Insolvency Act 1994 (c.7), section 2; by the Enterprise Act 2002 (c.40), section 250 and Schedule 21, paragraph 1; by the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 20, paragraph 2; by S.I. 2003/1832, article 2; by S.I. 2008/1897, regulation 2(1); by S.I. 2009/1941, Schedule 1, paragraph 74; by S.I. 2010/18, article 5(1); and by S.I. 2010/866, Schedule 2, paragraph 61. 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. There are other amendments not relevant to these Regulations.

(19) Schedule A1 was inserted by the Insolvency Act 2000, Schedule 1, paragraph 4. It was amended by the Enterprise Act 2002, Schedule 17, paragraph 37; by S.I. 2004/2312, article 2; by S.I. 2008/1897, regulation 3; and by S.I. 2009/1941, Schedule 1, paragraph 71. There are other amendments not relevant to these Regulations.

(20) 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). There are other amendments not relevant to these Regulations.

(21) There are amendments to Schedule 1 not relevant to these Regulations.

(22) Schedule 4 was amended by the Enterprise Act 2002, section 253 and by S.I. 2010/18, article 10(2).

*Status: This is the original version (as it was originally made).*

- (b) Parts 6 and 7(23) other than section 242, 243 and 250;
  - (c) the Third Group of Parts (miscellaneous matters bearing on both company and individual insolvency; general interpretation; final provisions)(24) other than sections 389B, 402, 412, 415, 417, 418, 420, 421, 421A, 422, 426, 426A, 426B, 426C, 427, 428, 429, 434E, 437, 438, 439, 440, 441 and 442.
- (3) The general modifications are—
- (a) any reference to a company or a company registered under the Companies Act 2006(25) in England and Wales, is to be read as a reference to a CIO;
  - (b) any reference to a company being wound up by the court in England and Wales is to be read as a reference to a CIO being wound up by the court;
  - (c) any reference to a company being wound up in England and Wales is to be read as a reference to a CIO being wound up;
  - (d) any reference to a winding up in England and Wales is to be read as a reference to the winding up of a CIO;
  - (e) any reference to the registrar of companies is to be read as a reference to the Charity Commission;
  - (f) in any provision which requires an original document to be sent to the Charity Commission, any reference to an original document is to be read as a reference to a copy of that document;
  - (g) any reference to the registered office of a company is to be read as a reference to the principal office of a CIO;
  - (h) any reference to a general meeting of a company is to be read as a general meeting of a CIO;
  - (i) any reference to a director of a company is to be read as a reference to a charity trustee of a CIO;
  - (j) any reference to an officer of a company is to be read as a reference to a charity trustee of a CIO;
  - (k) any reference to a shadow director is to be treated as omitted;
  - (l) in any enactment of the 1986 Act which makes provision (for any purpose) for “officer” to include a shadow director, any such provision is to be treated as omitted;
  - (m) any reference to a company’s articles of association is to be read as a reference to a CIO’s constitution;
  - (n) any reference to the interests of a member is to be read as a reference to the interests of the relevant CIO;

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(23) Part 6 of the 1986 Act was amended by the Water Act 1989 (c.15), Schedule 25, paragraph 78; by the Insolvency (No.2) Act 1994 (c.12), section 1; by the Gas Act 1995 (c.45), Schedule 4, paragraph 14; by the Utilities Act 2000 (c.27), Schedule 6, paragraph 47; by the Insolvency Act 2000 (c.39), Schedule 1, paragraph 8; by the Enterprise Act 2002, Schedule 17, paragraphs 19 to 23 to 27 and 30 to 32, and Schedule 26; by the Communications Act 2003 (c.21), Schedule 17, paragraph 82; and by S.I. 2010/18, article 3. Part 7 of the 1986 Act was amended by the Enterprise Act 2002, Schedule 17, paragraph 33, and by S.I. 2009/1941, Schedule 1, paragraph 77. There are other amendments not relevant to these Regulations.

(24) The Third Group of Parts of the 1986 Act was amended by the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 18; by the Youth Justice and Criminal Evidence Act 1999 (c.23), Schedule 3, paragraph 7; by the Insolvency Act 2000, sections 4 and 13, Schedule 1, paragraphs 9 to 11, and Schedule 4, paragraph 16; by the Adults with Incapacity (Scotland) Act 2000 (asp 4), Schedule 5, paragraph 18; by the Enterprise Act 2002, sections 251, 270 to 272, Schedule 17, paragraphs 36 and 38, Schedule 21, paragraph 4, Schedule 23, paragraph 14, and Schedule 26; by the Civil Partnership Act 2004 (c.33), Schedule 27, paragraphs 121 and 122; by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraphs 188 and 190; by the Mental Capacity Act 2005 (c.9), Schedule 6, paragraph 31 and Schedule 7; by the Tribunals, Courts and Enforcement Act 2007, Schedule 20, paragraphs 6, 7, 10 and 15; by S.I. 2002/1037, regulations 3 and 4; by S.I. 2002/1240, regulation 18; by S.I. 2005/879, regulation 3; by S.I. 2005/2078, article 15; by S.I. 2005/3129, Schedule 4, paragraph 8; by S.I. 2007/2194, Schedule 4, paragraph 44; by S.I. 2008/948, Schedule 1, paragraph 105; by S.I. 2009/3081 regulation 2; by S.I. 2009/1941, Schedule 1, paragraphs 78 to 82; and by S.I. 2010/18, article 4. There are other amendments not relevant to these Regulations.

(25) 2006 c.48.

(o) any reference to the business of a company is to be read as a reference to the activities the CIO undertakes in furtherance of its charitable purposes;  
in each case, unless the context otherwise requires.

(4) The provision to be substituted for section 84 of the 1986 Act is—

**“Circumstances in which CIO may be wound up voluntarily**

**84.—(1)** A CIO may be wound up voluntarily if its members pass a resolution that it be wound up voluntarily.

(2) A resolution under subsection (1) must be passed—

(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.

(3) In this Act “a resolution for voluntary winding up” means a resolution passed under subsection (1).

(4) Before the members of a CIO pass a resolution for voluntary winding up, they must give written notice of the resolution to the holder of any qualifying floating charge to which section 72A applies.

(5) Where notice is given under subsection (4), a resolution for voluntary winding-up may be passed only—

(a) after the end of the period of five business days beginning with the day on which the notice was given; or

(b) if the person to whom the notice was given has consented in writing to the passing of the resolution.

(6) If a resolution for voluntary winding up 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 the meeting;

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

(7) For the purpose of calculating the period of notice to be given under subsection (6) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.

