

**CONSULTATIVE DOCUMENT  
PROPOSED AMENDMENTS TO THE COMMUNITY INTEREST  
COMPANIES REGULATIONS 2005**

**Introduction**

1. The Companies (Audit, Investigation and Community Enterprise) Act 2004 (the 2004 Act) and Community Interest Company Regulations 2005<sup>1</sup> (the Regulations) introduced the community interest company (CIC) which came into force in July 2005. This legislation provided a bespoke legal form for social enterprises which want the flexibility of the company form but with the assurance that assets will be used for the benefit of the community. The Act also established the independent role of Regulator of Community Interest Companies to oversee CICs and to maintain public confidence in the new form.

**Background**

2. Introduction of the CIC followed considerable consultation. The proposal was introduced in the Cabinet Office 2002 consultation paper “Private Action, Public Benefit – A Review of Charities and the wider Not –for-Profit Sector” with a view to improving the range of available legal forms. That review was followed in 2003 by “Enterprise for Communities Proposals for a Community Interest Company” outlining the community interest company in more detail. As the response to that consultation indicated substantial support for the form, this was followed by a consultation on draft Regulations<sup>2</sup> and the Community Interest Company came into effect in July 2005. The intention was that the CIC would sit alongside existing forms commonly used by social enterprises eg Industrial and Provident Societies, charitable companies and would offer greater choice and flexibility to the sector.

**Current position**

3. In the three years since then, over 2,400 CICs have been formed with the number of applications rising steadily over that period. CICs operate across the range of economic activity with a large number offering services in the environmental, health, social and personal care sectors. Detailed information about CICs is available from the website of the Regulator of Community interest Companies – [www.cicregulator.gov.uk](http://www.cicregulator.gov.uk)

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<sup>1</sup> SI 2005 No 1788

<sup>2</sup> Consultation on draft Regulations for Community Interest Companies (October 2004)

## **Scope of this consultation**

4. The CIC is still a new legal form which is establishing itself in the sector. In line with better regulation principles, the Government's intention is to review how the legislation is meeting its original objectives after around 5-6 years of operation when there will be more evidence of CICs' experience in going through the business life-cycle. In the meantime, a number of partly technical points have been raised in relation to the Regulations. So, the Government intends to make some amendments to the Regulations to reflect the experience to date of CICs and the Regulator in complying with the legislation. The intention of this exercise is therefore to deal with anomalies which have come to light, update the Regulations and consider any other points which will help to clarify the Regulations for the benefit of CICs, prospective CICs and the Regulator.

5. These draft amendments should not result in burdensome effects for the sector or individual CICs and do not seek to alter the policy approach to CICs. In view of that and earlier consultations on the introduction of CICs, Ministers have agreed that we will conduct a short informal consultation only to enable interested parties to express views and to ensure they are forewarned of the proposed changes to the Regulations. This is therefore a limited exercise and this note invites views from interested parties on the draft amendments at Annex A and in particular to consider the questions detailed in the body of this note and reproduced at Annex B.

## **Companies Act 2006 – Consequential amendments**

6. The Companies Act 2006 introduced significant changes to improve and simplify company law and its provisions will be commenced in full in October 2009. To give full effect to the Companies Act's provisions, we also need to amend related provisions in both the 2004 Act and the Regulations. The necessary amendments to the 2004 Act will be made by Consequential Amendments Order. However, the necessary amendments to the Regulations have been included in the scope of the current exercise to keep all amendments to those Regulations together. These are detailed at paragraph 24 of the attached note.

## **Impact assessment**

7. An impact assessment was published at the time of the 2004 Act introducing CICs and can be found on the BERR website at <http://www.berr.gov.uk/whatwedo/businesslaw/Community%20Interest%20Companies/page45644.html>

The draft amendments do not impose substantive new requirements on CICs or prospective CICs or alter HMG's policy approach to CICs. A further impact assessment has therefore not been included with this consultation.

