
STATUTORY INSTRUMENTS

2020 No. 744

**CO-OPERATIVE SOCIETIES
COMMUNITY BENEFIT SOCIETIES
CREDIT UNIONS**

The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020

<i>Made</i>	- - - -	<i>16th July 2020</i>
<i>Laid before Parliament</i>		<i>17th July 2020</i>
<i>Coming into force</i>	- -	<i>18th July 2020</i>

The Treasury make the following Order in exercise of the powers conferred on them by sections 118 and 147 of the Co-operative and Community Benefit Societies Act 2014⁽¹⁾ (“the 2014 Act”) and section 47 of, and paragraph 92 of Schedule 4 to, the Corporate Insolvency and Governance Act 2020⁽²⁾ (“the 2020 Act”) and the Secretary of State makes the following Order in exercise of the power conferred under section 49(2) of the 2020 Act.

The Secretary of State concurs in relation to the making of this Order under sections 118 and 147 of the 2014 Act and paragraph 92 of Schedule 4 to the 2020 Act.

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1. This Order may be cited as the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020, and comes into force on 18th July 2020.

(1) 2014 c. 14.
(2) 2020 c. 12.

2. In this Order “the 2014 Order” means the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014(3).

PART 2

Commencement of provision of the Corporate Insolvency and Governance Act 2020

Commencement of paragraph 51 of Schedule 3 to the Corporate Insolvency and Governance Act 2020

3. Paragraph 51 of Schedule 3 to the Corporate Insolvency and Governance Act 2020 comes into force on 18th July 2020.

PART 3

Amendment of the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014

Amendment of the 2014 Order by revocation of provision in the Corporate Insolvency and Governance Act 2020

4. In the Corporate Insolvency and Governance Act 2020, in Schedule 3 paragraph 54 is revoked.

Amendment of the 2014 Order

5. The 2014 Order is amended in accordance with the following articles.

Amendment of Article 1

6. In Article 1(2), at the appropriate place insert—

““relevant CCBS” means a co-operative society or community benefit society, that is registered under the 2014 Act but not a society that is—

- (a) registered as a social landlord under Part 1 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 2010; or
- (b) a credit union within the meaning of section 31(1) of the Credit Unions Act 1979.”.

Amendment of Article 2

7. In Article 2—

(a) in the title—

(i) after “relevant societies” insert “and relevant CCBS”;

(ii) for “and administration” substitute “, administration and moratoriums”;

(b) at the beginning insert—

“(A1) Part A1 of the 1986 Act (moratorium) applies in relation to relevant CCBS with the modifications set out in paragraph 1(2) of Part 1, and Part 1A, of Schedule 1”;

(c) after paragraph (3) insert—

“(4) Part 26A of the 2006 Act (arrangements and reconstructions: companies in financial difficulty) applies in relation to a relevant society with the modifications set out in Schedule 2A.

(5) Schedule 4 to the Corporate Insolvency and Governance Act 2020 (moratoriums in Great Britain: temporary provision) applies in relation to relevant CCBS with the modification set out in Part 4 of Schedule 4.”.

Amendment of Article 4

8. In Article 4, before “Part 1 or Part 2” insert “Part A1,”.

New Article 5A

9. After Article 5 insert—

“Application of sections 355A and 355B of FSMA

5A.—(1) Sections 355A (powers of FCA and PRA to participate in proceedings) and 355B (enforcement of requirements imposed by section 355A) of FSMA apply in relation to a relevant society which meets the criteria in section 355A(1).

(2) For that purpose, in sections 355A and 355B a reference to a company is a reference to a relevant society of a kind specified in paragraph (1).”.

Amendment of Article 11

10. In Article 11, after paragraph (5) insert—

“(6) Part 3 of Schedule 4 (moratoriums in Great Britain: temporary provision) to the Corporate Insolvency and Governance Act 2020 apply where—

(a) it is intended to make, and there is made, a proposal to a relevant CCBS and its creditors for a moratorium under Part A1 of the 1986 Act (as applied in relation to a relevant CCBS); and

(b) either—

(i) the courts in England and Wales have jurisdiction to wind up the society; or

(ii) a sheriff court in Scotland has jurisdiction to wind up the society.”

