EXPLANATORY MEMORANDUM TO

THE DRAFT CHARITABLE INCORPORATED ORGANISATIONS (INSOLVENCY AND DISSOLUTION) REGULATIONS 2012

No. [XXXX]

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision relating to the insolvency and dissolution of charitable incorporated organisations in consequence of the coming into force of Part 11 of the Charities Act 2011: Charitable incorporated organisations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Charities Act 2006 amended the Charities Act 1993 to make provision for a new incorporated legal structure for charities, the charitable incorporated organisation (CIO). The 1993 Act has since been consolidated into the Charities Act 2011 (the "2011 Act").

4.2 Part 11 of the 2011 Act:

4.2.1 introduces the concept of the charitable incorporated organisation (CIO) and makes provision for its constitution, its formation and registration, its name and status (Chapter 1);

4.2.2 makes provision for the powers of a CIO, constitutional requirements, third parties, duties of members and trustees, and regulation about CIO procedure (Chapter 2);

4.2.3 makes provision relating to the amendment of a CIO's constitution, including where the Charity Commission's consent is required (Chapter 3);

4.2.4 makes provision for the conversion of certain bodies to CIOs (not being implemented at this stage), amalgamation of CIOs and transfer of a CIO's undertakings to another CIO (Chapter 4); and

4.2.5 makes supplementary provisions, including powers for the Minister to make further provision for CIOs through regulations (Chapter 5).

4.3 These Regulations make provision for the dissolution of a CIO either through a bespoke dissolution procedure or through the insolvency and dissolution procedures set out in the Insolvency Act 1986 (the IA). The IA is applied, with appropriate technical modifications, to CIOs. The Regulations also make provision for the restoration to the register of a dissolved CIO in certain circumstances.

4.4 These Regulations form part of a package of secondary legislation needed to complete the legal framework for CIOs and enable implementation. The intention is to make all of the statutory instruments at the same time. The other statutory instruments are:

4.4.1 The Charitable Incorporated Organisations (General) Regulations 2012, which make various provisions related to the formation and operation of CIOs. (a draft copy of these regulations is attached to this Memorandum)

4.4.2 The Charitable Incorporated Organisations (Consequential Amendments) Order 2012, which amends the Company Directors Disqualification Act 1986 to apply it to the charity trustees of a CIO, and amends the Employment Rights Act 1996 to enable employees of insolvent CIOs to claim payments from the National Insurance Fund. It also provides certain rights of appeal to the First-tier Tribunal (Charity) in consequence of these Regulations. The Order is subject to the affirmative resolution procedure;

4.4.3 The Charities Act 2011 (Commencement No. 1) Order 2012, which brings into force most of the relevant provisions of the 2011 Act (the provisions enabling bodies to convert to be CIOs are not being brought into force at this stage). Although the 2011 Act came into force on 14 March 2012, transitory modifications have the effect that Part 11 is not in force until a commencement order is made.

5. Territorial Extent and Application

5.1 The Regulations extend to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary, Cabinet Office, Nick Hurd has made the following statement regarding human rights in respect of the Regulations:

In my view the provisions of the Regulations are compatible with the Convention rights.

7. Policy background

7.1 Although the CIO model is intended to be a relatively easy way to set up and run a charity, it does have to be robust enough to inspire public confidence. Unlike trustees of unincorporated structures, the charity trustees of a CIO benefit from limited liability, so the CIO framework must offer safeguards and protections to third parties engaging in business with a CIO.

7.2 Many such safeguards and protections already exist for charitable companies that are insolvent or being wound up under the IA, and the policy decision was taken at an early stage to make use of same the tried and tested insolvency and dissolution procedures. The alternative would have been to create a bespoke series of insolvency and dissolution procedures, which would to a large degree replicate existing IA procedures, but would create a new body of law specifically for CIOs. This was quickly ruled out as unnecessary given that the existing IA procedures could easily be modified to apply to CIOs.

7.3 However, it was considered useful to include a bespoke and relatively simple voluntary dissolution procedure, outside of the IA regime, for winding up a CIO that has made provision for its liabilities. The Regulations also make provision for the Charity Commission to dissolve a CIO which is not in operation, is no longer a charity, or is being wound up.

7.4 The Regulations make provision to ensure that any remaining assets of a CIO which is dissolved otherwise than under the IA are applied for similar charitable purposes to those of the dissolved CIO. Finally, the Regulations also make provision for a dissolved CIO to be restored to the register of charities in certain circumstances.

7.5 In general terms, insolvency will occur where a CIO is unable to pay its debts as they fall due, or where its total liabilities outweigh its total assets. The trustees of a CIO can be exposed to civil and criminal liability if they allow the CIO to continue to trade when it is insolvent. The Charity Commission's guidance (CC12) *"Managing Financial Difficulties and Insolvency in Charities"* provides trustees with a useful resource (http://www.charity-commission.gov.uk/publications/cc12.aspx).

7.6 Part 1 of the Regulations makes general provision on the interpretation of the Regulations, including in relation to criminal offences that apply by virtue of these Regulations.

Application of the Insolvency Act 1986

7.7 Part 2 of the Regulations (including Schedule 2) makes provision for the full range of IA procedures that apply to registered companies to also apply to CIOs, with appropriate technical modifications.

7.8 In summary, the relevant procedures are:

- Rescue procedures:
  - Administration
  - Voluntary Arrangement
  - Administrative Receivership
- Liquidation procedures:
  - Members' Voluntary Liquidation
  - Creditors' Voluntary Liquidation
  - Compulsory Liquidation

7.9 **Administration** (Part 2 of the IA, including Schedule B1) is an insolvency procedure that provides a CIO with some breathing space enabling the administrator (an insolvency practitioner), acting in the interests of the creditors, to attempt to rescue the CIO in whole or in part as a going concern, to secure a better result for the CIO's creditors than would be likely if the CIO were simply wound up, or to realise property in order to make a distribution to one or more secured or preferential creditors.