## **How to respond**

8. We would welcome any comments on the draft amendments to the Regulations by Monday 6 April 2009.

9. When responding, please state whether you are replying as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents.

10. You are invited to send comments, preferably by email to:

[James.Carey@berr.gsi.gov.uk](mailto:James.Carey@berr.gsi.gov.uk)

If by letter, then to

James Carey  
Corporate Law & Governance Directorate  
Department for Business, Enterprise and Regulatory Reform  
5<sup>th</sup> floor  
1 Victoria Street  
London SW1H 0ET

11. Additional copies of this document may be made without seeking permission or downloaded from the Department's website on:  
<http://www.berr.gov.uk/whatwedo/businesslaw/Community%20Interest%20Companies/page45644.html>

## **Confidentiality & Data Protection**

12. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

13. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

14. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## **Help with queries**

15. Questions about the policy issues raised in the document can be addressed to:

Jane Leavens  
Corporate Law & Governance Directorate  
Department for Business, Enterprise and Regulatory Reform  
5<sup>th</sup> floor  
1 Victoria Street  
London SW1H 0ET

[Jane.Leavens@berr.gsi.gov.uk](mailto:Jane.Leavens@berr.gsi.gov.uk)

16. If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Babatunde Idowu, Consultation Co-ordinator  
Department for Business, Enterprise and Regulatory Reform  
Better Regulation Team  
1 Victoria Street  
London  
SW1H 0ET  
Babatunde.idowu@berr.gsi.gov.uk  
020 7215 0412

17. A copy of the Code of Practice on Consultation is at Annex C.

**THE COMMUNITY INTEREST COMPANY REGULATIONS 2005  
(SI 2005 No 1788)  
CONSULTATION ON DRAFT AMENDMENTS**

**CONVERSIONS TO OTHER LEGAL FORMS**

1. Government policy is that social enterprises should have flexibility and choice in considering what legal form to take and that decision will depend on the nature and aims of the particular enterprise and how they wish to run their organisation. It is therefore our view that in principle and, where appropriate, enterprises should have the ability to move from one legal form to another.

**Industrial and Provident Societies – Community Benefit Society with an asset lock**

2. Under the Industrial and Provident Society Act 1965 (The 1965 Act), an Industrial and Provident Society (IPS) may be set up as either a bona fide cooperative or as a society for the benefit of the community (community benefit society). While it is possible for an IPS to convert to a CIC under section 52 of the 1965 Act, the 2004 Act did not allow a CIC to convert to this form or to transfer assets to such bodies unless Regulations were made to permit this. The rationale for this position was that unlike CICs, IPSs did not have a statutory asset lock. In April 2006, Regulations<sup>3</sup> provided that community benefit societies could also choose to take an asset lock which operates in a similar way to the CIC asset lock by ensuring that the assets are only used for a purpose that is for the benefit of the community or for other limited purposes.

The draft amendments (draft Regulations 3 and 21) therefore update Regulation 2 and paragraph 1 (4) (a) (i) of the Schedules to the Regulations which define “asset locked body” to include these asset locked forms of community benefit society. New Regulations are also being made under Section 56 of the Act to permit conversion from a CIC to an asset locked community benefit society.

***Q1. Do you agree with the draft amendments to recognise the asset lock form of community benefit society?***

**Conversion to a Scottish Charity**

3. A CIC may already convert to a Scottish charitable company under Sections 54 & 55 of the 2004 Act. However, when the 2004 Act and the Regulations came into force, the Office of the Scottish Charity Regulator had not yet been established. As a result section 40 of the Act prohibited Scottish charitable companies from becoming CICs while providing for this provision to be repealed by regulations. As the Office of the Scottish Charity Regulator is

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<sup>3</sup> The Community Benefit Societies (Restriction on the Use of Assets) Regulations 2006, No 264 and the Community Benefit Societies (Restriction on the Use of Assets) Regulations (Northern Ireland) 2006 No 258 as amended by the Community Benefit Societies (Restriction on Use of Assets) (Amendment) Regulations (Northern Ireland) 2007 No. 226.

now in operation, the draft amendments repeal subsections 1 &2 of Section 40 of the 2004 Act, which has the effect of enabling conversion from Scottish charitable company to a CIC under subsections 4-7. To complete this process, an amendment is also made to Regulation 12.

***Q2. Do you agree with the proposed amendments to allow a Scottish charitable company to convert to a CIC?***

**Northern Ireland**

4. Part 2 of the 2004 Act (community interest companies) was extended to Northern Ireland by the Companies Act 2006 (Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (SI 2007/1093 (C. 49)) (“ the No. 2 Order”). Consequently, it is possible to establish a CIC in Northern Ireland either as a new company or on conversion from an existing company. While current Northern Ireland legislation does not permit either a charitable company to convert to a CIC or a CIC to convert to a charitable company, provision corresponding to that in the rest of the UK will be made following the introduction of a new regulatory framework for charities.

