

**2006 No. 2078**

**COOPERATIVE SOCIETIES**

**The European Cooperative Society Regulations 2006**

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The Treasury are designated **(a)** for the purposes of section 2(2) of the European Communities Act 1972 **(b)** in relation to European Cooperative Societies;

The Treasury make the following Regulations in exercise of the powers conferred upon them by that section:

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**(a)** S.I. 2006/608.

**(b)** 1972 c.68. The enabling powers of section 2(2) of this Act were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51). Council Regulation (EC) No 1435/2003 applies in the EEA by virtue of the EEA Joint Committee Decision No 15/2004 of 6th February 2004 (O.J. L.116, 22.4.2004, p.68).

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the European Cooperative Society Regulations 2006 and come into force on 18th August 2006.

#### Interpretation

2.—(1) In these Regulations—

“competent organ” means—

- (i) the administrative organ in a one-tier SCE, or
- (ii) the supervisory organ and management organ in a two-tier SCE;

“EC Regulation” means Council Regulation (EC) No 1435/2003 of 22nd July 2003 on the Statute for a European Cooperative Society (SCE)(a);

“EEA State” means a member State, Norway, Iceland or Liechtenstein;

“employee involvement” has the meaning given by Council Directive 2003/72/EC of 22nd July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees(b);

“one-tier SCE” means an SCE comprising a general meeting and administrative organ;

“SCE” means a European Cooperative Society within the meaning of the EC Regulation and, except as provided in these Regulations, means an SCE which has its registered office in the United Kingdom;

“two-tier SCE” means an SCE comprising a general meeting, supervisory organ and management organ.

(2) Words and expressions which are used in the EC Regulation have the same meaning in these Regulations as they have in that Regulation.

(3) References in these Regulations to numbered Articles are references to Articles of the EC Regulation.

## PART 2

### Competent authorities

#### Competent authorities

3.—(1) The following bodies are designated pursuant to Article 78(2) as competent authorities for the purposes of Articles 7, 21, 29, 30, 54 and 73—

- (a) in relation to an SCE or cooperative which has (or in the case of an SCE, proposes to have) its registered office in Great Britain, the Financial Services Authority;
- (b) in relation to an SCE or cooperative which has (or in the case of an SCE, proposes to have) its registered office in Northern Ireland, the Registrar of Credit Unions for Northern Ireland.

(2) Any reference in these Regulations to the competent authority in respect of an SCE or cooperative is to be construed as a reference to the body designated under paragraph (1) in relation to that SCE or cooperative.

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(a) O.J. L.207, 18.8.2003, p.1.

(b) O.J. L.207, 18.8.2003, p.25.

## PART 3

### Formation, registration, structure and proceedings of an SCE

#### *Formation of an SCE*

##### **Participation by a body whose head office is not in the Community**

4. A body whose head office is not in the Community may participate in the formation of an SCE if the body—

- (a) is formed under the law of an EEA State;
- (b) has its registered office in that EEA State; and
- (c) has a real and continuous link with any EEA State's economy.

##### **Provision of documents by a cooperative which participates in the formation of an SCE by merger**

5.—(1) A cooperative which—

- (a) has its registered office in the United Kingdom; and
- (b) proposes to take part in the formation in any EEA State of an SCE by merger,

must send the competent authority a copy of each of the documents listed in paragraph (2) at least two months before the general meeting called to decide on the merger.

(2) The documents referred to in paragraph (1) are—

- (a) the draft terms of merger; and
- (b) the report drawn up in accordance with Article 23.

(3) The cooperative must send the competent authority written notice of the completion of the merger within one month of the completion.

##### **Power to oppose the participation of a cooperative in the formation of an SCE by merger**

6.—(1) The competent authority may decide on the grounds of public interest to oppose the participation of a cooperative which has its registered office in the United Kingdom in the formation in any EEA State of an SCE by merger.

(2) The competent authority must give the cooperative written notice of its decision, including the grounds for its opposition, before the issue of the certificate referred to in Article 29(2).

(3) The cooperative may not take part in the formation of the SCE following its receipt of a notice given in accordance with paragraph (2), subject to the determination of any appeal under regulation 25 against the competent authority's decision.

##### **Publication of a proposal to convert into an SCE**

7.—(1) A cooperative which—

- (a) has its registered office in the United Kingdom; and
- (b) proposes to convert into an SCE,

must send the competent authority a copy of each of the documents listed in paragraph (2) at least two months before the general meeting called to decide on the conversion.