7.10 A CIO can (under Part 1 of the IA), make a proposal to creditors for a **Voluntary Arrangement (VA)**. An insolvency practitioner is appointed to supervise the agreement, and the creditors may agree to accept a reduction in their debt and/or a delay in payment. A VA can also be pursued during administration by the administrator as a means of rescuing the CIO as a going concern.

7.11 Some CIOs may also be able to benefit from a "moratorium" where a VA is proposed. A moratorium provides a breathing space to give the CIO time to put a rescue plan to its creditors. It

prevents the CIO's creditors from proceeding against the CIO during the relevant period, whilst allowing the charity trustees to remain largely in control of the CIO. Where a CIO is in administration it is already protected, and does not need to apply for a moratorium.

7.12 A moratorium may be available to a CIO that is not already in administration and meets at least two of the following criteria:

- a turnover of less than £6.5 million;
- a balance sheet total of less than £3.26 million;
- less than 50 employees.

7.13 **Administrative Receivership** (Part 3 of the IA, including Schedule B1) is unlikely to be of relevance to many CIOs. The Enterprise Act 2002 amended the IA (Chapter 4 of Part 3), preventing the appointment of an administrative receiver under any security created after 15 September 2003, subject to certain exceptions (which will not apply to many CIOs – other than Registered Social Landlords).

7.14 If the above rescue mechanisms are not possible, then liquidation and winding up must be considered.

7.15 Members of a CIO can place the CIO into liquidation. Where the CIO is solvent, this is a **Members' Voluntary Liquidation** (Chapter 3 of Part 4 of the IA). Where the CIO is insolvent this is a **Creditors' Voluntary Liquidation** (Chapter 4 of Part 4 of the IA) which gives the creditors certain additional rights, such as a choice in the appointment of the liquidator. The procedure for the members placing the CIO in voluntary liquidation is set out in Chapters 1 and 2 of Part 4 of the IA. The liquidator (an insolvency practitioner) is responsible for winding up the CIO, settling its liabilities, and (if there are any remaining assets) applying to the court or Charity Commission for a Scheme to secure the application of those assets.

7.16 **Compulsory liquidation**. The court (either the High Court or the relevant county court) may be petitioned to wind up a CIO (Chapter 6 of Part 4 of the IA). The circumstances in which the court may wind up a CIO are set out in section 122 of the IA. Those who may apply to the court to wind up a CIO are set out in section 124, and include creditors owed more than £750, the CIO or its charity trustees. The court will appoint a liquidator (which may be the Official Receiver) to manage the winding up of the CIO.

7.17 Chapter 9 of Part 4 of the IA deals with dissolution after winding up. Within three months of receiving the liquidator's final report (on a voluntary liquidation) or the Official Receiver's notice that the winding-up is complete (on a compulsory liquidation), the Commission must remove the CIO from the register of charities. The CIO is dissolved when it is removed from the register.

7.18 Chapter 10 of Part 4 of the IA deals with malpractice during insolvency and liquidation, and provides that, in certain circumstances, the actions of a CIO charity trustee can lead to criminal liability. There is also the potential for a court to make a charity trustee personally liable for fraudulent (section 213) or wrongful (section 214) trading.

Dissolution otherwise than under the Insolvency Act 1986

7.19 Part 3 of the Regulations provides procedures for the dissolution of a CIO otherwise than under the IA. Under this regime, a solvent CIO can apply to the Charity Commission for voluntary dissolution or the Charity Commission can dissolve a CIO of its own volition in certain circumstances. These are designed to be simpler procedures than those under the IA, and the expectation is that they will be more commonly used than the IA procedures.

7.20 The charity trustees may make an application for dissolution to the Charity Commission on behalf of the CIO (regulation 5). The application must include: a copy of the members' dissolution resolution (passed in accordance with the procedure set out in the Regulations); a declaration by the charity trustees that the debts and liabilities of the CIO have been settled or provided for in full; and a charity trustees' statement setting out the way in which the CIO's property has been or is to be applied on dissolution in accordance with the CIO's constitution.

7.21 The Charity Commission must not dissolve a CIO until three months after it has published notice that it has received an application to dissolve the CIO. If anyone shows cause why the CIO should not be dissolved, the Commission must not dissolve the CIO.

7.22 It is an offence for the charity trustees of the CIO to make an application for dissolution if they have not settled or provided in full for the liabilities of the CIO, or if they have not taken any steps required by the CIO's constitution to be taken in relation to its property prior to dissolution. It is also an offence to make an application for dissolution if other IA procedures are already in train, or if an interim manager has been appointed.

7.23 The Regulations set out the restrictions on a CIO's activities once an application for dissolution has been made, and specify what must happen if a CIO receives property after an application has been made. The Regulations also provide that notice must be given to other charity trustees, members and employees of the CIO within seven days of the making of an application. It is an offence for the charity trustees of the CIO to fail to comply with this requirement.

7.24 The Regulations set out the circumstances in which the charity trustees of a CIO must immediately withdraw an application for dissolution. These include where certain IA procedures have commenced, or where the CIO incurs any liabilities contrary to the requirements of regulation 10. It is an offence for the charity trustees of a CIO not to withdraw the application in these circumstances.

7.25 The Regulations require the Charity Commission to dissolve a CIO where it has cause to believe that the CIO is not in operation (regulation 16). The Regulations set out the steps that the Commission must take to contact the CIO, its charity trustees and members before the Charity Commission dissolves the CIO.

7.26 The Charity Commission is required to dissolve a CIO that it considers is no longer a charity. It must give three months' notice of its intention to do so, giving the CIO time to make representations or restructure (regulation 17).

7.27 The Charity Commission is also required to dissolve a CIO that is being wound up but where no liquidator is acting, or the affairs of the CIO have been fully wound up, or the liquidator has failed to make returns for at least six months. Again, the Charity Commission must give three months' notice of its intention to dissolve in these circumstances (regulation 18).

7.28 The date on which a CIO is dissolved is the date when the CIO is removed from the register of charities, and the Charity Commission must publish notice of the date when it dissolves a CIO. The liabilities of charity trustees and members continue to be enforceable after dissolution of a CIO, and the court's power to wind up a CIO remains after dissolution.