5. It is expected that the first provisions of the Charities Act (Northern Ireland) 2008 (c. 12) will be introduced and a Charity Commission for Northern Ireland (similar to the Charity Commission for England and Wales) established in April of this year. While the new legislation enables a CIC to convert to a charity, it is unlikely that this particular provision will be implemented before the end of 2010. Permission for conversion of a Northern Ireland charity to a CIC will require amendment of the 2004 Act to repeal the prohibition imposed by the No. 2 Order pending the necessary changes to Northern Ireland’s company and charity legislation. We will therefore need to effect this change as and when a suitable legislative vehicle is available.

6. Unlike the law relating to charities, company law operates on a UK-wide basis. Accordingly, the position as regards conversion from a CIC to a community benefit society as described in paragraph 2 above, applies to Northern Ireland as it does to the rest of the UK.

**COMMUNITY INTEREST TEST – SECTION 35 OF THE 2004 ACT & REGULATIONS 3-5**

7. The community interest test is a key feature of the CIC legislation and is intended to ensure that CICs are fulfilling the essential aim of serving the needs and interests of the community. The test was purposely widely drawn to recognise the broad range of activities which CICs may want to undertake as well as allowing for future innovation by avoiding an unnecessarily prescriptive approach. It may be however that in light of experience we could amend the drafting of the community interest test to express more precisely its purpose and provide a clear basis for the Regulator to consider the wider public interest when approving applications.

**“For the benefit of the community” and “section of the community”**

8. As outlined above, the purpose of amending Regulations 4 & 5 would be to clarify the community interest test so that it more clearly expresses the underlying policy purpose of organisations operating for the benefit of the community and permits the exclusion of groups for which the CIC form was not intended. The 2004 Act provides that “community” includes a section of the community on the basis that the CIC may be aiming at serving a particular constituency and enables Regulations to define what may constitute a section of the community.

9. Regulation 5 gives a definition which is very broad ie those sharing a readily identifiable characteristic which is not shared by other members of the community. That definition could potentially include random groups for which the CIC form was not designed eg people with brown hair who share a characteristic which is not shared by the wider community, but with the result that any community benefit would be directed at a group of beneficiaries which seems arbitrary and not in keeping with the spirit of the legislation. The Regulator may rely on the view that Regulation 5 and “section of the community” should be interpreted in a common sense way ie a reasonable person’s view. However, it may be argued that the reasonable persons test does not apply to this part of the test. To make this point more secure, the draft amendment therefore proposes adding a reasonable persons test to Regulation 5 which defines section of the community for the purposes of the community interest test.

***Q3 Do you agree that adding a reasonable persons test to Regulation 5 will help to clarify the purpose of the community interest test? If so, will it help ensure it excludes those for whom the form was not designed?***

### **Detrimental effects**

10. The Regulations do not address the possibility that activities which may be considered to benefit one section of the community could potentially constitute harm to others. Nor do the Regulations refer to activities which may be considered to be contrary to general public policy. If the activities were unlawful, the Regulator would have discretion to refuse approval on those grounds but there may be no such discretion if the objection would be on general public interest grounds. Including such a provision could involve the Regulator in subjective decisions but on the other hand, it may be considered helpful to enable the Regulator to take a view in such a case. The draft amendments therefore suggest an approach which would allow the Regulator to weigh the potential detriment to others in reaching a decision as to whether activities satisfy the community interest test.

***Q4. Do you agree that the Regulator should take account of the impact of a prospective CIC’s activities on the wider community and public policy considerations? Will the proposed amendment help the Regulator to interpret more clearly the meaning of community interest?***

### **Political activities**

11. Regulation 3 provides that political activity shall not be considered as activities carried on for the benefit of the community. The reference in this Regulation to governmental authority does not currently cover various international agencies so the draft amendments extend the interpretation of governmental authority under Regulation 2 to provide a wider scope.