(2) The documents referred to in paragraph (1) are—

- (a) the draft terms of conversion;
- (b) the report drawn up in accordance with Article 35(3); and
- (c) the certificate referred to in Article 35(5).

(3) The cooperative must permit its members, creditors and holders of other rights in the cooperative—

(a) to examine the documents listed in paragraph (2)(a) and (b) at the SCE's registered office; and

(b) to obtain copies of these documents,

free of charge at least one month before the general meeting.

(4) The cooperative must notify in writing—

(a) its members; and

(b) every creditor and holder of other rights of whose claim and address it is aware,

of their entitlement under paragraph (3) in advance of it arising.

(5) At any time between the date on which—

(a) the entitlement under paragraph (3) arises; and

(b) the cooperative converts into an SCE or the conversion is discontinued,

every invoice, order for goods or business letter which is issued by or on behalf of the cooperative must contain a statement that the cooperative is proposing to convert into an SCE.

#### *Registration of SCEs*

#### **Register of SCEs**

**8.**—(1) The Financial Services Authority must establish and maintain a register of SCEs which have their registered office in Great Britain.

(2) The Registrar of Credit Unions for Northern Ireland must establish and maintain a register of SCEs which have their registered office in Northern Ireland.

(3) The registers established under paragraphs (1) and (2) are designated for the purposes of Article 11(1).

#### **Provision of documents for registration**

**9.**—(1) A body proposing to be registered in the United Kingdom as an SCE must send—

(a) a copy of its statutes;

(b) a list of the members of the competent organ signed—

(i) by or on behalf of the members of the SCE, and

(ii) by each person named in the list giving his consent to act as a member of the competent organ; and

(c) a statutory declaration signed by—

(i) a solicitor engaged in the formation of the SCE, or

(ii) a person named as a member of the competent organ in the list sent under subparagraph (b),

to the person who is required under regulation 8(1) or (2) to register it as an SCE.

(2) The list referred to in paragraph (1)(b) must include, in relation to each member of the competent organ—

(a) his name, any former name, date of birth, usual residential address, nationality and business occupation; or

(b) in the case of a body corporate, its name, any former name, date of incorporation and the address of its registered office.

(3) The statutory declaration referred to in paragraph (1)(c) must confirm compliance in respect of the SCE with—

- (a) in the case of an SCE formed under Article 2(1), the requirements for formation under the EC Regulation and these Regulations and the requirement for registration in Article 11(2);
- (b) in the case of an SCE that proposes to transfer its registered office to the United Kingdom under Article 7, the requirements for transfer under the EC Regulation and these Regulations.

### **Registration**

**10.**—(1) The competent authority must register an SCE if it is satisfied that—

- (a) the requirements for the formation and registration of the SCE have been met; or
- (b) the requirements for the transfer of the SCE’s registered office to the United Kingdom have been met.

(2) The competent authority may accept a statutory declaration made in accordance with regulation 9(1)(c) as sufficient evidence that the requirements—

- (a) in the case of the formation of an SCE, referred to in regulation 9(3)(a);
- (b) in the case of the transfer of a registered office, referred to in regulation 9(3)(b),

are satisfied.

### **Provision of documents following registration**

**11.** An SCE must send the competent authority—

- (a) a copy of its amended statutes within one month of any amendment to the statutes;
- (b) a revised copy of the list referred to in regulation 9(1)(b) within one month of any change to the membership of the competent organ or the information required to be included in the list in accordance with regulation 9(2).

### **Cancellation of registration**

**12.**—(1) The competent authority must cancel the registration of an SCE—

- (a) if the SCE converts under Article 76 into a cooperative;
- (b) if the SCE has ceased to exist; or
- (c) in accordance with Article 7(11), if the SCE transfers its registered office to another EEA State.

(2) The competent authority may cancel the registration of an SCE at the request of the SCE.

### **Branches**

**13.**—(1) The Financial Services Authority must establish and maintain a register of any branch in Great Britain of an SCE which has its registered office in another EEA State.

(2) The Registrar of Credit Unions for Northern Ireland must establish and maintain a register of any branch in Northern Ireland of an SCE which has its registered office in another EEA State.

(3) An SCE which is registered in another EEA State must within one month of opening a branch in the United Kingdom send—

- (a) a copy of its statutes;
- (b) a list of the members of the competent organ; and
- (c) a copy of the information about the branch specified in paragraph (5),

to the person who is required under paragraph (1) or (2) to register that branch (the “registrar”).

