

## EXPLANATORY MEMORANDUM TO

### THE CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES AND CREDIT UNIONS (ARRANGEMENTS, RECONSTRUCTIONS AND ADMINISTRATION) (AMENDMENT) AND CONSEQUENTIAL AMENDMENTS ORDER 2020

2020 No. 744

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This Order is made by HM Treasury and the Department for Business, Energy and Industrial Strategy, in exercise of powers under the Co-operative and Community Benefit Societies Act 2014 (“the 2014 Act”) and the Corporate Insolvency and Governance Act 2020 (“the 2020 Act”), as described in the preamble to the Order.
- 2.2 This Order amends the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (“the Principal Order”), to apply company insolvency rescue legislation, as introduced by the 2020 Act, to societies registered under the 2014 Act.
- 2.3 This Order applies company insolvency rescue legislation, Part A1 (Moratorium) of the Insolvency Act 1986 (“the 1986 Act”), to co-operative and community benefit societies, excluding societies which are providers of social housing and credit unions. In the Order these are called “relevant CCBS”. This Order also applies Part 26A (Arrangements and Reconstructions: Companies in Financial Difficulty) of the Companies Act 2006 (“the 2006 Act”) to co-operative and community benefit societies and credit unions, excluding societies which are providers of social housing. In this Order these are called “relevant societies”.
- 2.4 This Order also makes amendments to four financial services and markets secondary instruments in consequence of the changes to the Insolvency Act 1986 by the Corporate Insolvency and Governance Act 2020. These are the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, the Financial Collateral Arrangements (No. 2) Regulations 2003, the Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005 and the Regulated Covered Bonds Regulations 2008.

#### 3. Matters of special interest to Parliament

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

- 3.1 These regulations are being laid in breach of the 21-day rule for the following reasons.
- 3.2 The 2020 Act received expedited passage through Parliament and provides for several measures, inserted into the 1986 Act and the 2006 Act, which will give businesses greater flexibility and breathing space within the insolvency regime to continue trading despite financial difficulty. The expedited passage was necessary because of the economic uncertainty caused by the Covid-19 pandemic. The measures inserted

into the Insolvency Act 1986 will allow companies facing financial difficulties to obtain a moratorium, which will give them some additional breathing space with a view to obtaining rescue. The new provisions of the 2006 Act, inserted by the 2020 Act, will allow a company in financial distress to propose a restructuring plan to its creditors and members, which can be approved by the court in certain circumstances (even if a class of creditors or members dissents).

- 3.3 It is for the same reasons that this Order applies these measures to relevant societies or relevant CCBS, where appropriate. This will ensure at the earliest opportunity that these businesses have greater flexibility and breathing space within the insolvency regime to continue trading, despite the economic uncertainty caused by the Covid-19 pandemic. This will place relevant societies or relevant CCBS, where appropriate, on a level playing field with companies.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of articles 4-13 is England, Wales, and Scotland.  
4.2 The territorial application of articles 4-13 is England, Wales and Scotland.  
4.3 The territorial extent of articles 14-17 is the United Kingdom.  
4.4 The territorial application of articles 14-17 is the United Kingdom.

#### **5. European Convention on Human Rights**

- 5.1 The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The 2014 Act is the principal statute governing co-operative and community benefit societies, and credit unions. Credit unions are also governed by the Credit Unions Act 1979.  
6.2 The Principal Order applies company insolvency rescue legislation, in particular Part 1 (company voluntary arrangements) and Part 2 (administration) of the 1986 Act and Part 26 (arrangements and reconstructions) of the 2006 Act, to relevant societies. The Principal Order was made in exercise of the power in section 255 of the Enterprise Act 2002 (now section 118 of the 2014 Act) and came into force on 6 April 2014. The Principal Order was subsequently amended by the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) Order 2014, mainly in consequence of the coming into force of the 2014 Act.

