



Northern Ireland
Assembly

Committee for Enterprise, Trade and Investment

Report on the Credit Unions and Co-operative and Community Benefit Societies Bill (NIA Bill 280/11-16)

Together with the Minutes of Proceedings of the Committee relating to the Report and Minutes of Evidence

This report is the property of the Committee for Enterprise, Trade and Investment. Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

List of Abbreviations and Acronyms used in the Report

DETI	Department of Enterprise, Trade and Investment
FCA	Financial Conduct Authority
FSCS	Financial Services Compensation Scheme
GB	Great Britain
HM Treasury	Her Majesty's Treasury
ILCU	Irish League of Credit Unions
IPS	Industrial and Provident Society
PRA	Prudential Regulation Authority
Roi	Republic of Ireland
UFCU	Ulster Federation of Credit Unions
UK	United Kingdom

Table of Contents

Membership & Powers	4
Executive Summary	6
Purpose	6
Principles of the Bill	6
Committee consideration of Key Issues	7
Introduction	10
Summary of the Bill as Presented in the Committee Stage	11
Summary of Consideration	15
Committee Consideration of Other Issues	27
Clause by Clause Scrutiny of the Bill	29
List of Appendices	32

Membership & Powers

Powers

The Committee for Enterprise, Trade & Investment is a Statutory Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Assembly Standing Order 46. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Enterprise, Trade & Investment and has a role in the initiation of legislation.

The Committee has power to:

- Consider and advise on Departmental Budgets and Annual Plans in the context of the overall budget allocation;
- Approve relevant secondary legislation and take the Committee stage of relevant primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on matters brought to the Committee by the Minister of Enterprise, Trade & Investment.

Membership

The Committee has 11 members, including a Chairperson and Deputy Chairperson, and a quorum of five members.

The membership of the Committee is as follows:

Democratic Unionist Party	Paul Givan ¹ William Humphrey ² Gordon Dunne Lord Morrow ³
Green Party	Steven Agnew
Sinn Féin	Conor Murphy (Deputy Chairperson) ⁴ Megan Fearon ⁵

¹ With effect from 16th September 2013 Mr Sydney Anderson replaced Mr Stephen Moutray. With effect from 1st December 2014 Mr Paul Givan replaced Mr Sydney Anderson.

² With effect from 27th February 2012 Mr Paul Givan replaced Mr Robin Newton. With effect from 21st May 2012 Mr Robin Newton replaced Mr Paul Givan. With effect from 16th September 2013 Mr Sammy Douglas replaced Mr Robin Newton. With effect from 6th October 2014 Mr William Humphrey replaced Mr Sammy Douglas.

³ With effect from 24th October 2011 Mr Paul Frew replaced Mr David McIlveen. With effect from 5th October 2015 Mr Paul Girvan replaced Mr Paul Frew. With effect from 16th November 2015 Lord Morrow of Clogher Valley replaced Mr Paul Girvan.

⁴ With effect from 02nd July 2012 Mr Phil Flanagan replaced Mr Daithí McKay as Deputy Chairperson. With effect from 10th September 2015 Mr Conor Murphy replaced Mr Phil Flanagan.

Social Democratic & Labour Party	Máirtín Ó Muilleoir ⁶ Patsy McGlone (Chairperson) ⁷ Fearghal McKinney ⁸
Ulster Unionist Party	Adrian Cochrane-Watson ⁹

⁵ With effect from 10th September 2012 Ms Maeve McLaughlin was appointed as a Member. With effect from 2nd December 2013 Ms Megan Fearon replaced Ms Maeve McLaughlin.

⁶ With effect from 23rd January 2012 Ms Jennifer McCann replaced Ms Sue Ramsey. With effect from 10th September 2012 Ms Sue Ramsey replaced Ms Jennifer McCann. With effect from 21st October 2013 Mr Mitchel McLaughlin replaced Ms Sue Ramsey. With effect from 6th October 2014 Mr Chris Hazzard replaced Mr Mitchel McLaughlin. With effect from 10th November 2014 Mr Máirtín Ó Muilleoir replaced Mr Chris Hazzard.

⁷ With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Alasdair McDonnell. With effect from 07 September 2012 Mr Patsy McGlone replaced Mr Alban Maginness as Chairperson. Mr Maginness rejoined the Committee as a member from 10 September 2012.

⁸ With effect from 7th October 2013 Mr Fearghal McKinney replaced Mr Alban Maginness

⁹ With effect from 06 February 2012 Mrs Sandra Overend replaced Mr Mike Nesbitt. With effect from 4th July 2014 Mr Danny Kinahan replaced Mrs Sandra Overend. With effect from 30 June 2015 Mr Adrian Cochrane-Watson replaced Mr Danny Kinahan.

Executive Summary

Purpose

1. This Report details the Committee for Enterprise, Trade and Investment's consideration of the Credit Unions and Co-operative and Community Benefit Societies Bill.
2. The Bill is intended to update the key Northern Ireland legislation governing credit unions and industrial and provident societies (IPSs) - the Credit Unions (Northern Ireland) Order 1985 and Industrial and Provident Societies Act (Northern Ireland) 1969 respectively.