Amendment of Schedule 1

11. In Schedule 1—

(a) paragraph 1 becomes paragraph 1—(1);

(b) after subparagraph (1) of paragraph (1) insert—

“(2) Unless the context otherwise requires and subject to any further modification in this Schedule, in Part A1 of the 1986 Act, subparagraph (1) of this paragraph applies as if “relevant CCBS” was substituted for “relevant society” in each place it appears.”;

(c) after paragraph 1 insert—

“PART 1A

Modified application of Part A1 of the Insolvency Act 1986 to Co-operative and Community Benefit Societies (further modifications)

1A. Part A1 of the 1986 Act (moratorium) applies in relation to a relevant CCBS with the further modifications set out in this Part and with any other necessary modification.

1B. Section A5 (obtaining a moratorium for other overseas companies) is omitted.

1C. Section A20 (restrictions on insolvency proceedings etc) has effect as if after subsection (3) there were inserted—

“(4) In subsection (1)(h) “administrative receiver” in relation to a relevant CCBS means—

- (a) a receiver or manager of the whole “or substantially the whole” of the society’s property appointed by or on behalf of the holder of a floating charge, or
- (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the society’s property.”.

1D. Section A28 (restrictions on payment of certain pre-moratorium debts) has effect as if after subsection (1) there were inserted—

“(1A) During a moratorium, withdrawal of shares from the relevant CCBS is prohibited.”

1E. Section A35 (monitoring) has effect as if after subsection (2) there were inserted—

“(3) In carrying out its functions under this chapter the monitor must have regard to the rules of the relevant CCBS and the obligations of the relevant CCBS under the Co-operative and Community Benefit Societies Act 2014.”.

1F. Section A48 of the 1986 Act (prosecution of delinquent officers of company) has effect as if—

- (a) in subsection (3), in the definition of “the appropriate authority”—
 - (i) at the end of paragraph (a) there were added “or the Financial Conduct Authority (“the FCA”);
 - (ii) at the end of each of paragraph (b) and paragraph (c)(i), (ii) and (iv) there were added “or the FCA”; and
 - (iii) in paragraph (c)(iii), after “Lord Advocate” there were inserted “or the FCA”;
- (b) for subsection (4) there were substituted—

“(4) Subsection (4A) applies where a report is made to the Secretary of State or the FCA under subsection (2) in relation to a relevant CCBS whose registered office is situated in England and Wales.

(4A) The Secretary of State or the FCA may, for the purpose of investigating the matter reported and such other matters relating

to the CCBS affairs as appear to require investigation, exercise the power to appoint inspectors which would be exercisable by the FCA under section 106 of the Co-operative and Community Benefit Societies Act 2014 upon an application made for that purpose under subsection (1) of that section.”;

- (c) subsections (5) to (8) were omitted; and
- (d) in subsection (10), for the definition of “prosecuting authority” there were substituted—

““prosecuting authority” means—

- (a) in the case of a relevant CCBS whose registered office is situated in England and Wales, the Director of Public Prosecutions, the Secretary of State or the FCA; and
- (b) in the case of a relevant society whose registered office is situated in Scotland, the Lord Advocate.”.

1G. Chapter 8 of Part A1 of the 1986 Act (miscellaneous and general) has effect as if before section A49 there were inserted—

“**A48A.** This Part has effect as if it required any proposal under it to be framed so as to enable a relevant CCBS to comply with the rules of the society and the provisions of the 2014 Act.”.

1H. Section A50 (power to modify this Part etc in relation to certain companies) is omitted.

