

GENERAL SCHEME
CO-OPERATIVE SOCIETIES BILL 2022

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GENERAL SCHEME
CO-OPERATIVE SOCIETIES BILL 2022

A Bill to make provision for the formation, operation and regulation of bodies corporate to be known as Co-operative Societies; to provide for the establishment of the Office of the Registrar of Co-operative Societies and Trade Unions and to confer functions on it; to transfer to that Office the functions of the Registrar of Friendly Societies; to provide for the dissolution of industrial and provident societies; after a transition period repeal the Industrial and Provident Societies Acts 1895, the Industrial and Provident Societies (Amendment) Act 1971, the Industrial and Provident Societies (Amendment) Act 1978, Parts 3 and 4 of the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014 and certain provisions of the Industrial and Provident Societies Act 1893 and the Industrial and Provident Societies (Amendment) Act 1913 to 2021; to amend the Trade Union Act 1871; to amend the Industrial and Provident Societies Act 1893; to amend the Friendly Societies Act 1896; to amend the Industrial and Provident Societies (Amendment) Act 1978; to amend the Electoral Act 1997; to amend the Taxes and Consolidation Act 1997; to amend the Companies Act 2014, to amend the European Communities (European Cooperative Society) Regulations 2009 and to provide for related matters

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1 PRELIMINARY AND GENERAL

HEAD 1 – Short title and commencement

Provide for:

(1) This Bill may be cited as the Co-operative Societies Bill 2022.

(2) This Bill shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory note:

This is a standard provision. It provides that different provisions can be commenced and come into operation on different days as ordered by the Minister.

HEAD 2 – Interpretation

Provide for:

(1) In this Bill —

“Act of 1893” means the Industrial and Provident Societies Act 1893;

“Act of 1913” means the Industrial and Provident Societies (Amendment) Act 1913;

“Act of 2014” means the Companies Act 2014;

“activity” means any activity in the State that a co-operative society may be lawfully formed to carry on and includes the holding, acquisition or disposal of property of whatsoever kind;

“agent” does not include a person’s counsel acting as such;

“amendment”, in relation to a rule, includes an alteration and a deletion;

“annual general meeting” means the meeting provided for in *head 96*;

“annual return” has the meaning given to it by section 342 of the Act of 2014, as applied by *head 169*;

“assignee in bankruptcy” means the Official Assignee (within the meaning of the Bankruptcy Act 1988) or a creditors’ assignee (within the meaning of that Act);

“authorised market operator” means a market operator (within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004) who, for the time being, is authorised under—

(a) the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007); or

(b) the measures adopted by another Member State to implement that Directive, to operate the business of a regulated market (within the meaning of that Directive);

“Authority” means the Corporate Enforcement Authority;

“called-up share capital”, in relation to a co-operative society, means so much of its share capital as equals the aggregate amount of the calls made on its shares, whether or not those calls have been paid, together with any share capital paid up without being called and any share capital to be paid on a specified future date under the co-operative society’s rules, the terms of allotment of the relevant shares or any other arrangements for payment of those shares, and “uncalled share capital” shall be read accordingly;

“category 1 offence” has the same penalty as a category 1 offence under section 871(1) of the Act of 2014;

“category 2 offence” has the same penalty as a category 2 offence under section 871(2) of the Act of 2014;

“category 3 offence” has the same penalty as a category 3 offence under section 871(3) of the Act of 2014;

“category 4 offence” has the same penalty as a category 4 offence under section 871(4) of the Act of 2014;

“Central Bank” means the Central Bank of Ireland;

“child” includes a step-child and an adopted child and “son”, “daughter” and “parent” shall be read accordingly;

“civil partner” has the meaning given to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“Community act” means an act adopted by an institution of the European Union;

“company” means a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act;

“constitution of a company” has the same meaning given to it by section 2(1) of the Act of 2014;

“contravention” includes a failure to comply;

“contributory” has the meaning given to it by section 559 of the Act of 2014 as applied by *head 203*;

“co-operative society” means any autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise, formed and registered under this Bill;

“court”—

- (a) without prejudice to *paragraphs (b) and (c)*, where used in any provision of this Bill in relation to a co-operative society, means—
 - (i) the High Court; or
 - (ii) where another court is specified for the purposes of that provision —that court;
- (b) where used in relation to proceedings for an offence, means—
 - (i) in the case of an offence that is being prosecuted summarily — the District Court; or
 - (ii) in any other case — the court with jurisdiction in the matter concerned;
- (c) where used in connection with proceedings for a debt or the recovery of a sum otherwise provided by this Bill to be recoverable and a particular court or a court of competent jurisdiction is not specified for the purpose, means any court of competent jurisdiction;