Principles of the Bill

3. The main principles of the Bill are:
 - I. In the interests of promoting the continued growth and ongoing sustainability of the sectors, to give Northern Ireland Credit Unions and IPSs greater operational flexibility while seeking to ensure that this flexibility does not put at risk the prudential running of such organisations; and
 - II. To address a lacuna in the legislation relating to the disqualification of directors, so that directors of credit unions can be disqualified in the same way as directors of companies. It will also ensure that the Company Directors Disqualification (Northern Ireland) Order 2002 applies both to credit unions registered under the 1985 Order and to registered societies under the 1969 Act.
4. This legislation had arisen as a result of an Inquiry into the role and potential of credit unions which was undertaken by the Committee during the previous mandate. The Committee undertook considerable pre-legislative scrutiny of the Bill and, as a result, the Committee suggested a number of changes to the proposed policy which have been largely accepted by the Department and, where appropriate, included in the Bill.
5. During the Committee Stage of the Bill, the Committee engaged in a call for

evidence from interested organisations and individuals, as well as from the Department of Enterprise, Trade and Investment as part of its deliberations on the Bill. Evidence from stakeholders indicated there was broad support for the Bill, however a number of key issues arose in relation to some provisions.

Committee consideration of Key Issues

6. The Committee's pre-legislative scrutiny focused on: corporate members of credit unions; interest-bearing shares; attachment of shares; supply by credit union of copies of its rules; application of surplus funds towards social, cultural or charitable purposes; and removal of limit on holding of non-withdrawable shares.
7. In the Committee's consideration of the Bill, as introduced, the key issues related to:
 - Corporate members of credit unions;
 - Interest-bearing shares;
 - Registration of societies as co-operatives or community benefit societies etc.
 - Minor and consequential amendments
8. The Committee welcomed the provision in Clause 1 of the Bill to allow a credit union to admit corporate members as recommended by the Committee in its Inquiry report into the role and potential of credit unions, from the previous mandate.
9. Following Committee consideration of trade body concerns regarding provisions for corporate members as they relate to unincorporated bodies, the Department agreed to bring an amendment to the Bill at Consideration Stage to insert a new Clause 13A to make provisions for a review of Clause 1, as it relates to unincorporated bodies becoming members of credit unions in the name of the entity. The Committee was content with Clause 1 subject to the inclusion of the new Clause 13A.
10. During pre-legislative scrutiny the Committee recommended to the Department that provision should be made in subordinate legislation to allow the amount

that a credit union can charge for a copy of its rules to be increased in line with inflation. The Committee therefore welcomed provisions in Clause 5 for the Department to change the fee by regulations.

11. The Committee welcomed the provision in Clause 6 of the Bill for application of surplus funds towards social, cultural or charitable purposes. This was a key recommendation from the Committee in its Inquiry report in the previous mandate.
12. The Committee considered evidence relating to Clause 8 on possible adverse regulatory consequences resulting from registration of societies as co-operatives or community benefit societies etc. The Committee welcomed the agreement of the Minister to advise the Assembly, when speaking on the Bill in plenary, that the Department will continue to review more generally the legislative framework underpinning credit unions and IPSs after conclusion of work on the Bill, and whether further legislation change is appropriate.
13. The original policy proposal, considered by the Committee during pre-legislative scrutiny, was to remove the £20,000 limit on holding of non-withdrawable IPS shares altogether. The Department informed the Committee that Clause 10 of the Bill will amend the restriction, removing it entirely for non-withdrawable shares but maintaining it for withdrawable shares with the limit on withdrawable shares increased from £20,000 to £100,000. The Committee was content with the change to the original proposal.
14. Clause 15(4), as introduced, makes all regulations under Clause 15(2) subject to negative resolution. The Examiner of Statutory Rules recommended that Clause 15 be amended to make regulations under Clause 15(2) subject to affirmative procedure where they amend primary legislation and subject to negative resolution in other cases. The Committee accepted the ESR's recommendation. The Department provided the wording of the amendment as suggested by the ESR. The ESR indicated that the Department may wish to consider a small amendment to Clause 15(4) to reflect the new subsection (3A). The Department informed the Committee that a minor amendment to this effect will be brought at Consideration Stage. The Committee was content with Clause 15 subject to the proposed amendment and was content with the wording of the proposed amendment. The Committee's agreement is subject to

the minor technical amendment to be brought by the Department at Consideration Stage.

Introduction

15. The Credit Unions and Co-operative and Community Benefit Societies Bill arose largely as a result of an [Inquiry into the role and potential of credit unions](#) which was undertaken by the Committee for Enterprise, Trade & Investment during the previous mandate. A number of the Committee's recommendations have already been enacted and this Bill will bring two further Committee recommendations into effect. As part of that Inquiry the Committee recommended that credit unions be permitted to offer joint accounts and group membership. This provision is included in Clause 1 of the Bill. The Committee also recommended that credit unions be permitted to reinvest assets into community projects. This provision is included in Clause 6.
16. The Credit Unions and Co-operative and Community Benefit Societies Bill was introduced to the Northern Ireland Assembly on 23rd June 2015. The Assembly debated the principles of the Bill in the Second Stage on 6th October 2015 when the Bill was passed to the Committee for Enterprise, Trade & Investment. The Committee sought and received approval of the Assembly in Plenary Session on 23rd November 2015 to extend its consideration and scrutiny of the Bill to 29th January 2016.
17. The Bill contains 17 clauses and two schedules. Clauses 1 - 7 apply to credit unions and clauses 8 - 13 apply to co-operatives and community benefit societies.
18. The Committee launched a call for evidence from 3rd July 2015 to 30th September 2015.
19. In total four substantive written evidence submissions were received. Officials from the Department of Enterprise, Trade & Investment and representatives from the Irish League of Credit Unions and the Ulster Federation of Credit Unions gave oral evidence to the Committee.

