
DRAFT STATUTORY INSTRUMENTS

2012 No.

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

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.