(8) If a qualifying majority agrees, a resolution for voluntary winding up which is to be proposed at a general meeting may be passed without the notice provisions in subsection (6) being satisfied.

*Status: This is the original version (as it was originally made).*

(9) Where a resolution for voluntary winding up 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.

(10) A copy of every resolution for voluntary winding up or (in the case of a resolution that is not in writing) a written memorandum setting out its terms must be sent to the Charity Commission within 15 days of the date on which it is passed.

(11) If a CIO fails to comply with subsection (10) an offence is committed by the liquidator and by every charity trustee of the CIO who is in default.

(12) In this section—

“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 whose members take decisions otherwise than by voting, all of the members having the right to attend the meeting and to take part in the decisions to be made at that 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 section.”.

(5) The provision to be substituted for section 122 of the 1986 Act is—

**“Circumstances in which CIO may be wound up by the court**

**122.—**(1) A CIO may be wound up by the court if—

- (a) the members of the CIO have passed a resolution that the CIO be wound up by the court (“resolution for court winding up”);
- (b) the CIO does not commence its business within a year of its registration in the register of charities or suspends its business for a whole year;
- (c) the CIO is unable to pay its debts;
- (d) at the time when a moratorium for the CIO under section 1A comes to an end, no voluntary arrangement approved under Part 1 has effect in relation to the CIO;
- (e) it is just and equitable in the opinion of the court that the CIO should be wound up.

(2) The resolution for court winding up must be passed by the members of the CIO in accordance with section 84(2).

(3) Subsections (6) to (12) of section 84 apply in relation to a resolution for court winding up as they apply to a resolution for voluntary winding up.”.

(6) The provision to be substituted for section 154 of the 1986 Act is—

**“Application of surplus**

**154.** The court shall make such directions as it considers necessary to secure the application of the surplus in accordance with the directions contained in the CIO's constitution pursuant to section 206(2)(c) of the Charities Act 2011.”.

(7) The Table of further modifications is as follows—

**TABLE OF FURTHER MODIFICATIONS TO  
PROVISIONS OF THE 1986 ACT APPLIED TO CIOS**

<i>Provision of the 1986 Act</i>	<i>Modification(s)</i>
<b>FIRST GROUP OF PARTS (Company insolvency; companies winding up)</b>	
<b>Section 1</b> (Those who may propose an arrangement)(26)	Omit subsections (4) to (6).
<b>Section 4A</b> (Approval of arrangement)(27)	Omit subsection (5).
<b>Section 5</b> (Effect of approval)(28)	
Subsection (3)	In paragraph (a) omit “or sist”.
Subsections (5) and (6)	Omit subsections (5) and (6).
<b>Section 6</b> (Challenge of decisions)(29)	
Subsection (1)	In paragraph (a) omit “, member”.
Subsection (2A)	Omit subsection (2A).
Subsection (4)	Omit “or in the case of an application under subsection (2A), as to the ground mentioned in that subsection”.
Subsection (8)	Omit subsection (8).
<b>Section 7A</b> (Prosecution of delinquent officers of CIO)	
Subsection (2)	In the full out words omit paragraph (ii).
Subsection (3)	After “1985” substitute “to investigate the CIO’s affairs as if the CIO were a company”.
Subsection (7)	Omit paragraph (b).
Subsection (8)	Omit the reference to “the Lord Advocate”.
<b>Section 30</b> (Disqualification of body corporate from acting as receiver)	Any reference to a body corporate is to be read as a reference to a body corporate other than a body corporate appointed as an interim manager under section 76(3)(g) of the Charities Act 2011.
<b>Section 38</b> (Receivership accounts to be delivered to Charity Commission)	In subsection (1) omit “for registration”.
<b>Section 47</b> (Statement of affairs to be submitted)(30)	For subsection (3)(d) substitute: “those who are or have been within that year officers of, or in the employment of, a company or a CIO which is, or within that year was, a charity trustee of the CIO.”.

(26) Section 1 was amended by the Insolvency Act 2000, Schedule 2, paragraph 2 and by the Enterprise Act 2002, Schedule 17, paragraph 10. There are other amendments to section 1 not relevant to these Regulations.

(27) Section 4A was inserted by the Insolvency Act 2000, Schedule 2, paragraph 5.

(28) Section 5 was amended by the Insolvency Act 2000, Schedule 2, paragraph 6 and by the Enterprise Act 2002, Schedule 17, paragraph 11. There are other amendments to section 5 not relevant to these Regulations.

(29) Section 6 was amended by the Insolvency Act 2000, Schedule 2, paragraph 7 and by the Enterprise Act 2002, Schedule 17, paragraph 12. There are other amendments to section 6 not relevant to these Regulations.

(30) Section 47 was amended by [S.I. 2010/18](#), article 5(1).

**Status:** This is the original version (as it was originally made).

<i>Provision of the 1986 Act</i>	<i>Modification(s)</i>
<b>Section 72A</b> (Floating charge holder not to appoint an administrative receiver)( <b>31</b> )	
Subsection (2)	Omit subsection (2).
Subsection (3)	For “subsections (1) and (2)” substitute “subsection (1)”.
Subsection (6)	For “sections 72B to 72GA” substitute “section 72G”.
<b>Section 72G</b> (Sixth exception: registered social landlords)( <b>32</b> )	Omit “or under Part 3 of the Housing (Scotland) Act 2001 (asp. 10)”.
<b>Section 72H</b> (Sections 72A to 72G: supplementary)	
Subsection (1)	For “sections 72B to 72G” substitute “section 72G”.
Subsection (2)	In paragraph (d) for “sections 72B to 72G” substitute “section 72G”.
Subsection (5)	Omit paragraph (b).
<b>Section 73</b> (Scheme of this Part)( <b>33</b> )	Omit “or Scotland”.
<b>Section 74</b> (Liability as contributories of present and past members)( <b>34</b> )	
Subsection (1)	For subsection (1) substitute: “ (1) When— (a) a CIO is wound up; and (b) its constitution states that its members are liable to contribute to its assets if it is wound up, every present and past member of the CIO is liable to contribute to its assets to any amount sufficient for the payment of its debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories amongst themselves.”.
Subsection (2)	Omit paragraphs (d) and (f); in paragraph (e) for “the Companies Acts” substitute “the Charities Act 2011”.
Subsection (3)	For subsection (3) substitute: “(3) No contribution is required from any member of a CIO exceeding the amount specified in the CIO’s constitution under section 206(1)(d) of the Charities Act 2011 as the amount to be

(31) Section 72A was inserted by the Enterprise Act 2002, section 250. It was amended by S.I. 2003/2093, Schedule 1.