***Q5. Do you agree with this widening of the definition of governmental authority?***

## **ASSET LOCK AND DISTRIBUTIONS**

### **Regulation 23**

12. Regulation 23 prescribes the distribution of assets on a winding up to another asset locked body. The intention here is to ensure that residual assets are used for community interest purposes by requiring that, after any distribution to members, remaining assets are only distributed to an appropriate asset locked body. Where a CIC has been set up by, or is subject to the oversight of, a public authority or regulatory body, it may be desirable to allow for residual assets to be transferred to that oversight body or public authority where it is deemed to be for the benefit of the community. This might apply, for example, to a CIC set up by a Local Authority or the Housing Corporation. However, these public bodies will not be asset locked so cannot currently receive any assets from a CIC on winding up. To allow for this, it is proposed that the Regulations allow for such bodies to make representations to the CIC Regulator who would need to consider whether this would be in keeping with the community benefit purpose of the CIC.

13. One issue here is whether the public authority or regulatory body concerned should ring – fence the assets to ensure that they are used for purposes in keeping with the objects of the CIC. Or could it be considered sufficient that they are operating in the same sphere of business as the CIC and, in that way, could be deemed to be working for the community benefit.

***Q6. Do you agree with the aim of permitting relevant public authority or regulatory bodies to seek distribution of residual asset of a CIC subsidiary on winding up?***

### **Transfer of assets for less than full consideration**

14. Schedules 1, 2 & 3 paragraph 1 provide that a CIC may not transfer any of its assets for less than full consideration except

- where the transfer is to an asset locked body specified in their memorandum or articles or, with the Regulator's consent, to another asset locked body; or
- where the transfer of assets is made for the benefit of the community other than by way of a transfer of assets to an asset locked body.

15. The requirement that the Regulator must give consent for such a transfer to an asset locked body but does not need to consent to a transfer where it is

for the benefit of the community appears to create an inconsistency in the role of the Regulator. In practice, any such transfers would need to be included in the CIC annual report and the Regulator would have the opportunity to explore where a transfer made under paragraph 1 (2) (b) seemed inconsistent with community benefit.

16. However, there remains an apparent inconsistency of approach which could be addressed in one of two ways:

a) the Government could remove the requirement in Schedules 1,2 &3 paragraph 1 (2) (a) for the Regulator's consent leaving this as a matter for the judgement of the CIC on the basis that any such transfers will come to the notice of the Regulator in due course; or

b) the Government could require that the Regulator's consent should also be required where a transfer is made for the benefit of the community under 1(2) (b).

17. The approach outlined in 15a would regularise the anomaly of requiring consent to a transfer of assets for less than full consideration to an unspecified asset locked body. Under this approach the Regulator would not be drawn into considerations and decisions, which could be complex or legal in nature or may require specific sectoral knowledge. This type of decision would remain with the director(s) of the company to justify, if challenged.

18. The approach under 15b would afford the Regulator the opportunity to ensure that transfers for less than full consideration (other than to a specified asset-locked body) are all considered by the Regulator before consent is given i.e. rather than investigating an irregularity after the event. This approach may be more interventionist than is consistent with a light touch Regulator.

19. The draft amendment follows 15a, the first option, i.e. removing the Regulator's consent under Schedules 1, 2 & 3 paragraph 1 (2) (a). However, the Government would be interested in views on the effects of this change and whether it strikes the right balance while offering consistency of approach.

***Q7. Do you consider that the current provisions create inconsistency? If so, how would you propose we deal with this?***

## **DIRECTORS AND VOTING – SCHEDULES 1, 2 & 3**

20. Schedules 1, 2 & 3 of the Regulations include provisions which must be included in a CIC's memorandum or articles relating to the appointment and removal of Directors and to voting. The draft amendments propose a number of changes.

### **Appointment and removal of Directors**

21. Paragraph 3 (2) & (3) of Schedules 1, 2 &3 are intended to ensure that the majority of the Board are appointed by members, by limiting the powers of non members to appoint and remove Directors. In practice, some CICs have found these provisions unhelpful and they are not considered to provide any benefit, given that all Directors, regardless of appointment, are bound by the same duties to the company. It is therefore proposed to remove these sub paragraphs.

