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Credit Unions and Co-operative and Community Benefit Societies

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The following paper provides an overview of the Credit Unions and Co-operative and Community Benefit Societies Bill (the Bill). It looks at the purpose of each clause in the Bill and provides a brief commentary on the clauses.

Key Points

The following paper provides an overview of the Credit Unions and Co-operative and Community Benefit Societies Bill.

The Bill seeks to amend two existing pieces of legislation - the Credit Unions (Northern Ireland) Order 1985 and the Industrial and Provident Societies Act (Northern Ireland) 1969.

The majority of clauses received the support of stakeholders at consultation stage.

The credit union trade bodies, the Irish League of Credit Unions and the Ulster Federation of Credit Unions, have expressed some concerns about Clause 1 which will enable Credit Unions to admit 'corporate members'. The bodies are concerned with the differing treatment of the groups that make up the corporate member category in the Clause as currently drafted – the Clause holds that bodies corporate are allowed to become members of credit unions in their own right, whilst partnerships and unincorporated associations must be represented by an individual acting on behalf of the organisation.

The Department of Enterprise, Trade and Investment have stated that this is due to distinction in legal status for each type of organisation – where bodies corporate are legal entities, partnership and unincorporated bodies are not.

Both the Irish League of Credit Unions and the Ulster Federation of Credit Unions would welcome an amendment to this clause to enable corporate member accounts of partnerships and unincorporated organisations to be held in the name of the group rather than the individual representing them.

Executive Summary

The following paper provides an overview of the Credit Unions and Co-operative and Community Benefit Societies Bill.

The Bill itself is divided into two main parts. The first deals with changes to credit unions legislation. The Clauses contained in this part seek to amend the Credit Unions (Northern Ireland) Order 1985. The second part of the bill includes clauses that will amend the Industrial and Provident Societies Act (Northern Ireland) 1969.

Part 1 of the bill contains seven clauses.

Clause 1 will enable Credit Unions to admit ‘corporate members’. ‘Corporate members’ include bodies corporate (including incorporated partnerships), individuals acting as a partner in a partnership, and individuals acting as representatives of an unincorporated organisation.

This clause has been broadly welcomed by the Irish League of Credit Unions and Ulster Federation of Credit Unions. Both organisations have expressed concern over the different treatment of the groups that make up the corporate member category – with bodies corporate allowed to become members of credit unions in their own right, whilst partnerships and unincorporated associations must be represented by an individual acting on behalf of the organisation.

The Department of Enterprise, Trade and Investment (the Department) have stated that this is due to distinction in legal status for each type of organisation – where bodies corporate are legal entities, whilst partnership and unincorporated bodies are not.

Both the Irish League of Credit Unions and the Ulster Federation of Credit Unions would welcome an amendment to this clause to enable corporate member accounts of partnerships and unincorporated organisations to be held in the name of the group rather than the individual representing them.

Clause 2, if enacted, will remove the limit – currently set at 10% of total membership – on the number of ‘non-qualifying members’ that cease to have the required qualifications for membership (that is members who no longer meet the ‘common bond’). This has been welcomed by both the Irish League of Credit Unions and the Ulster Federation of Credit Unions and received ‘broad support’ during the consultation process.

Clause 3 will enable CUs to offer interest-bearing shares. The Irish League of Credit Unions thought the clause ‘beneficial’. The Ulster Federation of Credit Unions noted that there was ‘no appetite’ for this change amongst its membership, but had ‘no objection’ to the inclusion of the clause.

Clause 4, if enacted, would require ‘*credit unions to include in the terms of a loan a statement*’ which sets out which shares are attached (and therefore un-withdrawable)

and which shares are unattached (and therefore withdrawable) over the loan period. The proposal, on which Clause 4 is based, was supported or not opposed by 16 of 25 responses.

Clause 5 allows credit unions to charge £5 to non-members seeking a copy of their rules (the existing charge is £1). Furthermore, it holds that credit union members must receive an initial copy of the rules for free. Credit unions may then charge £5 for each additional copy. According to DETI's summary of consultation response 23 of the 24 respondents who addressed this issue were in favour of, or had no objections to, the increase to £5 for provision of a copy of the rules. Similarly, 24 of 27 respondents were in favour of, or had no objections to, giving members the right to a free copy of the rules. It was felt that the present charge did not sufficiently reflect the cost of providing a copy of rules.

Clause 6 removes the minimum amount of dividend to be paid (3%) before surplus funds of a Credit Union are directed towards social, cultural or charitable purposes. It will still require that a dividend be paid to members before surplus funds are used for such purposes. The proportion of surplus that may be used for these purposes continues to be capped at 10% of total surplus. According to the Department responses to the Bill consultation show 'near unanimous support from respondents for this proposal'.

Clause 7 will insert a new clause into the Company Directors Disqualification (Northern Ireland) Order 2002 ensuring that the Order will apply to Credit Unions. There was unanimous support for this proposal from respondents to the consultation, who noted that it would close a loophole.

Part 2 of the bill contains six clauses.

Clause 8 introduces the new names 'co-operative societies' and 'community benefit societies' into the 1969 Act. It requires all new societies to be registered as cooperative or community benefits societies and amends the short title or title of existing Industrial and Provident Societies legislation to reflect the new names. The majority of respondents to consultation were in support of this proposal. Those who were not in favour noted that loss of an umbrella term, which could in future encompass additional forms of commercial enterprise.

Clause 9 allows individuals aged under 18 to be a member of a registered society (with no lower limit) and allows members aged 16 and over to '*execute all instruments and give all receipts necessary to be executed or given under a society's register rules*'. Clause 9 also reduces the minimum age at which a person can hold office in a registered society from 18 to 16. The majority of respondents to the consultation on this clause supported both the changes to minimum age of membership and the reduction in the age at which a person can hold office in a registered society.

Clause 10 increases the £20,000 limit on the amount of withdrawable share an individual can hold to £100,000 and removes it entirely for non-withdrawable shares. In their summary of consultation response, the Department notes that the proposal received support from all but one respondent.

Clause 11 allows societies to choose their own accounting year-end by notification to the registrar. According to the Department, 5 out of 6 consultation respondents were supportive of this change.

Clause 12 will allow a society to publish an unaudited interim revenue account or unaudited balance sheet; provided that it is published with the latest audited year end revenue account and balance sheet, and marked as unaudited. This received unanimous support from consultation respondents.

Clause 13 will enable dormant societies to be dissolved by special resolution. This amends the current situation where dormant societies may only be dissolved by an instrument of dissolution signed by no fewer than three quarters of the membership. Respondents to the consultation had mixed opinions on this clause with 3 out of 6 in favour. Concerns were expressed by some respondents about easier dissolution. The Department has sought to reassure these concerns by ensuring that this new procedure will not be permitted for active, productive Industrial and Provident Societies.

Schedule 1 deals with minor and consequential amendments. These concern changes to existing Credit Union legislation in relation to corporate members and the amendment of a range of legislation to reflect the change in name of Industrial and Provident Societies, to Co-operative and Community Societies.