(32) Section 72G was inserted by the Enterprise Act 2002, section 250. It was amended by S.I. 2010/866, Schedule 2.

(33) Section 73 was substituted by S.I. 2009/1941, Schedule 1, paragraph 75.

(34) Section 74 was amended by S.I. 2009/1941, Schedule 1, paragraph 75.

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	contributed by that member in the event of the CIO being wound up.”.
<b>Section 79</b> (Meaning of contributory)(35)	Omit subsection (3).
<b>Section 81</b> (Contributories in case of death of a member)	
Subsection (1)	Omit the words from “, and the heirs and legatees” to “in Scotland,”.
Subsection (2)	Omit subsection (2).
Subsection (3)	Omit the words “in England and Wales”.
<b>Section 88</b> (Avoidance of share transfers, etc after winding-up resolution)	Omit the words from “Any transfer” to “liquidator, and”.
<b>Section 95</b> (Effect of a CIO’s insolvency)(36)	Omit subsections (2), (4A)(b) and (5) to (7).
<b>Section 98</b> (Meeting of creditors)(37)	
Subsection (1)	Omit subsection (1).
Subsections (3) to (5)	Omit subsections (3) to (5).
Subsection (6)	For “(1), (1A) or (2)” substitute “(1A) or (2)”.
<b>Section 99</b> (Charity trustees to lay statement of affairs before creditors)(38)	Omit subsection (2A)(b).
<b>Section 101</b> (Appointment of liquidation committee)	Omit subsection (4).
<b>Section 107</b> (Distribution of CIO’s property)	For “shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company” substitute “shall be applied in accordance with the directions contained in the CIO’s constitution pursuant to section 206(2)(c) of the Charities Act 2011; and for this purpose the liquidator may require the charity trustees of the CIO to take any necessary action to secure that application.”.
<b>Section 109</b> (Notice by liquidator of his appointment)	In subsection (1) omit “for registration”.
<b>Section 110</b> (Acceptance of shares, etc, as consideration for sale of CIO property)(39)	
Subsection (1)	For paragraph (a) substitute: “to a company (“the transferee company”), whether or not the latter is a company registered under the Companies Act 2006, or”.

(35) Section 79 was amended by [S.I. 2009/1941](#), Schedule 1, paragraph 75.

(36) Section 95 was amended by [S.I. 2009/864](#), article 3 and by [S.I. 2010/18](#), articles 5(2) and 7.

(37) Section 98 was amended by [S.I. 2009/864](#), article 3 and by [S.I. 2010/18](#), article 7.

(38) Section 99 was amended by [S.I. 2010/18](#), article 5(3).

(39) Section 110 was amended by [S.I. 2001/1090](#), Schedule 5, paragraph 15 and by [S.I. 2009/1941](#), Schedule 1, paragraph 75. There are other amendments to section 110 not relevant to these Regulations.

*Status: This is the original version (as it was originally made).*

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Subsection (2)	In paragraphs (a) and (b) for “distribution among members of the transferor company” substitute “to be applied in accordance with the directions contained in the CIO’s constitution pursuant to section 206(2)(c) of the Charities Act 2011”.
Subsection (3)	In paragraph (a) for “company” substitute “members of the CIO”.
Subsection (4)	Omit subsection (4).
New subsections (7) to (11)	After subsection (6) insert: “(7) For the purposes of this section, a resolution of the members of a CIO is to be treated as a special resolution if it is passed— (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. (8) Subject to subsection (10), if a resolution under subsection (3)(a) 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 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 the meeting; and the notice must contain particulars of the resolution that is to be proposed.



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(9) For the purpose of calculating the period of notice to be given under subsection (8) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.

(10) If a qualifying majority agrees, a resolution under subsection (3)(a) which is to be proposed at a general meeting of a CIO may be passed without the notice provisions in subsection (8) being satisfied.

(11) In this section “qualifying majority” has the meaning given by section 84.”.

**Section 117** (High Court and county court jurisdiction)(40)

Subsection (2)

Omit the words from “Where the amount” to “(subject to this section)”.

Subsection (3)

Omit subsection (3).

Subsection (7)

Omit subsection (7).

**Section 123** (Definition of inability to pay debts)

Omit subsection (1)(c) and (d).

**Section 124** (Application for winding up)(41)

Subsection (1)

Omit the words from “or by the designated officer” to “”fines imposed on companies)”.

Subsections (2) and (3)

Omit subsections (2) and (3).

Subsection (3A)

For “section 122(1)(fa)” substitute “section 122(1)(d)”.

Subsections (4) to (4A)

Omit subsections (4) to (4A).

**Section 126** (Power to stay or restrain proceedings against company)(42)

Subsection (1)

In paragraph (a) omit “or Northern Ireland”; and in the full out words omit “sist”.

Subsection (2)

Omit subsection (2).

**Section 127** (Avoidance of property dispositions, etc)(43)

In subsection (1) omit the words from “and any transfer” to “the company’s members,”.

**Section 128** (Avoidance of attachments etc.)

Omit subsection (2).

(40) There are amendments to section 117 not relevant to these Regulations.

(41) Section 124 was amended by the Companies Act 1989, section 60(2); by the Insolvency Act 2000, Schedule 1, paragraph 7; by the Courts Act 2003, Schedule 8, paragraph 294; by S.I. 2002/1240, regulation 8; by S.I. 2006/2078, regulation 33(2); and by S.I. 2009/1941, Schedule 1, paragraph 75. There are other amendments to section 124 not relevant to these Regulations.

(42) Section 126 was amended by S.I. 2009/1941, Schedule 1, paragraph 75.

(43) Section 127 was amended by the Enterprise Act 2002, Schedule 17, paragraph 15.

