

Proposals for a Legislative Reform Order for credit unions and industrial and provident societies in Great Britain: response to consultation

April 2009



HM TREASURY



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ISBN 978-1-84532-267-0
PU694



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Foreword

Mutual organisations in Great Britain have grown in number and diversity over the past decade, and now span many spheres from traditional societies and employee-owned businesses to Supporters' Trusts involved in sports clubs and Co-operative Trusts set up to manage schools. Despite these recent developments many of the largest and most established mutuals are still financial institutions – building societies; friendly societies; credit unions; and industrial and provident societies (IPSs). It is to the latter two types of mutual that this document relates.

Membership of financial mutual societies now exceeds 30 million people in the UK, and the sector has total assets in excess of £400 billion. The mutual sector is a significant employer and is often the mainstay of many communities. The mutual form is widely accepted as a viable alternative to the proprietary company model – both in structure and approach.

I have said previously that credit unions and industrial & provident societies, together with other mutuals, have a vital role to play in the UK economy. They offer diversity and choice in the financial services sector, and are instrumental in delivering key initiatives such as the Growth Fund and Child Trust Funds.

The mutual form, founded on the idea of common and joint ownership and a democratic voting structure, continues to engender trust and community participation. Mutuals, by their very nature, are not answerable to external shareholders. They are therefore able to operate without pressure for short-term profits and continue to lead the way in ethical investment and corporate social responsibility.

The Government is keen to see the financial mutuals sector grow, both to better serve their members and communities; and to offer many more people the opportunity to become members. We recognise that a tangible way in which Government can assist the sector is to ensure it is subject to an up to date legislative framework and not constrained by outmoded statutory restrictions. The Government believes that mutuals legislation should be comparable to that applied to other types of institutions, helping to enhance competition in the modern economy.

Our consultations confirmed that the legislative framework for industrial & provident societies and credit unions are in particular need of updating to ensure the law reflects modern commercial realities and the changing needs and priorities of members. This document summarises the responses we have received to the ongoing review of IPS and credit union legislation and sets out the Government's intention to legislate.

I am pleased to see the changes we have proposed to deliver using a Legislative Reform Order, and confident that when they are adopted will help to support a vibrant and self-sustaining sector, offering high quality services to its members and communities.



Ian Pearson MP
Economic Secretary to the Treasury

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Introduction

Background

1.1 As part of its review of mutuals legislation, the Government consulted on the legislative framework for cooperatives and credit unions in Great Britain in 2007, publishing a summary of responses in December 2007 setting out the key issues which needed to be addressed to create a modern legislative framework for the sector.

1.2 The Treasury set up a Working Group of experts to help develop policy and to advise on their implementation. Membership is shown in an annex to this response.

1.3 The Government announced in a further consultation in July 2008 that it would bring forward proposals for an Order under the Legislative and Regulatory Reform Act (LRRRA) 2006 to update the legislative framework for credit unions and industrial & provident societies (IPSS) in Great Britain.

1.4 Under the LRRRA a Minister can make a Legislative Reform Order (LRO) for the purpose of removing or reducing any burden or overall burdens, resulting directly or indirectly for any person from legislation. Section 1(3) of the LRRRA defines a 'burden' as

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any awful activity.

1.5 This document summarises the responses to the consultation "Proposals for a Legislative Reform Order for Credit Unions and Industrial & Provident Societies", which closed on 15 October 2008, and sets out the Government's proposals for legislation.

Cooperatives

1.6 There is at present no national law on cooperatives in Great Britain. The closest equivalent is the law governing IPSS. The majority of GB cooperatives are registered under the Industrial & Provident Societies Act 1965 (IPSA 65).

1.7 Cooperatives may register as other legal forms including as companies (under the Companies Act), partnerships, unregistered unincorporated associations and even as limited liability partnerships. The LRO proposals under discussion in this document for cooperatives relate to IPSA 65.

Credit unions

1.8 The main Act of Parliament governing credit unions is the Credit Unions Act 1979 (CUA 79). The LRO proposals under discussion in this document for credit unions relate to CUA 79. However, credit unions are registered under IPSA 65 and are subject to most of its requirements so will also be affected by some of the changes to IPSA.

Devolution

1.9 Matters relating to IPSs are reserved to Westminster under the Scottish and Welsh devolution agreements, however some cooperatives carry on activities which are devolved to Scotland. For example, cooperatives that are registered social landlords in Scotland are governed by the Housing (Scotland) Act 2001. The Treasury has therefore sought the views of the Scottish Government to establish any read across.

1.10 Northern Ireland has its own legislation for Credit Unions and IPSs. The relevant Northern Ireland enactments are the Industrial & Provident Societies Act (Northern Ireland) 1969 and the Credit Unions (Northern Ireland) Order 1965. The LRO proposals under consideration in this document therefore do not extend to Northern Ireland IPSs or credit unions.

1.11 HM Treasury received 85 responses to this consultation. The responses were from a wide group of stakeholders ranging from individual members of credit unions and IPSs, representative bodies, individual societies, other Government departments and firms providing professional service to the sector.

1.12 The Government is grateful to all who responded to the consultation and to those who met with us to discuss and inform the issues raised and, in particular, for the time, commitment and expertise of the Working Group.

1.13 The document is set out as follows:

- Chapter 2: Proposals for IPSs;
- Chapter 3: Proposals for credit unions;
- Chapter 4: Summary of consultation responses;
- Chapter 5: Impact Assessment; and
- Annex A – Members of the working group

1.14 This summary of responses will be sent to all the respondents to the consultation, representative bodies as well as key stakeholders in the financial services sector. A copy will also be posted on the Treasury public website at www.hm-treasury.gov.uk. Printed copies available on request from the following address:

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1 Horse Guards Road
London SW1A 2HQ

Tel: 020 7270 4558

Next steps

1.15 The Government will publish and consult on the draft LRO shortly. The Minister can recommend one of three alternative procedures for Parliamentary scrutiny depending on the size and importance of the LRO. These are the

- Negative resolution procedure;
- Affirmative resolution procedure; or
- Super-Affirmative procedure.

1.16 Parliamentary Scrutiny Committees will have the final say about which procedure will apply.

1.17 The Treasury believes that the affirmative resolution procedure should apply to this LRO. This procedure allows Parliament 40 days to scrutinise the draft LRO after which, if approved by a resolution of each House of Parliament, the LRO can be made.

1.18 Respondents are welcome to put their views before either or both of the Scrutiny Committees, either on the substance of the LRO or the proposed Parliamentary procedure. This should in the first instance be in writing and the Committees will then decide on the basis of the written submission whether to take oral evidence.