7. 29 Part 4 of the Regulations makes provision for the application of the property of a CIO on its dissolution through the non-IA procedures of Part 3. On dissolution, remaining property of the CIO (other than property which falls to be dealt with, on dissolution, in accordance with directions made by the CIO before it was dissolved) vests in the Official Custodian (regulation 23). It is held on trust for the same purposes as the CIO had before it was dissolved. The Charity Commission may, by order, specify the purposes or charities for which the property is held on trust by the Official Custodian (regulation 25), and may, by order, vest property held by the Official Custodian in a charity or charities (regulation 26). This ensures that any property that the CIO has not disposed of prior to its dissolution is applied for the same or similar charitable purposes. Regulation 27 provides for the Official Custodian to disclaim property that is vested in it. The remainder of Part 4 sets out the rules governing disclaimer, and various protections in relation to leasehold land and other parties.

7.30 Part 5 of the Regulations makes provision for the restoration of a dissolved CIO to the register of charities. It sets out the powers of the Charity Commission (regulation 33) and the court (regulation 34) to restore a dissolved CIO to the register of charities. The Regulations provide for circumstances in which the restored CIO is to be given a new name (regulation 37), the effect of the restoration (regulation 39), and the automatic vesting in the restored CIO of property held by the Official Custodian (regulation 40), and the requirement for the Charity Commission to publish notification of the restoration (regulation 38). The Regulations make special provision for accounting and reporting for any financial year spanning the period when the CIO was dissolved (regulation 41).

8. Consultation outcome

8.1 Draft regulations were published for public consultation in 2008-09. Respondents were broadly supportive of the proposals relating to the insolvency and dissolution of CIOs.

8.2 The Cabinet Office has worked closely with the Charity Commission in preparing the CIO framework and secondary legislation needed to complete it. The shared aim has been to ensure that it is as straightforward as possible to set up and run a CIO, whilst ensuring the necessary protections are in place to protect public confidence in the CIO model. The Commission supports these Regulations and the implementation of the CIO. The Department for Business Innovation and Skills, and the Insolvency Service, have also been consulted on these Regulations. In addition, the Cabinet Office sought expert insolvency practitioner and charity lawyer review of the Regulations. The responses received have enabled improvements to be made to the Regulations.

8.3 Despite the passage of time since the public consultation, a further consultation is not considered necessary, given the strong support from the charity sector for the implementation of the CIO. The lapse in time between the public consultation and bringing forward the Secondary Legislation has largely been due to detailed work required on the insolvency and dissolution regime for CIOs (including the aforementioned review by specialists) and to make changes to the draft Regulations to address Charity Commission operational process and resource concerns.

9. Guidance

9.1 The Charity Commission has published detailed guidance on the CIO on its website: http://www.charitycommission.gov.uk/Start_up_a_charity/Do_I_need_to_register/CIOs/default.aspx
This includes general information on the CIO, how to set up a CIO, the requirements for running a CIO, and it is currently being updated to include guidance on the insolvency and dissolution of a CIO. The Charity Commission has also published two model constitutions for CIOs:

9.1.1 the Foundation model is for CIOs whose constitution provides that the same persons are to be its voting members and its charity trustees;
9.1.2 the Association model is for other CIOs i.e. those that will have voting members other than (or in addition to) its charity trustees.

10. Impact

10.1 The CIO framework, including these Regulations, is a permissive regime. It does not impose regulation on any charities other than those that choose to adopt the CIO form. The Regulatory Policy Committee has confirmed that the CIO will not impose any costs on business.

10.2 Most defunct CIOs are expected to opt for the more straightforward non-IA dissolution procedure under Part 3 of the Regulations. Despite this, it was considered important that all the existing IA procedures were also made available to CIOs and their creditors.

10.3 The impact on the Justice system is expected to be minimal. It is rare for civil or criminal cases to involve organisations or individuals specifically in their capacity as charities or charity trustees. There is no reason to expect any increase in the number of criminal prosecutions (charities and charity trustees are seldom prosecuted under existing legislation).

10.4 The Regulatory Policy Committee has confirmed that the CIO will not impose a cost on business. A validation impact assessment for the CIO has been prepared and is annexed to this Memorandum.

11. Regulating small business

11.1 These Regulations do not apply to small business.

12. Monitoring & review

12.1 Lord Hodgson of Astley Abbotts has undertaken a statutory review of the Charities Act 2006. Whilst the review did consider organisational forms, including the CIO, a full assessment of the CIO was not possible as the CIO had not been implemented when the review completed. Lord Hodgson did recommend swift implementation of the CIO.

12.2 There is a policy commitment to review the impact of the CIO framework within three years of commencement of these Regulations. The assessment will consider whether or not the CIO has met its aims of being relatively straightforward to establish and run.

13. Contact

Ben Harrison at the Office for Civil Society, Cabinet Office, Tel: 020 7271 6282 or email: ben.harrison@cabinet-office.gsi.gov.uk can answer any queries regarding this instrument.

STATUTORY INSTRUMENTS

2012 No.****

CHARITIES, ENGLAND AND WALES

The Charitable Incorporated Organisations (General) Regulations 2012

Made - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1

CONTENTS

PART 1
GENERAL

1. Citation and commencement
2. Interpretation: general
3. Interpretation: bodies corporate and associated bodies corporate
4. Interpretation: hard copy, electronic form and related expressions

PART 2
REGISTRATION

5. CIO not to be exempt
6. Application of registration provisions in 2011 Act
7. Applications for registration: communications with Commission
8. Applications for registration: information to be included
9. Applications for amalgamation: information to be included
10. Transfer of accounting records on amalgamation
11. Retention of accounting records after amalgamation
12. Interpretation

PART 3
CONSTITUTION

13. Matters to be provided for in constitution
14. Constitution not to restrict ability to dispose of property
15. Provision for entrenchment
16. Date of resolution amending constitution
17. Provision for entrenchment: statement of compliance
18. Effect of amendment of constitution on members