*Status: This is the original version (as it was originally made).*

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<b>Section 130</b> (Consequences of a winding up order)	Omit subsection (3).
<b>Section 131</b> (CIO’s statement of affairs)( <b>44</b> )	
Subsection (2A)	Omit paragraph (b).
Subsection (3)	For paragraph (d) substitute: “those who are or have been within that year officers of, or in the employment of, a company or a CIO which is, or within that year was, a charity trustee of the CIO.”.
Subsection (8)	Omit subsection (8).
<b>Section 133</b> (Public examination of officers)	
Subsection (1)	In the opening words omit “or in Scotland, the liquidator”; in paragraph (b) omit “or, in Scotland, receiver of its property”.
Subsection (2)	Omit “or, in Scotland, the liquidator”.
Subsection (4)(d)	Omit “or, in Scotland, submitted a claim”.
<b>Section 135</b> (Appointment and powers of provisional liquidator)	Omit subsection (3).
<b>Section 143</b> (General functions in winding up the court)	In subsection (1) for “to the persons entitled to it” substitute “applied in accordance with the directions contained in the CIO’s constitution pursuant to section 206(2)(c) of the Charities Act 2011”.
<b>Section 144</b> (Custody of CIO’s property)	Omit subsection (2).
<b>Section 147</b> (Power to stay winding up)	Omit all references to the sisting of proceedings.
<b>Section 149</b> (Debts due from contributory to company)( <b>45</b> )	
Subsection (2)	Omit subsection (2).
Subsection (3)	Omit “whether limited or unlimited”.
<b>Section 152</b> (Order on contributory to be conclusive evidence)	In subsection (2) omit from “except proceedings in Scotland” to the end.
<b>Section 165</b> (Voluntary winding up)( <b>46</b> )	
Subsection (2)	In paragraph (a) for “company” substitute “members of the CIO”.
New subsections (7) to (11)	After subsection (6) insert: “(7) For the purposes of this section, a resolution of the members of a CIO is to be treated as a special resolution if it is passed— (a) at a general meeting of the CIO—

(44) Section 131 was amended by [S.I. 2010/18](#), article 5(4).

(45) Section 149 was amended by [S.I. 2009/1941](#), Schedule 1, paragraph 75.

(46) Section 165 was amended by [S.I. 2007/2194](#), Schedule 4, paragraph 41.

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(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.

(8) Subject to subsection (10), if a resolution under subsection (2)(a) 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 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 the meeting;

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

(9) For the purpose of calculating the period of notice to be given under subsection (8) the following are to be excluded—

(a) the day of the meeting; and

(b) the day on which notice is given.

(10) If a qualifying majority agrees, a resolution under subsection (2)(a) which is to be proposed at a general meeting of a CIO may be passed without the notice provisions of subsection (8) being satisfied.

(11) In this section “qualifying majority” has the meaning given by section 84.”.

*Status: This is the original version (as it was originally made).*

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<b>Section 172</b> (Removal, etc (winding up by the court))	Omit subsection (7).
<b>Section 173</b> (Release (voluntary winding up))	Omit subsection (3).
<b>Section 174</b> (Release (winding up by court))	Omit subsection (7).
<b>Section 176A</b> (Share of assets for unsecured creditors)(47)	Omit subsection (4)(b).
<b>Section 177</b> (Power to appoint special manager)	
Subsection (2)	Omit “or members generally”.
Subsection (5)(a)	Omit “or, in Scotland, caution”.
<b>Section 184</b> (Duties of officers charges with execution of writs and other processes (England and Wales))(48)	Omit subsection (8).
<b>Section 187</b> (Power to make over assets to employees)(49)	
Subsection (1)	In subsection (1) for the words from “payment” to “business)” substitute “ex-gratia payment authorised, before the commencement of the winding up, by the Charity Commission under section 106 of the Charities Act 2011 or the Attorney General”.
Subsection (2)	For subsection (2) substitute: “(2) The liquidator may, after the winding up has commenced, make any relevant payment if the CIO’s liabilities have been fully satisfied and provision has been made for the expenses of the winding up. (2A) For the purposes of subsection (2) a payment is a relevant payment if it is an ex-gratia payment authorised, after the commencement of the winding-up, by the Charity Commission under section 106 of the Charities Act 2011 or the Attorney General.”.
Subsection (3)	For “the members on winding up” substitute “be applied in accordance with the directions contained in the CIO’s constitution in compliance with section 206(2)(c) of the Charities Act 2011.”.
<b>Section 189</b> (Interest on debts)	Omit subsection (5).
<b>Section 190</b> (Documents exempt from stamp duty)	

(47) Section 176A was inserted by the Enterprise Act 2002, section 252. It was amended by [S.I. 2008/948](#), Schedule 1, paragraph 103.

(48) Section 184 was amended by the Courts Act 2003, Schedule 8 paragraph 296.

(49) Section 187 was amended by [S.I. 2007/2194](#), Schedule 4, paragraph 42, and by [S.I. 2009/1941](#), Schedule 1, paragraph 75.

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Subsection (2)	Omit “If the company is registered in England and Wales”.
Subsection (3)	Omit subsection (3).
<b>Section 196</b> (Judicial notice of court documents)( <b>50</b> )	Omit references to the Court of Session, sheriff court and High Court in Northern Ireland; in paragraph (b) omit “or the Companies Acts”.
<b>Section 197</b> (Commission for receiving evidence)	
Subsection (1)	In the opening words omit “in England and Wales or in Scotland”; omit paragraphs (b) and (c).
Subsections (2) and (3)	Omit references to the sheriff principal.
Subsection (5)	Omit subsection (5).
<b>Section 201</b> (Dissolution (voluntary winding up))( <b>51</b> )	
Subsection (2)	For subsection (2), substitute: “(2) The Charity Commission must remove the CIO from the register of charities on the expiration of 3 months from the date on which it received the account and return and the CIO is dissolved on the date on which it is removed from the register.”
Subsection (4)	Omit “for registration”.
New subsections (5) and (6)	After subsection (4) insert: “(5) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating— (a) that the CIO has been removed from the register of charities; and (b) the date on which the CIO was so removed.  (6) In determining the manner in which to publish a notice under subsection (5) the Charity Commission must have regard in particular to— (a) the location of the CIO’s principal office; (b) the area in which the CIO operated; and (c) the charitable purposes of the CIO.”
<b>Section 202</b> (Early Dissolution (England and Wales))	For subsection (5), substitute: “(5) The Charity Commission must remove the CIO from the register of charities on the expiration

(50) Section 196 was amended by [S.I. 2009/1941](#), Schedule 1, paragraph 75.

(51) Section 201 was amended by [S.I. 2006/3429](#), regulation 3.

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of 3 months from the date on which it received the official receiver’s application under subsection (2) and the CIO is dissolved on the date on which it is removed from the register. However the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under section 203 at any time before the end of that period.

(6) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating—

- (a) that the CIO has been removed from the register of charities; and
- (b) the date on which the CIO was so removed.

(7) In determining the manner in which to publish a notice under subsection (6), the Charity Commission must have regard in particular to—

- (a) the location of the CIO’s principal office;
- (c) the area in which the CIO operated; and
- (c) the charitable purposes of the CIO.”.

**Section 203** (Consequence of notice under s 202)

In subsection (5) omit “for registration”.