***Q8. Do you agree with the proposal to remove these provisions?***

### **Alternate Directors**

22. Paragraphs 3 (4) and 4 (2) of Schedules 1, 2 &3 deal with the appointment, removal and voting rights of alternate Directors. It has been suggested that the provision for alternate Directors should be removed as unhelpful and unnecessary. The provisions do not however require that CICs appoint alternate Directors but just provide that CICs may permit such appointments in their articles, if they wish. On the basis that it does not impose a requirement on CICs, but covers the eventuality that they have opted to permit the appointment of alternate Directors, it is proposed to leave these provisions as they stand. However, we would welcome views on our intended approach.

***Q9. Do you agree with our intention to leave this provision on the basis it does not impose any requirement on CICs?***

### **Casting vote**

23. Paragraph 4 (1) of Schedules 1, 2 & 3 provides that the Chairman shall have a second or casting vote where necessary at meetings of Directors. Concerns have been raised about this provision on the basis that CICs wish to operate on the basis of consensus and equality. This provision only applies to meetings of Directors where it may be helpful to resolve a deadlock; the casting vote does **not** apply to meetings of the membership. However, company law makes no similar provision for a casting vote at meetings of Directors but leaves this as a matter for the individual company to determine and include, where agreed, in the articles. It is therefore proposed that we remove this provision from the Schedules and instead leave this for CICs to determine and to include such a provision in the articles if they so choose.

***Q10. Do you agree with the proposal to remove this provision?***

### **Companies Act 2006 – Consequential amendments**

24. As outlined in paragraph 6 of the introduction to this note, the Regulations need to be amended to reflect changes introduced by the Companies Act 2006. The changes to the 2004 Act must be made by primary legislation and are therefore being made by Consequential Amendments Order. We are however making the necessary amendments to the Regulations alongside the

other proposed changes in this consultation exercise. The consequential amendments to the Regulations are limited and relate to:

- removal of references to earlier companies legislation which has been superseded by the 2006 Act;
- changes to memorandum and articles so relevant provisions now refer only to articles of association (see paragraph 25).

### **Transitional arrangements**

25. The Companies Act 2006 introduced changes to the information contained within a company's memorandum and articles. Under section 28 of the Companies Act 2006, any provisions in a company's memorandum immediately before commencement of this part of the Act (1 October 2009) will be treated as provisions in the company's articles, if they are of a type that will not be in memoranda of companies formed under the Act. So, existing companies will not be required to change their articles to reflect the changes. This provision includes CICs and means they do not need to take any action to transfer provisions currently in the memorandum to their articles unless they so wish.

26. However, this consultation proposes a number of changes to the Schedules to the Regulations which CICs are required currently to include in their memorandum and articles. These changes should be reflected in the articles of CICs but to require all existing CICs to change their articles would be time consuming and incur costs. We therefore do not intend to require existing CICs to amend their articles specifically to reflect these changes. Any CICs being formed after the amended Regulations come into force ie 1 October 2009 will however need to apply them. We propose instead that existing CICs should only amend their articles to reflect these changes as and when they are amending their articles in the normal course of business.

*Draft Regulations laid before Parliament under section 62(4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2009 No. 0000**

**COMPANIES**

**The Community Interest Company (Amendment) Regulations  
2009**

*Made* - - - - - *\*\*\* 2009*  
*Coming into force* - - - *1st October 2009*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 31(1), 32(3) and (4), 35(4) and (5), 37(7), 40(3), 56 and 62(2) and (3) of the Companies (Audit, Investigations and Community Enterprise) Act 2004<sup>(4)</sup>.

In accordance with section 62(4) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Community Interest Company (Amendment) Regulations 2009 and come into force on 1st October 2009.

(2) In these Regulations—

“the 2004 Act” means the Companies (Audit, Investigations and Community Enterprise) Act 2004; and

“the Principal Regulations” means the Community Interest Company Regulations 2005<sup>(5)</sup>.

**Existing companies: Scottish charities**

**2.** Subsections (1) and (2) of section 40 of the 2004 Act are repealed.

**Interpretation of the Principal Regulations**

**3.**—(1) Regulation 2 of the Principal Regulations is amended as follows.

(2) At the appropriate place insert—

““the 1965 Act” means the Industrial and Provident Societies Act 1965<sup>(6)</sup>”;

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<sup>(4)</sup> 2004 c.27.

<sup>(5)</sup> S.I. 2005/1788.

