

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

237.—(1) For section 54 of that Act (community interest company becoming a charity) substitute—

“54 Ceasing to be a community interest company and becoming a charity

- (1) If a company is to cease to be a community interest company and become a charity—
 - (a) the company must by special resolution—
 - (i) state that it is to cease to be a community interest company,
 - (ii) make such alterations of its articles as it considers appropriate, and
 - (iii) change its name so that it does not comply with section 33;
 - (b) the conditions specified below must be met; and
 - (c) an application must be delivered to the registrar of companies in accordance with section 54C together with the other documents required by that section.
- (2) The conditions referred to in subsection (1)(b) are that—
 - (a) where no application under section 54A for cancellation of the special resolutions has been made—
 - (i) having regard to the number of members who consented to or voted in favour of the resolutions, no such application may be made, or
 - (ii) the period within which such an application could be made has expired, or
 - (b) where such an application has been made—
 - (i) the application has been withdrawn, or
 - (ii) an order has been made confirming the resolutions and a copy of that order has been delivered to the registrar.
- (3) Section 30 of the Companies Act 2006 (copies of resolutions to be forwarded to the registrar) applies to the special resolutions as follows—
 - (a) that section is complied with by forwarding copies of the resolutions together with the application in accordance with section 54C,
 - (b) copies of the resolutions must not be so forwarded before the relevant date, and
 - (c) subsection (1) of that section has effect in relation to the resolutions as if it referred to 15 days after the relevant date.
- (4) The relevant date is—
 - (a) if an application is made under section 54A for cancellation of the resolutions—
 - (i) the date on which the court determines the application (or if there is more than one application, the date on which the last to be determined by the court is determined), or
 - (ii) such later date as the court may order;
 - (b) if there is no such application—
 - (i) if having regard to the number of members who consented to or voted in favour of the resolutions, no such application may be made, the date on which the resolutions were passed or made (or, if the resolutions were passed or made on different days, the date on which the last of them was passed or made);

(ii) in any other case, the end of the period for making such an application.

54A Ceasing to be a community interest company and becoming a charity: application to court to cancel resolutions

(1) Where special resolutions have been passed with a view to a company ceasing to be a community interest company and becoming a charity, an application to the court for the cancellation of the resolutions may be made—

- (a) by the holders of not less in the aggregate than 15% in nominal value of the company's issued share capital or any class of the company's issued share capital (disregarding any shares held by the company as treasury shares);
- (b) if the company is not limited by shares, by not less than 15% of its members; or
- (c) by the holders of not less than 15% of the company's debentures entitling the holders to object to an alteration of its objects;

but not by a person who has consented to or voted in favour of the resolutions.

(2) The application—

- (a) must be made within 28 days after the date on which the resolutions were passed or made (or, if the resolutions were passed or made on different days, the date on which the last of them was passed or made), and
- (b) may be made on behalf of the persons entitled to make it by such one or more of their number as they may appoint for the purpose.

(3) On the hearing of the application the court shall make an order either cancelling or confirming the resolutions.

(4) The court may—

- (a) make that order on such terms and conditions as it thinks fit,
- (b) if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of the interests of dissentient members, and
- (c) give such directions, and make such orders, as it thinks expedient for facilitating or carrying into effect any such arrangement.

(5) The court's order may, if the court thinks fit—

- (a) provide for the purchase by the company of the shares of any of its members and for the reduction accordingly of the company's capital; and
- (b) make such alteration in the company's articles as may be required in consequence of that provision.

(6) The court's order may, if the court thinks fit, require the company not to make any, or any specified, amendments to its articles without the leave of the court.

54B Ceasing to be a community interest company and becoming a charity: notice to registrar of court application or order

(1) On making an application under section 54A (application to court to cancel resolutions) the applicants, or the person making the application on their behalf, must immediately give notice to the registrar of companies. This is without prejudice to any provision of rules of court as to service of notice of the application.

(2) On being served with notice of any such application, the company must immediately give notice to the registrar.

(3) Within 15 days of the making of the court's order on the application, or such longer period as the court may at any time direct, the company must deliver to the registrar a copy of the order.

(4) If a company fails to comply with subsection (2) or (3) an offence is committed by—

- (a) the company, and
- (b) every officer of the company who is in default.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale and, for continued contravention, a daily default fine not exceeding one-tenth of level 3 on the standard scale.

54C Ceasing to be a community interest company and becoming a charity: application and accompanying documents

(1) An application to cease to be a community interest company and become a charity must be accompanied by—

- (a) a copy of the special resolutions,
- (b) a copy of the company's articles as proposed to be amended, and
- (c) the statement required by subsection (2).

(2) The statement required is—

- (a) where the company is to become an English charity, a statement by the Charity Commission that, in its opinion, if the proposed changes take effect the company will be an English charity and will not be an exempt charity;
- (b) where the company is to become a Scottish charity, a statement by the Scottish Charity Regulator that if the proposed changes take effect the company will be entered in the Scottish Charity Register;
- (c) where the company is to become a Northern Ireland charity, a statement by the Commissioners of Her Majesty's Revenue and Customs that the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988.

(3) In subsection (2)(a) “exempt charity” has the same meaning as in the Charities Act 1993 (see section 96 of that Act).

(4) On receiving an application to cease to be a community interest company and become a charity, together with the other documents required to accompany it, the registrar of companies must (instead of recording the documents and entering a new name on the register)—

- (a) forward a copy of each of the documents to the Regulator, and
- (b) retain the documents pending the Regulator's decision.”.

(2) For section 55 of that Act (becoming a charity: decisions etc) substitute—

“55 Ceasing to be a community interest company and becoming a charity: decision by Regulator

(1) The Regulator must decide whether the company is eligible to cease being a community interest company.

(2) A company is eligible to cease being a community interest company if it has complied with sections 54 and 54C and none of the following applies—

- (a) the Regulator has under section 43 appointed an auditor to audit the company's annual accounts and the audit has not been completed,

Changes to legislation: *There are currently no known outstanding effects for the The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, Paragraph 237. (See end of Document for details)*

- (b) civil proceedings instituted by the Regulator in the name of the company under section 44 have not been determined or discontinued,
 - (c) a director of the company holds office by virtue of an order under section 45,
 - (d) a director of the company is suspended under section 46(3),
 - (e) there is a manager in respect of the property and affairs of the company appointed under section 47,
 - (f) the Official Property Holder holds property as trustee for the company,
 - (g) an order under section 48(2) or (3) is in force in relation to the company,
 - (h) a petition has been presented for the company to be wound up.
- (3) The Regulator must give notice of the decision to the registrar of companies (but the registrar is not required to record it).

**55A Ceasing to be a community interest company and becoming a charity :
consequences of Regulator's decision**

- (1) If the Regulator gives notice of a decision that the company is eligible to cease being a community interest company, the registrar of companies must—
- (a) proceed in accordance with section 80 of the Companies Act 2006 (change of name: registration and issue of new certificate of incorporation), and
 - (b) if the registrar enters the new name of the company on the register, retain and record the documents mentioned in section 54C(4).
- (2) The new certificate of incorporation must state—
- (a) that it is issued on the company's ceasing to be a community interest company, and
 - (b) the date on which it is issued.
- (3) On the issue of the certificate—
- (a) the changes in the company's name and articles take effect, and
 - (b) the company ceases to be a community interest company.
- (4) If the Regulator decides that the company is not eligible to cease being a community interest company, the company may appeal to the Appeal Officer against the decision.”.

Changes to legislation:

There are currently no known outstanding effects for the The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009, Paragraph 237.