(4) The list referred to in paragraph (3)(b) must include, in relation to each member of the competent organ—

- (a) his name, any former name, date of birth, usual residential address, nationality and business occupation; or
  - (b) in the case of a body corporate, its name, any former name, date of incorporation and the address of its registered office.
- (5) The following information is specified for the purposes of paragraph (3)(c)—
- (a) the address of the branch;
  - (b) the date on which the branch opened;
  - (c) the business carried on at the branch;
  - (d) the name under which that business is carried on if different from the name of the SCE;
  - (e) a list of the names and addresses of all persons resident in the United Kingdom authorised to accept on the SCE's behalf service of proceedings in respect of the business of the branch and of any notices required to be served on the SCE in respect of the business of the branch;
  - (f) a list of the names and usual residential addresses of all persons authorised to represent the SCE for the business of the branch;
  - (g) the extent of the authority of any person falling within sub-paragraph (f), including whether that person is authorised to act alone or jointly; and
  - (h) if a person falling within sub-paragraph (f) is not authorised to act alone, the name of any person with whom he is authorised to act.
- (6) The SCE must send the registrar—
- (a) a copy of its amended statutes within one month of any amendment to the statutes;
  - (b) a revised copy of the list referred to in paragraph (3)(b) within one month of any change to the membership of the competent organ or the information required to be included in the list in accordance with paragraph (4); and
  - (c) written notice of any change to the information required to be provided in accordance with paragraph (3)(c) within one month of any such change.
- (7) The SCE must send the registrar a copy of the information referred to in Article 68(1) within three months of its publication in the EEA State in which the SCE is registered.
- (8) The SCE must send the registrar written notice of—
- (a) the initiation and termination of winding-up, including voluntary winding-up, liquidation or insolvency of the SCE or suspension of the SCE's payment procedures and any decision to continue operating the SCE (within the meaning of Article 74); and
  - (b) the closure of the branch,
- within one month of that event or decision.
- (9) Where information required to be sent to the registrar in accordance with this regulation is in a language other than English, the SCE must also provide a translation in English of that information.
- (10) In this regulation, "branch"—
- (a) has the meaning given by the Eleventh Council Directive 89/666/EEC of 21st December 1989 concerning disclosure requirements in respect of branches opened in an EEA State by certain types of company governed by the law of another State **(a)**; and
  - (b) refers to the principal branch in the United Kingdom of an SCE where the SCE has more than one branch in the United Kingdom.

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(a) O.J. L.395, 30.12.1989, p.36.

### **Provision of a solvency statement**

**14.—**(1) The administrative organ (in a one-tier SCE) or the management organ (in a two-tier SCE) of an SCE which proposes to transfer its registered office to another EEA State must make a solvency statement in the terms set out in paragraph (4) in order to satisfy the competent authority that the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in respect of any liabilities arising, or that may arise, prior to the transfer.

(2) The solvency statement must be made by all of the members of the administrative organ or, as the case may be, the management organ.

(3) The management organ may not make a solvency statement unless that statement has been authorised by the supervisory organ.

(4) The solvency statement must state that the members of the administrative organ or, as the case may be, the management organ have formed the opinion that, for the twelve months immediately following the date on which the transfer is proposed to be made, the SCE will be able to carry on business as a going concern and will accordingly be able to pay its debts as they fall due.

(5) In forming their opinion for the purposes of paragraph (4), the members of the administrative organ or, as the case may be, the management organ must take into account—

- (a) their intentions in relation to the management of the SCE's business during that year;
- (b) the amount and character of the financial resources which will, in their view, be available to the SCE during that year; and
- (c) the same liabilities (including prospective and contingent liabilities) as would have been relevant—
  - (i) in relation to an SCE which has its registered office in Great Britain, under section 122 of the Insolvency Act 1986<sup>(a)</sup> (circumstances in which company may be wound up by the court); or
  - (ii) in relation to an SCE which has its registered office in Northern Ireland, under Article 102 of the Insolvency (Northern Ireland) Order 1989<sup>(b)</sup> (circumstances in which company may be wound up by the High Court),

to the question of whether a company is unable to pay its debts.

### **Additional forms of publication of a proposal to transfer a registered office**

**15.—**(1) An SCE which proposes to transfer its registered office to another EEA State must send the competent authority a copy of each of the documents listed in paragraph (2) at least two months before the general meeting called to decide on the transfer.

