

## **REQUEST TO DETI FROM THE ETI COMMITTEE**

Members asked the Department for the following information:

- (a) why credit unions are not able to invest as banks are,
- (b) for a detailed explanation of why, in regards to Clause 1, it decided not to allow corporate bodies to hold membership and what instruction, guidance and/or advice it received from Treasury on the issue and,
- (c) on what aspect did it seek legal advice regarding unincorporated bodies and did the legal advice come from within the Department or the Treasury.

### **(a) why credit unions are not able to invest as banks are,**

How credit unions can invest surplus funds is not a transferred matter and cannot therefore be legislated for by the NI Assembly. A Northern Ireland credit union may apply to the appropriate regulatory authority to amend their activities.

The Prudential Regulation Authority (PRA) published a consultation on 24 June 2015. The PRA is proposing the introduction of a revised approach to the supervision of credit unions which, among other things, should enable credit unions to have more flexibility in core activities including investments.

### **(b) for a detailed explanation of why, in regards to Clause 1, it decided not to allow corporate bodies to hold membership and what instruction, guidance and/or advice it received from Treasury on the issue**

The Department did not decide 'not to allow corporate bodies to hold membership'.

Clause 1 of the Bill amends the Credit Unions (NI) Order 1985 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.

Within the legislation these three groups are referred to as "corporate members" of the credit union.

The Department did not seek, or receive, instruction on the matter of corporate bodies from HM Treasury.

**(c) on what aspect did it seek legal advice regarding unincorporated bodies and did the legal advice come from within the Department or the Treasury.**

The Department first published the policy provision for unincorporated associations (or unincorporated bodies) in the public consultation of summer 2013. This used existing GB legislation regarding unincorporated associations as a starting point (the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011).

Following the consultation, the policy on unincorporated associations was supported by the Ulster Federation of Credit Unions although the Irish League of Credit Unions noted some concerns around administrative handling of such accounts. To address those concerns raised, DETI developed the current legislative position with the Office of Legislative Council. This goes further than GB by simplifying the administrative burden for credit unions when transferring the named persons for unincorporated associations.

To ensure the Department understood the GB position, DETI officials discussed the policy rationale with HM Treasury (HMT), the Financial Conduct Authority, the Prudential Regulation Authority and the Financial Services Compensation Scheme.

Some points of discussion have already been shared previously with the ETI Committee, for example the 30 January 2015 letter (attached at Annex A) and the 8 April 2015 letter (attached at Annex B).

On the specific point regarding the naming of unincorporated association accounts, the Department sought advice from HMT on the reasons why banks have the ability to open accounts in the name of unincorporated associations but credit unions in GB do not. HMT's response, dated 20 January 2015, is attached at Annex C.

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

**Reply prepared by: Company Law**  
**Date: 31 July 2015**

## **ANNEX A**

### **30 JANUARY 2015 DETI LETTER TO THE ETI COMMITTEE**

#### **COMMITTEE PRE-LEGISLATIVE SCRUTINY OF THE CREDIT UNIONS AND INDUSTRIAL & PROVIDENT SOCIETIES BILL**

On 3 April 2014 you wrote setting out the Committee's views on proposals for the draft Bill. I responded on 17 June 2014 advising of policy decisions in respect of two of the three areas where the Committee had made recommendations.

The Committee's final recommendation concerned the issue of corporate accounts (proposal 6). In your 3 April 2014 letter, you advised,

"The Committee is mostly content with the Department's decision to accept Proposal 6. However, during oral evidence, the credit union trade bodies expressed concern at the Department's response to their request that corporate accounts are held in the name of the entity rather than in the name of an individual. The Department responded that the matter should be raised with the regulatory authority. The Committee believes that the Department should explore, with the regulatory authority, if and how the provision for corporate accounts to be held in the name of the entity can be included in primary legislation."

This proposal, broadly speaking, envisages two types of corporate member: bodies corporate, and unincorporated groups.

It is intended that should a body corporate (such as a company) join a credit union, the account will be held in the name of the entity itself.

The issue therefore concerns unincorporated groups. Unlike bodies corporate, these groups are not recognised as legal entities separate from their members and cannot enter into contracts, borrow money, hold property etc. It is for this key reason that credit unions, as proposed, would not be permitted to admit as members unincorporated groups in their own right, the account instead being in the name of an individual.

In line with the Committee's wishes, officials have explored this issue with colleagues in UK credit union regulatory authorities. The Prudential Regulation Authority (PRA), which has responsibility for prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms, has advised of a number of risks if unincorporated groups were permitted to have accounts in their own right.

One risk concerns the Financial Services Compensation Scheme, which is the fund which compensates savers for deposits lost when, for instance, a bank or credit union folds. A particular issue with unincorporated associations, officials understand, is the lack of certainty about who precisely would be entitled to compensatory payments in the absence of a named individual holding membership.

Another risk raised by the PRA was that of lending to unincorporated groups, and the legal liability when they do not have a legal identity. This could well lead to a situation whereas credit union is unable to recover monies owed, or increase the legal costs of recovery.

