Draft Order laid before Parliament under section 74(5) of the Charities Act 2006 and section 349(3) of the Charities Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

CHARITIES, ENGLAND AND WALES

The Charitable Incorporated Organisations (Consequential Amendments) Order 2012

Made - - - - ***

Coming into force in accordance with article 1

The Minister for the Cabinet Office makes the following Order in exercise of the powers conferred by sections 74(2) and 75(4) and (5) of the Charities Act 2006(**a**) and sections 324 and 347(3) of, and paragraph 3(3)(a) of Schedule 8 to, the Charities Act 2011(**b**).

A draft of this Order has been approved by a resolution of each House of Parliament pursuant to section 74(5) of the Charities Act 2006 and section 349(3) of the Charities Act 2011.

Citation and commencement

1. This Order may be cited as the Charitable Incorporated Organisations (Consequential Amendments) Order 2012 and comes into force on the twenty eighth day after the day on which it is made.

Amendment of the Company Directors Disqualification Act 1986

2. Before section 23 of the Company Directors Disqualification Act 1986(**c**) insert—

"**Application of Act to charitable incorporated organisations**

22F.—(1) This Act applies to charitable incorporated organisations ("CIOs") as it applies to companies.

(2) Accordingly, in this Act—

(a) references to a company are to be read as including references to a CIO;

(b) references to a director or an officer of a company are to be read as including references to a charity trustee of a CIO; and

(**a**) 2006 c.50. For the definition of "relevant Minister" see section 75(6). Section 74 was amended by the Charities Act 2011, Schedule 7, paragraph 121, and Schedule 10.
(**b**) 2011 c.25. For the definition of "the Minister" see section 353.
(**c**) 1986 c.46.

(c) any reference to the Insolvency Act 1986 is to be read as including a reference to that Act as it applies to CIOs(**a**).

(3) As they apply in relation to CIOs, the provisions of this Act have effect with the following modifications—

(a) in section 2(1)(**b**), the reference to striking off is to be read as including a reference to dissolution;

(b) in section 4(1)(a)(**c**), the reference to an offence under section 993 of the Companies Act 2006 is to be read as including a reference to an offence under regulation 60 of the Charitable Incorporated Organisations (General) Regulations 2012(**d**)(fraudulent trading);

(c) sections 9A to 9E(**e**) are to be disregarded;

(d) references to any of sections 9A to 9E are to be disregarded;

(e) references to a shadow director are to be disregarded.

(4) In the application of Schedule 1 to the charity trustees of a CIO, references to the provisions of the Companies Act 2006 are to be read as including references to the corresponding provisions (if any) of the Charities Act 2011 and regulations made under that Act.

(5) In this section "charity trustees" has the meaning given by section 177 of the Charities Act 2011.".

Amendments of the Employment Rights Act 1996

3. At the end of section 166 of the Employment Rights Act 1996 (unpaid redundancy payments: applications to the Secretary of State)(**f**) insert—

"(9) In this section—

(a) references to a company are to be read as including references to a charitable incorporated organisation, and

(b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.".

4. At the end of section 183 of that Act (insolvency of employer)(**g**) insert—

"(5) In this section—

(a) references to a company are to be read as including references to a charitable incorporated organisation, and

(b) any reference to the Insolvency Act 1986 in relation to a company is to be read as including a reference to that Act as it applies to charitable incorporated organisations.".

(**a**) The Insolvency Act 1986 (c.45) applies to CIOs by virtue of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/XXX), regulation 3.

(**b**) Section 2 was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 11, paragraph 6 and by the Insolvency Act 2000 (c.39), Schedule 4, Part 1, paragraph 3. There are other amendments to section 2 not relevant to this Order.

(**c**) Section 4 was amended by S.I. 2007/2194, Schedule 4, Part 3, paragraph 46. There are other amendments to section 4 not relevant to this Order.

(**d**) S.I. 2012/XXX.

(**e**) Sections 9A to 9E were inserted by the Enterprise Act 2002 (c.40), section 204. There are amendments to the sections not relevant to this Order.

(**f**) 1996 c.18. Section 166 was amended by the Employment Rights (Dispute Resolution) Act 1998 (c.8), sections 1(2) and 11(2) and Schedule 2, and by the Enterprise Act 2002, Schedule 17, paragraph 49 and Schedule 26. There are other amendments to section 166 not relevant to this Order.

(**g**) Section 183 was amended by the Enterprise Act 2002, Schedule 17, paragraph 49 and Schedule 26. There are other amendments to section 183 not relevant to this Order.

