
STATUTORY INSTRUMENTS

2012 No. 3012

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

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Charitable Incorporated Organisations (General) Regulations 2012 and come into force on 2nd January 2013.

Interpretation: general

2. In these Regulations—

“the 2011 Act” means the Charities Act 2011;

“application for registration” means an application to be constituted and registered under section 207 of the 2011 Act;

“association CIO” means a CIO⁽¹⁾ which is not a foundation CIO;

“enactment” has the meaning given by section 245(4) of the 2011 Act;

“foundation CIO” means a CIO whose constitution provides that the same persons are to be its members and its charity trustees;

“provision for entrenchment” has the meaning given by regulation 15;

“service address” means, in relation to a person, an address at which—

- (a) the service of documents can be effected by physical delivery; and
- (b) the delivery of documents is capable of being recorded by the obtaining of an acknowledgment of delivery.

Interpretation: bodies corporate and associated bodies corporate

3. For the purposes of these Regulations—

(a) “body corporate” includes a body incorporated outside the United Kingdom but does not include—

(i) a corporation sole; or

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

(b) bodies corporate are associated if—

(i) one is a subsidiary of the other; or

(1) Section 204 of the 2011 Act provides that for the purposes of that Act “CIO” means charitable incorporated organisation.

(ii) both are subsidiaries of the same body corporate, and for these purposes “subsidiary” has the meaning given by section 1159 of, and Schedule 6 to, the Companies Act 2006⁽²⁾ with the substitution, in relation to CIOs, of references to charity trustees for references to directors.

Interpretation: hard copy, electronic form and related expressions

4.—(1) The following provisions apply for the purposes of these Regulations.

(2) A document or information is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read and references to “hard copy” in these Regulations have a corresponding meaning.

(3) A document or information is sent or supplied in electronic form if it is sent or supplied—

- (a) by electronic means (for example, by e-mail or fax); or
- (b) by any other means whilst in electronic form (for example, sending a disk by post).

(4) A document or information is sent or supplied by electronic means if it is—

- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data; and
- (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means,

and references to “electronic means” in these Regulations have a corresponding meaning.

(5) A document or information authorised or required to be sent or supplied in electronic form must be sent or supplied in a form, and by a means, that the sender or supplier reasonably considers will enable the recipient—

- (a) to read it; and
- (b) to retain a copy of it.

(6) For the purposes of this regulation, a document or information can be read only if—

- (a) it can be read with the naked eye; or
- (b) to the extent that it consists of images (for example, photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(7) The provisions of this regulation apply whether the provision of these Regulations in question uses the words “sent” or “supplied” or uses other words (such as “deliver”, “provide” “produce”, “transmit” or, in the case of notice, “give”) to refer to the sending or supplying of a document or information.

PART 2

REGISTRATION

CIO not to be exempt

5. No application may be made for a CIO to be constituted and registered where the resulting charity would be an exempt charity.

(2) 2006 c.46. There are amendments to the Act not relevant to these Regulations.

Application of registration provisions in 2011 Act

6.—(1) In their application to CIOs the following provisions of the 2011 Act are to be read subject to the modifications specified.

- (2) In section 29 of that Act (the register)—
 - (a) in subsection (2)(a) for “charity registered in accordance with section 30” substitute “CIO”;
 - (b) in subsection (2)(b) before “such other particulars” insert “ ” in addition to any particulars and information required to be included by any other provision of this Act or of regulations made under it.”.
- (3) Sections 30 to 34 of that Act do not apply.
- (4) In section 35 of that Act (duties of trustees in connection with registration)—
 - (a) subsections (1) and (2) do not apply;
 - (b) for subsection (3) substitute—
 - “(3) The charity trustees of a CIO must within 28 days—
 - (a) notify the Commission if there is any change in the particulars of the CIO entered in the register; and
 - (b) so far as appropriate, supply the Commission with particulars of any such change.”.
- (5) In section 36 of that Act (claims and objections to registration)—
 - (a) in subsection (1) for “registration of an institution as a charity” substitute “registration of a CIO”;
 - (b) in subsection (3)(b) after “an institution from the register” insert—
 - “, or
 - (c) to restore a CIO to the register”.
- (6) In section 38 of that Act (right to inspect register) for subsection (4) substitute—
 - “(4) Copies of the constitution of any CIO as supplied to the Commission must, so long as the CIO remains on the register—
 - (a) be kept by the Commission, and
 - (b) be open to public inspection at all reasonable times.”.

Applications for registration: communications with Commission

7.—(1) This regulation applies in relation to any requirement for applicants to send documents or information to the Commission under section 207 of the 2011 Act (application for CIO to be constituted and registered)(3).

- (2) The Commission may—
 - (a) require the contents of the document to be in a standard form;
 - (b) require the document to be produced in the manner the Commission considers fit for the purpose of enabling that document to be scanned or copied;
 - (c) require the document to be authenticated by a particular person or persons of a particular description;

- (d) where a requirement is imposed under sub-paragraph (c), specify the means of authentication;
 - (e) specify the means to be used for sending the document to the Commission (for example by post or by electronic means);
 - (f) where the document is to be sent by electronic means, specify—
 - (i) the hardware or software to be used; and
 - (ii) the requirements as to the technical specifications including protocol, security, anti-virus protection and encryption.
- (3) Any requirements imposed by the Commission under this regulation—
- (a) must not be inconsistent with requirements imposed by any enactment as to the form, authentication or manner of sending the document concerned; and
 - (b) must be published by the Commission in such manner as it thinks fit.
- (4) Where a document or information is sent or supplied by the applicants by electronic means, it may only be sent or supplied to an address specified for the purpose by the Commission.
- (5) If the applicants send or supply a document or information to the Commission in electronic form—
- (a) the applicants are treated as having agreed to accept a response in electronic form; and
 - (b) where the document or information is sent or supplied by the applicants by electronic means from an electronic address, or the applicants have given such an address in the document or information (subject to any limitations specified when providing that address), the applicants are treated as having agreed to the response being sent by electronic means to that address.