“the 1969 Northern Ireland Act” means the Industrial and Provident Societies (Northern Ireland) Act 1969<sup>(7)</sup>”;

“the Authority” means the Financial Services Authority”;

“oversight authority” means a public authority with regulatory responsibility for the company or a public authority which is or has been a member of the company with or without regulatory responsibility for the company”;

“permitted industrial and provident society” means an industrial and provident society which has a restriction on the use of its assets in accordance with regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006<sup>(8)</sup> or regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006<sup>(9)</sup>”.

(3) Omit the definitions of “the 1985 Act” and “the 1986 Order”.

(4) In sub-paragraph (a) of the definition of “asset-locked body” for “or a charity” substitute “a charity or a permitted industrial and provident society”.

(5) For the definition of “governmental authority” substitute—

“governmental authority” includes—

- (a) any national, regional or local government in the United Kingdom or elsewhere;
- (b) the European Community;
- (c) any inter-governmental organisation; and
- (d) any organisation which is able to make rules or adopt decisions which are legally binding on any governmental authority falling within sub-paragraph (a), (b) or (c); or any of their organs, institutions or agencies”.

(6) In the definition of “public authority” after the word “nature” insert “whether in the United Kingdom or elsewhere”.

(7) In the definition of “subsidiary” for “given to it in section 736 of the 1985 Act or Article 4 of the 1986 Order” substitute “given to it by section 1159 of the 2006 Act”.

### **Other activities not to be treated as being carried on for the benefit of the community**

4. For regulation 4 of the Principal Regulations substitute—

#### **“Other activities not to be treated as being carried on for the benefit of the community**

4. For the purposes of the community interest test, an activity is to be treated as not being an activity which a reasonable person might consider is an activity carried on for the benefit of the community if, or to the extent that a reasonable person might consider that, that activity—

- (a) benefits only the members of a particular body or the employees of a particular employer; or
- (b) could have an appreciable detrimental effect on the interests of any section of the community.”.

### **Section of the community**

5. For regulation 5 of the Principal Regulations substitute—

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<sup>(6)</sup> 1965 c.12.

<sup>(7)</sup> 1969 c.24.

<sup>(8)</sup> S.I. 2006/264.

<sup>(9)</sup> S.R. 2006/258.

### **“Section of the community**

5. For the purposes of the community interest test, any group of individuals may constitute a section of the community if—

- (a) they share a common characteristic which distinguishes them from other members of the community; and
- (b) a reasonable person might consider that they constitute a section of the community.”.

### **Becoming an industrial and provident society**

6. After Part 2 of the Principal Regulations insert—

## **“PART 2A**

### **CONVERSION TO AN INDUSTRIAL AND PROVIDENT SOCIETY**

#### **Becoming an industrial and provident society**

**6A.** Pursuant to section 56 of the 2004 Act, a community interest company which has a restriction on use of assets in accordance with the provisions of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006<sup>(10)</sup> may convert itself into a permitted industrial and provident society under section 53 of the 1965 Act or section 62 of the 1969 Northern Ireland Act as modified in regulation 6B.

**6B.** Section 53 of the 1965 Act and section 62 of the 1969 Northern Ireland Act are modified in their applications to the conversion of a community interest company into a registered society under section 56 of the 2004 Act by the inclusion or modification of the following subsections—

- (a) in section 53(1) after the word “Acts” insert “which is a community interest company”;
- (b) in section 53(1) after the word “society” insert “which has a restriction on use of assets in accordance with the provisions of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006”;
- (c) insert section 53(2A) into the 1965 Act and section 62(2A) into the 1969 Northern Ireland Act—

“(2A) The alterations of the articles made by the special resolutions are to take effect only as provided by this section.”;

- (d) insert section 53(2B) into the 1965 Act and section 62(2B) into the 1969 Northern Ireland Act—

“(2B) The company is eligible to cease being a community interest company if none of the following applies—

- (a) the Regulator has under section 43 of the 2004 Act appointed an auditor to audit the company’s annual accounts and the audit has not been completed,
- (b) civil proceedings instituted by the Regulator in the name of the company under section 44 of the 2004 Act have not been determined or discontinued,
- (c) a director of the company holds office by virtue of an order under section 45 of the 2004 Act,
- (d) a director of the company is suspended under section 46(3) of the 2004 Act,
- (e) there is a manager in respect of the property and affairs of the company appointed under section 47 of the 2004 Act,
- (f) the Official Property Holder holds property as trustee for the company,

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<sup>(10)</sup> S.I. 2006/264.

