

CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES AND CREDIT UNIONS ACT 2010

EXPLANATORY NOTES

COMMENTARY

Section 3: Application of provisions relating to directors disqualification

19. **Section 3** inserts in the Company Directors Disqualification Act 1986 (“the CDDA”) a new section 22E applying the Act to industrial and provident societies.
- Section 22E(1) defines “registered society” for the purposes of the section as a society registered or deemed to be registered under the 1965 Act.
 - Section 22E(2) provides that the CDDA applies to registered societies as it applies to companies.
 - Section 22E(3) provides that references in the CDDA to certain terms relating to companies include references to the equivalent terms relating to industrial and provident societies. In particular, subsection 22E(3)(a) provides that references to a company include a registered society; and subsection 22E(3)(b) provides that references to a director or an officer of a company include a member of the committee or an officer of a registered society (as defined in section 74(1) of the 1965 Act).
 - Section 22E(4) provides for modifications of certain provisions of the CDDA in their application to industrial and provident societies, so that references to provisions or concepts of company law are read as including, or being replaced by, references to equivalent provisions or concepts of industrial and provident society law.
 - Section 22E(4)(a) provides that in section 2(1) of the CDDA the reference to striking off includes cancellation of the registration of a society under the 1965 Act. Section 2(1) refers to disqualification on conviction for an indictable offence in connection with, among other things, the striking off of a company.
 - Section 22E(4)(b) provides that in sections 3 and 5 of the CDDA references to companies legislation shall be read as references to the legislation relating to registered societies. Section 3 concerns disqualification for persistent breaches of company legislation and section 5 concerns disqualification on summary conviction.
 - Section 22E(4)(c) provides that references to investigative material in section 8(1) of the CDDA are to be read as including (i) any report made under section 47 or 49(1) of the 1965 Act and (ii) any information, books, accounts or other documents obtained under section 48 of the 1965 Act. Section 8 deals with disqualification after an investigation, on the basis of material produced as part of the investigation. Some (although not all) of the enactments referred to in section 8 apply to industrial and provident societies as well as companies, for example some of the provisions

These notes refer to the Co-operative and Community Benefit Societies and Credit Unions Act 2010 (c.7) which received Royal Assent on 18 March 2010

of the Financial Services and Markets Acts 2000 apply to industrial and provident societies that are authorised under that Act. However, at present section 8 contains no reference to the investigations (and related investigative materials) provided for in sections 47, 49(1) and 48 of the 1965 Act. The Act adds references to those investigations, and related investigative material. Section 47 provides for inspection of societies' books and production of a report by an accountant or actuary by order of the FSA. Section 49(1) provides for the appointment, on the application of a certain number of members of the society, of an inspector to examine into and report on the affairs of the society. Under section 48 the FSA can require the society to produce to it books, accounts and other documents and to furnish information.

- Section 22E(4)(d) provides that references to the registrar are to be read as references to the FSA. The reason for this is that the FSA is the registrar for industrial and provident societies.
- Section 22E(4)(e) provides that references to shadow directors are to be disregarded. The reason for this is that there is no provision as to shadow directors in industrial and provident society law.
- Section 22E(5) provides that in the application of Schedule 1 to the CDDA to members of the committee of a society (the equivalent of directors for industrial and provident societies) references to provisions of the Companies Act 2006 are to be read as including references to the corresponding provisions of the legislation relating to societies. Schedule 1 lists the matters for determining the unfitness of directors for the purposes of section 9 of the CDDA. Section 9 relates to cases in which the court has to determine whether a person's conduct as a director makes him or her unfit to be concerned in the management of a company.