

# HM Treasury consultation:

## Industrial and Provident Societies: growth through co-operation

### About Co-operatives UK

Co-operatives UK is the national trade body that campaigns for co-operation and works to promote develop and unite co-operative enterprises. We have a unique role as a trade association for co-operatives. We work to promote co-operative businesses across all sectors of the economy – from retail and finance where co-operatives are most recognised to key growth areas such as renewable energy, agriculture and education.. Together the co-operative economy is worth some £36.7 billion, is owned by 15.4 million adult members in the UK and has grown by nearly 20 per cent since the start of the credit crunch. Co-operatives UK have 75 per cent of the UK co-operative sector in membership.

### WITHDRAWABLE SHARE CAPITAL

#### Question 1

1 ***Withdrawable share capital: Should the limit be raised, and if so, what is the appropriate level for the WSC limit?***

- 1.1 Co-operatives UK have long argued that the limit on withdrawable share capital should be increased. The current £20,000 limit has not been touched for over 38 years.
- 1.2 The current limit can result in a number of problems for societies, including:
  - Under-capitalisation
  - Over exposure to debt finance
  - Limited ability to finance new investment
  - Imposed constraints on new societies in capital intensive sectors
- 1.3 Research we have commissioned looking at the capital constraints on co-operative societies has concluded that:
  - *'changes in earnings or asset prices over the period since it was set at £5,000 in 1975 would suggest that the limit should be reset at somewhere between £60,000 and £100,000.*

- *For existing co-operatives, the modelling work suggests that the potential impact of the current limit could be to be adding £1.5m to £2.5m pa in annual financing costs, or a net present cost over 10 years of £12.7m to £23.5m. These costs would be reduced by increasing the current limit on withdrawable share capital, although we would only expect the costs to be eliminated by increasing the limit to around £100,000. Raising the limit to £60,000 would still impose some constraints on co-operatives. The scale of benefits would therefore be lower.'*

1.1 We would therefore recommend consideration of the high limit.

## **INSOLVENCY**

### **Question 2**

**2** *Do you agree that legislation which applies Parts 1 and 2 of Insolvency Act 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?*

- 2.1 We welcome the introduction of provisions for societies which allows them the option of enacting an insolvency rescue procedure, when circumstances require it, particularly to close down the question as to whether they can access the Pension Protection Fund.
- 2.2 In general we would support the view that same provisions should apply to societies as to other corporate forms.
- 2.3 Withdrawable share capital and its treatment tends to be special to societies, so consideration as to any impacts in that context should be considered.
- 2.4 Further if the building societies regime is to be applied, it should be noted that whilst building societies are limited in the business activity they are allowed to undertake and in how they carry out certain activities such as lending, IP societies are free to carry on an industry business or trade.

### **Question 3**

**3** *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 exceptions?*

- 3.1 It is our understanding to do this would create a difference in treatment between companies and societies. Given the general principle that there is no reason why they should not be treated the same, this does not seem appropriate to include.

#### Question 4

**4** *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 but have prospects for recovery?*

4.1 If this will assist the recovery process, then it makes sense provided that such agreements do not cut across the societies ability to be recognised as either a bona fide co-operative or society for the benefit of the community.

#### Question 5

**5** *Do you agree that the proposed modification of section 7A (delinquent directors) is appropriate?*

5.1 Making the FCA the body to carry out investigations as it is the registrar would seem to be appropriate. In this case of delinquent directors, if the FCA was to move to having an on line register of society directors this would make this function more effective.

#### Question 6

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

6.1 We see no reason why societies should not be allowed to obtain a moratorium. Making the limit the same as that in place for the audit exemptions is practical, provided a mechanism is also introduced to ensure the limit is reviewed and amended as appropriate to ensure it keeps pace with modern business practice.

#### Question 7

**7** *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?*

7.1 Yes, particularly if this improves a society's prospects for recovery.

#### Question 8

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

8.1 We see no reason why this should not be the case.

**8.2 If yes:**

**8.3 Should the holder of the charge be prohibited from appointing a receiver**

8.4 We see no reason why this should not be the case.

- 8.5 **Are any of the exceptions made for companies in sections 72B to 72GA of IA relevant (so that a qualifying charge holder should be able to appoint a receiver under any equivalent provision)?**
- 8.6 The society sector is growing and whilst it is unclear as to whether societies will operate in the areas listed in sections 72B to 72GA it is in our view appropriate that these exemptions should apply to societies as well as companies.
- 8.7 **Should ‘administrative receiver’ have the same meaning in substance as it does for England, Wales and Scotland as part 3 of IA?**
- 8.8 We see no reason why the definition should differ.