(2) The documents referred to in paragraph (1) are—

- (a) the draft transfer proposal;
- (b) the report drawn up in accordance with Article 7(3); and
- (c) the solvency statement made in accordance with regulation 14.

(3) The SCE must notify in writing—

- (a) its members; and
- (b) every creditor and holder of other rights of whose claim and address it is aware,

of their entitlement under Article 7(4) to examine and obtain copies of the documents listed in paragraph (2)(a) and (b) in advance of it arising.

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<sup>(a)</sup> 1986 c.45.

<sup>(b)</sup> S.I. 1989/2405 (N.I. 19) as amended by S.R. 1992 No.405, S.I. 2002/3152 (N.I.16) and S.R. 2004 No.307.

- (4) At any time between the date on which—
- (a) the entitlement under Article 7(4) arises; and
  - (b) the SCE's old registration is deleted under Article 7(11) or the transfer is discontinued,
- every invoice, order for goods or business letter which is issued by or on behalf of the SCE must contain a statement that the SCE is proposing to transfer its registered office to another EEA State and identify that EEA State.

#### **Power to oppose the transfer of a registered office**

**16.**—(1) The competent authority may decide to oppose the transfer of an SCE's registered office to another EEA State on grounds of public interest if the transfer would result in a change of the law applicable to the SCE.

(2) The competent authority must give the SCE written notice of its decision, including the grounds for its opposition, within two months of the publication of the draft transfer proposal.

(3) The SCE may not transfer its registered office to another EEA State following its receipt of a notice given in accordance with paragraph (2), subject to the determination of any appeal under regulation 25 against the competent authority's decision.

#### *Structure and proceedings of an SCE*

#### **Arrangements for employee involvement**

**17.** The administrative organ (in a one-tier SCE) or management organ (in a two-tier SCE) of an SCE may, without any decision from the general meeting, amend the statutes to the extent that is necessary to resolve a conflict between the statutes and the arrangements for employee involvement.

#### **Power of general meeting to appoint or remove members of the management organ**

**18.** The statutes of an SCE may provide for a member of the management organ to be appointed or removed by the general meeting.

#### **Minimum number of members**

**19.** The minimum number of members of each of—

- (a) an administrative organ;
- (b) a management organ; and
- (c) a supervisory organ,

of an SCE is three.

#### **Supervisory organ's power to require information**

**20.** In a two-tier SCE, any member of the supervisory organ may require the management organ to provide information that the supervisory organ needs to exercise supervision in accordance with Article 39(1).

#### **Acts of competent organ which are outside the SCE's objects**

**21.**—(1) An SCE is not bound by the acts of its competent organ in relation to third parties where such acts are outside the objects of the SCE if the SCE proves that—

- (a) the third party knew that the act was outside the SCE's objects; or
- (b) the third party could not, in the circumstances, have been unaware that the act was outside the SCE's objects.

(2) Disclosure of the SCE's statutes is not of itself sufficient proof for the purposes of subparagraph (a) or (b) of paragraph (1).

#### **Power to represent an SCE**

**22.**—(1) The statutes of an SCE may confer the power to represent the SCE on a single person or on two or more persons acting jointly.

(2) A provision included in the statutes of the SCE in accordance with paragraph (1) may be relied on as against third parties—

- (a) provided that it concerns the general power of representation; and
- (b) subject to Article 47(2) and regulation 21.

#### **First general meeting of an SCE**

**23.** An SCE may hold its first general meeting at any time in the 18 months following the SCE's incorporation.

#### **Sectorial or section meetings of an SCE**

**24.** The statutes of an SCE may provide for sectorial or section meetings if the SCE—

- (a) undertakes different activities;
- (b) undertakes activities in more than one territorial unit;
- (c) has several establishments; or
- (d) has more than 500 members.

### *Appeals*

#### **Appeals against competent authority's decision**

**25.**—(1) An SCE or a cooperative may appeal from a decision of the competent authority under regulation 6(1) or 16(1)—

- (a) in the case of an SCE or cooperative that has (or in the case of an SCE, proposes to have) its registered office in England or Wales, to the High Court;
- (b) in the case of an SCE or a cooperative that has (or in the case of an SCE, proposes to have) its registered office in Scotland, to the Court of Session; or
- (c) in the case of an SCE or cooperative that has (or in the case of an SCE, proposes to have) its registered office in Northern Ireland, to the High Court in Northern Ireland.

