



## Note for the Committee for Enterprise, Trade & Investment Northern Ireland

### Assembly powers

1. Under the devolution arrangements set out in the Northern Ireland Act 1998, the area of financial services is generally a reserved matter (see Sch 3, para 23 to the Act). The consent of the Secretary of State for Northern Ireland, acting on advice from HM Treasury, would therefore be required before the Northern Ireland Assembly could legislate in respect of financial services. However, in the Act, specific exceptions are made for legislation relating to credit unions including:

‘....the subject-matter of..... the Credit Unions (Northern Ireland) Order 1985’

2. As the Assembly intend to amend the 1985 Order, consent is not required for the Northern Ireland Assembly to legislate. Given the drafting of the exception, we consider it is likely that the Assembly always has power to legislate in relation to credit unions in Northern Ireland.
3. Given the above, HM Treasury’s interactions with Department of Enterprise, Trade and Investment on the Credit Unions and Co-operative and Community Benefit Societies Bill have simply been to share our rationale for the policy behind the drafting of the Legislative Reform Order 2011 (‘the LRO’) which applies to GB credit unions. We hope that the below information detailing our policy rationale for the treatment of unincorporated associations will provide all the necessary information to assist with the Committee Stage of this Bill.

### HM Treasury’s Policy rationale for the treatment of unincorporated associations in legislation

4. The Credit Unions Act 1979, as amended by the LRO, enables credit unions to have corporate members. As well as corporate bodies, section 5A(6) of the 1979 Act provides for partnerships (represented by one of the partners) and unincorporated associations (represented by an officer or member of the

association) to be included as ‘corporate members’. The reason why partnerships and unincorporated associations must be represented by an individual is that these bodies are not separate legal entities in their own right, unlike registered companies, chartered corporations or statutory corporations, which all have separate legal personality, specifically, a legal existence outside of their members.

5. The characteristics of unincorporated associations have historically been determined by case law rather than set out in legislation. In essence, they are organisations of persons or bodies, having a distinct purpose and an identifiable membership (although this will fluctuate over time) and are governed by rules or a constitution. The lack of a separate legal existence manifests itself in a number of ways, typically that:
  - Individual members of the management committee are personally responsible for the group’s obligations and debts if sued
  - Individuals enter into contracts on behalf of the group
  - An unincorporated association cannot own property in its own right
6. This lack of a separate legal identity is the reason why, in terms of legislative drafting, unincorporated associations must be represented by individuals who act under delegated or implied authority on behalf of the organisation (in practice, the rules of individual associations will determine the rights and duties of the members between themselves).
7. HM Treasury also considered the way that banks treat unincorporated associations when determining the appropriate treatment of credit unions in the LRO. It was concluded that although some banks do open accounts in the name of unincorporated associations themselves, these appear to be accounts with very limited functionality (for example, for deposits only which require a balance of over £10,000 before interest is payable.) This results from the risk profile of a credit union as compared to a bank. A bank is responsible to its shareholders for profits and this influences the level of risk it is prepared to take on. In general banks have much more detailed resources and procedures available to evaluate the risk profile of a particular client. For many of the GB credit unions this is not the case and in the event of a default on a loan from

an unincorporated association they would have to look to the members of the association to recoup any losses.

8. HM Treasury is happy to provide any further assistance required by the Committee for Enterprise, Trade & Investment on this matter.