Draft Regulations laid before Parliament under section 1(8) of the Co-operatives and Community Benefit Societies Act 2003, for approval by a resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No. XXXX

INDUSTRIAL AND PROVIDENT SOCIETIES

The Community Benefit Societies (Restriction on Use of Assets) Regulations 2006

Made - - - -	*XXXX*
Coming into force - -	*6th April 2006*

The Treasury make the following Regulations in exercise of the powers conferred by section 1 of the Co-operatives and Community Benefit Societies Act 2003(**1**);

In accordance with section 1(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Citation, commencement and interpretation

Citation and commencement

1. These Regulations may be cited as the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006 and come into force on 6th April 2006.

Interpretation

2. For the purposes of these Regulations—

"the 2003 Act" means the Co-operatives and Community Benefit Societies Act 2003;

"the Authority" means the Financial Services Authority;

"charity" –

(a) in relation to a society whose registered office is situated in England and Wales, has the same meaning as in the Charities Act 1993(**2**); and

(**1**) 2003 c.15.
(**2**) 1993 c.10.

(b) in relation to a society whose registered office is situated in Scotland, means a body established for charitable purposes only (that expression having the same meaning as in the Income Tax Acts(**3**));

"committee" and "officer" have the meaning given by section 74(1) of the 1965 Act(**4**)(interpretation – general);

"community benefit society" has the meaning given by section 1(9) of the 2003 Act;

"community interest company" has the meaning given by section 26 of the Companies (Audit, Investigations and Community Enterprise) Act 2004(**5**);

"prescribed community benefit society" means a community benefit society of the kinds prescribed by regulation 5;

"registered social landlord" means—

(a) a housing association registered in the register maintained by the Housing Corporation or the Secretary of State under section 1 of the Housing Act 1996(**6**); or

(b) in Scotland, a body registered in the register maintained by the Scottish Ministers under section 57 of the Housing (Scotland) Act 2001(**7**);

"a restriction on use" means a rule included in the rules of a prescribed community benefit society which is in the terms set out in Schedule 1.

PART 2

Restriction on use of assets

Effect of restriction on use of assets

3. A prescribed community benefit society which has a restriction on use may not use or deal with its assets except in a case mentioned in section 1(2) of the 2003 Act.

Procedure for imposition of restriction on use

4.—(1) A restriction on use may be included in the rules of a prescribed community benefit society at the time when it is registered under the 1965 Act or may be adopted by the society in accordance with paragraph (2).

(2) A prescribed community benefit society may by special resolution amend its rules so as to adopt a restriction on use and, for this purpose, "special resolution" has the same meaning as in section 52 of the 1965 Act(**8**) (conversion into, amalgamation with, or transfer of engagements to company).

(**3**) "Income Tax Acts" is defined in Schedule 1 to the Interpretation Act 1978 (c.30).
(**4**) The "1965 Act" is defined in section 6 of the 2003 Act and means the Industrial and Provident Societies Act 1965 (c.12). The definition of "officer" in section 74(1) was amended by the Friendly and Industrial and Provident Societies Act 1968 (c.55).
(**5**) 2004 c. 27.
(**6**) 1996 c. 52.
(**7**) 2001 asp. 10
(**8**) Section 52(3), which defines "special resolution", was substituted by section 1 of the Industrial and Provident Societies Act 2002 (c.20).

PART 3

Prescribed societies, circumstances etc.

Prescribed community benefit societies

5. All kinds of community benefit societies except—

(a) a community benefit society that is a registered social landlord; and

(b) a community benefit society that is a charity,

are prescribed pursuant to section 1(1) of the 2003 Act.

Prescribed circumstances

6. The following circumstances are prescribed pursuant to section 1(2)(b) of the 2003 Act—

(a) use or dealing with a society's assets for the purposes of—

(i) paying a member the value of his withdrawable share capital or interest on such capital;

(ii) making any payment pursuant to section 24 (proceedings on death of nominator), 25 (provision for intestacy) or 26 (payments in respect of mentally incapable persons) of the 1965 Act;

(iii) making any payment in accordance with the rules of the society to trustees of the property of bankrupt members or, in Scotland, members whose estate has been sequestrated; or

(iv) where the society is to be dissolved in accordance with section 55 of the 1965 Act (dissolution of registered society) or wound up under the Insolvency Act 1986(**9**), paying its creditors; and

(b) the transfer of a society's assets to—

(i) a prescribed community benefit society which has a restriction on use and which will apply that restriction to any assets so transferred;

(ii) a community interest company;

(iii) a registered social landlord which has a restriction on the use of its assets which is equivalent to a restriction on use and which will apply that restriction to any assets so transferred;

(iv) a charity (including a community benefit society that is a charity); or

(v) a body, established in Northern Ireland or a State other than the United Kingdom, that is equivalent to any of those persons.