Summary of the Bill as Presented in the Committee Stage

Clause 1: Corporate members of credit unions

20. Clause 1 amends the 1985 Order to allow a credit union to admit any of the following as a member: a body corporate; a partner acting for a partnership; and an officer or member of the governing body acting for an unincorporated association. These are referred to as “corporate members” of the credit union.

Clause 2: Removal of restriction on non-qualifying members of a credit union

21. Clause 2 amends Article 14 of the 1985 Order to remove the current statutory 10% limit on non-qualifying members. A non-qualifying member is a member of a credit union who ceases to have the required qualifications for membership.

Clause 3: Interest-bearing shares

22. Clause 3 permits a credit union to offer interest-bearing shares in addition to shares entitling the holder to a dividend.

Clause 4: Attachment of shares

23. Clause 4 concerns the withdrawal of credit union shares where the member’s paid-up shareholding is, or following withdrawal could be, less than the member’s total liability to the credit union. Clause 4 requires credit unions to include in the terms of a loan a statement of whether, for the duration of the loan, the borrower may make such a withdrawal. This replaces the current rule that such withdrawals are permitted only at the discretion of the board of directors of the credit union.

Clause 5: Supply by credit union of copies of its rules

24. Clause 5 substitutes Article 12(1) of the 1985 Order to give a member of a credit union who asks for a copy of its rules the entitlement to their first copy free of charge. It allows a credit union to charge a fee of up to £5 for the provision of rules to non-members and to members who have already received a free copy. The Department may change the fee by regulations.

Clause 6: Application of surplus funds towards social, cultural or charitable purposes

25. Clause 6 amends Article 36(5) of the 1985 Order. That Article currently imposes a requirement that a dividend of not less than 3% is paid on all paid-up shares before a credit union can apply any of its surplus funds for social, cultural or charitable purposes (up to a maximum of 10%). The Clause removes the minimum amount of the dividend, although it still requires that a dividend be paid to members before surplus funds are applied to those purposes.

Clause 7: Application of directors' disqualification provisions to credit unions

26. Clause 7 inserts a new Article 25B into the Company Directors Disqualification (Northern Ireland) Order 2002 to provide for that Order to apply to credit unions.

Clause 8: Registration of societies as co-operative or community benefit societies etc.

27. Clause 8 substitutes section 1 of, and inserts a new section 1A into, the 1969 Act. The effect is to introduce the new names, co-operative societies and community benefit societies.

Clause 9: Members under 18 years old

28. Clause 9 substitutes section 19 of the 1969 Act to allow persons under the age of 18 to become a member of a registered society, and reduces from 18 to 16 the minimum age at which persons can hold office in a registered society.

Clause 10: Removal of limit on holding of non-withdrawable shares

29. Clause 10 amends section 6(1) of the 1969 Act to amend the £20,000 limit on the holding of withdrawable shares and replacing the previous limit with a new maximum of £100,000 per shareholding member. There will be no limit on shareholdings of shares that are non-withdrawable.

Clause 11: Year of account

30. Clause 11 amends the provision relating to annual returns and calculation of

societies' year-end by inserting into the 1969 Act new sections 36A and 36B, which specify the year of account for societies but also allow societies to choose their own year-end date by notice to the appropriate authority. New section 36A applies to societies that were registered before this clause comes into operation. New section 36B applies to societies registered thereafter.

Clause 12: Publication of unaudited interim accounts

31. Clause 12 inserts into the 1969 Act a new section 37A(6A) to allow a society to publish an unaudited interim revenue account or unaudited balance sheet, provided that it is published with the latest audited year end revenue account and balance sheet, and clearly marked as unaudited.

Clause 13: Dissolution of a registered society by an instrument of dissolution

32. Clause 13 amends section 64 of, and inserts a new section 66A into, the 1969 Act. The changes offer a dormant society and alternative method of dissolution by a special resolution of the society.

Clause 14: Interpretation

33. Clause 14 defines a number of terms used in the Act.

Clause 15: Minor and consequential amendments

34. Clause 15 introduces Schedule 1 which makes transitional provisions.

Clause 16: Commencement

35. Clause 16 deals with commencement of the Bill.

Clause 17: Short title

36. Clause 17 deals with the title of the Bill.

Schedule 1: Minor and consequential amendments

Part 1: Amendments consequential on Section 1

37. Part 1 of Schedule 1 makes a number of amendments which are consequential on clause 1 of the Bill (corporate members of credit unions).

Part 2: Amendments consequential on Section 8

38. Part 2 of Schedule 1 makes consequential amendments that are required for the change of registration of new industrial and provident societies as co-operative or community benefit societies (section 8). It amends references to industrial and provident societies in a number of Acts and Orders and also makes general modifications.