PART 4
CIO CAPACITY AND RELATED MATTERS

19. CIO contracts
20. Execution of documents
21. Execution of deeds
22. Execution of deeds or other documents by attorney
23. Common seal
24. Official seal for use abroad
25. Bills of exchange and promissory notes

PART 5
REGISTERS OF MEMBERS AND CHARITY TRUSTEES

26. Requirement to keep registers
27. Power of Commission to order rectification of register of members
28. Power of court to order rectification of register of members
29. Register of members to be evidence
30. Time limit for claims arising from entry in register of members

PART 6
CHARITY TRUSTEES: APPOINTMENT, POWERS AND DUTIES

31. Eligibility for appointment as charity trustee
32. Validity of acts of charity trustee
33. Delegation and appointment of nominees etc. by charity trustees
34. Duty not to accept benefits from third parties

PART 7
MEETINGS AND PROCEDURE

35. Notice of resolutions to be proposed at a general meeting
36. Charity trustee with personal interest in decision
37. Records to be kept of charity trustees' decisions
38. Charity trustee minutes as evidence
39. Charity trustee decision records as evidence
40. Power of court or Commission to order meeting
41. Records to be kept of members' decisions
42. Records as evidence of members' decisions
43. Records of decisions by sole member
44. Inspection of records of decisions and meetings
45. Records of resolutions and meetings of classes of members
46. CIO records

PART 8
SERVICE OF DOCUMENTS

47. Service of documents on CIO
48. Service of documents on charity trustees etc

DRAFT

PART 9
COMMUNICATIONS PROVISIONS

49. The CIO communications provisions
50. Sending or supplying documents or information
51. CIO's implied agreement to receive information in electronic form
52. Member's right to hard copy
53. Information sent by CIO: time of receipt
54. Commission's requirements as to form etc of document
55. Agreement with Commission to send by electronic means
56. Requirements for proper delivery to Commission
57. Commission's power to accept document not properly delivered
58. Replacement of document not properly delivered to Commission
59. Interpretation of the CIO communications provisions

PART 10
SUPPLEMENTARY PROVISIONS

60. Fraudulent trading
61. Pre-merger vesting declarations
62. Notes to CIO's accounts and statement

PART 11
CONSEQUENTIAL AMENDMENTS TO SECONDARY LEGISLATION

63. Consequential amendments to secondary legislation

SCHEDULE 1 — REGISTERS
PART 1 — REGISTER OF MEMBERS
PART 2 — REGISTER OF CHARITY TRUSTEES
PART 3 — MAINTENANCE OF AND ACCESS TO REGISTERS
PART 4 — INTERPRETATION
SCHEDULE 2 — DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A CIO
SCHEDULE 3 — COMMUNICATIONS BY A CIO
SCHEDULE 4 — CONSEQUENTIAL AMENDMENTS

The Minister for the Cabinet Office makes the following Regulations in exercise of the powers conferred by sections 42(2)(c), 206(3), 207(2)(b), 223, 246 and 347(3) of the Charities Act 2011(**a**).

In accordance with section 348(4) of that Act the Minister has consulted such persons and bodies of persons as he considers appropriate.

(**a**) 2011 c.25. Regulations under Part 11 of the Act (charitable incorporated organisations) are to be made by the Minister (section 247). For the definition of "the Minister" see section 353.

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 the twenty eighth day after the day on which they are made.

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(**a**) which is not a foundation CIO;

"benefit" has the meaning given by section 248 of the 2011 Act;

"the CIO communications provisions" has the meaning given by regulation 49;

"the Dissolution Regulations" means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012(**b**);

"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;

"working day" means a day that is not—

(c) a Saturday or Sunday;

(d) Christmas Day;

(e) Good Friday; or

(f) any day that is a bank holiday under the Banking and Financial Dealings Act 1971(**c**) in England and Wales.

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

(**a**) Section 204 of the 2011 Act provides that for the purposes of that Act "CIO" means charitable incorporated organisation.
(**b**) S.I. 2012/XXXX.
(**c**) 1971 c. 80. There are amendments to the Act not relevant to these Regulations.

(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(**a**),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.

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

(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."

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(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 a CIO to be constituted and registered).

(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 one or more CIOs makes an application for amalgamation and the proposed constitution of the new CIO includes a 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" has the meaning given by section 237(7) 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 may retire 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, and method by, which a member's membership of the CIO may or must be terminated; and

(c) the holding of a general meeting 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 of any body corporate who is a member of the CIO at such meetings;

(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) 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 and procedure).

(2) Provision for entrenchment may only be made—

(a) in the constitution proposed in the application for registration of the CIO as a charity; 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.

(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 same meaning as in regulation 20**.**

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) Subsection (3) of section 45 of the Companies Act 2006 (offence of failure to comply with requirements in relation to common seal) applies in relation to a failure by a charity trustee of a CIO in default to comply with paragraph (2) as it applies in relation to a failure by an officer of a company in default to comply with that section.

(4) For the purposes of determining whether a charity trustee of a CIO is in default for the purposes of section 45 of that Act, the following provisions of Part 36 of that Act (offences under the Companies Acts) apply subject to the modifications specified in paragraphs (8) and (9)—

(a) section 1121 (liability of officer in default);

(b) section 1122 (liability of company as officer in default).

(5) Subsection (4) of that section applies to a person who uses or authorises the use of a seal of a CIO which does not comply with paragraph (2) as it applies to a person who uses or authorises the use of a seal of a company which does not comply with that section.

(6) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Acts) apply 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).

(7) 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 to Scotland and Northern Ireland were omitted;

(d) references to the Secretary of State were omitted.

(8) In its application to CIOs section 1121 has effect as if subsection (2) were omitted.

(9) 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.".

(10) 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 2 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) apply to an order made under paragraph (4) as they apply to an order made under section 52(1) of that Act.

(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 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 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(**a**) ("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;

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

(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;

(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.

(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 be regarded as reasonably 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.

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 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) The minutes of the 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 duly held and convened;

(b) all proceedings at the meeting are treated as having duly taken place; and

(c) all appointments 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 purporting to be signed by a charity trustee of the CIO.