1.19 The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

House of Lords

Delegated Powers and Regulatory Reform Committee
House of Lords
London SW1A 0PW

Tel: 020 7219 3103

Fax: 020 7219 2571

Email: dpdc@parliament.uk

House of Commons

Regulatory Reform Committee
House of Commons
7 Millbank
London SW1P 3JA

Tel: 020 7219 2830/2833/2837

Fax: 020 7219 2509

Email: regrefcom@parliament.uk

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Proposals for industrial and provident societies

2.1 The Treasury received 30 responses on the proposals relating to IPSs. Responses were received from a wide cross section including other Government departments, individual societies as well as the main trade representative bodies on behalf of their members.

2.2 The Government considers that the proposals set out here are proportionate to the objectives sought and that they will strike a fair balance between the public interest and those of any person adversely affected.

Proposal A1: Minimum age for membership of an IPS; minimum age for becoming an officer of an IPS

2.3 Under the current legislation a person under the age of 18 and over the age of 16 may become a member of an IPS unless the rules of the society provide otherwise. However a person under the age of 18 may not become a member of the committee, trustee, manager or treasurer of an IPS.

2.4 The Government noted in the consultation that this restricted the participation of younger people and also put societies at a disadvantage in comparison with companies, which are not subject to such age restrictions.

2.5 The Government therefore proposed amending the legislation to allow for a person under the age of 16 to become a member of an IPS and to lower the minimum age for becoming an officer (member of the committee, trustee, manager or treasurer) from 18 to 16. Societies would retain the ability to make contrary provision in their rules.

Respondents' views

2.6 Respondents agreed that this was a sensible proposal, which would not only allow for creative engagement with the younger generation but would engender a sustainable membership amongst the next generation.

The Government response

2.7 The Government notes that respondents supported the proposal set out in the consultation document and will amend the provisions of IPSA 65 accordingly.

Proposal A2: Modify the rules on share capital

2.8 IPSs may issue shares which are transferable (i.e. which can be transferred to another person who qualifies for membership of the society) or withdrawable (i.e. which the member can "withdraw" and receive the value of the shares from the society). Societies must specify in their rules whether shares are transferable or withdrawable (or both) and on what terms.

2.9 Under IPSA 65 the maximum shareholding a member may have in an IPS (subject to certain limited exceptions) is restricted to £20,000. The Government's view is that this is unduly restrictive and creates an obstacle to productivity.

2.10 The Government therefore proposed that the legislation be amended so that the £20,000 limit only applies to withdrawable shares. There would therefore be no limit on shareholding for transferable shares. As a separate measure the Government proposed to exercise its power under the IPSA 65 to increase the £20,000 limit on withdrawable shares in line with inflation.

Respondents' views

2.11 Respondents pointed out that share capital in societies played different roles with different implications depending on the nature and business sector in question. For some societies, particularly those with high capital investments (such as agricultural cooperatives) and others wishing to use share capital as a means of raising finance, restrictions on shares inhibited productivity.

2.12 While respondents welcomed the proposal to increase the limit on withdrawable share capital in line with inflation, it was further argued that the Government should have a duty to review the limit every three years.

2.13 For other societies, such as retail cooperatives, members' share capital is not a primary source of capital financing. This group were supportive of the proposal but it was less of a priority for them.

The Government response

2.14 The Government proposes to increase the withdrawable share capital limit in line with inflation, using its existing power in IPSA 65, later this year. It will at the same time consider whether to build a periodic review into the legislation.

2.15 The Government will use the LRO to change IPSA 65 to enable members to invest more than £20,000 where the shares are transferable. This would create much needed scope for societies to raise capital, provide further investment opportunities for societies and increase the potential for the development of new markets. It is worth noting however that apart from certain available exemptions, a society, which issues transferable shares, may be subject to the FSA's prospectus requirements.

Proposal A3: Amend the provision on fee for copy of the society's rules.

2.16 IPSA 65 provides that a copy of the rules of a society must be provided by the society to any person who demands it, on payment of a sum determined by the society but not exceeding 10 pence.

2.17 The Government believes that members of societies should be entitled to certain information, such as a copy of the rules, as a matter of good corporate governance and to increase member awareness and participation. For non-members, however, the Government considers it appropriate for societies to charge for the provision of rules. The change proposed in consultation would align IPSs with provisions for building societies and friendly societies.

2.18 The Government proposed amending the legislation so that societies must provide a copy of the rules free of charge to any member, and to any non-member on payment of a fee determined by the society but not exceeding £1. The Treasury would be able to vary the £1 fee by a negative resolution statutory instrument.

Respondents' views

2.19 Respondents welcomed the proposal to increase the charge societies can make to cover the provision of rules to non-members, however some respondents considered that the proposed £1 fee did not reflect the true cost of production or postage. They therefore proposed a higher fee, of £5.

The Government response

2.20 The Government agrees that £1 is not likely to be sufficient to cover printing and postal costs. The Government therefore proposes to amend the legislation to enable societies to specify a fee not exceeding £5 for the provision of rules to non-members. It proposes to enable the fee to be varied by negative resolution.

Proposal A4: Facilitate the easier dissolution of registered societies.

2.21 Under current legislation, a solvent IPS wishing to dissolve must prepare an instrument of dissolution, which must be signed by not less than three-quarters of the members of the society. The requirement to obtain the signature of three-quarters of the members makes it difficult for dormant societies to dissolve, particularly if they have lost touch with a significant number of their members. Without being dissolved, a society remains encumbered with having to conform to statutory requirements such as filing annual returns. In addition the FSA is still required to perform its statutory functions as registrar even for a dormant society.

2.22 The Government proposed to make it easier for dormant societies to dissolve by providing an alternative procedure to that set out above. The alternative option would enable societies to dissolve, where the instrument of dissolution was approved by special resolution, aligning the procedure with that for conversion or transfer of engagements to a company.

Respondents' views

2.23 Respondents were generally supportive of the Government's proposal. They suggested, however, that there should be appropriate safeguards to prevent an extant society from being dissolved, allowing 'demutualisation by the back door'.

2.24 One respondent pointed out that the proposal could assist Registered Social Landlords (RSLs) that wish to dissolve, but struggle to meet the requirements of existing legislation. Requiring the consent of the regulator (the Housing Corporation) would guard against the risk of a minority group of members trying to dissolve a society when it was not in the majority interest.

2.25 Respondents pointed out some of the burdens on transfers of engagements for RSLs in situations where an RSL is unable to carry on trading and the regulator's insolvency powers are triggered. They gave as example instances where an RSL, which was facing financial difficulties, failed narrowly to transfer to another RSL. Stakeholders were then left with no choice but to seek to invoke insolvency powers contained in the Housing Act 1996. The regulator's insolvency powers having been triggered, the net effect was that the regulator was required to transfer the RSL to another RSL without reference to shareholding members.