Part 3: Minor and consequential amendments: general

39. Part 3 of Schedule 1 makes minor and consequential amendments to the 1985 Order and the 1969 Act.

Part 4: Removal of obsolete material

40. Part 4 of Schedule 1 removes obsolete material from the 1969 Act.

Schedule 2: Transitional provision

41. Schedule 2 makes transitional provision in respect of section 4 (attachment of shares), section 8 (pending applications for registration of a society and appeals against decision not to register) and section 9 (members under 18).

Summary of Consideration

Clause 1: Corporate members of credit unions

42. The Committee for [Enterprise, Trade & Investment's Inquiry report](#), in the previous mandate, into the role and potential of credit unions recommended that membership of credit unions be extended to include joint accounts and group membership. For that reason, the Committee very much welcomes this provision in the Bill.
43. In [oral evidence to the Committee](#), representatives from the Irish League of Credit Unions (ILCU) informed members that the ILCU is broadly satisfied with the contents of the Bill and is keen to see it enacted in a timely manner. The organisation had some concerns with the manner in which unincorporated members are being dealt with under the legislation. However, to progress matters the ILCU agreed to accept the current form of words in the Bill and welcomes the commitment from the Department to revisit the matter in the future. Representatives also expressed a belief that Her Majesty's Treasury (HM Treasury) is willing to consider the matter again at a later stage.
44. When questioned on the issue the ILCU suggested that the Department could have done more to allow credit unions to help maximise the potential benefits of having corporate members. The ILCU is still trying to fully understand why there is a requirement for some classes of corporate member to be registered in the name of an individual because, according to the ILCU, in any other type of financial institution this is not required. Representatives cited the example of a sports club which, they state, can open a bank account in the name of the club with authorised signatories but cannot open a credit union account in the name of the club. As the ILCU understands it, the rationale being put forward is that an unincorporated member does not have a legal personality therefore there is an argument that the account would not be in the name of an entity that has legal personality. The ILCU sees a conflict between banks, on the one hand being allowed to open accounts in the name of an unincorporated entity, whereas, on the other hand, credit unions are not.
45. The ILCU also believes there is an issue in relation to lending. If a credit union

is lending to an unincorporated body, there is an issue about the ability to enter into a contract and, in turn, an enforceable loan, but, for the most part, a lot of those members are simply putting money into the account and depositing shares. On that basis, the ILCU does not see an issue around accepting the account in the name of the unincorporated association for the purposes of taking in deposits and shares. The ILCU informed the Committee that lending would have to be dealt with separately, and a credit union may have to have somebody in an organisation who would be individually accountable for repayment of the loan.

46. In its [written submission](#) to the Committee's call for evidence the ILCU reiterated its concerns in relation to unincorporated members.
47. The [Ulster Federation of Credit Unions \(UFCU\) raised a number of concerns](#) in relation to Clause 1. The organisation believes that provisions in relation to corporate members brings credit unions into an area where they are seen to be second-class product and service providers. The UFCU initially welcomed the provisions but, having given consideration to the way in which is being introduced, they believe it sends out the wrong signal to the market place as it suggests that a business person who opens a credit union account cannot get a proper bank account. They believe that, as banks can open accounts in the name of organisations, credit unions should be able to do the same. Representatives suggested that, if banks have been able to overcome any legal barriers, credit unions should be able to do the same.
48. When UFCU representatives met with DETI, they were told that the decision was based on advice from HM Treasury. The UFCU informed the Committee that HM Treasury thinking seems to have been that, whilst the banks in Northern Ireland would be big enough to absorb any loss, a similar loss could have a serious impact on a credit union. HM Treasury does not seem to understand how large, mature and advanced credit unions in Northern Ireland are compared to those in England and Wales. According to the UFCU, the perception that credit unions would not be big enough seems to be coming from HM Treasury. However, when HM Treasury is giving advice, the Department is interpreting this as what it is required to do.
49. [DETI informed the Committee](#) that HM Treasury had stated that some banks

open accounts in the name of unincorporated associations but these appear to be accounts with very limited functionality (i.e. for deposits only which require a balance of over £10,000 before interest is payable). HM Treasury considers the profile risk of a bank to be a lot different to that of a credit union. Banks are responsible to shareholders for profits which will influence the level of risk they are prepared to accept. Banks also have much more detailed resources and procedures available to evaluate the risk profile of a client.