(4) The record of a decision of the members is evidence of the making of the decision if purporting 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,

he 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 the inspection of 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 known address.

(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 not a working day.

(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;

(b) these Regulations;

(c) 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.

(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)(**a**) applies in relation to a CIO as it applies in relation to a company, subject to the modifications in paragraph (3).

(2) The following provisions of Part 36 of the Companies Act 2006 (offences under the Companies Acts) apply 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 the business of a company there were substituted references to the activities of a CIO.

(c) for references to an officer of a company there were substituted references to a charity trustee of a CIO;

(d) provisions relating to Scotland and Northern Ireland were omitted;

(**a**) 2006 c.46.

(e) 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.

Name
Parliamentary Secretary
Date Cabinet Office

SCHEDULE 1

Regulation 26

REGISTERS

PART 1

REGISTER OF MEMBERS

Register of members

1.—(1) In a register of members there must be entered for each member of the CIO—

(a) the name of the member;

(b) a service address of the member;

(c) the date on which the person was registered as a member;

(d) if the CIO has more than one class of member, a statement of the class to which the member belongs; and

(e) the date on which the person ceased to be a member.

(2) For the purpose of sub-paragraph (1)(b) "The principal office of the CIO" may be entered as the service address.

(3) Every CIO having more than 50 members must keep the register in such a form as to constitute in itself an index.

Single member CIO

2.—(1) If a CIO has only one member there must be entered in the register, with the entry in the register relating to the sole member, a statement that the CIO has only one member.

(2) If the number of members of a CIO falls to one there must be entered in the register, with the entry in the register relating to the sole member, the date on which the CIO became a CIO having only one member.

(3) If the number of members of a CIO increases from one to two or more members there must be entered in the register, with the entry in the register relating to the sole member, the date on which the CIO ceased to be a CIO having only one member.

Removal of entries relating to former members after 10 years

3. An entry relating to a former member of a CIO may be removed from the register of members after the expiration of 10 years from the date on which that person ceased to be a member.

PART 2

REGISTER OF CHARITY TRUSTEES

Register of charity trustees

4.—(1) In a register of charity trustees there must be entered for each charity trustee of the CIO—

(a) the name of the charity trustee, including in respect of an individual any former name or names;

(b) a service address of the charity trustee;

(c) the date on which the person was registered as a charity trustee;

(d) if the CIO (being a foundation CIO) has more than one class of member, a statement of the class to which the charity trustee belongs;

(e) the date on which the person ceased to be a charity trustee.

(2) If the charity trustee is an individual "The principal office of the CIO" may be entered as the service address.

(3) If the charity trustee is a body corporate—

(a) the service address entered in the register must be the registered or principal office of the body corporate;

(b) company registration information for the body corporate must be entered in the register.

(4) If a person has been appointed interim manager of the CIO, there must be entered in the register—

(a) a statement that such a manager has been appointed under section 76 of the 2011 Act (suspension of trustees etc and appointment of interim managers); and

(b) the interim manager particulars.

Interpretation

5.—(1) In paragraph 4—

"company registration information" means—

(a) in the case of an EEA company to which the First Company Law Directive (68/151/EEC)(**a**) applies, particulars of—

(i) the register in which the company file mentioned in Article 3 of that Directive is kept (including details of the relevant state); and

(ii) the registration number in that register.

(b) in the case of a body corporate which is not an EEA company mentioned in paragraph (a), particulars of—

(aa) the legal form of the company or body corporate and the law by which it is governed; and

(bb) if applicable, the register in which it is entered (including details of the state) and its registration number in that register.

"interim manager particulars" means, in relation to a person appointed as interim manager under section 76 of the 2011 Act—

(ii) the person's name;

(iii) where the person appointed is a body corporate, the name of the individual responsible for dealing with all matters arising from the body corporate's appointment as interim manager;

(iv) the person's service address; and

(v) the date on which the person was appointed as interim manager.

(2) In paragraph (1)(a) "EEA company" means a company governed by the law of an EEA state(**b**).

(**a**) Directive of the Council on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community. OJ No L 65, 14.03.1968, p8.

(**b**) For the meaning of "EEA state" see the Interpretation Act 1978 (c.30), Schedule 1.

PART 3

MAINTENANCE OF AND ACCESS TO REGISTERS

Updating registers

6. The CIO must make an alteration to the register of members or register of charity trustees within 28 days of the date on which the event necessitating the alteration occurs.

Registers to be kept available for inspection

7. A CIO must keep a register maintained in accordance with this Schedule available for inspection at its principal office as it appears on the register of charities or, where the charity trustees pass a resolution to that effect, at any other address specified in the resolution.

Members register: rights of access

8.—(1) A member or charity trustee of the CIO is entitled on request to inspect or to be provided with a copy of all or part of the register of members where—

(a) the request is made for the purposes of carrying out the requester's duties as a charity trustee or member of the CIO; or

(b) the request is to inspect or to be provided with a copy of the entry in the register which is made for the requester.

(2) No other person is entitled to inspect or to be provided with a copy of the register kept by a CIO except as provided in sub-paragraph (3).

(3) A person is entitled on request to inspect or to be provided with a copy of all or part of the register of members if:

(a) in accordance with its constitution, some or all of the members of the CIO are liable to contribute to its assets if it is wound up;

(b) the CIO has been or is in the course of being wound up; and

(c) the request is made for the purposes of recovering a member's contribution.

(4) For the purposes of sub-paragraph (3), if not all of its members are liable to contribute to its assets if it is wound up, the entitlement is limited to those entries on the register that relate to members who are so liable.

(5) Where a CIO makes the register available for inspection or provides a copy other than in response to a request under sub-paragraph (1) it may require payment of such fee as the charity trustees may reasonably require in respect of the costs of complying with the request.

Trustees register: rights of access

9.—(1) Any person is entitled on request to inspect or to be provided with a copy of all or part of the register of charity trustees kept by the CIO.