(2) Any appeal under paragraph (1) must be brought within one month of the date of issue of the written notice of the competent authority's decision.

(3) On an appeal under paragraph (1), the High Court, the Court of Session or the High Court in Northern Ireland may vary or set aside the decision that is the subject of the appeal.

## PART 4

### Conversion of an SCE into a cooperative

#### **Publication of a proposal to convert into a cooperative**

**26.**—(1) If an SCE proposes to convert in accordance with Article 76 into a cooperative that has its registered office in the United Kingdom, it must send the competent authority a copy of each of the documents listed in paragraph (2) at least two months before the general meeting called to decide on the conversion.

- (2) The documents referred to in paragraph (1) are—
- (a) the draft terms of conversion;
  - (b) the report drawn up in accordance with Article 76(3); and
  - (c) the certificate issued in accordance with Article 76(5).
- (3) The SCE must permit its members, creditors and holders of other rights in the SCE—
- (a) to examine the documents listed in paragraph (2)(a) and (b) at the SCE's registered office; and
  - (b) to obtain copies of these documents,
- free of charge at least one month before the general meeting.
- (4) The SCE must notify in writing—
- (i) its members; and
  - (ii) every creditor and holder of other rights of whose claim and address it is aware,
- of their entitlement under paragraph (3) in advance of it arising.
- (5) At any time between the date on which—
- (a) the entitlement under paragraph (3) arises; and
  - (b) the SCE converts into a cooperative or the conversion is discontinued,
- every invoice, order for goods or business letter which is issued by or on behalf of the SCE must contain a statement that the SCE is proposing to convert into a cooperative.

#### **Certification of assets**

27. The competent authority must approve the appointment by an SCE of an independent expert for the purpose of certifying under Article 76(5) that the SCE has assets at least equivalent to its capital.

#### **Decision of the general meeting to convert into a cooperative**

28. The general meeting of an SCE may, pursuant to Article 76(6), approve the draft terms of conversion into a cooperative and the statutes of the cooperative if—

- (a) the members present or represented make up at least half of the total number of members on the date the general meeting is held; and
- (b) a majority of the votes validly cast are in favour of the proposal to convert.

## **PART 5**

### **Compliance and offences**

#### **Provision of information**

29. The competent authority may, by written notice, require an SCE to provide such information and produce such documents as the competent authority considers necessary for the exercise of its functions under the EC Regulation and these Regulations.

#### **Inspection of accounts**

30.—(1) The competent authority may, on the application of ten or more members of an SCE, appoint an accountant or actuary to inspect the accounts of the SCE and report his findings.

- (2) Before taking any action under paragraph (1), the competent authority—
- (a) must inform the SCE of the application; and

- (b) may require the applicants to give security for the costs of the proposed inspection and report in such manner as the competent authority may direct.
- (3) All expenses and incidental costs of the inspection and report must be defrayed by—
  - (a) the applicants;
  - (b) the SCE; or
  - (c) the members (including former members) of the SCE's competent organ,in such proportions as the competent authority may direct.
- (4) A person appointed under paragraph (1) may require members (including former members) of the SCE's competent organ and members, servants or agents (including former members, servants or agents) of the SCE to provide any relevant information or document (or part of a document).
- (5) The competent authority must communicate the results of any inspection under this regulation to the applicants and the SCE.

### **Holding of an inquiry**

- 31.**—(1) The competent authority may appoint a person to examine and report on the affairs of an SCE on the application of—
- (a) one-tenth or more of the SCE's members; or
  - (b) in the case of an SCE with one thousand or more members, at least one hundred of those members.
- (2) An application under paragraph (1) must be supported by evidence which shows that the applicants have good reason for their application.
- (3) Before taking any action under paragraph (1), the competent authority—
- (a) must inform the SCE of the application; and
  - (b) may require the applicants to give security for the costs of the proposed inquiry and report in such manner as the competent authority may direct.
- (4) All expenses and incidental costs of the inquiry and report must be defrayed by—
- (a) the applicants;
  - (b) the SCE; or
  - (c) the members (including former members) of the SCE's competent organ,
- in such proportions as the competent authority may direct.
- (5) A person appointed under paragraph (1) may require members (including former members) of the SCE's competent organ and members, servants or agents (including former members, servants or agents) of the SCE—
- (a) to attend before him at a specified time and place to answer questions; or
  - (b) otherwise to provide such information as he may require.
- (6) The competent authority must communicate the results of any inquiry under this regulation to the applicants and the SCE.
- (7) In the case of an SCE that has its registered office in Northern Ireland, the competent authority must obtain the consent of the Department of Enterprise, Trade and Investment before appointing a person under paragraph (1).

