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HM Treasury Open Consultation

Industrial and Provident Societies: Growth Through Co-operation

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Closes

Summary

Setting out the government's proposed reforms to promote the ongoing success of the Industrial and Provident Society (IPS) sector.

Consultation description

The consultation proposes six reforms to IPS legislation, which will give the IPS sector the legislative environment it needs to thrive. These include making insolvency procedures available to IPSs, which will increase the chance of rescue for troubled societies and therefore protect members and jobs. Making insolvency procedures available to IPSs will also remove an obstacle to supporter-owned IPS football clubs playing at the top level, because they can now meet Football Association rules that clubs must be able to go into administration.

The consultation follows the government's commitment in Budget 2013 to consult on introducing insolvency procedures for IPSs and for Credit Unions, and on raising the limit of Withdrawable Share Capital that one member can invest a particular IPS.

Ways to respond

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1. Introduction

1.1 Supporting the Industrial and Provident Society sector

The government's approach to mutuals is enshrined in its founding document, the Coalition Agreement, where it set out its intention to 'promote mutuals and foster diversity' in the UK economy. Building on its previous steps to support building societies and credit unions, as well as for public service mutuals, this consultation document sets out the measures the government intends to take to ensure the Industrial and Provident Society (IPS) sector has the legislative environment that will allow it to thrive.

The IPS sector forms a major part of the mutuals landscape, with a diverse mix of over 7,600 independent IPSs in the UK. Given the clear importance of IPSs to the diversity and strength of the UK economy, the government is keen to continue its support for the sector. This will help to ensure that IPSs are well placed to play a central role in the UK economy for years to come.

The proposals in this paper are for consultation in England, Wales and Scotland, except for consultation on the merits of applying Part 2 of the Banking Act 2009 to credit unions, which is for consultation in Northern Ireland as well. Consultation on this proposal is at a high level (see measure 3 of the paper), and any order taking it forward would extend to Northern Ireland. The other matters are devolved in Northern Ireland and the instruments required to implement them will extend to GB only.

1.2 Consultation Document

The government is currently proposing to implement a number of key reforms of IPS legislation. The first of these is the Co-operatives and Community Benefit Societies Consolidation Bill, which was announced in January 2012. The Consolidation Bill, which was welcomed by the sector, will consolidate all existing IPS legislation in one place, and is an important step in reducing legal complexity

for new and existing societies. This consultation document does not consult upon the content of the Consolidation Bill; there will be a separate consultation issued by the Law Commission and Scottish Law Commission, and the government intends that the Bill will be introduced into Parliament in late 2013.

While the Consolidation Bill will make existing legislation clearer and easier to use for IPSs, it cannot be used to make substantive policy changes. Therefore, the government is also taking other steps to modernise IPS legislation. The government plans to bring into force various elements of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 (the 2010 Act). Specifically, the government will commence:

- Section 1, which will allow societies to register as 'co-operative and community benefit societies', instead of Industrial and Provident Societies. This change has been requested by the sector, which believes that the new name is more appropriate and up-to-date.
- Section 3, which will apply the Company Directors Disqualification Act 1986 to IPSs. This will offer IPSs protection, because it enables directors found guilty of a variety of offences relating to the mismanagement of an IPS to be barred from holding office in a different IPS.
- Section 4, which will give the Treasury power by regulations to apply certain legal provisions relating to companies to IPSs.
- Section 5, which will give the Treasury power by regulations to make legislative provision for credit unions corresponding to that for building societies. The government does not intend to use the Section 5 power at present, but will keep the power under review.

Following on from bringing the 2010 Act into force, the government proposes to use the powers provided by section 4 to make changes in secondary legislation applying Companies Act 1985 provisions about the powers the regulator has to investigate IPSs.

The government also proposes to make other changes in secondary legislation,

through existing powers. These proposals are:

- whether the withdrawable share capital (WSC) limit should be raised, and if so, what level it should be raised to
- making available insolvency procedures for IPSs
- making available further insolvency procedures for Credit Unions
- applying Companies Act 2006 provisions regarding the inspection of the register of members to IPSs
- allowing IPSs to submit electronic copies of registration documents to the FCA instead of printing and posting conventional paper documents; this additional procedure will give societies the option of submitting registration documents online, although will not be compulsory

The government is today launching a consultation on all of these proposed reforms. These proposed reforms are in line with the government's commitment to promote mutuals and foster diversity in the UK economy, and will help to support the continued growth and success of IPS sector in the UK. The government would like to receive views from the sector, and other interested parties, about the six measures proposed in this document. The government is not formally seeking views on the Commencement of the 2010 Act, which has already passed through Parliament and received Royal Assent.

This consultation follows the commitment the government made at Budget 2013 to consult on introducing insolvency procedures for IPSs and Credit Unions, and also on raising the WSC limit.

The document covers the following areas:

- Chapter 2 provides a brief overview of the IPS movement, and sets out the government's vision for the sector in the future
- Chapter 3 sets out each of the six proposed legislative measures and invites views

on each

- Chapter 4 gives details of how to reply to this document

2. Sector

2.1. The Sector Today

The Industrial and Provident Societies Act 1965 (IPSA) allows for the registration of two types of co-operatively owned societies. The first of these are co-operative societies, which are businesses owned and run by and for their own members. The second of these are community benefit societies, which operate for the benefit of the community in which they work (e.g. housing associations). The Industrial and Provident Society form embodies the democratic principle, with each member having an equal voting right regardless of their level of financial commitment, and receiving an equal share of any profits made. This way of working gives significant opportunity for IPS members, whether they are employees, customers or residents, to be involved in the running of the business in a fair and worthwhile manner.

