

**From:** James Wright [<mailto:james.wright@uk.coop>]  
**Sent:** 19 October 2015 12:26  
**To:** McManus, Jim  
**Cc:** Helen Barber; James Proctor  
**Subject:** Credit Unions Co-operative and Community Benefit Societies Bill

Dear Jim,

Thank you for getting in touch.

Back in July we sent a briefing to all MLAs, see attached. Parts 1 to 7 set out why we as a sector body support the reforms. Parts 8 to 11 suggest further improvements to industrial and provident society law beyond what is in this Bill. Stephen Agnew MLA responded noting the briefing and saying he was on the ETI Committee.

Just last week we sent the attached letter to ETI members and the DETI Minister, making them aware of possible regulatory fallout from one aspect of the reform and suggesting (mainly to DETI) ways to avoid problems we've had in GB this past year.

On the potential for this legislation to be looked at again in 2 years, we would certainly welcome this. In our experience industrial and provident society legislation tends to be updated less often than that for companies, and this soon leads to a build up in red tape. We certainly urge the ETI Committee to note our proposals in 8 to 11 of the briefing so these can be considered when this area of law comes up for review.

If you or any MLA would like to know more then please get back in touch, and we can find a way of progressing these matters that works for everyone.

--

**James Wright**  
Policy Officer



0161 214 1775  
[James.Wright@uk.coop](mailto:James.Wright@uk.coop)  
[www.uk.coop](http://www.uk.coop)



*Unique professional development for co-operative practitioners*

*19 November, Manchester*

*Book now at [www.uk.coop/pf15](http://www.uk.coop/pf15)*



Holyoake House  
Hanover Street  
Manchester M60 0AS  
T 0161 214 1750  
F 0161 831 7684  
E info@uk.coop  
www.uk.coop

Mr Patsy McGlone MLA  
Chair of the Committee for Enterprise Trade and Investment  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

Cc: Minister for Enterprise Trade and Investment

Monday, 19 October 2015

### **Avoiding regulatory burdens as a result of the Credit Union Co-operative and Community Benefit Societies Bill**

I am writing with regards to the Credit Union Co-operative and Community Benefit Societies Bill currently undergoing scrutiny by your committee. The intention of this letter is both to reaffirm our support for the reforms to industrial and provident society law contained therein, and to advise legislators and the Department for Enterprise Trade and Investment (DETI) of possibly adverse regulatory consequences resulting from Section 8 'Registration of societies as co-operative or community benefit societies etc'. These regulatory consequences have only become clear over the course a year in which the same reform has been in place in Great Britain.

I close this letter with six recommendations for consideration by legislators and DETI.

Following the introduction of the Bill in July Co-operatives UK issued a briefing to MLAs, setting out why the reforms will be beneficial and suggesting further improvements to industrial and provident society law. This is attached.

In Section 8 the Bill makes provision for the outdated industrial and provident society terminology to be replaced by clearer nomenclature more relevant to a modern social economy: co-operative and community benefit societies. This is welcome. However, Section 8 of the Bill also introduces in the substituted clause 1) the word "or" between co-operatives and community benefit societies, driving a more ridged delineation between the two types of society. Furthermore substituted clause 2)a) in Section 8 of the Bill creates new clearer duty for the registrar to register a society as a co-operative or a community benefit society.

While it is true that over time some key differences between the two types of industrial and provident society have evolved, most notably the introduction of an optional statutory asset lock for community benefit societies and resultant differences in tax treatment, the law in Northern Ireland does not currently require the registrar to make a ridged distinction at registration. However Section 8 substituted clause 2)a) of the Bill will change this and in effect create three new legal forms when now there is just one:

develop and unite member-owned businesses across the economy.

- pre-2015 Act societies (all industrial and provident societies registered to date)
- co-operative societies (registered post commencement)
- community benefit societies (registered post commencement)

These exact changes were enacted in Great Britain in August 2014 without anticipation of regulatory difficulties arising as a result. However it soon became apparent that rather than simply updating terminology, these changes intensified the regulatory distinction between co-operative and community benefit societies and triggered a review of the definitions of each. This has not been unproblematic. The registrar in Great Britain, the Financial Conduct Authority (FCA), initially proposed an inflexible definition of a co-operative and an outdated restrictive definition of a community benefit society. This has caused significant uncertainty and concern for societies in Great Britain. If left unchecked this would also have become a damaging bureaucratic obstacle to mutual innovation at a time when this is increasingly needed to meet people's needs.

The FCA has also chosen to prevent community benefit societies from identifying as co-operatives, no matter how closely these meet the internationally recognised definition of a co-operative in practice. In reality the distinction is not always so clear cut. A bona fide co-operative society meets the needs or aspirations of its members, and a community benefit society must provide a community benefit, but these are not necessarily mutually exclusive activities. Indeed there are a great many community benefit societies in which the members benefit as part of a community; these are called 'community co-operatives'. There are also many bona fide co-operatives that provide a community benefit through members coming together to meet their own needs; what might be called self-help social enterprise.

