

CREDIT UNIONS (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for the Economy 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. Credit unions are an established part of the financial services landscape in Northern Ireland and provide savings, lending and related services to their members on a mutual and community-based basis. The existing legislative framework requires amendment to ensure that credit unions are able to operate within a modern, proportionate and effective statutory environment. The policy objectives of the Bill are to modernise and reform credit union legislation, improve the ability of credit unions to respond to changing member needs and expectations, support financial inclusion, and enable the sector to continue to make a positive contribution to local communities and the wider economy.

CONSULTATION

4. The Department for the Economy has undertaken consultation on proposals to reform credit union legislation in Northern Ireland. The consultation sought views from credit unions, their members and other interested stakeholders on the case for legislative change and on the measures needed to support a modern, effective and sustainable credit union sector. The responses received helped to inform the development of the Bill and the policy approach reflected in its provisions.

OPTIONS CONSIDERED

5. In developing the Bill, the Department considered the option of making no legislative change. This was not considered appropriate, as it would leave the existing statutory framework unchanged and would not address the issues identified through previous consultation on credit union reform. The Department also considered whether the policy objectives could be achieved through non-legislative means, including administrative action or guidance. That option was not considered sufficient, as the matters to be addressed require amendment of the legislative framework governing credit unions in Northern Ireland. The preferred option is therefore to bring forward primary legislation to

modernise and reform credit union law in a targeted and proportionate way, taking account of the consultation responses and the need to support a sustainable and effective credit union sector.

OVERVIEW

6. The Bill makes provision to amend the legislative framework governing credit unions in Northern Ireland. It is structured around a series of targeted amendments to the Credit Unions (Northern Ireland) Order 1985. Provisions either confer or clarify powers relating to the activities which credit unions may undertake, including specified financial activities, deferred shares, ancillary services and loan participation. The Bill also makes provision about membership and governance, including minimum age requirements, admission of family members, remote meetings and the register of members and officers. Further provisions deal with operational matters, including transfers of engagements, referrals between credit unions, the holding of land and the application of surplus. The Bill also includes amendments relating to the making of orders and regulations under the 1985 Order, together with general provisions on interpretation, commencement and short title. Taken together, the provisions are intended to modernise credit union legislation, support the continued development of the sector and provide credit unions with a clearer and more flexible statutory framework within which to serve their members and communities.

COMMENTARY ON CLAUSES

Clause 1: The 1985 Order

This clause defines “the 1985 Order” for the purposes of the Act as the Credit Unions (Northern Ireland) Order 1985.

Clause 2: Minimum age

This clause replaces Article 15 of the 1985 Order to provide that a person under the age of 18 may not be a member of a credit union. It also restates the existing restriction preventing persons under the age of 18 from holding specified offices in a credit union. Transitional provision preserves the position of existing members, and persons whose applications were made before commencement, in accordance with the existing Article 15.

Clause 3: Admission of family members

This clause amends the membership provisions of the 1985 Order to allow the rules of a credit union to treat family members of existing members as meeting the qualifications for admission to membership whether or not those family members live in the same household as an existing member. The current position is that a credit union’s rules can authorise the admission of a family member but only if that family member is part of the household of an existing member. The amendment made by the clause provides that the number of members admitted through this route on or after the day the clause comes into operation must not exceed 5% of the total number of members, with power for the Department to substitute a different percentage by regulations.

Clause 4: Referral of members to other credit unions

This clause inserts a new Article 28E into the 1985 Order to allow a credit union to refer one of its members to another credit union for the provision of a service, where its rules provide for this. The receiving credit union may provide the referred service, and the person is treated as a member of that credit union for the purposes of that service and while it is being provided.

Clause 5: Register of members and officers

This clause amends the provisions in the 1985 Order relating to the register of members and officers and restrictions on inspection of books (Articles 54 and 55, respectively). Members of a credit union and persons having an interest in the funds of the credit union, have a right under Article 55(2)(b) to inspect certain information contained in the register. This information relates to the credit union's members and its officers. The amendment made by the clause limits the information that must be made available on an inspection under Article 55(2)(b) to information about a credit union's officers (so that information about members of a credit union is no longer subject to the right of inspection under Article 55(2)(b)).

Clause 6: Transfers of engagements

This clause amends the provisions on transfers of engagements between credit unions. It provides that, where engagements are transferred, the common bond of the transferee credit union is taken to include the common bond of the transferor credit union, with the rules of the transferee credit union amended accordingly from the date of transfer. It also makes consequential provision so that the usual rule amendment procedure does not apply to such an amendment.