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1 Introduction

The following paper provides an overview of the Credit Unions and Co-operative and Community Benefit Societies Bill (the Bill). It looks at the purpose of, and provides a brief commentary on, each clause in the Bill.

The Bill itself is divided into two main parts. The first deals with changes to credit unions (CUs) legislation. The Clauses contained in this part seek to amend the Credit Unions (Northern Ireland) Order 1985 (the 1985 Order).

The second part of the bill includes clauses that will amend the Industrial and Provident Societies Act (Northern Ireland) 1969 (the 1969 Act). One of the purposes of the bill is to require all new Industrial and Provident Societies (IPSs) to register as Co-operative and Community Benefit Societies. For the purposes of this paper the term used to refer to these societies is IPS.

The commentary on the clauses throughout this paper is sourced from:

- Committee for Enterprise, Trade and Investment evidence sessions with the Department for Enterprise, Trade and Investment (DETI), the Irish League of Credit Unions (ILCU) and the Ulster Federation of Credit Unions (UFCU);
- DETI's consultation on the bill, the responses to this consultation and DETI's summary of these responses; and
- The Credit Unions and Co-operative and Community Benefit Societies Bill Explanatory Memorandum.

DETI consulted on policy proposals that form the basis of the Bill between June and September 2013. There were 37 responses to this consultation, 20 came from individual CUs and 2 from individual IPSs. Other responses were received from trade bodies, political parties and other interested parties. Not all respondents addressed each of the policy proposals.

Definitions

Credit unions are non-profit making financial institutions based on cooperative values. The Credit Unions (Northern Ireland) Order 1985 states that credit unions should have the following objectives:

- The promotion of thrift among members by the accumulation of their savings;
- The creation of sources of credit for the benefit of members and a reasonable rate of interest;
- The control and use of members savings for their mutual benefit; and
- The training and education of members in the wise use of money in their financial affairs.

A society may be registered as **industrial and provident societies** under the Industrial and Provident Societies Act (Northern Ireland) 1969 *'if it is formed for the purpose of carrying on any industry, business or trade and it satisfies the Registrar that either it is a bona fide co-operative society or, that its business is to be conducted for the benefit of the community'*.

In Northern Ireland DETI is the registering authority for societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1985. Responsibility for the regulation of credit unions is the responsibility of the Prudential Regulatory Authority and the Financial Conduct Authority since 31 March 2012.

2 Part 1 – Clauses introducing changes to credit union legislation

2.1 Clause 1: Corporate members of credit unions

2.1a Purpose

Clause 1 proposes amending the 1985 Order to allow CUs to admit 'corporate members', a catch-all term used to refer to:

- A body corporate, which includes partnerships set up as bodies corporate (a limited liability partnership for example);
- An individual acting in the capacity as a partner in a partnership; and
- An individual acting in the capacity as an officer or member of the governing body of an unincorporated association.¹

The clause will also amend the 1985 Order to the effect that it permits CUs to admit corporate members *'when provided for in their rules'*. That is, when the credit union

¹ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 1

makes provision for the admission of corporate members in their own rulebook. It also places certain limits on the number of corporate members allowed and the proportion of shares they can hold, specifically:

- The number of corporate members must not exceed 10% of total members; and
- The number of shares allotted to corporate members must not exceed 25% of total allotted shares.²

The clause would also give the Department of Enterprise, Trade and Investment the power to amend these limitations by order.³

2.1b Commentary

In its *Report on the Committee's Inquiry into the Role and Potential of Credit Unions in Northern Ireland* (2009) the Committee for Enterprise, Trade and Investment (CETI) recommended that CU membership be extended to include group membership, stating that they could:

*...see no reason why membership of credit unions should not be extended to allow couples, community and voluntary groups and societies and social enterprises to open accounts. There is obvious desire from the credit union movement to move in this direction. The demand for group membership is confirmed by the ILCU and no opposition has been expressed by any stakeholders. The BBA has stated that it sees no objections, challenges or difficulties.*⁴

Clause 1 will enable CUs to admit bodies corporate, individuals acting for partnership, and individuals acting for unincorporated bodies as members. The Clause treats the individual categories of organisation that fall within the 'corporate members' grouping differently. Bodies corporate may become members of CUs in their own right, whilst partnerships and unincorporated associations must be represented by an individual acting on behalf of the organisation. The reasoning behind this is the distinction in legal status for each type of organisation. An organisation with an incorporated legal form (bodies corporate), such as limited company or a partnership limited by guarantee, has a separate legal personality. In other words, the organisation is a legal entity in its own right. For example, a limited company (by either shares or guarantee) is considered as a legal person; as such, its debts and contracts belong to the company itself. In addition, the personal assets of members are not held liable should the company

² *Ibid*

³ *Ibid*

⁴ Northern Ireland Assembly, Committee for Enterprise, Trade and Investment *Report on the Committee's Inquiry into the Role and Potential of Credit Unions in Northern Ireland* (First Report) Session 2008/09
http://archive.niassembly.gov.uk/enterprise/2007mandate/reports/report05_08_09r.htm

become insolvent. Unincorporated organisations, such as partnerships, sole traders, and unincorporated associations, do not enjoy a separate legal identity.⁵

The Department, in evidence to CETI, stated that Clause 1 had *'probably been the most difficult, and taken the longest, to resolve'*. The Clause, as currently stands is the result of a process involving the Department, Treasury, the Financial Conduct Authority, the Prudential Regulation Authority, the Department for Business, Innovation and Skills and the Financial Services Compensation Scheme. The outworkings of this process are, in the Department's view, *'probably the most effective, and possibly the only, way that we could put this [the membership of groups] into practice in legislation'*.⁶

Commenting on this distinction in the legislation the Department stated:

*The problem is that unincorporated associations do not have a legal personality in law. They cannot, for example, borrow money or hold land, and that is risky for credit unions. Say, a credit union lends money to a sports club, which is, of course, unincorporated, and the club defaults on that loan, an unincorporated association cannot be sued to repay the money. So, unless a named individual is the account holder, it could be extremely risky for credit unions.*⁷

They argue that the Clause, as currently framed on the subject of unincorporated associations *'provides some assurance for credit unions, in that an individual can be pursued through the courts'*. The Department has also:

...made a commitment in February [2015], when we met the Irish League of Credit Unions and the Ulster Federation of Credit Unions that, although this is where we are at present, we would continue to press bodies across the water and, if necessary, and if trade bodies thought that it would be useful, set up meetings. We would certainly accompany them to those to try to move this forward as much as possible.

*One of our main issues is that what we are pressing for is unique to Northern Ireland. When we spoke to the Financial Services Compensation Scheme, for example, it did not see there being as big a risk as perhaps others thought.*⁸

Whilst broadly satisfied with the Bill, and *'anxious to see it enacted in a timely manner'*, the Irish League of Credit Unions (ILCU) has expressed some concern about the requirement for partnerships and unincorporated bodies to be registered in the name of

⁵ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁶ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Department for Enterprise, Trade and Investment (16 June 2015) <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14203&evidID=7812>

⁷ *Ibid*

⁸ *Ibid*

an individual, rather than the name of the body itself. The ILCU explained their position to the Committee as follows:

I understand that unincorporated members do not have legal personalities, so there is an argument that the account would not be in the name of an entity that does not have legal personality. As we understand it, that is the rationale that is being put forward. For example, the Irish League of Credit Unions is an unincorporated association, and we can open bank accounts in our own name. As Brian mentioned, there is a conflict between the banks, on the one hand, being allowed to open accounts in the name of an unincorporated entity, whereas, on the other hand, credit unions are seen not to be able to do it.

