

CREDIT UNIONS AND CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Enterprise, Trade and Investment in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Bill makes provision for updates to the key legislation governing the operation of credit unions and industrial and provident societies (IPSs).
4. The credit union sector in Northern Ireland plays a key role in the Northern Ireland economy. This was recognised in a 2009 ‘Report on the Committee’s Inquiry into the Role and Potential of Credit Unions in Northern Ireland’, in which the NI Assembly Committee for Enterprise, Trade and Investment (ETI Committee) made a number of recommendations for the sector. A 2012 NI Assembly research paper, ‘FSA Regulation of Northern Ireland Credit Unions’, considered these recommendations and noted that legislative changes would be required at the Northern Ireland level. This opportunity is also being used to implement legislative changes for IPSs.
5. This Bill updates two pieces of legislation: The Credit Unions (Northern Ireland) Order 1985 (‘the 1985 Order’) and the Industrial and Provident Societies Act (Northern Ireland) 1969 (‘the 1969 Act’). These pieces of legislation govern the operations of credit unions and IPSs respectively. In the interests of promoting the continued growth and ongoing sustainability of these sectors, the Bill will give NI credit unions and IPSs greater operational flexibility, while seeking to ensure that this flexibility does not put at risk the prudential running of such organisations.
6. The Bill will also address a lacuna in the legislation relating to the disqualification of directors, so that directors of credit unions can be disqualified in the same way as directors of companies. It will also ensure that the Company Directors Disqualification (Northern Ireland) Order 2002 applies both to credit unions registered under the 1985 Order and to registered societies under the 1969 Act.

CONSULTATION

7. The Department consulted on 19 proposed legislative updates between 11 June 2013 and 6 September 2013 and received 37 responses. During the consultation period, 3 public consultation events were held in Downpatrick, Cookstown and Ballymena.
8. Following consultation, and having considered the views of stakeholders, it was decided that 13 of the initial 19 policy proposals would be taken forward.

OPTIONS CONSIDERED

9. The recommendations in the 2009 ETI Committee report for the credit union sector cannot be implemented in the absence of legislative change. Similarly, the operational proposals for IPSs require legislative change.
10. The first option of doing nothing would result in none of the recommendations of the 2009 ETI Committee report being implemented, and none of the proposed changes to the IPS sector enacted
11. The second option to introduce legislation was the only available option that permitted any of the proposed changes to proceed.

OVERVIEW

12. The Bill contains 18 clauses and 2 Schedules. Clauses 1 to 7 and 14 apply to credit unions, and clauses 8 to 13 apply to IPSs.

COMMENTARY ON CLAUSES

Clause 1: Corporate members of credit unions

Clause 1 amends the 1985 Order to allow a credit union to admit any of the following as a member: a body corporate; a partner acting for a partnership; and an officer or member of the governing body acting for an unincorporated association. These are referred to as “corporate members” of the credit union.

Clause 1(1) inserts, into the 1985 Order, definitions of “body corporate”, “corporate member” and “partnership”.

Clause 1(2) substitutes a new Article 14(1) into the 1985 Order and details who may be a member of a credit union.

Clause 1(3) inserts into the 1985 Order a new Article 14A, which permits credit unions to admit corporate members when provided for in their rules, and places limits on the number of, and proportion of shares allotted to, corporate members. The Department may alter these limits by order.

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

Clause 2 amends Article 14 of the 1985 Order to remove the current statutory 10% limit on non-qualifying members. A non-qualifying member is a member of a credit union who ceases to have the required qualifications for membership.

Clause 3: Interest-bearing shares

This clause permits a credit union to offer interest-bearing shares in addition to shares entitling the holder to a dividend.

Clause 3(2) inserts new Articles 23A and 23B into the 1985 Order. Article 23A sets out the conditions which a credit union must satisfy before issuing interest-bearing shares. One of the conditions is that the credit union must have reserves of a certain level (the “threshold amount”). Article 23A(4) enables the Department to amend by order the threshold amount. Article 23B imposes duties on a credit union where interest-bearing shares have been issued, in relation to annual reporting and conversion of interest-bearing shares to non-interest-bearing shares.