The Government response

2.26 The Government agrees that appropriate safeguards should be in place to prevent an extant society being dissolved but is also mindful of the fact that the retention of dormant societies on the register poses an administrative burden for the registrar. On reflection therefore and at the request of the registrar, the Government will provide an easier route to dissolution for societies based on the model of transfer of engagements to another society and not to a company as was proposed in the consultation. Under this revised procedure (a) only two-thirds rather than three-quarters of those who vote must agree and (b) there is no requirement for at least half of the qualifying members of the society to have voted. The added safeguard is that the Order will provide that only dormant societies can use this procedure.

Proposal A5: Give societies the flexibility to choose their own year-ends.

2.27 Current legislation requires societies to have a year-end which falls between 31 August and 31 January unless a year end falling outside this period is approved by the FSA, who have to be satisfied that special circumstances exist.

2.28 The Government recognises that this gives some societies difficulties since the trading year of a society may not necessarily coincide with the period allowed for year-end. This is especially significant in the case of agricultural cooperatives. For example, produce harvests or the lambing season mean that the optimum trading year-end is different from the statutory requirement. Government therefore proposed in the consultation document to allow societies to choose their year-end.

Respondents' views

2.29 Respondents agreed unanimously that societies should have the flexibility to choose their own year-ends that suit their own commercial and financial convenience, as is the case for companies.

The Government response

2.30 The LRO will amend IPSA 65 to align it with provisions for companies and to give societies flexibility to choose their own year-ends.

Proposal A6: Remove the requirement on societies to have interim accounts audited

2.31 Under current legislation those IPSs which choose to publish interim accounts are required to have them audited. This puts IPSs at a competitive disadvantage with other bodies corporate such as companies, which are not required to have their interim accounts audited.

2.32 The Government therefore proposed to modify the legislation so that any society can publish interim accounts; provided they are published alongside the last published year-end accounts and are clearly identified as unaudited interim accounts. This would also apply to credit unions, which are currently subject to a more limited exemption.

Respondents' views

2.33 Respondents agreed that the requirement to audit interim accounts imposed a costly burden on societies, and put them at a competitive disadvantage when compared with companies. They were therefore supportive of the proposal that interim accounts are not audited.

The Government response

2.34 The Government will amend the legislation so that an IPS or credit union can publish unaudited interim accounts provided they are clearly identified as such and are published alongside the most recent audited annual accounts.

Other issues

2.35 Respondents also raised a number of other issues, including the possibility of changing the title of IPSA 65, arguing that the current title is out of date. They also sought the extension of certain provisions in companies' legislation (such as the Company Directors Disqualification Act) to bring corporate governance standards for IPSs in line with companies.

2.36 These issues are outside the scope of an LRO, and the Government is supporting a Private Members Bill sponsored by Mr Malcolm Wicks MP, which contains measures to change the IPSA title, and to improve the corporate governance of IPSs.

3

Proposals for credit unions

3.1 The Treasury received 55 responses on the proposals relating to credit unions.

3.2 The Government considers that the proposals set out here are proportionate to the objectives sought and that they will strike a fair balance between the public interest and those of any person adversely affected.

3.3 The Government notes in particular respondents' concerns in relation to proposal B7 on repeal of the "attachment" requirement, which restricts withdrawal of shares. This proposal has proved particularly controversial and the Government now proposes to amend it in a way, which gives flexibility to Boards and members.

Proposal B1: Replace the "common bond" requirement for credit unions with a "field of membership" test.

3.4 Under current legislation membership of a credit union is based on the concept of a "common bond". Section 1 of the CUA 79 provides that a society may be registered as a credit union if it is shown, to the satisfaction of the FSA that, among other things, admission to membership is restricted to certain specified membership criteria "and that in consequence a common bond exists between members of the society".

3.5 The Government considers that in today's modern society this definition is overly restrictive and, in addition, creates administrative burdens for the FSA, which must apply the common bond test to any application for registration as a credit union.

3.6 The Government proposed to simplify the membership criteria by integrating the "appropriate membership qualification" and the "common bond". This would create a field of membership requirement, which will be called the common bond, (in keeping with common usage).

3.7 The Government further proposed to alter the requirements relating to membership qualifications to allow for more combinations of membership qualifications (to be known as common bonds), to enable credit union membership to be open to more people.

3.8 As a safeguard for ensuring that credit union membership and size still stayed within appropriate limits it proposed a new "field of potential members test" under which the FSA would have to be satisfied that the field of potential members was appropriate to a credit union.

Respondents' views

3.9 Respondents were generally in agreement with replacing the "common bond" requirement with the field of membership test as this would enable credit unions to provide services to new groups, including, for example, housing association tenants and national employers.

3.10 There was disagreement, however, on the number of potential members, with some respondents opposed to increasing the membership limit beyond 1 million or wanting to defer a decision. Others expressed concern that the proposed 1 million limit for potential membership was unduly restrictive, arguing that there were already some credit unions which had potential

common bonds exceeding this limit and that it would prevent others offering credit union services to new groups of people.

3.11 It was recognised that the higher limit must also be consistent with the credit union being an organisation with a restricted membership and not open to the public generally.

3.12 Respondents suggested that a potential membership of 2 million would be more appropriate. They were also of the view that the numerical limit should only apply for geographical common bonds but not for associational and employment common bonds for which there should be no limit.

The Government response

3.13 The Government notes respondents' views and agrees that a 2 million membership limit would strike an appropriate balance between giving greater access to credit unions while ensuring that there would be a genuine connection between members of an individual union. The Government agrees that the limit should only apply to credit unions with geographical common bonds and not to those with common bonds based on association or employment. The 2 million limit will also apply where there are different types of bond, and any of them is geographical. In effect where other common bonds are combined with geographical common bonds the overall potential membership limit will be 2 million.

Proposal B2: Reform the requirements relating to membership qualifications and rename them "common bonds"

3.14 The Government sought views on two options for amending the requirement relating to membership qualifications:

- Option A: to allow the combination of only two membership qualifications, unless a further addition of a membership qualification was necessary to allow amalgamation or transfer of engagements (i.e. merger)
- Option B: to allow a combination of any number of membership qualifications. This would allow for instance a credit union to serve a geographical area along with tenants of two housing associations and employees of two companies.