(2) Where a CIO makes the register available for inspection or provides a copy in response to a request other than under sub-paragraph (3), it may require payment of such fee as the charity trustees may reasonably require in respect of the costs of complying with the request.

(3) A member or charity trustee of the CIO is entitled to inspect or to be provided with a copy of all or part of the register without payment of a fee where—

(a) the request is made for the purposes of carrying out the requester's duties as a charity trustee or member of the CIO; or

(b) the request is to inspect or to be provided with a copy of the entry in the register which is made for the requester.

Information relating to charity trustees: grounds for refusal

10.—(1) A CIO may refuse a request under paragraph 9 in relation to any entry in the register relating to a person who is or was a charity trustee if that person is affected by a dispensation from any reporting requirements under regulations 40 and 41 of the Charities (Accounts and Reports) Regulations 2008(**a**).

Information as to state of register

11.—(1) When a person inspects a CIO's register of members or register of charity trustees or is provided with a copy of the register or part of it, the CIO must provide that person with the information specified in sub-paragraph (2).

(2) The information to be provided is—

(a) the most recent date (if any) on which alterations were made to the register or to the relevant part of it; and

(b) confirmation either—

(i) that there are no further alterations to be made to the register or to the relevant part of it; or

(ii) if there are alterations to be made but which have not yet been made, that there are alterations to be made.

PART 4

INTERPRETATION

Names and former names

12.—(1) This paragraph applies for the purposes of paragraphs 1 and 4 of this Schedule.

(2) "Name" means, in relation to an individual, the individual's forename and surname.

(3) Despite paragraph (2), in the case of a peer or an individual usually known by a title, the title may be stated instead of, or in addition to the peer or individual's forename and surname.

(4) "Former name" means a name by which an individual was formerly known for business purposes but does not include—

(a) in the case of a peer or an individual normally known by a British title, a name by which the person was known previous to the adoption of or succession to the title;

(b) in the case of any person, a name that—

(i) was changed or disused before the person attained the age of 16 years; or

(ii) has been changed or disused for 20 years or more.

SCHEDULE 2

Regulation 50

DOCUMENTS AND INFORMATION SENT OR SUPPLIED TO A CIO

Application of this Schedule

1. This Schedule applies to documents or information sent or supplied to a CIO but not to documents or information sent or supplied by one CIO to another.

(**a**) S.I. 2008/629. There are amendments to the Regulations not relevant to these Regulations.

Communications in hard copy form: introduction

2. A document or information is validly sent or supplied to a CIO if it is sent or supplied in hard copy form in accordance with this Schedule.

Method of communication in hard copy form

3.—(1) A document or information in hard copy form may be sent or supplied by hand or by post to an address in accordance with paragraph 4.

(2) For the purposes of this Schedule, a person sends a document or information by post if the person posts a prepaid envelope containing the document or information.

Address for communications in hard copy form

4. A document or information in hard copy form may be sent or supplied—

(a) to an address specified by the CIO for the purpose;

(b) to the CIO's principal office as it appears on the register of charities.

Communications in electronic form: introduction

5. A document or information is validly sent or supplied to a CIO if it is sent or supplied in electronic form in accordance with this Schedule.

Conditions for use of communications in electronic form

6. A document or information may only be sent or supplied to a CIO in electronic form if—

(a) the CIO has agreed (generally or specifically) that the document or information may be sent or supplied in that form and the CIO has not revoked that agreement; or

(b) the CIO is treated by regulation 51 as having so agreed.

Address for communications in electronic form

7.—(1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address—

(a) specified for the purpose (generally or specifically) by the CIO; or

(b) treated by regulation 51 as being so specified.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be sent or supplied to an address to which, if it were in hard copy form, it could be validly sent in accordance with paragraphs 3 and 4.

SCHEDULE 3

Regulation 50

COMMUNICATIONS BY A CIO

Application of this Schedule

1. This Schedule applies to documents or information sent or supplied by a CIO, including documents or information sent or supplied by one CIO to another.

Communications in hard copy form: introduction

2. A document or information is validly sent or supplied by a CIO if it is sent or supplied in hard copy form in accordance with this Schedule.

Method of communication in hard copy form

3.—(1) A document or information in hard copy form must be—

(a) handed to the intended recipient, or

(b) sent or supplied by hand or by post to an address in accordance with paragraph 4.

(2) For the purposes of this Schedule, a person sends a document or information by post if the person posts a prepaid envelope containing the document or information.

Address for communications in hard copy form

4.—(1) A document or information in hard copy form may be sent or supplied by the CIO—

(a) to an address specified for the purpose by the intended recipient;

(b) to a person in their capacity as a member of the CIO at that person's address as shown in the CIO's register of members;

(c) to a person in their capacity as a charity trustee of the CIO at that person's address as shown in the CIO's register of charity trustees;

(d) to another CIO at its principal office as it appears on the register of charities.

(2) Where the CIO is unable to obtain an address falling within sub-paragraph (1), the document or information may be sent or supplied to the intended recipient's last address known to the CIO.

Communications in electronic form: introduction

5. A document or information is validly sent or supplied by a CIO if it is sent in electronic form in accordance with this Schedule.

Conditions for use of communications in electronic form

6. A document or information may only be sent or supplied by a CIO in electronic form to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form and the person has not revoked that agreement.

Address for communications in electronic form

7.—(1) Where the document or information is sent or supplied by electronic means, it may only be sent or supplied to an address specified for the purpose (generally or specifically) by the intended recipient.

(2) Where the document or information is sent or supplied in electronic form by hand or by post, it must be—

(a) handed to the intended recipient; or

(b) sent or supplied to an address to which, if it were in hard copy form, it could be validly sent in accordance with paragraphs 3 and 4.

Communications by means of a website: introduction

8. A document or information is validly sent or supplied by a CIO if it is made available on a website in accordance with this Schedule**.**

Agreement to use of website

9. A document or information may only be sent or supplied by the CIO to a person ("A") by being made available on a website if A—

(a) has agreed (generally or specifically) that the document or information may be sent or supplied in that manner, and has not revoked that agreement; or

(b) is treated as having so agreed under paragraph 10.

