
STATUTORY INSTRUMENTS

2012 No. 3013

The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012

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^{MI} 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

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- (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);
 - (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.

Marginal Citations

M1 Chapter 9 of Part 4 of the 1986 Act was amended by S.I. 2006/3429, regulation 3(1)(d).

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 ^{M2}.

Marginal Citations

M2 1934 c.41.

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
- (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—

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- (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.

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