Respondents' views

3.15 The majority of respondents were in favour of Option B. Their view was that it would enable credit unions to reach out to more members and could improve both the strength and stability of credit unions. It would offer certainty to credit unions and avoid a situation where a planned or proposed merger could not take place because of the limitations in the legislation.

3.16 Some respondents, however, considered that option B could lead to an imbalance of members. They cited a hypothetical case of a Registered Social Landlord in Scotland with no known social or business links with the original credit union, which might, say, have a membership qualification, based on an employer in SE England. They recommended that a decision on adopting option B be deferred to allow time to carry out a further review of the issue.

The Government's response

3.17 The Government notes respondents' concerns in relation to Option B, but considers that there are adequate safeguards in the proposed membership qualifications. It also notes that a majority of respondents favoured Option B. The Government considers that deferring a decision would unacceptably delay access to credit union services for a wider section of the population. It therefore intends to implement Option B in the LRO.

Proposal B3: Reform restrictions on non-qualifying members of credit unions.

3.18 The CUA 79 restricts the number of non-qualifying members a credit union may have to a maximum of 10 per cent. Non-qualifying members are members who cease to fulfil the qualifications for admission to membership: for example, they are no longer resident in the locality or employed by the relevant employer.

3.19 The Government considered that this artificial restriction was unhelpful especially due to the high mobility of labour. The Government proposed repealing the 10 per cent limit on non-qualifying members and instead allowing credit unions to set their own limits on non-qualifying members via their rules.

Respondents' views

3.20 Respondents were supportive of Government's proposal, agreeing that increasing mobility of labour meant that members who had an association with a credit union based on geography or work place connection stood to lose their membership when they moved away. Respondents were of the view that members should not have to change their financial services provider purely because they had moved house or job and would prefer permanent membership based on the tenet that once a member, always a member.

The Government's response

3.21 The Government will use the LRO to repeal the 10 per cent limit on non-qualifying members, leaving credit unions free to set their own limits via their rules.

Proposal B4: Allow credit unions to admit bodies corporate, unincorporated associations or partnerships to membership.

3.22 Under current legislation only individuals can become members of a credit union; bodies corporate cannot become members. Allowing credit unions the flexibility to admit bodies corporate, unincorporated associations and partnerships ('corporate members') to their membership would boost the involvement of organisations such as boy scouts/girl guides and other community groups and small businesses, as well as engender community cohesion. The Government therefore proposed to remove the current restriction and make related changes:

- Repeal the prohibition on bodies corporate becoming members at the discretion of individual credit unions, subject to a maximum of 10 percent of the total membership;
- Allow unincorporated associations and partnerships to become members of credit unions at the discretion of individual credit unions; and
- Create a new class of deferred shares that only bodies corporate would be able to subscribe to, and provide limits on the amounts corporate members may deposit with, and borrow from, a credit union.

Respondents' views

3.23 Respondents were divided on this proposal. Some welcomed the potential for corporate membership. Others took the view that credit union membership should at all times be based on individual membership and that the inclusion of corporate members would create a burden on societies and detract from the core principles of one member one vote.

3.24 A number of respondents were concerned that only allowing credit unions to offer deferred shares to bodies corporate would limit their ability to offer services to corporate members. They argued that many local community groups and charities were incorporated and

so would be unable to use the credit union for day-to-day banking and other services. They pointed out that a significant number of credit unions would like to be able to provide services to small, incorporated businesses and social enterprises. A number of respondents suggested that credit unions should be able to choose whether to offer ordinary shares or deferred shares to corporate members.

3.25 Respondents were generally supportive of proposals to limit the proportion of corporate members in a credit union compared to individual members, and to limit the proportion of shares and loans held by these members. They saw this as an important safeguard to prevent corporate members from wielding undue influence over the operations of the credit union.

The Government's response

3.26 The Government intends to use the LRO to allow credit unions to admit corporate members. The Government accepts the case for allowing flexibility for credit unions to be able to choose to offer either ordinary shares or deferred shares to corporate members.

3.27 The Government agrees with the views expressed by some respondents that there is a risk that corporate membership could crowd out individual member involvement. The Government therefore intends to cap the proportion of membership which is not individual to 10% and to limit the proportion of total assets, and of lending, which may be held by corporate members. The limits in the legislation will be variable by order made by the Treasury. It is the Government's intention to give the FSA the power to amend credit union permissions unilaterally to permit both corporate and private members. This will save credit unions from having to apply individually to seek a variation of their permission.

Proposal B5: Allow credit unions to offer interest on deposits, provided certain requirements are met.

3.28 Under current legislation, credit unions cannot offer interest on members' deposits. They can only offer a discretionary dividend. The Government considered that this put credit unions at a disadvantage in comparison with banks and building societies, which do not have this restriction.

3.29 The Government proposed to allow credit unions to be able to offer interest on members' deposits, subject to certain safeguards such as a requirement to hold reserves of £50,000 or 5 per cent of its total assets, (whichever is higher) as well as demonstrating that it had adequate systems in place to manage the greater risk of offering interest. Credit unions would then be able to offer both dividend and interest bearing share accounts (although individual accounts would only be able to offer interest or dividends, not both). The figures of £50,000 and 5 per cent will be capable of being varied by an Order made by the Treasury and subject to the negative resolution parliamentary procedure.

Respondents' views

3.30 Respondents agreed that credit unions should be able to offer interest on members' deposits under certain conditions. They saw this as an important tool for credit unions to mobilise savings as well as enabling credit unions to be able to compete on a more level playing field with other financial services providers in the provision of Child Trust Funds and Individual Savings Accounts.

The Government's response

3.31 The Government will implement this proposal in the LRO, allowing credit unions wishing to retain the dividend to do so. This way only credit unions which wish to pay interest on members' deposits and which can show that they have the financial strength and operational ability to

offer interest will be able to do so. In addition, the FSA will consider whether rules covering, for example, systems and controls and liquidity would need strengthening to address risks arising from the contractual obligation to pay interest on an individual's account. The Government recognises that it is important to distinguish between the legislative framework of credit unions and FSA rules that maintain appropriate regulatory safeguards.

Proposal B6: Abolish the 8 per cent per annum limit on dividends.

3.32 Credit unions are prevented under the current legislation from paying a dividend in excess of 8 per cent per annum.

3.33 The Government proposal sought to remove this restriction and to allow credit unions the flexibility to award an appropriate dividend.

Respondents' views

3.34 Respondents agreed with the proposal to abolish the 8 per cent annual limit on dividends. Respondents were of the view that there were already safeguards in place to allow members at an AGM to vote on a dividend proposed by the directors.