There are currently over 7,600 independent IPSs in the UK, and these numbers continue to grow as the sector continues to provide a popular and successful legal form. IPSs cover a vast range of businesses and industries; including public service mutuels, football clubs, credit unions, wind farms, web designers and agricultural providers. They also come in a range of different sizes – from the Co-operative Group, the UK's largest mutual, which has an annual turnover of more than £14 billion, to community based societies with a handful of members. Moreover, IPSs have good geographic reach: with an IPS located in every postcode area across the UK.

The Financial Conduct Authority (FCA) is responsible for IPS registration – a function similar to that performed by the Registrar of Companies for companies registered under the Companies Act 2006. In order for an institution to be registered as an IPS, it must satisfy the FCA that either (a) it is a bona fide co-operative or (b) its business will be conducted for the benefit of the community.

While co-operative enterprises may, in principle, take any legal form, the IPS is a legal form designed specifically for them. HM Treasury has policy responsibility for

IPS and has responsibility for the governing legislation. The primary piece of legislation is the Industrial and Provident Societies Act (IPSA) 1965, supplemented by several further pieces of legislation, all of which the Consolidation Bill will cement into one place.

2.2. The Past: history of the IPS sector

The UK has long held a central position in the worldwide co-operative movement. The first ever recorded co-operative was created in Fenwick, Scotland, in March 1761, when a group of local weavers came together to form the Fenwick Weavers' Society. In subsequent years, many more co-operative organisations started across Western Europe, North America and Japan. Building upon these early grassroots co-operatives, in 1844, the Rochdale Society of Equitable Pioneers is widely regarded to have started the modern co-operative movement we know today. The Rochdale Pioneers were a group of 28 workers, each of whom had saved £1 to finance the rent for a shop and the purchase of basic items for sale; butter, flour, sugar, oatmeal and candles. In the following years the Rochdale Pioneers opened new branches and many other societies were formed.

From these humble beginnings, the co-operative movement has expanded exponentially. In the UK alone, co-operative society membership has increased from 100,000 in 1863, 4 million in 1918, to over 15 million in 2013.

2.3. The Future: government's vision for the sector

The government believes that the presence of the diverse mix of successful mutually-owned IPSs is important for the UK's economy as a whole, for the communities served, and for individual members. The sector has gone from strength to strength, with the numbers of registered IPSs growing rapidly, and the IPS sector as a whole contributing over £38bn to the UK's economy in 2011.

The government's vision for the IPS sector is of a diverse, healthy and successful sector which is able to continue to offer a broad range of services to an ever-growing number of members. The government also believes that it is vital that the unique features of the traditional IPS form are preserved, and that the sector stays focused upon serving its members in line with its core, member-focused principles. The measures proposed in this consultation will contribute to helping the sector achieve these key objectives.

3. Proposed amendments of industrial and provident society legislation

3.1. introduction

Having an appropriate and up-to-date legislative framework for IPSs is vital, as it will help societies to continue to play an important role in serving their members and communities across the UK, and to further contribute to the success of the UK economy as a whole.

While the Consolidation Bill is an important step in reducing complexity for new and existing societies, it cannot be used to make substantive changes to legislation. For this reason, the government will bring the Co-operative and Community Benefit Societies and Credit Unions Act 2010 (2010 Act) into force, which makes improvements to existing IPS legislation, and gives the government the power to make further legislative changes. Using these new powers, as well as existing powers, the government then proposes to make six reforms to IPS legislation. These proposed reforms are discussed in the remainder of this chapter.

IPSs have seen wide-ranging change over the years since the majority of their legislation was written, and there has been a development in the range of activities undertaken by societies. The government believes that the measures proposed reflect this development, and will help the IPS sector to thrive. The government also believes that, taken together, the proposals will have a cost-saving impact on the IPS sector. However, the government will continue to monitor changes in costs for IPSs as a result of these proposals and if these costs were to rise, would consider what action would be appropriate in response.

3.2. Proposed changes to IPS legislation

The text below details each proposed measure in turn and invites the sector and interested parties to respond to the consultation questions, and to provide supporting evidence where appropriate. With one exception, the proposals do not extend to Northern Ireland and an order implementing them would extend to England, Wales and Scotland only. The exception is the proposal to apply Part 2 of the Banking Act 2009 to credit unions. The consultation about this is confined to the merits of the proposal.

Consequently, the text in measure 3 and question 17 are for stakeholders and interested parties in GB and Northern Ireland, while consultation on the other questions is only GB-wide. Stakeholders and interested parties in Northern Ireland are asked to respond just to the text and questions in measure 3.

Measure 1: Withdrawable share capital

The government committed in Budget 2013 to consult on raising the limit of withdrawable share capital (WSC) that one individual member of a society may invest in a single society. WSC is a form of share capital put into the society by members, which is withdrawable on demand. WSC is important to societies, as it is one of their primary sources of capital.

The amount of WSC a member can invest in a particular society is limited under the current legislation to prevent any one member having undue influence over that society. At present, the limit on the amount of WSC an individual can invest in a particular society is set at £20,000; this level has not been increased since 1994. The limit has been raised previously with the approach taken each time to raise the limit in line with the Retail Price Index (RPI). If the government took the same approach now, the WSC limit would be raised to £31,000.

However, given developments in the IPS sector, the government accepts that there are arguments for raising the limit to a level higher than £31,000. In particular, this could facilitate greater investment in societies in industries requiring higher capital input, such as agriculture.