Clause 4: Attachment of shares

Clause 4 concerns the withdrawal of credit union shares where the member’s paid-up shareholding is, or following withdrawal would be, less than the member’s total liability to the credit union. Clause 4 requires credit unions to include in the terms of a loan a statement of whether, for the duration of the loan, the borrower may make such a withdrawal. This replaces the current rule that such withdrawals are permitted only at the discretion of the board of directors of the credit union.

Clause 4(1)(b) substitutes Article 23(4) of the 1985 Order. The new Article 23(4) forbids the withdrawal of shares where a credit union has made a loan to a member which is treated as a secured loan by virtue of Article 28A of the 1985 Order and the member’s shareholding is, or following withdrawal would be, less than their total liability.

Clause 4(2) inserts into the 1985 Order a new Article 28(1E), which requires the terms of a loan made by a credit union to a member to state whether the borrower can withdraw shares, where the loan is not treated as a secured loan by virtue of Article 28A.

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

This clause substitutes Article 12(1) of the 1985 Order to give a member of a credit union who asks for a copy of its rules the entitlement to their first copy free of charge. It allows a credit union to charge a fee of up to £5 for the provision of rules to non-members and to members who have already received a free copy. The Department may change the fee by regulations.

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

This clause amends Article 36(5) of the 1985 Order. That Article currently imposes a requirement that a dividend of not less than 3% is paid on all paid-up shares before a credit union can apply any of its surplus funds for social, cultural or charitable purposes (up to a

maximum of 10%). The clause removes the minimum amount of the dividend, although it still requires that a dividend be paid to members before surplus funds are applied to those purposes.

Clause 7: Application of directors disqualification provisions to credit unions

This clause inserts a new Article 25B into the Company Directors Disqualification (Northern Ireland) Order 2002 to provide for that Order to apply to credit unions.

Clause 8: Registration of societies as co-operative or community benefit societies etc

This clause substitutes section 1 of, and inserts a new section 1A into, the 1969 Act. The effect is to introduce the new names, co-operative societies and community benefit societies. The substituted section 1 requires all new societies to be registered as co-operative or community benefit societies. New section 1A(1) deals with the treatment of societies already registered, or treated as registered, under the old provisions (a “pre-2015 Act society”); their registration status will not be affected. It also introduces a new definition of “registered society”, so that the term covers both new societies and pre-2015 Act societies. Subsection (2) changes the short titles by which the legislation governing such societies may be cited.

Clause 9: Members under 18 years old

This clause substitutes section 19 of the 1969 Act to allow persons under the age of 18 to become a member of a registered society, and reduces from 18 to 16 the minimum age at which persons can hold office in a registered society.

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

Clause 10 amends section 6(1) of the 1969 Act to amend the £20,000 limit on the holding of withdrawable shares and replacing the previous limit with a new maximum of £100,000 per shareholding member. There will be no limit on shareholdings of shares that are non-withdrawable.

Clause 11: Year of account

Clause 11 amends the provision relating to annual returns and calculation of societies’ year-end by inserting into the 1969 Act new sections 36A and 36B, which specify the year of account for societies but also allow societies to choose their own year-end date by notice to the appropriate authority. New section 36A applies to societies that were registered before this clause comes into operation. New section 36B applies to societies registered thereafter.

Clause 12: Publication of unaudited interim accounts

Clause 12 inserts into the 1969 Act a new section 37A(6A) 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 clearly marked as unaudited.

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

Clause 13 amends section 64 of, and inserts a new section 66A into, the 1969 Act. The changes offer a dormant society an alternative method of dissolution by a special resolution of the society.

Clause 14: Review of Section 1

Clause 14 places a requirement on the Department to conduct a review of the operation of Section 1, as it refers to unincorporated associations. The Department shall also be required to report on the outcome of this review, and lay the report before the Assembly. The review must commence no later than 2 years after the Bill receives Royal Assent.

Schedule 1: Minor and consequential amendments

Part 1: Amendments consequential on section 1

Part 1 of Schedule 1 makes a number of amendments which are consequential on clause 1 of the Bill (corporate members of credit unions).

Paragraph 2 inserts into the 1985 Order a new Article 3A, which sets out how a corporate member will satisfy the common bond requirements of a credit union.