Applications for registration: information to be included

8. In a case where one or more persons makes an application for registration and the proposed constitution of the CIO includes provision for entrenchment, the applicants must specify that fact in the application.

Applications for amalgamation: information to be included

9. In a case where two or more CIOs make an application for amalgamation and the proposed constitution of the new CIO includes provision for entrenchment, the old CIOs must specify that fact in the application.

Transfer of accounting records on amalgamation

10.—(1) The charity trustees of each old CIO must, on registration of the new CIO, transfer the relevant accounting records to the charity trustees of the new CIO.

(2) In paragraph (1) “relevant accounting records” means the accounting records which the charity trustees of the old CIO were, immediately before the registration of the new CIO, under a duty to preserve under section 131 of the 2011 Act (preservation of accounting records).

(3) On transfer of the records in accordance with paragraph (1), the charity trustees of the old CIO shall be treated as having discharged their duty under section 131.

Retention of accounting records after amalgamation

11.—(1) The charity trustees of a new CIO must preserve the records transferred to it under regulation 10 for at least 6 years from the end of the financial year in which the records were made (“the retention period”).

(2) Subject to paragraph (3), where a new CIO is dissolved within the retention period, the obligation to preserve those records in accordance with this regulation is to continue to be discharged by the persons who were the charity trustees of the new CIO immediately before its dissolution.

(3) Paragraph (2) does not apply if the Commission consents in writing to the records being destroyed or otherwise disposed of.

Interpretation

12. In this Part—

“new CIO” and “old CIO” have the meanings given by section 235(1) of the 2011 Act (application for amalgamation of CIOs); and

“application for amalgamation” means an application under section 235 of the 2011 Act.

PART 3

CONSTITUTION

Matters to be provided for in constitution

13.—(1) A CIO’s constitution must state the names of the persons who are to be the first charity trustees of the CIO.

(2) In addition to the provision required by section 206(2) of the 2011 Act, a CIO’s constitution must make—

- (a) the standard charity trustee provisions; and
- (b) the standard member provisions.

(3) In this regulation—

“standard charity trustee provisions” means provision about—

- (a) how a charity trustee of the CIO retires from office;
- (b) the other circumstances in which a charity trustee of the CIO will cease to hold office and in particular, if the CIO’s constitution permits its members to remove a charity trustee from office, the circumstances in which a charity trustee may be removed from office and the procedure for doing so;
- (c) the holding of meetings of the charity trustees of the CIO and in particular—
 - (i) the procedure for calling such meetings;
 - (ii) the appointment of a chair of such meetings;
 - (iii) the quorum for such meetings;
 - (iv) if the charity trustees of the CIO are to have the right to demand a poll, the exercise of that right and the manner in which the poll is to be conducted; and
- (d) subject to compliance with section 222 of the 2011 Act and regulation 36, the extent to which a charity trustee of the CIO may, if at all, benefit personally from any arrangement or transaction entered into by the CIO.

“standard member provisions” means provision about—

- (a) how a member retires from membership of the CIO;
 - (b) the other circumstances in which, and method by which, a member's membership of the CIO may or must be terminated; and
 - (c) the holding of general meetings of its members and in particular—
 - (i) the procedure for calling such meetings;
 - (ii) the appointment of a chair of such meetings;
 - (iii) the representation at such meetings of any body corporate who is a member of the CIO;
 - (iv) the quorum for such meetings; and
 - (v) if the members of the CIO are to have the right to demand a poll, the exercise of that right and the manner in which a poll is to be conducted.
- (4) If the CIO is to have a common seal, the constitution must make provision about the use of the seal.
- (5) If a CIO's constitution permits its members to appoint a proxy, the constitution must make provision about—
- (a) the way in which a member makes such an appointment;
 - (b) the rights of the proxy; and
 - (c) the termination of such an appointment.
- (6) If a CIO's constitution permits its members to vote by post, the constitution must make provision about the circumstances in which, and the way in which, such votes may be given.
- (7) If a CIO's constitution permits its members to make decisions at a general meeting otherwise than by voting on resolutions, the constitution must make provision as to the alternative process by which the members may make decisions at a general meeting.
- (8) If a CIO's constitution permits its members to make decisions otherwise than at a general meeting, the constitution must make provision as to the alternative process by which the members may make decisions otherwise than at a general meeting.
- (9) If the members of a CIO are to have different voting rights, the constitution must state the voting rights which are to attach to each class of member.
- (10) If the members of a CIO are to be treated, as a result of becoming members, as having agreed to receive communications from the CIO by electronic means, the constitution must include—
- (a) a statement to this effect; and
 - (b) provision setting out, as a result of the deemed agreement, the circumstances in which its members will receive communications by electronic means from the CIO.
- (11) If a CIO is to communicate with its members by means of a website, the constitution must make provision as to the circumstances in which a website may be used as a means of communication with its members.
- (12) If a CIO's constitution requires more than one charity trustee to be in office for the business of the CIO to be discharged, the constitution must make provision indicating the minimum number of charity trustees that are to be in office to enable its business to be discharged.
- (13) If a CIO's constitution is to permit its charity trustees to make decisions at a meeting otherwise than by voting on resolutions, the constitution must make provision as to the alternative process by which the charity trustees may make decisions at a meeting.
- (14) If a CIO's constitution is to permit its charity trustees to make decisions otherwise than at a meeting, the constitution must make provision as to the alternative process by which the charity trustees may make decisions otherwise than at a meeting.

