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STATUTORY INSTRUMENTS

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**2003 No. 256**

**REGULATORY REFORM**

**The Regulatory Reform (Credit Unions) Order 2003**

Made - - - - 6th February 2003

*Coming into force in accordance with article 1*

Whereas:

- (a) the Treasury have consulted—
  - (i) such organisations as appeared to them to be representative of interests substantially affected by their proposals for this Order,
  - (ii) the National Assembly for Wales, and
  - (iii) such other persons as they considered appropriate;
- (b) following that consultation, the Treasury considered it appropriate to proceed with the making of this Order;
- (c) a document containing the Treasury's proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001<sup>(1)</sup> and the period for Parliamentary consideration under section 8 of that Act expired;
- (d) the Treasury had regard to the representations made during that period and in particular to the First Report (Session 2002–03) of the Regulatory Reform Committee of the House of Commons<sup>(2)</sup> and the Twenty-Ninth Report (Session 2001–02) of the Delegated Powers and Regulatory Reform Committee of the House of Lords<sup>(3)</sup>;
- (e) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the Treasury's proposals in light of them;
- (f) the draft was approved by resolution of each House of Parliament;
- (g) the Treasury are of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise; and
- (h) this Order creates burdens affecting persons in the carrying on of certain activities, and the Treasury are of the opinion that—
  - (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and

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<sup>(1)</sup> 2001 c. 6.

<sup>(2)</sup> First report on 25 November 2002, HC82, ISBN021500647X.

<sup>(3)</sup> Twenty-Ninth Report on 30 October 2002, HL180, ISBN0-10-481410-1.

- (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

The Treasury, in exercise of the powers conferred upon them by section 1 of the Regulatory Reform Act 2001, hereby make the following Order:

### **Citation and commencement**

1. This Order may be cited as the Regulatory Reform (Credit Unions) Order 2003 and comes into force on the seventh day after the day on which it is made.

### **Amendments to the Credit Unions Act 1979**

2. This Order amends the Credit Unions Act 1979(4).

### **Common bond requirement**

3.—(1) Section 1 (qualifications for registration)(5) is amended as follows.

(2) In subsection (2), for paragraph (b), substitute—

“(b) that as a result of any provision of the rules, admission to membership of the society meets the requirement specified in subsection (3A) or (3B) below (whether or not any other qualifications for admission to membership are also required by the rules) and that in consequence, a common bond exists between members of the society.”

(3) After subsection (3), insert—

“(3A) The requirement specified in this subsection is that admission to membership of the society is restricted to persons all of whom fulfil the same specific qualification for admission to membership, being a qualification specified in, or approved under, subsection (4) below as being appropriate to a credit union.

(3B) The requirement specified in this subsection is that admission to membership of the society is restricted to persons each of whom fulfils either—

- (a) the qualification for admission to membership specified by paragraph (e) of subsection (4) below as being appropriate to a credit union; or
- (b) the same specific qualification for admission to membership, being a qualification which is so specified in paragraph (a), (b), (c), (d) or (f) of that subsection.”

### **Use of the name “credit union”**

4.—(1) Section 3 (use of name “credit union” etc.)(6) is amended as follows.

(2) For subsection (3), substitute—

“(3) Subsection (2) above does not apply to—

- (a) the use, in reference to itself, of a name, title or descriptive expression by any body corporate which falls within subsection (3A) below;

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(4) 1979 c. 34.

(5) Amended by S.I.1996/1189, S.I. 2001/2617 and S.I. 2002/1501.

(6) Amended by the Welsh Language Act 1993 (c. 38), section 29 and by S.I. 2001/2617. At the date on which this Order was laid in draft before Parliament, subsections (2) and (3) were not in force.

- (b) the use by any person or unincorporated association with reference to himself (or itself) of a name which has been approved in writing by the Authority; or
- (c) the use by any officer or employee of—
  - (i) a credit union,
  - (ii) a body corporate which falls within subsection (3A) below, or
  - (iii) a person or association which has obtained approval under paragraph (b) above,of a title or descriptive expression indicating his office or post with that credit union, body, person or association.”.