### **Power to give directions**

- 32.**—(1) If it appears to the competent authority that the statutes of an SCE are in conflict with the arrangements for employee involvement it may direct the SCE to amend its statutes, within such period as may be specified in the direction, to the extent that is necessary to resolve that conflict.

(2) If it appears to the competent authority that an SCE is not in compliance with the requirements in Article 6, it may direct the SCE to regularise its situation in accordance with Article 73(2) within such period as may be specified in the direction.

(3) A direction under paragraph (1) or (2) is enforceable by the competent authority by an application—

- (a) in the case of an SCE whose registered office is in England or Wales, to the High Court for an injunction;
- (b) in the case of an SCE whose registered office is in Scotland, to the Court of Session for an order under section 45 of the Court of Session Act 1988(a); or
- (c) in the case of an SCE whose registered office is in Northern Ireland, to the High Court in Northern Ireland for an injunction.

### **Power to petition for winding up**

**33.**—(1) After section 124B(b) of the Insolvency Act 1986(c) insert—

#### **“124C Petition for winding up of SCE**

(1) Where, in the case of an SCE whose registered office is in Great Britain—

- (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative Society (SCE) (the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and

(b) it appears to the Financial Services Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Great Britain—

- (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office, and

(b) it appears to the Financial Service Authority that the SCE should be wound up, the Authority may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This section does not apply if the SCE is already being wound up by the court.

(4) In this section “SCE” has the same meaning as in the European Cooperative Society Regulation.”.

(2) After subsection (4) of section 124 of the Insolvency Act 1986 insert—

“(4AA) A winding up petition may be presented by the Financial Services Authority in a case falling within section 124C(1) or (2).”.

(3) After Article 104B(d) of the Insolvency (Northern Ireland) Order 1989(e) (petition for winding up of an SE) insert—

#### **“104C Petition for winding up of SCE**

(1) Where, in the case of an SCE whose registered office is in Northern Ireland—

- (a) there has been such a breach as is mentioned in Article 73(1) of Council Regulation (EC) No 1435/2003 on the Statute for a European Cooperative (SCE)

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(a) 1988 c.36.

(b) Section 124B was inserted by S.I. 2004/2326.

(c) 1986 c.45.

(d) Article 104B was inserted by S.R. 2004 No.417.

(e) S.I. 1989/2405 (N.I. 19).

(the “European Cooperative Society Regulation”) (winding up by the court or other competent authority), and

- (b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(2) Where, in the case of an SCE whose registered office is in Northern Ireland—

- (a) the SCE is not in compliance with Article 6 of the European Cooperative Society Regulation (location of head office and registered office), and
- (b) it appears to the Registrar of Credit Unions for Northern Ireland that the SCE should be wound up,

the Registrar may present a petition for the SCE to be wound up if the court thinks it is just and equitable for it to be so.

(3) This Article does not apply if the SCE is already being wound up by the court.

(4) In this Article “SCE” has the same meaning as in the European Cooperative Society Regulation.”.

(4) After paragraph (4) of Article 104 of the Insolvency (Northern Ireland) Order 1989 insert—

“(4AA) A winding up petition may be presented by the Registrar of Credit Unions for Northern Ireland in a case falling within Article 104C(1) or (2).”.

#### **Offences in relation to the provision of information**

**34.**—(1) A person commits an offence if, in purported compliance with any requirement imposed by the EC Regulation or these Regulations, he—

- (a) provides information which he knows to be false or misleading in a material particular; or
- (b) recklessly provides information which is false or misleading in a material particular.

(2) A person commits an offence if, knowing or suspecting that documents are or are likely to be requested under regulation 29, 30 or 31, he—

- (a) falsifies, conceals, destroys or otherwise disposes of a document which he knows or suspects is or would be relevant to such an investigation; or
- (b) causes or permits the falsification, concealment, destruction or disposal of such a document,

unless he shows that he did not intend to conceal facts disclosed by the document from the competent authority or any person appointed by the competent authority under regulation 30 or 31.

(3) A person commits an offence if without reasonable excuse he fails to comply with a requirement under the EC Regulation or these Regulations to provide information or produce documents.

