

**EXPLANATORY MEMORANDUM TO**  
**THE INDUSTRIAL AND PROVIDENT SOCIETIES AND CREDIT UNIONS**  
**(ARRANGEMENTS, RECONSTRUCTIONS AND ADMINISTRATION) ORDER**  
**2014**

**2014 No. 229**

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

**2. Purpose of the instrument**

2.1 This Order applies company insolvency rescue legislation to industrial and provident societies (other than societies which provide social housing) and to credit unions. In the Order these are called “relevant societies”. Rescue legislation means Part 1 (company voluntary arrangements) and Part 2 (administration) of the Insolvency Act 1986 (“the 1986 Act”) and Part 26 of the Companies Act 2006 (arrangements and reconstructions).

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

3.1 None

**4. Legislative Context**

4.1 Section 255 of the Enterprise Act 2002 empowers the Treasury, with the concurrence of the Secretary of State, to provide by order for the application (with or without modification) of rescue legislation to societies registered under the Industrial and Provident Societies Act 1965 (“the 1965 Act”). For this purpose the Treasury may make consequential or incidental provision, which may apply enactments (with or without modification) and amend enactments. A society which is a private registered provider of social housing or registered as a social landlord is excluded from the scope of the power.

4.2 The 1965 Act is the principal statute governing industrial and provident societies (“IPSs”) and credit unions. Credit unions are also governed by the Credit Unions Act 1979, which modifies some provisions of the 1965 Act for credit unions.

4.3 The 1965 Act provides for winding up registered societies under provisions for the winding up of registered companies (principally Part 4 of the 1986 Act), but not for rescuing registered societies in financial difficulty.

4.4 Article 2 of the Order applies to relevant societies (with modifications):

4.4.1 Part 1 of the 1986 Act, which provides for company voluntary arrangements and includes Schedule A1 (provision for obtaining a moratorium against action for debt enforcement);

4.4.2 Part 2 of the 1986 Act, consisting principally of Schedule B1 (administration);

4.4.3 Part 26 of the Companies Act 2006 Act, which provides for company arrangements and reconstructions.

4.5 In consequence of or incidental to the application of rescue legislation to relevant societies the Order applies other legislation with necessary modifications:

4.5.1 Article 3 applies section 176A of the 1986 Act (share of assets for unsecured creditors) to relevant societies in administration.

4.5.2 Article 4 applies other provisions of the 1986 Act for the purpose of relevant society voluntary arrangements and administration.

4.5.3 Articles 5 to 10 apply provisions of the Financial Services and Markets Act 2000 which confer rights in insolvency proceedings on the Financial Conduct Authority, the Prudential Regulation Authority and the manager of the Financial Services Compensation Scheme.

4.5.4 Article 11 applies the Insolvency Rules 1986 and the Insolvency (Scotland) Rules 1986 to govern procedure for relevant society voluntary arrangements and administration.

4.5.5 Articles 13 to 15 apply sections 50 to 52 of the 1965 Act (amalgamation, transfer of engagements and conversion into companies). The administrator of a relevant society will be able to recommend an arrangement under these sections. The same conditions, including the requirement for a special resolution, will apply. So will the exclusion of credit unions from the scope of section 52, so that a credit union in administration cannot to be converted into, amalgamated with, or having its engagements transferred to a company.

4.5.6 Article 17 amends the 1965 Act in connection with the administration of a relevant society whose registered office is in England and Wales. A floating charge holder who is entitled to appoint an administrator will not be able to appoint an administrative receiver. The holder of a floating charge given by a society whose registered office is in Scotland is not competent to appoint a receiver.

4.6 These measures form part of a package of legislative reform for registered societies, which is made under various powers with a view to commencement on 6 April 2014.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## 6. European Convention on Human Rights

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

In my view the provisions of the Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 are compatible with the Convention rights.

## 7. Policy background

- *What is being done and why*

7.1 This instrument is one measure for implementing the Government's commitment to promote mutual bodies and foster diversity in the UK economy. The objectives are to preserve and strengthen the unique features of societies registered under the 1965 Act, and to promote a diverse, healthy and successful mutuals sector which is able to offer a broad range of services to growing numbers of members.