**Section 205** (Dissolution otherwise than under ss 202-204)

Subsection (2)

For subsection (2), substitute:

“(2) The Charity Commission must remove the CIO from the register of charities on the expiration of 3 months from the date on which it received the notice and the CIO is dissolved on the date on which it is removed from the register.”.

Subsection (5)

Omit subsection (5).

Subsection (6)

Omit paragraph (c); and in the full out words omit “for registration”.

New subsections (8) and (9)

After subsection (7), insert:

“(8) Where the Charity Commission removes a CIO from the register of charities in accordance with this section, it must publish a notice, in such manner as it thinks fit, stating—

- (a) that the CIO has been removed from the register of charities; and

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(b) the date on which the CIO was so removed.

(9) In determining the manner in which to publish a notice under subsection (8), the Charity Commission must have regard in particular to—

(a) the location of the CIO’s principal office;

(b) the area in which the CIO operated; and

(c) the charitable purposes of the CIO.”.

**Section 216** (Restriction on re-use of Omit subsection (8). company names)

**Section 217** (Personal liability for debts, Omit subsection (6). following contravention of s 216)

**Section 218** (Prosecution of delinquent officers and members of CIO)(52)

Subsection (1)

Omit paragraph (b).

Subsection (4)

Omit paragraph (b); and in the full out words omit “or (as the case may be) the Lord Advocate” in both places it occurs.

Subsection (5)

After “1985” substitute “to investigate the CIO’s affairs as if the CIO were a company”.

**Section 219** (Obligations arising under s 218)(53)

Subsection (2B)

Omit paragraph (b)

Subsection (3)

Omit the references to the “Lord Advocate” and “defender”.

Subsection (4)

Omit the reference to the “Lord Advocate”.

**Section 233** (Supplies of gas, water, electricity, etc)(54)

In subsection (3)(c) omit the reference to Scottish Water.

**Section 235** (Duty to co-operate with office-holder)(55)

For subsection (3)(d) substitute: “those who are, or have within that year been, officers of or in the employment (including employment under a contract for services) of a company or a CIO which is, or within that year was, a charity trustee of the CIO in question”.

(52) Section 218 was amended by the Insolvency Act 2000, section 10, and by S.I. 2009/1941, Schedule 1, paragraph 75.

(53) Section 219 was amended by the Insolvency Act 2000, sections 10 and 11, and by S.I. 2009/1941, Schedule 1, paragraph 75.

(54) Section 233 was amended by the Water Act 1989, Schedule 25, paragraph 78; by the Gas Act 1995, Schedule 4, paragraph 14 and Schedule 6; by the Utilities Act 2011, Schedule 6, paragraph 47; by the Insolvency Act 2000, Schedule 1, paragraph 8; by the Enterprise Act 2002, Schedule 17, paragraph 22; by the Communications Act 2003, Schedule 17, paragraph 82 and by S.I. 2004/1822, paragraph 14 of the Schedule.

(55) Section 235 was amended by the Enterprise Act 2002, Schedule 17, paragraph 24.

*Status: This is the original version (as it was originally made).*

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<b>Section 236</b> (Inquiry into CIO’s dealings, etc)( <b>56</b> )	In subsection (3A) omit from “(in England and Wales)” to the end.
<b>Section 244</b> (Extortionate credit transactions)( <b>57</b> )	In subsection (5) omit “or under section 242 (gratuitous alienations in Scotland)”.
<b>Section 245</b> (Avoidance of certain floating charges)( <b>58</b> )	In subsection (1) omit “but applies to Scotland as well as to England and Wales”.
<b>Section 246A</b> (Remote attendance at meetings)( <b>59</b> )	Omit subsection (2).
<b>Section 246B</b> (Use of websites)	Omit subsection (2).
<b>Section 248</b> (“Secured creditor” etc)	Omit paragraph (b)(ii).
<b>Section 251</b> (Expressions used generally)( <b>60</b> )	
Definition of administrative receiver	Omit paragraph (b).
Definition of “chattel leasing agreement”	Omit “or, in Scotland, the hiring”.
Definition of “floating charge”	Omit the words from “and includes” to “(Scottish floating charges)”.
Definition of “the Gazette”	Omit paragraph (b).
Definition of “receiver”	Omit the definition.
<b>Section 387</b> (“The relevant date”)( <b>61</b> )	Omit subsections (4)(b), (5) and (6).
<b>Section 388</b> (Meaning of “to act as an insolvency practitioner”)( <b>62</b> )	
Subsection (2)	Omit subsection (2).
Subsection (2A)	Omit subsection (2A).
Subsection (3)	Omit subsection (3).
Subsection (4)	Omit the definitions of “company”, “interim trustee” and “permanent trustee”.
Subsection (5)	Omit paragraph (b).
<b>Section 389</b> (Acting without qualification an offence)( <b>63</b> )	In subsection (2) omit the words from “or the Accountant” to “Act 1985”.
<b>Section 389A</b> (Authorisation of nominees and supervisors)( <b>64</b> )	

(56) Section 236 was amended by [S.I. 2010/18](#), article 5(6).

(57) Section 244 was amended by the Enterprise Act 2002, Schedule 17, paragraph 30.

(58) Section 245 was amended by the Enterprise Act 2002, Schedule 17, paragraph 31.

(59) Sections 246A and 246B were inserted by [S.I. 2010/18](#), article 3.

(60) Section 251 was amended by [S.I. 2009/1941](#), Schedule 1, paragraph 77.

(61) Section 387 was amended by the Insolvency Act 2000, Schedule 1, paragraph 9, and Schedule 3, paragraph 15; by the Enterprise Act 2002, Schedule 17, paragraph 34, and by [S.I. 2002/1240](#), regulation 16.

(62) Section 388 was amended by the Insolvency Act 2000, section 4; by [S.I. 2002/1240](#), regulation 17; by [S.I. 2002/2708](#), article 3; by [S.I. 1994/2421](#), article 15; and by [S.I. 2009/1941](#), Schedule 1, paragraph 78.

(63) Section 389 was amended by the Insolvency Act 2000, section 4.

(64) Section 389A was inserted by the Insolvency Act 2000. It was amended by the Mental Capacity Act 2005 (c.9), Schedule 6, paragraph 31, and Schedule 7; by [S.I. 2004/1941](#), Schedule, paragraph 2; by [S.I. 2005/2078](#), Schedule 1, paragraph 3; and by [S.I. 2009/1941](#), Schedule 1, paragraph 78.