“credit institution” means—

- (a) a company or undertaking that is the holder of a licence under section 9 of the Central Bank Act 1971,
- (b) a company or undertaking engaged solely in the making of hire purchase agreements (within the meaning of the Consumer Credit Act 1995) and credit sale agreements (within the meaning of that Act), in respect of goods owned by the company or undertaking,
- (c) a company or undertaking engaged in the business of accepting deposits or other repayable funds from the public and granting credit for its own account, or
- (d) a company or undertaking that is a trustee savings bank licensed under the Trustee Savings Banks Act 1989;

“debenture” includes debenture stock, bonds and any other securities of a co-operative society whether constituting a charge on the assets of the co-operative society or not;

“*de facto* director” shall be read in accordance with *head 125*;

“deliver” includes send or forward and, in the case of a requirement to deliver a document, notice or thing to the Registrar, where the provision concerned itself does not indicate that that is the purpose of its delivery, means deliver the document, notice or thing to the Registrar for the purposes of its registration;

“disqualification order” has the same meaning given to it by Chapter 4 of Part 4 of the Act of 2014, as applied by *head 230*;

“director” includes any person occupying the position of director by whatever name called;

“document” includes summons, notice, order and other legal process, and register;

“EEA state” means a state, including the State, which is a contracting party to the EEA Agreement;

“electronic means” or “electronic communications” includes the use of electronic mail;

“enactment” means a statute or an instrument made under a power conferred by a statute;

“examiner” means an examiner appointed under *section 509 or 517 of the Act of 2014, as applied by head 200*;

“extraordinary general meeting” shall be read in accordance with *head 98*;

“financial year” has the same meaning given to it by section 288 of the Act of 2014;

“group” means a holding company and its subsidiaries;

“hire-purchase agreement” has the same meaning as it has in the Consumer Credit Act 1995;

“holding company” has the meaning given to it by section 8 of the Act of 2014;

“industrial and provident society” means a society registered under the Industrial and Provident Societies Acts 1893 to 2021;

“insurance undertaking” means an undertaking that is the holder of an authorisation within the meaning of—

- (a) Regulation 2 of the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976),
- (b) Regulation 2 of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994),
- (c) Regulation 2 of the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984),
- (d) Regulation 2 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994),
- (e) European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006), or
- (f) Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);

“members’ voluntary winding up” has the meaning given to it by *section 559(1) of the Act of 2014*;

“Minister” means the Minister for Enterprise, Trade and Employment;

“officer”, in relation to a body corporate, includes a director or secretary;

“ordinary resolution” has the meaning given to it by *head 111*;

“prescribed” means prescribed by regulations made by the Minister;

“private company limited by shares” means, unless otherwise indicated, a private company limited by shares registered under Part 2 of the Act of 2014 as distinct from a designated activity company of the type referred to in section 965(2)(a) of that Act;

“public holiday” means a day which is a public holiday under the Organisation of Working Time Act 1997;

“receiver of the property of a co-operative society” shall be read in accordance with *subhead (4)*;

“register” shall be read in accordance with *head 239(2)*;

“registered office”, in relation to a co-operative society, means the office provided for in *head 41*;

“registered person” shall be read in accordance with *head 31(2)*;

- “Registrar” means the registrar appointed under *head 239(3)*;
- “related company” has the same meaning as provided for in section 2(1) of the Act of 2014;
- “relevant classification system” – means NACE Rev. 2, that is to say, the common basis for statistical classifications of economic activities within the European Community set out in the Annex to Council Regulation (EEC) No. 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community, as amended for the time being;
- “RCT Gazette” means the Co-operative Societies and Trade Unions Registration Office Gazette referred to in *head 239(5)*;
- “rules of co-operative society” means the rules of a co-operative society as provided for in *head 11*;
- “shadow director” shall be read in accordance with *head 124*;
- “share” means share in the share capital of a co-operative society, and includes stock except where a distinction between stock and shares is express or implied;
- “share capital”, in relation to a co-operative society, means the aggregate amount or value of the nominal value of shares of the co-operative society;
- “special resolution” has the meaning given to it by *head 111*;
- ‘statutory auditor’ has the same meaning given to it by section 2(1) of the Act of 2014;
- “subscribe” includes, where the means of authentication referred to in *head 241* are employed, subscribe in the prescribed non-legible form;
- “subsidiary” has the meaning given to it by section 7 of the Act of 2014;
- “transition period” means the period provided for in *head 254*;
- “undischarged bankrupt” means a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction;
- “wholly owned subsidiary” has the same meaning given to it by section 8 of the Act of 2014.
- (2) A word or expression used in Part 6 of the Act of 2014, as applied by *head 169*, and used in this Bill has the same meaning as it has in Part 6 of the Act of 2014.
- (3) References in this Bill to a body corporate shall be read as not including a corporation sole, but as including a co-operative society or body corporate incorporated outside the State.
- (4) In this Bill a reference to a receiver of the property of a co-operative society includes—
- (a) a reference to—
 - (i) a receiver and manager of the property of a co-operative society; or
 - (ii) a manager of the property of a co-operative society;
 - (b) a reference to a receiver or to a receiver and manager or to a manager, of part only of that property; and
 - (c) a reference to a receiver only of the income arising from that property or from part of it.

