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Draft Co-operative and Community Benefit Societies Bill

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Introduction

A Bill is being prepared to consolidate the legislation relating to co-operative and community benefit societies (formerly known as industrial and provident societies).

The Bill will extend to both England and Wales and Scotland, and so falls within the responsibility of both the Law Commission for England and Wales and the Scottish Law Commission. The Government department responsible for this area of law is the Treasury.

The project was originally proposed by the Prime Minister in a speech in January 2012. It has been taken forward by the Law Commission under arrangements made with the Treasury.

Status

Drafts of the Bill, the Table of Origins, the Drafter's Notes to the Joint Committee and some possible Law Commission recommendations have been published by the Law Commission and Scottish Law Commission. The consultation closes on Friday 15 November 2013.

Work on the Bill and associated documents continues. Subject to the results of the consultation and decisions to be made by Government, the current aim is to introduce a Bill in the current Session of Parliament so that it can be enacted before the end of the Session.

Background

The legislation relating to co-operative and community benefit societies has its origins in the nineteenth century and has some features in common with the original legislation on other forms of mutual society (such as friendly societies, building societies and credit unions). The law has been consolidated before, most recently in the Industrial and Provident Societies Act 1965.

That Act has been heavily amended and supplemented by a number of

subsequent Acts and Statutory Instruments altering the law relating to these societies. The significant legislative activity has partly been due to the need to keep up with developments in company law, changes to the regulation of financial services and changes to EU law.

Registration under the existing legislation gives a society corporate personality with limited liability and so provides an alternative legal form to registration under the companies legislation. While some aspects of the legislation have been assimilated with the corresponding company law there remain many differences.

The conditions for registration have become tighter over the years. A society must now be a bona fide co-operative society or conducted for the public benefit in order to apply successfully for registration.

It is important that the legislation is as clear as possible. Some of it is complicated and technical and it is not easy to navigate around the various separate enactments on the subject or to understand how the legislation as a whole fits together. These are some of the reasons why consolidation is necessary.

The Consolidation Bill

The Bill will replace the legislation on the relevant societies listed in Schedule 7 to the Bill. The material listed includes some provisions that are spent or otherwise obsolete, such as provisions textually amending Acts consolidated in the Bill. Those provisions are not reproduced in the Bill.

The Bill will take account of some changes to the law that are planned to be made by statutory instrument in the current Session of Parliament. These will implement provisions of the Co-operative and Community Benefit Societies Act 2010, among other things.

The Treasury is at present consulting on a package of measures relating to co-operative and community benefit societies and credit unions. The amendments to the Industrial and Provident Societies 1965 Act made by these measures will be included in the consolidation. These measures include:

- raising the limit on the amount of withdrawable share capital that a registered society may hold,
- applying, with modifications, the provisions of the Insolvency Act 1986 for company voluntary arrangements and administration,
- applying, with modifications, Part 14 of the Companies Act 1985 relating to

investigations, and

- allowing for the electronic submission of registration documents.

The consolidation does not include the corresponding legislation in Northern Ireland, which has always been separate from the law in Great Britain.

Nor does it include the legislation about credit unions contained in the Credit Unions Act 1979. Credit unions are another form of mutual entity. Currently, these are registered under the Industrial and Provident Societies Act 1965 and some provisions of that Act and other legislation consolidated by the Bill are currently “applied” to credit unions, with modifications. The decision not to include credit union legislation in the Bill left the drafter with a choice between leaving the old societies legislation in place as it applies to credit unions or repealing it and adapting the references in credit union law to refer to the relevant provisions of the Bill. The decision has been made to take the latter approach.

The aim of the consolidation is to reproduce the effect of the current legislation, while putting the law into a more logical, accessible, clear and modern form. This includes using gender neutral language and altering archaic language. Developments in the general law (including EU law) also have to be taken into account – for example if they have made existing provisions obsolete or unnecessary or left them giving a misleading or incomplete account of the law.

The only substantive changes to the law which may be included in the Bill are those the Law Commission and the Scottish Law Commission may recommend in order to facilitate the production of a satisfactory consolidated text. Changes affecting only the law of England and Wales or only the law of Scotland will be recommended by the appropriate Law Commission. Changes affecting both jurisdictions will be made jointly.

It is currently anticipated that a number of points will need to be addressed by Law Commission recommendations. These are currently described in the draft recommendations published with the Bill for consultation. The Law Commissions have not made any decisions on any of the recommendations and final decisions on a Report (if any) will not be made until shortly before introduction of the Bill in the House of Lords. It is possible that other points requiring recommendations will arise or that points covered by the draft recommendations will be dropped.

The scope of what can be dealt with by Law Commission recommendation is limited. The parliamentary procedure for consolidation Bills is not designed for

significant changes of policy that may be proposed to the House (whether by a Minister or any other MP or peer). The only changes that can be made are to address technical issues that emerge during the process of consolidating the law.