It also appears that the issue is around lending. What we are perceiving from the officials is, and it is true, if you are lending to an unincorporated body, there is an issue there about the ability to enter into a contract and, in turn, an enforceable loan, but, for the most part, a lot of those members are simply putting money into the account and depositing shares. On that basis, we do not see a particular issue around accepting the account in the name of the unincorporated association for the purposes of taking in deposits and shares.

On the lending side, that would have to be dealt with separately, and you would perhaps have somebody who would be individually accountable for repayment of the loan. As we said, we are anxious to get the Bill passed, because, as we mentioned, it has taken quite a long time. We received a commitment from DETI that the structure on which the accounts are opened could be relooked at. It was disappointing to us that there could not be a solution that would allow the name to be in the name of the unincorporated association.⁹

The Ulster Federation of Credit Unions also expressed concern in evidence to the Committee:

We are really concerned about that area. We feel that it brings credit unions into an area where they are seen to be second-class product providers and service providers... Initially, when we saw that it was in the legislation, we welcomed it, but then we saw how it had been put forward. For example, in a local town, say in Cookstown, you might have John Thompson the butcher, and, for years, his chequebook has been John Thompson trading as Thompson's Butcher. His suppliers are used to seeing that, everything is fine and it is accepted as a business account. We are expected to open the account not in the name of John Thompson trading as Thompson's Butcher

⁹ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Irish League of Credit Unions (30 June 2015)
<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14419&evidID=7853>

*but in the name of John Thompson. That sends out the wrong signal to the marketplace. It suggests to his suppliers that he cannot get a proper bank account and therefore has ended up in the credit union. There is still a public perception that credit unions are not as good as banks, and nothing could be further from the truth. Credit unions have a key role to play in supporting the SME sector in Northern Ireland. We still lend money on the basis of a relationship and on the basis of common sense, and we will not rule someone out because a credit score says that they are not worthy of consideration. The local people still make the decision, and that is the ethos of credit unions. People are there to help each other at a local level, and we feel that this is the wrong way forward. Banks can open accounts in the name of the organisation and so should credit unions.*¹⁰

Both organisations have met with Treasury on the issue. In evidence to the Committee, the UFCU noted that the Treasury had been:

*...advised by an all-party committee of MPs that, in turn is advised by one of the major trade bodies in England, the Association of British Credit Unions (ABCUL)... We are concerned that the advice from that all-party group is based on the experiences in England rather than the experiences in Ireland, which is a much more mature credit union organisation. We made that clear to the Treasury official, and they accepted what we were saying and will have further discussions with us about that.*¹¹

The ICLU have also met with Treasury and have expressed concern that the proposals in the Credit Unions and Co-operative and Community Benefit Societies Bill have been transferred across from similar legislation in GB. They also note that the Treasury expressed a willingness to look at the matter again.¹²

Both the ILCU and UFCU were supportive of CETI seeking amendment to this clause during the Committee stage of the Bill.¹³

¹⁰ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Ulster Federation of Credit Unions (30 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14420&evidID=7853>

¹¹ *Ibid*

¹² Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Irish League of Credit Unions (30 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14419&evidID=7853>

¹³ *Ibid* and Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Ulster Federation of Credit Unions (30 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14420&evidID=7853>

2.2 Clause 2: Removal of restriction on non-qualifying members of a credit union

2.2a Purpose

Clause 2, if enacted, will remove the limit – currently set at 10% of total membership – on the number of ‘non-qualifying members’ that cease to have the required qualifications for membership (that is members who no longer meet the ‘common bond’).¹⁴

2.2b Commentary

Membership of a CU is restricted to those who share a ‘common bond’ with all other members. The Credit Unions (Northern Ireland) Order 1985 (Article 3(4)) defines common bonds as persons:

- Following a particular occupation;
- Residing or being employed in a particular;
- Being employed by a particular employer;
- Being a member of a bona fide organisation or being otherwise associated with other members of the society for a purpose other than that of forming a society to be registered as a credit union; and/or
- Any other common bond for the time being approved by the registrar.¹⁵

Currently, the 1985 Order permits CUs to retain as members individuals who no longer meet the original common bond criteria – for example, a person who has moved away from their home area but wishes to retain membership of the CU in that area.¹⁶ The Order restricts the proportion of such members of a CU to 10% of total membership. Clause 2 will remove this restriction.

This reflects changes brought in by the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 (LRO) in GB. The LRO removed the 10% restriction on GB CUs, and allowed GB credit unions to set their own limits via their own rules. In their summary of consultation responses DETI notes that the removal of the 10% limit will allow ‘*credit unions to set their own limits on non-qualifying members in their rules*’.¹⁷

According to DETI, the proposal received ‘*broad support*’ with 66% of respondents to the consultation in favour or not opposed. They noted that those who responded positively to the proposed change advised that the mobility of members had increased

¹⁴ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 2

¹⁵ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

¹⁶ *Ibid*

¹⁷ *Ibid*

since the passing of the 1985 Order – with greater numbers of younger people attending university, for example – and that removal of the 10% limit would allow such people to retain their membership and credit union accounts. The Department also pointed out that a *number of respondents advised of “various administrative drawbacks” should the limit be removed, but did not elaborate on what these drawbacks were and how they would come about*.¹⁸

In their response to the Department’s consultation, the UFCU were supportive of the proposal and made the following comments:

*Whilst we understand the reasoning behind the limit in 1985, we feel the restriction is no longer relevant and should be lifted to reflect the increasing levels of movement by our members. For example, more young people choose to go to University for a number of years compared to 1985 when the original rules were set. Lifting the 10% limit and allowing credit unions to set their own rules would encourage people to remain active members of credit unions when their circumstances change. This would also help strengthen credit union membership.*¹⁹

The ILCU were also supportive, stating:

*The League supports this proposal to remove the 10% limit which would allow individuals who have moved outside the common bond to remain active members of the credit union. The league, however, also supports the proposal that a credit union would still be entitled to sets its own limits on non-qualifying members in its registered rules as it sees fit.*²⁰

2.3 Clause 3: Interest-bearing shares

2.3a Purpose

Clause 3 will enable CUs to offer interest-bearing shares. CUs are only currently able to offer shares that entitle the holder to a dividend. The clause also sets out the conditions a CU must meet to offer interest bearing shares, namely:

- The CU has made provision in its own rulebook for the issuing of interesting bearing shares.
- The CU’s most recent year-end balance sheet demonstrates that it holds reserve equal to, or greater than, the threshold amount. The threshold amount is defined as either £50,000 or 5% of the CU’s total assets, whichever is greater.

