

Summary Responses to Questions:

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.

Answer

It should be raised, ideally to £100,000. For how this relates to the risks see above at pages 2-3.

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?

Answer

This is a convenient model so long as the key differences in the regulatory status and governance structures are reflected in its adaptation – see pages 3-4 above.

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?

Yes, that is appropriate. The only exception should be where it would have power in the case of a company. See the detailed comment above on the approach to Part 2 of IA 1986 – see page 5 above.

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?

Yes. See page 5 above.

Question 5 Prosecution of delinquent officers

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

Question 5 Prosecution of delinquent officers

Yes. See page 5.

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?

They should be able to obtain the moratorium and the limits applicable to companies should apply. See page 5.

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?

Yes. See page 6.

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?

Yes. See pages 6-7.

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

Yes.

(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)?

Most of them should. For full details see above. At pages 6-7.

(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?

Yes but see page 7 above for full discussion of technical issues.

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?

Yes. See page 7.

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?

For detail see above at pages 8 onwards. A member should be able to seek this as an alternative to winding up on the just and equitable ground

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?

They are appropriate and it seems reasonable to treat them as an expense of the administration. The PRA should have no role unless it would have a role in respect of a company in an equivalent position i.e. because it is a regulated person.

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)

The safeguard is welcome and necessary but FCA enforcement powers and resources must be adequate as well. See pages 8-9.

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?

Only if the FCA has power and resources to veto such a step where it appears not to be necessary as part of a rescue but merely a device to achieve demutualisation. There should be particularly strict scrutiny where to transfer, conversion or amalgamation will involve an investor controlled company rather than a co-operative, a bencom or a CIC. See pages 8-9.

Question 14 Applying Part 26 of CA 2006

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

Yes – see page 9.

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?

The FCA role is vital and is welcome. There will be no need to refer to Part 27. Otherwise the modifications appear to be suitable.

Question 16 Distributions to creditors

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

The approach to distributions looks convoluted but probably works. It is vital to bear in mind that in many societies members will routinely have other contractual relations with their societies in addition to the role that flows from holding shares.

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 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?

I agree that applying the Part to credit unions will be very beneficial and those benefits clearly outweigh any downside risks. See pages 10-11.

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

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

Yes, as long as section 432(2) is applied with the addition of the words recommended on pages 11-12 above for the reasons given there.

(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)

Yes.

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

Yes.

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

Yes, I agree. Most paragraphs of both Schedule 15C and Schedule 15D should be

Question 18 Investigations regulations

applied but see page 12 above for detailed comments.

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

Yes.

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

Yes.

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

Yes but note that while section 431 of CA 1985 allows the company itself to ask for the appointment of an inspector, section 49 does not provide that right to a society. Section 431(2)(c) (and no other part of the section) should be applied to societies to plug this gap. Failing that, the FCA should make a formal statement to the effect that they will carefully consider making an appointment if the society requests one. It is also important not to leave two parallel inspection regimes in existence so maybe s 49 (or CA 1985 as applied to societies) should be amended to confer all the powers of a CA 1985 inspector on one appointed under that provision.

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

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?

No. This represents an unacceptable dilution of the rights of members by the application of one part of a Companies Act regime which confers clearer and more extensive rights on members. Any such change should await a full consideration of the balance between member rights and society obligations in the context of societies. This relates to the internal democratic control of societies by members and not competition with companies in the market place.

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

If this measure goes ahead at all, only the county court should be permitted as that

Question 19 Inspection of the register provisions

will reduce to costs faced by members seeking to exercise their democratic rights against a society management and committee using the members' money for legal fees.

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

No. Any power to charge fees for inspection is unacceptable (and perhaps beyond the powers being exercised here) as companies are not permitted to levy such a charge (see 116(1)(a) CA 2006). Fees for copies should be subject to a very limited maximum limit, if they are permitted at all.

(d) the proposed penalties are appropriate?

If reasons have to be given for a request, it is inevitable that a requirement not to mislead in the statement of them would follow. However, the equivalent specific offence for the society to fail to provide the requested information unless they have court permission to do so should also be imported from section 118 of the 2006 Act.

Question 20 Electronic submission of registration documents

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

This overdue measure will clearly be beneficial to societies and will bring their registration systems into line with companies and make them fit for purpose in the twenty-first century. There are no obvious disadvantages to such a measure so long as it remains an option for societies and they have the alternative of submitting in hard copy only if they choose.