1I. Section A54 has effect as if—

- (a) in subsection (1), after the definition of “qualified person” there were inserted—

““CCBS” means a co-operative society or community benefit society that is registered under the 2014 Act but not a society that is—

- (a) a private registered provider of social housing;
- (b) registered as a social landlord under Part 1 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 2010; or
- (c) a credit union within the meaning of section 31(1) of the Credit Unions Act 1979”;

- (b) after subsection (3) there were inserted—

“(3A) In this Part a reference to a floating charge, in relation to a relevant society—

- (a) whose registered office is situated in England or Wales, is a reference to a floating charge which is either—
 - (i) a charge in respect of which an application has been made for the purposes of section 59 of the Co-operative and Community Benefit Societies Act 2014; or
 - (ii) created by a debenture registered under section 9 of the Agricultural Credits Act 1928 as applied by section 14 of that Act;

- (b) whose registered office is situated in Scotland, is a reference to a floating charge which is either—
 - (i) a charge created by an instrument a copy of which has been delivered to the Financial Conduct Authority in pursuance of section 63 of the Co-operative Benefit Societies Act 2014; or
 - (ii) created and registered under Part 2 of the Agricultural Credits (Scotland) Act 1929.”.

1J. Section A55 is omitted.

1K. Schedule ZA1 has effect as if—

- (a) in paragraph 15—
 - (i) in subparagraph (2)(e) for “holding company” there were substituted “parent society”; and
 - (ii) after subparagraph (4) there were inserted—
 - “(5) For the purposes of this paragraph a “parent society” is a society in relation to which another society is treated as a subsidiary society within the meaning of section 101 of the Co-operative and Community Benefit Societies Act 2014.”;
- (b) paragraph 18 were omitted.”;
- (d) in paragraph 3A omit “, and Schedule A1 to,”;
- (e) omit paragraphs 6 to 8.

New Schedule 2A

12. After Schedule 2 insert—

“Schedule 2A

Article 2(4)

Modified application of Part 26A of the Companies Act 2006 to relevant societies

1. Unless the context otherwise requires and subject to any further modification in this Schedule, in Part 26A of the 2006 Act—

- (a) a reference to the articles of a company is a reference to the rules of a relevant society;
- (b) a reference to a class of members is to be ignored;
- (c) a reference to a company includes a reference to a relevant society;
- (d) a reference to a company’s creditors does not include a reference to a member of a relevant society to whom an amount is owed by the society if, but only in so far as, the amount concerned is owed in respect of the member’s shares;
- (e) a reference to the directors of a company is a reference to the members of the committee of a relevant society;
- (f) a reference to a member of a company is a reference to a person whose name is entered a member in the register kept by a relevant society in accordance with section 30(1) of the 2014 Act;
- (g) a reference to an officer of a company is a reference to an officer of a relevant society; and

- (h) a reference to the registrar is a reference to the FCA in its capacity as the authority responsible for the registration of a relevant society under the 2014 Act.
2. Part 26A of the 2006 Act applies in relation to a relevant society with the further modifications set out in the following paragraphs of this Schedule and with any other necessary modification.
3. Section 901A (application of this part) subsection (4) has effect as if after the definition of “company” there were inserted—
- ““relevant society” means a registered society (within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014) which is not—
- (a) a private registered provider of social housing; or
 - (b) registered as a social landlord under Part 1 of the Housing Act 1996 or under Part 2 of the Housing (Scotland) Act 2010.”.
4. Section 901B is omitted.
5. Section 901F (court sanction for compromise or arrangement) has effect as if—
- (a) in subsection (1) the reference to a number representing 75% in value of the members present and voting at the meeting summoned under section 901C were a reference to 75% of the members of a relevant society present and voting at that meeting; and
 - (b) in subsection (5)(b) the reference to contributories had the same meaning as it has in relation to a relevant society in the 1986 Act.
6. Section 901I is omitted.
7. Section 901J (powers of court to facilitate reconstruction or amalgamation) has effect as if after subsection (4) there were inserted—
- “(4A) Subsection (4B) applies where a compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstructions of a relevant society or the amalgamation of a relevant society with any other relevant society or any company.
- (4B) An order under this section may only be made with respect to the compromise or arrangement if the Financial Conduct Authority—
- (a) is satisfied that the compromise or arrangement is not contrary to the rules of the society or the provisions of the 2014 Act or the Credit Unions Act 1979; and
 - (b) has issued a statement to that effect.”.
8. In section 901K (obligations of company with respect to articles etc) has effect as if after subsection (1) there were inserted—
- “(1A) Where, in the case of a relevant society, the compromise or arrangement includes provision for amending the society’s rules, the order may be made only if the Financial Conduct Authority has issued a statement to the effect that it would register an amendment in the terms proposed if copies were given to it for registration in accordance with section 16 of the Co-operative and Community Benefit Societies Act 2014.
- (1B) Subsection (1A) does not apply if the intended effect of the compromise or arrangement is that the society will cease to be registered under that Act.”.
9. Section 901L is omitted.
10. Where a copy of any order or other document is delivered to the FCA under section 901F(6), 901J(6) or 901K(2) (in each case as applied in relation to a relevant society by article 2(4)), that provision also has effect as if it required the document to be delivered—

