

EXPLANATORY MEMORANDUM TO
THE FINANCIAL SERVICES AND MARKETS ACT 2000 (PERMISSIONS,
TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS)
(NORTHERN IRELAND CREDIT UNIONS) ORDER 2011

2011 No. 2832

AND

THE MONEY LAUNDERING (AMENDMENT No. 2) REGULATIONS 2011

2011 No. 2833

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instruments**

2.1 The main purpose of these instruments is to make consequential amendments and transitional provisions to change in the way credit unions in Northern Ireland will be regulated from 31st March 2012. They are consequential on Statutory Instrument 2011/2716 which brings Northern Ireland credit unions under the regulatory regime contained in the Financial Services and Markets Act 2000 with effect from 31st March 2012. Once authorised by the Financial Services Authority (the FSA), depositors with Northern Ireland credit unions will have access to the Financial Services Compensation Scheme in the event of a default, and the Financial Ombudsman's Service.

2.2 A further purpose is transfer the financial crime function of the Department for Enterprise, Trade and Investment in Northern Ireland (DETI) under the Money Laundering Regulation 2007 in respect of Northern Ireland credit unions to the Financial Services Authority.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

4.1 Statutory Instrument 2011/2716 revokes on 31st March 2012 the exemption in paragraph 24A of Part 2 of the Schedule to the Financial Services and Markets Act 2000 (Exemption) Order 2001 for credit unions registered in Northern Ireland from the regulatory requirements of the Financial Services and Markets Act 2000

(the 2000 Act). Once revoked, credit unions in Northern Ireland will be required to comply with the 2000 Act and the FSA's rules when they accept deposits, a regulated activity. Credit unions in Great Britain have been subject to the regulatory regime in the 2000 Act since 2nd July 2002.

- 4.2 **The Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011** makes transitional provision and consequential amendments. Part 1 concerns permissions under Part 4 of the 2000 Act and makes transitional provision with respect to these. All registered credit unions are treated as having, on and after 31st March 2012, a Part 4 permission to accept deposits. This permission is subject to any existing restrictions imposed on a credit union by the DETI, and any exercise by the FSA of any of its powers that take effect on commencement. Specifically, for a period of two years after commencement, the FSA is given the power to direct a credit union to apply for a new Part 4 permission. Secondly, all persons performing controlled functions in a credit union immediately before commencement will also be treated as persons authorised by the FSA to perform that function under section 59 of the 2000 Act (even where they have not in fact been). This would not extend, however, to persons already disqualified under the 1985 Order to hold office. The FSA may, for a period of two years after commencement, direct a credit union to apply for approval under section 59 of the 2000 Act in respect of a particular person. During a three month pre-commencement period credit unions may make applications to the FSA to vary, for example, the type of permission they will get on commencement so that they may, for example, conduct other regulated activities as well as deposit-taking. Certain of the FSA's information-gathering and investigatory powers in the 2000 Act are commenced at the start of the three month pre-commencement period to assist it in gathering information in advance of 31st March 2012. These provisions are similar to equivalent provisions made in respect of credit unions registered in Great Britain in 2002. It is made explicit that the DETI may share information about credit unions with the FSA.
- 4.3 Part 2 amends primary, secondary and tertiary legislation applying to Northern Ireland credit unions. The two amendments to United Kingdom banking legislation make necessary technical amendments to maintain the position of Northern Ireland credit unions under those Acts. The amendments to the Credit Unions (Northern Ireland) Order 1985 and the statutory rules made under it change parts of that Order that are inconsistent with the 2000 Act, the Financial Services Compensation Scheme or the Financial Ombudsman's Service, revoke prudential provisions that are duplicated in the 2000 Act, no longer required or will instead be contained in rules made by the FSA under the 2000 Act. The amendments do not change DETI's function as the registrar for credit unions in Northern Ireland, a transferred matter under the Northern Ireland Act 1998. Many of these changes mirror similar changes made in 2002 to equivalent legislation applying the credit union in Great Britain.