Question 1

Withdrawable Share Capital limit: what the limit should be

The government welcomes views on whether the limit for the WSC should be raised, and if so, views on the appropriate level for the WSC limit. It would also welcome supporting evidence and rationale for raising

Question 1

Withdrawable Share Capital limit: what the limit should be

the limit to a particular level, and evidence on the benefits and risks of doing so.

Measure 2: Application of provisions of the Insolvency Act 1986 for company voluntary arrangements and administration to IPSs

The government committed at Budget 2013 to consult on the introduction of an insolvency rescue procedure for IPSs. Specifically, the government proposes to apply Part 1 (company voluntary arrangements) and Part 2 (administration) of the Insolvency Act (IA) 1986 and Part 26 (arrangements and reconstructions) of the Companies Act (CA) 2006 to IPSs. The government has the power to do so under s255 of the Enterprise Act 2002. The insolvency procedures will be applied to all IPSs, except those societies which are a private registered provider of social housing or are registered as a social landlord. Societies of this description are excluded from the scope of the power.

At present, IPSs cannot enter administration or a voluntary arrangement with creditors – the only option for an insolvent society is to wind itself up. There are a number of potential benefits to enacting an insolvency rescue procedure, which has the potential to:

- increase the chance of rescue for troubled societies and therefore protect members and jobs
- address a specific problem for football supporter’s societies which mean that they cannot own top-level football clubs, because Football Association rules require clubs to have the power to go into administration
- smooth access to the Pension Protection Fund for members of IPSs sponsored eligible pension schemes

The government seeks views on a number of specific questions which have arisen in designing the proposed measures.

3.3. General approach to drafting section 255 order

The government proposes that insolvency rescue legislation should be applied to IPSs broadly in the same way as for building societies (by Schedule 15A to the Building Societies Act 1986) unless there is a good reason for changing the approach.

Question 2

General approach to drafting s255 order

Do you agree that legislation which applies Parts 1 and 2 of IA 1986 to IPSs should be broadly in line with what has been done with respect to building societies? Can you draw attention to differences between building societies and IPSs which would require different provision for the IPSs?

References to registrar of companies and the role of the PRA and the scheme manager

References to the registrar of companies will need to be read as a reference to the FCA as the body responsible for the registration of societies under IPSA 1965. For a society which is an authorised person under section 31 of the Financial Services and Markets Act 2000 (FSMA) the registrar of companies is the FCA and, if the society is authorised by the PRA, the PRA. In many provisions it will be appropriate that the manager of the Financial Services Compensation Scheme (the 'scheme manager' as defined in section 212 of FSMA 2000) should also be included within a reference to the registrar of companies or should have a role to play.

In Part 1 of IA 1986 (section 4A and paragraph 44 of Schedule A1) the PRA has functions which relate to companies for which the PRA is no longer the regulator. The government proposes to apply these provisions to IPSs without specific modification, so that the PRA will have functions in relation to the moratorium for a society which is or has been authorised by them (treating them in the same way as companies).

Part 2 of IA 1986 does not make provision about PRA-authorized persons. If provision is made, for example, for a statement of proposals or revised proposals prepared under paragraph 49 or 54 to be sent to the FCA and PRA and FSCS manager, the question arises whether this should include the PRA if the society is no longer authorized by the PRA. It should be noted that the PRA may present a winding up petition under section 367 of FSMA 2000 after a relevant society has ceased to be a PRA-authorized person.

Question 3 **References to registrar of companies and the role of the PRA and the scheme manager**

For the purposes of Part 2 (administration) is it appropriate that the PRA should generally cease to be empowered to do anything or have anything done in relation to it under a provision of that Part if it has revoked its authorisation of a society? If yes, are there any exceptions?

3.4. Part 1 of the Insolvency Act 1986

Applying Part 1 of IA 1986

Applying Part 1 of IA 1986 will allow the members of the committee of an IPS to make a proposal to the society and its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (in either case known as a 'voluntary arrangement'). Sections 1 to 7B of IA 1986 will be applied with necessary general and specific modifications.

Question 4 **Applying Part 1 of IA 1986**

Do you agree that enabling IPSs to conclude binding and effective arrangements with creditors would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Prosecution of delinquent officers

The government proposes to modify section 7A of IA 1986 so that the FCA is the appropriate authority for investigating reports of suspected offences in connection with the moratorium or voluntary arrangement with respect to an IPS (rather than the Secretary of State in England and Wales and the Lord Advocate in Scotland); and so that either the Director of Public Prosecutions or the FCA is the prosecuting authority. The government proposes that the PRA also should have power to investigate and prosecute in the case of an IPS which is a PRA-authorized person.

Question
5 **Prosecution of delinquent officers**

Do you agree that this is an appropriate modification of
section 7A?

Schedule A1 to the 1986 Act (the moratorium)

The government proposes to apply provisions for the moratorium (section 1A of IA 1986 and Schedule A1) for the protection of smaller societies for which a voluntary arrangement is proposed. This will prevent the issuance of a winding up petition, the appointment of an administrator or administrative receiver and other steps for the recovery of debts.

The government proposes that the moratorium should be available for small societies, and that the criteria for being 'small' should be in line with provision made for exemptions in relation to accounts and audit of IPSs. The basic conditions proposed are that a society qualifies in a year of account if in that year (a) the total value of its assets does not exceed £2,800,000; and (b) its turnover does not exceed £5,600,000. Provision is also proposed for a parent society of a group of societies (i.e. a society which has subsidiaries within the meaning given in section 15 of IPSA 1968). The basic conditions proposed are that a parent society qualifies in a year of account if in that year (a) the aggregate value of the group's assets and the group's aggregate turnover do not exceed specified amounts.