- (a) in the case of a relevant society which is or has been an authorised person but not a PRA-authorised person, also to the FCA in its capacity as the society’s regulator;
- (b) in the case of a relevant society which is or has been a PRA-authorised person, also to the Prudential Regulation Authority;
- (c) in the case of a relevant society which is a relevant person, also to the scheme manager.

11. In paragraph (10)—

- (a) “PRA-authorised person” has the meaning given in section 2B(5) of FSMA;
- (b) “regulator” has the meaning given in section 3A of FSMA; and
- (c) “the scheme manager” means the body corporate established by the Financial Services Authority under section 212 of FSMA (the manager of the Financial Services Compensation Scheme) as originally enacted.”

Amendment of Schedule 4

13. In Schedule 4—

- (a) in paragraph 1, in the definition of “applied provisions”, after subparagraph (b) insert—
 - “(c) in Part 4, means the parts of Part 3 of Schedule 4 to the Corporate Insolvency and Governance Act 2020 which are applied by article 11(6).”
- (b) in paragraph 1, for the definition “Schedule A1” substitute—
 - ““Part A1” means Part A1 of the 1986 Act as applied in relation to a relevant society;”;
- (c) in paragraph 4—
 - (i) in subparagraph (a), after “a reference to Part 1” insert “, Part A1”;
 - (ii) for “Schedule A1” in both places it occurs substitute “Part A1 of the 1986 Act”;
- (d) in paragraph 5(a), after “for the purposes of Part 1” insert “, 1A”;
- (e) omit paragraph 8;
- (f) omit paragraph 38;
- (g) after paragraph 58 insert—

“PART 4

**Modified application of Part 3 of Schedule 4 to the
Corporate Insolvency and Governance Act 2020**

59. This Part modifies Part 3 of Schedule 4 to the Corporate Insolvency and Governance Act 2020 which are applied by article 11(6) in relation to a relevant CCBS.

60. Unless the context otherwise requires and subject to any further modification in this Part, the applied provisions have effect with the following general modifications—

- (a) a reference to Part A1 or any provision of Part A1, 4 or 6 of the 1986 Act is a reference to that Part or provision as applied in relation to a relevant CCBS;
- (b) an expression defined in the 1986 Act (but not an expression modified by this paragraph) has the meaning given in that Act;