Explanatory note: This head contains the defined terms that apply generally in the Bill. This is a standard interpretation section required in legislation and its purpose is to ensure clarity and precision. It provides for general interpretation provisions for the entire Bill unless a Part or head specifically identifies interpretation provisions for the purposes of that Part or head.

New definitions and definitions of note in subhead (1) include:

The definition “activity” is new, and subject to the prohibitions in heads 9 and 10, means any activity that a co-operative society may carry on.

“Annual general meeting” and “extraordinary general meeting” – these expressions are now defined.

The penalties for offences under the Bill are classified based on the four-tier scheme already used in the Companies Act of 2014.

“Contravention” is defined under the Bill as including a failure to comply.

“credit institution” and “insurance undertaking” are defined in the Bill as co-operative societies are not allowed to carry on the activity of a credit institution or an insurance undertaking.

The term “deliver” has been defined to clarify that “deliver” means to send or forward a document, notice or thing to the Registrar for the purposes of its registration.

“Electronic means “or “electronic communications” is defined as including the use of electronic mail.

“Hire-purchase agreement” has the same meaning as it has in the Consumer Credit Act 1995.

“Ordinary resolution” was not previously defined under the Industrial and Provident Societies Acts and is defined here as a resolution of the type provided for in section 111 of the Bill.

The definition of “prescribed” gives a specific meaning to the term in the context of the Bill.

“Public holiday” is defined as a day which is a public holiday under the Organisation of Working Time Act 1997 and replaces the expression “bank holiday”.

The term “registered office” is now defined.

“The Registrar” is now defined as the Registrar of Co-operative Societies and Trade Unions under head 239 of the Bill.

“Shadow director” and “*de facto* director” are new definitions taken from the Companies Act 2014.

“Special resolution” is given a new definition in head 111 insofar as a special resolution is now said to be a resolution that is required to be passed as a special resolution, whether by this Bill the co-operative society’s rules or otherwise.

“Undischarged bankrupt” is defined as a person who is declared bankrupt by a court of competent jurisdiction, within the State or elsewhere, and who has not obtained a certificate of discharge or its equivalent in the relevant jurisdiction.

HEAD 3 – Periods of time

Provide that:

- (1) Where the time limited by any provision of this Bill for the doing of anything expires on a Saturday, a Sunday or a public holiday, the time so limited shall extend to and the thing may be done on the first following day that is not a Saturday, a Sunday or a public holiday.
- (2) Where in this Bill anything is required or allowed to be done within a number of days not exceeding 6, a day that is a Saturday, a Sunday or a public holiday shall not be reckoned in computing that number.

Explanatory note: This head is new and is based on section 3 of the Companies Act 2014. It deals with the calculation of time limits under the Bill and is in line with the Interpretation Act 2005. Where a time limit expires on a Saturday, Sunday or a public holiday, that time limit will extend to the first following day that is not a Saturday, Sunday or a public holiday. Where a time limit under the Bill is 6 days or less, any Saturday, Sunday or public holiday that falls within that period will not be taken into account when calculating the number of days.

HEAD 4 – Repeals

Provide that:

The Acts of Oireachtas specified in Schedule 1 are repealed to the extent specified in the third column of that Part on the expiration of the transition period.

Explanatory note:

The purpose of this head is to repeal the Industrial and Provident Societies Acts 1893 to 2021 specified in Schedule 1 on the expiration of the transition period. Sections 13, 14, 73, 74, 76 and 79 of the Act of 1893 and section 3(2) of the Act of 1913 remain in force in order that the Registrar of Co-operative Societies and Trade Unions may maintain the register of Industrial and Provident Societies. Under head 263, an industrial and provident society may apply to the High Court for restoration to the industrial and provident register to wind up in accordance with head 262 or to register as a co-operative society where it is required to submit outstanding annual returns under the Industrial and Provident Societies Acts.

