STATUTORY RULES OF NORTHERN IRELAND

# 2006 No. 258

# INDUSTRIAL AND PROVIDENT SOCIETIES

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

*Made - - - - 12th June 2006*
*To be laid before Parliament under paragraph 7(3) of theSchedule to the Northern Ireland Act 2000*

*Coming into operation 31st July 2006*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by Article 9 of the Industrial and Provident Societies (Northern Ireland) Order 2006(**1**), makes the following Regulations:

## PART I

## CITATION, COMMENCEMENT AND INTERPRETATION

### Citation and commencement

**1.** These Regulations may be cited as the Community Benefit Societies (Restriction on Use of Assets) Regulations (Northern Ireland) 2006 and come into operation on 31st July 2006.

### Interpretation

**2.**—(1) The Interpretation Act (Northern Ireland) 1954(**2**) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"the 2006 Order" means the Industrial and Provident Societies (Northern Ireland) Order 2006;

"the 1969 Act" means the Industrial and Provident Societies Act (Northern Ireland) 1969(**3**);

"the Registrar" means the Registrar of Industrial and Provident Societies;

"charity" has the meaning given by section 35 of the Charities Act (Northern Ireland) 1964(**4**);

(**1**) S.I. 2006/314 (N.I. 3)
(**2**) 1954 c. 33 (N.I.)
(**3**) 1969 C. 24
(**4**) 1964 C. 33

"committee" and "officer" have the meaning given by section 101 of the 1969 Act;

"community benefit society" has the meaning given by Article 9(8) of the 2006 Order;

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

"registered housing association" means a housing association registered in the register maintained by the Department of the Environment under Article 14 of the Housing (Northern Ireland) Order 1992(**5**);

"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 II

## 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 Article 9(2) of the 2006 Order

### 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 1969 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 59 of the 1969 Act (amalgamation of societies).

# PART III

## 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 housing association; and

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

are prescribed pursuant to Article 9(1) of the 2006 Order.

### Prescribed circumstances

**6.** The following circumstances are prescribed pursuant to Article 9(2)(b) of the 2006 Order—

(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;

(**5**) S.I. 1992/1725 (N.I. 15)

(ii) making any payment pursuant to section 23 (proceedings on death of nominator), 24 (provision for small payments on death) or 25 (payments in respect of mentally incapable persons) of the 1969 Act;

(iii) making any payment in accordance with the rules of the society to trustees of the property of bankrupt members; or

(iv) where the society is to be dissolved in accordance with section 64 of the 1969 Act (dissolution of registered society) or wound up under the Insolvency (Northern Ireland) Order 1989(**6**), 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 registered housing association 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;

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

(iv) a body, established in England and Wales, Scotland 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 Article 9(4)(b) of the 2006 Order.

# PART IV

## 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 Registrar 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 Registrar considers that a prescribed community benefit society is contravening or has contravened regulation 3, he 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 Registrar 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,

(**6**) S.I. 1989/2405 (N.I. 19)

the Registrar may require the officer concerned, in accordance with such arrangements and within such period as the Registrar considers appropriate, to pay to the society such amount as appears to the Registrar 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 Registrar may not exercise the power in paragraph (1) if he considers, having taken into account any representations made to him 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 Registrar 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 Registrar may direct the society to remove the officer from his office or position.

(2) The Registrar may not exercise the power in paragraph (1) if he considers, having taken into account any representations made to him 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 Registrar proposes to exercise a power conferred by regulation 9, 10 or 11, he 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) be in writing;

(b) state the action which the Registrar proposes to take; 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 Registrar.

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

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

**Decision notice**

**13.**—(1) If the Registrar decides to exercise a power conferred by regulation 9, 10 or 11, he 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 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 Registrar 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.

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

(a) quash or vary the decision of the Registrar, 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 Registrar, 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,

the court may make an order restraining the contravention by the society.

(2) If, on the application of the Registrar, the court is satisfied that—

(a) an officer of a prescribed community benefit society is likely to be knowingly concerned in a contravention of regulation 3; or

(b) an officer of a prescribed community benefit society is or has been knowingly concerned in a contravention of regulation 3 and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order requiring him to take such steps as the court may direct to prevent the contravention or bring it to an end.

(3) The jurisdiction conferred by this regulation is exercisable by the High Court.

(4) Nothing in this regulation affects the right of any person other than the Registrar to bring proceedings in respect of the matters to which these Regulations apply.

# PART V

## MISCELLANEOUS AND SUPPLEMENTAL

**Service of notices and other documents**

**16.**—(1) This regulation applies where under these Regulations a notice is to be given to any person.

(2) The notice may be given to the person in question—

(a) by delivering it to him;

(b) by leaving it at his proper address;