- (c) a reference to an administrative receiver is a reference to an administrative receiver within the meaning given in Part A1 of the 1986 Act in relation to a CCBS whose registered office is situated in England or Wales;
- (d) a reference to the articles of a company is a reference to the rules of a relevant CCBS;
- (e) a reference to a class of creditors includes a reference to a single class of members of a relevant CCBS that consists of the member-depositors of the CCBS, but only in so far as the member-depositors are owed amounts in respect of deposits;
- (f) a reference to a company includes a reference to a relevant CCBS;
- (g) a reference to a company's creditors, other than in a reference to a class of creditors, does not include a reference to a member of a relevant CCBS to whom an amount is owed by the CCBS if, but only in so far as, the amount concerned is owed in respect of the member's shares;
- (h) a reference to the directors of a company is a reference to the members of the committee of a relevant CCBS;
- (i) a reference to a floating charge is a reference to a floating charge within the meaning given in Part A1 in relation to a relevant CCBS whose registered office is situated in England or Wales or Scotland;
- (j) a reference to a meeting of a company or of the members of a company is a reference to a general meeting of a relevant CCBS and, in relation to a CCBS whose rules allow the members to appoint delegates for meetings of the CCBS or its members, includes a reference to a general meeting for which delegates have been appointed;
- (k) a reference to an officer of a company is a reference to an officer of a relevant CCBS; and
- (l) a reference to the registrar of companies is a reference to the FCA.

61. The applied provisions have effect as if they provided that a person appointed for the purpose by the FCA is entitled—

- (a) to attend any meeting of creditors of a relevant CCBS summoned for the purposes of Part A1 of the 1986 Act (as applied in relation to a CCBS); and
- (b) to make representations as to any matter for decision at such a meeting.

62. The applied provisions have effect with the further modifications set out in this Part and with any other necessary modification.”

PART 4

Further amendments consequential to the Corporate Insolvency and Governance Act 2020

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

14.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999⁽⁴⁾ are amended as follows.

- (2) In regulation 14(5)(a)(i)—
- (a) after “sections” insert “174A,”,
 - (b) for “paragraph 65(2)” substitute “paragraphs 64A and 65(2)”,
 - (c) after “Articles” insert “148A”, and
 - (d) for “paragraph 66(2)” substitute “paragraphs 65A and 66(2)”.

Amendment of the Financial Collateral Arrangements (No. 2) Regulations 2003

15.—(1) The Financial Collateral Arrangements (No. 2) Regulations 2003⁽⁵⁾ are amended as follows.

- (2) In regulation 10—
- (a) after paragraph (2A), insert—
 - “(2AA) Section 174A of the Insolvency Act 1986 (moratorium debts etc. priority) shall not apply (if it otherwise would do so) to any charge created or otherwise arising under a financial collateral arrangement.”.
 - (b) after paragraph (5), insert—
 - “(5A) Paragraph 64A of Schedule B1 to the Insolvency Act 1986 shall not apply (if it otherwise would do so) to any charge created or otherwise arising under a financial collateral arrangement.”.
- (3) In regulation 11(2A), for “Article 149 of that Order (preferential debts)” substitute “Articles 148A (moratorium debts etc. priority) and 149 (preferential debts) of that Order”.

Amendment of the Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005

16.—(1) The Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005⁽⁶⁾ are amended as follows.

- (2) In regulation 8—
- (a) in paragraph (6)(c), after “section 899” insert “or section 901F”, and
 - (b) in paragraph (8)(b), after “section 899” insert “or section 901F”.
- (3) In regulation 20(6), after “section 896” insert “or section 901C”.
- (4) In regulation 24(6), after “section 896” insert “or section 901C”.
- (5) In regulation 26(5), after “section 896” insert “or section 901C”.
- (6) In regulation 30(6), after “section 896” insert “or section 901C”.
- (7) In regulation 43(5)(c)—

⁽⁴⁾ S.I. 1999/2979.

⁽⁵⁾ S.I. 2003/3226.

⁽⁶⁾ S.I. 2005/1998.

