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STATUTORY INSTRUMENTS

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**2020 No. 744**

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

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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.”