50. The [UFCU informed the Committee](#) that it believes that HM Treasury had been poorly advised by trade bodies that operate in a less mature environment in England and Wales with a lack of understanding in London of what the credit union sector in Northern Ireland has achieved. Representatives stated that, it appears that HM Treasury had been advised by an all-party committee of MPs that, in turn, is advised by the Association of British Credit Unions Limited (ABCUL) which provides the secretariat to that organisation. The UFCU is concerned that the advice from that all-party committee is based on the experiences in England rather than the experiences in Ireland, which is a much more mature credit union organisation. Representatives informed the Committee that they had made that clear to HM Treasury officials who accepted what the UFCU was saying and informed representatives that they would have further discussions with them in the future on the matter. The UFCU is concerned that, if the right information is not being conveyed through those committees and organisations back to the Assembly and Executive, it is difficult to make good legislation.
51. The UFCU also raised issues relating to the impact on the individual concerned when an account was opened in his/her name. This included tax implications for that individual and the potential for fraud in circumstances where a credit union failed. In its [written submission](#) to the Committee's call for evidence the UFCU reiterated its concerns in relation to unincorporated members. The UFCU is concerned that the proposal will have the unintended effect of sending a message to the public that credit unions offer an inferior level of service when compared to banks and building societies. The UFCU raised a number of concerns in relation to unincorporated accounts being opened in the name of an individual. These included the impact on the unincorporated body where

disputes may arise in the event of, for example, divorce or unexpected death of the named individual.

52. [Representatives informed the Committee](#) that the UFCU reluctantly agreed to have the provision included in the Bill in its current format because it was told that if they did not agree, a provision for corporate membership would not be included in the Bill at all until the issues was resolved.
53. [In response to a Committee query](#) regarding the advice the Department had received relating to credit union membership by unincorporated bodies, the Department stated that it had used existing Great Britain (GB) legislation (the Legislative reform Order 2011) regarding unincorporated associations (Credit Unions and Industrial & Provident Societies) as a starting point in developing provisions for unincorporated bodies. In relation to the UFCU query on disputes regarding the named individual on the account of an unincorporated body the [Department responded](#) that provisions are contained in the Bill to determine what interest an individual who is representing an unincorporated body has in the shares held in a credit union on behalf of that body. For the purposes of this determination the shares will not be treated as being held by the individual. This is provided for under Clause 1(3) of the Bill. There is also a safeguard in the Bill which specifically concerns the death of a credit union member. The Bill will allow a nomination to be made by an individual representing an unincorporated body but the property can pass only to another officer or member of the governing body of the unincorporated body. Where nomination has not been completed the shares held on behalf of the unincorporated body will transfer to a newly appointed representative.
54. The current proposals go further than GB in simplifying the administrative burden for credit unions when transferring the named persons for unincorporated associations. On the specific point regarding the naming of unincorporated association accounts, the Department sought advice from HM Treasury on the reasons why banks have the ability to open accounts in the name of unincorporated associations but credit unions in GB do not. The Department provided a [copy of the response](#) to the Committee (Annex C of response).
55. The Committee asked the Department to confirm that the Assembly has the

power to legislate to allow unincorporated bodies to become members of credit unions in the name of the entity should it wish to do so. The [Department confirmed that this is the case](#). However, the Department reiterated its concerns relating to the risks involved where a credit union is unable to recover monies owed. In a [written response to the Committee](#), HM Treasury also confirmed that, although financial services is generally a reserved matter, the Northern Ireland Act 1998 contains specific exceptions for legislation relating to credit unions. HM Treasury is therefore content that the Assembly always has power to legislate in relation to credit unions in Northern Ireland.

56. The [Department also highlighted](#) that the Financial Services Compensation Scheme (FSCS) would not issue a payment to the unincorporated body if a credit union failed. The Department stated that in the period since the Bill has been developed six credit unions in Northern Ireland have failed and that the last failure involved unauthorised lending. The Department stated that, following discussions with HM Treasury, the Prudential Regulation Authority (PRA) and the FSCS, it believes that to create further risk at this stage would be imprudent. The Department reiterated its commitment to review this position in the future and its commitment to the ILCU and UFCU to work with them to discuss further changes to the legislation with HM Treasury, the PRA and the FSCS after the current Bill comes into force.
57. The Committee asked the Department what consideration it had given to inclusion in the Bill of provisions similar to those which are included in the Republic of Ireland (RoI) legislation to permit credit unions to admit unincorporated bodies as members in the name of the entity. The Department responded that the legislation in the RoI does not provide detail about the practical effect or operation of corporate membership, with unincorporated associations being treated as having a legal personality even though, under the general law, they do not. Given the lack of detail in the RoI legislation, the Department states that it would prefer to have the more comprehensive drafting approach in relation to corporate members establishing a direct connection between the credit union and the corporate member. The Department considers the RoI legislation to be similarly burdensome to the provisions proposed in the current Bill but with additional prudential risks as articulated by

the PRA.

58. On the request for clarification regarding membership of credit unions by unincorporated bodies, [HM Treasury responded](#) that the reason why partnerships and unincorporated associations must be represented by an individual is that these bodies are not separate legal entities in their own right, unlike registered companies, chartered corporations or statutory corporations, which all have separate legal personality, specifically, a legal existence outside of their members. Lack of a separate legal identity is the reason why, in terms of legislative drafting, unincorporated associations must be represented by individuals who act under delegated or implied authority on behalf of the organisation. HM Treasury states that, in practice, the rules of individual associations will determine the rights and duties of the members between themselves.
59. HM Treasury stated that the characteristics of unincorporated associations have historically been determined by case law rather than set out in legislation.
60. The Committee was content that it had fully explored the possibility of enabling unincorporated associations the facility to open credit union accounts in the name of the entity under the current legislation but that, there is insufficient time to achieve the support of all parties to enable this to be included. The Committee therefore agreed to explore with the Department the possibility of the Department including a review clause in the bill to the effect that the Minister shall, within one year of the Bill receiving royal assent, report to the Committee on work undertaken to explore the option of introducing an amendment to the legislation to make provisions to permit unincorporated bodies to become members of credit unions in the name of the entity rather than in the name of an individual. The [Department's response](#) stated that, the Department does not consider one year a sufficient period of time to enable a meaningful analysis of the operation of the new legislation in practice and that therefore it does not consider the inclusion of a review and report clause necessary. The Committee subsequently agreed with the assessment that one year is not sufficient time and asked the Department to include an amendment to bring a review and report clause within two years in respect of the provisions in Clause 1 as they relate to unincorporated bodies becoming members of

credit unions in the name of the entity.

