



CREDIT UNIONS (AMENDMENT) BILL 2017

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr W C Shimmins, MHK

1. INTRODUCTION

- 1.1 These explanatory notes relate to the *Credit Unions (Amendment) Bill 2017* (**‘the Bill’**). The Bill is promoted by the Treasury on behalf of the Isle of Man Financial Services Authority (**‘the Authority’**). The notes have been prepared by the Authority in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 1.2 The notes need to be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

2. BACKGROUND

- 2.1 This Bill, which is promoted by the Treasury on behalf of the Authority, contains amendments to the *Credit Unions Act 1993* (**‘the 1993 Act’**) which makes provision for societies that are registered under *the Industrial and Building Societies Act 1892* (**‘the 1892 Act’**) as credit unions.
- 2.2 The purpose of the Bill is to amend the 1993 Act so as to impose a requirement for credit unions to be licensed and subject to regulation under the *Financial Services Act 2008* (**‘FSA 2008’**); and, by breaking the reliance on the 1892 Act, to make comprehensive and self-sufficient provision for the registration of credit unions under the 1993 Act.

These amendments will enable the Authority’s regulatory framework to be implemented for credit unions as it is for various other financial services sectors. The detailed framework will be implemented by secondary legislation, which will be subject to public consultation.

- 2.3 The Bill repeals certain provisions in the 1993 Act and replaces them with alternative provisions. It also makes a minor consequential change to the *Company and Business Names Etc Act 2012*.
- 2.4 The Bill has been the subject of wide consultation and all comments have been addressed. The Bill is expected to reduce the administrative burden on credit unions and the Authority. No additional burden is anticipated for Government.

- 2.5 It is intended that the Bill will come into operation immediately after Royal Assent is granted. Transitional arrangements will address the sole existing credit union.
- 2.6 The Bill is considered to be compliant with the *Human Rights Act 2001*.

3. STRUCTURE OF THE BILL

- 3.1 The Bill has 41 clauses. There are no Parts to the Bill.
- 3.2 The Bill imposes a requirement for credit unions to be licensed by the Authority; it makes comprehensive and self-sufficient provision for the registration of credit unions; it breaks the reliance of the 1993 Act on the 1892 Act; it subjects credit unions to the requirements of the FSA 2008; and it has other connected purposes.

4. CLAUSE BY CLAUSE NOTES

- 4.1 **Clauses 1 and 2** provide for the short title and commencement of the 'Credit Unions (Amendment) Bill 2017' and allow transitional and saving provisions.
- 4.2 **Clause 3** states that the 1993 Act is amended in the manner specified in the succeeding clauses.
- 4.3 **Clause 4** repeals and replaces the existing section 1. The proposed section 1 provides for the incorporation under the 1993 Act of 'bodies corporate' which are 'credit unions'. This replaces the current arrangement by which 'societies' are first incorporated under the 1892 Act and are then 'registered' as 'credit unions' under the 1993 Act. In this way, the proposed section 1 breaks the reliance of the 1993 Act on the 1892 Act.

The proposed section 1 describes the 'common bond' that is required of persons wishing to be members of a particular credit union; and sets out the objects, additional qualifications for admission to membership of a credit union and other procedural requirements for incorporation of a credit union. It also provides that a credit union is a separate legal entity upon incorporation, but that it must obtain a licence under the FSA 2008 in order to carry on business.

- 4.4 **Clause 5** repeals and replaces section 2 of the 1993 Act. The proposed section 2 explains that a society whose objects are wholly or substantially those of a credit union must be incorporated under the 1993 Act as opposed to under the 1892 Act (as per the existing section 2). The proposed section 2 further provides that any registration or incorporation of such a society under the 1892 Act is void.
- 4.5 **Clause 6** inserts into the 1993 Act two new sections: sections 2A and 2B.

Section 2A provides for appeals to a court of summary jurisdiction in respect of decisions of the Department of Economic Development ('**the Department**') and permits the court to confirm the decision of the Department or make such other direction or determination as it thinks fit.

Section 2B provides for appeals in respect of decisions made by the Authority, in accordance with section 32 of FSA 2008.

- 4.6 **Clause 7** amends section 3 of the 1993 Act, principally by increasing the maximum fine for 'holding out' as a credit union from £2,500 to £5,000.
- 4.7 **Clause 8** repeals and replaces section 4 of the 1993 Act with a very similar provision relating to Rules of credit unions. The main change is to require rules (or amendments to rules) to be registered under the 1993 Act in order for them to be valid. The new section describes how the rules should be registered and provides for appeals against decisions not to register these. It also provides that rules of a credit union must be made available to members of the public.
- 4.8 **Clause 9** amends the 1993 Act by inserting a new section 4A, which relates to documents held by the Department. The new section enables any person to inspect a copy of such a document and requires copies of specified documents to be certified by the Department, both on payment of a prescribed fee.
- 4.9 **Clause 10** amends section 5 of the 1993 Act. One amendment permits bodies corporate and unincorporated societies to become members of credit unions. This is in addition to 'individuals' which are the only permitted members at present. Although bodies corporate and unincorporated societies may save with credit unions, they may not borrow from them.