Clause 7: Specified financial activities

This clause and the Schedule it introduces amend the 1985 Order to enable a credit union to have an optional object of carrying on specified financial activities for the benefit of its members. The provision mirrors, for Northern Ireland, the corresponding reforms made for credit unions in Great Britain by Schedule 14 to the Financial Services and Markets Act 2023. The activities specified include entering into conditional sale agreements, entering into hire purchase agreements and carrying on insurance distribution activities. The clause also provides a power for the Department to specify requirements or restrictions in relation to such activities and to specify further financial activities by regulations, following consultation.

Clause 8: Deferred shares

This clause makes provision for deferred shares in credit unions by inserting a definition of deferred shares into Article 2 of the 1985 Order and making related amendments throughout the Order to ensure that deferred shares are treated differently to ordinary shares for various purposes. Deferred shares are a distinct class of shares issued on terms set out in issue documents provided to applicants. Those documents must identify the shares as deferred shares, state whether they are covered by the Financial Services Compensation Scheme and include a term prohibiting repayment of principal except in specified circumstances. Repayment may take place only on the winding up or dissolution of the credit union, where all sums due to creditors are paid in full, or with the consent of the appropriate authority

following an application by the credit union (the “appropriate authority” for this purpose will be either the Prudential Regulation Authority or the Financial Conduct Authority).

Clause 9: Charging for ancillary services

This clause inserts a new Article 26A into the 1985 Order to enable a credit union to charge a fee for providing ancillary services to members and certain persons from whom it has accepted deposits. Ancillary services include services connected with deposits, loans, conditional sale agreements and hire purchase agreements, including payment services, debit card services, money transmission services and related advice.

Clause 10: Loan participation

This clause inserts a new Article 28AA into the 1985 Order to allow one or more credit unions to participate in a loan made by another credit union, subject to that credit union’s agreement. It provides that participation may be for any purpose the participating credit union considers appropriate and, on such security, and terms as the rules of that credit union may provide.

Clause 11: Clarification of powers to hold land

This clause clarifies the powers of a credit union under Article 32 of the 1985 Order to hold and dispose of land, including part of land, for the purpose of conducting its business. It also provides that Article 32 is to be treated as having always had effect with the amendments made by the clause.

Clause 12: Application of surplus

This clause amends Article 36 of the 1985 Order in relation to the application of surplus for social, cultural or charitable purposes. The amendments remove the requirement that a dividend be paid on all paid-up shares in a credit union before an amount of surplus can be applied for those purposes. The amendments apply only in relation to a year of account beginning on or after commencement.

Clause 13: Remote meetings

This clause amends the definition of “meeting” in the 1985 Order so that it includes a meeting at which some or all participants attend remotely.

Clause 14: Use of name “credit union”

This clause amends the provision in the 1985 Order concerning the use of the name “credit union” to avoid doubt that a credit union may lawfully use the abbreviation “Ltd.” as an alternative to “Limited”.

Clause 15: Appointment and removal of auditors: procedure

This clause amends Article 45 of the 1985 Order, which makes provision about resolutions relating to the appointment and removal of auditors, including provision about notice requirements relating to resolutions. It replaces fixed minimum notice periods of 28 days (in Article 45(1)) and 14 days (in Article 45(3)) with a power for the minimum number of days’ notice to be specified in each case by regulations. It also amends provision in Article 45(3) about the way in which notice of such a resolution is to be given to a credit union’s members, so that the way in which the notice must be given is determined exclusively by reference to the rules of a credit union (as opposed to the current position which gives a credit union a

choice between placing an advertisement in a newspaper or choosing a different method permitted by its rules).

The clause defines “specified number” for these purposes as a number of days specified by regulations. The amendments apply only where notice of intention to move the resolution is given on or after the day on which the clause comes into operation.

Clause 16: Orders and regulations under the 1985 Order

This clause replaces certain references to orders in the 1985 Order with references to regulations so that all of the Department’s powers to make subordinate legislation under the 1985 Order will be exercisable by regulations. It inserts general provision dealing with the Assembly procedure for regulations (the general rule being that regulations will be subject to negative resolution unless the draft affirmative procedure applies to the regulations) and enables regulations to include incidental, transitional, transitory or saving provision. It also makes consequential amendments to Articles 2 and 78A of the 1985 Order.

Clause 17: Commencement

This clause makes provision for commencement. It provides for the provisions of the Act (including the Schedule) to come into operation on the day after Royal Assent except for clause 15. Clause 15 (appointment and removal of auditors: procedure) will come into operation on a day appointed in an order made by the Department for the Economy.