61. At its meeting on 17th November, the Committee considered a [response from the Department](#) which included an amendment to the Bill to insert a new Clause 13A to include a review of Clause 1 as it relates to unincorporated associations to commence within 2 years following royal assent and report to the Assembly.
62. The Committee was content that the proposed addition of Clause 13A will provide the review and report mechanism requested by the Committee. The Committee was therefore content with Clause 1 as drafted, subject to the addition of a new Clause 13A at Consideration Stage. The Committee was also content with the wording of Clause 13A.

Clause 3: Interest-bearing shares

63. In [pre-legislative scrutiny](#) the Department informed the Committee that credit unions may not be particularly interested in this proposal but they see there is a point in having it in the legislation. When questioned during the Committee Stage on the level of interest credit unions may have in this proposal, the [Department stated](#) that it would attract savers who want to know, from the outset, what their return will be. The majority of consultation responses were in favour of the proposal, which is why it is included in the Bill.
64. During oral evidence, the UFCU informed the Committee that the advantages of interest bearing shares are not obvious to UFCU members. Interest-bearing shares put the UFCU in an awkward position in that traditionally they were able to draw a clear distinction between themselves and the banks as they were always able to tell their members that credit unions are owned by their members. Each member of a credit union has one share and is entitled to one vote. The introduction of interest-bearing shares tends to muddy that water. The UFCU believes the introduction of interest bearing shares will not be taken up by UFCU credit unions.
65. The ILCU sees Clause 3 as an extra tool in credit unions' armoury for their asset-liability management. The organisation believes that, based on the principle that a credit union is a smaller form of financial institution, it should be enabled to undertake and partake in any financial activities and offer services to

members. The ILCU believes that level of interest will be determined by market performance in the same way as a bank sets the interest rate at which a deposit account will be guaranteed over a one-year period, a credit union will have to reflect a cognisance of the business environment and then take money on deposit with the promise of a return, based on its business analysis and forecasting. It will have to be competitive in order to attract any significant amount of funds. Representatives informed the Committee that this facility introduces a further opportunity to help members plan for the future as it guarantees a specific return which is predictable and can be incorporated into a member's financial planning.

66. The Committee was concerned that the introduction of provisions for interest-bearing shares had the potential to create a two-tier system by which some members held only non-interest bearing shares whilst others were able to avail of interest bearing shares. The [UFCU has no concerns](#) that the introduction of interest bearing shares could lead to a two-tier membership. The ILCU has no concerns about a perception of 'two-tier' membership. A member will have to have shares in the credit union account in order to be a member and have voting rights. There have been no concerns about this in other jurisdictions where the facility is already available.
67. Following consideration of the evidence the Committee was content with Clause 3 as drafted.

Clause 4: Attachment of shares

68. Although the [UFCU originally opposed](#) this proposal at pre-legislative scrutiny, [representatives informed the Committee](#) that they no longer have any issues with it.
69. Following consideration of the evidence the Committee was content with Clause 4 as drafted.

Clause 5: Supply by credit union of copies of its rules

70. [During pre-legislative scrutiny](#), at the suggestion of the ILCU and UFCU, the

Committee recommended to the Department that provision should be made in subordinate legislation to allow the amount that a credit union can charge for a copy of its rules to be increased in line with inflation. The Department subsequently agreed to the inclusion of this provision. The [ILCU informed members](#) that it is satisfied with this outcome. The [UFCU informed the Committee](#) that it welcomes the inclusion of this provision in the Bill.

71. Following consideration of the evidence the Committee was content with Clause 5 as drafted.

Clause 6: Application of surplus funds towards social, cultural or charitable purposes

72. The application of surplus funds towards social, cultural or charitable purposes was a key recommendation from the Committee for Enterprise, Trade & Investment's [Inquiry](#), in the previous mandate, into the role and potential of credit unions. For that reason, the Committee very much welcomes this provision in the Bill.
73. During [pre-legislative scrutiny](#) the UFCU suggested that expertise in social finance would be needed to ensure a credit union does not put its members' money at risk. During oral evidence to the Committee the [UFCU stated](#) that the provisions provide sufficient protection for members from risk. They welcome the opportunity to be able to invest for social, cultural or charitable purposes.
74. The [ILCU is content](#) that the provisions in Clause 6 are sufficient to protect members' money from risk. Representatives informed the Committee that one of the social purposes of credit unions, as well as providing services to their members, is to contribute back to the community. In the current environment, given the way in which credit unions are formulated, they would not be permitted to make any contribution for social or charitable purposes unless they have declared a 3% dividend. A 3% dividend, in the past number of years, has just not been realistic, and it was completely excessive for most credit unions to reach. This is one of the provisions that the ILCU asked to be removed. The provision for a maximum of only up to 10% to be put towards such purposes is considered balanced and is not believed to be of concern to members.