Question 6 **Schedule A1 to the 1986 Act (the moratorium)**

Do you agree that smaller IPSs ought to be able to obtain a moratorium?

Do you agree with these proposals on qualifying limits?

3.5. Part 2 of the Insolvency Act 1986

Applying Part 2 of IA 1986

Applying Part 2 of IA 1986 will allow the appointment of an administrator by floating charge holders, by members of the committee of an IPS and by the court upon making an administration order. The whole of Schedule B1 to IA 1986 will be applied with necessary general and specific modifications.

Question 7 **Applying Part 2 of IA 1986**

Do you agree that enabling IPSs to go into administration upon the appointment of an administrator or the making of an administration order would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Appointment of administrator by holder of floating charge

The government proposes that the holder of a floating charge given by an IPS should be entitled to appoint an administrator under paragraph 14 of Schedule B1. Existing charges will qualify under paragraph 14(2) if they entitled the holder to appoint a receiver. New charges will qualify if they applied paragraph 14 or entitled the holder to appoint an administrator or receiver.

The government proposes that having acquired a right to appoint an administrator, a qualifying charge holder should be prohibited from appointing a receiver. This will

mirror section 72A of IA 1986 and will only apply to charges created after a specified date.

For these purposes the meaning of 'receiver' will be in line with the meaning given to 'administrative receiver' by IA 1986 (sections 29(2) and 51) and will have the same meaning in Schedule A1 (the moratorium).

Question 8 **Appointment of administrator by holder of floating charge**

Do you agree that the holder of a floating charge given by an IPS should be entitled to appoint an administrator?

If yes: (i) should the holder of the charge be prohibited from appointing a receiver?

(ii) are any of the exceptions made for companies in sections 72B to 72GA of IA 1986 relevant (so that a qualifying charge holder should be able to appoint a receiver under any equivalent provision)?

(iii) should 'administrative receiver' have the same meaning in substance as it does for England and Wales and for Scotland in Part 3 of IA 1986?

Floating charges and the prescribed part (section 176A of IA 1986)

If an IPS whose property is subject to a floating charge goes into liquidation, the liquidator must make a prescribed part of the society's property available for the satisfaction of unsecured debts. This is included in s55 (2) of IPSCA 1965, which applies the provisions about the winding up of companies. The government proposes that as for companies the administrator of an IPS should be subject to the requirements in section 176A.

Question 9 **Floating charges and the prescribed part (section 176A of IA 1986)**

Do you agree that the administrator of an IPS should be required to comply with section 176A?

Application by regulators for administration order and notification of appointment

The government proposes to modify paragraph 12 of Schedule B1 to enable the FCA to apply for an administration order, and also the PRA in the case of an IPS which is a PRA-authorized person; and to provide that an applicant for an administration order shall notify the FCA and PRA that they have made the application.

The old administration regime, as applied to building societies, is modified by paragraph 11 of Schedule 15A of the Building Societies Act (BSA) 1986 to allow shareholding members to petition for administration if they could petition for winding up under section 89 of BSA1986.

Question 10 **Application for administration order and notification of appointment**

Do you agree that the regulators should be entitled to apply for an administration order? Are there any circumstances under which a member of an IPS (as a contributory or otherwise) should be entitled to apply for an administration order?

Process of administration (involvement of members)

The government proposes that paragraphs 46 to 58 of Schedule B1 should be modified to provide for notifying members of the appointment of an administrator, sending administrator's proposals to members, convening members' meetings and generally providing for members in line with what has been done for building

societies in paragraphs 19 to 24 of Schedule 15A to BSA 1986.

The government proposes that members also should be invited to a meeting in accordance with paragraph 51(2) and (3). The exception for creditors in paragraph 52 should be modified so that a members meeting must be called under the circumstances specified if at least 10 per cent of creditors request one (i.e. if the creditors ask for a meeting, there must also be a meeting of members).

The government proposes that members (as well as creditors) should approve the administrator's proposals and revisions to proposals.

The government proposes that paragraph 56 (further creditors' meetings) should be modified to require the administrator (a) to summon a meeting of creditors if a meeting is requested by 10 per cent, in number or value, of creditors; and (b) to call a meeting of the members if a meeting is requested by 10 per cent in the number of members. In either case the administrator may be directed to do so by the court.

Question 11

Process of administration (involvement of members)

Do you agree that these are appropriate modifications for meetings and the participation of members in the process of administration? How should the expenses of a members' meeting under paragraph 52(2) or 56(1) (as modified for an IPS) be met? Should they be payable out of the assets of the IPS as an expense of the administration?

Powers of the administrator – general

The government proposes to make provision to ensure that the powers of the administrator are exercised in accordance with the IPSA 1965 and other enactments having effect in relation to registered societies and in accordance with the rules of IPSs. For this purpose it will be necessary to modify paragraphs 59 and

60 of Schedule B1 to IA 1986 and paragraph 3 of Schedule 1 to IA 1986 (power to raise or borrow money or grant security). More specific modification of paragraph 49 of Schedule B1 is proposed to ensure that the administrator's proposals (or revision of proposals) do not include any measure which is contrary to such provisions.

Paragraph 49 will also be modified to protect against inappropriate rule changes where proposals are not intended to remove mutual status. It is proposed that the FCA should issue a statement that it would register an amendment if copies were sent to it for registration.

Question 12 **Powers of the administrator – general**

Do you agree that the order should provide a safeguard for this purpose in the legislation? Do you agree that the order should provide a safeguard for this purpose and that the FCA should have a supervisory function?