¹⁸ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

¹⁹ The Ulster Federation of Credit Unions, Credit Unions & Industrial Provident Societies Bill Consultation response by the Ulster Federation of Credit Unions

²⁰ Irish League of Credit Unions, Submission from the Irish League of Credit Unions to the Consultation on Credit Unions and Industrial & Provident Societies Bill – Policy Consultation (September 2013)

- The CU's auditor has issued a report on the balance sheet.
- The credit union has provided the appropriate authority a copy of both the balance sheet and the auditor's report.²¹

The clause will also allow the Department to amend the threshold amount by order.²²

2.3b Commentary

CUs in GB have been able to offer interest-bearing shares since the enactment of the LRO. Clause 3 would enable the same to be offered by NI CUs to their Members. It should be noted, however, that the Clause allows credit unions to offer interest-bearing shares; it does not oblige them to offer them.²³

In their evidence to the Committee on 16 June 2015 the Department noted that the majority of consultation responses were in favour of Clause 3 and explained its purpose as follows:

Allowing credit unions to offer interest-bearing shares puts them on a more even keel with building societies. It means that someone investing in shares in the credit union can see from the outset what return they will get on their savings, rather than waiting to get a dividend.²⁴

The Department added:

I think that it will attract savers who know that, if they invest their money in a building society or bank, they will get a certain return, whereas, if they invest in a credit union, they have to wait until the end of the year to see what their dividend will be. I can see it attracting savers who want to know, from the outset, what their return will be.²⁵

The ILCU in their evidence to the Committee were supportive of the Clause, calling the proposed change 'beneficial'. They stated that the Clause would offer 'a different form of taking money in for the credit union' and stated that:

It helps the credit union with asset-liability management, and that is the huge benefit that we see for deposits. The credit union can pick the deposit interest rate at the start of the year and work around that, whereas shares are only subject to a dividend. All shares are then entitled to the same dividend, whereas, with deposits, you can balance your asset management a bit better. That is the main benefit that we see. In the Republic of Ireland,

²¹ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 3

²² *Ibid*

²³ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

²⁴ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Department for Enterprise, Trade and Investment (16 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14203&evidID=7812>

²⁵ *Ibid*

we have deposits in credit unions currently. We have always had them, and they used to be fairly popular, but increasingly they are less so. People are more inclined to put money into shares. However, it is an extra tool in credit unions' armour for their asset-liability management. That is why it would be beneficial.²⁶

They also stated that:

It is also a model that exists across the credit union world: the acceptance of deposit. Based on the principle that the credit union is a smaller form of financial institution, it should really be enabled to undertake and partake in any of the financial activities and offer of services to members.²⁷

The UFCU, in their evidence, noted that they were not 'as mature an organisation as the Irish League' and stated that the 'advantages [of Clause 3] are not as obvious to our members'. In explaining their position the UFCU made the following points:

Interest-bearing shares put us in an awkward position in that traditionally we were able to draw a clear distinction between ourselves and the banks in that we were always able to tell our people or anyone who wanted to know that credit unions are owned by their members. Each member of a credit union has one share. No matter how much money you have in the credit union, you are entitled to one vote, so you have one share.

The introduction of interest-bearing shares tends to muddy that water. We were able to say that banks are driven by profit because they have shareholders to whom they are responsible and have to pay interest, whereas a credit union is owned by its members, and therefore we just pay a dividend based on how well the credit union did during the year.

The introduction of interest-bearing shares will not be well taken up by credit unions in Northern Ireland, certainly not in the federation. Our credit unions tend to be ultra-conservative as far as that is concerned, and I cannot see them wanting to implement that.²⁸

Despite their reservations on the Clause the organisation concluded that they had no objection to the Clause been included:

...when this was being discussed in a number of forums throughout Northern Ireland for the Ulster Federation of Credit Unions, there was no appetite at all for this. It is there, and we appreciate the fact that it mirrors,

²⁶ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Irish League of Credit Unions (30 June 2015)
<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14419&evidID=7853>

²⁷ *Ibid*

²⁸ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Ulster Federation of Credit Unions (30 June 2015)
<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14420&evidID=7853>

*to a certain extent, the situation in the rest of the UK. That is fine. **We have no objection to it being there**, but I do not think that there will be an awful lot of uptake from Ulster Federation credit unions. (Emphasis added)²⁹*

2.4 Clause 4: Attachment of shares

2.4a Purpose

According to the Department:

Shares in a credit union are said to be ‘attached’ when they cannot be withdrawn because the member has an outstanding loan in excess of their shareholding. At present, a member of a NI credit union must obtain the permission of the credit union board to make a withdrawal of shares, where it would reduce the member’s shareholding to less than his total liability to the credit union. If, for example, a member has a £1,000 loan, and £1,500 shares, the member may withdraw £500, but the remaining £1,000 may only be withdrawn at the discretion of the board of directors.³⁰

Clause 4, if enacted, would change this to the extent that it ‘requires credit unions to include in the terms of a loan a statement³¹ which sets out which shares are attached (and therefore un-withdrawable) and which shares are unattached (and therefore withdrawable) over the loan period.³² This replaces the current rule that the withdrawal of attached shares is only possible at the discretion of the board of directors.³³ This applies to unsecured loans only, the Clause will forbid the withdrawal of shares where the credit union has made a loan to a member that is treated as a secured loan and the member’s shareholding is less than their total liability, or would be following the withdrawal.³⁴

2.4b Commentary

The Department has stated that the rationale behind Clause 4 is to ‘give credit union members greater certainty about their financial position, benefiting them as a consumer’. They add that the clause will also provide CUs with ‘greater certainty about member’s accounts and prove to be more attractive to potential members’.³⁵

²⁹ *Ibid*

³⁰ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

³¹ Credit Unions and Co-operative and Community Benefits Societies Bill Explanatory Memorandum

³² Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

³³ Credit Unions and Co-operative and Community Benefits Societies Bill Explanatory Memorandum

³⁴ *Ibid*

³⁵ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

According to the Department's summary of consultation responses, the proposal on which Clause 4 is based, was supported or not opposed by 16 of 25 responses. Those who were in favour made *'their position conditional on the potentials for attachment of future shares, so that when a loan is arranged, the credit union would have right to consider attached not only the existing shares of the member concerned but also those shares the member might acquire later'*.³⁶

According to the Department's response, following consultation with the three CU trade bodies (ILCU, UFCU and Tyrone Federation) the desire to attach future shares to the loan resulted in concerns about the proposal in the event of a member defaulting on a loan. The Department states that *there is provision in the Credit Unions (Northern Ireland) Order 1985 for such a situation*. Article 16 of that order holds:

(1) *All money payable to a credit union by a member of it shall be a debt recoverable summarily by the credit union from the member.*

(2) *A credit union shall have lien³⁷ on the shares of any member for any debt due to the credit union by that member, and may set off any sum credit to the member on those shares in or towards the payment of that debt.*³⁸

The Department further argues that should a member default on a loan agreement, Article 16:

*...should allow the credit union to attach shares belonging to that member up to the value of the debt. It is not the intention at present to amend or repeal Article 16, which should allay concerns about the proposal in the event.*³⁹

2.5 Clause 5: Supply by credit union of copies of its rules

2.5a Purpose

Article 12(1) of the 1985 Order states:

A copy of the registered rules of any credit union shall be delivered by the credit union to any person who demands it, subject to payment by that person of such sum not exceeding £1 (or such larger sum as an order may

³⁶ *Ibid*

³⁷ A lien is defined as a right which entitles a party to hold on to assets in his possession pending payment of a debt owed. It does not confer on the lien holder an automatic right to sell the assets. <http://uk.practicallaw.com/1-107-6319>

³⁸ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

³⁹ *Ibid*

*specify) as the credit union may determine.*⁴⁰

Clause 5 of the 2015 Bill amends this clause with that effect that CUs:

- Must provide a copy of its rules free of charge to any member of the CU who has not previously received a copy; and
- May charge a fee, not exceeding £5, to any non-member, or member who has previously received a copy, seeking a copy of the rules.⁴¹

The Clause will also grant the Department the power to amend, by regulation, the £5 charge for non-members/existing members who have previously received a copy.⁴²

2.5b Commentary

The LRO brought in similar changes in GB. Prior to the LRO the maximum GB CUs could charge for a copy of their rule was £0.10. This was revised up to £5 to reflect actual costs involved and financial burden associated with issuing a copy of the rules.⁴³

However, Clause 5 as outlined above differs from the LRO in that the LRO obliged CUs to provide a copy of their rules to members free of charge. Clause 5 holds that CUs may charge a fee of £5 to any member who had previously received a copy of the rules.⁴⁴

According to DETI's summary of consultation responses, 23 of the 24 respondents who addressed this issue were in favour, or had no objections to, the increase to £5 for provision of a copy of the rule. Similarly, 24 of 27 respondents were in favour, or had no objections to, giving members the right to a free copy of the rules. In general, respondents argued that the current £1 cap insufficiently reflected printing cost and that access to the rules of a credit union is essential if members are to clearly understand their rights and responsibilities. Other responses noted the scope for abuse of this entitlement and suggested that members should be entitled to receive only one free copy (a point of view seemingly reflected in the drafting of the Bill, as outlined above).⁴⁵

The Department's summary of responses reflects the views of the ILCU as outlined in their response to the consultation. The ILCU state that they welcome the change, that the *'current £1 charge is inadequate'* and that the *'right to receive a full copy of the rules should be once in a lifetime only'* so that the provision is not *'abused resulting in significant cost to the credit union'*. The ILCU also suggested that the provision be

⁴⁰ *Ibid*

⁴¹ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause

⁴² *Ibid*

⁴³ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁴⁴ *Ibid*

⁴⁵ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

amended to allow the amount to be changed by order to reflect increases in inflation. This suggestion is reflected in Clause 5, as outlined above, which allows the Department to amend the charge by regulation.⁴⁶

In their response, the UFCU agreed that the proposed £5 charge was *'more reflective of current printing costs'*. The UFCU did not raise any issues with the possibility of providing a free copy to members being abused, stating instead that *'we believe that current members should be entitled to free access of the rules in which their credit unions operates, especially as each member is in effect an equal shareholder in the organisation'*.⁴⁷

Citizens Advice Bureau Northern Ireland, in their response, suggested that if the cost was to reflect direct costs only (i.e. excluding indirect cost such as staff time) then it should be set a lower level (they recommended £2). The Bureau recommend that CUs should be *'required to make their rules available on the internet'* as this *'would both reduce cost for non-members and the institutions as well as stimulating wider interest in Credit Unions, particularly among young people'*.⁴⁸

This point, on electronic access, was taken up by both trade bodies in evidence to the Committee (March 2014). The UFCU stated:

*From our perspective, the legislation does not prescribe how you have to deliver the rules. It does not have to be a printed copy. We frequently update our rule book, and we can distribute that either through our websites or via email. It is not really an issue for us at this stage.*⁴⁹

Adding that:

*We are very rarely asked for a printed copy.*⁵⁰

The ILCU stated:

*Most credit unions have a website with all the information. The rules are up on the website, and people can download them for free.*⁵¹

⁴⁶ Irish League of Credit Unions, Submission from the Irish League of Credit Unions to the Consultation on Credit Unions and Industrial & Provident Societies Bill – Policy Consultation (September 2013)

⁴⁷ The Ulster Federation of Credit Unions, Credit Unions & Industrial Provident Societies Bill Consultation response by the Ulster Federation of Credit Unions

⁴⁸ Citizens Advice Bureau Northern Ireland, Proposals for a Credit Unions and Industrial & Provident Societies Bill (September 2013)

⁴⁹ Northern Ireland Assembly, Official Report, Committee for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill: Irish League of Credit Unions and Ulster Federation of Credit Unions (13 March 2014) <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/march-2014/credit-unions-and-industrial-and-provident-societies-bill-irish-league-of-credit-unions-and-ulster-federation-of-credit-unions/>

⁵⁰ *Ibid*

⁵¹ *Ibid*

2.6 Clause 6: Application of surplus funds for social, cultural or charitable purposes

2.6a Purpose

Article 36 of the 1985 Order (as amended by the Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011) allows credit unions to apply surplus funds towards of social, cultural or charitable purposes. Currently, CUs must ensure that a dividend of not less than 3% is paid on all paid-up shares before surplus funds can be directed towards social, cultural or charitable purposes (up to a maximum of 10% of total surplus funds).⁵²

Clause 6 of the 2015 Bill will remove the minimum amount of dividend to be paid, although it will still require that a dividend be paid to members before surplus funds are used for social, cultural or charitable purposes (while retaining the maximum limit).⁵³

2.6b Commentary

In their *Report on the Committee's Inquiry into the Role and Potential of Credit Unions in Northern Ireland* (2009) the Committee for Enterprise, Trade and Investment (CETI) recommended that:

*... that the appropriate reinvestment of assets by credit unions into community development and community enterprises can bring significant benefits to communities. It is therefore recommended that the FSA work with the credit union movement to identify the knowledge and skills required to successfully undertake such a task and to develop the appropriate training and structures to implement, monitor and evaluate the reinvestment of a proportion of assets by credit unions in the communities they serve.*⁵⁴

The issue was raised again in the joint HM Treasury and DETI consultation '*Proposals for regulatory reform of credit unions in Northern Ireland*'. In their response to this consultation the UK Government stated:

The Government acknowledges the particular concerns with regard to credit union stability should the proposal to facilitate the re-investment of assets for community enterprises be taken forward. In view of the

⁵² Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁵³ *Ibid*

⁵⁴ Northern Ireland Assembly, Committee for Enterprise, Trade and Investment *Report on the Committee's Inquiry into the Role and Potential of Credit Unions in Northern Ireland* (First Report) Session 2008/09 http://archive.niassembly.gov.uk/enterprise/2007mandate/reports/report05_08_09r.htm

complexities surrounding this issue, it is likely that it will be subject to further consultation prior to any final decision.⁵⁵

In their ‘*Credit Union and Industrial and Provident Societies Bill Consultation*’, DETI noted that whilst the:

... ‘issue of how credit unions can invest surplus funds is not a transferred matter, and cannot therefore be legislated for by the NI Assembly... there is already provision in legislation for NI credit unions to financially support their local communities’. The provision referred to in this statement is Article 36 of The Credit Unions (Northern Ireland) Order 1985 (as amended). The consultation noted too, that the current requirement on CUs to pay 3% dividend before directing their surplus towards social, cultural or charitable purposes ‘may serve to restrict the application of surplus funds’ towards such purposes ‘particularly in the current economic environment.’⁵⁶

In this context Clause 6, if enacted, will remove ‘3% dividend hurdle’ whilst retaining the 10% limit on the proportion of surplus funds that can be used for such purposes.

