EXPLANATORY MEMORANDUM TO

THE CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES (ADMINISTRATION) (AMENDMENT) ORDER 2021

2021 No. 1048

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Treasury and the Department for Business, Energy and Industrial Strategy, 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 with the concurrence of the Secretary of State for the Department for Business, Energy and Industrial Strategy, in exercise of powers under the Co-operative and Community Benefit Societies Act 2014 (c. 14) ("the 2014 Act") and by the Secretary of State in exercise of powers under the Enterprise Act 2002 as described in the preamble to the Order.

2.2 Currently, the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (SI 2014/229) ("the 2014 Order") applies Schedule 4 (Moratoriums in Great Britain: temporary provision) to the Corporate Insolvency and Governance Act 2020 (c.12) ("the 2020 Act") with modifications to certain co-operative and community benefit societies ("relevant CCBS") that are eligible for a moratorium under Part A1 of the Insolvency Act 1986 (c. 45) ("the 1986 Act").

2.3 The purpose of this Order is to apply on a continuing basis the insolvency rules found in Parts 3 and 4 of Schedule 4 to the 2020 Act as modified for relevant CCBS.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Departments regret that this instrument breaches the rule that statutory instruments subject to the negative procedure should be laid and copies provided to the Committee at least 21 days before the instrument comes into force. This is necessary because Parts 3 and 4 of Schedule 4 to the 2020 Act, which set out the current temporary insolvency rules for the moratorium, are due to expire on 30 September 2021 (the end of the relevant period under paragraph 1 of Schedule 4 to the 2020 Act). After that date, and without this Order, there would be no procedural rules in place for a relevant CCBS to obtain a moratorium under Part A1 of the 1986 Act.

3.2 If there were no procedural rules in place, even for a short period of time, it would be unclear and uncertain for relevant CCBS and insolvency practitioners as to the process to obtain and deal with a moratorium under Part A1 of the 1986 Act. In turn this may restrict the ability of a relevant CCBS to obtain a moratorium at all.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2014 Order applies certain provisions of company insolvency rescue legislation to relevant CCBS (with modifications), including Part A1 (moratorium) of the 1986 Act, which was introduced by the 2020 Act alongside other insolvency measures. The 2014 Order also applies, with modifications, certain provisions of the Insolvency Rules 1986 (SI 1986/1925) for England and Wales, and certain provisions of the Insolvency Rules (Scotland) 1986 (SI 1986/1915 (S. 139))

6.2 Articles 2(5) and 11(6) of the 2014 Order apply Parts 3 and 4 of Schedule 4 to the 2020 Act to relevant CCBS, with the modifications set out in Part 4 of Schedule 4 to the 2014 Order. This sets out the procedural insolvency rules that apply when a relevant CCBS seeks to obtain, extend or end a moratorium. Parts 3 and 4 of Schedule 4 to the 2020 Act will cease to apply to relevant CCBS on 30 September.

7. Policy background

What is being done and why?

7.1 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. As of May 2021, there were an estimated 8181 registered co-operative and community benefit societies in Great Britain.[1]

7.2 The 2020 Act introduced new features to the insolvency regime to give businesses greater flexibility when experiencing financial difficulty. One of these was a moratorium on creditor action, which introduced breathing space for businesses to explore rescue and restructuring options free from creditor action. Parts 3 and 4 of Schedule 4 to the 2020 Act contain temporary procedural rules which have applied pending amendments to the England and Wales Insolvency Rules 2016 (SI 2016/1024) Rules and the Insolvency (Scotland) (Voluntary Arrangements and Administration) Rules 2018 (SI 2018/1082). These temporary provisions will cease to have effect at the end of the "relevant period" (30 September 2021). Schedule 4 to the 2020 Act was applied to relevant CCBS with modifications by the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (SI 2020/744).

7.3 This Order inserts a new Schedule 1A into the 2014 Order to apply (as modified) the insolvency rules found in Parts 3 and 4 of Schedule 4 of the 2020 Act to relevant CCBS on a continuing basis. Part 1 of new Schedule 1A sets out interpretative

[1] Mutual societies registration function: 2020-21 | FCA

provisions. Part 2 of new Schedule 1A sets out the rules which apply for relevant CCBS in England and Wales. Part 3 of new Schedule 1A sets out the rules which apply for relevant CCBS in Scotland. This ensures that relevant CCBS have certainty over which rules apply, and certainty that they can obtain a moratorium when needed, keeping them on a level playing field with companies.

8. European Union Withdrawal and Future Relationship

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 There are no plans for consolidation of the amendments made to the 2014 Order.

10. Consultation outcome

10.1 There has been no formal consultation on the proposal to apply the insolvency rules in Parts 3 and 4 of Schedule 4 to the 2020 Act to relevant CCBS on a long-term basis. The provisions of Schedule 4 have applied to relevant CCBS since 18th July 2020 (i.e. the date of the coming into force of the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (SI 2020/744).

10.2 During the time that Schedule 4 to the 2020 Act has applied, the Insolvency Service has sought feedback from Insolvency Practitioners (IP's) on that Schedule through the "Dear IP" newsletter to understand if these rules created uncertainties over which procedures to follow.[2] The Insolvency Service also contacted IP's who had administered a moratorium to request feedback. In both cases, the Insolvency Service did not receive significant feedback.

11. Guidance

11.1 There is no intention to issue any guidance in connection with this Order.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited. As this Order ensures a continuation of the current rules in Parts 3 and 4 of Schedule 4 to the 2020 Act, insolvency practitioners will already be familiar with the legislation. These rules will only be followed when a relevant CCBS enters a moratorium following financial difficulty and will not impact day to day business. There will be a small cost for relevant CCBS when they have to familiarise themselves with the rules upon obtaining a moratorium, but this will be negligible.

12.2 The application of these rules will mean that relevant CCBS will be able to obtain a moratorium, whereas without them this would have been uncertain. Estimated benefits and costs in the 2020 Act impact assessment show that the moratorium will deliver a net benefit to businesses when used.[3]

12.3 There is no, or no significant, impact on the public sector.

[2] https://www.gov.uk/guidance/dear-insolvency-practitioner/29-covid-19
[3] https://publications.parliament.uk/pa/bills/cbill/58-01/0128/IA200519.pdf

12.4 A de minimis impact assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

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 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Economic Secretary to the Treasury has made the following statement; "As these rules have a limited scope and impact on businesses, it would not be appropriate to include a review clause for this Order".

15. Contact

15.1 Jamie Slater at HM Treasury, Telephone: 07866 059606 or email: Jamie.Slater@hmtreasury.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Alanna Barber, 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, John Glen MP, can confirm that this Explanatory Memorandum meets the required standard.