

Co-operatives UK Consolidation Project

This report is based on a trawl though the whole of the IPSA 1965 as in force on 27.07.12 to find:

- **Obsolete parts (including language that can be updated and improved);**
- **Glitches and**
- **Skeletons/problems.**

which do not involve substantive change.

In the Cabinet Office “Guide to Making Legislation” at G 43 it is said:

“These Bills may either be purely to consolidate existing legislation, or they may also make some minor amendments such as tidying up past errors and ambiguities, though without making any changes of substance.”

http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/making-legislation-guide/consolidation_bills.aspx

This paper deals only with the legislation applicable in Great Britain with occasional reference to the Channel Islands. It does not cover the Northern Ireland legislation.

1. Industrial and Provident Societies Act 1965

Clearly the Victorian language of this statute should be modernised without any change of meaning or substance when the consolidation Act is drafted. Tentative examples of how this might be done are provided for sections 2 and 14. The discussion of Schedule 1 highlights the difficulties and dangers in the process.

The **Short Title of the Act** will change to the Co-operative and Community Benefit Societies and Credit Unions Act 1965 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Section 1

Is to be replaced by the following text when section 1(1) of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect:

“1 Societies that may be registered

(1) A society for carrying on any industry, business or trade (including dealings of any kind with land) may be registered under this Act as—

(a) a co-operative society, or

(b) a community benefit society.

As to registration under this Act as a credit union, see the Credit Unions Act 1979.

(2) A society may be registered as a co-operative society only if it is shown to the satisfaction of the Authority that the society is a bona fide cooperative society.

For this purpose “co-operative society” does not include a society that carries on, or intends to carry on, business with the object of making profits mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person.

(3) A society may be registered as a community benefit society only if it is shown to the satisfaction of the Authority that in view of the fact that the business of the society is being, or is intended to be, conducted for the benefit of the community, *there are special reasons why the society should be registered under this Act rather than as a company under the Companies Acts*.

(4) A society may not be registered as a co-operative society or community benefit society unless—

(a) the society's rules contain provision in respect of the matters mentioned in Schedule 1, and

(b) the place that under those rules is to be the society's registered office is situated in Great Britain or the Channel Islands.”.

This language represents a model on which the language of the proposed consolidation statute might well be based.

The words ‘*there are special reasons why the society should be registered under this Act rather than as a company under the Companies Acts*’, in s1(3) could be removed, as these are not longer necessary.

The Registry of Friendly Societies applied a two stage test for the registration of societies for the benefit of the community. In order to satisfy the condition, the Registry required applicants to show that:

a) the business of the society is being, or is intended to be, conducted for the benefit of the community; *and*

(b) there were additional, and special, reasons why the society should be registered under the I&P Act rather than as a company under the Companies Act 1985.

The IPSA 1965 provided no guidance as to what might constitute a special reason, which resulted in the Registry having considerable discretion. It published guidance on how this discretion would be exercised, and the examples of 'special reasons' it would accept included the following:

- One member, one vote
- Membership of a group structure of societies sharing a common IT system.

None of the specified reasons were particularly compelling as they could equally apply to a company structure.

The FSA initially applied the Registry’s line on the condition for registration, but in recent

years has adopted a new and, in our view, more persuasive interpretation of this provision, which is supported by the Hansard records of the debates on the issue. The FSA considers the fact that the society exists to benefit the community, and not its shareholders, is in itself the 'special reason'. As a consequence of this key and critical difference between community benefit societies and companies, the former enjoys valuable concessions under FSMA, as the shares in a community benefit society would not be acquired for a financial return.

The FSA has pointed to the following extracts from Hansard debates on the Prevention of Fraud (Investments) Act 1939 to support its view of Parliament's intention.

Deletion of the words 'there are special reasons why' would remove the ambiguity in the language without altering the intention of the legislation

Section 2 Registration of Society

The following might represent a draft which retains the same substance while modernising the language:

“(1) A society may be registered by the Authority under this Act with three or more persons or two or more registered societies as members if the conditions in subsection (2) are met.

(2) The conditions referred to in subsection (1) are

(a) that the Authority is satisfied that the society has complied with the provisions of this Act as to registration and

(b) that a copy of an application for registration signed by three members and the secretary of the society or, in the case of a society being formed solely by registered societies, by the secretaries of any two of those registered societies, are sent to the Authority with, and a copy of the rules of the society to be registered.

(3) On the registration of the society the Authority shall issue to the society an acknowledgment of registration bearing the Authority's seal.”

Requiring two copies of the application and rules to be submitted upon registration predates electronic communication, given s 25 of The Mutual Societies (Electronic Communications) Order 2011 introduced the ability for the registrar to accept registrations on-line and the ability to specify requirements in this regard, the requirement for two copies would seem to be obsolete.

In place of :

“(1) Subject to subsection (2) of this section—

(a) no society shall be registered under this Act if the number of the members thereof is less than three; and

(b) an application for the registration of a society under this Act shall be signed by three members and the secretary of the society and shall be sent with two copies of the society's rules to the Authority.

(2) A society whose members consist solely of two or more registered societies may be registered

under this Act if the application for registration is signed by the secretary of each (or, if more than two, of each of any two) of the constituent societies and is accompanied by two copies of the rules of the society sought to be registered.

(3) On being satisfied that a society has complied with the provisions of this Act as to registration thereunder, the Authority shall issue to the society an acknowledgment of registration bearing the Authority's seal."