Constitution not to restrict ability to dispose of property

14. A CIO's constitution must not include any restriction of the power in section 216 of the 2011 Act (powers of CIO)(4) that would deprive the CIO of its ability to dispose of its property.

Provision for entrenchment

15.—(1) A CIO's constitution may contain provision ("provision for entrenchment") to the effect that specified provisions of the constitution may be amended or repealed by resolution of its members only if specified conditions are met, or specified procedures are complied with, that are more restrictive than those applied by section 224(2) of the 2011 Act (amendment of constitution by resolution of members).

(2) Provision for entrenchment may only be made—

- (a) in the constitution proposed in the application for registration; or
- (b) by an amendment of the constitution agreed to by all of the members of the CIO.

(3) Provision for entrenchment does not prevent amendment of the CIO's constitution—

- (a) by agreement of all of the members of the CIO; or
- (b) by order of the court or by the Commission.

(4) Nothing in this regulation affects—

- (a) any power of a court or the Commission to alter a CIO's constitution; or
- (b) the operation of sections 225 to 227 of the 2011 Act (amendment of constitution, Commission's consent and coming into effect of amendments).

Date of resolution amending constitution

16.—(1) Subject to paragraph (2), if a resolution under section 224 of the 2011 Act to amend a CIO's constitution 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.

(2) Paragraph (1) does not apply if a provision in the CIO's constitution treats such a resolution as having been passed on a date later than the date on which the last member agreed to it.

Provision for entrenchment: statement of compliance

17.—(1) This regulation applies where a CIO's constitution contains provision for entrenchment.

(2) If the CIO amends its constitution, it must send a statement of compliance to the Commission with the documents that it is required to send to the Commission by section 227(1) of the 2011 Act.

(3) The Commission may rely on the statement of compliance as sufficient evidence of the matters stated in it.

(4) In this regulation "statement of compliance" means a statement certifying that the amendment has been made in accordance with the provision for entrenchment.

Effect of amendment of constitution on members

18.—(1) A member of a CIO ("M") is not bound by an amendment to its constitution after the date on which M became a member, if that amendment increases in any way M's liability to contribute to the CIO's assets if it is wound up.

(4) 2011 c.25.

(2) Paragraph (1) does not apply if M agrees in writing, either before or after the amendment is made, to be bound by the amendment.

PART 4

CIO CAPACITY AND RELATED MATTERS

CIO contracts

19.—(1) A contract may be made—

- (a) by a CIO, by writing under its common seal; or
- (b) on behalf of a CIO, by a person acting under its authority, express or implied.

(2) Any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a CIO.

Execution of documents

20.—(1) A document is executed by a CIO—

- (a) by the affixing of its common seal; or
- (b) whether or not the CIO has a common seal, in accordance with paragraph (2).

(2) A document is validly executed by a CIO if it is signed—

- (a) where the CIO has more than one charity trustee, by at least two of the CIO’s charity trustees; or
- (b) where the CIO has only one charity trustee, by that charity trustee.

(3) A document—

- (a) signed in accordance with paragraph (2); and
- (b) expressed, in whatever words, to be executed by the CIO,

has the same effect as if executed under the common seal of the CIO.

(4) In favour of a purchaser a document is to be treated as duly executed by a CIO if it purports to be signed in accordance with paragraph (2).

(5) For the purposes of paragraph (4), “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

(6) References in this regulation to a document being (or purporting to be) signed by a charity trustee are to be read, in a case where a body corporate is a charity trustee, as references to the document being (or purporting to be) signed by an individual authorised by the body corporate to sign on its behalf.

Execution of deeds

21.—(1) A document—

- (a) executed by a CIO in accordance with regulation 20; and
- (b) which makes clear on its face that it is intended by the person or persons making it to be a deed,

has effect, upon delivery, as a deed.

(2) For the purposes of paragraph (1) a document is presumed, unless the contrary intention is proved, to be delivered upon its being executed.

(3) In favour of a purchaser—

- (a) if a document is treated as duly executed under regulation 20 and
- (b) the document makes clear on its face that it is intended by the person or persons making it to be a deed,

the document is treated as having been delivered upon its being executed.

(4) In paragraph (3) “purchaser” has the meaning given by regulation 20(5).

Execution of deeds or other documents by attorney

22.—(1) A CIO may, by instrument executed as a deed, empower a person, either generally or in respect of specified matters, as its attorney to execute deeds or other documents on its behalf.

(2) A deed or other document so executed, whether in the United Kingdom or elsewhere, has effect as if executed by the CIO.

Common seal

23.—(1) A CIO may have a common seal but need not have one.

(2) A CIO which has a common seal must have its name engraved in legible characters on the seal.

(3) Subsections (3) and (5) of section 45 of the Companies Act 2006 (offence of failure to comply with requirements in relation to common seal)(5) apply in relation to a failure by a CIO to comply with paragraph (2) as they apply in relation to a failure by a company to comply with subsection (2) of that section; and, in its application by virtue of this paragraph, subsection (3) of that section has effect as if paragraph (a) were omitted.

(4) Subsections (4) and (5) of that section (offence of using etc. a seal which does not satisfy the necessary requirements) apply to the use, or authorisation of the use, of a seal of a CIO which does not comply with paragraph (2) as they apply to the use, or authorisation of the use, of a seal of a company which does not comply with subsection (2) of that section.