The Government's response

3.35 The Government notes respondents' views and will as proposed abolish the 8 per cent per annum limit on dividends and allow societies the flexibility to award an appropriate dividend. A related issue is that currently, if a credit union voluntarily winds up, in theory, any surplus could be divided among the members. However the current limit on dividend payments restricts this, as any surplus above 8 per cent has to go to a charity. By abolishing the 8 per cent limit there would no longer be a bar on distributing any surplus and it will all be distributed amongst members.

Proposal B7: Repeal the "attachment" requirement, which restricts withdrawal of shares.

3.36 Under current legislation a member of a credit union requires the permission of the credit union to make a withdrawal of shares, where this would reduce the member's shareholding to less than his total liability to the credit union.

3.37 This means that a credit union member with a loan could face significant obstacles to seeking to withdraw their money. The Government contrasted this with the position of a bank or building society customer who did not face such restrictions and could in general withdraw savings or use a current account without the permission of the bank or building society.

3.38 The Government proposed to amend CUA 79 so that the credit union's permission was not required for such withdrawals unless the rules of the credit union specifically required it. In addition the Government said it would seek to put in place transitional provisions to allow the 'attachment of shares' requirement to remain in place until the credit union's next general meeting to enable the members to vote on removing the attachment requirement.

Respondents' views

3.39 A number of respondents, particularly those representing credit union boards, were opposed to this proposal and were of the view that the decision to attach shares must remain a discretionary decision of the Board of Directors and not the members. They did not therefore wish to see this repealed.

3.40 Some respondents were concerned that members would not wish to vote to allow the credit union to attach shares they hold in a credit union whilst their loan is active. It was also

pointed out that repealing the current law could have an impact on the liquidity of the credit union and increase the risk of the loan portfolio.

3.41 Others point out that a member's shares, which they have used as collateral in order to receive a loan, should remain in the member's share account until the loan is repaid. It was also pointed out that it would be unusual that in order to retain an existing rule, credit unions should need to seek agreement from their membership. A number of individuals pointed out that the restriction on access to their money was not something that applied to loans from banks or building societies.

The Government's response

3.42 Taking account of the range of views of respondents, the Government has modified its proposal. Attachment will remain as a tool for the board. Credit unions will be able to offer loans where the shares are either attached or not. However the Government would prefer that individual credit unions have a transparent policy on this and to make clear to their members. The result will be greater clarity for members, the boards of credit unions and the FSA in assessing the degree of risk and liquidity requirements of individual credit unions.

Proposal B8: Allow credit unions to charge the market rate for providing ancillary services to their members.

3.43 Under current legislation credit unions may only charge on a cost-recovery basis for services which are ancillary to accepting a deposit or making a loan, such as making or receiving payments as agent for a member, issuing and administering chequebooks and other means of payment, and money transactions.

3.44 Other deposit-takers such as banks and building societies do not face such restrictions on charging for ancillary services. The Government would like to see a responsive credit union sector able to provide services demanded by their members. It recognises that the only way credit unions can do this effectively and efficiently is to have the freedom to charge a market rate for the services demanded by its members. The Government proposed removing this restriction and to allow for credit unions to be able to charge anyone requiring such services the market rate.

Respondents' views

3.45 Respondents were in agreement with this proposal, arguing that it was appropriate in the context of the market in which credit unions operate. Respondents also explained that credit unions have in the past been put off from developing new services to meet the needs of their members because of the difficulties in calculating the exact cost of providing the service. They were therefore of the view that this proposal would enable credit unions to develop new services in response to the changing needs of an expanding and discerning membership.

The Government's response

3.46 The Government will remove the restriction preventing credit unions from charging the market rate for providing services to their members.

Other issues

3.47 One respondent expressed concern that the proposals taken as a whole could encourage the creation of a relatively small number of super-credit unions based in and around urban conurbations, in effect creating a two-tier movement in Britain similar to that operating in the USA.

3.48 The Government believes that the proposals put forward on the common bond should make it easier to serve rural communities and that the package as a whole, if adopted, will help create a level playing field between the IPS/credit union sector and other legal forms as well as modernise the legislative framework within which they operate. This will in turn enhance productivity, improve efficiency and make them more attractive to a wider membership from different social strata.

4

Summary of responses to LRO questions

4.1 As part of the consultative process and to ensure that the proposals strike a fair balance between the public interest and those of any persons that may be adversely affected, departments are required to seek respondents' views not only on the policy content of the consultation but also on the process and constitutional significance of the proposed reforms. The questions below therefore sought respondents' views on these matters.

1. For section 1 Orders: Do you think the proposals will remove or reduce burdens as explained in Chapter 1 of the original consultation?

4.2 Industrial & provident societies (IPSs): Respondents were unanimous that the proposals set out would on balance serve to remove or reduce burdens to the growth of membership and development of societies. Respondents considered that the proposals would lighten the administrative burdens and provide flexibility for societies on membership issues as well as remove limitations on financial planning and reporting.

4.3 Credit unions: Respondents were of the view that, with the exception of Proposal B7, (Repealing the attachment requirement which restricts withdrawal of shares) the proposals set out in the consultation document would serve to remove or reduce burdens in CUA79.

2. Do you have views regarding the expected benefits of the proposals as identified in this consultation document and addressed in the partial Impact Assessment? Please provide empirical evidence of any costs or associated benefits.

4.4 IPSs: Respondents said that the clarity in the legislation would assist currently registered societies as well as for those considering whether to use the IPS legal form. They considered that there would be considerable cost savings. Respondents also agreed that there would be other benefits such as greater diversity in the membership base of cooperative societies and heightened profile, but these could not readily be quantified.

4.5 Credit unions: Respondents agreed with the analysis provided in the Impact Analysis with the exception of Proposal B7. Some respondents were of the view that the proposals especially those which will allow credit unions to have more flexibility over who they provide services to and over what services they provide to have a range of benefits for credit unions and the communities they serve. It would provide access for more people and make it easier for credit unions to attract more members. No further empirical evidence of costs or associated benefits was provided.

3. If there is any empirical evidence that you are aware of that supports the need for these reforms please provide details here.

4.6 IPSs: Respondents were of the view that it was common knowledge that IPS legislation was out of date and in need of reform. Examples cited included the minimum age for membership and the fees for copy of a society's rules.

4.7 Credit unions: Respondents provided empirical evidence based on membership surveys. These were supportive of the proposed reforms especially on the reform of the common bond, on removing the 10 per cent limit on non-qualifying membership, reforms to enable credit unions to admit to their membership bodies corporate, unincorporated associations or

partnerships and for credit unions to pay interest on members deposits provided certain requirements were met.

4. Are there any non-legislative means that would satisfactorily remedy the difficulties, which the proposals are intended to address?