75. The [Department informed the Committee](#) that one of the safeguards that already exists in the Credit Unions (NI) Order 1985, which this Bill amends, will be retained. No more than 10% of surplus funds can be applied to such measures. The minimum 3% dividend is being removed.
76. Following consideration of the evidence the Committee was content with Clause 6 as drafted.

Clause 8: Registration of societies as co-operatives or community benefit societies etc.

77. The [Department informed the Committee](#) that the original title of the Bill would be amended to reflect recent GB legislation changing the name of “Industrial & Provident Societies” to “Co-operative and Community Benefit Societies”. The Committee was content with the Department’s decision to amend the title of the Bill.
78. The Committee considered [correspondence from Co-operatives UK](#) advising of possible adverse regulatory consequences resulting from Clause 8 which have recently come to light following similar changes to GB legislation. Current Northern Ireland legislation does not require the registrar to make a ridged distinction at registration. However, according to Co-operatives UK, Clause 8 will change this and create three new legal forms where now only one exists. Namely:
- Pre-2015 Act societies (all current IPSs);
 - Co-operative societies (registered post commencement); and
 - Community Benefit Societies (registered post commencement).
79. Co-operatives UK states that this has caused significant uncertainty and concern for societies in GB and that, if left unchecked in the UK, these changes would have resulted in, what it considers, a damaging bureaucratic obstacle to mutual innovation. Co-operatives UK stated that it is now hopeful that FCA policy will achieve the necessary refinement and flexibility.
80. The Committee considered [correspondence from the Department](#) to Co-operatives UK advising that the registration process is an operational matter

outside the immediate legislative scope of the current Bill. The Department informed Co-operatives UK that it will continue to review the legislative framework underpinning IPSs after conclusion of work on the Bill.

81. In an email to the Clerk, [Co-operatives UK stated](#) that they would welcome any plans to review the legislation in two years.
82. In [oral evidence to the Committee](#), officials agreed to ask the Minister to agree to review the legislation in two years when speaking at Consideration Stage. The [Department responded](#) that it will continue to review the legislative framework underpinning credit unions and IPSs after conclusion of work on the Bill and whether further legislative change is appropriate. The Minister is content to advise the Assembly of this when speaking on the Bill in plenary in the Assembly.
83. Following consideration of the evidence the Committee was content with Clause 8 as drafted.

Clause 10: Removal of limit on holding of non-withdrawable shares

84. The original policy proposal, considered by the Committee during pre-legislative scrutiny, was to remove the £20,000 limit on holding of non-withdrawable IPS shares altogether. During [oral evidence](#), the Department informed the Committee that the Bill will amend the restriction removing it entirely for non-withdrawable shares but maintaining it for withdrawable shares. The limit for withdrawable shares will be increased from £20,000 to £100,000. The Committee was content with the change to the original proposal.
85. Following consideration of the evidence the Committee was content with Clause 10 as drafted.

Clause 15: Minor and consequential amendments

86. Clause 15(4) makes all regulations under Clause 15(2) subject to negative resolution. The Committee received advance notice from the Examiner of Statutory Rules (ESR) that his report on the [Delegated Powers Memorandum](#)

will consider whether regulations under Clause 15(2) should be subject to draft affirmative procedure where they amend primary legislation and subject to negative resolution in other cases.

87. At its meeting on 17th November, the Committee considered the [report from the Examiner of Statutory Rules](#) recommending the proposed amendment to Clause 15. The Committee also considered a [response from the Department](#) which provided the wording of the amendment as suggested by the Examiner of Statutory Rules. Commenting on the amendment, the ESR indicated that the Department may wish to consider a small amendment to Clause 15(4) to reflect the new subsection (3A). The [Department agreed](#) that a small amendment to this effect will be brought at Consideration Stage.
88. The Committee was content that the proposed amendment will make the necessary provisions recommended by the Examiner of Statutory Rules. The Committee was therefore content with Clause 15 subject to the proposed amendment and was content with the wording of the proposed amendment. The Committee's agreement is subject to the minor technical amendment to be brought by the Department at Consideration Stage.

Committee Consideration of Other Issues

Allow credit unions to offer deferred shares

89. [Proposal 7 in the policy consultation](#) allowed credit unions to offer ‘deferred’ shares, the key feature of which is that principal can only be repaid to the shareholder if the credit union is wound up or dissolved and all creditors have been paid in full, or with the consent of the regulatory authority. Deferred shares would be transferable, but would not be withdrawable, and would not be covered by the Financial Services Compensation Scheme.
90. Both the ILCU and UFCU believed there would be little interest in this provision. During oral evidence both trade bodies expressed significant concerns regarding the proposal. There was no provision for transferring shares to another individual (for example on death of the member) where the individual to whom the shares were to be transferred cannot meet the common bond. The proposal was therefore rejected by the Committee. The Department agreed not to include the provision in the Bill.
91. [ILCU](#) is satisfied that this has not been included in the legislation stating that deferred shares are unlikely to be used by credit unions in Northern Ireland.
92. The [UFCU](#) informed the Committee that deferred shares are an instrument which is used in the rest of the UK but the organisation cannot see any particular need for it in Northern Ireland. Representatives stated that the UFCU is content that it has not been included in the Bill.