(5) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Acts) apply in relation to an offence under that Act committed by virtue of this regulation as they apply to an offence under the Companies Acts—

- (a) section 1121 (liability of officer in default);
- (b) section 1122 (liability of company as officer in default);
- (c) section 1127 (summary proceedings: venue);
- (d) section 1128 (summary proceedings: time limit for proceedings);
- (e) section 1129 (legal professional privilege); and
- (f) section 1132 (production and inspection of documents where offence suspected).

(6) In their application to CIOs the provisions of the Companies Act 2006 mentioned in this regulation 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.
- (7) In its application to CIOs section 1121 has effect as if subsection (2) were omitted.
- (8) In its application to CIOs section 1122 has effect as if the following were substituted—
- “(1) Where a company is an officer of a CIO, it does not commit an offence as a charity trustee in default unless one of its officers is in default.
- (2) Where any such offence is committed by a company the officer in question also commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In this section—
- “in default” has the meaning given by section 1121;
- “officer” includes any director, manager or secretary.”
- (9) 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”.

Official seal for use abroad

- 24.**—(1) A CIO that has a common seal may have an official seal for use outside the United Kingdom.
- (2) The official seal must be a facsimile of the CIO’s common seal, with the addition on its face of the place or places where it is to be used.
- (3) The official seal when duly affixed to a document has the same effect as the CIO’s common seal.
- (4) A CIO having an official seal may, by writing under its common seal, authorise any person appointed for the purpose to affix the official seal to any deed or other document to which the CIO is a party.

Bills of exchange and promissory notes

- 25.** A bill of exchange or promissory note is deemed to have been made, accepted or endorsed on behalf of a CIO if made, accepted or endorsed in the name of, or by or on behalf of or on account of the CIO by a person acting under its authority.

PART 5

REGISTERS OF MEMBERS AND CHARITY TRUSTEES

Requirement to keep registers

- 26.**—(1) Every association CIO must keep a register of members in accordance with Part 1 of Schedule 1 and a register of charity trustees in accordance with Part 2 of Schedule 1.
- (2) Every foundation CIO must keep a register of charity trustees (who are also the members of the CIO) in accordance with Part 2 of Schedule 1.
- (3) Part 3 of Schedule 1 makes further provision about maintenance of and access to a CIO’s register or registers.
- (4) If a CIO fails to comply with a requirement imposed by Schedule 1 the Commission may, by order, give the charity trustees of the CIO such directions as it considers appropriate for securing that the default is made good.

(5) Sections 336 and 337 of the 2011 Act (enforcement of and other provisions as to orders of the Commission)(6) apply to an order made under paragraph (4) as they apply to an order made under section 52(1) of that Act (power to call for documents).

(6) No order may be made under section 335 of the 2011 Act in respect of a CIO's failure to comply with any requirement imposed by Schedule 1.

(7) In regulations 27 to 30 a reference to a CIO's register of members is, in the case of a foundation CIO, a reference to its register of charity trustees kept in accordance with Part 2 of Schedule 1.

Power of Commission to order rectification of register of members

27.—(1) Where—

- (a) the Commission, or a person appointed by the Commission, makes a determination under section 111 of the 2011 Act (power to determine membership of a charity); and
- (b) the determination reveals the membership of a CIO to be different from the membership specified in its register of members,

the Commission may, by order, require the CIO, or the charity trustees of the CIO, to rectify the register.

(2) Sections 336 and 337 of the 2011 Act (enforcement of and other provisions as to orders of the Commission) apply to an order made under paragraph (1) as they apply to an order made under section 52(1) of that Act (power to call for documents).

Power of court to order rectification of register of members

28.—(1) If—

- (a) the name of any person is, without sufficient cause, entered in or omitted from a CIO's register of members; or
- (b) default is made or unnecessary delay takes place in entering in the register the fact that any person has ceased to be a member,

a relevant person may apply to the court for the rectification of the register.

(2) The court may either—

- (a) refuse the application; or
- (b) order the rectification of the register and payment by the CIO of any damages sustained by a party aggrieved.

(3) On such an application the court may decide the title of persons who are parties to the application to have their names entered in or omitted from the register, whether the question arises—

- (a) between members;
- (b) between members and the CIO;
- (c) between members and the Commission; or
- (d) between the CIO and the Commission.

(4) On such an application the court may also decide any question necessary or expedient to be decided for rectification of the register.

(5) For the purposes of paragraph (3) references to members of a CIO include references to alleged members of a CIO.

(6) In this regulation "relevant person" means—

- (a) the person aggrieved by the entry, omission, default or delay;
- (b) a member of the CIO;
- (c) the CIO; or
- (d) the Commission.

Register of members to be evidence

29. A CIO's register of members is to be prima facie evidence of any matters which are by these Regulations required to be inserted in it.

Time limit for claims arising from entry in register of members

30.—(1) Liability incurred by a CIO from—

- (a) the making or deletion of an entry in its register of members; or
- (b) a failure to make or delete such an entry,

is not enforceable more than 10 years after the date on which the entry was made or deleted or, as the case may be, the failure first occurred.

- (2) This is without prejudice to any lesser period of limitation.

PART 6

CHARITY TRUSTEES: APPOINTMENT, POWERS AND DUTIES

Eligibility for appointment as charity trustee

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

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

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

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

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

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

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

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

Validity of acts of charity trustee

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

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

(2) Paragraph (1)(d) and (e) apply only in favour of (as the case may be)—

- (a) the CIO; and
- (b) any party, other than A or the CIO, to an agreement or transaction entered into as a consequence of—
 - (i) A voting on a matter on which A was not entitled to vote; or
 - (ii) where the constitution permits the charity trustees to make decisions otherwise than by voting, A taking part in a decision in which A was not entitled to take part.