After a year of consultations and campaigning, we are now hopeful that FCA policy will achieve the necessary refinement and flexibility, so that it protects against misuse of the society legal form while also allowing innovation. We believe it is vitally important that legislators and regulators in Northern Ireland learn from our recent experience in Great Britain and take necessary steps now to ensure these reforms do not result in overly burdensome or restrictive regulation.

We make the following policy recommendations ahead of final passage of the Bill and implementation of these reforms:

- Many bona fide co-operatives have a strong social or community purpose and policy makers should explore ways of recognising this at registration
- DETI should base its 'co-operative test' on the International Co-operative Alliance (ICA) Definition of a co-operative, with all 7 ICA Principles used as practical guidelines
- The first test of a co-operative should be whether it meets some clear common need or aspiration of its members; DETI should be very flexible in what these needs or aspirations can be and how they can be met, with a focus on ensuring the business is not primarily an investment vehicle
- DETI policy should reflect that co-operative and community benefit societies are excellent at aligning the individual and common interests of their members, including the alignment of equitable financial reward with mutual and community benefit

- DETI should allow community benefit societies to operate as a democratic and mutual form of social enterprise
- DETI should allow qualifying community benefit societies to identify as community co-operatives

We would be appreciative of any opportunity to discuss the recommendations in this letter with legislators and DETI, as we would those set out in our previous briefing as well.

Yours sincerely

A handwritten signature in black ink, appearing to be 'J. Wright', with a long horizontal stroke extending to the right.

James Wright

Policy Officer

0161 214 1775

[james.wright@uk.coop](mailto:james.wright@uk.coop)



## Legislative Briefing

# Credit Unions Co-operative and Community Benefit Societies Bill

July 2015

### About Co-operatives UK

Co-operatives UK is the network for thousands of co-operatives in Great Britain and Northern Ireland. We work to promote, develop and unite member owned businesses across the economy. From high street retailers to community owned pubs, fan owned football clubs to farmer controlled businesses, co-operatives are everywhere and together they are worth £37 billion to the UK economy.

### 1 Introduction

- 1.1 This short briefing is intended to demonstrate to MLAs, co-operatives, and other stakeholders in Northern Ireland, the value of the reforms to co-operative law contained in the Credit Unions Co-operative and Community Benefit Societies Bill currently making its way through the Northern Ireland Assembly. Driven by the needs and aspirations of our members we have campaigned for many years to see these reforms introduced, first in Westminster and now here in Stormont.
- 1.2 In **parts 2 to 6** we set out the case from our sector for the measures currently contained in this Bill, while in **part 7** we touch on reforms for credit unions. In **parts 8 to 11** we propose further enhancements to the Bill which we believe would have numerous and far reaching benefits for co-operatives in Northern Ireland.

### 2 Co-operative capital

- 2.1 The Bill includes two significant changes in the rules governing share capital in co-operatives.
- 2.2 First is a fivefold increase in the limit on a member's holdings in 'withdrawable share capital' from £20,000 to £100,000. This form of capital is unique to co-operatives and underpins the vast majority of member-led investment. The current limit has been left unchanged since the 1990s and is now a major impediment for many co-operatives, especially in the capital intensive agricultural sector.
- 2.3 Farmers often need to pool significant sums of money in their co-operatives and can reap real benefits by doing so. Research tells us that for every £1 farmers contribute in capital £9 is generated through the co-operative to

improve productivity and efficiency in agriculture, but the current investment limit is holding back this increasingly important sector.<sup>1</sup>

- 2.4 The same research tells us that before the limit was raised to £100,000 in Great Britain, it was costing co-operatives between £1.5 million and £2.5 million a year through additional borrowing, with overreliance on debt finance a significant risk.<sup>2</sup>
- 2.5 Secondly the Bill will remove any limit on a member's holdings in 'non-withdrawable share capital'. This permanent capital is currently less well used but experts believe it could be instrumental in future innovations for financing co-operatives.<sup>3</sup>

### **3 Financial reporting**

- 3.1 While reporting requirements for companies are updated regularly to reflect economic reality, changes for co-operatives tend to lag far behind. Over time this results in significant disadvantages that come with real business costs for our members. So it is most welcome that the Bill includes two measures to level the playing field in this regard. Industrial and provident societies will be free to choose their own year end, introducing crucial flexibility already enjoyed by companies. And they will also be free to publish unaudited interim reports at a significantly reduced cost, just as companies can. A further amendment to reporting requirements is proposed in **part 7**.

### **4 Director disqualification**

- 4.1 The Bill will apply company director disqualification to industrial and provident societies, providing greater protection against wrongdoing, and putting co-operatives on an equal footing with companies in this crucial regard.

### **5 Dissolution**

- 5.1 The Bill will introduce a new more straightforward means for a dormant industrial and provident society to be dissolved.

