
STATUTORY INSTRUMENTS

2006 No. 2078

The European Cooperative Society Regulations 2006

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⁽¹⁾; 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(2) of the Insolvency Act 1986⁽³⁾ insert—

“Petition for winding up of SCE

124C.—(1) Where, in the case of an SCE whose registered office is in Great Britain—

(1) 1988 c. 36.
(2) Section 124B was inserted by S.I.2004/2326.
(3) 1986 c. 45.

- (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(4) of the Insolvency (Northern Ireland) Order 1989(5) (petition for winding up of an SE) insert—

“Petition for winding up of SCE

- 104C.**—(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) (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) Article 104B was inserted by S.R. 2004 No.417.

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

- (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.