(3) This regulation does not affect the application of sections 183 and 184 of the 2011 Act (criminal and civil consequences of acting while disqualified).

Delegation and appointment of nominees etc. by charity trustees

33.—(1) The provisions of the Trustee Act 2000(7) (“the 2000 Act”) specified in paragraph (2) apply in relation to a CIO as they apply to a charitable trust but with the modifications specified in paragraph (3).

(2) The provisions of the 2000 Act which apply are—

- (a) Part 4 (agents, nominees and custodians) other than sections 11(2), 12(3), 13(3) to (5), 18, 25(2) and 27; and
- (b) section 32 (remuneration of agents, nominees and custodians).

(3) The modifications are—

- (a) any reference to a charitable trust or a trust is to be read as a reference to a CIO;
- (b) any reference to the trustees of a trust or to the trustees is to be read as a reference to the charity trustees of a CIO;
- (c) any reference to property or assets subject to the trust, or of the trust, is to be read as a reference to the property or assets of a CIO;
- (d) any reference to the acquisition of property which is to be subject to the trust is to be read as a reference to the acquisition of property by a CIO;
- (e) any reference to the trust instrument is to be read as a reference to CIO’s constitution;
- (f) any reference to a provision of the 2000 Act is to be read as a reference to a provision of that Act as it applies in relation to CIOs;
- (g) any reference to trust funds is to be read as a reference to the funds of a CIO;
- (h) any reference to section 12(3), 13(5) or 18 is omitted;
- (i) in sections 14(1) and 20(1) the reference to sections 29 to 32 is to be read as a reference to section 32;

(7) 2000 c. 29. There are amendments to the Act not relevant to these Regulations.

- (j) in sections 14(3)(b) and 20(3)(b) the words “or any beneficiary” are omitted;
- (k) in sections 16(3) and 17(4) references to a CIO having a custodian trustee are omitted;
- (l) any reference to the duty of care applicable to a trustee under paragraph 3 of Schedule 1 to the 2000 Act is to be read as a reference to the duty of care in section 221(2) of the 2011 Act (duties of charity trustees);
- (m) the reference in section 11(3)(d) to any other function prescribed by an order made by the Secretary of State is to be read as a reference to any function prescribed by an order made by the Secretary of State under that provision in relation to a charitable trust and any such order applies in relation to a CIO in so far as it applies to a charity which is not an exempt charity with appropriate modifications;
- (n) in section 19(4) the words “which is not an exempt charity” are omitted;
- (o) in section 25(1) the words “subject to subsection (2)” are omitted.

Duty not to accept benefits from third parties

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

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

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

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

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

PART 7

MEETINGS AND PROCEDURE

Notice of resolutions to be proposed at a general meeting

35.—(1) Subject to paragraph (3) and any more restrictive provision included in the CIO’s constitution, where a resolution to which this regulation applies is to be proposed at a general meeting of a CIO—

- (a) notice of not less than 14 days of the general meeting must be given by the person calling the meeting to—
 - (i) 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 at the meeting; and
 - (ii) any charity trustee of the CIO who is not also a member 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 at the meeting;
- (b) the notice referred to in sub-paragraph (a) must contain particulars of the resolution that is to be proposed at that meeting.

(2) This regulation applies to a resolution under section 224 (amendment of constitution and procedure) or 235 (application for amalgamation of CIOs) or 240 (resolutions about transfer of CIO's undertaking to another CIO) of the 2011 Act⁽⁸⁾.

(3) For the purpose of calculating the period of notice to be given under paragraph (1)(a) 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 resolution which is to be proposed at a general meeting may be passed without the requirements of paragraph (1) being satisfied.

(5) 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.

Charity trustee with personal interest in decision

36.—(1) A charity trustee of a CIO who would benefit personally, whether directly or indirectly, from a transaction or arrangement into which the CIO proposes to enter—

- (a) must not take part in the making of any decision whether or not to enter into that transaction or arrangement; and
- (b) must not be counted in the quorum necessary for the discharge of that business.

(2) Paragraph (1)(a) applies to any decision whether of the charity trustees of the CIO or its members.

(3) The restrictions in paragraph (1) do not apply where the transaction or arrangement to be entered into by the CIO cannot reasonably be regarded as likely to give rise to a conflict of interest.

(4) Nothing in this regulation affects the power of the Commission to authorise dealings with charity property etc. under section 105 of the 2011 Act.

Records to be kept of charity trustees' decisions

37.—(1) Every CIO must—

- (a) cause minutes of all proceedings at meetings of its charity trustees to be recorded; and
- (b) if decisions are made by its charity trustees otherwise than in meetings, must cause the decisions made to be recorded.

(2) The records must be kept for at least 6 years from—

- (a) in the case of minutes of meetings, the date of the meeting;
- (b) in the case of decisions made otherwise in meetings, the date on which the decision was made.

(8) 2011 c.25.

Charity trustee minutes as evidence

38.—(1) Minutes of a meeting of a CIO's charity trustees are evidence of the proceedings at the meeting if they purport to be authenticated by—

- (a) the chair of that meeting; or
- (b) the chair of the next charity trustees' meeting.

(2) Where minutes have been made of the proceedings of a meeting of the charity trustees, then, until the contrary is proved—

- (a) the meeting is treated as having been duly held and convened;
- (b) all proceedings at the meeting are treated as having duly taken place; and
- (c) all appointments made at the meeting are treated as valid.

