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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**The Community Benefit Societies (Restriction  
on Use of Assets) Regulations 2006**

**PART 4**

Enforcement measures

**Condition for exercise of enforcement measures**

**8.** In deciding whether and how to exercise the powers conferred by regulations 9, 10 and 11, the Authority must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community benefit societies.

**Enforcement notification**

**9.—(1)** If the Authority considers that a prescribed community benefit society is contravening or has contravened regulation 3, it may issue an enforcement notification.

(2) An enforcement notification is a notification which imposes requirements on a society to take all such steps as may be necessary for securing that a contravention is brought to an end or is not repeated.

**Restitution**

**10.—(1)** If the Authority considers that—

- (a) a prescribed community benefit society has contravened regulation 3;
- (b) the society has suffered loss as a result; and
- (c) an officer of the society has been knowingly concerned in the contravention,

the Authority may require the officer concerned, in accordance with such arrangements and within such period as the Authority considers appropriate, to pay to the society such amount as appears to the Authority to be just having regard to the extent of the loss suffered by the society as a result of the contravention.

(2) If all or any of the amount payable by the officer is outstanding at the end of the period within which payment is required to be made, the society may recover the outstanding amount as a debt due to it.

(3) The Authority may not exercise the power in paragraph (1) if it considers, having taken into account any representations made to it in response to a warning notice, that the officer concerned took all reasonable steps to secure that the society did not contravene regulation 3.

## **Removal of officers**

**11.**—(1) If the Authority considers that a prescribed community benefit society has contravened regulation 3 and that an officer of the society has been knowingly concerned in the contravention, the Authority may direct the society to remove the officer from his office or position.

(2) The Authority may not exercise the power in paragraph (1) if it considers, having taken into account any representations made to it in response to a warning notice, that the officer concerned took all reasonable steps to secure that the society did not contravene regulation 3.

## **Warning notice**

**12.**—(1) If the Authority proposes to exercise a power conferred by regulation 9, 10 or 11, it must give a warning notice to the society and any officer in relation to whom the power is to be exercised.

(2) A warning notice must—

- (a) state the action which the Authority proposes to take;
- (b) be in writing; and
- (c) give reasons for the proposed action.

(3) A warning notice must specify a reasonable period within which the persons to whom it is given may make representations to the Authority.

(4) The Authority may extend the period specified in the notice.

(5) The Authority must then decide, within a reasonable period, whether to exercise the power concerned.

## **Decision notice**

**13.**—(1) If the Authority decides to exercise a power conferred by regulation 9, 10 or 11, it must give a decision notice to the society and any officer in relation to whom the power is exercised.

(2) A decision notice must —

- (a) be in writing;
- (b) give reasons for the decision to exercise the power concerned;
- (c) set out the terms of, as the case may be, the enforcement notification, requirement for payment or direction for removal of an officer; and
- (d) indicate that there is a right of appeal to the High Court or, as the case may be, the Court of Session and that any appeal must be brought within 28 days.

(3) Subject to regulation 14(4), a society which is subject to an enforcement notification or a direction for removal must comply with it.

## **Appeal**

**14.**—(1) If the Authority decides to exercise a power conferred by regulation 9, 10 or 11, the society and any officer in relation to whom it is exercised may appeal to the High Court or, in the case of a society or an officer of a society whose registered office is situated in Scotland, to the Court of Session.

(2) On an appeal from any decision of the Authority, the court has the power to—

- (a) quash or vary the decision of the Authority, including the power to reduce the amount of the payment required under regulation 10(1) to such amount as it thinks proper; and
- (b) substitute its own decision for any decision quashed on appeal.

(3) An appeal to the court must be made before the end of the period of 28 days beginning with the date on which the decision notice in question is given.

(4) A decision to exercise a power conferred by regulation 9, 10 or 11 is not to be treated as having any effect—

- (a) during the period within which an appeal may be brought; and
- (b) if the matter is the subject of an appeal, until the appeal has been finally disposed of.

### **Court orders**

**15.**—(1) If, on the application of the Authority, the court is satisfied that—

- (a) there is a reasonable likelihood that a prescribed community benefit society will contravene regulation 3; or
- (b) a prescribed community benefit society is contravening or has contravened regulation 3 and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining (or in Scotland an interdict prohibiting) the contravention by the society.

(2) If, on the application of the Authority, the court is satisfied that—

- (a) an officer of a prescribed community benefit society is likely to be knowingly concerned in a contravention of regulation 3; or
- (b) an officer of a prescribed community benefit society is or has been knowingly concerned in a contravention of regulation 3 and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order requiring him to take such steps as the court may direct to prevent the contravention or bring it to an end.

(3) The jurisdiction conferred by this regulation is exercisable by the High Court or, in the case of a society whose registered office is situated in Scotland, the Court of Session.

(4) Nothing in this regulation affects the right of any person other than the Authority to bring proceedings in respect of the matters to which these Regulations apply.