

Co-operatives and Community Benefit Societies Act 2003

Regulatory Impact Assessment

1. Introduction and Summary

The Co-operatives and Community Benefit Societies Act supplements and amends the Industrial and Provident Societies (IPS) Acts 1965 to 2002. This note provides the Government's assessment of the regulatory impact of the provisions in the Act.

Industrial and provident societies are an alternative corporate structure to companies regulated under the Companies Acts – often operating in the sector considered as 'social enterprise' or 'not-for-profit' but operating in diverse areas of the economy – from retail shops to housing associations. There are two main forms of societies – co-operatives and community benefit societies.

The Act updates certain aspects of IPS legislation, in line with the relevant aspects of the law relating to companies, in order to facilitate the ability of societies to enter into contracts and conduct business.

The Act also contains an enabling provision which allows the Treasury to bring forward, through secondary legislation, provisions to permit IPSs whose business is conducted for the benefit of the community to commit their assets permanently for that purpose (asset 'lock-in'), subject to appropriate safeguards and supplementary provisions. Giving community benefit societies the option of 'protecting their assets in perpetuity for a public purpose' was a recommendation of the Strategy Unit report "Private Action, Public Benefit" published in September 2002.

2. Purpose and intended effects of measure

The Act contains an enabling provision to allow the Treasury to bring forward, through secondary legislation, provisions to enable 'community benefit societies' to prohibit distribution of their assets other than in specified circumstances, such as to another society or company with a similar 'lock-in' rule, or to a charity. The exact circumstances need to be specified under the secondary legislation. The aim is not to restrict societies from buying, selling or otherwise using their assets but to ensure that those assets subject to a 'lock-in' are dedicated, in whatever form, for the intended use set out in the society's rules or for some other purpose which benefits the community.

The Act also contains sections to bring aspects of IPS law into line with the corresponding legislation relating to companies so as to facilitate the ability of societies to enter into contracts and conduct business. These sections make provision to:

- Protect those dealing with societies and with society committees from adverse consequences if the society or its committee were found to have acted outside their powers, while preserving committee members' obligations to observe society rules; and remove any obligation for parties entering into transactions with a society to enquire whether the transaction is permitted under that society's rules.
- Provide for liability under contracts made for a society before it has been legally formed.
- Allow societies to have an official seal for use abroad.
- Update the procedure for societies to execute contracts and other documents, and for authorised persons to do so on their behalf, and remove the obligation for IPSs to have a common seal.

3. Benefits

Power to restrict use of assets (Section 1)

The enabling provision gives the Treasury power to introduce an asset 'lock-in' regime in the future, through secondary legislation. The clause in itself does not offer any tangible benefits. In the report "Private Action, Public Benefit" the Strategy Unit noted that under the current position - without an asset 'lock-in' regime in place - there is a "serious deterrent to funders" of these organisations. However, any benefits would depend on the detailed legislation which introduced such a regime – and this does not form part of the contents of this Act. The Treasury will run a full consultation with stakeholders on the operation of the asset lock, including an assessment of the costs and benefits of this.

Modernising aspects of IPS law towards the position in company legislation

The provisions to modernise IPS legislation by bringing some aspects more closely into line with corresponding company law provide for a reduction in transaction costs for societies and facilitate their business transactions. Further detail is set out below.

Purported contracts, deeds and obligations. Execution of deeds and other documents (Sections 4 and 5)

Currently a society has to have a common seal and in some circumstances it has to use that seal to authenticate a contract or other document. The Act allows societies to operate without a seal and modernise the provisions by which authorised persons can sign binding contracts and execute documents on a society's behalf. This removes the cost of having to have a common seal made, and make administrative arrangements to keep it secure. It may

also remove any transportation costs to ensure the seal is available in the place where the document is to be executed, as well as the potential delay and risks of non-delivery that this may involve.

Persons involved in setting up an IPS may wish to make contracts in the name of the IPS concerned before it is registered. But at that stage it does not exist as a legal entity and any obligations or rights in the contracts entered into at this stage may be unenforceable as a result. The Act ensures that the contract was enforceable against and by the person who purported to act for or on behalf of the IPS making the contract. The current situation imposes an administrative cost on those contracting with an IPS to check if it is registered or, if not registered, taking a risk that the contract might be void. Currently there may also be costs conferred on IPSs to prove their (registered) status. The Act removes these costs or risks by enabling parties to contracts with IPSs to enforce those contracts even where the IPS does not yet exist.

There is currently no provision for IPSs wishing to conduct business outside the UK requiring execution under seal, to have official seals for use in different countries. The Act allows IPSs to have official seals for use abroad and provides that the affixing of such a seal will have the same effect as if the common seal had been affixed instead. This measure avoids the need to send a document to the UK for execution or to take a common seal to another country. This would avoid the consequent expense and risk of delay or damage or loss to either the document or the seal.