Amendments of the Charities Act 2011

5. In section 180 of the Charities Act 2011 (disqualification: exceptions in relation to charitable companies)—

(a) in subsection (1)—

(i) after "charitable company" insert "or a CIO"; and

(ii) after "director of the company" insert "or charity trustee of the CIO (as the case may be)";

(b) in subsection (2)—

(i) after "charitable company" insert "or a CIO"; and

(ii) after "director of the company" insert "or charity trustee of the CIO (as the case may be)".

6. In section 181 of that Act (power to waive disqualification), in subsection (5)—

(a) after "charitable company" insert "or CIO";

(b) in paragraph (a), after "director of the company" insert "or charity trustee of the CIO (as the case may be)"; and

(c) in paragraph (b), for "director of any other company" substitute "director of any company or charity trustee of any CIO".

7. In section 183 of that Act (criminal consequences of acting while disqualified), in subsection (2)(a) after "company" insert "or a CIO".

8. In the Table in Schedule 6 to that Act (appeals and applications to Tribunal), after the entry relating to a decision of the Commission under section 242 of the Act to refuse to confirm a resolution passed by a CIO insert—

"Decision of the Commission under regulations made by virtue of section 245 to grant an application for the dissolution of a CIO.	The persons are— (a) the CIO, (b) the charity trustees of the CIO, or the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, (c) any creditor of the CIO, and (d) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under regulations made by virtue of section 245 not to grant an application for the dissolution of a CIO.	The persons are— (a) the CIO, (b) the charity trustees of the CIO, and (c) any other person who is or may be affected by the decision.	Power to— (a) quash the decision and (if appropriate) remit the matter to the Commission, (b) direct the Commission to grant the application.
Decision of the Commission under regulations made by virtue of section 245 to dissolve a CIO which it has reasonable cause to believe is not in operation.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, (b) any creditor of the CIO, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under regulations made by virtue of section 245 to dissolve a CIO it no longer considers to be a charity.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, (b) any creditor of the CIO, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Decision of the Commission under regulations made by virtue of section 245 to dissolve a CIO which is being wound up.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, (b) the liquidator of the CIO (if	Power to quash the decision and (if appropriate) remit the matter to the Commission.

	any), (c) any creditor of the CIO, and (d) any other person who is or may be affected by the decision.	
Order made by the Commission under regulations made by virtue of section 245 specifying the charitable purposes, charity or charities for which the official custodian holds on trust the property of a CIO which has been dissolved.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, and (b) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been included in an order made by the Commission.
Order made by the Commission under regulations made by virtue of section 245 vesting property held by the official custodian in a charity or charities.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, and (b) any other person who is or may be affected by the order.	Power to— (a) quash the order in whole or in part and (if appropriate) remit the matter to the Commission, (b) substitute for all or part of the order any other order which could have been made by the Commission, (c) add to the order anything which could have been included in an order made by the Commission.
Decision of the Commission under regulations made by virtue of section 245 to restore or not to restore a CIO to the register.	The persons are— (a) the persons who were or claim to have been the charity trustees of the CIO immediately before it was dissolved, and (b) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate)— (a) remit the matter to the Commission, (b) direct the Commission to rectify the register.”.

Parliamentary Secretary
Cabinet Office

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments in consequence of the implementation of the provisions of the Charities Act 2011 relating to charitable incorporated organisations ("CIOs"). See also the Charitable Incorporated Organisations (General) Regulations 2012 (S.I. 2012/XXX) and the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/XXX).

Although some of the amendments are to statutory provisions that extend to England and Wales and to Scotland, this Order extends to England and Wales only.

The Employment Rights Act 1996 is amended (articles 3 and 4) so that an employee of an insolvent CIO can apply to the Secretary of State for a payment out of the National Insurance Fund in respect of an unpaid redundancy payment (under section 166) or other unpaid debt (under section 182) in the same circumstances as an employee of an insolvent company.

The Company Directors Disqualification Act 1986 ("the 1986 Act") is amended (article 2) so that a CIO charity trustee can be disqualified in the same circumstances as a company director, and a disqualified person (whether a former company director or CIO charity trustee) is not able to act as a company director or CIO charity trustee in England and Wales. Under charity law in England and Wales a person disqualified under the 1986 Act is not able to act as a trustee of any other form of charity (section 178 of the Charities Act 2011). Certain provisions of the Charities Act 2011, relating to general disqualifications from being a trustee of a charity, are amended in consequence of the amendment to the 1986 Act (articles 5 to 7).

The Charities Act 2011 is also amended (article 8) by adding to the list of appeals and applications that may be brought to the Tribunal, so that certain decisions and orders of the Charity Commission relating to the dissolution of CIOs come within the Tribunal's jurisdiction. The list is in Schedule 6 to that Act, and it already includes other decisions of the Charity Commission relating to CIOs.

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.

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