Clause 10 also qualifies the 'shares' mentioned in section 5 as being 'ordinary shares', as opposed to 'deferred shares' – a concept which the Bill proposes to introduce into the 1993 Act.

Additionally, clause 10 proposes that members' maximum interest (savings) in a credit union may be expressed as a percentage of a monetary amount instead of as a fixed amount (currently £5,000).

The clause also adds two new subsections. These limit members' liability in respect of both deferred and ordinary shares; and permit the Authority to amend, by order, the maximum number of non-qualifying members of a credit union, and provisions relating to the rules of a credit union.

- 4.10 **Clause 11** repeals and replaces section 6 of the 1993 Act in relation to the maximum number of members of a credit union. This figure is to be determined by the Authority and specified in the Financial Services Rule Book (**the Rule Book**) which is made by the Authority. The minimum number of members is kept at 21.
- 4.11 **Clause 12** amends section 7 of the 1993 Act, to enable the Authority to provide by order that credit unions may issue 'deferred' shares in addition to 'ordinary' shares, and to impose conditions relating to the issue of 'deferred' shares. Any such conditions must be specified in writing to the credit union or group of credit unions concerned. The amendments provide that 'ordinary' shares are not transferable, whereas 'deferred' shares are.
- 4.12 **Clause 13** inserts two new sections into the 1993 Act, namely sections 7A and 7B. Section 7A permits an adult member of a credit union to nominate a person or persons to receive their property held by the credit union at the time of their death, subject to specified conditions and

restrictions. Credit unions are required to keep a register of all such nominations. An exception to the rule of non-transferability of ordinary shares applies to such nominations.

Section 7B addresses a nominator's marriage or civil partnership, which automatically revokes a nomination, in normal circumstances. Section 7B also sets out how the credit union may transfer the property to the nominees.

- 4.13 **Clause 14** repeals and replaces section 8 of the 1993 Act. The proposed section 8 prohibits credit unions from accepting 'deposits' from any person, with the term 'deposit' having the same meaning as in the Regulated Activities Order 2011. Credit unions may accept savings from members (shareholders), but may not carry on the Class 1 regulated activity of deposit taking.
- 4.14 **Clause 15** repeals and replaces section 9 of the 1993 Act and enables persons under the age of 18 years to be members of a credit union unless the rules of the credit union provide otherwise. However, minors may only save with the credit union and may not borrow. Also, minors cannot vote, nor be members of a committee, nor serve as a trustee, manager or treasurer of a credit union, although 16-18 year olds may execute instruments.
- 4.15 **Clause 16** repeals and replaces section 10 of the 1993 Act and sets out a credit union's powers to borrow and invest money, with provision for detailed requirements to be specified by the Authority in the Rule Book.
- 4.16 **Clause 17** repeals and replaces section 11 of the 1993 Act and inserts a new section 11A. The proposed section 11 permits a credit union to make loans to adult members for provident and productive purposes, either with or without security and upon such terms as may be provided in the rules of the credit union. The maximum term of a loan is 5 years if a loan is secured and 2 years if it is unsecured. The maximum loan amount is £5,000 in excess of a member's total paid-up shareholding. The maximum rate of interest is 1% per month on the loan amount outstanding – this rate to include administrative and other expenses.

The Authority is empowered by order to prescribe a different rate of interest, different maximum periods for loans and a different maximum loan amount.

Section 11A enables a member to request that a loan be treated as secured if their shareholding (savings) in the credit union exceed their loan and subject to specified criteria.

- 4.17 **Clause 18** inserts a new section 12A into the 1993 Act, which permits any body corporate to hold ordinary or deferred shares in a credit union, if its constitutional documents permit this.
- 4.18 **Clause 19** repeals and replaces section 13 of the 1993 Act. The proposed section 13 permits a credit union to change its name by special resolution with the written approval of the Authority and subject to specified conditions and restrictions, including approval and registration of the new name by the Department.
- 4.19 **Clause 20** repeals and replaces section 14 of the 1993 Act. The proposed section 14 requires credit unions to submit annual financial statements to the Authority and to the Department. It also requires credit unions to maintain general reserves. In addition, the section empowers a

credit union to pay a dividend to its members. The provisions of the section are subject to detailed requirements as may be prescribed in the Rule Book.

- 4.20 **Clause 21** repeals section 15 of the 1993 Act.
- 4.21 **Clause 22** repeals and replaces section 16 of the 1993 Act with new provisions that also relate to protection of members' savings. The new provisions permit the Treasury to make regulations establishing a scheme for compensating savers in credit unions in cases where credit unions are unable, or likely to be unable, to satisfy any claims made against them. Such regulations are linked to FSA 2008 provisions, are subject to consultation with the Authority amongst others, and must be approved by Tynwald in order to come into operation.

If no such regulations are in operation, the section provides that a credit union may not be incorporated unless there are alternative arrangements in place that the Authority has approved.