#### **Question 9**

- 9 ***Do you agree that the administrator of an IPS should be required to comply with section 176A?***
- 9.1 We see no reason why this should not be the case.

#### **Question 10**

- 10 ***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 should be entitled to apply for an administration order?***
- 10.1 We see no reason why the regulators should not be allowed to apply an administration order, likewise if sufficient members – a defined percentage, who met an appropriate criteria applied – this would be keeping with the principles of co-operatives and societies operating in a democratic way with and for members.

#### **Question 11**

- 11 ***Do you agree with the proposed 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?***

In keeping with the principles of member engagement allowing members participation in the administration process we would support. The costs of the members meeting should be a cost of the administration process.

#### **Question 12**

- 12 ***Do you agree that the order should provide a safeguard for this purpose (powers of the administrator) in legislation? Do you agree that the FCA should have a supervisory function?***
- 12.1 Yes, we would support the introduction of a safeguard which ensured that the administration process did not undermine the mutual status of the societies concerned.

### **Question 13**

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

13.1 Whilst we recognise that an administrator may have to recommend one of the above as being in the best interests of the society, we welcome the provision that this should be presented to members and creditors and approved on that basis. It should be noted however that the option for conversion into a company is not available for credit unions as per s52 of IPSA 1965 nor would we recommend that this situation changes.

### **Question 14**

**14** *Do you agree that the application of Part 26 of the Companies Act 2006 would be beneficial for IPSs?*

14.1 Yes we would agree this would be beneficial for societies

### **Question 15**

**15** *Do you agree that the order should provide a safeguard for this purpose (ensuring compatibility of part 26 with IPSA principles) and that the FCA should have a supervisory function? Are there any modifications required?*

15.1 Yes we would agree that a provision to protect the mutual status of societies is important.

### **Question 16**

**16** *Do you agree with the proposed modifications of rules relating to distributions?*

16.1 In the context of societies all shareholders are members and vice versa, this would need to be taken into consideration when looking at this provision.

### **Question 17 – credit unions**

17.1 There are we believe a number of benefits for credit unions from the introduction of the legislation in relation to insolvency. What will be important to ensure is that there are mechanisms in place for the protection and transfer of member funds to other credit unions so they are kept in the sector and used for their original purposes.

## **INVESTIGATIONS**

### **Question 18**

**18** (a) **Do you agree that the circumstances for appointment of inspectors set out in section 432(2) of the Companies Act 1985 are suitable for IPS?**

- 18.1 Yes we agree
- 18.2 (b) Do you agree with the proposal that the costs of the inspection should be recoverable from the IPS?**
- 18.3 Yes we recognise that a society has to take responsibility for its own governance.
- 18.4 (c) Do you agree that the FCA, inspectors and section 447 investigators should be given the proposed powers?**
- 18.5 We recognise that for an inspection to be successful, those inspecting need to have access to all necessary powers.
- 18.6 (d) Do you agree that Schedules 15c and 15d (permitted disclosures of information) need to be adapted for IPS, and if so, how?**
- 18.7 Schedule 15c lists the organisations who could be engaged in an investigation and be privy to the investigation process. Given the unique nature of trade associations in the society sector, Co-operatives UK has made the point as to whether this list should include bodies such as Co-operatives UK and ABCUL.
- 18.8 (e) Do you agree that the sanctions and penalties in the Company Act 1985 are suitable for IPS**
- 18.9 Yes, we would agree for societies to be taken seriously sanctions should be the same as for companies.
- 18.10 (f) Do you agree that section 48 of the Industrial and Provident Societies Act 1965 should be repealed?**
- 18.11 Yes, we would agree, these new provision make this on longer necessary.
- 18.12 Do you agree with the proposal not to apply the sections of the Companies Act 1985 listed in 3.51?**
- 18.13 Yes, we would agree

## REGISTER OF MEMBERS

### Question 19

- 19 The government welcomes views on the Application of Companies Act 2006 provisions about the inspection of the duplicate register of members to IPSs.**
- 19.1 Co-operatives UK welcome the proposal regarding inspection of the duplicate register of members. Co-operatives UK has previously raised concerns that current provision puts IPSs at a disadvantage in relation to companies as, for example, there is a possibility that a rogue member could seek to disrupt the business by trying to contact other members directly.

### Question 20

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

20.1 Co-operatives UK welcome this proposal. We have raised our concern previously that the current requirement upon registration for two copies of the rulebook to be submitted predates modern electronic communication and is wholly incompatible with an electronic registration process. We are therefore extremely supportive of the introduction of this option.

- Applying Companies Act provisions regarding the inspection of the register of members to IPSs
- Allowing IPSs to submit electronic copies of registration documents