Prescribed rules

7. A restriction on use is prescribed as unalterable pursuant to section 1(4)(b) of the 2003 Act.

(**9**) 1986 c.45.

PART 4

Enforcement measures

Condition for exercise of enforcement measures

8. In deciding whether and how to exercise the powers conferred by regulations 9, 10 and 11, the Authority must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in community benefit societies.

Enforcement notification

9.—(1) If the Authority considers that a prescribed community benefit society is contravening or has contravened regulation 3, it may issue an enforcement notification.

(2) An enforcement notification is a notification which imposes requirements on a society to take all such steps as may be necessary for securing that a contravention is brought to an end or is not repeated.

Restitution

10.—(1) If the Authority considers that—

(a) a prescribed community benefit society has contravened regulation 3;

(b) the society has suffered loss as a result; and

(c) an officer of the society has been knowingly concerned in the contravention,

the Authority may require the officer concerned, in accordance with such arrangements and within such period as the Authority considers appropriate, to pay to the society such amount as appears to the Authority to be just having regard to the extent of the loss suffered by the society as a result of the contravention.

(2) If all or any of the amount payable by the officer is outstanding at the end of the period within which payment is required to be made, the society may recover the outstanding amount as a debt due to it.

(3) The Authority may not exercise the power in paragraph (1) if it considers, having taken into account any representations made to it in response to a warning notice, that the officer concerned took all reasonable steps to secure that the society did not contravene regulation 3.

Removal of officers

11.—(1) If the Authority considers that a prescribed community benefit society has contravened regulation 3 and that an officer of the society has been knowingly concerned in the contravention, the Authority may direct the society to remove the officer from his office or position.

(2) The Authority may not exercise the power in paragraph (1) if it considers, having taken into account any representations made to it in response to a warning notice, that the officer concerned took all reasonable steps to secure that the society did not contravene regulation 3.

Warning notice

12.—(1) If the Authority proposes to exercise a power conferred by regulation 9, 10 or 11, it must give a warning notice to the society and any officer in relation to whom the power is to be exercised.

(2) A warning notice must—

(a) state the action which the Authority proposes to take;

(b) be in writing; and

(c) give reasons for the proposed action.

(3) A warning notice must specify a reasonable period within which the persons to whom it is given may make representations to the Authority.

(4) The Authority may extend the period specified in the notice.

(5) The Authority must then decide, within a reasonable period, whether to exercise the power concerned.

Decision notice

13.—(1) If the Authority decides to exercise a power conferred by regulation 9, 10 or 11, it must give a decision notice to the society and any officer in relation to whom the power is exercised.

(2) A decision notice must —

(a) be in writing;

(b) give reasons for the decision to exercise the power concerned;

(c) set out the terms of, as the case may be, the enforcement notification, requirement for payment or direction for removal of an officer; and

(d) indicate that there is a right of appeal to the High Court or, as the case may be, the Court of Session and that any appeal must be brought within 28 days.

(3) Subject to regulation 14(4), a society which is subject to an enforcement notification or a direction for removal must comply with it.

Appeal

14.—(1) If the Authority decides to exercise a power conferred by regulation 9, 10 or 11, the society and any officer in relation to whom it is exercised may appeal to the High Court or, in the case of a society or an officer of a society whose registered office is situated in Scotland, to the Court of Session.

(2) On an appeal from any decision of the Authority, the court has the power to—

(a) quash or vary the decision of the Authority, including the power to reduce the amount of the payment required under regulation 10(1) to such amount as it thinks proper; and

(b) substitute its own decision for any decision quashed on appeal.

(3) An appeal to the court must be made before the end of the period of 28 days beginning with the date on which the decision notice in question is given.

(4) A decision to exercise a power conferred by regulation 9, 10 or 11 is not to be treated as having any effect—

(a) during the period within which an appeal may be brought; and

(b) if the matter is the subject of an appeal, until the appeal has been finally disposed of.

Court orders

15.—(1) If, on the application of the Authority, the court is satisfied that—

(a) there is a reasonable likelihood that a prescribed community benefit society will contravene regulation 3; or

(b) a prescribed community benefit society is contravening or has contravened regulation 3 and there is a reasonable likelihood that the contravention will continue or be repeated,