

EXPLANATORY MEMORANDUM TO
THE CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES AND CREDIT
UNIONS (ARRANGEMENTS, RECONSTRUCTIONS AND ADMINISTRATION)
(AMENDMENT) ORDER 2014

2014 No. 1822

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This Order will amend the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (“the Principal Order”), mainly in consequence of the coming into force of the Co-operative and Community Benefit Societies Act 2014 (“the 2014 Act”). The Principal Order applies company insolvency rescue legislation to industrial and provident societies (other than those which provide social housing) and credit unions. Rescue legislation means Part 1 (company voluntary arrangements) and Part 2 (administration) of the Insolvency Act 1986 and Part 26 of the Companies Act 2006 (arrangements and reconstructions).
- 2.2 The instrument will ensure that the Principal Order will work effectively where it modifies primary legislation governing relevant societies (following the consolidation of that legislation by the 2014 Act). It also amends provision for the interpretation of references to a floating charge, so that provisions about a floating charge, including provision entitling the holder to appoint an administrator, apply in the case of a charge created by a society before, as well as on or after, 6th April 2014.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 Section 255 of the Enterprise Act 2002 (“the 2002 Act”) empowers the Treasury, with the concurrence of the Secretary of State, to provide by order for the application (with or without modification) of rescue legislation to societies registered under the Industrial and Provident Societies Act 1965 (“the 1965 Act”). For this purpose the Treasury may make consequential or incidental provision, which may apply enactments (with or without modification) and amend

enactments. A society which is a private registered provider of social housing or registered as a social landlord is excluded from the scope of the power.

4.2 The Principal Order was made in exercise of the power in section 255 of the 2002 Act and came into force on 6 April 2014.

4.3 The 1965 Act and other primary legislation governing industrial and provident societies have been consolidated in the 2014 Act. This includes section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2014, which provides for the registration of an industrial and provident society as a co-operative society or a community benefit society. It also includes amendments to the 1965 Act made by the Principal Order.

4.4 This Order amends the Principal Order under section 118 of the 2014 Act, which re-enacts section 255 of the 2002 Act so far as it concerns registered societies. In particular:

4.4.1 it amends the meaning of “relevant society” (to which rescue legislation is applied) to take account of:

the requirement that a new society, other than a credit union, is to be registered under the 2014 Act as a cooperative society or a community benefit society;

the meaning of “registered society” given by section 1(1) of the 2014 Act (a society, which may be a credit union, registered under the 2014 Act on or after 1st August 2014 or registered or treated as registered immediately before that date under the 1965 Act).

4.4.2 it substitutes provision for the modified application to relevant societies in administration of provisions in the 1965 Act for the amalgamation of societies, transfer of engagements between societies and conversion into, amalgamation with, or transfer of engagements to a company (the substituted provision modifies the re-enacted provisions in sections 111 and 113 of the 2014 Act).

Further provision is made to take account of the repeal and re-enactment of the Industrial and Provident Societies Acts 1965 to 1968.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Co-operative and Community Benefit Societies and Credit Unions Act (Arrangements, Reconstructions and Administration) (Amendment) Order 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Principal Order is one measure for implementing the Government's commitment to promote mutual bodies and foster diversity in the UK economy. The objectives are to preserve and strengthen the unique features of co-operative and community benefit societies and credit unions, and to promote a diverse, healthy and successful mutuals sector which is able to offer a broad range of services to growing numbers of members.

7.2 Over 7,000 co-operatives, community benefit societies and credit unions were registered in Great Britain as of 2013. The number has grown as the sector has continued to provide a popular and successful structure for mutually run business. Registered societies cover a vast range of activity and industry. They include public service providers, football clubs, wind farms, web designers and agricultural suppliers. Some have hundreds of members and are large employers; others have just a handful of members. Societies are found in all parts of the UK (legislation governing registered societies is devolved in Northern Ireland).

7.3 Registered societies were unable to enter administration or make a voluntary arrangement with creditors; winding up under companies legislation was the only option for an insolvent society. The Principal Order aimed to strengthen and support further growth in the mutuals sector by providing an opportunity to rescue societies in financial difficulty. As for a company, it should be possible to seek an alternative to winding up and dissolving a relevant society, through administration or arrangements for restructuring its debt or the society itself. If it cannot be rescued as a going concern, the interests of members, employees and people who benefit from its operation may be protected by an amalgamation or a transfer of the society's undertaking, which are now options which may be pursued by an administrator.

7.4 This Order is required to ensure that the changes made by the Principal Order will continue to work effectively after 1 August 2014 when the primary legislative framework for registered societies is consolidated. It is also made to enable a

floating charge holder to appoint an administrator where the charge was created by a society before, as well as on or after, 6th April 2014.

- Consolidation

7.5 This Order is made partly in connection with the consolidation of primary legislation. Otherwise, not applicable.

8. Consultation outcome

8.1 The introduction of insolvency rescue procedures, explained above, together with a number of other industrial and provident society reforms, were consulted upon in a public consultation “Review of the GB cooperative and credit union legislation” carried out by the Government in 2007. The proposals received the support of the sector.

9. Guidance

9.1 The Treasury does not intend to issue guidance with this Order.

10. Impact

10.1 The Order has no impact on business, charities or voluntary bodies, as it is mainly concerned with making consequential amendments to the Principal Order and as it has a beneficial impact so far as it makes new substantive provision (by widening the right of a floating charge holder to appoint an administrator instead of an administrative receiver).

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. The changes in the law made by the Principal Order were requested and welcomed by the mutual societies sector.

12. Monitoring & review

12.1 While no specific review is planned for the Principal Order as amended by this instrument, it will be reviewed as part of any review of policy on co-operatives and community benefit societies.

13. Contact

13.1 Dan Turnbull at the Treasury can answer any queries regarding the instrument: 0207 2704819 or email: daniel.turnbull@hmtreasury.gsi.gov.uk