HEAD 5 – Regulations and orders

Provide that:

(1) The Minister may make regulations or orders prescribing anything referred to in this Bill as prescribed or to be prescribed.

(2) Every regulation made by the Minister under this Bill or order made by the Minister under this Bill (other than an order under *head 1(2)*, *169(3)*, or *255(1)*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which the House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Explanatory note: This is a standard head required in the legislation. It gives the power to the Minister to make regulations prescribing anything referred to in this Bill as prescribed or to be prescribed, unless the regulation is specifically to be prescribed by another authority. Regulations or orders made by the Minister under the Bill must be laid before each House of the Oireachtas as soon as possible after the making of the regulation or order and the Houses of the Oireachtas may then pass a resolution annulling the regulation or order within 21 days of it being laid before it (provided the House is sitting).

HEAD 6 – Authentication of certain official documents

Provide that:

Any approval, sanction, direction or licence or revocation of licence which, under this Bill, may be given or made by the Minister may be signed by any person authorised in that behalf by the Minister.

Explanatory note: This head based on section 13 of the Companies Act 2014. The purpose of the head is to make provision for the authentication of documents and states that any approval, sanction, direction or licence or revocation of licence given or made by the Minister under this Bill may alternatively be authenticated by any person authorised in that regard by the Minister.

HEAD 7 – Expenses

Provide that:

The expenses incurred by the Minister in the administration of this Bill shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Explanatory note: This is a standard provision in legislation of this kind. It provides that expenses incurred by the Minister in the administration of this Bill will be paid out of moneys provided by the Oireachtas, to the extent that such expenses are sanctioned by the Minister for Public Expenditure and Reform.

PART 2 REGISTRATION

Chapter 1 Registration and consequential matters

HEAD 8 – Way of forming co-operative society

Provide that:

(1) A co-operative society may be formed to carry on any activity by:

- (a) not less than three natural persons,
- (b) not less than three bodies corporate,
- (c) not less than three natural persons and one or more bodies corporate, or
- (d) at least two co-operative societies,

subscribing to the rules as provided for in *head 11* and complying with the requirements of this Part as to registration of a co-operative society.

(2) The liability of a member of a co-operative society at any time shall be limited to the amount, if any, unpaid on the shares registered in the member's name at that time.

(3) *Subhead (2)* is without prejudice to any other liability to which a member may be subject as provided by this Bill.

(4) Where two or more persons hold one or more shares in a co-operative society jointly, they shall, for the purposes of this head, be treated as a single member.

Explanatory note: This head derives from sections 4, 5, 42 and point 2 of Schedule II of the Industrial and Provident Societies Act 1893 and section 1 of the Industrial and Provident Societies (Amendment) Act 1913. It sets out the manner in which a co-operative society may be formed and limits the liability of any member of such a society.

Subhead (1) provides that a co-operative society may be formed to carry on any activity by not less than three natural persons, not less than three bodies corporate, a combination of three natural persons and one or more bodies corporate, or at least two co-operative societies, who subscribe to its rules and comply with the requirements of this Part as to registration of a co-operative society. Bodies corporate include a co-operative society.

The proposal to reduce the current minimum number of seven persons to form a co-operative to three, and to provide that a body corporate can be a founding member aims to facilitate setting up co-operative societies in the future.

The current law provides that a society may be registered for carrying on any industries, businesses or trades. Stakeholders have indicated that the current scope of activities is potentially restrictive, therefore the Bill proposes that a co-operative society may be formed to carry on any activity, where “activity” is defined as any activity in the State that a co-operative society may be lawfully formed to carry on. This provision will create a level playing field with companies.

Subhead (2) enshrines the principle of limited liability, and subhead (3) clarifies that the operation of this principle is without prejudice to any other liability to which a member may be subject to pursuant to this Bill.

Subhead (4) is based on section 17(6) of the Companies Act 2014 and provides that where two or more persons hold one or more shares in a co-operative jointly, such persons shall be treated as a single member. The clarification removes any ambiguity relating to the membership status and rights where shares in a co-operative society are held jointly.

HEAD 9 – Co-operative principles

Provide that:

(1) A proposed co-operative society shall not be registered as a co-operative society under this Bill unless it is formed to carry on any activity on the basis of the co-operative principles specified in Schedule 2.