Section 3 Registration to effect incorporation of society with Limited Liability

The text after the semi-colon in 3(1) is probably obsolete. Historically the provision was about the change from friendly societies to I & Ps in the mid nineteenth century and the problems of incorporation in the early days. Under current trust law it seems that property could vest in the society on incorporation without this provision depending on the rules of any unincorporated association or the deed of any partnership that existed first. Under *Re Recher's Will Trusts* [1972] Ch 526 as applied in *Hanchett-Stamford v Attorney General* [2009] Ch. 173 the wording of a trust document will determine whether a trust is created in favour of a non-charitable unincorporated association (so that assets accrue to its funds or are held jointly by all its members) or the trust fails for want of certainty about the beneficiary. The problem is that the incorporated association has no legal personality.

As a result, the documentation used by the founders before incorporation would determine whether property passed to the registered society. With the correct wording, this could be achieved. Similar considerations probably apply to the continuation of legal proceedings. If start-ups usually incorporate immediately or very early this may not present a problem. If an unincorporated 1890 Act partnership or a corporate body, such as a company or LLP, were used first, any property held by them would transfer to the newly incorporated society providing the documentation made sure that it did. With the present wording the issue is whether, in a particular case, property is vested in a person on trust for the society. That would also depend on the wording of any documentation.

Section 29A now deals with pre-incorporation contracts in the same way as CA 2006.

Section 4 existing societies deemed to be registered

The new consolidating Act needs similar provisions. Compare section 1(1) of Companies Act 2006 for wording.

Note **section 4A** on pre-2010 societies when 2010 Act commenced

Section 5 Name

Note effect of 2010 Act when in force esp re sections 5(1) & 5(5) if Part 5 CA 2006 applied by regulations under s 4(2)(b). That would deal with FSA powers.

Section 5(7) (personal liability on cheques etc when society name incorrect) is out of line with the rules applying to companies under sections 82 to 85 of the CA 2006 and the regulations made under those sections but that would be a change of substance. Under section 2 of the IPSC 2002 regulations could be used by HMT to change this as company law changed 2006.

Section 5A Status of charitable societies to appear on correspondence etc

Inserted by 2003 Act no change needed

Section 6 Maximum shareholding

6(1) now amended by LRO 2011

6(2)-6(4) Repeal as obsolete

Section 7 Carrying on of banking by societies

7(1) was considered in the consultation before the LRO but left unchanged as a result of responses.

7(2) & Sched 2 The combination of CUA 1979, FSMA 2000, and the accounting rules applicable to all societies seem to make this obsolete. It is hard to see any benefit for societies from using this as a society wanting to carry on banking/deposit taking under this section is subject to FSMA 2000 and cannot have withdrawable share capital. Credit unions have their own status under IPSA 1965 due to CUA 1979 and are regulated under FSMA 2000.

7(3) is probably not used by societies due to the low deposit limits and the prohibition on share withdrawals while any deposits are held. Repeal as obsolete.

7(4) Repeal as obsolete

7(5) Repeal as obsolete

7(6) Amend to remove 7(3) reference if 7(3) repealed

Sections 7A to 7F inserted by 2003 Act and bring capacity agency and contracts into line with Company Law pre2006

No Change in the consolidation as changes to align the rules fully with post-2006 Company Law by giving societies unrestricted objects and removing the need to have an objects rule would be substantive and possibly controversial.

Section 8 repealed by FSMA 2000

Section 9 Acknowledgement of registration of rules

OK. No change except language.

Section 10 Amendment of registered rules

No Change. This is a key element of the FSA's power to police registration and protect co-operative identity.

Section 11 Rules as to fund for purchase of government securities

Repeal as obsolete unless CUK aware of societies using this power. Dates from World War II

Section 12 Rules of agricultural, horticultural or forestry society

This allows such societies to make unsecured loans to their members by way of an exception to section 21, which generally allows unsecured loans to members only by a society carrying on a banking business.

Section 13 Supplementary provisions as to rules

13(1) is permissive and harmless if, perhaps, unnecessary.

13(2) & (3) allow fines to be imposed on members and enforced in the magistrates' court. I suspect that this is never used and could be repealed without causing any problems. It is arguably obsolete because, under section 14(1) and section 22 any financial penalty provided for by or in accordance with the rules could be enforced in the civil courts under the contract in the rules. We now have the small claims procedure in the county court for small amounts which is at least as cheap and easy as the magistrates' court.

13(4) should be kept as it makes absolutely clear that societies are free to deal with matters in their rules that are not specifically mentioned in the legislation. This avoids doubt on that matter.

Section 14 Rules to bind members

14(1) is an essential core provision about the legal effect of rules. Section 14 could maybe be brought into line with s 33 of CA 2006 thus:

“(1) Subject to subsection (2) of this section, the registered rules of a society bind the society and its members to the same extent as if there were covenants on the part of the society and of each member to observe those provisions.

(2) A member of a society shall not, without his prior consent in writing, be bound by any amendment to the society's rules registered after he became a member, to the extent that the amendment:

- (a) requires him to take or subscribe for more shares than he held at the date of registration of the amendment; or
- (b) to pay on the shares he already held any sum greater than the amount unpaid on them at that date; or
- (c) in any other way increases the his liability to contribute to the share or loan capital of the society”.

This gets rid of cumbersome wording and obsolete references to pre-1893 or pre-1928 matters.

Section 15 Provision of copies of rules

Amended by LRO. Nothing obsolete.