Implicit agreement of members to use of website

10.—(1) This paragraph applies to a document or information to be sent or supplied by a CIO to a person as a member of the CIO.

(2) To the extent that—

(a) the members of the CIO have resolved that the CIO may send or supply documents or information to members by making them available on a website; or

(b) the CIO's constitution contains provision to that effect,

a person in relation to whom the conditions in sub-paragraph (3) are met is treated as having agreed that documents or information may be sent or supplied to them in that manner.

(3) The conditions are—

(a) the person ("M") has been asked individually by the CIO to agree that the CIO may send or supply documents or information generally, or the documents or information in question, to M by means of a website; and

(b) the CIO has not received a response from M within the period of 28 days starting with the date on which the CIO's request was sent.

(4) M is not treated as having agreed if the CIO's request—

(a) did not state clearly what the effect of a failure to respond would be; or

(b) was sent less than 12 months after a previous request made to M for the purpose of this paragraph in respect of the same or a similar class of documents or information.

Availability of document or information on website

11.—(1) A document or information authorised or required to be sent or supplied by a CIO by means of a website must be made available in a form, and by a means, that the CIO reasonably considers will enable the intended recipient—

(a) to read it; and

(b) to retain a copy of it.

(2) For this purpose a document or information can only be read 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.

Notification of availability on website

12.—(1) The CIO must notify the intended recipient of—

(a) the presence of the document or information on the website;

(b) the address of the website;

(c) the place on the website where it may be accessed; and

(d) how to access the document or information.

(2) The document or information is treated as having been sent or supplied—

(a) on the date on which the notification required by this paragraph is sent; or

(b) if later, the date on which the document or information first appears on the website after the notification is sent.

Period of availability of website

13.—(1) The CIO must make the document or information available throughout—

(a) any period specified by any applicable charity law provision; or

(b) if no such period is specified, the period of 28 days starting on the date on which the notification required under paragraph 12 is sent to the person in question.

(2) For the purposes of this paragraph, a failure to make a document or information available on a website throughout the period mentioned in sub-paragraph (1) is to be disregarded if—

(a) it is made available on the website for part of that period; and

(b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to expect the CIO to prevent or avoid.

SCHEDULE 4

Regulation 63

CONSEQUENTIAL AMENDMENTS

Amendment of the Charities (Exception from Registration and Accounts) Regulations 1965

1. After sub-paragraph (c) of regulation 2 of the Charities (Exception from Registration and Accounts) Regulations 1965(**a**) insert—

"or

(d) a charitable incorporated organisation.".

Amendment of the Charities (Exception of Universities from Registration) Regulations 1966

2. In regulation 2 of the Charities (Exception of Universities from Registration) Regulations 1966(**b**), after "Charities Act 1960" insert "or a charitable incorporated organisation".

Amendment of the Charities (Misleading Names) Regulations 1992

3. In the Schedule to the Charities (Misleading Names) Regulations 1992(**c**)—

(a) after "Building society" insert "Charitable incorporated organisation"; and

(b) after "Royalty" insert "Sefydliad elusennol corfforedig".

Amendment of the Charities (Exception from Registration) Regulations 1996

4.—(1) The Charities (Exception from Registration) Regulations 1996(**d**) are amended as follows.

(2) In regulation 4—

(a) at the start of paragraph (2), insert "Subject to paragraph (4),"; and

(b) after paragraph (3), insert—

"(4) This regulation shall not apply to a charity which is constituted as a charitable incorporated organisation.".

(3) In regulation 5—

(a) at the start of paragraph (2), insert "Subject to paragraph (3),"; and

(b) after paragraph (2), insert—

"(3) This regulation shall not apply to a charity which is constituted as a charitable incorporated organisation.".

(**a**) S.I. 1965/1056.
(**b**) S.I. 1966/965.
(**c**) S.I. 1992/1901.
(**d**) S.I. 1996/180, amended by S.I. 2007/2655.

Amendment of the Charities (Exception from Registration) Regulations 2008

5.—(1) The Charities (Exception from Registration) Regulations 2008(**a**) are amended as follows.

(2) In regulation 2—

(a) at the start of paragraph (2), insert "Subject to paragraph (4),"; and

(b) after paragraph (3), insert—

"(4) This regulation does not apply to a charity which is constituted as a charitable incorporated organisation.".

Amendment of the Charities (Exception from Registration) Regulations 2010

6.—(1) The Charities (Exception from Registration) Regulations 2010(**b**) are amended as follows.

(2) In regulation 2 after "Subject to" insert "regulation 4 and to".

(3) In regulation 3 after "Subject to" insert "regulation 4 and to".

(4) After regulation 3 insert—

"(4) These Regulations do not apply to a charity which is constituted as a charitable incorporated organisation.".

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/XXX) and the Charitable Incorporated Organisations (Consequential Amendments) Order 2012 (S.I. 2012/XXX), build on provisions in Part 11 of the Charities Act 2011 ("the 2011 Act") relating to charitable incorporated organisations ("CIOs"). The provisions were originally in the Charities Act 1993 (as amended by the Charities Act 2006) but were consolidated in the 2011 Act.

The Regulations make provision for the registration, constitution and administration of CIOs, and in relation to CIOs generally.

Part 2 deals with issues to do with registration. A charity which would be exempt from registration with the Charity Commission, because it meets the criteria in Schedule 3 to the 2011 Act, cannot apply to be a CIO (regulation 5). The registration provisions in Part 4 of the 2011 Act apply to CIOs but with modifications (regulation 6): the register of charities must contain the name of every CIO, and other particulars as required or specified by the Charity Commission; the trustees of a CIO must notify the Charity Commission within 28 days of any changes; the registration of a CIO can be challenged on the grounds that the CIO is not a charity, but otherwise registration is conclusive proof of charity status. Although section 34 (removal of charities from register) is not applied to CIOs, provision is made in the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 for the Charity Commission to dissolve a CIO where it is not in operation or is no longer a charity. The Charity Commission can specify the form, authentication and means of communication of applications for registration, including specifying that applications must be made in a particular form, such as electronic (regulation 7). Where a CIO's constitution is to include provision for entrenchment (that is, a more onerous procedure for amending the constitution than would otherwise apply), this must be specified in the application for registration (regulations 8 and 9). Charity trustees applying to register a CIO formed by amalgamating two or more CIOs must confirm that the accounting records of the existing CIOs will be transferred to the new CIO (regulation 10).