4.8 IPSs and credit unions: Respondents were not aware of any non-legislative means that would satisfactorily remedy the difficulties which the proposals are intended to address.

5. Are the proposals put forward in this consultation document proportionate to the policy objective?

4.9 IPSs and Credit unions: Respondents were in agreement that the proposals in the consultation document were proportionate to the policy objective.

6. Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

4.10 IPSs and Credit unions: Respondents were in agreement that the proposals taken as a whole struck a fair balance between the public interest and any persons who may be adversely affected by it.

7. Do the proposals put forward in this consultation document remove any necessary protection?

4.11 IPSs: Respondents were of the view that the proposals did not appear on the face of it to remove any necessary protection.

4.12 Credit unions: Respondents were generally of the view that the proposals put forward did not remove necessary protections save for proposal B7. The main view on proposal B7 was that it would remove the ability of credit unions to be able to stop members withdrawing their shares when they owed money to the credit union. Many credit unions thought that this should be left to the board of directors of the credit unions to decide and that removing this link would remove a protection for credit unions.

8. Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom, which they might reasonably expect to continue to exercise, as explained in Chapter 1? If so please provide details.

4.13 IPSs and Credit unions: Respondents were not aware of any instances where the proposals in the consultation could prevent any person from continuing to exercise any right or freedom.

9. Do you consider the provisions of the proposals to be constitutionally significant?

4.14 IPSs and Credit unions: Respondents did not consider the proposals in the consultation document to have constitutional significance.

10. In the case where the proposal will restate an enactment; do the proposals put forward in the consultation make the law more accessible and easily understood?

4.15 IPSs and credit unions: Respondents were not aware of any instance or circumstances.

11. Do you agree that the proposed Parliamentary procedure as outlined in Chapter 4 of the original consultation should apply to the scrutiny of these proposals?

4.16 IPS: Respondents were generally of the view that the proposals were unlikely to be controversial. Furthermore the proposal to use the affirmative resolution procedure in debating the issues in Parliament gave added comfort to the scrutiny process.

4.17 Credit unions: Respondents were of the view that the majority of the proposals would be uncontroversial, with the exception of B7, which could be divisive and therefore prove controversial.

12. Do you have any other comments in relation to the proposals?

4.18 IPSs: Societies generally welcomed the proposals and particularly that this was part of an ongoing process of legislative reform which would involve further updating using the Electronic Communications Act 2000 and the Industrial & Provident Societies Act 2002 to align certain aspects of society law with that of companies.

5

Impact Assessments

An impact assessment for the proposals in the LRO follows.

Summary: Intervention & Options

Department /Agency: HM Treasury	Title: Proposals for a Legislative Reform Order to amend industrial & provident society legislation in Great Britain	
Stage: Parliamentary scrutiny	Version:	Date: 18 March 2009
Related Publications: Proposals for a Legislative Reform Order for Credit unions and industrial & provident societies in Great Britain: Consultation July 2008		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: Sammy Amissah

Telephone: 020 7270 5291

What is the problem under consideration? Why is government intervention necessary?

The legislative framework for cooperatives (Industrial & Provident Societies Act 1965) is out of date in certain respects, imposes burdens on cooperative enterprise, requires updating to reflect the current commercial realities and to enable cooperatives to better serve their members.

Many of the identified burdens are contained in the legislation and it is not possible to achieve the policy by non-legislative means.

What are the policy objectives and the intended effects?

To remove legislative burdens, update the legislation to bring cooperative legislation in line with international comparators, enable them to compete on a level playing field with other legal forms, improve their efficiency, productivity and better serve their members.

What policy options have been considered? Please justify any preferred option.

Options considered included

Option 1: No intervention

Option 2: Legislative Reform Order (LRO)

Option 3: Implement changes in a consolidating Bill

Under the Parliamentary timetable and attendant constraints Option 2 (LRO) is the most viable option for delivering on legislative reforms.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The actual costs and benefits will be evident after the reforms have been implemented. We propose a review in 3 years by which time reforms would have been embedded.

Ministerial Sign-off For Parliamentary scrutiny stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



.....Date: 19 March 2009

Summary: Analysis & Evidence					
Policy Option: 2		Description: Legislative Reform Order			
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Difficult to quantify. Costs mainly relate to Government staff costs (policy and legal) and printing logistics.		
	One-off (Transition)	Yrs			
	£0.05mn				
	Average Annual Cost (excluding one-off)				
	£ N/A				
			Total Cost (PV)	Not quantifiable	
Other key non-monetised costs by 'main affected groups' Societies costs in complying with new measures. FSA costs in updating registrar function.					
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Main benefits are greater clarity and ease of use of legislation. Enhanced operational efficiency; increased awareness of sector.		
	One-off	Yrs			
	£ Not quantifiable				
	Average Annual Benefit (excluding one-off)				
	£ Not quantifiable				
			Total Benefit (PV)	£ Not quantifiable	
Other key non-monetised benefits by 'main affected groups'					
Key Assumptions/Sensitivities/Risks					
Price Base Year	Time Period Years	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate)		
What is the geographic coverage of the policy/option?			Great Britain		
On what date will the policy be implemented?			To be confirmed		
Which organisation(s) will enforce the policy?			FSA		
What is the total annual cost of enforcement for these organisations?			To be confirmed		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			To be confirmed		
What is the value of changes in greenhouse gas emissions?			£		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)					
Increase of	£ N/A	Decrease of	£ N/A	Net Impact £ N/A	

I. PROPOSAL

1.1 The Treasury has submitted proposals to Parliament to make certain changes to the Industrial & Provident Societies Act 1965 using a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006.

2. OBJECTIVE

2.1 The objective is to remove legislative burdens, modernise the legislation for IPS cooperatives and provide them with a legislative framework which will enable them to better compete and to deliver a better service to their members.

3. BACKGROUND

3.1 The Treasury held a consultation in June 2007 on the “Review of GB cooperative and credit union legislation”. The consultation received over 200 responses a summary of which was published in the “Summary of consultation responses” in December 2007.

3.2 The responses indicated an overwhelming desire for reform of the legislative framework for cooperatives and the Government response signalled a corresponding desire to legislate to remove the identified burdens.

3.3 The Treasury subsequently formed a Working Group comprising of key stakeholders, representative bodies for the sector, legal experts and academicians to advise on the technicalities of the proposed changes.

3.3 These proposals under consideration which have been developed in conjunction with the Working Group include a review of the following:

- Minimum age for membership of an IPS; minimum age for becoming an officer of an IPS.
- Modifying the rules on share capital.
- Modifying the provision on fee for copy of the society’s rules.
- Facilitating easier dissolution of registered societies.
- Giving societies the flexibility to choose their own year-ends.
- Removing the requirement on societies to have interim accounts audited.