Section 16 Cancellation of registration of the society

Amendment to s 16 (1)(c)(ii) and insertion of 16(1A) by section 1(3) & (4) of 2010 Act provides new ground for post 2010 societies and transitional provisions for pre-2010 societies

S 16(2) is obsolete as it was a transitional provision for the Prevention of Fraud (Investments) Act 1939 amendments to the 1893 Act. How many societies still fall within it on the basis that “no invitation to subscribe for or to acquire or offer to acquire securities, or to lend or deposit money, has been made on or after [26th July 1938] by or on behalf of the society”? Any society that has issued shares (withdrawable or not) or any form of loan stock or even borrowed from a bank is probably outside the scope of this subsection. Even if some societies still meet that requirement, they have had 73 years to understand the “new” cancellation of registration rules.

Section 17 Suspension of registration of society

OK. No change except language.

Section 18 Appeal from refusal, cancellation or suspension of registration of society or rules

OK. No change except language.

Section 19 Bodies corporate as members of society

OK. No change except language.

Section 20 Members under 21

New version substituted by 2011 LRO. No change.

Section 21 Advances to members

OK. No change except language.

Section 22 Remedy for debts from members

OK. No change except language.

Section 23 Nomination to property in society

23(1) (a) referring to pre-1914 position – repeal – rest OK apart from language

23(3) (a) & (b) similarly obsolete. 23(3)(c) delete reference to date nomination made 23(3) should then read:

“(3) For the purpose of the disposal of any property which is subject to a nomination under subsection (1) of this section, if the amount of the nominator's property in the society comprised in the nomination exceeds £1500 the nomination shall be valid to the extent of £1500 but not further or otherwise”.

The figure should be the one actually current at the time of the consolidating statute which, is £1500 in August 2012 under Administration of Estates (Small Payments) Act 1965 s 2 and sched 2, The Administration of Estates (Small Payments) (Increase of Limit) Order 1975 SI 1975/1137 and the Administration of Estates (Small Payments) (Increase of Limit) Order 1984/539 art 2 Sched 2

23(6) delete “and after 31st December 1913” as obsolete.

Section 24 Proceedings on death of nominator

Delete 24(4) Repealed by Administration of Estates (Small Payments) Act 1965 (c. 32), Sch. 4

Otherwise OK. No change except language.

Section 25 Provision for intestacy

Remove s 25(2) which applies in England and Wales only so as to make the position the same as Scotland It is probably only different to deal with people who died before 1st January 1970 (see art 2 of SI 1969/1149) when section 19(2) of the Family Law Reform Act 1969 came into force (S 19(3) FLRA 1969: “subsection (2) of this section does not affect the operation of the said Act of 1965 in relation to a member of a registered society who dies before the coming into force of the said subsection (2)”) and surely none of their estates are still being dealt with?

Otherwise OK. No change except language.

Section 26 Payments in respect of mentally incapable persons

OK. No change except language.

Section 27 Validity of payment to persons apparently entitled

OK apart from adapting wording to the new consolidating legislation.

Section 28 Promissory notes and bills of exchange

OK. No change except language.

Sections 29 to 29G Contracts and formalities

Section 29 only applies to England and Wales and overlaps with the Corporate Bodies Contracts Act 1960.

Sections 29A to 29F deal with related issues about formalities and were modelled on the pre-2006 Companies Act sections. Section 43 of CA 2006 provides an elegant equivalent to section 29 but does not include the useful presumption about officers' signatures in section 29(2).

The rules about which documents require signature or writing under Scots Law are to be found in section 1 of the Requirements of Writing (Scotland) Act 1995. Section 7(7) and Schedule 2 of that Act deal with the manner in which any signature is to be provided in the case of documents made by corporate bodies. Paragraph 5 of Schedule 2 applies to societies as corporate bodies that are not companies. This is the equivalent of the combined effect in England and Wales of the various common law and statutory rules of Contract Law about when writing or a deed is required as well as of section 29 of IPSCA 1965 and section 1 of the Corporate Bodies Contracts Act 1960.

The Land Registration etc (Scotland) Act 2012 (asp 2012 12) will introduce some changes to this legislation and to section 29D of IPSCA 1965.

Hopefully, consolidation will allow all of these rules to be brought together in one place using modern language.

Section 30 Holding of land

This section confers power to hold land. I have always wondered why it is necessary in modern times as the corporate personality of the society would seem permit that in any event. It immediately derives from section 12 of the IPSA 1876 via section 36 of the 1893 Act and started life in IPSA 1871 (34 & 35 Vict c 80) which, according to Chappenden's text, followed a disagreement between the registrar and societies about the scope of their power to deal with land.

The modern concept of corporate personality seems to confer this power without the need to list it separately. The 1871 Act preceded *Salomon v Salomon & Co* [1897] AC 22 so e.g. CA 2006 sections 15(1) & 16(1)-(3) do not list the powers of companies. Section 5(2) of Building Societies Act 1986, similarly, simply incorporates the society on registration without listing powers, although in the case of building societies, powers are limited elsewhere in the legislation. The purpose of I & P societies is set out in section 1(1). If we can be certain that s30 is redundant it could go.

