

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

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Co-operative and Community Benefit Societies and Credit Unions Act 2010, which received Royal Assent on 18 March 2010. They have been provided by HM Treasury, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act introduces certain reforms of the law of industrial and provident societies.

4. Industrial and provident societies are mutual societies. The main statute on industrial and provident societies is the Industrial and Provident Societies Act 1965 (the “1965 Act”). Other relevant Acts are the Industrial and Provident Societies Acts 1967, 1975, 1978 and 2002, the Friendly and Industrial and Provident Societies Act 1968, and the Co-operatives and Community Benefit Societies Act 2003 (together with the 1965 Act, the “Industrial and Provident Societies Acts”).

5. The reforms introduced by the Act are:

- to require new industrial and provident societies (other than credit unions) to be registered as co-operative or community benefit societies;
- to re-name the Industrial and Provident Societies Acts;
- to apply the Company Directors Disqualification Act 1986 to industrial and provident societies;
- to give the Treasury powers to apply to industrial and provident societies, with appropriate modifications, company law on investigations, company names and dissolution and restoration to the register; and
- to give the Treasury powers to make provision for credit unions corresponding to any enactment applying to building societies.

6. A number of these reforms were consulted upon in a public consultation “Review of the GB cooperative and credit union legislation”, carried out by the Government from 21 June to 12 September 2007. The proposals received the support of the sector. The consultation, together with a summary of responses and the Government’s response, are published on HM Treasury’s website (www.hm-treasury.gov.uk).

7. The Act makes changes that will lead to the replacement of the expression “industrial and provident society” with the expression “co-operative or community benefit society”. The reason for this change is that the expression “industrial and provident society” is now widely perceived as old-fashioned. The Act amends the 1965 Act so that new societies (other than credit unions) will be required to register as either a co-operative society or a community benefit society.

8. To reflect the new requirement to register as co-operative or community benefit societies, the Act will change the name of the Industrial and Provident Societies Acts. The terms “co-operative and community benefit societies”, and where appropriate “credit unions”, will appear in the short titles of those Acts.

9. The Act amends the Company Directors Disqualification Act 1986 to apply it to industrial and provident societies. The 1986 Act provides for the disqualification of officers of companies and certain other bodies. Disqualification means that a person is prohibited for a period of time from being a director or otherwise being involved in the management of a company or other body or from acting as an insolvency practitioner. These provisions do not currently apply to industrial and provident societies, although they apply to certain other mutuals such as building societies and friendly societies.

10. The Act gives the Treasury power to apply Parts 14 and 15 of the Companies Act 1985 and Parts 5 and 31 of the Companies Act 2006 to industrial and provident societies, with appropriate modifications. These provisions relate to investigations, company names and dissolution and restoration to the register.

11. The Act also gives the Treasury power to apply to credit unions any enactment applying to building societies. A number of provisions of the Building Societies Act 1986 deal with matters that could also be relevant to credit unions, which are similarly institutions that accept deposits.

TERRITORIAL EXTENT

12. The Act extends to Great Britain only, with a power to extend certain provisions by Order in Council to the Channel Islands.

13. Industrial and provident societies in Northern Ireland are governed by their own legislation and the Act does not extend to Northern Ireland. However, the Act does contain a power to make consequential amendments to enactments that extend to Northern Ireland.

COMMENTARY

Section 1: Registration of societies as co-operative or community benefit societies

14. Subsection (1) replaces section 1 of the 1965 Act with revised provisions requiring all new societies registered under the Act, other than credit unions, to be registered by the Financial Services Authority (FSA) as co-operative or community benefit societies. The FSA is the registrar for industrial and provident societies.

15. Subsection (2) inserts into the 1965 Act a new section 4A, which deals with the treatment of societies registered, or treated as registered, under the “old” section 1 of the 1965 Act (“pre-2010 Act societies”). These societies did not have to register as a particular type of society and their status is not affected.

16. Subsections (3) and (4) make consequential amendments of section 16 of the 1965 Act, which deals with circumstances in which a society’s registration may be cancelled. Subsection (4) inserts a new subsection (1A), permitting the FSA, as registrar, to cancel the registration of a society where it no longer meets the relevant registration condition, that is, the provision under which the society in question was registered.

17. Subsections (6) and (7) make further consequential amendments, to section 20(1)(b) of the Credit Unions Act 1979 and section 1(9) of the Co-operatives and Community Benefit Societies Act 2003.

Section 2: Re-naming of Industrial and Provident Societies Acts

18. Section 2 provides that the Acts listed in it may be cited by new short titles. The Industrial and Provident Societies Acts 1965, 1967 and 2002 are re-named the Co-operative and Community Benefit Societies and Credit Unions Acts 1965, 1967 and 2002 because they apply to credit unions. The Industrial and Provident Societies Acts 1975 and 1978 (which have no application to credit unions) are re-named the Co-operative and Community Benefit Societies Acts 1975 and 1978. The Friendly and Industrial and Provident Societies Act 1968, which has not applied to friendly societies since amendments made in 1974, is re-named the Co-operative and Community Benefit Societies Act 1968.

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 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.

Section 4: Power to apply certain other provisions relating to companies

20. Section 4 gives the Treasury the power to apply to industrial and provident societies certain other provisions relating to companies.

21. Subsection (1) provides that the Treasury can make regulations either applying, or making provisions equivalent to, certain provisions relating to companies, in either case with appropriate modifications.