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Subsection (1)	Omit “or Part 8”.
Subsection (2)(b)	Omit “(in Scotland, caution)”; and “or caution”.
<b>Section 390</b> (Persons not qualified to act as insolvency practitioners)(65)	
Subsection (3)	In paragraph (a) omit “or, in Scotland, caution”; in paragraph (b) omit “or caution”.
New subsection (6)	After subsection (5) insert: “(6) This section does not apply to a body corporate appointed as an interim manager under section 76(3)(g) of the Charities Act 2011.”.
<b>Section 399</b> (Appointment, etc of official receivers)	
Subsections (1) and (4)	Omit each reference to bankruptcy; individual voluntary arrangement; debt relief order or application for such an order.
<b>Section 411</b> (CIO insolvency rules)(66)	
Subsection (1)	Omit paragraph (b).
Subsections (1A) and (1B)	Omit subsections (1A) and (1B).
Subsection (2)	Omit the reference to subsections (1A) and (1B) and to the Treasury.
Subsections (2C) and (2D)	Omit subsections (2C) and (2D).
Subsection (3)	Omit “bank liquidator or administrator” and the references to the Banking Act 2009.
Subsection (3A)	Omit subsection (3A).
<b>Section 413</b> (Insolvency Rules Committee)(67)	In subsection (2) omit the reference to section 412.
<b>Section 414</b> (Fees orders (CIO insolvency proceedings))(68)	
Subsection (2)	Omit paragraph (b).
Subsection (5)	Omit the reference to the Secretary of State.
Subsection (8A) to (8C)	Omit subsections (8A) to (8C).

(65) Section 390 was amended by the Adults with Incapacity (Scotland) Act 2000 (asp. 4), Schedule 5, paragraph 18; by Insolvency Act 2000, Schedule 4, paragraph 16; by the Enterprise Act 2002, Schedule 21, paragraph 4; by the Mental Capacity Act 2005, Schedule 6, paragraph 31, and Schedule 7; by the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 20, paragraph 6; by S.I. 2004/1941, Schedule, paragraph 3; by S.I. 2005/2078, Schedule 1, paragraph 3; and by S.I. 2009/1941, Schedule 1, paragraph 78. There are other amendments to section 390 not relevant to these Regulations.

(66) Section 411 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 4, paragraph 188; S.I. 2002/1037, regulation 3; S.I. 2007/2194, Schedule 4, paragraph 44; S.I. 2009/1941, Schedule 1, paragraph 79. There are other amendments to section 411 not relevant to these Regulations.

(67) Section 413 was amended by the Water Act 1985, Schedule 25; by the Water Consolidation (Consequential Provisions) Act 1991, Schedule 1; by the Railways Act 1993, Schedule 12; and by the Constitutional Reform Act 2005, Schedule 4.

(68) Section 414 was amended by S.I. 2007/2194, Schedule 4, paragraph 44. There are other amendments to section 414 not relevant to these Regulations.

*Status: This is the original version (as it was originally made).*

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Subsection (9)	Omit the words from “and the application of” to the end.
<b>Section 415A</b> (Fees orders (general))(69)	Omit subsection (A1).
<b>Section 416</b> (Monetary limits (companies winding up))	
Subsection (1)	Omit the entries relating to sections 117(2) and 120(3).
Subsection (3)	Omit “117(2), 120(3) or”.
<b>Section 423</b> (Transactions defrauding creditors)(70)	For subsection (4) substitute: “(4) In this section “the court” means— (a) the High Court; or (b) any county court having jurisdiction to wind up the CIO.”.
<b>Section 424</b> (Those who may apply for an order under s423)(71)	For paragraph (a) substitute: “(a) in a case where the debtor is being wound up or is in administration, by the official receiver, by the liquidator or administrator or (with the leave of the court) by a victim of the transaction;”.
Subsection (1)	
<b>Section 431</b> (Summary proceedings)(72)	
Subsection (3)	Omit subsection (3).
Subsection (4)	Omit the reference to the Lord Advocate.
<b>Section 432</b> (Offences by bodies corporate)	
Subsection (2)	The reference to any director, manager, secretary or other similar officer of a body corporate is to be read as including a reference to a charity trustee of a CIO.
Subsection (4)	Omit the words “51, 53, 54, 62, 64, 66,” and “and 23(1)(a)”.
<b>Section 433</b> (Admissibility in evidence of statements of affairs, etc)(73)	
Subsection (1)	Omit paragraphs (aa) and (ab).
Subsection (3)	In paragraph (a) omit the words “66(6), 67(8),” and from “, 353(1)” to “(2)(a) or (b)”;
	omit paragraph (e).

(69) Section 415A was inserted by the Enterprise Act 2002, section 270(1). There are other amendments to section 415A not relevant to these Regulations.

(70) Section 423 was amended by the Civil Partnerships Act 2004 (c.33), Schedule 27, paragraph 121.

(71) There is an amendments to section 424 not relevant to these Regulations.

(72) There are amendments to section 431 not relevant to these Regulations.

(73) Section 433 was amended by the Youth Justice and Criminal Evidence Act 1999 (c.23), Schedule 3, paragraph 7. There are other amendments to section 433 not relevant to these Regulations.

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<b>Section 434A</b> (Introductory)(74)	For “416 and 417” substitute “416”.
<b>Section 434D</b> (Enforcement of a CIO’s filing obligations)(75)	In subsection (4) omit “(in Scotland, expenses)”.
<b>Section 436</b> (Expressions used generally)(76)	In subsection (2) in the opening words after “Companies Acts” insert: “with the substitution, in relation to CIOs, of references to charity trustees for references to directors; omit the entries relating to: “articles”, “the Joint Stock Companies Acts”, “overseas company”, “paid up”, “private company”, “public company” and “registrar of companies”.
<b>Section 436B</b> (References to things in writing)(77)	In subsection (2) ignore paragraphs (a), (b), (c) (e), (h) and (i).
<b>SCHEDULE A1</b> (Moratorium where directors propose voluntary arrangements)(78)	
<b>Paragraph 1</b> (79)	Omit the definitions of “market contract”, “market charge”, “settlement finality regulations” and “system-charge”.
<b>Paragraph 2</b> (80)	For paragraph 2 substitute: <p style="margin-left: 40px;">“2. A CIO is eligible for a moratorium unless it is excluded from being eligible by virtue of paragraph 4.”.</p>
<b>Paragraph 7</b>	
Sub-paragraph (1)	Omit “(in Scotland, lodge)”.
Sub-paragraph (4)	Omit “(in Scotland, lodged)”.
<b>Paragraph 12</b> (81)	
Sub-paragraph (3)	Omit sub-paragraph (3).
Sub-paragraph (5)	For sub-paragraph (5) substitute: <p style="margin-left: 40px;">“(5) For the purposes of this paragraph “excepted petition” means a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.”.</p>

(74) Sections 434A to 434C were inserted by [S.I. 2008/948](#), Schedule 1, paragraph 105.