Section 31 Investments

This may raise the same issue to section 30 – does a society have full power because it is incorporated? The key is the meaning of “any security” and how well society rules extend this as widely as possible. The present position seems to be a general power to invest “in or upon any security” as long as the society's rules specify this and a more limited fall-back list in the section (different for each of England, Wales, and Scotland) unless the rules limit even that. If section 31 were removed would there be general power to invest in anything and hold funds as the society chose? We need to be sure that there would. Maybe the solution is to change the section to a statement of unrestricted power to invest and hold property or assets of any kind unless the society's rules restrict that? I would argue that this is not a change of substance but a way of clearing up the ambiguity of “in or upon any security”.

Section 32 Proxy voting by societies

The relationship between this section and section 323 of CA 2006 would benefit from clarification. Section 32 applies to a society's proxy in any corporate body but section 323 CA 2006 applies only to a proxy in a company meeting. Under s 32 the society's rules decide how the proxy is chosen. Under s323 of CA 2006 a resolution of the society's directors or other governing body decides on the proxy. S 323(2) & (3) change and clarify the pre-2006 Act position on proxies. Maybe s 323 of CA 2006 should apply to society proxies in company meetings and the present s32 to those in meetings of other corporations? That would require a minor change to s32.

Section 33 Discharge of mortgages in England and Wales

OK. No change except language. It clarifies who can do this so that a society's rules don't have to do that.

Section 34 Discharge of securities in Scotland

OK. No change except language. It clarifies who can do this so that a society's rules don't have to do that

Section 35 and Schedule 3 Receipt of moneys secured to a society

OK. No change except language. It clarifies who can do this so that a society's rules don't have to do that and societies operating on a modest scale have a ready drafted document in the Schedule. In theory it may help conveyancers and make the work cheaper.

Sections 36 to 38 repealed

Section 39 to 39B Annual returns

OK. No change except language. Added or amended most recently by 2011 LRO.

Section 40 Display of latest balance sheet

Do subsections 36(6)-(10) inserted by art 23(1) of the Electronics Communications Order SI 2011/593 make this obsolete? Maybe it should be kept for smaller societies which may not have a website?

Section 41 Security by officers

Is this now obsolete? I suspect few societies use it. Implied terms in employment contracts and fiduciary duties in Equity probably cover the ground – not to mention aspects of Tort and Criminal Law.

Section 42 Duty of officers of society to account

While apparently rather old fashioned this is a very useful power as it allows for a fast first instance judgment in the county court without any right of appeal.

Section 43 Duties of receiver or manager of society's property

OK. No change except language.

Section 44 Register of members and officers

OK. No change except language.

Section 45 Restriction on inspection of books

OK. No change except language

Section 46 Inspection of books by members etc.

OK. No change except language

Section 47 Inspection of books by order of registrar (sic)

Subject to hopes for an early SI under section 4(2)(a) of the 2010 Act to apply the relevant Companies Act powers in place of ss 47 – 49, this text and those of ss 48 & 49 are OK & need no change except language and replacing “registrar” with “authority” in the heading.

Section 48 Production of documents and provision of information for certain purposes

See s 47 comment.

Section 49 Appointment of inspectors and calling of special meetings

See s 47 comment.

Section 50 Amalgamation of societies

OK. No change except language

Section 51 Transfer of engagements between societies

OK. No change except language

Section 52 Conversion into, amalgamation with, or transfer of engagements to company

OK. No change except language. Not amendments by section 1 of 2002 Act

Section 53 Conversion of company into registered society

In 53(1) change may be desirable to avoid any ambiguity or uncertainty now that post the 2011 LRO the maximum share limit applies only to withdrawable shares. Otherwise, OK & no change needed except language.

Section 54 Saving for rights of creditors

Wise to keep this. So, OK & no change needed except language.

Section 55 Dissolution of society

OK pending the much needed SI to reform the application of insolvency law to societies under section 255 of the Enterprise Act 2002. Note this judicial comment:

“Section 255 of the Enterprise Act 2002 makes provision for the Treasury, with the concurrence of the Secretary of State, by order to provide for the provisions of Part II of the 1986 Act to apply to societies registered under IPSA 1965 but no such order has yet been made. Accordingly, although administration is the form of insolvency process now generally favoured by Parliament and the ‘rescue culture’ which it seeks to promote, it is not available to an IPS.” Henderson J - *Re Dairy Farmers of Britain Ltd* [2010] Ch 63 at page 66.

NI Statutory Rules 2008/445 applied administration to the Presbyterian Mutual Society in Northern Ireland as a “one off”.

Section 56 Power of registrar to petition for winding up

This could be repealed. The section allows for a winding up petition to deal with societies already registered before the changes introduced by the Prevention of Fraud (Investments) Act 1939 were introduced. It was aimed at those which carried out some of the activities that the 1939 Act was aimed at i.e. investment activities with investors being given less information than required by the company prospectus provisions in force at that time. In the unlikely event that a society that has been registered for so long engages in activity making winding up desirable in the interests of depositors or investors, the FSA could deal with that issue under its FSMA 2000 powers. Section 16 allows the cancellation of the registration of any society for non-compliance with section 1 of the 1965 Act and, without this section, would apply to a society whenever it was registered.

Section 57 Liability of members in winding up.

OK. No change except language

Section 58 Instrument of Dissolution

OK with the LRO 2011 changes. No change except language

Section 59 Restriction on dissolution or cancellation of registration of society

OK. No change except language. This provision should avoid expensive and troublesome litigation if it is applied by the FSA.

