

This Statutory Instrument has been made in consequence of defects in S.I. 2020/710 and is being issued free of charge to all known recipients of that Statutory Instrument.

Regulations made by the Secretary of State, laid before Parliament under section 43 of the Corporate Insolvency and Governance Act 2020(a), for approval by resolution of each House of Parliament within forty days beginning with the day on which the instrument is made, subject to extension for periods of dissolution, prorogation or adjournment for more than four days.

STATUTORY INSTRUMENTS

2020 No. 856

CHARITIES, ENGLAND AND WALES

**The Charitable Incorporated Organisations (Insolvency and
Dissolution) (Amendment) (No. 2) Regulations 2020**

Made - - - - on 12th August 2020

Laid before Parliament on 13th August 2020

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 245 and 347(3) of the Charities Act 2011(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020.

(2) This regulation and regulation 2 come into force on the day after the day on which these Regulations are made.

(3) Regulations 3 to 7 come into force immediately after the coming into force of this regulation and regulation 2.

Revocation of the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020

2. The Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020(c) are revoked and each amendment made by those Regulations is reversed.

(a) 2020 c. 12.

(b) 2011 c. 25. Section 347 was amended by S.I. 2016/997, paragraph 25(2)(mm) of Schedule 2, and is temporarily amended by section 43 of the Corporate Insolvency and Governance Act 2020.

(c) S.I. 2020/710.

Amendment of the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012

3. The Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012(a) are amended as follows.

4.—(1) Regulation 9 (application not to be made if other procedures not completed) is amended as follows.

(2) In paragraph (1), before sub-paragraph (a) insert—

“(za) a moratorium is in force in relation to the CIO under Part A1 of the 1986 Act;”.

(3) In paragraph (1)(a), for “the 1986 Act” substitute “that Act”.

5.—(1) Paragraph 1 of Schedule 1 (application of the Insolvency Act 1986 to CIOs) is amended as follows.

(2) Sub-paragraph (2)(a) is amended as follows—

(a) before sub-paragraph (i) insert—

“(ai) sections A5, A15, A27 and A49 to A51;”;

(b) after sub-paragraph (iii) insert—

“(iiia) paragraphs 3 to 18 and 20 to 22 of Schedule ZA1;”;

(c) omit sub-paragraph (iv).

(3) In sub-paragraph (5), in substituted section 122(1) omit paragraph (d).

(4) In the table in sub-paragraph (7)—

(a) in the entry relating to section 4A (approval of arrangement), for the second column substitute “Omit subsections (5) and (5A).”;

(b) at the appropriate place insert—

“**Section A3** (Obtaining moratorium by filing documents)

Omit subsection (1)(b).

Section A7 (Beginning of moratorium)

Omit subsection (1)(c).

Section A9 (End of moratorium)

In subsection (3) omit “section A15 (extension by court in course of other proceedings).”.

Section A16 (Entry into insolvency procedure etc)

Omit subsections (1)(a) and (2).

Section A17 (Obligation to notify change in end of moratorium)

In subsection (1) omit entry 8 of the table.

Section A20 (Restrictions on insolvency proceedings etc)

Subsection (1)

Omit paragraph (b) and for paragraph (c) substitute:

“(c) a resolution for voluntary winding up under section 84(1) may be passed only if the resolution is recommended by the charity trustees,”.

Subsection (3)

For subsection (3) substitute:

“(3) For these purposes, “excepted petition” means a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.”.

(a) S.I. 2012/3013, amended by S.I. 2018/728, 2020/652 and 2020/710.

Section A21 (Restrictions on enforcement and legal proceedings)	Omit subsection (1)(b).
Section A22 (Floating charges)	In subsection (7) for “as defined by section A27”, in each place it occurs, substitute “as defined by section A31”.
Section A24 (Duty of directors to notify monitor of insolvency proceedings etc)	For subsection (2) substitute: “(2) The charity trustees must notify the monitor if, during a moratorium for the CIO, they recommend a resolution for voluntary winding up be passed under section 84(1).”.
Section A25 (Restrictions on obtaining credit)	In subsection (2)(b) omit “(in Scotland, hired)”.
Section A26 (Restrictions on grant of security)	Omit subsection (6).
Section A31 (Disposal of charged property free from charge)	
Subsection (11)	Omit “(as defined by section A27)”.
New subsection (12)	After subsection (11) insert: “(12) In this section— “collateral security” has the same meaning as in the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(a); “financial collateral arrangement” has the same meaning as in the Financial Collateral Arrangements (No.2) Regulations 2003(b); “market charge” has the same meaning as in Part 7 of the Companies Act 1989(c); “system-charge” has the meaning given by the Financial Markets and Insolvency Regulations 1996(d).”.
Section A32 (Disposal of hire-purchase property)	Omit subsection (7).
Section A42 (Challenge to monitor’s actions)	In subsection (2)(a) for “creditor, director or member” substitute “creditor or director”.
Section A43 (Challenges to monitor remuneration in insolvency proceedings)	In subsection (2)(c) omit “(or, in Scotland, the expenses)”.
Section A44 (Challenges to charity trustees’ actions)	In subsection (1) omit “or member”, and “or members” in both places.
Section A48 (Prosecution of delinquent officers of CIO)	
Subsection (3)	Omit paragraphs (b) and (c).
Subsection (4)	At end insert “as if the CIO were a company.”.
Subsection (8)	Omit paragraph (b).
Subsection (10)	Omit “, the Lord Advocate”.
Section A52 (Void provisions in floating charge documents)	In subsection (4) for “as defined by section A27”, in each place it occurs, substitute “as defined by section A31”.