(2) The Minister may, by order, amend Schedule 2 to give effect to amendments adopted by the International Co-operative Alliance to the co-operative principles adopted as part of the Statement on the Co-operative Identify, Values and Principles by the General Assembly of the Alliance in 1995.

Explanatory note:

One of the main differences between companies and co-operatives is that the latter are governed by the co-operative principles listed in Schedule 2. Based on stakeholders' support that societies registered under the new legislation should have co-operative ethos/subscribe to the co-operative principles, subhead (1) of the Bill proposes that a society that may be registered as a co-operative society will carry on its activities based on the internationally recognised co-operative principles.

Subhead (2) sets out that the Minister may, by order give effects to amendments adopted by the International Co-operative Alliance to the co-operative principles.

HEAD 10 – Co-operative society to carry on activity in the State and operate in accordance with the co-operative principles and prohibition of certain activities

Provide that:

(1) A co-operative society shall not be formed or registered unless it appears to the Registrar that the society, when registered will—

- (a) carry on an activity in the State, and
- (b) operate in accordance with the principles 1 to 4 listed in Schedule 2 and as far as is practicable operate in accordance with the principles 5 to 7 listed in that Schedule.

(2) A co-operative society shall not carry on the activity of a credit institution or an insurance undertaking.

Explanatory note: This head is partially based on section 18 of the Companies Act 2014 and contains the basic principle that a society cannot be formed or registered unless it appears to the Registrar that the society, when registered, will carry on an activity in the State and will operate based on co-operative principles 1 to 4 listed in Schedule 2, and as far as practicable based on principles 5 to 7 of that Schedule. It also prohibits a co-operative society to carry on the business of a credit institution or insurance undertaking.

HEAD 11 – Form of the rules

Provide that:

- (1) The rules of a co-operative society shall state—
 - (a) the society’s name;
 - (b) that it is a co-operative society limited by shares registered under this Part;
 - (c) that the liability of its members is limited;
 - (d) its objects;
 - (e) that the co-operative society will carry on any activity on the basis of the co-operative principles provided for in Schedule 2;
 - (f) that the society may or may not, as the case may be, avail of an audit exemption under section 352 or 359 of the Act of 2014, as applied by *head 169* where a society is entitled to the benefit of that exemption;
 - (g) that the society may or may not, as the case may be, avail of an exemption under sections 305(14), 305A(3), 309(1A), 317(7B), 323(1A)(b) and 325(1A)(b) of the Act of 2014, as applied by *head 169* where a society is entitled to the benefit of that exemption;
 - (h) the conditions and procedure for admission of members;
 - (i) the conditions and procedure for expulsion and suspension of members;
 - (j) the conditions and procedure for cessation of membership;
 - (k) the minimum number (which shall not be less than one) and nominal value of shares required to be taken by each subscriber to the rules;
 - (l) that the shares of the society or any of them will or will not, as the case may be, be transferable; and if transferable, provision for the form of transfer and registration of the shares, and for the consent of the board of directors;
 - (m) the procedure for redeeming a member’s shares;
 - (n) the rights and liabilities of representatives of members under bankruptcy;
 - (o) the conditions and procedure for dealing with the estate of a deceased member who is a natural person and the rights and liabilities of representatives of a member who is natural person who can no longer be reasonably regarded as possessing an adequate decision-making capacity;
 - (p) dispute resolution procedure for settling disputes between the co-operative and any of its members;
 - (q) the mode of distribution of the surplus;
 - (r) the procedure for the allotment of shares, the nominal value of each share and the rights and obligations regulating those shares;
 - (s) if a co-operative society wishes to raise capital from non-user investor members the rules shall expressly provide for non-user investor members, and the terms attached to their shares shall be clearly stated;
 - (t) the maximum interest, if any, in the shares of the co-operative society which any member may hold; and

- (u) any supplementary rules, governing the society in addition to those required under paragraphs (a) to (t).
- (2) The Rules of the co-operative society need not contain any supplementary rules, to the extent that the provisions of this Part and *Parts 1 and 3 to 13* regulate the matters which would be governed by those rules.
- (3) The rules shall—
 - (a) be divided into paragraphs numbered consecutively, and
 - (b) either—
 - (i) be signed by each subscriber in the presence of at least one witness who shall attest the signature; or
 - (ii) be authenticated in the manner referred to in *head 241*.
- (4) Where, subsequent to its registration, an amendment of the rules is made affecting any matter, referred to in *subhead (1)*, that subhead shall be read as requiring the rules to state the matter as it stands in consequence of that amendment.

Explanatory note: This head deals with the particulars of the rules of a co-operative society.