Clause 18: Short title

This clause provides for the short title of the Act.

FINANCIAL EFFECTS OF THE BILL

7. The Bill is not expected to give rise to significant additional expenditure from public funds. Its provisions are primarily enabling and regulatory in nature, amending the legislative framework within which credit unions in Northern Ireland operate. Any costs arising for credit unions will depend on the extent to which individual credit unions choose to make use of the new or amended powers provided for in the Bill, for example in relation to specified financial activities, deferred shares, ancillary services, loan participation or remote meetings. The Department may incur limited administrative costs associated with implementation, including preparation of any subordinate legislation, guidance or commencement arrangements, but these are expected to be met from within existing resources.

HUMAN RIGHTS ISSUES

8. The Department considers that the Bill is compatible with the Convention rights within the meaning of the Human Rights Act 1998, which gives further effect in UK law to the rights and freedoms guaranteed under the European Convention on Human Rights. The provisions of the Bill are directed at amending the statutory framework governing credit unions in Northern Ireland and are primarily enabling and regulatory in nature. The Bill does not create criminal offences or impose requirements which are considered to give rise to significant human rights concerns. Insofar as individual provisions may affect the

operation of credit unions or the services available to members, those provisions pursue legitimate policy objectives and are considered to be proportionate.

EQUALITY IMPACT ASSESSMENT

9. The Department has considered the Bill in accordance with its equality obligations under section 75 of the Northern Ireland Act 1998. The Bill is concerned with reform of the statutory framework governing credit unions in Northern Ireland and is primarily enabling and regulatory in nature. The Department does not consider that the Bill will have a significant adverse impact on any of the groups listed in section 75. The provisions are intended to support a modern and effective credit union sector and to improve the ability of credit unions to respond to the needs of their members and communities. The Department will keep equality considerations under review as the Bill progresses and as any subordinate legislation or implementation arrangements are developed.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

10. A regulatory impact assessment has been considered in relation to the Bill. The Bill is primarily enabling and regulatory in nature and is intended to modernise the statutory framework for credit unions in Northern Ireland. The provisions are expected to provide credit unions with additional flexibility, including in relation to specified financial activities, deferred shares, ancillary services, loan participation and remote meetings. Any regulatory impact on credit unions is expected to depend on the extent to which individual credit unions choose to make use of the new or amended powers. The Department considers that the Bill provides a proportionate approach to reform and is not expected to impose significant additional regulatory burdens on credit unions or on business generally.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

11. The Department has considered the Bill in light of data protection requirements, including the UK General Data Protection Regulation and the Data Protection Act 2018. The Bill is primarily concerned with amending the statutory framework governing credit unions in Northern Ireland and does not, of itself, establish a new system for the processing of personal data by the Department. Some provisions may affect the way in which credit unions administer membership, services or governance arrangements, including in relation to membership records, remote meetings or referrals between credit unions. Where personal data is processed in connection with those matters, credit unions and any other relevant controllers will be required to comply with applicable data protection legislation. The Department will keep data protection considerations under review as the Bill progresses and as any subordinate legislation, guidance or implementation arrangements are developed.

RURAL NEEDS IMPACT ASSESSMENT

12. The Department has considered the Bill in accordance with the Rural Needs Act (Northern Ireland) 2016. Credit unions operate across Northern Ireland, including in rural areas, and may provide important access to community-based financial services for rural

members and communities. The Bill is intended to modernise the statutory framework for credit unions and to provide additional flexibility for the sector. The Department does not consider that the Bill will have a significant adverse impact on rural needs.

Its provisions are expected to apply generally to credit unions operating in both urban and rural areas and may support them in responding to the needs of their members and local communities. The Department will keep rural needs considerations under review as the Bill progresses and as any subordinate legislation, guidance or implementation arrangements are developed.

LEGISLATIVE COMPETENCE

13. The Department considers that the provisions of the Bill are within the legislative competence of the Northern Ireland Assembly. The Bill amends the Credit Unions (Northern Ireland) Order 1985 and makes provision in relation to the operation and regulation of credit unions in Northern Ireland.

The Bill does not make provision which is considered to be outside the Assembly's legislative competence under the Northern Ireland Act 1998.

14. At Introduction the Minister for the Department for the Economy made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Credit Unions (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly."

SECRETARY OF STATE CONSENT

The Secretary of State's consent under section 8 of the Northern Ireland Act 1998 is not required for this Bill.



**Northern Ireland
Assembly**

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