Powers of the administrator – amalgamations etc

The administrator of an IPS will have power to propose and give effect to amalgamation, transfer of engagements and conversion into companies. For this purpose the government proposes to modify the provision for such arrangements and for restricting dissolution and the cancellation of registration in sections 50, 51 and 52 of IPSA 1965 so that instead of requiring a special resolution, the arrangements would need to be approved on presentation of the administrator's proposals to creditors and members of the society.

Question 13 **Powers of the administrator**

Do you agree that the administrator of an IPS should have power to

Question
13 **Powers of the administrator**

effect amalgamation, transfer of engagements and conversion into companies?

3.6. Part 26 of the Companies Act 2006

Applying Part 26 of CA 2006

Applying Part 26 of CA 2006 will allow IPSs to apply to the court for an order sanctioning an arrangement or reconstruction agreed with a majority of members or creditors. The government intend to apply Part 26 with modifications.

Question
14 **Applying Part 26 of CA 2006**

Do you agree that the application of Part 26 would be beneficial for IPSs?

Provision to ensure that Part 26 measures are compatible with governing legislation and principles and rules for mutual status

The government proposes to make provision to ensure that no reconstruction or amalgamation is contrary to the provisions of IPSA 1965 or other enactments having effect in relation to IPSs or with the rules of the society. Section 900 of CA 2006 will be modified to provide that an order can only be made if the FCA has confirmed that it is satisfied that this is so. Similarly, section 901 of CA 2006 will be modified to protect against inappropriate rule changes where a reconstruction or amalgamation is not intended to remove mutual status.

Question **Provision to ensure that Part 26 measures are compatible with**
15 **governing legislation and principles and rules for mutual status**

Do you agree that the order should provide a safeguard for this purpose

**Question Provision to ensure that Part 26 measures are compatible with
15 governing legislation and principles and rules for mutual status**

and that the FCA should have a supervisory function? Are any other modifications required?

3.7. Insolvency Rules 1986 and Insolvency (Scotland) Rules 1986

Distributions to creditors

The government proposes to modify the application of rules relating to distributions and the right of set-off for mutual dealings (Rules 2.68, 2.69 and 2.85) where a creditor is also a member (as a depositor or otherwise) of an IPS. The modifications will follow in substance what has been done for building societies in rules 49 and 60 of the Building Society (Special Administration) Rules 2010 (S.I. 2010/2580).

Rule 2.68 will be modified to provide that a creditor for the purpose of distributions includes a member (so that a class of creditors may be read as a class of members). Rule 2.69 will be modified to exclude from “debts” any amounts owed by an IPS to a member in respect of shares. This will ensure that a member does not enjoy the benefit of equal ranking payment for debts which arise in the capacity of shareholder.

Similarly, Rule 2.85 will be modified so that a member does not enjoy the benefit of recovery by set-off of debts which arise in the capacity of shareholder. Rule 2.85 will also be modified in the case of an IPS which is a relevant person (within the meaning given in section 213(9) (a) of FSMA 2000) where rules made by the appropriate regulator (the FCA or PRA) allow the FSCS manager to make gross payments of compensation in respect of protected deposits. Rules about mutual dealings will not apply in determining the sum due from the building society in respect of protected deposits (up to the prescribed limit of FSCS compensation).

Corresponding modifications will be made to Rule 2.95 (notice of proposed

distribution) and Rules 2.97 to 2.100 and 2.103 (declaration of dividend).

Corresponding provision, where relevant, will be made in relation to the Insolvency (Scotland) Rules 1986.

Question
16 **Distributions to creditors**

Do you agree that these are necessary modifications of rules relating to distributions?

Measure 3: Application of Part 2 of the Banking Act 2009 (bank insolvency) to Credit Unions [This proposal is for consultation in GB and Northern Ireland, the power in section 131 of the Banking Act 2009 being wholly reserved to the UK Government]

The government committed in Budget 2013 to consult on the introduction of an insolvency rescue procedure for credit unions. At present, credit unions cannot enter an administration or a voluntary arrangement with creditors – the only option for an insolvent credit union is to wind itself up.

The government seeks views on the merits of applying Part 2 of the Banking Act (BA) 2009 (bank insolvency) to credit unions, in addition to Part 2 of the Insolvency Act (IA) 1986 (or Part 3 of the Insolvency (Northern Ireland) Order 1989) (administration). An order under section 131 would be laid before Parliament for approval later in 2014 or in 2015, and would be prepared on the basis that administration legislation had already been applied to credit unions. It would also be necessary to prepare rules for ‘credit union insolvency’.

The government believes that the potential benefits of introducing credit union insolvency under section 131 of BA 2009 are as follows:

- ensure that credit union members were treated in the same way as depositors in

other types of credit institution

- ensure that there could be a speedy Financial Services Compensation Scheme (FSCS) payout in the event of default
- allow flexibility to move into ordinary administration, but failing that provide a more suitable procedure for winding up

The first objective of the liquidator under credit union insolvency would be to work with the FSCS to ensure that the accounts of eligible depositors were transferred as soon as reasonably practicable to another financial institution or that the FSCS pays out.

The court would be able to make a credit union insolvency order on a petition for a winding up order or an application for an administration order in respect a credit union. The PRA or the Bank of England would have the option of applying for a credit union insolvency order on being notified of an application for an administration order, the presentation of a winding up petition, a resolution for voluntary winding up or a proposal to appoint an administrator.