Charity trustee decision records as evidence

39.—(1) Records of decisions made by a CIO's charity trustees otherwise than in meetings are evidence of those decisions if they purport to be authenticated by—

- (a) in the case of a CIO having more than one charity trustee, any one of those trustees who was not prevented by these Regulations or otherwise by the CIO's constitution from taking part in the relevant decision;
- (b) in the case of a CIO having only one charity trustee, by that charity trustee.

(2) Where a decision of the charity trustees made otherwise than in a meeting has been recorded, then, until the contrary is proved—

- (a) the decision is treated as having been duly made in accordance with the provisions of the CIO's constitution; and
- (b) where the decision was that an appointment should be made, that appointment is treated as valid.

Power of court or Commission to order meeting

40.—(1) This regulation applies if for any reason it is impracticable—

- (a) to call a meeting of the CIO in any manner in which meetings of that CIO may be called; or
- (b) to conduct the meeting in the manner prescribed by the CIO's constitution.

(2) The court or the Commission may order a meeting to be called, held and conducted in any such manner as the court or the Commission, as the case may be, thinks fit.

(3) Where the court or the Commission makes an order under paragraph (2), the court or the Commission, as the case may be, may give such ancillary or consequential directions as it thinks expedient.

(4) Directions under paragraph (3) may include a direction that one member of the CIO present at the meeting be treated as constituting a quorum.

(5) The power in paragraph (2) is exercisable by the court or the Commission—

- (a) of its own motion; or
- (b) on the application of a charity trustee of the CIO; or
- (c) on the application of a member of the CIO who—
 - (i) would be entitled to vote at the meeting; or
 - (ii) where the constitution permits the members to make decisions otherwise than by voting, would be entitled to take part in decisions made at the meeting.

(6) A meeting called, held and conducted in accordance with an order made under this regulation is treated for all purposes as being a meeting of the CIO duly called, held and conducted.

Records to be kept of members' decisions

41.—(1) Every CIO must keep records comprising—

- (a) minutes of all proceedings of general meetings;
- (b) copies of the resolutions of members passed otherwise than at general meetings;
- (c) copies of decisions of members made otherwise than by resolution; and
- (d) details provided to the CIO in accordance with regulation 43.

(2) The records must be kept for at least 6 years from the date of the meeting, resolution or decision, as the case may be.

Records as evidence of members' decisions

42.—(1) Minutes of proceedings of a general meeting are evidence of the proceedings at the meeting if they purport to be signed by—

- (a) the chair of that meeting; or
- (b) the chair of the next general meeting.

(2) Where there is a record of proceedings of a general meeting of the members of a CIO then, until the contrary is proved—

- (a) the meeting is treated as having been duly held and convened;
- (b) all proceedings at the meeting are treated as having duly taken place; and
- (c) all appointments made at the meeting are treated as valid.

(3) The record of a resolution of the members passed otherwise than at a general meeting is evidence of the passing of the resolution if they purport to be signed by a charity trustee of the CIO.

(4) The record of a decision of the members made otherwise than by resolution is evidence of the making of the decision if they purport to be signed by a charity trustee of the CIO.

Records of decisions by sole member

43.—(1) This regulation applies to a CIO that has only one member.

(2) Where the member takes any decision that—

- (a) may be taken by the members of the CIO in general meeting; and
- (b) has effect as if agreed by the CIO in general meeting,

the member must provide the CIO with details of that decision.

(3) Paragraph (2) does not apply if the member takes the relevant decision by way of a written resolution.

Inspection of records of decisions and meetings

44.—(1) The records referred to in regulation 41 relating to the previous 6 years must be kept available for inspection at—

- (a) the CIO's principal office as it appears on the register of charities; or
- (b) where the charity trustees pass a resolution to that effect, any other address specified in the resolution.

(2) The records must be open to inspection by any member of the CIO without charge.

(3) Any member may require a copy of the records on payment of such fee, if any, as the charity trustees of the CIO may reasonably require in respect of the costs of complying with the request.

Records of resolutions and meetings of classes of members

45. Regulations 41 to 44 apply, with any necessary modifications, to the resolutions, decisions and meetings of a class of members of a CIO as they apply in relation to resolutions and decisions of members generally and to general meetings.

CIO records

46.—(1) CIO records—

(a) may be kept in hard copy or electronic form; and

(b) may be arranged in such manner as the charity trustees of the CIO think fit,

provided the information in question is adequately recorded for future reference.

(2) Where the records are kept in electronic form, they must be capable of being reproduced in hard copy form.

(3) In this regulation “CIO records” means any register, minutes or other document required by these Regulations to be kept by a CIO.

PART 8

SERVICE OF DOCUMENTS

Service of documents on CIO

47. A document may be served on a CIO by leaving it at, or sending it by post to, the CIO’s principal office as it appears on the register of charities.

Service of documents on charity trustees etc

48.—(1) A document may be served on a person to whom this regulation applies by leaving it at, or sending it by post to, the person’s registered service address.

(2) This regulation applies to—

(a) a charity trustee of the CIO; and

(b) an interim manager for the CIO.

(3) This regulation is restricted to service for purposes—

(a) arising out of or in connection with the appointment or position mentioned in paragraph (2); or

(b) in connection with the CIO.

(4) Nothing in this regulation is to be regarded as preventing the Commission from serving a document on an individual at the individual’s last address known to the Commission.

(5) For the purposes of this regulation—

(a) “interim manager” means an interim manager appointed under section 76 of the 2011 Act;

(b) “registered service address” means, in relation to a charity trustee or an interim manager of a CIO, the service address appearing in the entry for that person in the CIO’s register of charity trustees.

