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.

DRAFT STATUTORY INSTRUMENTS

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 30(1), 31(1), 32(3)(**1**), (4)(**2**) and (6)(**3**), 35(5), 37(7)(**4**), 40(3), 56, 57(1) and (2), 59(1) and 62(2) and (3) of the Companies (Audit, Investigations and Community Enterprise) Act 2004(**5**).

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(**6**).

Existing companies: Scottish charities

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 Subsections (1) and (2) of section 40 of the 2004 Act are repealed.

(**1**) Section 32(3) was amended by S.I. 2009/[ ], Schedule 1, paragraph 223(5).
(**2**) Section 32(4) was amended by S.I. 2009/[ ], Schedule 1, paragraph 223(6).
(**3**) Section 32(6) was amended by S.I. 2009/[ ], Schedule 1, paragraph 223(8).
(**4**) Section 37 was substituted by S.I. 2009/[ ], Schedule 1, paragraph 227(1).
(**5**) 2004 c.27.
(**6**) S.I. 2005/1788.

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(**7**);";

""the 1969 Northern Ireland Act" means the Industrial and Provident Societies Act (Northern Ireland) 1969(**8**);";

""the Authority" means the Financial Services Authority;";

""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(**9**) or regulation 4 of the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006(**10**);".

(3) Omit the definitions of "the 1985 Act" and "the 1986 Order"(**11**).

(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"(**12**).

(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;(**13**)."(**13**).

(6) For the definition of "public authority" substitute—

""public authority" includes—

(a) a court or tribunal; and

(b) any person certain of whose functions are functions of a public nature,

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"(**14**).

Section of the community

4. For regulation 5 of the Principal Regulations substitute—

(**7**) 1965 c.12.
(**8**) 1969 c.24 (N.I.).
(**9**) S.I. 2006/264.
(**10**) S.R. (NI) 2006 No 258.
(**11**) The definition of "the 1986 Order" was inserted by S.I. 2007/1093, Schedule 4, paragraph 27.
(**12**) The definition of "asset-locked body" was amended by S.I. 2007/1093, Schedule 4, paragraph 27.
(**13**) The definition of "governmental authority" was amended by S.I. 2007/1093, Schedule 4, paragraph 27.
(**13**) The definition of "governmental authority" was amended by S.I. 2007/1093, Schedule 4, paragraph 27.
(**14**) The definition of "subsidiary" was amended by S.I. 2007/1093, Schedule 4, paragraph 27.

"**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

5. 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(**15**), a community interest company may convert itself into a permitted industrial and provident society and section 53 of the 1965 Act and section 62 of the 1969 Northern Ireland Act apply to community interest companies, modified so that they read as follows—

(a) section 53 of the 1965 Act—

"**Conversion of company into registered society**

53.—(1) A company registered under the Companies Acts which is a community interest company may, by special resolution, determine to convert itself into a registered society 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; and for this purpose, in any case where the nominal value of the company's shares held by any member other than a registered society exceeds the maximum for the time being permitted by section 6(1) of this Act in the case of a member of a registered society the resolution may provide for the conversion of the shares representing that excess into a transferable loan stock bearing such rate of interest as may be fixed, and repayable on such conditions only as are determined by the resolution.

(2) Any such resolution as aforesaid shall be accompanied by a copy of the rules of the society therein referred to and shall appoint three persons, being members of the company, who, together with a director, shall sign the rules and who may either—

(a) be authorised to accept any alterations made by the Authority therein without further consulting the company; or

(b) be required to lay any such alterations before the company in general meeting for acceptance as the resolution may direct.

(**15**) Section 56 was amended by S.I. 2007/1093, Schedule 4, paragraph 21.

(2A) The following documents shall be sent to the registrar of companies—

(a) a copy of the resolution;

(b) a copy of the rules of the society therein referred to; and

(c) a statement by the Authority that, in its opinion, if those rules take effect, the company will become a registered society 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,

and, on receiving them, the registrar of companies must forward each of the documents to the Regulator.

(2B) The Regulator must decide whether the company is eligible to cease being a community interest company.

(2C) 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,

(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.

(2D) The Regulator must give notice of the decision to the company.

(2E) The Authority shall register the community interest company as a registered society 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.

(3) The Authority upon the registration of the society under this Act, shall give to it, in addition to an acknowledgement of registration under

section 2(3) of this Act, a certificate similarly sealed or signed that the rules of the society referred to in the resolution have been registered.

(4) A copy of any such resolution as aforesaid together with a copy of the notice of the decision issued by the Regulator and the certificate issued as aforesaid by the Authority shall be sent to the registrar of companies and, upon his registering that resolution and certificate (but not the notice of the decision issued by the Regulator), the conversion shall take effect.

(5) The name under which any community interest company is registered under this section as a registered society shall not include any of the following words, expressions or abbreviations—

(a) "company",

(b) "community interest company" or (with or without full stops) the abbreviation "cic",

(c) "cwmni buddiant cymunedol" or (with or without full stops) the abbreviation "cbc",

(d) "community interest public limited company" or (with or without full stops) the abbreviation "community interest plc", or

(e) "cwmni buddiant cymunedol cyhoeddus cyfyngedig" or (with or without full stops) the abbreviation "cwmni buddiant cymunedol ccc".

(6) Subject to the next following subsection, upon the conversion of a community interest company into a registered society under this section, the registration of the company under the Companies Acts shall become void and shall be cancelled by the registrar of companies.

(7) The registration of a community interest company as a registered society shall not affect any right or claim for the time being subsisting against the company or any penalty for the time being incurred by the company; and—

(a) for the purpose of enforcing any such right, penalty or claim the company may be sued and proceeded against in the same manner as if it had not been registered as a society;

(b) any such right or claim and the liability to any such penalty shall have priority as against the property of the registered society over all other rights or claims against or liabilities of the society.

(8) In this section—

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

"the Official Property Holder" has the meaning given in section 29 of the 2004 Act; and

"the Regulator" has the meaning given in section 27 of the 2004 Act.",

(b) section 62 of the 1969 Northern Ireland Act—