It is also considered that naming individuals as account holders reinforces their liabilities and legal obligations in respect of the group. In contrast, a credit union account in the name solely of an unincorporated group may not make clear to persons in that group that they share legal obligations in respect of that account, and may be liable to action.

In addition to raising the Committee's proposal with regulatory bodies, officials have also explored alternative approaches.

Officials are advised that in the Republic of Ireland, where unincorporated associations can be admitted as members in their own right, there is a detailed validation process to establish the signatories who will operate that account. A similar validation process applies when there is a change in signatory. These formalities are similar in scope to those associated with the Department's proposal.

Officials have also explored another alternative with the aim of addressing the administrative concern expressed by the Irish League of Credit Unions (ILCU) and Ulster Federation of Credit Unions (UFCU) – that of permitting transfer of rights and liabilities from one individual representative to another (as opposed to closure of one account followed by the opening of another).

This new proposal has been the subject of further, extensive negotiations between DETI officials and colleagues in HM Treasury, the two UK regulatory authorities, the two key credit union trade bodies and legislative counsel. The significant discussions to date have focused on establishing if this new proposed approach is legislatively possible, operationally feasible, and the degree to which it would address the concerns expressed by the trade bodies without prejudicing credit unions' prudential framework or creating undue risk.

Following talks neither of the two UK regulatory authorities has raised any concerns, from either a financial conduct or prudential perspective, and both are content in principle.

The two key trade bodies have cautiously welcomed the proposed new approach. The ILCU, however, has indicated that it did not foresee any huge benefit, but the UFCU has suggested that this approach could be a positive development.

In view of the prudential risks highlighted by the PRA it has been decided that the Department's original policy proposal will be maintained - that an unincorporated group cannot be a member of a credit union in its own right, but that a named individual can join on behalf of an unincorporated group. However, with the aim of easing the associated administration, the Bill will permit either the transfer of rights and liabilities from one representative to another, or the opening and closing of accounts.

**David McCune**  
**DETI DALO**

**Date: 30 January 2015**

## **ANNEX B**

### **8 APRIL 2015 DETI LETTER TO THE ETI COMMITTEE**

#### **REQUEST TO DETI FROM THE ETI COMMITTEE**

At its meeting on 24 March the ETI Committee considered correspondence from the ILCU and UFCU in respect of the above Bill.

Members asked the Department, in relation to no.3 in the correspondence from the UFCU, whether it has addressed the issue of potential fraud with the Treasury.

#### **DRAFT DEPARTMENTAL RESPONSE**

In its correspondence, the UFCU raised a concern about a particular practice of the UK Financial Services Compensation Scheme (FSCS), the body that can pay compensation to eligible depositors in banks, building societies and credit unions when they fail. In these circumstances, the FSCS sends out a cheque in the name of the individual representing an unincorporated association, rather than in the name of the association itself. The UFCU suggests to the Committee that this would present the opportunity for fraud.

This issue, being an operational matter, has been raised with the FSCS, which advises that it sees no reason why fraud would be more likely at failure than it would be whilst the unincorporated association funds were held in the credit union account to which the individual had access. In addition, should the credit union account for an unincorporated association have two or more signatories, compensation would be split equally and cheques issued to each individual. This would reduce significantly any scope for potential fraud.

The FSCS has confirmed that it has no plans to alter its existing practice of sending out compensation cheques in the name of a natural person rather than in the name of unincorporated associations which, the FSCS has emphasised, have no legal status.

The Committee may also wish to note that the Department, along with the Office of Legislative Counsel, are currently finalising the draft Bill and it is hoped to get introduction before the summer recess. Failure to achieve this will compromise the successful completion of the Bill's passage in this Assembly term.

Prepared by: Business Regulation Division  
8 April 2015

## **ANNEX C**

### **[EXTRACT OF EMAIL FROM HMT TO DETI]**

“An unincorporated association has no separate legal identity from its individual members. This manifests itself in a number of ways:

- Individual members of the management committee are personally responsible for the groups obligations and debts if sued.
- Individuals enter into contracts on behalf of the group.
- An unincorporated association cannot own property in its own right.

If the association acts through individuals or committees or any other delegated authority, then in most cases, those individuals will be held responsible to the person they deal with, for what they do in the name of the association. However, within the association, the position may be more complicated and will depend on the application of the law of contract and implied authority.

Therefore, in the UK Credit Unions can loan to unincorporated associations but the account will be in the name of an individual who will represent the association. Some banks do open accounts in the name of unincorporated associations but these appear to be accounts with very limited functionality (i.e. for deposits only which require a balance of over £10,000 before interest is payable).

We had to keep in mind that the risk profile for a bank is a lot different to that of a Credit Union. A bank is responsible to its shareholders for profits and this will influence the level of risk it is prepared to take on. Also, banks have much more detailed resources and procedures available to evaluate the risk profile of a particular client. This is not the case with a Credit Union and in the event of a default on a loan from an unincorporated association they will have to look to the members of the association to recoup any losses.”