Section 60 Decision of disputes

It is useful to have provision for decisions by lower courts but do we now need both magistrates/justices' court and county court/sheriff? Could we restrict this to the county court/sheriff even where rules specify the magistrates' court (s 60(4))? It is important to limit the right of appeal as 60(3) does in “arbitration” style cases (See also comment on section 42). Is the right to “state a case” under 60(7) desirable if the magistrates/justices are no longer involved? Would it not be better to leave it to the county court (or Sheriff) with the possibility of judicial review in an extreme case of procedural irregularity or the like?

Section 61 General offences by societies etc.

OK. No change except language. Compare s 1112 of CA 2006 for modernised language.

Section 62 Offences by societies to be also offences by officers, etc.

The relationship between this section and sections 1121, 1123(1) & (2) when read with 1173(1) of CA 2006 should be clarified. Are they cumulative in imposing liability where they do not operate in the same way?

Section 63 Continuing offences

OK. No change except language

Section 64 Punishment of fraud and misappropriation

This is a very useful additional remedy in addition to those available under the general criminal and civil law. Section 66 provides that this can be used by the society or the FSA.

Section 65 Penalty for falsification

OK. No change except language.

Section 66 Institution of proceedings

OK. No change except language.

Section 67 Recovery of costs etc.

OK. No change except language.

Section 68 Service of process

How does this fit with Part 6 of the Civil Procedure Rules? See

<http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06>

Posting on the outer door of the office seems a bit obsolete?

Section 69 Remuneration of county court registrars

OK from our point of view.

Section 70 repealed by FSMA 2000 and replaced by**Section 70A Fees for inspection or copying of documents**

OK.

Section 71 repealed by Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/3649**Section 72 Form, deposit and evidence of documents**

OK mainly about validity of FSA documents etc.

Section 72A Form etc. of electronic documents sent to the Authority

Facilitates electronic communication with the FSA under SI 2011/593

Section 73 repealed by SI 2001/2617**Section 74 Interpretation – general**

The consolidation act will need its own interpretation section but many of these definitions will carry over to that.

Section 74A Meaning of “electronic form”, “by electronic means” etc

Inserted by SI 2011/593 and can be consolidated

Section 75 Channel Islands

OK. This allows adaptation of Act for application to the CI's by Order in Council. That was done by SI 1965/2165

Section 76 Northern Ireland societies

This applies some sections of the Act to those societies registered in Northern Ireland that record their rules in Great Britain. Presumably the consolidating act will have some equivalent provision.

Section 77 Repeals and savings

The consolidating act will need an equivalent provision in modern form.

Section 78 Short title extent and commencement

A standard provision. For commencement this Act see SI 1965/2051. Note effect of s 2 of the 2010 act when it is in force.

Schedule 1 Matters to be Provided for in Society's Rules

A key registration and regulatory provision. The new Act will need an equivalent. It is important to bear in mind that the Schedule, with section 1, allows the FSA to protect co-operative and bencom identity.

The way the language is updated will have to be considered carefully to ensure that the current scope of some of the paragraphs is not narrowed unintentionally. Section 1(b) makes it clear that the rules just need to provide for these things and that the way that is done is for the society to choose subject to the FSA's role in deciding whether or not the rules as submitted meet the conditions for registration as either a co-operative or a bencom.

For example, the word "mode" which appears in paragraphs 5 and 12 is applied to holding meetings, making altering or rescinding rules (para 5), and the application of profits (para 9). In the first case it presumably includes, for meetings: the notice; quorum; procedure during the meeting; and voting methods (but "scale and right of voting" are separately mentioned) as well as provision for Standing Orders to govern some of these things in more detail. For rules it clearly includes majorities (or is that "scale and right of voting"?) but also who may propose a new rule or a change, or rescission of existing rules e.g. just the board or a certain number of members. Presumably the notice required and the way amendments to the proposals are dealt with falls within the mode of holding meetings. In practice societies sometimes have serial meetings at different venues or delegate meetings etc. In the case of profits "mode of application" presumably means how they are distributed and whether or not they can be distributed at all in addition to who decides this and how they decide it. It may be that the Victorian wording, although it sounds archaic, actually covers a lot of ground economically and without imposing unnecessary restrictions.

The word "determination" is similarly widely used in paras 7, 8, 9, 11 & 14 and certainly includes a rule which lays this down and a rule that lays down how it is to be decided and within what limits.

Para 9 raises a n important issue now that non-withdrawable shares are not subject to a maximum holding limit. It reads as if committee consent is required for every transfer of any shares that are transferable without indicating that the committee may lay down a policy to be implemented by an employee or officer. If the committee itself has to approve every transaction, this limits the scope for societies to use transferable shares. If the committee just has to develop a policy, or can even delegate the decisions in all cases, that makes it easier to issue these shares on a greater scale. A transfer is probably the

only available form of exit for a holder of non-withdrawable shares since the society is probably not allowed to buy back or redeem its own non-withdrawable shares. That means that the new wording of this paragraph is of great importance.

Schedule 2 Form of statement by Society Carrying on Banking

See comment on section 7(2) suggesting the removal of this.

Schedule 3 Form of Receipt on Mortgage heritable Security etc.

OK but could be updated and checked against current land Law rules.

Schedule 4 Forms of Bond for Officers of Society

Seems a shame to dispose of “Know all men by these presents.....” (maybe persons rather than men?) and “Whereas.....” but, as suggested re section 41, the idea of these bonds is probably wholly obsolete and even if the idea were kept the wording could, I'm sure, be modernised.

Schedule 5 Repealed

2. Industrial and Provident Societies Act 1967

This short Act allows societies to grant floating charges and is therefore very important. Its provisions can be incorporated in a consolidating act with appropriate changes of wording.