4. OPTIONS APPRAISAL

(a) No Intervention

Not doing anything would put cooperative societies in a disadvantageous position in relation to other business both in UK and EU.

(b) Legislative Reform Order: The Government has tabled proposals for an LRO and consulted on the proposals.

(c) Government could seek to implement the changes by way of a consolidating Bill.

Option (b) is the Government’s preferred option. The use of the LRO is an appropriate and effective response to the issues raised in the consultation. LROs are capable of far reaching changes to primary legislation. Although a consolidating Bill would be thorough and address all the issues the Parliamentary timetable makes its likelihood uncertain.

LROs involve a process of high Parliamentary scrutiny (both in the House of Commons and the Lords) and Government is confident that the issues under review will encourage debate and ensure adequate safeguards are in place to mitigate against any known or unknown consequences.

TABLE OF OPTIONS

See key assumptions, facts and calculations in the Annex.

OPTION	COST PER ANNUM	BENEFIT PER ANNUM
(a) No Intervention	Difficult to quantify but could lead to loss of investor confidence, competitive disadvantage and high opportunity costs.	No benefit to societies. Legislative inertia.
(b). Legislative Reform Order (LRO)	Government staff costs (Policy, Legal and logistics). FSA costs in updating registrar Societies' costs	Updated legislation with burdens removed. Addresses 90% of issues raised in consultation. Not feasible to quantify benefits however it would enhance operational efficiency, increase awareness of sector and provide agents and people wishing to work with the sector greater clarity. Also investors would be able to access corporate information and make comparisons with similar businesses.
(c) Implementing changes using a consolidating Bill	Legislative inertia. Decision will not be known until late 2009 and even then there is no certainty that we will find a slot in the legislative and Parliamentary timetable. Significant legal and administrative resources to rewrite Act.	Would result in a comprehensive rewrite of the IPS Act. However the uncertainty around whether a mandate would be obtained.

5. RISK, UNCERTAINTY AND UNINTENDED CONSEQUENCES

5.1 The proposals in the LRO have been carefully examined by HMT policy and legal to ensure that they strike a fair balance between the public interest and the interests of persons who may adversely affected. We have also considered how the various provisions will provide the necessary protections and preserve the rights and freedoms of those concerned. We do not consider that any of the proposals have constitutional significance or will restate an enactment.

6. IMPLEMENTATION

LRO to be made by the Treasury in exercise of the power conferred by section 1 of the Legislative and Regulatory Reform Act 2006.

7. WHO WILL BE AFFECTED?

7.1 The provisions in this LRO will affect Industrial & Provident Societies and their members.

8. EQUITY AND FAIRNESS

8.1 The Government considers that the measures introduced by the LRO will not have a disproportionate impact on the groups identified.

9. CONSULTATION WITH SMALL BUSINESS

- SMALL FIRMS IMPACT TEST

9.1 In the run up to the consultation HMT held consultative meetings, and workshops with the wider sector as well as the main representative groups to assess the impact of the proposals on smaller societies. The Government has taken on board the issues specific to smaller societies in the provisions of the LRO and

accordingly allow societies to apply a discretionary approach to issues, which could have a disproportionate impact on smaller societies. Accordingly it is Government's view that there will not be a disproportionate impact on small business.

- **COMPETITION ASSESSMENT**

9.2 We have carried out a competition filter test and concluded that the provisions have a potential impact on Industrial and Provident Societies Great Britain. It was considered however that the provisions would not give rise to disproportionate costs of entry or administrative costs for either small or larger societies. The proposals are not expected to restrict innovation in sectors characterised by rapid technological change (such as in the agricultural sectors) and would not impair the freedom to provide services.

10. CONSULTATION

10.1 HMT has discussed the initial consultation proposals with BERR and the FSA. HMT has in addition informed The Office of Fair Trading, Companies House, HMRC and the devolved Governments of the consultation. We have received no objections from the various Government departments.

10.2 HMT on behalf of Government will also be discussing the provisions of the LRO with all interested parties including the Financial Reporting Council and accounting authorities in the run up to debates in Parliament.

11. ENFORCEMENT AND SANCTIONS

11.1 The bodies responsible for monitoring and enforcing sanctions are the Financial Services Authority and the Courts. We believe that the organisations involved together have the necessary powers to monitor and enforce the provisions of the LRO.

12. SUMMARY AND RECOMMENDATIONS

12.1 The Government signalled in its response to the initial consultation in 2007, a clear intention to legislate to remove certain impediments in the legislation for cooperatives. It aims to do this in an effective and proportionate manner without imposing extra burdens on societies affected. The implementation proposals suggested in the consultation document, by the Government as well as the implementation option adopted would ensure that these objectives are achieved in a cost effective and efficient manner.

12.2 Although difficult to monetise it is self-evident that removing obstacles to the development of cooperatives and updating the legislation in line with commercial realities (including inflation) will prove beneficial. The expected benefits of the proposals will therefore far outweigh the costs and is recommended.

12.3 We also recommend a post implementation review in 3 years time to establish whether the implemented provisions are having the intended effect and to ascertain whether there are any unintended effects, which will need to be addressed.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Summary: Intervention & Options		
Department /Agency: HM Treasury	Title: Proposals for a Legislative Reform Order to amend credit union legislation	
Stage: Parliamentary scrutiny	Version:	Date: 18 March 2009
Related Publications: Proposals for a Legislative Reform Order for credit unions and industrial & provident societies in Great Britain: Consultation July 2008		

Available to view or download at:

<http://www.hm-treasury.gov.uk>

Contact for enquiries: Sammy Amissah

Telephone: 020 7270 5291

What is the problem under consideration? Why is government intervention necessary?

The legislative framework for credit unions (Credit Unions Act 1979) is out of date in certain respects, imposes burdens on their business, requires updating to reflect the commercial realities and to enable credit unions to better serve their members and to further contribute towards Governments policy on financial inclusion.

Many of the identified burdens are contained in the legislation and it is not possible to achieve the policy by non-legislative means.

What are the policy objectives and the intended effects?

To remove legislative burdens, update legislation to bring credit union legislation in line with international comparators, enable them to compete on a level playing field with other legal forms, improve their efficiency, productivity and better serve their members.

What policy options have been considered? Please justify any preferred option.