- (a) for subsection (i)(cc) substitute—
 - “(cc) which is a compromise or arrangement under section 899 or section 901F,”
 - and
- (b) for subsection (ii)(bb)—
 - “(bb) which is a compromise or arrangement under section 899 or section 901F.”
- (8) In regulation 44(6)(c), for subsection (i) substitute—
 - “(i) which is a compromise or arrangement under section 899 or section 901F.”
- (9) In regulation 47(5)(c)—
 - (a) for subsection (i)(cc) substitute—
 - “(cc) which is a compromise or arrangement under section 899 or section 901F,”
 - and
 - (b) for subsection (ii)(bb)—
 - “(bb) which is a compromise or arrangement under section 899 or section 901F.”

Amendment of the Regulated Covered Bonds Regulations 2008

- 17.—**(1) The Regulated Covered Bonds Regulations 2008(7) are amended as follows.
- (2) In regulation 2(3)—
- (a) in the definition of “project company” from “paragraph 4H” to the end substitute “paragraph 15 of Schedule ZA1 to the 1986 Act or, in Northern Ireland, paragraph 15 of Schedule ZA1 to the 1989 Order;”.
 - (b) in the definition of “public-private partnership project” from “paragraph 4I” to the end substitute “paragraph 16 of Schedule ZA1 to the 1986 Act or, in Northern Ireland, paragraph 16 of Schedule ZA1 to the 1989 Order;”.
 - (c) in the definition of “step-in rights” from “paragraph 4J” to the end substitute “paragraph 17 of Schedule ZA1 to the 1986 Act or, in Northern Ireland, paragraph 17 of Schedule ZA1 to the 1989 Order”.

16th July 2020

James Morris
Maggie Throup
Two of the Lords Commissioners of Her
Majesty’s Treasury
Callanan
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial
Strategy

16th July 2020

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision to apply to co-operative societies and community benefit societies the provisions in the Corporate Insolvency and Governance Act 2020 (c. 12) (“the 2020 Act”) relating to moratoriums (“the moratorium provisions”) and arrangements and reconstructions for companies in financial difficulty (“the Part 26A provisions”).

For those purposes articles 6 to 13 amend the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229) (“the 2014 Order”).

Article 6 inserts a definition of “relevant CCBS” into the 2014 Order for the purpose of defining the categories of co-operative societies and community benefit societies to which the moratorium provisions do not apply.

Articles 7 and 8 amend the 2014 Order to apply the moratorium provisions, including the temporary provisions, to relevant CCBS and the Part 26A provisions to relevant societies with the modifications set out in—

- (a) Schedule 1 to the 2014 Order, amended by article 11;
- (b) Schedule 2A to the 2014 Order, inserted by article 12; and
- (c) Part 4 of Schedule 4 to the 2014 Order, inserted by article 13.

Article 9 amends the 2014 Order to enable the Financial Conduct Authority and the Prudential Regulation Authority to participate in proceedings where the Part 26A provisions apply to a relevant society which meets the criteria in section 355A(1) of the Financial Services and Markets Act 2000 (c. 8).

Article 10 amends the 2014 Order to apply the temporary provision relating to moratoriums set out in the 2020 Act where a proposal for a moratorium is made to a relevant CCBS and its creditors and the courts have jurisdiction to wind up the society.

Article 11 provides the modifications to the moratorium provisions in their application to relevant CCBS to ensure those provisions operate correctly in relation to relevant CCBS.

Article 12 provides the modifications to the Part 26A provisions in their application to relevant societies to ensure those provisions operate correctly in relation to relevant societies.

Article 13 provides the modifications to the temporary moratorium provisions of the 2020 Act in their application to relevant CCBS to ensure those provisions operate correctly in relation to relevant CCBS.

Articles 14 to 17 make amendments consequential to the 2020 Act to the—

- (a) Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979);
- (b) Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226);
- (c) Insurers (Reorganisation and Winding Up) (Lloyds) Regulations 2005 (S.I. 2005/1998); and
- (d) Regulated Covered Bonds Regulations 2008 (S.I. 2008/346).

A full impact assessment has not been produced for this instrument as no impact, or no significant impact on the private, public or voluntary sectors is foreseen.

Document Generated: 2020-09-24

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*