Capacity of society and power of committee to bind it (Clauses 2 and 3)

An IPS must limit itself to activities which are within the objects stated in its rules. This leaves those dealing with societies open to the risk that transactions may be void if a society or its committee acts outside its powers. It places a burden on parties to a contract to verify that a society's rules gives it the vires to enter the proposed contract. This may increase costs and time involved in entering contracts or deter those wishing to enter a contract with an IPS because they perceive there is a risk of the contract being void. It may also increase the difficulty of IPSs obtaining loans or funding.

The Act removes these costs or risks by protecting those dealing with an IPS from the consequences of entering a contract which is outside the objects of the society. The Bill's provisions would mean that such a contract would not be capable of legal challenge simply because it was not permitted by the society's rules. Committee members' obligations to observe society rules are, however, still preserved.

4. Compliance cost estimates

Power to restrict use of assets (Section 1)

The enabling provision will give the Treasury power to introduce an asset 'lock-in' regime in the future, through secondary legislation. The section in itself does not create any costs for societies. Any costs relating to asset 'lock-in' would depend on the detailed legislation to introduce such a regime – and this does not form part of the contents of this Act. However, the Treasury would consult carefully and consider further the costs before making any associated secondary legislation under this power.

Modernising aspects of IPS law towards the position in company legislation

The provisions in relation to purported contracts and execution of deeds and other documents are generally permissive – societies do not have to change their current practices if they do not wish to. It is possible that societies may need to make changes to their rules in order to take advantage of these opportunities. However, at present the Financial Services Authority (which provides a registry function for the sector) does not charge societies for registering a change in their rules.

We do not envisage that there would be any compliance costs in relation to the provisions on powers and capacities for most societies. Section 2 of the Act requires societies which are charities to make this status clear in various documents including business letters and official publications of the society. This might result in some costs for those charitable societies which do not already make their status clear in the specified documents. But a society which is a charity and which complies with the disclosure requirements of Section 2 will find it easier to protect its assets, in the event that the society or its committee acts beyond its powers. This is an important protection and, for the same reason, similar provisions apply to companies which are charities.

5. Other costs not subject to the Regulations

None.

6. Competition Assessment

Industrial and Provident societies operate across diverse sectors of the economy. There is therefore no one specific market sector to examine.

Power to restrict use of assets (Clause 1)

The enabling provision in this Act does not, in itself, have any impact on competition in markets where societies operate. The Treasury will consider impacts on competition as part of its work to develop an asset 'lock-in' regime. The lock-in regime will only be available to community benefit societies. It will be optional for those societies that are eligible and see net benefit for them in adopting it. The Strategy Unit report undertook a comparison of legal structure of various corporate forms used by social enterprises. It was partly as a result of that analysis that the asset 'lock-in' provision was recommended.

Modernising aspects of IPS law towards the position in company legislation (Sections 2 – 5)

The Strategy Unit report in its examination of the legislative framework for IPSs also made a comparison with company law and recommended that IPS legislation should be “brought up to date with relevant aspects of company legislation.” The Act’s provisions should improve this aspect of competitive advantage between the company and IPS forms of incorporation. As set out above – these provisions should reduce costs or reduce the current burdens that societies face when undertaking business. Some potential increase in cost for societies which are charities was identified, but these are similar costs to those currently applying to companies which are charities and are important as part of the system of protections on the use of a charity’s assets.

7. Enforcement and sanctions

Power to restrict use of assets (Section 1)

The Government will consider what enforcement processes and sanctions might be appropriate for the ‘asset lock’ regime when planning any substantive legislation implementing the regime. The Act limits any sanction prescribed by the ‘asset lock’ regime to not more than seven years’ imprisonment.

Modernising aspects of IPS law towards the position in company legislation (Sections 2 – 5)

Most of these provisions are permissive, so there is no need to prescribe enforcement procedures and sanctions. Section 2 of the Act requires societies which are charities to make this status clear in various documents including business letters and official publications of the society. Failure to include such a statement will be a criminal offence by the society, and by any officer of the society or other person acting on its behalf who is responsible for the document in question.

8. Monitoring and review

Power to restrict use of assets (Section 1)

The Government would consider what monitoring or review processes might be appropriate when planning any substantive legislation implementing an asset 'lock-in' regime.

Modernising aspects of IPS law towards the position in company legislation
(Sections 2 – 5)

These provisions offer modernising changes to IPS legislation towards similar provisions which have been long established in Company Law. The current Company Law Review has already been examining how effectively these parallel measures have been operating in Company Law. We have no plans to monitor or review how they would impact on the IPS sector.

9. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

(signed)

Ruth Kelly
Financial Secretary to the Treasury