

Co-operative and Community Benefit Societies Bill

Drafter's Notes

General

1 This bill consolidates the Industrial and Provident Societies Act 1965 and subsequent legislation on this topic.

2 The 1965 Act is itself a consolidation. It consolidated the Industrial and Provident Societies Act 1893 (which, again, was a consolidation) and subsequent legislation.

3 Industrial and provident societies are (by virtue of section 1 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010, to be brought into force immediately before the bill comes into force) now to be registered, and known, as co-operative societies or community benefit societies (depending on the nature of the society).

4 Credit unions are a further type of society registered under the 1965 Act. They are governed by the Credit Unions Act 1979, which is not consolidated by the bill.

5 The bill incorporates a number of changes giving effect to recommendations of the Law Commission and the Scottish Law Commission [*insert ref to Law Comms report*].

6 The bill also incorporates the effect of a number of statutory instruments, proposed to be made before the bill is enacted. These instruments are: [*to be inserted*]

Notes on particular provisions

Clause 3: registration

7 In accordance with modern practice, subsection (3) does not provide that the body corporate has “perpetual succession”.

Clause 6: cancellation of registration: procedure and effect & Clause 8: suspension of registration

8 Subsection (6) of clause 6 is drafted on the basis that s.16(6) of the 1965 Act – which provides that the notice mentioned there must be published but does not state by whom – places a duty on the Financial Conduct Authority (FCA) to publish the notice.

9 The same point applies in relation to subsection (5) of clause 8 (which reproduces s.17(4) of the 1965 Act).

Clause 11: registered name to be displayed and used

10 Subsection (1) is drafted on the basis that the duty in s.5(6) of the 1965 Act to cause the society's name "to be painted or affixed, and to be kept painted and affixed, ... in letters easily legible" is in modern times to be interpreted as a duty to ensure that the society's name appears in legible characters.

Clause 14: content of a society's rules

11 The opening words of this clause are drafted on the basis that a registered society's rules must, at all times, contain provision about the matters mentioned in Schedule 1 to the 1965 Act. (Section 1 of that Act provides that the rules must contain such provision in order for the society to be registered, but does not in terms state that they must contain such provision at all times.)

12 Item 7 (maximum shareholding) has been drafted on the basis that item 7 of Schedule 1 to the 1965 Act – which does not refer to section 6(1A) of that Act – was impliedly modified by the instrument that inserted subsection (1A) into section 6.

13 Item 10 (audit) has been drafted on the basis that the rules must make provision for audit that complies with the 1968 Act. While item 10 of Schedule 1 to the 1965 Act refers to audit by auditors appointed in accordance with the Friendly and Industrial and Provident Societies Act 1968 or Part 42 of the Companies Act 2006:

- that item is impliedly modified by the 1968 Act, so as to provide that a society's accounts need be audited only if required by that Act;
- as for appointment of auditors, Part 42 of the Companies Act 2006 is not an alternative – where a qualified auditor is required, s.7(1) of the 1968 Act provides that the person must be eligible for appointment as a statutory auditor under Part 42.

Clause 30: register of members and officers

14 Subsection (6) is drafted on the basis that section 44(2) of the 1965 Act – which provides that certain precautions must be taken but does not state by whom – places a duty on the society to take the precautions.

Clause 37: nomination by member of entitlement to property in society on member's death

15 Subsection (4) is modified in relation to nominations made before 5 August 1954 by paragraph 10 of Schedule 3.

16 The modifications in relation to nominations made before 1 January 1914 – currently in s.23(3)(a) and (6) of the 1965 Act – have not been reproduced on the basis that no person now living will have made such a nomination.

Clause 41: security to be given by certain officers & Clause 42: duty of certain officers and employees to account

17 Clause 41(1) is drafted on the basis that section 41(1) of the 1965 Act – which refers to officers "having receipt or charge of money" – applies to officers who receive or are in charge of money.

18 The same point arises in relation to clause 42(1)(a) (which reproduces section 42(1) of the 1965 Act).

Clause 59: charges on assets of English and Welsh societies & Clause 63: Filing of information relating to charges created by virtue of section 61

19 Clause 59(4) has been drafted on the basis that section 1(3) of the Industrial and Provident Societies Act 1967 as amended imposes a duty on the FCA to do the things mentioned there (cf to secure that those things are done). (The reference to securing that certain things are done makes sense in the context of the 1967 Act as originally enacted, which provided that the Chief Registrar must secure that certain things are done.)