(3) After subsection (3), insert—

“(3A) A body corporate falls within this subsection if its head office is not in England, Wales or Scotland and it—

- (a) has Part IV permission under the 2000 Act to accept deposits;
- (b) is exempt from the prohibition imposed by section 19 of that Act in respect of accepting deposits;
- (c) has permission under that Act to accept deposits by virtue of qualifying for authorisation under Schedule 3 or 4 to that Act; or
- (d) is subject to legal provisions that are similar to the relevant provisions.

(3B) For the purposes of subsection (3A)(d) above, a body corporate is to be treated as being subject to legal provisions that are similar to the relevant provisions if it is subject to legal provisions which—

- (a) provide that the main activities carried on by the body are accepting deposits from, and lending money to, persons who are members or shareholders of the body;
- (b) require the body to obtain authorisation or approval before it commences business;
- (c) require the members and shareholders of the body to be linked by reference to some common characteristic or circumstance; and
- (d) provide that those from whom the body accepts deposits must be shareholders or members of the body (although the legal provisions may allow for some exceptions to this proposition).

(3C) In determining, for the purposes of subsection (3A)(d) above, whether a body corporate is subject to legal provisions that are similar to the relevant provisions, regard must be had as to whether the legal provisions to which it is subject require the body to obtain authorisation or approval before it commences business and whether those provisions—

- (a) impose limits on the objects which the body may or must have,
- (b) impose limits on the membership of the body,
- (c) impose restrictions on the kind of activities which the body may carry on,
- (d) impose limits or conditions on the body’s ability to accept deposits,
- (e) impose limits on the value of the shares which any one shareholder may have in the body,
- (f) impose limits on the body’s ability to lend money,

which are similar to those imposed by the relevant provisions.

(3D) In this section—

- (a) “legal provisions” includes laws, regulations and administrative provisions;

- (b) “relevant provisions” means—
  - (i) the provisions of this Act; and
  - (ii) any provision of or made under the 1965 Act or the 2000 Act so far as it relates to credit unions.”.

**Power to charge for ancillary services**

5. After section 9 (deposits by persons too young to be members), insert—

**“Power to charge for ancillary services**

**9A.**—(1) A credit union which provides an ancillary service to a member or any other person from whom the credit union has accepted a deposit may charge a fee to cover the cost of providing that service.

(2) In this section, “ancillary service” means any service which is ancillary to the activity of accepting a deposit or making a loan, and includes—

- (a) the making or receiving of payments, made by way of standing order, direct debit or any other means, as agent for a member or any other person from whom the credit union has accepted a deposit;
- (b) issuing and administering means of payment (for example, chequebooks and debit cards);
- (c) money transmission services;
- (d) giving advice on the services specified by paragraphs (a) to (c) above.”.

*Philip Woolas*

*John Heppell*

Two of the Lords Commissioners of Her Majesty’s Treasury

6th February 2003

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## EXPLANATORY NOTE

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

This Order amends the Credit Unions Act 1979 (“the Act”).

Article 3 amends section 1 of the Act so as to permit credit unions to combine the qualification for admission to membership specified in section 1(4)(e) (the associational common bond) with any one of the other qualifications specified in section 1(4), so long as in consequence there exists common bond between members of the society.

Article 4 amends section 3 of the Act. The effect of the amendment is that a body corporate (or an officer or employee of such a body) which has its head office outside England, Scotland or Wales and which is either authorised under the Financial Services and Markets Act 2000 to accept deposits, exempt from section 19 of that Act (the general prohibition) in relation to that activity or subject to legislation that is similar to the relevant legislation that relates to credit unions, may use the title “credit union”. In addition, the Financial Services Authority may give approval to any person or unincorporated association to use the name “credit union”.

Article 5 inserts a new section 9A in the Act. This permits credit unions to charge their members a fee to recover the cost of providing services that are ancillary to the activity of accepting a deposit or making a loan.