Commenting on these proposed changes, the ILCU noted that this was something that they specifically requested be considered as part of the Bill. On the issue they stated:

One of the social purposes of credit unions, as well as providing services to their members, is to contribute back to the community. In the current environment, given the way in which credit unions are formulated, they would not be permitted to make any contribution for social or charitable purposes unless they have declared a 3% dividend. A 3% dividend, in the past number of years, has just not been realistic, and it was completely excessive for most credit unions to reach. It was nowhere near possible for most institutions to reach 3%.

We found that credit unions were unable to make any kind of social or charitable donation, for example, to the local community or to local clubs or schools in the form of sponsorship — that type of thing — because they had not reached the 3% dividend, which was unrealistic. That is one of the provisions that we asked to be removed. At the same time, there is still that saving provision that only 10% can be put towards that purpose, so we do not see it as being of any concern to members. Of course, the credit unions are there to serve their members. If they are not paying a dividend but are throwing money at unnecessary purposes, the members will soon tell them

⁵⁵ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁵⁶ *Ibid*

*at the AGM. We therefore do not believe that it is of any concern that safeguards are being removed in that case.*⁵⁷

The UFCU welcomed the opportunity to be able to invest funds in the community and were content that the 10% limit on surplus being used for such purpose represented an adequate protection for member funds. They added:

*Obviously, not being as mature as the Irish League, we do not have as big a capital fund in surplus funds, but we are reasonably content, and we have no particular issue.*⁵⁸

According to the DETI's response to the Bill consultation there was '*near unanimous support from respondents for this proposal*'.⁵⁹

2.7 Clause 7: Application of directors disqualification provisions to credit unions

2.7a Purpose

Clause 7 will insert a new clause into the Company Directors Disqualification (Northern Ireland) Order 2002 ensuring that the Order will apply to CUs.

The Company Directors Disqualification (Northern Ireland) Order 2002 served a number of purposes:

- To consolidate the Companies Order 1989 and amendments to that order;
- To introduce provision for the disqualification of unfit directors by consent without the need for uncontested cases to be heard in court;
- To amend the law so that while it remains possible for someone subject to a disqualification order (or who has given an undertaking) to apply to the Court for leave to be a director of a company, to act as receiver of a company's property or to take part in the promotion, formation or management of a company, they are not able to apply for leave to act as an insolvency practitioner.⁶⁰

2.7b Commentary

According to DETI's summary of consultation responses:

⁵⁷ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Irish League of Credit Unions (30 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14419&evidID=7853>

⁵⁸ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Ulster Federation of Credit Unions (30 June 2015)

<http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14420&evidID=7853>

⁵⁹ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁶⁰ The Company Directors Disqualification (Northern Ireland) Order 2002, Explanatory Memorandum
<http://www.legislation.gov.uk/nisi/2002/3150/memorandum/division/3>

There was unanimous support for this proposal from respondents, who noted that it would close a loophole, help to ensure good governance and make clear to directors the importance of carrying out their duties responsibly.⁶¹

In their response to the consultation, the ILCU made the following comments on Clause 7:

On the basis that this is a technical amendment which simply ensures that all Northern Ireland are subject to the same provision in this matter, the League supports this proposal.⁶²

In their response to the consultation, the UFCU stated:

We agree that the 2002 Disqualification Order should also extend to credit unions. Ensuring good governance is vital in any organisation and it is important that our directors understand the importance of their role and how they must carry out their duties in a responsible manner. Extending directors disqualification rules to credit union is a logical step.⁶³

3 Part 2 – Clauses introducing changes to Industrial and Provident Societies legislation

3.1 Clause 8: Registration of societies as cooperative or community benefit societies etc.

3.1a Purpose

The purpose of Clause 8 is to introduce the new names ‘*co-operative societies*’ and ‘*community benefit societies*’ into the 1969 Act. The Clause will require all new societies to be registered as cooperative or community benefits societies and sets out the conditions under which an organisation may register as such, namely:

- Where it is shown to the satisfaction of the register the society is either a bona fide co-operative society or that the business of the society is being, or is intended to be, conducted for the benefit of the community.⁶⁴

⁶¹ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁶² Irish League of Credit Unions, Submission from the Irish League of Credit Unions to the Consultation on Credit Unions and Industrial & Provident Societies Bill – Policy Consultation (September 2013)

⁶³ The Ulster Federation of Credit Unions, Credit Unions & Industrial Provident Societies Bill Consultation response by the Ulster Federation of Credit Unions

⁶⁴ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 8

The Clause ensures that registration status of societies prior to the introduction of the new names (i.e. those registered as industrial and provident societies) will be unaffected.⁶⁵

It also amends the short title or title of existing Industrial and Provident Societies legislation, as outlined in Table 1.

Table 1: Changes to title/short title of existing Industrial and Provident Societies legislation⁶⁶

Existing title/short titles	New title/short title
Industrial and Provident Societies Act (Northern Ireland) 1969	Co-operative and Community Benefit Societies Act (Northern Ireland) 1969
Industrial and Provident Societies (Amendment) (Northern Ireland) Order 1976	Co-operative and Community Benefit Societies (Northern Ireland) Order 1976
Industrial and Provident Societies (Northern Ireland) Order 2006	Co-operative and Community Benefit Societies (Northern Ireland) Order 1976

3.1b Commentary

The Co-operative and Community Benefit Societies and Credit Unions Act 2010 required new ‘*new GB industrial and provident societies to be registered as either a “co-operative” or “community benefit” society*’. It also renamed key GB legislation, replacing the terms Industrial & Provident societies, with the terms co-operative and community benefit societies.⁶⁷ Clause 8 will introduce similar changes into NI law.

According to the Department’s consultation the ‘*rationale for the change is that the expression “industrial and provident society” was widely perceived as old-fashioned*’.⁶⁸

In their summary of consultation responses, the Department noted that:

*The majority of respondents were in support of this proposal. Stakeholders advised that the change would add clarity and raise the profile of the sector, increasing awareness of co-operatives as alternatives to companies. However, respondents not in favour noted that loss of an umbrella term, which could in future encompass additional forms of commercial enterprise.*⁶⁹

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ Co-operative and Community Benefit Societies and Credit Unions Act 2010 (s1) <http://www.legislation.gov.uk/ukpga/2010/7/section/1?view=extent>

⁶⁸ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁶⁹ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

3.2 Clause 9: Members under 18 years old

3.2a Purpose

Clause 19 of the 1969 Act currently holds that:

... a person under the age of eighteen years but above the age of sixteen years may be a member of a registered society unless provision to the contrary is made by the society's registered rules and may, subject to those rules and to the provisions of this Act, enjoy all the rights of a member and execute all instruments and give all receipts necessary to be executed or given under those rules, but shall not be a member of the committee, trustee, manager or treasurer of the society.⁷⁰

Clause 9 will amend the 1969 Act by substituting Clause 19 with the following clauses:

19-(1) A person under the age of 18 may be a member of a registered society unless the society's registered rules provide otherwise.