20 The same point applies in relation to clause 63(4) (which reproduces section 4(3) of the 1967 Act).

21 Clauses 59(5) and 63(7) are drafted on the basis that the reference in the provisions being consolidated to paragraph 20 of Schedule 1ZA to the Financial Services and Markets Act 2000 should be read as a reference to paragraph 23 of that Schedule.

Clause 65: duty to account etc of receiver or manager of a society's property

22 Subsection (3)(a) has been drafted on the basis that the first 6 month period mentioned in section 43(1)(b) of the 1965 Act – expressed to be 6 months from the date of appointment – begins on the day of the appointment.

Clause 68: society carrying on banking must display statement & Clause 80: duty to display latest balance sheet at registered office

23 Clause 68 is drafted on the basis that s.7(2) of the 1965 Act, which provides that a statement must be kept “hung up” is to be interpreted in modern times as meaning that the statement must be displayed.

24 The same point applies in relation to clause 80 (which reproduces section 40 of the 1965 Act).

Clause 77: year of account for societies registered on or before 7 January 2012

25 Section 39A(2) of the 1965 Act provides that a year of account begins with the date to which the last annual return was made up. Annual returns are made up in respect of years of account (see section 39(1) of that Act).

26 Subsection (2) of the clause has been drafted on the basis that on a true interpretation of section 39A(2), a year of account begins immediately after the previous one ends.

Clause 81: restrictions on publication of balance sheet

27 Row 7 of the table is drafted on the basis that section 3A(6) of the 1968 Act applies in relation to revenue accounts and balance sheets for the year of account in relation to which the direction under section 9C of that Act is given.

28 Subsection (2)(a) – which reproduces section 3A(6A) of the 1968 Act – refers to accounts and balance sheets which comply with row 7 (rather than merely having been

audited under clause 85) as the year end revenue account and balance sheet must comply with row 7 if they are to be published.

Clause 90: meaning of “qualified auditor”

29 Section 7(1) of the 1968 Act provides that “no person shall be a qualified auditor... unless he is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006”.

30 The clause is drafted on the basis that any person who is so eligible is a qualified auditor for the purposes of the Bill.

Clause 95: provision of auditor’s representations by making available on a website

31 Subsection (2)(c) of the clause has been drafted on the basis that the reference in section 6(7D)(b) of the 1968 Act to “the two dates referred to in paragraph (a)” is to the dates of the two events mentioned in that paragraph.

Clause 104: power of FCA to appoint accountant or actuary to inspect a society’s books & Clause 107: appointment of inspectors and calling of special meetings

32 Clause 104(1) has been drafted on the basis that an application under section 47 of the 1965 Act must be made by at least 10 members who meet the condition mentioned there.

33 The same point applies in relation to clause 107(1) (which reproduces section 49 of the 1965 Act).

Clause 112: Special resolutions under section 110 or 112 & Clause 114: Special resolutions under section 113

34 Clause 112(4) has been drafted on the basis that a declaration of the kind mentioned in section 50(3) of the 1965 Act applies for all purposes.

35 The same point applies in relation to clause 114(4) (which reproduces section 52(3A) of the 1965 Act).

Clause 119: power to apply provisions about company arrangements and administration & Clause 135: power to apply certain company law provisions

36 Section 255(1)(a) of the Enterprise Act 2002 refers to “a society registered under the [1965 Act]”.

37 This may be contrasted with, for example, the definition of “registered society” in section 74(1) of the 1965 Act (“a society registered or deemed to be registered under this Act”).

38 Clause 119 has been drafted on the basis that section 255 of the Enterprise 2002 covers societies treated as registered under the 1965 Act (as well as those registered under that Act),

given that:

- a reference in legislation to an event, circumstance etc (without more) would usually be regarded as covering a case where the event, circumstance etc is treated as occurring (or deemed to occur);
- there would not appear to be any reason for treating societies actually registered under the 1965 Act differently from societies deemed to be registered under that Act.