- 6.3 Article 3 of this Order commences Paragraph 51 of Schedule 3 to the 2020 Act, which repeals section 106(2) of the 2014 Act. This section relates to the existing moratorium provided for by section 1A and under Schedule A1 of the 1986 Act, which is repealed for companies by the 2020 Act.
- 6.4 Article 4 revokes paragraph 54 of Schedule 3 to the 2020 Act, a saving provision in relation to the application of the existing moratorium provided for by section 1A and under Schedule A1 of the 1986 Act, which is repealed for companies by the 2020 Act.
- 6.5 Articles 6 to 13 amend the Principal Order.
- 6.6 Article 6 inserts a definition of ‘relevant CCBS’ into Article 1(2) of the Principal Order to which Part A1 of the 1986 Act will apply (with modifications). The definition excludes societies which are registered as a social landlord under Part 1 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 2010, and credit unions from the application of Part A1. Societies which are private registered providers of social housing have been excluded from the moratorium by virtue of the Insolvency Act 1986 Part A1 Moratorium (Eligibility of Private Registered Providers) Regulations 2020.
- 6.7 Article 7 applies (with modifications) Part A1 of the 1986 Act to relevant CCBS, and Part 26A of the 2006 Act to relevant societies. Part A1 contains provisions to enable an eligible company, in certain circumstances, to obtain a moratorium, giving it various protections from creditors. Part 26A contains provisions relating to arrangements and reconstructions for companies in financial difficulty.
- 6.8 Article 7 (c), in exercise of the power in paragraph 92 of Schedule 4 to the 2020 Act, also applies the temporary insolvency rules under Schedule 4 to the 2020 Act applicable to the new moratorium provisions under Part A1 of the Insolvency Act to relevant CCBS in England, Wales and Scotland.
- 6.9 In consequence of or incidental to the application of the applied legislation to relevant societies or relevant CCBS, article 9 applies sections 355A and 355B of the Financial Services and Markets Act 2000 to relevant societies. These sections relate to the ability of the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) to participate in proceedings under Part 26A of the 2006 Act.
- 6.10 Articles 10, 11, 12 and 13 provide for general and specific modifications to the application of Part A1 of the 1986 Act and Schedule 4 to the 2020 Act to relevant CCBS, and the application of Part 26A of the 2006 Act to relevant societies.
- 6.11 Part 4 of this Order also makes consequential amendments to the Financial Markets and Insolvency (Settlement Finality) Regulations 1999, the Financial Collateral Arrangements (No. 2) Regulations 2003, the Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005 and the Regulated Covered Bonds Regulations 2008. These amendments are made in consequence of the changes to the 1986 Act by the 2020 Act. The amendments ensure that those financial services which rely on the relevant insolvency provisions introduced by the 2020 Act are brought into line with other financial services affected by that Act.

## **7. Policy background**

### *What is being done and why?*

- 7.1 As of June 2020, in Great Britain there are approximately 8,000 co-operative and community benefit societies registered under the 2014 Act, and approximately 280 credit unions. 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. Co-operative and community benefit societies operate in most sectors of the economy.
- 7.2 The Principal Order applied company insolvency rescue legislation, in particular Parts 1 and 2 of the 1986 Act and Part 26 of the 2006 Act, with modifications to relevant societies, with the aim of strengthening and supporting further growth in the mutual sector by providing an opportunity to rescue societies in financial difficulty, and ensuring a level playing field between companies and mutual businesses. This Order builds on the Principal Order by keeping pace with company insolvency rescue legislation.
- 7.3 The 2020 Act introduced new company insolvency rescue legislation, in particular Part A1 of the 1986 Act and Part 26A of the 2006 Act. These procedures are intended to introduce greater flexibility into the insolvency regime, allowing companies breathing space to explore options for rescue, so they can have the maximum chance of survival.
- 7.4 Due to the Covid-19 pandemic, many UK companies faced the threat of insolvency owing to significant trading difficulties brought on by this crisis. Consequently, the measures in the 2020 Act were brought into force in an expedited manner to provide businesses with the flexibility and breathing space they need to continue trading during the pandemic.
- 7.5 As was the case for companies, co-operative and community benefit societies and credit unions were impacted by the Covid-19 pandemic, and consequently may benefit similarly from the applied legislation. This Order applies Part A1 of the 1986 Act to relevant CCBS, excluding credit unions from its application, as is the case with other financial services providers. This Order applies Part 26A of the 2006 Act to relevant societies, including credit unions.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 HM Treasury does not intend to consolidate the amendments made to the Principal Order at present.