(75) Section 424D was inserted by [S.I. 2009/1941](#), Schedule 1, paragraph 81.

(76) Section 436 was amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 13; by [S.I. 2002/1037](#), regulation 4; by [S.I. 2005/879](#), regulation 2; by [S.I. 2007/2194](#), Schedule 4, paragraph 45; and by [S.I. 2009/1941](#), Schedule 1, paragraph 82.

(77) Section 436B was inserted by [S.I. 2010/18](#), article 4(1).

(78) Schedule A1 to the 1986 Act is footnoted at Schedule 2 paragraph 1(2)(iv). Where a provision of Schedule A1 is applied subject to modifications specified in the Table, relevant amendments to that provision are footnoted below.

(79) Paragraph 1 was amended by [S.I. 2002/1555](#), article 28.

(80) Paragraph 2 was amended by [S.I. 2002/155](#), article 29. There are other amendments to paragraph 2 not relevant to these Regulations.

(81) Paragraph 12 was amended by the Enterprise Act 2002, Schedule 17, paragraph 37. There are other amendments to paragraph 12 not relevant to these Regulations.

*Status: This is the original version (as it was originally made).*

<i>Provision of the 1986 Act</i>	<i>Modification(s)</i>
<b>Paragraph 17</b>	In sub-paragraph (2) omit “(in Scotland, hired)”.
<b>Paragraph 22</b>	In sub-paragraph (1)(c) omit the reference to paragraph 21.
<b>Paragraph 38</b>	In sub-paragraph (1)(a) omit “, member”.
<b>Paragraph 40(82)</b>	In sub-paragraph (2) omit references to a “member” or “members”.
<b>Paragraph 45</b>	
Sub-paragraph (4)	Omit the words “(except regulations under paragraph 5)”.
Sub-paragraph (5)	Omit sub-paragraph (5).
<b>SCHEDULE B1 (Administration)(83)</b>	
<b>Paragraph 14</b>	Omit sub-paragraph (2)(d).
<b>Paragraph 15</b>	Omit sub-paragraph (3).
<b>Paragraph 39</b>	In sub-paragraph (1)(d) omit “or under any rule of the law of Scotland”.
<b>Paragraph 40(84)</b>	For sub-paragraph (2) substitute: “(2) Sub-paragraph (1)(b) does not apply to a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011”.
<b>Paragraph 42(85)</b>	For sub-paragraph (4) substitute: “(4) Sub-paragraph (3) does not apply to a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011”.
<b>Paragraph 43(86)</b>	Omit sub-paragraph (5).
<b>Paragraph 47</b>	
Sub-paragraph (3)	For sub-paragraph (3)(d) substitute: “a person who is or has been during that period an officer or employee of a company or a CIO which is or has been during that year a charity trustee of the CIO.”
Sub-paragraph (5)	Omit sub-paragraph (5).
<b>Paragraph 49(87)</b>	Omit sub-paragraph (3)(b).
<b>Paragraph 73(88)</b>	Omit sub-paragraph (2)(c) and (d).

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(82) Paragraph 40 was amended by the Enterprise Act 2002, Schedule 17, paragraph 37 and by [S.I. 2004/2312](#), article 2.  
(83) Schedule B1 to the 1986 Act is footnoted at regulation 10. Where a provision of Schedule B1 is applied subject to modifications specified in the Table, relevant amendments to that provision are footnoted below.  
(84) There are amendments to paragraph 40 not relevant to these Regulations.  
(85) There are amendments to paragraph 42 not relevant to these Regulations.  
(86) Paragraph 43 was amended by the Enterprise Act 2002, section 248 and Schedule 16, as amended by [S.I. 2003/2096](#).  
(87) There are amendments to paragraph 49 not relevant to these Regulations.  
(88) Paragraph 73 was amended by [S.I. 2007/2974](#), regulation 65. There are other amendments to paragraph 73 not relevant to these Regulations.

<i>Provision of the 1986 Act</i>	<i>Modification(s)</i>
<b>Paragraph 74(89)</b>	
The whole paragraph	Omit all references to a “member” or “members”.
Sub-paragraph (6)	Omit sub-paragraphs (b) and (ba).
<b>Paragraph 82(90)</b>	
	For sub-paragraph (1) substitute: “(1) This paragraph applies where a winding-up order is made for the winding up of a CIO in administration on a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.”.
<b>Paragraph 83</b>	
Sub-paragraph (2)	Omit sub-paragraph (2).
Sub-paragraph (4)	For sub-paragraph (4) substitute: “(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; (b) the area in which the CIO operates; and (c) the charitable purposes of the CIO.”.
Sub-paragraph (6)	For “registration” substitute “publication” and for “registered” substitute “published”.
<b>Paragraph 84</b>	
Sub-paragraph (3)	For sub-paragraph (3) substitute: “(3) On receipt of a notice under sub-paragraph (1), 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) 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.”.
Sub-paragraph (4)	For “registration” substitute “publication”.

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(89) There are amendments to paragraph 74 not relevant to these Regulations.

(90) There are amendments to paragraph 82 not relevant to these Regulations.

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<i>Provision of the 1986 Act</i>	<i>Modification(s)</i>
Sub-paragraph (6)	For “registration” substitute “publication”.
<b>Paragraph 96</b>	Omit sub-paragraph (4).
<b>Paragraph 111(91)</b>	Omit sub-paragraphs (1A) and (1B).
<b>SCHEDULE 1</b> (Powers of administrator or administrative receiver)	
<b>Paragraph 2(92)</b>	Omit the words from “or, in Scotland,” to “private bargain”.
<b>SCHEDULE 4</b> (Powers of liquidator in a winding up)	
<b>Paragraph 3</b>	Omit the paragraph.
<b>Paragraph 3A(93)</b>	Omit “, 242, 243”.
<b>SCHEDULE 6</b> (The categories of preferential debts)	
<b>Paragraph 14(94)</b>	Omit sub-paragraphs (1)(b) and (c).
<b>SCHEDULE 8</b> (Provisions capable of inclusion in CIO insolvency rules)	
<b>Paragraph 14</b>	Omit the words “or in the Bankruptcy (Scotland) Act 1985”.
<b>Paragraph 29(95)</b>	Omit “, 66”.
<b>SCHEDULE 10</b> (Punishment of offences under this Act)	In the table, after the entry relating to section 67(8) insert:
	Failing to comply with requirement to “84(1) send resolution to Charity Commission.
	One-fifth of the statutory maximum.      One-fiftieth of the statutory maximum.