(**a**) S.I. 2008/3268, amended by S.I. 2011/1725.
(**b**) S.I. 2010/502.

Part 3 deals with the constitution of a CIO. Regulation 13 makes provision for matters that must be covered by the constitution, over and above the requirements imposed on CIOs by section 206 of the 2011 Act. The matters include the names of the CIO's first trustees, provisions dealing with the appointment and retirement of trustees and members, procedures for the holding of meetings, use of proxies, voting rights and procedures, and electronic communications with members. Regulation 14 prevents a CIO from restricting its powers to dispose of property. Regulation 15 enables a CIO to include in its constitution provision for entrenchment, and sets out when and how it may do this. Regulation 16 stipulates the date on which a constitutional amendment takes effect, where the constitution does not deal with the point and the resolution to amend is made otherwise than at a general meeting of the CIO (if it is made at a general meeting, it takes effect on the date of the meeting (section 224 of the 2011 Act)). Where a CIO's constitution contains provision for entrenchment, any notice to the Charity Commission of an amendment to the constitution must be accompanied by a statement certifying that the amendment has been made in accordance with that provision (regulation 17). Unless individual members have agreed to it, no amendment can be made to the constitution that would increase members' liability to contribute on a CIO's winding up (regulation 18).

Part 4 makes provision as to how a CIO is to make contracts and execute documents and deeds, and as to the use of a common seal.

Part 5 concerns the maintenance of registers of charity trustees and members. The requirements depend on whether the CIO is a foundation CIO (where the same persons are its members and its charity trustees) or an association CIO (any other CIO). All CIOs are required to keep a register of charity trustees; an association CIO must also keep a separate register of members (regulation 26).

Parts 1 and 2 of Schedule 1 set out what information the registers must contain. Both members and trustees must provide an address where documents can be served on them, which need not be their residential address, and could be the address of the "principal office" of the CIO (the address of the CIO as recorded in the register of charities). Where a CIO has more than 50 members it must maintain its register of members in the form of an index, so that all entries relating to a particular member can be readily located. Part 3 of Schedule 1 provides that a CIOs must update its registers within 28 days of a change. The registers must be kept available for inspection (by those with rights of access) at the CIO's principal office, or, where the charity trustees have passed a resolution to that effect, at an alternative address.

Part 4 of Schedule 1 deals with rights of access to the registers. Members and charity trustees of a CIO have the right to inspect or be provided with a copy of the CIO's register of members where they want to see their own entry, or where the request is for the purposes of carrying out their duties as a member or charity trustee of the CIO. The register of members is only accessible to the public in limited circumstances. Any person has the right to inspect or be provided with a copy of the register of trustees, however. The CIO may charge a reasonable fee for allowing inspection or providing a copy of a register (other than for a trustee or member requesting their own entry or requesting for the purpose of carrying out their duties). The CIO may refuse access to an entry in a register of trustees if the Charity Commission has given a dispensation to withhold the personal details of the trustee in question.

The Charity Commission can order a CIO to rectify its register of members where it has determined that the membership of the CIO is different from that specified in the register (regulation 27); and the Court can order rectification of the register where it is not being kept up-to-date (regulation 28). The register of members is to be evidence of the matters in it (regulation 29), and there is a 10-year limit on claims against a CIO arising from entries on the register (regulation 30). For the purposes of each of these provisions, the register of trustees kept by a foundation CIO is treated as its register of members.

Part 6 deals with the appointment, powers and duties of charity trustees, including eligibility to be a charity trustee. It applies (with modifications) provisions of the Trustee Act 2000, so allowing the charity trustees of a CIO to appoint agents, nominees and custodians.

Part 7 sets out how a CIO is to call, conduct and record meetings of charity trustees and members.

Part 8 specifies how documents are to be served on CIOs and on the charity trustees of CIOs.

Part 9 deals with how documents are to be sent or supplied by or to a CIO, including how a CIO and the Charity Commission are to communicate with each other, where the communication is authorised or required for the purposes of any charity law provision. Documents and information can be sent or supplied in either hard copy or electronic form to a CIO (Schedule 2). Documents or information can be sent or supplied by a CIO (including between CIOs) in either hard copy or electronic form, including through a website (Schedule 3). The Charity Commission can specify its requirements as to the form of documents or information to be supplied to it by a CIO, and the manner in which a document or information is to be sent (regulation 54). Regulations 55 to 58 deal with other aspects of communications between a CIO and the Charity Commission.

It is a criminal offence for a CIO to undertake activities with the intent to defraud creditors or other third parties, or for other fraudulent purposes (regulation 60).

Regulation 61 makes it easier for an unincorporated charity to transfer property held on special trusts to a CIO by modifying the 2011 Act merger provisions. Where an existing unincorporated charity wishes to transfer all of its property to the CIO, property held on special trusts (including permanent endowment) can be transferred automatically to the CIO to be held on the same trusts, with the CIO appointed as corporate trustee of the property, and with a direction that they are to be treated as a single charity for the purposes of registration, accounts, reports and returns under the 2011 Act.

Where a CIO elects under section 133 of the 2011 Act not to prepare a full statement of accounts, but instead to prepare a receipts and payments account and a statement of assets and liabilities, regulation 62 requires it to provide certain additional information by way of notes to the statement of assets and liabilities.

Schedule 4 makes consequential amendments to secondary legislation to (i) enable the Charity Commission to require a charity that is not a CIO to change its name (under section 42 of the 2011 Act) if it includes in its name the words “charitable incorporated organisation” or the Welsh equivalent; and (ii) provide that no charity which is constituted as a CIO is excepted from registration.

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.