(a) S.I. 1999/2979, amended by S.I. 2010/2993.

(b) S.I. 2003/3226.

(c) 1989 c. 40, section 173(1), amended by S.I. 1991/880, regulation 9, S.I. 2017/1064, regulation 3(1), 19(a)(i), (ii), 19(b).

(d) S.I. 1996/1469.

Section A54 (Interpretation)

Subsection (1)

In the definition of “unable to pay its debts” omit paragraph (b).

Subsection (3)

Omit subsection (3).

Section A55 (Regulations)

In subsection (2) omit “, unless they are made by the Scottish Ministers”.”;

(c) in the entry relating to section 432(4) (offences by bodies corporate), for the second column substitute “Omit the words “A27(1)” and “51, 53, 54, 62, 64, 66,””;

(d) at the appropriate place insert—

“SCHEDULE ZA1 (Eligible CIOs)

Paragraph 1

Omit the references to paragraphs 3 to 18.

Paragraph 2

For sub-paragraph (4) substitute:

“(4) In sub-paragraph (3)(g) “relevant petition” means a petition presented by the Attorney General or the Charity Commission under section 113 of the Charities Act 2011.”.”;

(e) omit the entries relating to Schedule A1 (moratorium where directors propose voluntary arrangements);

(f) in the entry relating to Schedule 10 (punishment of offences), in the second column, after “table,” insert “omit the entries relating to sections A27 and A48, and”.

Application of Schedule 4 to the Corporate Insolvency and Governance Act 2020

6. The reference to the Insolvency Act 1986(a) in paragraph 1(1) of Schedule 1 to the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 is to be treated as including Part 1, Part 2 (other than paragraph 6(2)) and Part 3 (other than paragraph 48(2) and (3)) of Schedule 4 to the Corporate Insolvency and Governance Act 2020(b) (moratoriums: temporary provision).

Transition

7.—(1) Nothing in these Regulations affects the operation of the Insolvency Act 1986 in relation to a moratorium for a CIO under Schedule A1 to that Act which came into force before the repeal of that Schedule by Schedule 3 to the Corporate Insolvency and Governance Act 2020.

(2) Accordingly, in relation to such a moratorium the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 have effect without the amendments made by these Regulations.

(3) References in this regulation to the Insolvency Act 1986 are to that Act as applied by the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

12th August 2020

Barran
Parliamentary Under Secretary of State
Department for Digital, Culture, Media and Sport

(a) 1986 c. 45. Schedule ZA1 of the Insolvency Act 1986 was inserted into that Act by section 1 and Schedule 1 of the Corporate Insolvency and Governance Act 2020.

(b) 2020 c. 12.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and supersede the Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations (S.I. 2020/710).

They amend the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012 (S.I. 2012/3013) (“the primary regulations”) to make the necessary modifications and substitutions consequent upon the application to Charitable Incorporated Organisations (“CIOs”) of the provisions regarding moratoriums made by the Corporate Insolvency and Governance Act 2020 (2020 c. 12).

The 2020 Act inserted a new Part A1 into the Insolvency Act 1986 (c. 45). Part A1 provides for a freestanding moratorium for companies and other eligible entities to facilitate their rescue from financial difficulty. Schedule 3, paragraph 49 of that Act amends the primary regulations to apply the provisions to CIOs, other than in relation to those CIOs that are (a) a private registered provider of social housing; or (b) registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).

Regulation 4 of this instrument amends regulation 9 of the primary regulations in order to provide that the charity trustees may not apply for dissolution of the CIO if a moratorium is in force.

Regulation 5 amends Schedule 1, paragraph 1 to make the necessary modifications and substitutions due to the application of the provisions to CIOs.

Regulation 7 makes transitional provision.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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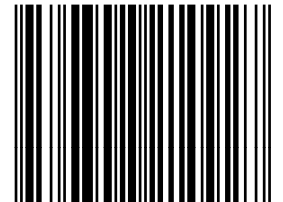
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