Subhead (1) sets out the contents of the rules and while it is partly based on Schedule II of the Industrial and Provident Societies Act 1893 as amended, it has been expanded to include additional matters that shall form part of the rules of each co-operative society, including the requirements that the society is a co-operative society limited by shares and the liability of its members is limited, the co-operative will operate in accordance with the co-operative principles, the procedure for expulsion and suspension of members, the grievance procedure for settling disputes, the minimum number and nominal value of the shares to be taken by each subscriber, that society will or will not avail of the micro or small co-operative exemptions where entitled to these exemptions, the terms attached to investment shares if such shares are issued.

The rules shall state: the name of the co-operative society; that the society is limited by shares; the liability of its members is limited; its objects, that the society will operate in accordance with the co-operative principles; that the society may or may not avail of the audit exemption and the other exemptions provided for in Part 6 of the Bill, where it is entitled to benefit from the exemption; the procedures for: admission, suspension and expulsion of members, cessation of membership, redeeming of shares; the minimum number and nominal value of shares required to be taken by each subscriber to the rules; if the shares are transferable or not and if so, the form of transfer and registration and for the consent of the board; the rights and liabilities of representatives of members under bankruptcy; the conditions and procedure for dealing with the estates of a deceased member who is a natural person, or the rights and liabilities of a representative of a member who is a natural person and who can no longer be reasonably regarded as possessing an adequate decision-making capacity; dispute resolution procedures for settling disputes between the co-operative and any of its members; the mode of distribution of the surplus; procedure for the allotment of shares, the nominal value of each share and the rights and

obligations regulating those shares; if applicable, expressly providing for a non-user investor member and the terms attached to non-user investor shares; the maximum shareholding, if any, which a member may hold and any supplementary rules the society may adopt.

Subhead (2) clarifies that the rules of the society do not need to contain any supplementary rules where the provisions of the Bill regulate the matters which would be governed by those rules.

Subheads (3) and (4) derive from section 19 of the Companies Act 2014. Subhead (3) provides details on the form of the rules and contains requirements as regards the signing of that document. Subhead (4) clarifies that the rules must always state the matters specified in them as they stand, not only what the position was at the time the society was registered.

HEAD 12 – Restriction on amendment of rules

Provide that:

A co-operative society may not amend the provisions contained in its rules except in the cases, in the manner and to the extent for which express provision is made in this Bill.

Explanatory note: This head is based on section 20 of the Companies Act 2014. It provides that an amendment of the rules shall be carried out in accordance with the provisions of the Bill.

HEAD 13 – Registration of rules

Provide that:

(1) The rules of a proposed co-operative society shall be delivered for registration to the Registrar together with—

- (a) the statement and consent referred to in *head 14*; and
- (b) the declaration referred to in *head 16*, and, where appropriate, the statement referred to in *head 15*.

(2) The Registrar shall not register rules delivered for registration under this head unless he or she is satisfied that all the requirements of this Bill in respect of registration and of matters precedent and incidental thereto have been complied with.

Explanatory note: This head sets out the requirements regarding registration of the rules of a proposed co-operative society and is based on section 21 of the Companies Act 2014. Subhead (1) provides that the rules shall be delivered for registration to the Registrar and sets out that the statements and consent referred to in head 14 and the declaration referred to in head 16, and where appropriate the statements referred to in head 15 are required to accompany the rules on delivery.

Subhead (2) provides that the Registrar shall not register any rules delivered to him or her unless he or she is satisfied that all the requirements of this Bill with regard to registration have been complied with.

HEAD 14 – Statement to be delivered with rules

Provide that:

- (1) In this subhead—
 - (a) a reference to a statement is to the statement required to be delivered by head 13(1)(a); and
 - (b) a reference to a society is to the proposed co-operative society to which such statement relates.
 - (2) The statement shall be in the prescribed form and shall state:
 - (a) the name of each of the persons who are to be the first directors of the society;
 - (b) the name of the person who is, or of each of the persons who are, to be the first secretary or joint secretaries of the society;
 - (c) the name of the person (if any) who is, or of each of the persons (if any) who are, to be the first assistant or deputy secretary or secretaries of the society;
 - (d) the address of the society’s registered office; and
 - (e) the place (whether in the State or not) where the central administration of the society will normally be carried on,and the particulars (in relation to any foregoing person) specified in *subhead (3)* and any other particulars that may be prescribed in relation to such a person or in relation to any other foregoing matter.
 - (3) The particulars referred to in *subhead (2)* are—
 - (a) in relation to a person named as director of the society concerned, all particulars which are, in relation to a director, required pursuant to *subhead (2)* of *head 70* to be contained in the register kept under that subhead;
 - (b) in relation to a person named as secretary, or as one of the joint secretaries, all particulars which are, in relation to the secretary or to each joint secretary, required pursuant to *subhead (5)* of *head 70* to be contained in the register kept under that subhead; and
 - (c) in relation to a person named as assistant or deputy secretary, all particulars which are, in relation to an assistant or deputy secretary, required pursuant to *subhead (7)* of *head 70* to be contained in the register kept under that subhead.
 - (4) Where the rules are delivered, pursuant to *head 13*, to the Registrar by a person (the “agent”) as agent for the person or persons who have subscribed to the rules of the society, the statement shall so specify and shall specify the name and address of the agent.
 - (5) *Subheads (2)* and *(3)* are without prejudice to *subhead (6)*.
 - (6) In respect of the activity, or one of the activities, to be carried on by the society in the State, the statement shall contain the following particulars:
 - (a) if it appears to the person making the statement that the activity belongs to a division, group and class appearing in the relevant classification system—
 - (i) the general nature of the activity; and
 - (ii) the division, group and class in that system to which the activity belongs;
 - (b) if it appears to that person that the activity does not belong to any such division, group and class, a precise description of the activity;
 - (c) the place or places in the State where it is proposed to carry on the activity.
-

(7) For the purposes of *subhead (6)*, if the purpose or one of the purposes for which the society is being formed is the carrying on of 2 or more activities in the State, the particulars in respect of the matters referred to in *paragraphs (a) to (c)* of that subhead to be given in the statement shall be the particulars that relate to whichever of those activities the person making the statement considers to be the principal activity for which the co-operative society is being formed to carry on in the State.

(8) The statement shall—

(a) be signed by or on behalf of each subscriber to the rules of the society or be authenticated in the manner referred to in *head 241*; and

(b) be accompanied by a consent that is either—

(i) signed by each of the persons named in the statement as a director, secretary or joint secretary or assistant or deputy secretary to act in that capacity, or

(ii) authenticated in the manner referred to in *head 241*.

(9) *Head 126(3)*, in the case of a director, and *head 129(5)*, in the case of a secretary, requires the inclusion of a particular statement in a foregoing consent by him or her.

Explanatory note: This head is based on section 22 of the Companies Act 2014. It sets out the particulars which must be contained in the statement which is required to be delivered with the rules for registration.

Subsubhead (2) requires that the statement must contain the names of the first directors and the first secretary of the proposed co-operative society, the address of the society's registered office, the place where the central administration of that society will be carried on and other particulars specified in subhead (3) in relation to the persons named as directors, secretary, or assistant secretary. In cases where the rules of the proposed society are delivered to the Registrar by an agent, subhead (4) requires the statement to specify the name and address of the agent.

Subhead (5) specifies that subheads (2) and (3) are without prejudice to subhead (6).

Subheads (6) and (7) provide that the statement to be delivered with the rules must indicate the general nature of the principal activity to be carried on by the proposed co-operative society in the State, together with the class to which that activity belongs under the European Union's NACE system for the classification of economic activity. Where the activity does not belong to any such class under the NACE system, a precise description of the activity must be provided. It is also necessary to give the place in the State where it is proposed to carry on the activity. These provisions are useful in terms of gathering statistics on the activities of the co-operative sector.

Subhead (8) requires that the statement be signed by or on behalf of each subscriber to the rules, and be accompanied by a consent signed by each of the directors and secretary to act in that capacity. The authentication of documents by means of new technology other than by sealing or signature is provided for.

HEAD 15 – Additional statement to be furnished in certain circumstances

Provide that:

(1) If any person named in the statement to be delivered under *head 13(1)(a)* as a director of the proposed co-operative society concerned is a person who is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking, that person has the following obligation.

(2) That obligation is to ensure that the foregoing statement is accompanied by (but as a separate document from that statement) a statement in the prescribed form signed by him or her, or authenticated in the manner referred to in *head 241*, specifying—

- (a) the jurisdiction in which he or she is so disqualified;
- (b) the date on which he or she became so disqualified; and
- (c) the period for which he or she is so disqualified.

Explanatory note: This head is based on section 23 of the Companies Act 2014. It provides that a person that proposes to become a director of a proposed co-operative society in the State and who is disqualified from acting as directors or secretary of a body corporate in other jurisdictions will be required to deliver with the statement under head 13(1)(a) a separate statement specifying the jurisdiction in which he or she is disqualified, the date on which he or she became disqualified and the period of disqualification.