It is possible that a credit union might pass into ordinary administration under section 114 of BA 2009 (as applied to credit unions) after the first objective had been achieved. The credit union liquidator would be able to apply to the court for an administration order if the liquidation committee had resolved that the credit union might be rescued as a going concern and the liquidator thought that administration would achieve a better result for the creditors as a whole than credit union insolvency.

Alternatively, if the credit union proceeded to be wound up under credit union insolvency procedure, suitable rules would be in place with respect to mutual credits and set-off. Rules applicable in the case of winding up under Part 4 of IA 1986 are not modified for application to credit unions.

While credit union default has so far has been adequately managed under normal liquidation procedure and the FSCS payments to members have been made quickly, this has required considerable intervention by the PRA, FSCS and the official receiver and the co-operation of the liquidator. It is thought that the lack of formal legislation for all the steps that need to be taken to poses considerable risks, including:

- a time lapse between the institution of winding up proceedings and eventual liquidation, which carries the potential for a “run” on the credit union
- disruption to members who have “current” accounts with automated transactions
- financial hardship suffered by members who rely on access to State benefits or salaries paid directly into their accounts

It is thought that requiring an insolvency practitioner to achieve Objective 1 under Part 2 of BA 2009 would strengthen the hand of the FSCS in discharging its statutory functions effectively and efficiently. A credit union liquidator would be obliged to work with the FSCS to secure prompt pay-out or transfer of depositors’ accounts.

On the other hand, it will be important to take account of any risks that applying Part 2 of BA 2009 to credit unions will have a negative impact on the ordinary course of business (for example, terms of trade and costs of capital) or will undermine creditors’ rights on normal insolvency or create uncertainty about the outcome where a credit union faces financial difficulty.

Question 17

Applying Part 2 of the Banking Act 2009 to Credit Unions

Do you agree that applying Part 2 of BA 2009 to credit unions would provide a more effective and flexible procedure for dealing with financial difficulties and insolvency? Do you agree with the benefits identified above? How far would this measure carry risks of prejudicing credit

unions in the ordinary course of business?

Measure 4: Application of Parts 14 & 15 of the Companies Act 1985 (investigations) to IPSs

This proposal gives the FCA, which regulates IPSs, additional powers to investigate IPSs should their behaviour be deemed improper or unlawful. The additional powers proposed in this section are in line with the current powers in the Companies Act 1985, and will be appropriately modified for IPSs. This proposal aims to create a level playing field with the requirements that companies face and will increase confidence in the IPS form.

As noted in chapter 2, the government proposes to commence section 4 of the 2010 Act. Section 4(2)(a) of the 2010 Act gives the Treasury power by regulations to apply Parts 14 and 15 of the Companies Act 1985 to IPSs. Under the proposals, the following key powers under Part 14 of the Companies Act 1985 would be made available to the FCA:

- Section 432(1) would be applied; this requires the FCA to appoint an inspector if a court instructs them to do so. Section 432(2) would be applied to give the FCA power to appoint an inspector to investigate the affairs of an IPS. As with companies, the power would be available when it appears to the FCA that, for example, there may have been an intention to defraud creditors or the IPS has been conducted in a way which unfairly prejudices a group of members or for unlawful purposes.

- The inspector's powers would include the power to investigate a subsidiary (section 433) and power to require production of documents, to require officers and agents of the IPS to attend a meeting with the inspector and to assist the inspector

(section 434).

- Under section 437 the inspector would report to the FCA. Section 439(1) to (4) (expenses of investigating a company's affairs) would be adapted so that the expenses of the investigation would be payable in the first instance by the FCA but recoverable from the IPS investigated. However, it is worth noting that in practice the FCA's first intention would be to cover the costs of any IPS investigation from the periodic fees paid by all societies. If this is not possible, then as a last resort the FCA may consider using its central budget.

- The government also proposes to apply sections 446A and 446B to give the FCA power to give directions to inspectors. It is also proposed to apply sections 446C to 446E (resignation, removal and replacement of inspectors and obtaining information from former inspectors) to inspections of IPSs.

- The government proposes to apply section 447 to give the FCA or an authorised investigator power to give directions to an IPS to produce documents and provide information; section 448, which would give the FCA or an authorised person power to apply to a magistrate for a warrant of entry to premises of an IPS on the grounds set out in section 448(2); and section 453A which would give an inspector or an investigator authorised under section 447 power to require entry to premises (but does not authorise forcible entry). Section 449, Schedule 15C and Schedule 15D (relating to the disclosure of information under sections 447 and 453A) are proposed to be applied in relation to IPSs. The government is considering whether additional bodies to which disclosure can be made should be included in the list in Schedule 15C.

- The sanctions and offences in Part 14 of the Companies Act 1985 are proposed to be applied in the case of investigations of IPSs. For example, the government proposes to apply the relevant sanctions contained in sections 436 (obstruction of

inspectors treated as contempt of court), 450 (punishment for destroying company documents) and 451 (punishment for providing false information).

- The government proposes to repeal section 48 of the Industrial and Provident Societies Act 1965 because the broader powers described above would render it unnecessary.

To ensure that the application of Companies Act 1985 provisions are appropriate for IPSs, the government proposes not to apply the list of Companies Act investigations provisions to IPSs below. The reasons for this are also stated.

- Section 431: appointment of an investigator following an application by members of the company or the company itself. Similar powers already exist under section 49 of the Industrial and Provident Society Act 1965.

- Sections 442 and 443 (powers to investigate membership of a company in order to determine ownership), 444 (power to investigate ownership of shares and debentures) and 445 (power to impose restrictions on shares and debentures).

These powers are inappropriate in the case of an IPS, but if such issues did arise, the government considers that they could be adequately investigated under section 447.