(4) A person guilty of an offence under paragraph (1) or (2) is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

(5) A person guilty of an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Offence in relation to solvency statements**

**35.**—(1) A person commits an offence if he makes a solvency statement under regulation 14 without having reasonable grounds for the opinion expressed in that statement.

(2) A person guilty of an offence under paragraph (1) is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both; or
- (b) on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both.

#### **Offences in relation to an SCE's name and the use of the acronym "SCE"**

**36.**—(1) An SCE commits an offence if it fails to comply with the requirement in Article 10(1) to use the acronym "SCE" and the title "limited" where Article 1(2) applies and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) A person commits an offence if he breaches Article 10(2) (subject to the provisions of Article 10(3)) and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Offence in relation to operation as an SCE after cancellation of registration**

**37.**—(1) A person commits an offence if he knowingly or recklessly carries on the business of an SCE after that SCE's registration has been cancelled, unless the SCE was registered in another EEA State at the relevant time.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Bodies corporate**

**38.**—(1) If an offence under these Regulations committed by a body corporate is shown—

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on his part,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In this regulation "officer" means—

- (a) in relation to a Scottish partnership, a partner; and
- (b) in relation to any other body corporate, a member of the competent organ or committee of management, director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity.

## **PART 6**

### **Miscellaneous**

#### **Expression of capital**

**39.**—(1) An SCE is subject to the same enactments and rules of law as apply to a public company as regards the expression of its capital (within the meaning of Article 77).

(2) "Public company" in paragraph (1) has the meaning given—

- (a) in the case of an SCE whose registered office is in Great Britain, by section 1(3) of the Companies Act 1985(a); or
- (b) in the case of an SCE whose registered office is in Northern Ireland, by Article 12(3) of the Companies (Northern Ireland) Order 1986(b).

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(a) 1985 c.6.

(b) S.I. 1989/2404 (N.I. 18).

### **Public notice of certain information**

**40.** The competent authority must publish in the London, Edinburgh or Belfast Gazette notice of—

- (a) registration by the competent authority of an SCE;
- (b) cancellation by the competent authority of the registration of an SCE;
- (c) the initiation and termination of winding-up including voluntary winding-up, liquidation or insolvency of an SCE, or suspension of an SCE's payment procedures and any decision to continue operating the SCE (within the meaning of Article 74); and
- (d) receipt by the competent authority of a draft transfer proposal and any document sent to the competent authority in accordance with regulation 13(3) or (8).

### **Electronic communications**

**41.—**(1) Any requirement imposed by or under the EC Regulation or these Regulations as to the giving by one person to another of a notice, document or information may be met by means of an electronic communication if the other person has consented to the notice, document or information being made available to him by such means.

(2) In this regulation, “electronic communication” has the meaning given—

- (a) in relation to Great Britain, by section 15 of the Electronic Communications Act 2000(a);
- (b) in relation to Northern Ireland, by section 4 of the Electronic Communications Act (Northern Ireland) 2001(b).

### **Inspection and copies of records**

**42.—**(1) Any person may inspect any document sent to the competent authority under the EC Regulation or these Regulations and may require—

- (a) a copy, in such form as the competent authority considers appropriate, of any information contained in any such document; or
- (b) a copy of any such document (or part of any such document) certified by the competent authority to be an accurate record of the contents of that document.

(2) A copy of a document provided by the competent authority under paragraph (1)(b) is admissible in legal proceedings—

- (a) as evidence of equal validity to the original document; and
- (b) as evidence (or, in Scotland, as sufficient evidence) of any fact stated in the document of which direct oral evidence would be admissible.

(3) Before the competent authority allows any person to inspect any document or provides any person with a copy of any information or document (or part of a document) under this regulation, it may charge that person a reasonable fee.

(4) This regulation does not require the competent authority to provide any information or document (or part of any such document)—

- (a) received by the competent authority by virtue of regulation 29, 30 or 31; or
- (b) in breach of any restriction imposed by any statutory provision or otherwise.

### **Fees**

**43.—**(1) The competent authority may charge such fees in connection with the discharge of any of its functions under the EC Regulation or these Regulations as it considers will enable it to meet expenses incurred in carrying out its functions or for any incidental purpose.

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(a) 2000 c.7.

(b) 2001 c.9 as amended by the Communications Act 2003 (c.21).