- 4.22 **Clause 23** repeals and replaces section 17 of the 1993 Act. The proposed section 17 provides for inspection of the affairs of credit unions, describes when an inspection is commenced and makes relevant procedural provisions.
- 4.23 **Clause 24** amends section 18 of the 1993 Act by deleting the reference to the 1892 Act and substituting a reference to the FSA 2008.
- 4.24 **Clause 25** repeals and replaces section 19 of the 1993 Act and inserts a number of new sections, i.e. sections 19A, 19B, 19C, 19D, and 19E.

The proposed section 19 sets out duties and obligations of credit unions including: the requirement for a registered office in the Island; that periodic statements of assets and liabilities are prepared and audited; and that credit unions' members and creditors are entitled to receive copies of account statements.

Section 19A sets out additional duties and obligations of credit unions, which include a statement about the auditor's qualification and the duty to submit annual returns to the Department and to make them available for inspection by any member or interested person. Credit unions are also required to supply copies of annual statements to any member or interested person free of charge.

Section 19B creates offences in respect of information.

Section 19C addresses documents that credit unions are required to submit to the Department.

Section 19D sets out privileges of credit unions, including that a credit union is a limited liability body corporate with a separate legal personality from that of its members, which can sue and be sued in its own name. Additionally, a credit union may own property and it may recover money due to it from a member, which constitutes a debt. Specific provisions relating to contracts on behalf of a credit union are also included.

Section 19E enables credit unions to charge appropriate fees for providing ancillary services to members, such as making payments on their behalf.

- 4.25 **Clause 26** repeals and replaces section 20 of the 1993 Act and addresses the winding up and dissolution of credit unions. It sets out the circumstances and the means for a credit union's winding up or dissolution, including aspects of the procedure, and it sets out the consequences of winding up and dissolution.
- 4.26 **Clause 27** inserts a new section number 20A which empowers the Department to order the disposal of valueless documents after dissolution. The Department must first consult with the Authority and a specified period must elapse before disposal.
- 4.27 **Clause 28** repeals and replaces section 21 of the 1993 Act. The proposed section 21 permits a credit union to amalgamate with, or to transfer its engagements to or from, another credit union. The transfer or amalgamation must be registered in order to take effect.
- 4.28 **Clause 29** repeals and replaces section 22 of the 1993 Act and expressly prohibits the conversion of a credit union into a company.
- 4.29 **Clause 30** repeals and replaces section 23 of the 1993 Act and expressly prohibits the conversion of a company into a credit union.
- 4.30 **Clause 31** amends section 24 of the 1993 Act. It addresses a credit union's accounts and requires that these be displayed to the public.
- 4.31 **Clause 32** repeals section 25 of the 1993 Act.
- 4.32 **Clause 33** amends section 26 of the 1993 Act by adding that transactions that are carried out by a credit union and permitted by the 1993 Act or the FSA 2008 do not constitute deposit taking business.
- 4.33 **Clause 34** repeals and replaces section 27 of the 1993 Act in relation to offences. The proposed section 27 specifies circumstances in which both a body corporate and an officer of that body corporate may be tried for committing an offence. It also provides for a general defence in connection with offences.
- 4.34 **Clause 35** inserts sections 27A, 27B, 27C, 27D, 27E and 27F.

Section 27A provides that an offence is committed if a person holds themselves out to be a credit union and commences business without first being incorporated as a credit union. An offence is also committed if a credit union fails to file a required return, or files a return knowing it to contain false or misleading information. Section 27A also provides that the members of the committee of management are personally liable if a credit union issues shares in excess of the limits prescribed by the 1993 Act.

Section 27B makes it an offence to falsify documents such as a balance sheet of a credit union or a record of members' shares.

Section 27C makes officers of a credit union personally liable if they fail to use the name of the credit union in various documents including cheques.

Section 27D provides for recovery of penalties imposed under the 1993 Act, which may be recovered in a court of summary jurisdiction.

Section 27E provides for a fine of up to £2,500 per person on conviction of any offence for which the 1993 Act does not expressly provide a penalty in another section.

Section 27F makes provision for determination of disputes. The mechanisms provided include forms of alternative dispute resolution, the Department and the court, the latter of which is empowered to enforce an award.

- 4.35 **Clause 36** repeals and replaces section 28 of the 1993 Act. The proposed section 28 contains additional provisions for the making of secondary legislation by the Department or the Authority. The section addresses consultation requirements and specifies the relevant Tynwald procedures, as well as mandating that prescribed forms are to be made available on the website of the Authority, the Department, or the Treasury, as may be appropriate.
- 4.36 **Clause 37** amends section 29 of the 1993 Act by defining several new terms that the Bill introduces.
- 4.37 **Clause 38** amends section 30 of the 1993 Act by repealing the subsection that cites the 1892 Act.
- 4.38 **Clause 39** amends the 1993 Act by repealing Schedule 1 and replacing it with an unnumbered Schedule.
- 4.39 **Clause 40** repeals Schedule 2 to the 1993 Act.
- 4.40 **Clause 41** makes consequential amendments to the Company and Business Names Etc Act 2012.