Issues Raised by Co-operatives UK

93. At its meeting on 3rd November the Committee considered [correspondence from Co-operatives UK](#) outlining a number of suggestions for amendments to the Bill. Co-operatives UK considers the Bill to be an opportunity to update and simplify account reporting thresholds for industrial and provident societies so that these are broadly equal to those set for companies. The organisation also believes that company insolvency procedures for IPSs should be adapted to provide the option of entering into a process of administration when insolvent

rather than having to be wound up. This reform has come into effect in GB. It also considers the Bill an opportunity to both introduce statutory underpinning of asset locks for bone fide co-operative societies and to amend the Community Benefit Societies (Restriction of Use of Assets) Regulations (NI) 2006 to enable community benefit societies to adopt a stronger asset lock.

94. DETI officials informed the Committee that most of the suggestions put forward by Co-operatives UK will entail working with the organisation following the passing of the Bill. Many of the issues raised are operational and the legislation does not affect these. The Department has also been engaging with the FCA in relation to some of the issues and will agree how these should be taken forward following a response from them. Co-operatives UK was content that a future review of the legislation would be sufficient to address its concerns. As the Co-operatives UK evidence came at a very late stage in its consideration the Committee asked the Department to confirm that the legislation will be reviewed in full within two years.
95. [Officials agreed](#) to ask the Minister to agree to review the legislation in two years when speaking on the Bill in plenary in the Assembly. The [Department responded](#) that it will continue to review the legislative framework underpinning credit unions and industrial and provident societies after conclusion of work on the Bill and whether further legislative change is appropriate. The Minister is content to advise the Assembly of this when speaking about the Bill in plenary.
96. The Committee is content with the Department's approach to dealing with the issues raised.

Clause by Clause Scrutiny of the Bill

Credit Unions

Clause 1: Corporate members of credit unions

97. The Committee for Enterprise, Trade & Investment is content with Clause 1 as drafted, subject to the addition of a new Clause 13A at Consideration Stage.

98. The Committee is content with the wording of Clause 13A.

Clause 2: Removal of restriction on non-qualifying members of a credit union

Clause 3: Interest-bearing shares

Clause 4: Attachment of shares

Clause 5: Supply by credit union of copies of its rules

Clause 6: Application of surplus funds towards social, cultural or charitable purposes

Clause 7: Application of directors disqualification provisions to credit unions

99. The Committee for Enterprise, Trade and Investment is content with Clauses 2 to 7 as drafted.

Co-operative and Community Benefit Societies

Clause 8: Registration of societies as co-operative or community benefit societies etc.

Clause 9: Members under 18 years old

Clause 10: Removal of limit on holding of non-withdrawable shares

Clause 11: Year of account

Clause 12: Publication of unaudited interim accounts

Clause 13: Dissolution of a registered society by an instrument of dissolution

Clause 14: Interpretation

100. The Committee for Enterprise, Trade and Investment is content with Clauses 8 to 14 as drafted.

General

Clause 15: Minor and consequential amendments

101. The Committee is content with Clause 15 subject to the proposed amendment and is content with the wording of the proposed amendment.

102. The Committee's agreement is subject to a further minor technical amendment to be brought at Consideration Stage.

Clause 16: Commencement

Clause 17: Short Title

103. The Committee for Enterprise, Trade and Investment is content with Clauses 16 and 17 as drafted.

Schedules and Long Title

Schedule 1: Minor and consequential amendments

Part 1: Amendments consequential on section 1

Part 2 Amendments consequential on section 8

Part 3 Minor and consequential amendments: general

Part 4 Removal of obsolete material etc

Schedule 2: Transitional provision

104. The Committee for Enterprise, Trade and Investment is content with Schedules 1 and 2 as drafted.

Long Title

105. The Committee for Enterprise, Trade & Investment is content with the long title as drafted.

Links to Appendices

[The Credit Unions and Co-operative and Community Benefit Societies Bill](#)

[Explanatory and Financial Memorandum](#)

[Memoranda and Papers from the Department of Enterprise, Trade and Investment](#)

[Memoranda and Papers from Others](#)

[Minutes of Proceedings](#)

[Minutes of Evidence](#)

[Written Submissions](#)

[Research Papers](#)

[Summary of Committee Pre-legislative Scrutiny](#)

The information contained in this document is available online at:

www.niassembly.gov.uk

This document can be made available in a range of alternative formats including large print, Braille etc. For more information please contact:

Committee for Enterprise, Trade and Investment

Jim McManus, Clerk to the Committee

Northern Ireland Assembly

Parliament Buildings

Ballymiscaw

Stormont

Belfast BT4 3XX

Tel: 028 90 521230

Email: committee.eti@niassembly.gov.uk

ISBN 978 - 1 - 78619 - 001 - 7

© Copyright Northern Ireland Assembly Commission 2015