(6) If a registered service address is changed after a person (“A”) inspected, or obtained a copy of, the relevant entry in the relevant register, A may validly serve a document at the previous registered service address until the end of the period of 14 days starting with the day on which A inspected, or obtained a copy of, as the case may be, that entry.

(7) For the purposes of paragraph (6) “previous registered service address” means, in relation to a person, the service address which appeared in the entry relating to that person in the relevant register on the day on which A inspected, or obtained a copy of, that entry.

PART 9

COMMUNICATIONS PROVISIONS

The CIO communications provisions

49.—(1) The provisions of this Part (“the CIO communications provisions”) have effect for the purposes of any charity law provision that authorises or requires documents or information to be sent or supplied by or to a CIO.

(2) The CIO communications provisions apply whether the charity law provision in question uses the words “sent” or “supplied” or uses other words (such as “deliver”, “provide”, “produce”, “transmit” or, in the case of notice, “give”) to refer to the sending or supplying of a document or information.

(3) The CIO communications provisions have effect subject to—

- (a) any requirements imposed or contrary provision made by or under any Act; or
- (b) any contrary provision (so far as it concerns communications between the CIO and its members or the CIO and its charity trustees) in a CIO’s constitution.

(4) For the purposes of paragraph (3), provision is not to be regarded as contrary to the CIO communications provisions by reason only of the fact that it expressly authorises a document or information to be sent or supplied in hard copy form, in electronic form or by means of a website.

Sending or supplying documents or information

50.—(1) Documents or information to be sent or supplied to a CIO must be sent or supplied in accordance with the provisions of Schedule 2.

(2) Documents or information to be sent or supplied by a CIO must be sent or supplied in accordance with the provisions of Schedule 3.

(3) The provisions referred to in Schedule 3 apply (and those referred to in Schedule 2 do not apply) in relation to a document or information that is to be sent or supplied by one CIO to another.

CIO’s implied agreement to receive information in electronic form

51.—(1) If a CIO sends or supplies documents or information to another person in electronic form—

- (a) the CIO is treated as having agreed to accept a response in electronic form; and
- (b) where the document or information is sent or supplied by the CIO by electronic means from an electronic address, or the CIO has given such an address in the document or

information (subject to any limitations specified when providing that address), the CIO is treated as having agreed to the response being sent by electronic means to that address.

(2) In this regulation “electronic address” means any address or number used for the purpose of sending or receiving documents or information by electronic means.

Member’s right to hard copy

52.—(1) Where a member of a CIO (“M”) has received a document or information from the CIO otherwise than in hard copy form, M is entitled to require the CIO to send M a version of the document or information in hard copy form.

(2) The CIO—

- (a) must send the document or information in hard copy form within 21 days of receipt of M’s request; and
- (b) may not make a charge for providing the document or information in that form.

Information sent by CIO: time of receipt

53.—(1) This regulation applies in relation to documents or information sent or supplied by a CIO.

(2) Where—

- (a) the document or information is sent by post (whether in hard copy or electronic form) to an address in the United Kingdom, and
- (b) the CIO is able to show that it was properly addressed, prepaid and posted,

it is treated as having been received by the intended recipient 48 hours after it was posted.

(3) For the purposes of paragraph (2) a document or information is properly addressed if it is addressed in accordance with paragraph 4 of Schedule 3.

(4) Where—

- (a) the document or information is sent or supplied by electronic means; and
- (b) the CIO is able to show that it was properly addressed,

it is treated as having been received by the intended recipient 48 hours after it was sent.

(5) For the purposes of paragraph (4) a document or information is properly addressed if it is addressed in accordance with paragraph 7 of Schedule 3.

(6) Where the document or information is sent or supplied by means of a website, it is treated as having been received by the intended recipient—

- (a) when the material is first made available on the website; or
- (b) if later, when the intended recipient received (or is treated as having received) notice of the fact that the material is available on the website.

(7) In calculating a period of hours for the purposes of this regulation, no account is to be taken of any part of a day that is—

- (a) a Saturday or Sunday;
- (b) Christmas Day;
- (c) Good Friday; or
- (d) a bank holiday under the Banking and Financial Dealings Act 1971(9) in England and Wales.

(9) 1971 c. 80. There are amendments to the Act not relevant to these Regulations.

(8) This regulation has effect subject to any contrary provision agreed between the CIO and the intended recipient.

Commission's requirements as to form etc of document

54.—(1) Where a document or information is required or authorised to be sent or supplied by a CIO to the Commission, the Commission may—

- (a) require the contents of the document or information to be in a standard form;
 - (b) require the document or information to be produced in the manner the Commission considers fit for the purpose of enabling it to be scanned or copied;
 - (c) require the document or information to be authenticated by a particular person or persons of a particular description;
 - (d) where a requirement is imposed under sub-paragraph (c), specify the means of authentication;
 - (e) specify the means to be used for sending the document or information to the Commission (for example by post or by electronic means);
 - (f) where the document or information is to be sent by electronic means, specify—
 - (i) the hardware or software to be used; and
 - (ii) the requirements as to the technical specifications including protocol, security, anti-virus protection and encryption.
- (2) Any requirements imposed by the Commission under this regulation—
- (a) must not be inconsistent with requirements imposed by any enactment as to the form, authentication or manner of sending the document or information concerned; and
 - (b) must be published by the Commission in such manner as it thinks fit.