- (g) an order under section 48(2) or (3) of the 2004 Act is in force in relation to the company,
- (h) a petition has been presented for the company to be wound up.”;
- (e) insert section 53(2C) into the 1965 Act and section 62(2C) into the 1969 Northern Ireland Act—  
“(2C) The Regulator must give notice of the decision to the company.”;
- (f) insert section 53(2D) into the 1965 Act and section 62(2D) into the 1969 Northern Ireland Act—  
“(2D) The Authority shall register the community interest company under this Act if the following conditions are met—
  - (a) a copy of the resolution aforesaid and a copy of the rules aforesaid is delivered to the Authority;
  - (b) a copy of the decision of the Regulator that the company is eligible to cease being a community interest company is delivered to the Authority;
  - (c) the company has a restriction on use of assets in accordance with the provisions of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006.”;
- (g) in section 53(3) of the 1965 Act and section 62(3) of the 1969 Northern Ireland Act delete “A copy of the resolution aforesaid shall be sent with a copy of the rules aforesaid to the Authority who.”;
- (h) in section 53(4) of the 1965 Act and section 62(4) of the 1969 Northern Ireland Act after the word “with” insert “a copy of the notice of the decision issued by the Regulator and with”;
- (i) in section 53(5) of the 1965 Act and section 62(5) of the 1969 Northern Ireland Act for “company” substitute “community interest company”.

#### **Requirements concerning the memorandum and articles**

**7.**—(1) In the heading for Part 3 of the Principal Regulations, for “MEMORANDUM AND ARTICLES” substitute “ARTICLES OF ASSOCIATION”.

(2) In regulations 7, 8 and 10 of the Principal Regulations omit “memorandum or”.

#### **Company without share capital**

**8.** In regulation 7 of the Principal Regulations after the words “Schedule 1” insert “but if the community interest company is in existence immediately prior to 1st October 2009 it may instead include in its articles the provisions prescribed in Schedule 1 as Schedule 1 read immediately prior to that date”.

#### **Company with share capital**

**9.** In regulation 8 of the Principal Regulations after the words “Schedule 3” insert “but if the community interest company is in existence immediately prior to 1st October 2009 it may instead include in its articles the provisions prescribed in Schedule 2 or 3 (as applicable) as Schedule 2 or 3 (as applicable) read immediately prior to that date”.

#### **Prescribed conversion documents**

**10.** In paragraph (1) of regulation 12 of the Principal Regulations—

- (a) in sub-paragraph (c)(i) delete “or”;
- (b) in sub-paragraph (c)(ii) for “.” substitute “, or”;
- (c) in sub-paragraph (c) add—

- “(iii) in the case of a company that is a Scottish charity, a declaration that the Scottish Charity Regulator, and, where applicable, the Charity Commission, has given the company the written consent required by section 40 of the 2004 Act.”.

### **Requirement for Regulator’s approval**

11. In regulation 13 of the Principal Regulations for “memorandum” substitute “articles”.

### **Documents to be delivered to registrar of companies**

12. In regulation 14(1) of the Principal Regulations for the words from “a copy of” to “(registration of resolutions)” substitute “notice under section 31(2)(a) of the 2006 Act (notice of amendment of articles so as to add, remove or alter a statement of the company’s objects)”.

### **Decisions etc**

13. In regulation 15 of the Principal Regulations—
- (a) in paragraph (1), for the words from “the copies of” to “1986 Order” substitute “notice under section 31(2)(a) of the 2006 Act”;
  - (b) in paragraph (2), for “memorandum” substitute “articles”;
  - (c) in paragraph (6), for sub-paragraphs (a) and (b) substitute—
    - “(a) register the notice under section 31(2)(a) of the 2006 Act;
    - (b) register any copy of the altered articles delivered pursuant to section 26(1) of that Act; or”.