(2) Any fee imposed in accordance with paragraph (1) which is owed to the competent authority is payable on demand.

(3) The power conferred by paragraph (1) may not be used to require a fee to be paid in respect of the discharge of any of the competent authority's functions under regulation 30, 31 or 42.

*Alan Campbell*

*Dave Watts*

25th July 2006

Two of the Lords Commissioners of Her Majesty's Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This instrument gives effect to Council Regulation (EC) No. 1435/2003 of 22<sup>nd</sup> July 2003 (on the Statute for a European Cooperative Society (SCE) (O.J. L.207, 18.8.2003 p.1) (the “EC Regulation”) in the United Kingdom.

Regulation 3 designates, for the purposes of the EC Regulation, the Financial Services Authority as the competent authority in relation to SCEs and cooperatives which have their registered office in Great Britain and the Registrar of Credit Unions for Northern Ireland as the competent authority in relation to SCEs and cooperatives which have their registered office in Northern Ireland.

Regulations 4, 5, 6 and 7 supplement Articles 2, 21 and 35 of the EC Regulation concerning the formation of SCEs. Regulation 4 permits bodies whose head offices are outside the EC to participate in the formation of an SCE subject to certain conditions. Regulations 5 and 7 prescribe the information and documents that a cooperative must provide if it wishes to form an SCE by merger or conversion. Regulation 6 enables the competent authority to oppose the participation of a cooperative in the formation of an SCE by merger.

Regulation 8 provides for the establishment and maintenance of a register of SCEs by the competent authority. That register is designated for the purposes of Article 11 of the EC Regulation. Regulations 9 and 10 specify the process by which an SCE may register with the competent authority. Regulation 11 lists the documents that an SCE must send to the competent authority while it continues to be registered.

Regulation 12 prescribes the circumstances in which the competent authority must or may cancel an SCE’s registration.

Regulation 13 concerns SCEs with registered offices outside the United Kingdom which open a branch in the United Kingdom and specifies the information that such SCEs must send to the competent authority.

Regulations 14, 15 and 16 supplement Article 7 of the EC Regulation concerning the transfer of an SCE’s registered office from one EEA State to another. Regulation 14 requires the relevant organ of an SCE to make a solvency statement concerning the SCE’s liabilities before its registered office is transferred to another EEA State. Regulation 15 prescribes the information and documents that an SCE must provide before its registered office is transferred to another EEA State. Regulation 16 enables the competent authority to oppose the transfer of an SCE’s registered office to another EEA State.

Regulations 17 to 24 make provision for the structure and proceedings of SCEs.

Regulation 25 provides the process by which a cooperative or SCE may appeal against a decision taken by the competent authority under regulation 6 or 16.

Regulations 26, 27 and 28 supplement Article 76 of the EC Regulation concerning the conversion of an SCE into another cooperative form.

Part 5 gives effect to the EC Regulation by providing mechanisms for the enforcement of the EC Regulation and this instrument.

The competent authority may require information or documents from an SCE (regulation 29), order an inspection of an SCE’s accounts (regulation 30) or order an inquiry into an SCE’s business affairs (regulation 31). The competent authority may direct an SCE to comply with Articles 6 and 11(4) of the EC Regulation and may enforce their direction through an application for an injunction (regulation 32).

Regulation 33(1) and (2) amends section 124 of and inserts section 124C into the Insolvency Act 1986 (c.45) so that the Financial Services Authority may petition for an SCE that has its registered office in Great Britain to be wound up on the grounds set out in Article 73(1) of the EC Regulation

or if the SCE breaches Article 6 of the EC Regulation. Regulation 33(3) and (4) makes corresponding changes to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).

Regulations 34 to 37 make it an offence to breach the requirements in the EC Regulation and this instrument to provide information (regulation 34); to make a solvency statement under regulation 14 where the maker of the statement has no reasonable grounds for the opinion expressed in that statement (regulation 35); to fail to use the terms “SCE” or “limited” in the SCE’s title where that is required (regulation 36(1)); to use the term “SCE” where the entity is not an SCE (regulation 36(2)) and to carry on the business of an SCE after that SCE’s registration has been cancelled (regulation 37).

Part 6 makes miscellaneous provision including for the publication and inspection of certain information and the provision of a power for the competent authority to charge fees.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business may be obtained from the General Insurance, Mutuals and Inclusion Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ or from HM Treasury’s website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). Copies of the regulatory impact assessment have been placed in the libraries of both Houses of Parliament.

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