

**ETI COMMITTEE QUERY MEMO - RESPONSE TO THE ETI COMMITTEE
CHAIRPERSON QUERIES IN RELATION TO CLAUSE 1 OF THE CREDIT
UNIONS AND CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES BILL**

The Committee asked the Department for the following information:

- (a) At Annex C of the Department's response to the Committee (31st July 2015) HMT states that, in the UK, credit unions can lend to unincorporated associations but the account will be in the name of an individual who will represent the association. Does the Assembly have the power to legislate, if it wishes to do so, in order to make separate provisions for Northern Ireland? Does the Assembly have the power to legislate to permit unincorporated bodies to join a credit union and hold an account in the name of the entity itself?**
- (b) In a response to a Committee query on corporate membership (30th January 2015) the Department referred to a risk raised by the Prudential Regulation Authority, of lending to unincorporated groups and the legal liability when they do not have a legal identity. The Department stated that this could lead to a situation where a credit union is unable to recover monies owed, or increase the legal costs of recovery. The ILCU and UFCU seem to be willing to live with this risk. Clause 1 of the Bill provides that the number of corporate members of a credit union must not exceed 10% of the total members and shares in a credit union allotted to corporate members must not exceed 25% of all shares. Given these provisions and the willingness of the credit union sector to live with the risks, what analysis has the Department undertaken of the extent of the risk? Has the Department given any consideration to including other provisions such as limiting the percentage of total lending which can be made to unincorporated members?**
- (c) In the same response to the Committee (30th January 2015) the Department stated that, in the RoI, unincorporated associations can be admitted as members in their own right, but with a detailed validation process to establish the signatories who will operate that account with a similar process when there is a change in signatory. What consideration did the Department give to including similar provisions in the Bill? Were there any problems identified in relation to the process in the RoI and, if not, why were provisions for a similar process not included in the Bill?**

In answer to these questions the Department would advise that:

- (a) Does the Assembly have the power to legislate, if it wishes to do so, in order to make separate provisions for Northern Ireland? Does the Assembly have the power to legislate to permit unincorporated bodies to join a credit union and hold an account in the name of the entity itself?**

The legislation relating to credit unions is a transferred matter and therefore can be legislated for by the NI Assembly. The Assembly has the power to legislate to permit

unincorporated bodies to join a credit union and hold an account in the name of the entity itself.

However, account has to be taken of the risks involved such as legal liability when unincorporated bodies do not have a legal identity. As advised in the Department's letter to the Committee on 30 January 2015, this could well lead to a situation where a credit union is unable to recover monies owed, or increase the legal costs of recovery. Additionally, as advised in the Department's 8 April 2015 letter to the Committee, the Financial Services Compensation Scheme (FSCS) would not issue a payment to the unincorporated body if a credit union failed (but will to a named entity as provided for in the current draft Bill). In the period since this legislation has been developed by DETI (2012-2015), six credit unions in Northern Ireland have failed and the latest failure involved unauthorised lending.

(b) What analysis has the Department undertaken of the extent of the risk? Has the Department given any consideration to including other provisions such as limiting the percentage of total lending which can be made to unincorporated members?

Paragraph 9 of Schedule 1 to the Bill provides that a credit union may make a loan to a 'corporate member' only if the credit union's rules provide and subject to a 10% limit on loans made to 'corporate members'. The 10% limit is based on the total amount of the outstanding balances on all loans made by the credit unions to members. A 'corporate member' is:

- a body corporate;
- a partner acting for a partnership; and
- an officer or member of the governing body acting for an unincorporated association.

On the basis of this 10% limit and the current total NI credit union lending of £509m, the possible exposure of NI credit unions to such authorised lending would be c. £57m.

Allowing unincorporated membership is a step change in itself and DETI, following discussions with HM Treasury (HMT), the Prudential Regulation Authority (PRA) and the FSCS, believes that to create further risk at this stage would be imprudent but is open to review this position in the future. DETI has committed to the ILCU and the UFCU that we will work with them to discuss further changes with HMT, the PRA and the FSCS after this Bill comes into force.

(c) What consideration did the Department give to including provisions similar to the R of I in the Bill? Were there any problems identified in relation to the process in the RoI and, if not, why were provisions for a similar process not included in the Bill?

The Irish League of Credit Unions (ILCU) and Ulster Federation of Credit Unions (UFCU) raised concerns about the administrative burden that opening and closing of accounts would create when a change of the representative member acting for an unincorporated association occurred. The ILCU advised that in ROI, where

unincorporated associations can be admitted as members in their own right, the account name was held in the name of the association.

It was with a view to addressing that administrative concern that consideration was given to the legislation governing credit unions in the Republic of Ireland - the Credit Union Act 1997 (the 1997 Act).

Section 17(7) of the 1997 Act deals with unincorporated associations becoming members of a credit union. This states:

'(7) Notwithstanding any other provision of this Act, a body (whether incorporated or unincorporated), the majority of the members of which are, and continue to be, eligible for membership of a credit union may itself be admitted to, and retain membership of, that credit union, with the same rights and obligations as a natural person.'

On inspection of that legislation it was noted that it did not give any detail about the practical effect or operation of corporate membership, with unincorporated associations being treated as having a legal personality, even though under the general law they do not. That is to say, although the Act states that unincorporated associations may be treated as members of the credit union, it does not say how in practice this will be accomplished as regards the exercise of rights and obligations of membership or the making or enforcement of loans. In particular, it does not address the question of who loan advances will be made to, or who will be liable to make loan repayments, given that an unincorporated association is not a legal person and cannot be pursued in legal proceedings in the event of default.

Given this lack of detail in the ROI legislation, the preferred way forward for Northern Ireland was to have the more comprehensive drafting approach in relation to 'corporate members' establishing a direct connection between the credit union and the 'corporate member'. The aim is to make the law clearer and more accessible to users.

There will always be some administrative burden irrespective of legislative structure, and the Committee's suggested alternative of unincorporated membership, as seen in ROI, is similarly burdensome. Added to the lack of substantive administrative benefits are the prudential risks that have been stressed by the PRA.

The Bill will permit either the transfer of rights and liabilities from one representative to another or the opening and closing of accounts with the aim of easing the associated administrative burden.

The Department, through discussions with sectoral regulators, is content that the current proposal allows credit unions to expand activities but ensures that it minimises risk to members.

**Reply prepared by: Business Regulation Division
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