### **6 Co-operative identity**

- 6.1 The Bill also introduces new clearer legal names for industrial and provident societies, with that wording becoming redundant. Rather than being an industrial and provident society, these business will either be a 'co-operative society' or a 'community benefit society'.
- 6.2 Since the introduction of this reform in Great Britain in 2014 we have experienced some unexpected and burdensome regulatory turbulence which

---

<sup>1</sup> [http://www.uk.coop/sites/default/files/uploads/attachments/capital\\_constraints\\_final\\_research1.pdf](http://www.uk.coop/sites/default/files/uploads/attachments/capital_constraints_final_research1.pdf)

<sup>2</sup> Ibid

<sup>3</sup> [http://www.uk.coop/sites/default/files/uploads/attachments/capitalfinance\\_0.pdf](http://www.uk.coop/sites/default/files/uploads/attachments/capitalfinance_0.pdf)

is only now dissipating. We have written to both the Department of Enterprise Trade and Investment (DETI) and the scrutinising committee describing these issues and suggesting how they could be avoided in Northern Ireland.

## **7 Credit unions**

- 7.1 The Bills also includes significant reforms for the already strong credit union sector in Northern Ireland, providing more powers to credit unions and modernising their legal framework. These reforms have already been introduced in Great Britain. Notably credit unions will be able to attract more savings with the offer of interest bearing shares, and they will also be able to open accounts to corporate members, with the potential to further integrate credit unions into their local economies.

## **8 Accounts reporting thresholds**

- 8.1 The thresholds in turnover at which industrial and provident societies are required to produce additional accounting reports are far lower and more numerous, and thus more onerous, than the ones set for companies; with the latter being regularly increased over the years reflect economic reality. This puts our members at a disadvantage that comes with real business costs.
- 8.2 We ask that MLAs consider using the Credit Unions Co-operative and Community Benefit Societies Bill as an opportunity to update and simplify account reporting thresholds for industrial and provident societies so that these are broadly equal to those set for companies.

## **9 Insolvency procedures**

- 9.1 In Great Britain reforms in 2014 adapted company insolvency procedures for industrial and provident societies, giving them the option of entering into a process of administration when insolvent, rather than always having to be wound up. In allowing for the possibility of rescue this vitally important modernisation has put co-operative societies in Great Britain on a level footing with companies. The measure also had the benefit of ensuring employees of larger co-operatives in Great Britain are guaranteed coverage under the rules of the Pension Protection Fund.
- 9.2 We believe industrial and provident societies in Northern Ireland should also be given the same options and assurances.

## **10 Asset locks for bona fide co-operative societies**

- 10.1 Co-operatives allow people to pool resources to meet their own needs in a fair and effective way. Members of a co-operative commit to reinvesting significant portions of their profits into a common reserve. This process of common wealth creation is sometimes underpinned through the use of asset locks. These enhance long term collective investment and growth while providing



everyone involved with crucial reassurance that the capital in their co-operative will not be reappropriated for private gain.

- 10.2 Most co-operatives use the bona fide co-operative society legal form, which is specifically intended for models of mutual self-help. While members of many bona fide co-operative societies write asset locks into their rules, these lack the official and legal recognition given to the asset locks of community interest companies and community benefit societies. These last two forms of incorporation are increasingly popular with social entrepreneurs.
- 10.3 For self-help social enterprise to take off in a big way we need to provide statutory underpinning for asset locks used in bona fide co-operative societies in Northern Ireland. We ask MLAs to consider using the Credit Unions Co-operative and Community Benefit Societies Bill as an opportunity to introduce what would be an extremely beneficial reform.

## **11 Refining the community benefit society asset lock regulations**

- 11.1 Industrial and provident societies 'for the benefit of the community' have the option of using a statutory asset lock, as per the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006. In many respects these regulations are extremely effective at ensuring assets are used appropriately. However in recent months a number of cases in Great Britain have shed light on an unintended operation of these regulations that obstructs innovation in the mutual and charitable sectors.
- 11.2 It is possible for community benefit societies with charitable objects to be recognised as such ('charitable community benefit societies'). To do so they must have a very stringent charitable asset lock. Recently Co-operatives UK has worked with societies with charitable objects but without the charitable asset lock needed for official recognition. When they have attempted to change the provisions of their asset lock to make them more stringent they have found the asset lock regulations prevent them from doing so. Under the asset lock regulations once provisions are adopted they cannot be alerted, even if to make them more stringent. This is not an intended operation of the regulations and represents a legislative anomaly which will now need to be dealt with in Great Britain.
- 11.3 Legislators in Northern Ireland could use the Credit Unions Co-operative and Community Benefit Societies Bill as an opportunity amend the asset lock regulations so that these allow societies to adopt a stronger asset lock.

**James Wright, Policy Officer**

james.wright@uk.coop

0161 214 1775

**Co-operatives UK**  
**Holyoake House**  
**Hanover Street**  
**Manchester**  
**M60 0AS**  
[www.uk.coop](http://www.uk.coop)