

EXPLANATORY MEMORANDUM TO
THE CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES AND CREDIT
UNIONS (ARRANGEMENTS, RECONSTRUCTIONS AND ADMINISTRATION)
(AMENDMENT) (NO. 2) ORDER 2020

2020 No. 963

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 amends Schedule 1 and Schedule 2A to the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229) (“the Principal Order”).
- 2.2 Regulation 2 omits paragraph 1J of Part 1A of Schedule 1. Paragraph 1J made a modification omitting section A55 of the Insolvency Act 1986, which provides that the Secretary of State may make regulations making different provision for different purposes, and consequential and other provisions. The effect of omitting paragraph 1J is that section A55 applies, by virtue of article 2 of the 2014 Order.
- 2.3 Regulation 2 also omits paragraph 6 of Schedule 2A. Paragraph 6 made a modification omitting section 901I of the Companies Act 2006, which gives the Secretary of State power to make regulations in relation to pension schemes. The effect of omitting paragraph 6 is that section 901I applies by virtue of article 2(4) of the Order.
- 2.4 The omission of section A55 and section 901I by the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (S.I. 2020/744) from the Principal Order was an error. This SI rectifies that error and is required to ensure a level playing field between companies and co-operative and community benefit societies regarding regulations in relation to pension schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment) Regulations 2020 (S.I. 2020/783), which applied the pensions scheme provisions under the Companies Act 2006, relied on the powers under section 901I of the Companies Act 2006 and section A55 of the Insolvency Act 1986. However, that SI is ultra vires given the omissions in S.I.2020/744. That SI is being re-made and laid, but only once the correction made by this SI is in force. This instrument, as with S.I 2020/774, is being laid in breach of the 21-day rule to ensure consistency between companies and co-operatives and community benefit societies can be attained as soon as possible.

- 3.2 As this instrument corrects an error in S.I. 2020/744, it will be offered free of charge to persons who purchased a copy of S.I 2020/744.

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)

- 3.3 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 this Order is England, Wales, and Scotland.
4.2 The territorial application of this Order is England, Wales, and Scotland.

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 Co-operative and Community Benefit Societies Act (“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 applied 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 The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (S.I. 2020/744) amended the Principal Order, to apply company insolvency rescue legislation, as introduced by the Corporate Insolvency and Governance Act 2020, to societies registered under the 2014 Act.

7. Policy background

What is being done and why?

- 7.1 The Joint Committee of Statutory Instruments noted that the Pension Protection Fund (Moratorium and Arrangements and Reconstructions for Companies in Financial Difficulty) (Amendment) Regulations 2020, which came into force on 23 July 2020, relied on the application of section A55 of the Insolvency Act 1986 which provides

that the Secretary of State may make regulations making different provision for different purposes, and consequential and other provisions. That Order also relied on section 901I of the Companies Act 2006 which applies to co-operatives and community benefit societies, and gives the Secretary of State power to make regulations in relation to pension schemes. Both provisions had however been disapplied by S.I. 2020/744, which came into force on 18 July 2020.

- 7.2 This instrument corrects those errors by removing the disapplication of section A55 of the Insolvency Act 1986 and section 901I of the Companies Act 2006, to ensure consistency and that a level playing field is retained between companies and co-operative and community benefit societies.

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 As this instrument is correcting a drafting error, no consultation has been carried out.

11. Guidance

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

12. Impact

- 12.1 There is no direct impact on business, charities or voluntary bodies. This instrument enables the Secretary of State to maintain consistency and a level playing field between businesses, charities and voluntary bodies which are CCBS and those which are companies in relation to pension schemes.

- 12.2 There is no impact on the public sector.

- 12.3 As this instrument is correcting a drafting error, a full Impact Assessment has not been prepared.

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 Sophie Macnair at HM Treasury Telephone: 07775 407157 or email: sophie.macnair@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 (John Glen) can confirm that this Explanatory Memorandum meets the required standard.