## **10. Consultation outcome**

- 10.1 The Government previously consulted on the introduction of the applied legislation in “A Review of the Corporate Insolvency Framework<sup>1</sup>”, published in May 2016. The Government announced plans to introduce new insolvency rescue and restructuring procedures in August 2018, and the measures were subsequently introduced through the 2020 Act, which received Royal Assent on 25 June 2020. The 2020 Act received expedited passage through both Houses in response to the economic disruption caused by Covid-19.
- 10.2 Due to the expedited passage of the 2020 Act, which introduced the applied legislation for companies, and the need to apply these procedures to co-operatives and community benefit societies quickly in response to the economic disruption caused by Covid-19, formal public consultation on the specific application of the measures to relevant societies or relevant CCBS, where appropriate, was not possible.
- 10.3 HM Treasury engaged with representatives from the sector, including Co-operatives UK and subject matter experts, on the detail of the application of the provisions to relevant societies or relevant CCBS, where appropriate. The stakeholders consulted were supportive of the application of the provisions to these organisations. HM Treasury also provided a draft of this Order to industry representatives for scrutiny prior to it being laid.
- 10.4 HM Treasury engaged extensively with the FCA, in its capacity as registering authority for mutuals, on the detail of the application of the provisions to relevant societies or relevant CCBS, where appropriate, and on the FCA’s function in this application. HM Treasury also engaged with the PRA on the application of the measures to financial services firms, including credit unions.

## **11. Guidance**

- 11.1 HM Treasury does not intend to issue any guidance in connection with this Order.

## **12. Impact**

- 12.1 Businesses, charities or voluntary bodies, which are relevant societies or relevant CCBS, that meet the eligibility conditions for the applied legislation may use the measures as a debtor. The applied legislation will provide them with breathing space and additional options for rescue, potentially saving viable businesses, maintaining productivity and preserving jobs
- 12.2 The applied legislation will also have an impact on business, charities or voluntary bodies as creditors of a relevant CCBS or relevant society who may use the measures. The possible effects of the applied legislation on creditors include a temporary suspension of creditor rights to take enforcement action against a relevant CCBS or relevant society, or the extinguishing of a creditor right or claim as part of a restructuring plan sanctioned by the court.
- 12.3 The impact on the public sector is likely to be minimal. The FCA, as registering authority for mutuals, may have some additional duties as this Order applies functions to it which the registrar of companies has under the applied legislation in relation to

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/736207/ICG - Government response doc - 24 Aug clean version with Minister s photo and signature AC final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/736207/ICG_-_Government_response_doc_-_24_Aug_clean_version_with_Minister_s_photo_and_signature_AC_final.pdf)

companies. The FCA, as regulator, and the PRA may also have some additional duties to perform for insolvent societies. Additional work is only required when rescue measures are taken for a relevant society or relevant CCBS in financial difficulty.

- 12.4 An Impact Assessment has not been prepared specifically for this instrument because of the small number of business affected. However, a full impact assessment<sup>2</sup> was prepared for the 2020 Act, including (but not limited to) the legislation applied by this Order.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

### **14. Monitoring & review**

- 14.1 While no specific review is planned for this instrument, the applied legislation in the 2020 Act will be reviewed within 3 years of commencement. HM Treasury will consider the outcomes of this review and whether amendment to this Order is required.

### **15. Contact**

- 15.1 Muiris Ó Floinn at HM Treasury Telephone: 0207 270 2447 or email: [muiris.ofloinn@hmtreasury.gov.uk](mailto:muiris.ofloinn@hmtreasury.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 David Raw, Deputy Director for Banking and Credit, at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Economic Secretary to the Treasury at HM Treasury can confirm that this Explanatory Memorandum meets the required standard.

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<sup>2</sup> <https://publications.parliament.uk/pa/bills/cbill/58-01/0128/IA200519.pdf>