The Short Title of the Act will change to the Co-operative and Community Benefit Societies and Credit Unions Act 1967 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Section 1 Charges on assets of English and Welsh societies

OK. No change except language.

Section 2 Application of Part I

2(1) OK subject to appropriate changes of language. The change to apply the administration procedure to societies in place of administrative receivership (see note to section 55 of the 1965 Act) would be substantive and the fact that receivers of societies are not administrative receivers would complicate such a change – see *Re Dairy Farmers of Britain Ltd* [2010] Ch 63

Section 14 of the Agricultural Credits Act 1928, referred to in subsection 2(2), is still in force.

Sections 3 to 6 Apply to Scotland and were amended in 1985 to plug the loophole about the use of contractual receivership to enforce floating charges granted by Scottish societies. Further detailed amendments will apply when the Bankruptcy and Diligence etc (Scotland) Act 2007 asp is brought into force.

Sections 7 and 8 raise no issues

Schedule 1 makes modifications to the Scottish legislation on floating charges in its application to societies.

The greater size and complexity of Part 2 of this Act is due to the statutory basis of the floating charge as a form of security in Scots Law. In England and Wales the device was a creation of case law and the 1967 Act was needed only to ensure that the Bills of Exchange Act did not apply to society charges and to set up a registration system.

3. Friendly and Industrial and Provident Societies Act 1968

This Act deals with accounts and audit requirements for societies and has been extensively amended over the years. Its provisions can be incorporated in a consolidating act with appropriate changes of wording and that will be a major improvement to the accessibility of the law governing societies.

The Short Title of the Act will change to the Co-operative and Community Benefit Societies and Credit Unions Act 1968 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Section 1 Books of account, etc.

This section imposes the core accounting obligation on societies and applies the “true and fair view” accounting test. No change except language.

Section 2 Form in which books of account may be kept.

No issues.

Section 3 General provisions as to accounts and balance sheets of societies

Extensive repeals to this section mainly to remove references to friendly societies.

Section 3A Publication of accounts and balance sheets of societies

This section was added by the 1996 Deregulation Order to bring societies into line with the rules that then applied to companies and permitted. A new subsection 6A was added by the 2011 LRO SI 2011/2687 to remove the need for interim accounts to be audited. Further change is needed to bring societies wholly into line with company rules but that would be a change of substance.

Section 4 Obligation to appoint auditors

Although sub sections 4(2) to 4(8) appear to be obsolete as the figures for an exempt society are radically out of date and section 4A (below) is more useful, presumably even the £5000 turnover and asset total limit are useful to some very small societies. While an increase in the figures would be useful, they are a change of substance. However, repeal of these subsections as obsolete should be resisted.

Section 4A Power of societies to disapply section 4

This provision was inserted by the 1996 Deregulation Order to bring societies into line with the rules that then applied to companies. It was amended in 2006 by SI 2006/265, which was made under the Thomas power in the IPSCA 2002, to apply the company thresholds and remove the need for an accountant’s report. However, since 2008 the threshold figures have again become obsolete as the current figures for small (private) companies

are a turnover of £6.5 million and a balance sheet total of £3.26 million (CA 2006 sections 382 and 477 as amended by SI 2008/393). The current figures for societies are £5.6 million turnover and £2.8 million asset value. However, this is probably a substantive amendment.

Section 5 Re-appointment and removal of qualified auditors

No issues.

Section 6 Provisions as to resolutions relating to appointment and removal of auditors

Subsections 6(7A) to 6(7D) were inserted by the Electronic Communications Order SI 2011/293. No other issues.

Section 7 Qualified auditors

The reference to Part 42 of CA 2006 as defining the concept of a “qualified auditor” under the I & P legislation is elegant and can probably be carried on. Section 1209(a) and 1211 of CA 2006 and Chapters 2 and 3 of Part 42 of CA 2006 seem to be the only parts of Part 42 about who is “eligible for appointment” applied to societies by section 7 (above). Although many of the sections dealing with third country auditors and the relationship between the secretary of state and the accounting bodies seem to be applicable, sections 1248 and 1249 on “second audits” apply only to companies and section 8 below gives an equivalent to the “independence” requirement dealt with in section 1214 of CA 2006.

The issue for the consolidation is whether all of this detail should be spelt out explicitly in the new Act to avoid the doubt and complexity arising from the need to deal with the reference to Part 42 of the 2006 Act. That could be done by stating which sections from Part 42 apply to society auditors and which do not.

Section 8 Restrictions on appointment of auditors

Section 8 deals with the version of the “independence” requirement applicable to societies and only applies section 1214 of CA 2006 to subsidiary companies of societies. This seems to be because section 1210(1) does not list I & P societies as being subject to a “statutory audit” under Part 42 of CA 2006.

Section 9 Auditors' report and right of access to books and to attend and be heard at meetings.

No issues.

Section 9A Duty to obtain accountant's reports where section 4 disappplied

This provision is obsolete as not such obligation now applies to companies which either have to have a full audit or are exempt from that. The requirement to have an accountant's report if the society's turnover is more than £90,000 but section 4A otherwise applies reflects the position of companies at the time of the 1996 Deregulation Order. However, change would presumably be a matter of substance and so not possible on consolidation under the 1949 Act.

Section 9B Rights of person appointed under section 9A(2)

Supplements section 9A

Section 9C Registrar's power to require accounts for past years to be audited.