### **Exemptions**

14. In regulation 16 of the Principal Regulations for “memorandum” substitute “articles”.

### **Declaration of dividends**

15. In regulation 17(1)(a) of the Principal Regulations delete “memorandum and”.

### **Distribution of assets on a winding up**

16. In regulation 23 of the Principal Regulations—
- (a) in paragraph (5)—
    - (i) delete “memorandum or”;
    - (ii) for “either” substitute “any”;
    - (iii) for “(b) and (c)” substitute “(aa), (b) and (c)”;
  - (b) in paragraph (6)(a) delete “memorandum and”;
  - (c) after paragraph (6)(a) insert—
    - “(aa) the body specified in the articles of the company as being an asset-locked body to which any remaining residual assets of the company should be distributed is no longer an asset-locked body;”;
  - (d) in paragraph (6)(b) delete “memorandum or” and delete “or”;
  - (e) in paragraph (6)(c)(ii) for “,” substitute “; or”;
  - (f) after paragraph (6)(c) insert—
    - “(d) the Regulator—
      - (i) has received representations from an oversight authority stating, with reasons, that the remaining residual assets of the company should be distributed to it;

- (ii) has received assurances from the oversight authority that those residual assets would be applied for the same community interest object as is stated in the articles of the company; and
- (iii) has agreed with those representations and is satisfied with those assurances;”;
- (g) in paragraph (6) after the words “asset-locked bodies” insert “(if the distribution is being made pursuant to paragraph (6)(a) to (c)) or oversight authorities (if the distribution is being made pursuant to paragraph (6)(d))”;
- (h) in paragraph (7)(b) delete “memorandum and”.

**Modifications and amendments**

17. Delete regulation 34 of the Principal Regulations.

**Schedules**

18. In the headings to Schedules 1, 2 and 3 omit “MEMORANDUM OR”.

**Regulator’s consent**

19. In paragraph 1(2)(a) of each of Schedules 1, 2 and 3 to the Principal Regulations, after “specified asset-locked body, or” delete “(with the consent of the Regulator)”.

**Definition of “asset-locked body”**

20. In paragraph 1(4)(a)(i) of each of Schedules 1, 2 and 3 to the Principal Regulations for “or a charity” substitute “a charity, or a permitted industrial and provident society”.

**Definition of “permitted industrial and provident society”**

21. In paragraph 1(4) of each of Schedules 1, 2 and 3 to the Principal Regulations insert paragraph (ba)—

“(ba) “permitted industrial and provident society” means an industrial and provident society which has a restriction on the use of its assets in accordance with regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006<sup>(11)</sup> or regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006<sup>(12)</sup>.”

**Appointment and removal of directors**

22. Sub-paragraphs (2) and (3) of paragraph 3 of each of Schedules 1, 2 and 3 to the Principal Regulations are revoked.

**Casting vote at meetings of directors**

23. In paragraph 4(1) of each of Schedules 1, 2 and 3 to the Principal Regulations omit “; in case of an equality of votes, the chairman shall have a second or casting vote”.

Date \_\_\_\_\_ *Name*  
Economic and Business Minister,  
Department for Business, Enterprise and Regulatory Reform

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<sup>(11)</sup> S.I. 2006/264.  
<sup>(12)</sup> S.R. 2006/258.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

[Text of explanatory note]

## CONSULTATION QUESTIONS

***Q1. Do you agree with the draft amendments to recognise the asset lock form of community benefit society?***

***Q2. Do you agree with the proposed amendments to allow a Scottish charitable company to convert to a CIC?***

***Q3. Do you agree that adding a reasonable persons test to Regulation 5 will help to clarify the purpose of the community interest test? If so, will it help ensure it excludes those for whom the form was not designed?***

***Q4. Do you agree that the Regulator should take account of the impact of a prospective CIC's activities on the wider community and public policy considerations? Will the proposed amendment help the Regulator to interpret more clearly the meaning of community interest?***

***Q5. Do you agree with the widening of the definition of governmental authority?***

***Q6. Do you agree with the aim of permitting relevant public authority or regulatory bodies to seek distribution of residual asset of a CIC subsidiary on winding up?***

***Q7. Do you consider the current provisions create inconsistency? If so, how would you propose we should deal with this?***

***Q8. Do you agree with the proposal to remove the provisions on appointment and removal of directors?***

***Q9. Do you agree with our intention to leave the provision on alternate directors on the basis it does not impose any requirement on CICs?***

***Q10. Do you agree with the proposal to remove the provision on a casting vote?***

**The Consultation Code of Practice Criteria**

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.