(2) A person under the age of 18-

(a) may enjoy all the rights of a member of a registered society, and

(b) if aged 16 or over, may execute all instruments and give all receipts necessary to be executed or given under a society's register rules.⁷¹

Clause 9 also holds that the above *'is subject to the society's registered rules'*. Finally Clause 9 reduces the minimum age at which a person can hold office in a registered society from 18 to 16.⁷²

3.2b Commentary

In their consultation, DETI explained the rationale behind this clause, namely that:

- it would help increase the participation of young people; and
- the existing limits placed societies at a disadvantage with respect to companies, which are not subject to such restrictions.⁷³

The Department's summary of responses examined these proposals in two parts. With regard to the minimum age of membership, 6 out of the 7 respondents were in favour. Those in favour argued that *'removing the age limit could encourage young people to*

⁷⁰ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁷¹ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 9

⁷² *Ibid*

⁷³ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

join existing societies and welcomed the freedom for individual IPSs to continue to specify that members should be age 18 or over.⁷⁴

The one respondent not in favour *‘did not expand on why this was the case and no specific concerns were expressed*’.⁷⁵

With regard to the reduction in the age at which a person can hold office in a registered society, the Department’s summary document states that:

Support for this proposal was again near unanimous, with only one respondent opposed. This respondent did not expand on why this was the case and no specific concerns were expressed.⁷⁶

3.3 Clause 10: Removal of limit on holding of non-withdrawable shares

3.3a Purpose

Currently, the 1969 Act limits of the amount of shares any one individual can hold in a registered society to £20,000.⁷⁷

The effect of clause 10 will be to increase this limit to £100,000 for withdrawable shares and to remove it entirely for non-withdrawable shares.⁷⁸

3.3b Commentary

At consultation stage the proposal that Clause 10 was based upon originally sought to remove the £20,000 limit in respect to non-withdrawable shares and retain it for withdrawable shares.⁷⁹ However, in evidence to CETI in June 2015, the Department noted that they added an additional element to the clause – that is to increase the limit to £100,000 for withdrawable shares. In explaining this, the Department stated:

In GB, the UK Government increased the limit for withdrawable shares from £20,000 to £100,000 in 2014. Sectoral representatives have been keen to align with this position, and we agree that this would be beneficial.⁸⁰

In their summary of consultation response, the Department notes that the proposal (as originally postulated) received support from all but one respondent. They add that the

⁷⁴ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁷⁵ *Ibid*

⁷⁶ *Ibid*

⁷⁷ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁷⁸ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 10

⁷⁹ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁸⁰ Committee for Enterprise, Trade and Investment, Official Report, Credit Unions and Community Benefit Societies Bill, Department for Enterprise, Trade and Investment (16 June 2015) <http://aims.niassembly.gov.uk/officialreport/minutesofevidencereport.aspx?AgendaId=14203&evidID=7812>

respondents who were in favour, or who did not object, *‘noted that the additional flexibility would offer IPSs new sources of funding and opportunities to develop new markets’*. The respondent in opposition to the proposal *‘did not give any reason for their position and no specific concerns were expressed’*.⁸¹

3.4 Clause 11: Year of account

3.4a Purpose

This Clause inserts new clauses into the 1969 Act concerning the ‘year of account’ (a society’s accounting year) and ‘year-end’ (the date on which the accounting year ends) of registered societies. The clauses do two things; they specify the year of account for societies but also allow societies to choose their own year-end date by notice to the appropriate authority.

Clause 11 inserts new Clause 36a into the 1969 Act. This clause, which impacts existing societies, specifies:

- That an existing society’s first year of account begins on the date of the society’s registration. In every other year, the year of account begins immediately after the end of its previous year of account.
- The year end for an existing society is the date of the last balance sheet published by the society in the relevant period (the relevant period begins with the 31 August following the beginning of the year of account and ends with the following 31 January). If no balance sheet is published by the society in the balance in the relevant period the year end is the 31 December in that period.
- The society may by notice to the registrar alter the date on which its current and subsequent years of account end to a date other than that outlined above.⁸²

For new registrations (that is societies register after the Clause comes into operation) a new Clause – 36b – will be inserted into the 1969 Act. This specifies:

- The first year of account is the period of more than 6 months but no more than 18 months.
- The society’s first year of account begins with the society’s registration and ends with its account reference date. For each subsequent year, the year begins immediately after the end of the previous year and ends with next reference date.
- The accounting reference date is the last date of the month in which the anniversary of the society’s registration falls.
- The society may by notice to the register alter the date on which its current and subsequent years of account end to a date other than that outlined above.⁸³

⁸¹ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁸² The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 11

3.4b Commentary

The LRO allowed GB societies to choose their own year-end by notification to the Financial Conduct Authority.⁸⁴ Clause 11, therefore bring NI societies in line with their GB counterparts. According to DETI, 5 out of 6 consultation respondents were supportive of this change on the basis that:

*...the additional flexibility for societies in choosing a year-end that suited their commercials and financial circumstances.*⁸⁵

Supportive respondents also noted that the change would give 'IPSs greater latitude in choosing auditors'.⁸⁶

The Department argues that:

*There is no longer any overriding rationale for this restriction, which may serve IPSs from, for instance, synchronising trading years with the tax year. Removal will therefore benefit the operations of IPSs, and bring the law applying to IPSs into line with company law.*⁸⁷

3.5 Clause 12: Publication of unaudited interim accounts

3.5a Purpose

Clause 12 will amend the 1969 Act to allow a society to publish an unaudited interim revenue account or unaudited balance sheet; provided that it is published with the latest audited year end revenue account and balance sheet, and marked as unaudited.⁸⁸

3.5b Commentary

Clause 12 will bring NI into line with GB. The LRO removed the requirement for societies to have interim accounts audited, permitting them to publish unaudited accounts so long as the accounts were clearly identified as such. This clause also brings the law for registered societies in line with that for CUs.⁸⁹

⁸³ *Ibid*

⁸⁴ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

⁸⁵ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁸⁶ *Ibid*

⁸⁷ *Ibid*

⁸⁸ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 12

⁸⁹ Department for Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Consultation June 2013 (http://www.detini.gov.uk/cuips_bill_consultation.pdf?rev=0)

The Department's summary of consultation responses notes that all six respondents to this proposal were in favour of it and states that respondents noted *'the costs of the existing requirements and that companies were not subject to the same burden'*.⁹⁰

3.6 Clause 13: Dissolution of registered society by an instrument of dissolution

3.6a Purpose

Clause 13 will amend the 1969 Act in such a way as to allow a dormant registered society to dissolve by special resolution of the society. It inserts new clauses (66a) into the 1969 Act which hold that:

- In the case of any society, the society may dissolve by an instrument of dissolution where 75% of the society's members to consent to the special resolution, demonstrated by their signature on the instrument; and
- In the case of a dormant society, the society may be dissolved by a special resolution of a society.⁹¹

The first point above does not alter the existing 1969 act, which held that a society could *'by an instrument of dissolution to which not less than three-fourths of the members of the society have given their consent testified by their signatures to the instrument'*.⁹² Although this specific clause has been removed and replaced by the above.