4.4 **The Money Laundering (Amendment No.2) Regulations 2011** transfers DETI's supervisory responsibilities under the Money Laundering Regulations 2007 (S.I. 2007/2157) for Northern Ireland credit unions to the FSA. This function is already performed by the FSA for other authorised persons.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom but only relates to credit unions registered in Northern Ireland.

6. European Convention on Human Rights

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments) (Northern Ireland Credit Unions) Order 2011 are compatible with the Convention rights.

As the Money Laundering (Amendment No.2) Regulations 2011 is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Around 180 credit unions are registered in Northern Ireland. In March 2010 the Treasury and DETI Ministers announced their decision to transfer regulation of credit unions in Northern Ireland from DETI to the FSA. The intention of this transfer is to equate the regulatory regimes of credit unions in Northern Ireland and Great Britain, and offer credit union members two key benefits. The first is access to the Financial Services Compensation Scheme, which provides credit union members with access to statutory compensation in the event of a failure of their credit union; the second brings Northern Irish credit unions under the jurisdiction of the Financial Ombudsman Service, which would hear complaints from members about their credit union. Once authorised under the 2000 Act, Northern Ireland credit unions would also, subject to obtaining the necessary permissions to conduct other regulated activities, be able to offer other financial products and services.

7.2 The FSA and Treasury held consultations with the industry, and the relatively short time-frame for implementation meant that the FSA reduced their normal consultation period from three to two months.

7.3 The grandfathering provisions copy to a great extent what was done for credit unions registered in Great Britain when they were brought under the 2000 Act in July 2002. The aim is to minimise the burdens on credit unions by removing the requirement on them to make new applications for permission under Part 4 of the 2000 Act unless the

FSA considers there to be a good reason for a fresh application in the case of a named individual or class of credit unions.

8. Consultation outcome

8.1 The Treasury and FSA published a joint consultation on the 31th August 2011. The consultation closed on 31th October 2011. A joint policy statement taking into account responses from the consultation will be published on 9th December 2011.

8.2 A number of responses suggested the consultation period should be extended to allow further scrutiny of the FSA rules. Unfortunately, in this instance this would have jeopardised the regulatory transfer date of 31th March 2012 given the FSA's need to carry out the necessary project work after the rules have been consulted on and finalised.

9. Guidance

9.1 The FSA is working closely with the sector and trade associations, in an attempt to ease the regulatory transition. It has conducted several visits to Northern Ireland, engaging with the sector and offering them an opportunity to ask questions on the regulatory regime outlined in the FSA's consultation paper. These have given the sector a chance to have their concerns addressed face to face, and let the FSA provide reassurance that the transition will prove beneficial.

10. Impact

10.1 The impact on credit unions is £1.657 million over the next 10 years. The impact on business (other than credit unions), charities or voluntary bodies is negligible.

10.2 The impact on the public sector is likely to be negligible. The DETI will be relieved of its regulatory and financial crime functions in relation to Northern Ireland credit unions and the FSA will take on responsibility for them. The FSA already performs these functions for GB credit unions.

10.3 A separate Impact Assessment has not been prepared for this instrument as it is one of a number of instruments. A copy of the Impact Assessment prepared for S.I. 2011/2716 is published alongside the Explanatory Memorandum for that Order on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small credit unions.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to minimise burdens on credit unions by granting them automatic permissions under Part 4 of the 2000 Act, and deeming certain persons to be approved

person under section 59 of the 2000 Act. The FSA will be able to exercise powers to require fresh applications on an individual (or class) basis where it considers it necessary.

12. Monitoring & review

12.1 Consistent with S.I. 2011/2716, the Financial Services and Markets Act 2000 (Permissions, Transitional Provisions and Consequential Amendments)(Northern Ireland Credit Unions) Order 2011 and the Money Laundering (Amendment No.2) Regulations 2011 require a review of the legislative amendments made by them at five year intervals.

12.2 The regulation of financial services, and deposit-takers in particular, is currently the subject of proposed legislative reform. In due course the Government will consult on what these reforms will mean for credit unions.

13. Contact

Christopher Moore at HM Treasury Tel: 020 7270 4819 or email: chris.moore@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.