Supplements section 9A by dealing with change of circumstances making an audit necessary.

Section 10 Remuneration of qualified auditors

This may be obsolete. No regulations seem to have been made under the section?

Section 11 Amendments relating to the annual returns of societies

The whole amended text of this section should be consolidated with section 39 of IPSA 1965.

Section 12 Consequential amendments of rules by societies.

This section can be repealed as it applied only to the transition period after the 1968 Act and the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993 came into force. However, it may be a model to be borne in mind for any amendments urgently needed to society rules as a result of the consolidation legislation. It empowers the committee to make the amendments and ensures that the FSA will not register further rule amendments until the society's rules have been brought into line with the legislation's requirements.

Section 13 Group accounts requirements of industrial and provident societies

No issues except that new Group Account Regulations will need to be issued under the new consolidated provision in place of SI 1969/1037.

Section 14 Exemption from requirements in respect of group accounts

No issues.

Section 14A Form etc. of electronic documents sent to the Authority

No issues except that only one such provision will be needed in the single consolidating Act

Section 15 Meaning of subsidiary

No issues, assuming that the interface between this definition and the definitions in sections 1159 to 1162 of CA 2006 is not a matter within the remit of the consolidation process. Societies are affected by those definitions for the purpose of Companies Act accounts as they are "undertakings" under sections 1161-1162. This is part of a wider question about the relationship between the accounting rules applied by the F&IPSA 1968 and those applicable under Companies Act 2006 – especially for large societies with complex Group structures.

Sections 16 & 17 Repealed

Section 18 Offences

No issues – part of general provision in consolidating Act

Section 19 Regulations

No issues – part of general provision in consolidating Act

Section 20 Minor and consequential amendments, repeals and transitional provisions

No issues – part of general provision in consolidating Act

Section 21 Interpretation

No issues – part of general provision in consolidating Act

Section 22 Channel Islands and Isle of Man

No issues – part of general provision in consolidating Act. CI's SI 1968/2031

Section 23 Short title, citation, construction and extent

No issues – part of general provision in consolidating Act

Schedule 1 Amendments

All either repealed or incorporated in other legislation

Schedule 2 applied to friendly societies and was repealed in 1974

Schedule 3 Transitional Provisions and relationship to other IPS legislation

No issues – part of general provision in consolidating Act

4. Industrial and Provident Societies Act 1975

The Short Title of the Act will change to the Co-operative and Community Benefit Societies Act 1975 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Increased share capital holding limit and gave power to committees to amend rules within limited time of Act coming into force as well as inserting power for HMT to raise limit by order. See SI 1994/341

No issues

5. Industrial Common Ownership Act 1976

The Short Title of the Act will change to the Co-operative and Community Benefit Societies Act 1968 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Sections 2 and 3 of this Act remain and allow for the certification of some companies and societies as common ownership or co-operative enterprises. Section 2 needs to be changed to refer to the FSA as it still refers to the RFS.

This may not be within the scope of the consolidation as it is not an industrial and provident societies Act. It is useful as it provides a definition and certification mechanism to identify a particular type of employee controlled body. That could be useful if a future government wanted to provide some financial or other benefit to such enterprises. The original grant and loan making power under section 1 of the Act was repealed in 2004 by the Statute Law Repeals Act of that year as being redundant.

6. Industrial and Provident Societies Act 1978

The Short Title of the Act will change to the Co-operative and Community Benefit Societies Act 1978 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Probably one for complete repeal if we think the section 7 deposit taking power under the 1965 Act is useless and obsolete. It is modelled on the 1975 Act and raises the deposit taking limit, allows society committees to amend rules on that issue within a limited time and inserts a power to raise the 1965 Act limit by order.

See SI 1981/394

7. Credit Unions Act 1979

There will be consequential amendments to this Act although it is not part of the consolidation project. However, I have not gone through it at this stage.

8. Deregulation (Industrial and Provident Societies) Order 1996 SI 1996/1738

This SI consisted entirely of amendments to legislation and all of its provisions have been taken into account above.

9. Financial Services and Markets Act 2000 (Mutual Societies) Order 2001 SI 2001/2617

This mammoth Order transferred the functions of registration from RFS to FSA and made many consequential amendments to the legislation. No other comment is necessary but **see my brief comment (below) on the Financial Services Bill 2012 and the Draft Order** to transfer the mutual society functions again in 2013 to either the Financial Conduct Authority or the Prudential regulation authority or a combination of the two.

10. Industrial and Provident Societies Act 2002

The Short Title of the Act will change to the Co-operative and Community Benefit Societies and Credit Unions Act 2002 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Section 1 amended section 52 of the 1965 Act and has been dealt with above.

Section 2 Power to modify etc to assimilate to company law

This needs to be included in the consolidated Act with suitable change to the list of excluded sections which cannot be modified using the power. This general power looks ahead to future possible modifications of company law at any time.

In the consolidated Act, it also needs to be related to the specific power in section 4 of the 2010 Act (not yet in force) to apply to societies Parts 14 & 15 of CA 1985 and Parts 5 and 31 of CA 2006 and the power in section 255 of the Enterprise Act 2002 to apply the administration procedure to societies. Ideally all of these powers would either be exercised by HMT at the time of the consolidation and as part of it or have already been exercised in advance of the passage of the Consolidation Bill. However, if it is not certain that HMT will do have used its powers by the time the Consolidating Bill passes, it is important to retain these specific powers in the consolidated Act so that these things can be done as soon as possible afterwards.