The second point, which refers to a dormant society, is a new addition. It lowers the required proportion of the membership needed to agree the dissolution of the society. The definition of a 'special resolution' used in relation to the context of the dissolution of a dormant society is the same as that defined in Section 59 of the 1969 act, that is:

- It must be passed by no fewer than two thirds of the society's membership who are available to vote; and
- It must be confirmed by a majority of those available to vote at a general meeting not less than 14 days after the resolution was passed.⁹³

A dormant society is defined as one whose accounts for the current year show no accounting transactions apart from: fees to the Financial Conduct Authority, fees to the Prudential Regulation Authority, payment of dividends and payments of interest. A dormant society must also notify the Registrar that it is dormant.⁹⁴

⁹⁰ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁹¹ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 13

⁹² Industrial and Provident Societies Act (Northern Ireland) 1969 s64(1b) <http://www.legislation.gov.uk/apni/1969/24/section/64>

⁹³ Industrial and Provident Societies Act (Northern Ireland) 1969 s59(2a-b) <http://www.legislation.gov.uk/apni/1969/24/section/59>

⁹⁴ The Credit Unions and Co-operative and Community Benefit Societies Bill Clause 13

3.6b Commentary

The Department notes that, at present *any* society wishing to dissolve must prepare an instrument of dissolution and that this instrument must be signed by no fewer than three quarters of the membership. This will be retained for all but dormant societies. If passed, Clause 13 will enable dormant societies to be dissolved by special resolution. The requirements for special resolution are not as stringent as those for an instrument of dissolution – a special resolution is passed by two thirds of available members, rather than three quarters of all members.⁹⁵

In their consultation the Department argued that the existing requirements made it difficult for dormant societies to dissolve *‘particularly where contact had been lost with a significant number of members’*.⁹⁶

Respondents to the consultation had mixed opinions on this clause with 3 out of 6 in favour. Two respondents suggested *‘further safeguards, and stressed the need for membership involvement in dissolution and the need to proceed carefully for those IPSs whose assets were purchased by and for a community’*. The Department also notes that concerns were expressed by some respondents about easier dissolution.⁹⁷ The Department responded to these concerns, stating:

The proposal is to enable dormant societies to dissolve more easily, not to make dissolution easier generally. The amendment is a fair balance between the desire to facilitate easier dissolution where it is appropriate to do so and ensuring the procedure cannot be abused.

*As a safeguard, this procedure will not be permitted for active, productive IPSs but will apply only to dormant IPSs.*⁹⁸

4 Schedules and consequential amendments

The Credit Unions and Co-operative and Community Benefit Societies Bill contains two Schedules. The first is a four part schedule that deals with minor and consequential amendments, the second schedule deals with transitional arrangements. The following section provides a brief overview of the contents of Schedule 1.

4.1 Schedule 1, part 1

Schedule 1, part 1, deals with consequential amendments relating to the Credit Unions (Northern Ireland) Order 1985, this section provides a brief overview of its contents.

⁹⁵ *Ibid*

⁹⁶ *Ibid*

⁹⁷ Department of Enterprise, Trade and Investment, Credit Unions and Industrial & Provident Societies Bill – Policy Proposals, Summary of responses (December 2013)

⁹⁸ *Ibid*

Paragraph 2 of part 1, sets out how a corporate member may be able to satisfy the common bond requirements of a credit union. It holds that corporate members may meet the common bond:

- If its principal business requires it to employ or otherwise engage persons who follow a particular occupation, or relates to that occupation in some other way;
- If the corporate member has a place of business in, or other significant connection, with a particular locality;
- If the corporate member employs persons who qualify for membership under a common bond, or provides services to an employer that does;
- If the corporate member is a bona fide organisation, or otherwise is associated with other members of the society.⁹⁹

Paragraph 3 deals with CU individual members who are representing a partnership or unincorporated association. It holds in these circumstances, the partnership or unincorporated association will be treated as the member and that this will not affect the treatment of the individual as a member in respect of any shares by the individual in his or her personal capacity.¹⁰⁰

Paragraph 4 enables the voting rights of a partnership or unincorporated association to be exercised by the corporate member and ensures that the individual representing them retains voting rights associated with any shares they might hold in a personal capacity.¹⁰¹

Paragraph 5 concerns the remedies available to CUs in respect of debts of individuals representing corporate members and ensures that all such debts are subject to existing rules on the transfer of shares and loans.¹⁰²

Paragraph 6 concerns the nomination of property in a credit union in the case of corporate membership. It holds that this is only valid if made by the individual acting as a representative of the corporate member. Paragraph 7 also deals with this area, it holds that where the nominees hold shares as a corporate member and in a personal capacity those are to be kept separate for the purposes of calculating maximum shareholdings upon the death of a nominee.¹⁰³

Paragraph 8 enables the transfer of corporate shares. It holds that the transferee must be another partner, in the case of a partnership, or, another officer or member, in the case of an unincorporated association.¹⁰⁴

Paragraph 9 holds that a credit union may make a loan to a credit union only if the credit union's rules provide for it and limits any loans to *'10% if the total amount of the*

⁹⁹ Credit Unions and Co-operative and Community Benefits Societies Bill Schedule 1, Part 1, s2

¹⁰⁰ Credit Unions and Co-operative and Community Benefits Societies Bill Explanatory Memorandum

¹⁰¹ *Ibid*

¹⁰² *Ibid*

¹⁰³ *Ibid*

¹⁰⁴ *Ibid*

outstanding balances on all loans made by the credit union to members'. It also enables the Department to amend this limit. The Paragraph allows for the transfer of loan (and all rights and responsibilities associated with the loans) made to individuals who are corporate members.¹⁰⁵

Paragraph 10 deals with disputes in the case of corporate membership. It amends current regulation so that an individual 'claiming through' a corporate member will include any partner, in a partnership, or, any member of an unincorporated association in question.¹⁰⁶

4.2 Schedule 1, part 2

Part 2 makes consequential amendments to legislation to allow for the registration of new industrial and provident societies as co-operative or community benefit societies by amending references to industrial and provident societies in a range of existing Acts and Orders.¹⁰⁷

4.3 Schedule 1, part 3 and part 4

Part 3 of Schedule 1 makes minor and consequential amendments to the 1985 Order and the 1969 Act.¹⁰⁸

Part 4 of Schedule 1 removes obsolete material from the 1969 Act.¹⁰⁹

5 Financial assessment, human rights issues and equality impact assessment

The Bill's explanatory memorandum states that the Bill:

- Is not expected to lead to any increase in public expenditure;
- Is compatible with Convention on Human Rights;
- Is not considered to have any adverse or negative impact on any of the groups identified in section 75 of the Northern Ireland Act 1998; and,
- Will have an overall beneficial impact.¹¹⁰

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid*

¹⁰⁷ *Ibid*

¹⁰⁸ *Ibid*

¹⁰⁹ *Ibid*

¹¹⁰ *Ibid*