39 The same point applies in relation to clause 135 (which reproduces section 4 of the 2010 Act).

Clause 122: instruments of dissolution: notification to FCA etc

40 Subsection (5) is drafted on the basis that the reference in section 58(5) of the 1965 Act to section 39(4) of that Act was impliedly modified by the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 (SI 2011/2687) – which amongst other things repealed section 39(4) and inserted new sections 39A and 39B – so as to have effect as a reference to section 39A(5) or 39B(6) of that Act.

Clause 125: liability of existing and former members in winding up

41 This clause has been drafted on the basis that section 57 of the 1965 Act is about the liabilities of existing and former members only.

Clause 128: offences by societies to be also offences by officers etc

42 Subsections (1) and (2) are drafted on the basis that the offence under section 62 of the 1965 Act contains a defence as set out in subsection (2) of the clause.

Clause 130: misappropriation of a society's property etc

43 Subsection (1) has been drafted on the basis that “imposition” in section 64(1) of the 1965 Act means deception.

44 The effect of section 64(2) of that Act is that acting with fraudulent intent is an element of the offence under that section. Subsections (1) and (2) of the clause accordingly integrate this element into the offence.

45 The clause does not reproduce the words in section 64(1) of the 1965 Act after the semi-colon on the basis that those words merely state what would be the position in any event.

Clause 131: falsification of a society's records etc

46 Subsection (1)(a), which reproduces part of section 65 of the 1965 Act, omits “wilfully” on the basis that it does not add anything, given that a person must act with the intention of falsifying the document or evading any provision of the Act.

47 Subsection (2)(b) is drafted on the basis that the reference in section 65 of the 1965 Act to a contribution or collecting book is to a contribution or collecting book of a registered society.

Clauses 132 and 133: prosecution of offences

48 Clause 132 is drafted on the basis that section 66 of the 1965 Act – which refers to proceedings for the recovery of a fine which is recoverable on the summary conviction of the offender – is about summary proceedings for an offence punishable with a fine.

49 Similarly, clause 133 is drafted on the basis that section 68 of the 1965 Act – which refers to proceedings for the recovery of a fine – is about proceedings for an offence punishable with a fine.

Clause 134: power to amend Act to assimilate to company law

50 Subsection (3)(h) has been drafted on the basis that the reference in section 2(2)(f) of the 2002 Act to section 55(b) of the 1965 Act was impliedly modified by the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (SI 2009/1941) – which substituted a new section 55 of the 1965 Act – so as to have effect as a reference to section 55(1)(b).

Clause 137: determination of disputes in accordance with a society's rules

51 Section 60(5) of the 1965 Act is not reproduced because a dispute can, by agreement, be determined by the county court by virtue of section 60(2)(a) of that Act.

Clause 139: determination of disputes otherwise than under a society's rules

52 This clause has been drafted on the basis that the references in section 60(2)(b) and (6) of the 1965 Act to a society's rules containing no directions as to disputes are to those rules containing no directions as to the determination of disputes of a kind mentioned in section 60(1) of that Act.

Clause 140: determination of disputes: supplementary

53 The uncommenced repeal of “or (2)” in section 60(3) of the 1965 Act – contained in the Friendly Societies Act 1992 – is not reproduced as there is no intention of commencing the repeal.

Clause 149: interpretation of Act

54 The definitions in the 1965 Act of “land” and “property” are not reproduced, on the basis that:

- the definition of “land” in the 1965 Act covers the same things as “land” as defined in the Interpretation Act 1978 (which applies automatically);
- the definition of “property” in the 1965 Act covers all kinds of property and accordingly is unnecessary.

Effect of s.17(1) of the Crime and Courts Act 2013

55 Section 17(1) of the Crime and Courts Act 2013 (not yet in force) establishes a single county court for England and Wales, making references to particular county courts inappropriate.

56 The Act contains consequential amendments of sections 42(3)(b) and 60(8)(a) of the 1965 Act. There is also a general power to make consequential amendments (section 59 of the 2013 Act).

57 The relevant provisions of the bill refer to “the county court” rather than particular county courts (with transitory provision in Schedule 6, pending the coming into force of section 17(1) of the 2013 Act), on the basis that section 17(1) (without more) impliedly modifies references to particular county courts so they have effect as references to the new single county court.