Paragraph 3 inserts into the 1985 Order new Articles 13(1A) and (1B). Article 13 deals with the minimum number of members of a credit union. New Articles 13(1A) and (1B) make provision about the membership of individuals who are members of a credit union in their capacity as a member of a partnership or unincorporated association. In these circumstances, for the purposes of Article 13, the partnership or unincorporated association will be treated as the member and this will not affect the treatment of the individual as a member in respect of any shares held by the individual in his or her personal capacity.

Paragraph 4 inserts into the 1985 Order a new Article 14(9A). This enables the voting rights of a partnership or unincorporated association to be exercised by the corporate member and ensures that an individual retains his or her own vote in respect of any shares held in a personal capacity.

Paragraph 5 inserts into the 1985 Order a new Article 16(3) which provides that the remedies available to a credit union in respect of the debts of individuals who are corporate members are subject to the rules on transfer of shares and loans.

Paragraphs 6 and 7 insert new Articles 17(7) and 18(2A) into the 1985 Order. A nomination to property in a credit union made by an individual who is a corporate member is valid when it is made to another partner (in the case of a partnership) or when the nominee is an officer or member of the governing body of the unincorporated association (in the case of an unincorporated association). Where the nominee holds shares both as a corporate member and in a personal capacity, those shareholdings are to be kept separate for the purposes of the rule in Article 18 about maximum shareholdings.

Paragraph 8 substitutes Article 23(2) and inserts, into the 1985 Order, two new Articles 23(2A) and 23(2B). The substituted Article 23(2) provides for the transfer of certain

corporate shares. Article 23(2A) enables shares to be transferred by individuals who are corporate members in accordance with the rules of the credit union. The transferee must be another partner (in the case of partnerships) or an officer or member of the governing body (in the case of unincorporated associations). Article 23(2B) provides that all rights and responsibilities of, or connected with, those shares transfer to the transferee.

Paragraph 9 inserts into the 1985 Order new Article 28(1A), (1B), (1C) and (1D). Article 28(1A) provides that a credit union may make a loan to a corporate member only if the credit union's rules so provide and subject to a limit on loans made to corporate members. Paragraph (1B) enables the Department to amend this limit by order. Paragraph (1C) allows for the transfer of loans made to individuals who are corporate members, if the credit union rules so provide and paragraph (1D) relates to the transfer of all rights and liabilities in relation to those transferred loans.

Paragraph 10 inserts into the 1985 Order a new Article 72(1A). Article 72 deals with decisions on disputes and new paragraph (1A) provides that any person claiming through a member of the credit union or any person aggrieved will include any partner in a partnership or any member of an unincorporated association where the individual is or has been a corporate member of the credit union.

Paragraph 11 amends Schedule 1 of the 1985 Order (matters to be provided for in rules of credit unions) so that credit union rules include certain matters pertaining to corporate membership.

Part 2 Amendments consequential on Section 8

Part 2 makes consequential amendments that are required for the change of registration of new industrial and provident societies as co-operative or community benefit societies (section 8). It amends references to industrial and provident societies in a number of Acts and Orders and also makes general modifications.

Part 3 Minor and consequential amendments: general

Part 3 makes minor and consequential amendments to the 1985 Order and the 1969 Act.

Part 4 removal of obsolete material

Part 4 removes obsolete material from the 1969 Act.

Schedule 2: Transitional provision

Schedule 2 makes transitional provision in respect of section 4 (attachment of shares), section 8 (pending applications for registration of a society and appeals against decision not to register) and section 9 (members under 18).

FINANCIAL EFFECTS OF THE BILL

13. If enacted the Bill is not expected to lead to any increase in public expenditure.

HUMAN RIGHTS ISSUES

14. The provisions of the Bill are considered to be compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

15. The proposed measures have been screened and it is not considered that the Bill will have any adverse or negative impact on any of the groups identified in section 75 of the Northern Ireland Act 1998.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

16. The regulatory impact of the changes has been considered and according to the Regulatory Impact Assessment the objectives of the Bill could be achieved only through legislation and legislative change will have an overall beneficial impact.

LEGISLATIVE COMPETENCE

17. The Minister of Enterprise, Trade and Investment has made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Credit Unions and Co-operative and Community Benefit Societies Bill would be within the legislative competence of the Northern Ireland Assembly.”