**Application to CIOs of subordinate legislation made under the 1986 Act**

2.—(1) The legislation made under the 1986 Act specified in sub-paragraph (3) applies to CIOs with any necessary modifications for the purpose of giving effect to the provisions of the 1986 Act which are applied to CIOs by paragraph 1 above.

(2) Where there is a conflict between a provision of the subordinate legislation applied by sub-paragraph (1) and any provision of these Regulations, the latter prevails.

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(91) Paragraph 111 was amended by [S.I. 2005/879](#), regulation 2; by [S.I. 2009/1941](#), Schedule 1, paragraph 72; and by [S.I. 2010/18](#), article 4(2).

(92) There are amendments to paragraph 2 not relevant to these Regulations.

(93) Paragraph 3A was inserted by the Enterprise Act 2002, section 253.

(94) Paragraph 14 was amended by the Enterprise Act 2002, Schedule 17, paragraphs 38(4) and (5).

(95) Paragraph 29 was amended by the Enterprise Act 2002, Schedule 17, paragraph 38(6).

- (3) The specified legislation is—
- (a) the Insolvency Rules 1986**(96)**;
  - (b) the Insolvency Practitioners (Recognised Professional Bodies) Order 1986**(97)**;
  - (c) the Insolvency Proceedings (Monetary Limits) Order 1986**(98)**;
  - (d) the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986**(99)**;
  - (e) the Insolvency Regulations 1994**(100)**;
  - (f) the Insolvency Act 1986 (Prescribed Part) Order 2003**(101)**;
  - (g) the Insolvency Proceedings (Fees) Order 2004**(102)**;
  - (h) the Insolvency Practitioners Regulations 2005**(103)**; and
  - (i) the Civil Proceedings Fees Order 2008**(104)**.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, together with the Charitable Incorporated Organisations (General) Regulations 2012 (S.I. 2012/3012) 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 originally in the Charities Act 1993 (as amended by the Charities Act 2006) but were consolidated in the 2011 Act.

The Regulations provide for what is to happen when a CIO is insolvent or is dissolved for any other reason.

The Insolvency Act 1986 (“the 1986 Act”) is applied, with modifications, (regulation 3 and the Schedule) so that a CIO is subject to the same insolvency and dissolution procedures as a registered company. This means that a CIO can be subject to a voluntary arrangement (Part 1 of the 1986 Act), be placed in administration (Part 2) or in receivership (Part 3), or be wound up voluntarily (Part 4) or by the court (Part 6). Subordinate legislation made under the 1986 Act is also applied to CIOs (paragraph 2 of the Schedule).

An alternative regime is established in Part 3 of the Regulations for the dissolution of a CIO otherwise than under the 1986 Act. Under this regime, a CIO can apply to the Charity Commission for voluntary dissolution (regulation 4). The Regulations specify how an application is to be made (regulation 5), and that the members must first pass a resolution to apply for dissolution (regulation 6). The charity trustees must not apply unless all the CIO’s debts are settled and the CIO has taken any steps it is required by its constitution to take in relation to its property prior to dissolution (regulation 8). Also,

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**(96)** S.I. 1986/1925. The Rules are amended regularly; the most recent relevant amendments are made by S.I. 2010/686.

**(97)** S.I. 1986/1764.

**(98)** S.I. 1986/1996. There are amendments not relevant to these Regulations.

**(99)** S.I. 1986/952.

**(100)** S.I. 1994/2507, amended by S.I. 2000/485, 2001/3649, 2004/472, 2005/512, 2008/670, 2009/482, 2009/2748, 2011/2203. There are further amendments not relevant to these Regulations.

**(101)** S.I. 2003/2097.

**(102)** S.I. 2004/593, amended by S.I. 2005/544, 2007/521, 2009/645, 2010/732, 2011/1167.

**(103)** S.I. 2005/524, amended by S.I. 2009/2748, 2009/3081.

**(104)** S.I. 2008/1053, amended by S.I. 2008/2853, 2009/1498, 2011/586.

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the charity trustees must not apply if a statutory process for the protection of the CIO's assets is already in place (regulation 9).

Once it has applied for dissolution the CIO must cease its activities and must not incur any debts (regulation 10), and the charity trustees who made the application must give members, employees and other charity trustees of the CIO notice of it (regulation 12). Where a CIO has applied for voluntary dissolution, if another statutory process is begun before the application is dealt with, or if the CIO incurs debts, the charity trustees must immediately withdraw the application (regulation 14). The CIO voluntary dissolution procedure replicates the procedure in the Companies Act 2006, and failure to comply with regulations 8, 9, 12 or 14 will constitute an offence under that Act.

The Charity Commission must dissolve a CIO itself where the CIO is not in operation (regulation 16); is no longer a charity (regulation 17); or is being wound up (regulation 18). In each case, dissolution is effected by the removal of the CIO from the register of charities maintained by the Charity Commission (regulation 20).

Where a CIO is dissolved under Part 3 of the Regulations, Part 4 makes provision for the CIO's property to pass to the official custodian for charities. The CIO's property, including any property held on trust for the CIO by another person, will vest automatically in the official custodian (regulation 23). Where the CIO has directed, prior to dissolution, that certain property is to be transferred on dissolution, that property will not vest in the official custodian but will be transferred as directed. Property vested in the official custodian is to be applied for charitable purposes specified by the Charity Commission (regulations 25 and 26). The official custodian can disclaim all or any property of the CIO (regulation 27). Where the official custodian disclaims leasehold property, the disclaimer does not take effect unless notice has been served in accordance with regulation 29. The court can make an order vesting disclaimed property in, or requiring it to be delivered to, a person with a claim to it (regulation 30).

Part 5 sets out the circumstances in which a dissolved CIO can be restored to the register. The Charity Commission can restore a CIO which it removed from the register (regulation 33), and the court has the power to order restoration where the CIO has been dissolved after being wound up or being in administration (regulation 34). Regulation 37 provides for a CIO to be restored with a new name where the old name is one which the Charity Commission would not have accepted, were the CIO being registered for the first time, because the name is the same as or too similar to the name of another charity. Once restored, a CIO is to be treated as if it had continued in existence without being dissolved (regulation 39). It must prepare accounts, reports and returns in the usual way, but need not do so for a "relevant financial year" as defined (broadly, a financial year spanning the period between dissolution and restoration) unless the Charity Commission requests that it does so. Part 8 of the 2011 Act (Charity accounts, reports and returns) is modified accordingly (regulation 41).

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](http://www.legislation.gov.uk).