

EXPLANATORY MEMORANDUM TO
THE COMMUNITY BENEFIT SOCIETIES (RESTRICTION ON USE OF ASSETS)
(AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2007

2007 No. 226

1. This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 This statutory rule amends the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 (SR 2006 No. 258) to allow prescribed community benefit societies which have a restriction on use of assets to transfer their assets to a community interest company (CIC). Often referred to as an “asset lock”, a restriction on use of assets rule serves to eliminate the possibility that, on dissolution or amalgamation, a society’s accumulated assets could be distributed to members following conversion to a company incorporated under the Companies (Northern Ireland) Order 1986 or, in the future, under the Companies Act 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 The Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006, which came into operation on 31 July 2006, enable prescribed community benefit societies to transfer their assets to certain prescribed bodies or organisations under prescribed circumstances. However, these Regulations differed from their GB equivalent in that they did not contain a provision permitting community benefit societies to transfer their assets to community interest companies because the CIC provisions of the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 were never brought into operation.
 - 4.2 The Companies Act 2006 (c. 46), which received Royal Assent on 8 November 2006, repealed the CIC provisions (Part III) of Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 and extended the CIC provisions (Part 2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to Northern Ireland with effect from 6 April 2007. These Regulations, therefore, amend the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 by inserting, where appropriate, references to community interest companies thereby bringing the Northern Ireland “asset lock” regulations fully into line with their GB equivalent.

5. Extent

- 5.1 This statutory rule applies to Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Minister for Enterprise, Trade and Investment, Maria Eagle, has made the following statement regarding Human Rights:

“In my view the provisions of the Community Benefit Societies (Restriction on Use of Assets) (Amendment) Regulations (Northern Ireland) 2007 are compatible with the Convention Rights.”

7. Policy background

- 7.1 Allowing community benefit societies to establish an asset lock, if they feel it would be of benefit to their society, allows societies to close off the possibility that assets would be distributed to members should a society convert to a company incorporated under the Companies (Northern Ireland) Order 1986 or, in the future, the Companies Act 2006. In theory, “carpetbaggers” could seek to become members of community benefit societies with the aim of forcing a vote on conversion of the society to company status and making windfall profits from accumulated investments over the years. It is recognised that this risk may deter individuals from investing in a society and thus, may serve as a barrier to future growth.
- 7.2 The Northern equivalent of the GB legislation enabling the setting up of community interest companies in England and Wales and Scotland is the Companies (Audit, Investigations and Community Enterprise) (Northern Ireland) Order 2005 (the CAICE Order) but Part III (Articles 25 – 60) of this Order, which specifically dealt with CICs, was never brought into operation. However, the Companies Act 2006 (Commencement No.2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007 No. 1093 (C. 49)) brought into force provisions repealing Part III of the CAICE Order and extending the CIC provisions (Part 2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to Northern Ireland with effect from 6 April 2007. It is necessary, therefore, to now amend the 2006 Regulation by inserting references to community interest companies where appropriate to ensure that they are fully in line with their GB equivalent. This will permit community benefit societies to transfer their assets to community interest companies under prescribed circumstances.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this Rule as it amends the 2006 Regulations to bring them fully into line with their GB equivalent and has no impact on business, charities or voluntary bodies beyond permitting prescribed community benefit societies, should they so desire, to transfer their assets to a CIC.
- 8.2 There is no impact on the public sector.

9. Contact

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