Section 3 Channel Islands

This Act has not yet been extended to the CI's.

11. Co-operatives and Community Benefit Societies Act 2003

The Short Title of the Act will change to the Co-operative and Community Benefit Societies and Credit Unions Act 2002 when section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 comes into effect.

Section 1 Community benefit societies: power to restrict use of assets

It would be very useful if this power could be extended to apply to co-operatives as well. However, this may be regarded as a substantive change and so not possible on consolidation. In any event this section needs to be carried over into the consolidating Act and The Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 SI 2006/264 also needs to be continued.

Otherwise, subject to **my note below on SI 2006/264**, this provision is OK.

Sections 2 to 5 Amendments incorporated to IPSA 1965 (above)

Sections 6 – 7 No issues

Section 8 Channel Islands

This Act has not yet been extended to the CI's.

Section 9 Short Title and Extent

See above re effect of 2010 Act

12. The Community Benefit Societies (Restrictions on Use of Assets) Regulations 2006 SI 2006/264

An amendment is needed to clarify the effect of the “asset lock” restriction on non-withdrawable share capital. This takes on greater importance since the 2011 LRO relaxed the maximum limit for this type of share capital. It may also be relevant for Community Shares if societies use them with an asset lock. It makes the asset locked society less attractive than a CIC.

In both the regulation laying down the restriction and the mandatory rule to be used by a society which adopts the lock, there is no express provision for the payment of interest on non-withdrawable shares or for the return of share capital on the solvent dissolution of the society – regulations 2 & 6 and Schedule 1 of SI 2006/264. The problem is that both the regulation and the mandatory rule expressly provide for the payment of creditors on dissolution or winding up and the repayment of withdrawable share capital and the payment of interest on it. Does this imply that a similar specific item would be required to permit the payment of interest on other shares and the repayment of that share capital on winding up?

Another view would be that under section 1(2)(a) of the 2003 Act and paragraph 1 part (2)(a) of SI 2006/264 the payment of limited interest on non-withdrawable shares and the repayment of share capital as part of a winding up can be justified as a “use or dealing [that] is directly or indirectly for a purpose that is for the benefit of the community”. It is easy to argue that case on the basis that if share capital cannot be repaid or earn even limited interest it will be impossible to raise it.

However, the presence of the express authorisation to pay interest on withdrawable share capital and to repay it to members could show a legislative intent to exclude interest payments or repayment (even on winding up) of other forms of share capital. The status of section 1(2)(a) in the primary legislation while the detailed list is only in an SI may help with the community benefit argument. The provisions of the Insolvency Act 1986, applied to a winding up through section 55 of the 1965 Act, may also help to resolve the repayment issue. But clarification by amendment of the SI would be helpful.

The regulations required that the exact wording of the regulation is repeated in the rules of a society for the asset lock to apply, it has caused some confusion as to the situation when this is not the case. Clarity on the intension required would be helpful.

13. Building Societies (Funding) and Mutual Societies (Transfers) Act 2007

Sections 1 and 2 relate to Building Societies
Section 3 Transfers to subsidiaries of other mutuals

14. The Mutual Societies (Transfers) Order 2009 SI 2009/509 is the only order so far made under this provision and it dealt only with the whole of the business of a building society registered under the Building Societies Act 1986 (BSA 1986) to a subsidiary of another mutual society. It was used to facilitate the transfer of the Britannia

Building Society to the Co-operative Bank PLC. To do so it applied (with appropriate modifications) relevant parts of the BSA 1986, relevant regulations applicable the building societies and this Act to such transactions.

Article 19 of SI 2009/509 provides a definition of an EEA mutual society for the purposes of this section of the 2007 Act

Section 4 Transfers to subsidiaries: distribution of funds

Allows regs to deal with this issue. This was done in SI 2009/509.

Section 5 Channel Islands and Isle of Man

This Act has not yet been extended to the CI's or IOM.

Section 6 Short title, commencement and extent

This Act applies to the whole UK and not just GB.

15. The Mutual Societies (Transfers of Business) (Tax) Regulations 2009 SI 2009/2971 and The Mutual Societies (Transfers of Business) (Tax) (Amendment) Regulations 2011 SI 2011/37

May need consequential amendments as part of the consolidation process.

16. Co-operative and Community Benefit Societies and Credit Unions Act 2010

There is presumably a question of whether this Act will come into force before being incorporated in a consolidating Act which will supersede it.

17. The Mutual Societies (Electronic Communications) Order 2011 SI 2011/593

This Order is made under sections 8 and 9 of the Electronic Communications Act 2000

Articles 1 & 22 to 28 apply to industrial and provident societies. Other parts of the Order apply only to building societies or friendly societies.

Article 1 Citation, commencement and interpretation

No issues

Articles 22 to 28 amend the 1965 and 1968 Acts

They are dealt with above and raise no issues.

18. Financial Services Bill 2012

http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0025/lbill_2012-20130025_en_1.htm

19. The Financial Services Act 201* (Mutual Societies) Order 201*

http://www.hm-treasury.gov.uk/d/fin_fs_bill_draft_si_mutuals_transfer_order_jan2012.pdf

The progress of this legislation will have to be monitored so that the transfer of registration functions from the FSA to FCA in 2013 or later is fully taken into account in the consolidation process.

Submitted by Co-operatives UK

Prepared by Ian Snaith, Cobbetts LLP with comments from Helen Barber, Co-operatives UK and Sarah Marshall, Co-operative Group.

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