7.2 The 1965 Act provides for the registration of IPSs. Credit unions are also registered under that Act. There are two types of IPS. A co-operative society is a business owned and run by and for the benefit of its members. A community benefit society must satisfy the same co-operative principles as a co-operative society and must be operated for the benefit of the community in which it works (e.g. a housing association). All registered societies embody democratic principles; in particular, members have equal voting rights regardless of the level of their financial commitment. This enables members, who may be employees, customers or residents, to be involved in the running of the business.

7.3 Over 7,000 IPSs and credit unions were registered in Great Britain in 2013. The number has grown as the sector has continued to provide a popular and successful structure for mutually run business. IPSs cover a vast range of activity and industry. They include public service providers, football clubs, wind farms, web designers and agricultural suppliers. Some have hundreds of members and are large employers; others have just a handful of members. IPSs are found in all parts of the UK (legislation governing registered societies is devolved in Northern Ireland).

7.4 IPSs and credit unions cannot enter administration or make a voluntary arrangement with creditors; winding up under companies legislation is the only option for an insolvent society. The Order will strengthen and support further growth in the mutuals sector by providing an opportunity to rescue societies in financial difficulty. As for a company, it should be possible to seek an alternative to winding up and dissolving a relevant society, through administration or arrangements for restructuring its debt or the society itself. If it cannot be rescued as a going concern, the interests of members, employees and people who benefit from its operation may be protected by an amalgamation or a transfer of the society's undertaking.

- **Consolidation**

7.5 As this Order is the first exercise of the power in section 255 of the Enterprise Act 2002 the possibility of consolidation does not arise.

## **8. Consultation outcome**

8.1 The Government consulted publically on the package of measures (including this Order) proposed for the reform of IPS legislation; see *Industrial and Provident Societies: Growth through Co-operation* issued on 26 July 2013. The consultation period was eight weeks (until 20 September 2013). This was proportionate to the scale and subject-matter of the consultation and took into account the capacity of interested parties to respond. The Treasury had regard to the specialised nature of the issues raised; the number of likely respondents; the prior involvement of some interested parties; and its on-going dialogue with industry representatives about the proposals and the timing of consultation.

8.2 The Treasury received 42 responses from a variety of sources, including mutuals sector representatives, individuals, trade bodies, legal advisers and consumer groups.

8.3 Given the complexity of the Order, 15 of the 20 questions raised related to the insolvency measures. Views were sought on the approach taken and on specific points requiring input from insolvency practitioners and experts on the registration and operation of registered societies. 32 respondents commented on some or all of these questions. All were supportive of the proposal to apply rescue legislation to IPSs and credit unions.

8.4 A full Government consultation response was published at:  
[www.gov.uk/government/consultations/industrial-and-provident-societies-growth-through-co-operation](http://www.gov.uk/government/consultations/industrial-and-provident-societies-growth-through-co-operation)

## **9. Guidance**

9.1 The Treasury does not intend to issue any guidance in connection with this Order.

## **10. Impact**

10.1 The impact of the Order on business, charities and voluntary bodies run as relevant societies is wholly beneficial.

10.2 The impact on the public sector is likely to be negligible. The FCA, as registration authority, may have some additional work to carry out as it generally has functions which the registrar of companies has under the applied legislation in relation to companies. The FCA, as regulator, the PRA and the FSCS manager may also have to carry out for insolvent societies functions which they have as regulators under the applied legislation. But no additional work is required unless rescue measures are taken for a relevant society in financial difficulty.

10.3 The Regulatory Policy Committee has confirmed that this measure qualifies for its fast-track process; therefore no impact assessment has been prepared.

## **11. Regulating small business**

11.1 Many IPSs are small businesses. There was consensus among consultation respondents that IPSs and credit unions generally will benefit from the application of company rescue legislation, and such benefits will be felt by all irrespective of their size.

## **12. Monitoring & review**

12.1 While no specific review is planned for this instrument, it will be reviewed with regard to future policy on co-operative and community benefit societies and credit unions.

## **13. Contact**

13.1 Candice Mullineux at HM Treasury can answer any queries regarding the instrument. Phone: 0207 270 1037; email: [Candice.Mullineux@hmtreasury.gsi.gov.uk](mailto:Candice.Mullineux@hmtreasury.gsi.gov.uk).