Agreement with Commission to send by electronic means

55.—(1) The Commission may agree with a CIO that documents or information relating to the CIO which are required or authorised to be sent or supplied by the CIO to the Commission—

- (a) will be sent or supplied by electronic means, except as provided for in the agreement; and
 - (b) will conform to such requirements as may be specified in the agreement or specified by the Commission in accordance with the agreement.
- (2) An agreement under this regulation may relate to all or any description of document or information to be sent or supplied to the Commission.
- (3) Documents or information in relation to which an agreement is in force under this regulation must be sent or supplied to the Commission in accordance with that agreement.

Requirements for proper delivery to Commission

56.—(1) A document or information sent or supplied by a CIO to the Commission is not properly delivered unless—

- (a) any applicable requirements specified by the Commission under regulation 54 are met; and
 - (b) any applicable requirements under an agreement made under regulation 55 are met.
- (2) Subject to regulation 57, a document or information that is not properly delivered to the Commission is treated for the purposes of the provision requiring or authorising it to be sent or supplied to the Commission as not having been so sent or supplied.

Commission’s power to accept document not properly delivered

57.—(1) The Commission may—

- (a) accept; and
- (b) in any relevant case, issue a certificate of notification in relation to,

a document or information that does not comply with the requirements for proper delivery in regulation 56.

(2) No objection may be taken to the legal consequences of a document or information being accepted by the Commission under this regulation on the grounds that the requirements for proper delivery were not met.

(3) The acceptance by the Commission of a document or information under this regulation does not affect—

- (a) the continuing obligation to comply with the requirements for proper delivery; and
- (b) subject to paragraph (4), any liability for failure to comply with those requirements.

(4) For the purposes of any qualifying provision the period after the document or information is accepted does not count as a period during which there is a default in complying with the requirements for delivery.

(5) In this regulation “qualifying provision” means a provision which imposes a daily default fine for failure to send or supply the document or information.

Replacement of document not properly delivered to Commission

58.—(1) The Commission may accept a replacement for a document or information previously sent or supplied to it that did not comply with the requirements for proper delivery in regulation 56.

(2) A replacement must not be accepted by the Commission unless it is satisfied that it is sent or transmitted by—

- (a) the person by whom the original document or information was sent or supplied; or
- (b) the CIO to which the original document or information relates,

and that it complies with the requirements for proper delivery.

Interpretation of the CIO communications provisions

59.—(1) In the CIO communications provisions—

“address” includes a number or address used for the purpose of sending or receiving documents or information by electronic means;

“charity law provision” means any provision of—

- (a) the 2011 Act⁽¹⁰⁾;
- (b) these Regulations;
- (c) the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012⁽¹¹⁾ (“the Dissolution Regulations”); or
- (d) a CIO’s constitution;

but not the provisions of the Insolvency Act 1986 and subordinate legislation as applied in relation to CIOs by the Dissolution Regulations;

“document” includes summons, notice, order or other legal process and registers.

(10) 2011 c.25.

(11) S.I. 2012/3013.

(2) References in the CIO communications provisions to documents or information being sent or supplied by or to a CIO include references to documents or information being sent or supplied by or to the charity trustees of a CIO acting on behalf of the CIO.

PART 10

SUPPLEMENTARY PROVISIONS

Fraudulent trading

60.—(1) Section 993 of the Companies Act 2006 (offence of fraudulent trading)(**12**) applies in relation to any activity of a CIO as it applies in relation to any business of a company.

(2) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Acts) apply in relation to an offence under that Act committed by virtue of this regulation 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).

(3) In their application to CIOs the provisions of the Companies Act 2006 mentioned in this regulation 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.

(4) 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”.

Pre-merger vesting declarations

61.—(1) Sections 310 (pre-merger vesting declarations) and 312 (“transferor” and “transferee” etc in s.310 and s.311) of the 2011 Act apply in relation to a relevant charity merger under Part 16 of that Act where the transferee is a CIO with the following modifications.

(2) In section 310—

- (a) in subsection (1)(c) after “property” insert “including any permanent endowment or other property held on special trust which is specified in the declaration (“specified trust property”);
- (b) in subsection (2)—
 - (i) after “property” insert “including specified trust property”;

- (ii) at the end of the subsection insert a new sentence “The transferee shall hold specified trust property on the same trusts, so far as is reasonably practicable, on which the property was held immediately before the merger.”;
- (c) after subsection (4) insert—
 - “(5) Where specified trust property vests in the transferee by virtue of subsection (2), unless the Commission directs otherwise the specified trust property and the transferee are to be treated as a single charity for the purposes of Parts 4 and 8 of this Act.”.
- (3) In section 312 in subsection (1) omit the words from “and (b)” to the end of the subsection.
- (4) Where a CIO holds specified trust property as trustee by virtue of section 310 as modified by this regulation, the CIO is to be treated for the purposes of the provisions identified in paragraph 3 of Schedule 7 to the 2011 Act (application of certain enactments to trust corporations) as if it were a corporation appointed by the court to be trustee.

Notes to CIO’s accounts and statement

62.—(1) This regulation applies where a CIO elects under section 133 of the 2011 Act to prepare a receipts and payments account and a statement of assets and liabilities, instead of a statement of accounts.

(2) The following information must be provided by way of notes to the statement of assets and liabilities—

- (a) particulars of any guarantee given by the CIO, where any potential liability under the guarantee is outstanding at the date of the statement; and
- (b) particulars of any debt outstanding at the date of the statement which is owed by the CIO and which is secured by an express charge on any of the assets of the CIO.

PART 11

CONSEQUENTIAL AMENDMENTS TO SECONDARY LEGISLATION

Consequential amendments to secondary legislation

63. The consequential amendments in Schedule 4 have effect.

5th December 2012

Nick Hurd
Parliamentary Secretary
Cabinet Office