- Section 453: investigation of overseas companies. This is not relevant as the FCA does not regulate overseas IPSs.

- Sections 454 to 457 (Part 15 of the Companies Act 1985): restrictions on shares; these are consequential on section 445 which it is not proposed to apply, and therefore are not necessary.

Question 18 **Investigations regulations**

The government welcomes views on the application of the powers of investigation from the Companies Act 1985 to IPSs. In particular do you agree:

Question 18

Investigations regulations

(a) that the circumstances for appointment of inspectors set out in section 432(2) of the Companies Act 1985 are suitable for IPSs?

(b) with the proposal that the costs of the inspection should be recoverable from the IPS? (recognising that the FCA will first try to soak these costs up into their existing budget)

(c) that the FCA, inspectors and section 447 investigators should be given the proposed powers?

(d) that Schedules 15C and 15D (permitted disclosures of information) need to be adapted for IPSs, and if so, how?

(e) that the sanctions and penalties in the Companies Act 1985 are suitable for IPSs?

(f) that section 48 of the Industrial and Provident Societies Act 1965 could be repealed?

(g) with the proposal not to apply the sections of the Companies Act 1985 listed in 3.51?

Measure 5: Application of provisions in the Companies Act 2006 relating to inspection of register of members to IPSs

This proposed measure amends the Industrial and Provident Societies Act (IPSA) 1965, by substituting for section 46(1) (b) of the IPSA 1965 provisions based on sections 116(3) and (4), 117 and 119 of the Companies Act 2006.

The proposal increases IPSs ability to prevent members from seeing their duplicate register of members, by giving them the right to refer the matter to court when sight of the register is sought for an improper purpose. The government believes that this is helpful because it gives IPSs options for avoiding unnecessary expense in response to vexatious or unlawful requests for information (the register contains private information about the members of the society). It also creates a level-

playing field for IPSs with companies' legislation.

Section 46(1) (a) of the IPSA1965 gives members of an IPS a right to inspect their own accounts; this proposal does not affect this right. Section 46(1) (b) of the IPSA 1965 gives members a right to inspect the duplicate register. If there is no duplicate register the person has the right to inspect the same information on the main register as would be contained in a duplicate register, but for simplicity this chapter only refers to the duplicate register. The duplicate register lists the names and addresses of members, the dates on which they became or ceased to be members and details of the officers of the society. The duplicate register does not contain information about the number of shares held by each member, sums paid or due to be paid on those shares or property in the IPS held by members.

The proposed measure would permit a member to inspect the duplicate register only if new conditions were met. First, the member would have to pay a reasonable fee set by the IPS. Second, the member would have to make a written application to the IPS which included the purpose for which the information from the duplicate register is to be used and details of any persons to whom the information might be disclosed, and the purposes for which those persons might use it. Third, the IPS receiving the application would have the right to apply to the court instead of complying with the request for inspection, and if the court is satisfied that the inspection is not sought for a proper purpose it must direct the IPS not to comply with the request and may order the member to pay the IPS's costs. However unless the court makes such a direction the IPS must comply with the member's request for inspection. The new provisions are subject to an IPS's existing rules about inspection of the duplicate register, which means that the IPS's rules take precedence.

It is also proposed to incorporate the criminal penalties in section 119 of the Companies Act 2006. It would be an offence knowingly or recklessly to make a materially false, misleading or deceptive statement in a request to inspect the

duplicate register. It would also be an offence for a member, having obtained information from the duplicate register, to disclose the information to another person in the knowledge or suspicion that the other person may use the information for an improper purpose. The penalties would be the same as those in the Companies Act 2006.

Question 19 **Inspection of the register provisions**

The government welcomes views on the application of Companies Act 2006 provisions about the inspection of the duplicate register of members to IPSs. In particular do you think that:

(a) IPSs should be given the right to apply to the court where they believe an application by a member to view the duplicate register is for an improper purpose?

(b) there should be choice of applying to the High Court or county court as in the Companies Act 2006?

(c) IPSs should be able to charge a fee for inspections of the duplicate register by members and interested persons?

(d) the proposed penalties are appropriate?

Measure 6: Amendment of section 2(1) of Industrial and Provident Societies Act (IPSA) 1965 to amend requirements for registration documents to be submitted electronically for new IPSs

This proposed measure will provide an additional procedure to allow societies to submit electronic copies of registration documents to the FCA instead of printing and posting conventional paper documents. This additional procedure will give societies the option of submitting registration documents online, but will not be compulsory as societies will still be allowed to send in documents by post. This additional electronic registration process will make it quicker, easier and cheaper to register a new society.

Question 20 **Electronic submission of registration documents**

The government welcomes views on the amendment of section 2(1) of the IPSA 1965 to allow IPSs to submit registration documents electronically.

4. Views Requested and How to Respond

4.1. Summary of views requested

The government welcomes written submissions on the proposals set out in this document in general and, in particular, on the requests for views and information listed below. Interested persons and stakeholders in Northern Ireland are invited to respond to the questions for measure (3) only, the other matters being devolved in Northern Ireland.

Measure 1: Withdrawable share capital

Question 1 **Withdrawable Share Capital limit: what the limit should be**

The government welcomes views on whether the limit for the WSC should be raised, and if so, views on the appropriate level for the WSC limit. It would also welcome supporting evidence and rationale for raising the limit to a particular level, and evidence on the benefits and risks of doing so.