Options considered included

Option 1: No intervention

Option 2: Legislative Reform Order (LRO)

Option 3: Implement changes in a consolidating Bill

Under the Parliamentary timetable and attendant constraints Option 2 (LRO) is the most viable option for delivering on legislative reforms.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The actual costs and benefits will be evident after the reforms have been implemented. We propose a review in 3 years by which time reforms would have been embedded.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:



.....Date: 19 March 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Legislative Reform Order
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Difficult to quantify. Some of the main costs relate to Government staff costs (policy and legal) and printing costs.
	One-off (Transition) Yrs	
	£0.05mn	
	Average Annual Cost (excluding one-off)	
	£ N/A	Total Cost (PV) £ Not quantifiable
Other key non-monetised costs by 'main affected groups' FSA costs in updating register. Societies costs in complying with new measures.		

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Main benefits are greater clarity and ease of use of legislation. Enhanced operational efficiency; increased awareness of sector.
	One-off Yrs	
	£ Not quantifiable	
	Average Annual Benefit (excluding one-off)	
	£ Not quantifiable	Total Benefit (PV) £ Not quantifiable
Other key non-monetised benefits by 'main affected groups'		

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	To be confirmed
Which organisation(s) will enforce the policy?	FSA
What is the total annual cost of enforcement for these organisations?	To be confirmed
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	To be confirmed
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ N/A	Decrease of £ N/A	Net Impact £ N/A

I. PROPOSAL

1.1 The Treasury has submitted proposals to make certain changes to the Credit Unions Act 1979 using a Legislative Reform Order under the Legislative and Regulatory Reform Act 2006.

2. OBJECTIVE

2.1 The objective is to modernise the legislation for credit unions and provide them with a legislative framework which will enable them to better compete and to deliver a better service to their members.

3. BACKGROUND

3.1 The Treasury held a consultation in June 2007 on the “Review of GB cooperative and credit union legislation”. The consultation received over 200 responses a summary of which was published in the “Summary of consultation responses” in December 2007.

3.2 The responses indicated an overwhelming desire for reform of the legislative framework for credit unions and the Government response signalled a corresponding desire to legislate to remove the identified burdens.

3.3 The Treasury subsequently formed a Working Group comprising of key stakeholders, representative bodies for the sector, legal experts and academicians to advise on the technicalities of the proposed changes.

3.3 These proposals under consideration which have been developed in conjunction with the Working Group include a review of the following:

- Replacing the “common bond” requirement with a “field of membership test”.
- Reforming the requirements relating to membership qualifications and renaming them “common bonds”.
- Reforming the restrictions on non-qualifying members.
- Allowing credit unions to admit bodies corporate, unincorporated associations or partnerships to their membership.
- Allow credit unions to pay interest on deposits, provided certain requirements are met.
- Abolishing the 8% per annum limit on dividends.
- Repealing the “attachment” requirement, which restricts withdrawal of shares.
- Allow credit unions to charge the market rate for providing ancillary services to their members.

4. OPTIONS APPRAISAL

(a) No Intervention

Not doing anything would put credit unions in a disadvantageous position in relation to other businesses both in UK and EU.

(b) Legislative Reform Order (LRO)

(c) Implement changes in a consolidating Bill.

Option (b) is the Government’s preferred option. The use of the LRO is an appropriate and effective response to the issues raised in the consultation. LROs are capable of far reaching changes to primary legislation. Although a consolidating Bill would be thorough and address all the issues the Parliamentary timetable makes its likelihood uncertain.

LRO’s involve a process of high Parliamentary scrutiny (both in the House of Commons and the Lords) and Government is confident that the issues under review will encourage debate and ensure adequate safeguards are in place to mitigate against any known or unknown consequences.

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(c) Implementing changes using a consolidating Bill)	Legislative Inertia. Decision will not be known until late 2009 and even then there is no certainty that we will find a slot in the legislative and Parliamentary timetable. Significant legal and administrative resources to rewrite Act.	Would result in a comprehensive rewrite of the Credit Union Act. However there is significant uncertainty around whether a mandate would be obtained.

5. RISK, UNCERTAINTY AND UNINTENDED CONSEQUENCES

5.1 The proposals in the LRO have been carefully examined by HMT policy and legal to ensure that they strike a fair balance between the public interest and the interests of persons who may adversely affected. We have also considered how the various provisions will provide the necessary protections and preserve the rights and freedoms of those concerned. We do not consider that any of the proposals have constitutional significance or will restate an enactment.

6. IMPLEMENTATION

LRO to be made by the Treasury in exercise of the power conferred by section 1 of the Legislative and Regulatory Reform Act 2006.

7. WHO WILL BE AFFECTED?

7.1 The provisions in this LRO will affect all credit unions in Great Britain and their members.

8. EQUITY AND FAIRNESS

8.1 The Government considers that the measures introduced by the LRO will not have a disproportionate impact on the groups identified.

9. CONSULTATION WITH SMALL BUSINESS

- SMALL FIRMS IMPACT TEST

9.1 In the run up to the consultation HMT held consultative meetings, and workshops with the wider sector as well as the main representative groups to assess the impact of the proposals on smaller societies. The

Government has taken on board the issues specific to smaller societies in the provisions of the LRO and accordingly allow societies to apply a discretionary approach to issues, which could have a disproportionate impact on smaller societies. Accordingly it is Government's view that there will not be a disproportionate impact on small business.

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10. CONSULTATION

10.1 HMT has discussed the consultation requirements with BERR and the FSA. HMT has in addition informed The Office of Fair Trading, Companies House, HMRC and the devolved Governments of the original consultation and will now be consulting with them further on the implementation proposals.

10.2 HMT on behalf of Government will also be discussing the provisions of the LRO with all interested parties including the Financial Reporting Council and accounting authorities in the run up to debates in Parliament.

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11.1 The bodies responsible for monitoring and enforcing sanctions are the Financial Services Authority and the Courts. We believe that the organisations involved together have the necessary powers to monitor and enforce the provisions of the LRO.

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Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

6

Members of the group on IPS and credit union legislative reform

Helen Barber, Head of Legal Services and Deputy Secretary, Coops UK

James Graham, CEO, Scottish Agricultural Organisation Society

Pauline Green, CEO, Coops UK

Bill Greenwood, CEO, UK Credit Unions Ltd

Philip Hardman, The Co-op Group

Peter Hunt, CEO, MUTUO

Mark Lyonette, CEO, ABCUL

Abbie Shelton, ABCUL

Cliff Mills, Partner, Cobbetts

Ian Snaith, Professor and author of handbook on Industrial & Provident Society law.

Dave Grace, Vice President, World Council of Credit Unions (WOCCU)

David Orr, National Federation of Housing Associations

Financial Services Authority

HM Treasury

Office of the Third Sector

ISBN 978-1-84532-267-0



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