22. Subsection (2) lists the provisions relating to companies that the Treasury will be able to apply under subsection (1):

- Parts 14 and 15 of the Companies Act 1985, which give the Secretary of State the power to investigate companies and their affairs and to requisition documents and make provision for imposing restrictions on shares and debentures that are the subject of an investigation.
- Part 5 of the Companies Act 2006, which contains provisions about company names, including: general requirements on company names; indications of company type or legal form; similarity to other names (which includes provisions on powers by the Secretary of State to direct a company to change its name if it is similar to other names); other powers of the Secretary of State (for example powers to direct a change of name if the company provides misleading information in order to register by a particular name or if the name of the company gives a misleading indication of the company's activities); change of name; trading disclosures.
- Part 31 of the Companies Act 2006, which contains provisions giving powers to strike defunct companies off the register of companies; setting out related procedures governing voluntary striking off and how such applications should be made; delineating when the property of a dissolved company is deemed to be bona vacantia and its operation, including the effect of crown disclaimer; and setting out procedures by which companies may be restored to the register and the effect of that restoration in relation to the company's name and property deemed bona vacantia.

23. Subsections (3) to (6) make it clear that the regulations may amend or repeal provisions in the 1965 Act that cover similar areas.

24. Subsection (7) provides that the regulations made by the Treasury to apply provisions of company law may (a) confer powers to make orders, regulations and other subordinate legislation; (b) create criminal offences in circumstances corresponding to an offence in the legislation being applied and subject to a maximum penalty no greater than is provided in the corresponding offence; (c) provide for the charging of fees (but not any charge in the nature of taxation).

25. Subsection (8) imposes a requirement on the Treasury to consult when using the regulation-making power conferred by this section.

Section 5: Power to make provisions corresponding to provisions applying to building societies

26. Subsection (1) inserts into the Credit Unions Act 1979 (“the 1979 Act”) a new section 23A giving the Treasury power to amend that Act by regulations so as to make provision for credit unions corresponding to any enactment applicable to building societies:

- Section 23A(1) confers the power, which is widely drawn.
- Section 23A(2) restricts the power by providing that sections of the 1979 Act covering registration, use of the name “credit union”, the general prohibition on deposit taking, amalgamations or transfers of engagements and conversion of status between credit union and company cannot be modified.
- Section 23A(3) provides that the regulations made by the Treasury to apply provisions of building society law may (a) confer powers to make orders, regulations and other subordinate legislation; (b) create criminal offences in circumstances corresponding to an offence in the legislation being applied and subject to a maximum penalty no greater than is provided in the corresponding offence; (c) provide for the charging of fees (but not any charge in the nature of taxation).
- Section 23A(4) provides that the Treasury may by regulations make consequential amendments to any enactment (including to those sections of the 1979 Act explicitly exempted from substantive amendment under new 23A(2)) as set out in new section 23A(4).
- Section 23A(5) defines “enactment”.
- Section 23A(6) imposes a requirement on the Treasury to consult when using the regulation-making power conferred by this section.
- Section 23A(7) provides that changes to credit union law using this power are subject to the affirmative resolution procedure.

27. Subsection (2) of the section amends section 29(2) of the 1979 Act, which deals with parliamentary procedure. Regulations under the new section 23A require the affirmative resolution procedure; those made under other powers contained in the 1979 Act are subject to negative resolution procedure.

28. Subsection (3) of the section amends section 33(4) of the 1979 Act, which dealt with the application of the 1979 Act to Northern Ireland. The new subsection provides for regulations under the new section 23A to extend to Northern Ireland if they amend enactments that extend there.

Section 6: Consequential amendments

29. Subsection (1) provides the Treasury with a power to make amendments of other enactments in consequence of any provision made by or under the Act.

30. Subsection (2) permits this power to be used to amend any enactment passed or made before commencement of the relevant section in the Act including provisions of the Act itself. This will ensure that even if implementation dates are delayed, legislation on the statute book as at the date of commencement will not clash with the new provisions.

31. Subsection (3) defines “enactment”.

Section 7: Regulations

32. This section provides for the inclusion of ancillary provisions in regulations made under sections 4, 5 and 6 and sets out relevant procedures.

33. Subsection (1) permits such regulations to include such supplementary, incidental and transitional provisions as may be necessary or expedient.

34. Subsection (2) states that regulations must be made by statutory instrument.

35. Subsection (3) requires all regulations made under the Act to be made by way of the affirmative resolution procedure.

Section 8: Short title, commencement and extent

36. Subsection (1) specifies the short title of the Act.

37. Subsection (2) confers a standard commencement power on the Treasury. It permits different provisions to be commenced on different dates.

38. Subsection (3) provides that a commencement order may contain such transitional provisions as the Treasury deems necessary.

39. Subsection (4) clarifies the position on the extent of the Act to Northern Ireland. The main substantive provisions of the Act will not extend to Northern Ireland but this provision makes it clear that sections 5 and 6, together with sections 7(1) and (3), which relate to powers to make consequential amendments, will extend to Northern Ireland where the underlying enactments being amended so extend.

40. Subsection (5) permits the Act to be extended to the Channel Islands by Order in Council. Any Order may make modifications to the Act in its application to the Channel Islands.

COMMENCEMENT DATES

41. The provisions of this Act will be brought into force by commencement order.

HANSARD REFERENCES

42. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	<i>Hansard reference</i>
House of Lords		
Introduction	19 November 2009	Vol. 715 Col 29
Second Reading	11 December 2009	Vol 715 Cols.1241-1260
Order of Commitment discharged	7 January 2010	Vol. 716 Col 276
Third Reading	14 January 2010	Vol.716 Cols 691-692
House of Commons		
Introduction	14 January 2010	No debate
Second Reading	29 January 2010	Vol. 504 Col 1096
Committee	3 March 2010	Hansard Public Bill Committee
Third Reading	12 March 2010	Vol. 507 Cols. 561-566

Royal Assent – 18 March 2010	House of Lords Hansard Vol. 718 Col 657
	House of Commons Hansard Vol. 507 Col 989