Measure 2: Application of provisions of the Insolvency Act 1986 for company voluntary arrangements and administration to IPSs

Question 2 **General approach to drafting s255 order**

Do you agree that legislation which applies Parts 1 and 2 of IA 1986 to IPSs should be broadly in line with what has been done with respect to building societies? Can you draw attention to differences between building societies and IPSs which would require different provision for the IPSs?

Question 3 **References to registrar of companies and the role of the PRA and the scheme manager**

For the purposes of Part 2 (administration) is it appropriate that the PRA should generally cease to be empowered to do anything or have anything done in relation to it under a provision of that Part if it has revoked its authorisation of a society? If yes, are there any exceptions?

Question 4 **Applying Part 1 of IA 1986**

Do you agree that enabling IPSs to conclude binding and effective arrangements with creditors would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Question 5 **Prosecution of delinquent officers**

Do you agree that this is an appropriate modification of section 7A?

Question 6 **Schedule A1 to the 1986 Act (the moratorium)**

Do you agree that smaller IPSs ought to be able to obtain a moratorium?
Do you agree with these proposals on qualifying limits?

Question 7 **Applying Part 2 of IA 1986**

Do you agree that enabling IPSs to go into administration upon the appointment of an administrator or the making of an administration order would be beneficial, particularly for societies which are in financial difficulty but are not actually insolvent or which are insolvent but have prospects for recovery?

Question 8 **Appointment of administrator by holder of floating charge**

Do you agree that the holder of a floating charge given by an IPS should

Question 8

Appointment of administrator by holder of floating charge

be entitled to appoint an administrator?

If yes:

(i) should the holder of the charge be prohibited from appointing a receiver?

(ii) are any of the exceptions made for companies in sections 72B to 72GA of IA 1986 relevant (so that a qualifying charge holder should be able to appoint a receiver under any equivalent provision)?

(iii) should 'administrative receiver' have the same meaning in substance as it does for England and Wales and for Scotland in Part 3 of IA 1986?

Question 9

Floating charges and the prescribed part (section 176A of IA 1986)

Do you agree that the administrator of an IPS should be required to comply with section 176A?

Question 10

Application for administration order and notification of appointment

Do you agree that the regulators should be entitled to apply for an administration order? Are there any circumstances under which a member of an IPS (as a contributory or otherwise) should be entitled to apply for an administration order?

Question 11

Process of administration (involvement of members)

Do you agree that these are appropriate modifications for meetings and the participation of members in the process of administration? How should the expenses of a members' meeting under paragraph 52(2) or 56(1) (as modified for an IPS) be met? Should they be payable out of the assets of the IPS as an expense of the administration?

Question 12 Powers of the administrator – general

Do you agree that the order should provide a safeguard for this purpose in the legislation? (paragraph 3.29) Do you agree that the order should provide a safeguard for this purpose and that the FCA should have a supervisory function? (paragraph 3.30)

Question 13 Powers of the administrator

Do you agree that the administrator of an IPS should have power to effect amalgamation, transfer of engagements and conversion into companies?

Question 14 Applying Part 26 of CA 2006

Do you agree that the application of Part 26 would be beneficial for IPSs?

Question 15 Provision to ensure that Part 26 measures are compatible with governing legislation and principles and rules for mutual status

Do you agree that the order should provide a safeguard for this purpose and that the FCA should have a supervisory function? Are any other modifications required?

Question 16 Distributions to creditors

Do you agree that these are necessary modifications of rules relating to distributions?

Measure 3: Application of Part 2 of the Banking Act 2009 (bank insolvency) to Credit Unions

Question 17 Applying Part 2 of the Banking Act 2009 to Credit Unions

Do you agree that applying Part 2 of BA 2009 to credit unions would

Question 17

Applying Part 2 of the Banking Act 2009 to Credit Unions

provide a more effective and flexible procedure for dealing with financial difficulties and insolvency? Do you agree with the benefits identified above? How far would this measure carry risks of prejudicing credit unions in the ordinary course of business?

Measure 4: Application of Parts 14 & 15 of the Companies Act 1985 (investigations) to IPSs

Question 18

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The government welcomes views on the application of the powers of investigation from the Companies Act 1985 to IPSs. In particular do you agree:

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Measure 5: Application of provisions in the Companies Act 2006 relating to inspection of register of members to IPSs

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Inspection of the register provisions

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(b) there should there be choice of applying to the High Court or county court as in the Companies Act 2006?

(c) IPSs should be able to charge a fee for inspections of the duplicate register by members and interested persons?

(d) the proposed penalties are appropriate?

Measure 6: Amendment of section 2(1) of Industrial and Provident Societies Act (IPSA) 1965 to amend requirements for registration documents to be submitted electronically for new IPSs

Question

20

Electronic submission of registration documents

The government welcomes views on the amendment of section 2(1) of the IPSA 1965 to allow IPSs to submit registration documents electronically.

4.2. How to respond

When responding please say if you are a business, private individual or representative body. In the case of representative bodies please provide information on the number and nature of people or businesses you represent.

The draft Statutory Instruments (SI's) will be made available for comments on an informal basis in summer 2013. The timing of availability is likely to differ between

each SI – the majority of the SI's will be available in July or August, while measure (2) and (3) are likely to be available in September. To request copies of the SI's, please contact IPSconsultation@hmtreasury.gsi.gov.uk

4.3. Confidentiality

Information provided in response to this consultation document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

4.4. Consultation principles

This consultation is being run in accordance with the government's [Consultation Principles](#).

The government's Consultation Principles state that 'timeframes for consultation should be proportionate and realistic'. This consultation will run for eight weeks, which should be sufficient time for stakeholders to consider and respond, given the likely audience.

