EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with the Charitable Incorporated Organisations (General) Regulations 2012 (S.I. 2012/XX) and the Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/XXX), 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, 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 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.