HEAD 16 – Declaration to be made to Registrar

Provide that:

- (1) In this head —
 - (a) a reference to a declaration is to the declaration required to be delivered by *head 13(1)(b)*; and
 - (b) a reference to a society is to the proposed co-operative society to which such declaration relates.
- (2) The declaration shall state that—
 - (a) all the requirements in respect of registration of the society and of matters precedent and incidental thereto have been complied with;
 - (b) the purpose, or one of the purposes, for which the society is being formed is the carrying on by it of an activity in the State;
 - (c) the co-operative shall operate in accordance with the principles 1 to 4 listed in Schedule 2 and as far as is practicable operate in accordance with the principles 5 to 7 listed in that Schedule; and
 - (d) the particulars contained in the statement delivered under *head 13(1)(a)* are correct.
- (3) The declaration shall be made by—
 - (a) one of the persons named in the statement delivered under head 13(1)(a) as directors of the society;
 - (b) the person or, as the case may be, one of the persons named in that statement as secretary or joint secretaries of the society; or
 - (c) the solicitor, if any, engaged in the formation of the society.
- (4) The Registrar may accept the declaration as sufficient evidence that all the requirements in respect of registration of the society and of matters precedent and incidental thereto have been complied with and, in particular, that there have been complied with—
 - (a) the requirements mentioned in head 14 and, where appropriate, head 15; and
 - (b) the requirement mentioned in head 10.

Explanatory note: This head is based on section 24 of the Companies Act 2014. It provides that the Registrar may accept a declaration made by a director, secretary, or solicitor engaged in the formation of the proposed co-operative society as sufficient evidence that the requirements outlined in heads 14 and 15 above have been complied with, and also as sufficient evidence that that society will carry on an activity in the State, and will operate in accordance with principles 1 to 4 in Schedule 2 and as far as practicable in accordance with principles 5 to 7 in that Schedule.

HEAD 17 – Effect of registration

Provide that:

- (1) On the registration of a co-operative society, the Registrar shall certify in writing that the society is registered and shall issue to the co-operative society a certificate of registration in respect of it.
- (2) From the date of registration mentioned in the certificate of registration, the subscribers to the rules of the co-operative society, together with such other persons as may from time to time become members of the co-operative society, shall be a body corporate with the name contained in the rules, having perpetual succession and a common seal.
- (3) The certificate of registration issued under *subhead (1)* shall state that the society is a co-operative society limited by shares.
- (4) A certificate of registration issued under *subhead (1)* shall be conclusive evidence that the requirements of *head 13* have been complied with, and that the co-operative society is duly registered under this Bill.
- (5) The persons who are specified in the statement required to be delivered to the Registrar by *head 13(1)(a)* as the directors, secretary or joint secretaries or assistant or deputy secretary or secretaries of the proposed co-operative society to which the statement refers shall, on the registration of the co-operative society, be deemed to have been appointed as the first directors, secretary or joint secretaries or assistant or deputy secretary or secretaries, as the case may be, of the co-operative society.
- (6) Any indication in the rules, as delivered under *head 13* for registration, specifying a person as a director or secretary (including any assistant or deputy secretary) of a proposed co-operative society shall be void unless such person is specified as a director or as secretary (or, as the case may be, assistant or deputy secretary) in the foregoing statement.
- (7) *Subhead (5)* does not operate to deem a person appointed as a director or secretary (including any assistant or deputy secretary) of a co-operative society where—
 - (a) he or she is disqualified under this Bill from being appointed a director, secretary, assistant or deputy secretary, as the case may be, of a co-operative society;
 - (b) he or she is disqualified under the Act of 2014 from being appointed a director, secretary, assistant or deputy secretary, as the case may be, of a company; or
 - (c) in the case of a director or secretary, a provision of this Bill provides that the person’s appointment as such in the circumstances is void.

Explanatory note: This head sets out the effect of registration of a co-operative society.

Subhead (1) derives from section 6 of the Industrial and Provident Societies Act 1893 and sets out that on registration, the Registrar shall issue to the co-operative society a certificate of registration.

Subheads (2) and (3) are based on section 21 of the Industrial and Provident Societies Act 1893 and set out that, from the date of registration as mentioned in the certificate, the members of the co-operative society will be a body corporate with the name contained in the rules, having perpetual succession and a

common seal. The certificate of registration shall state that the co-operative society is a co-operative society limited by shares.

Subheads (4) to (7) are based on section 25 of the Companies Act 2014.

Subhead (4) states that the certificate of registration is conclusive evidence that the co-operative society is duly registered.

Subhead (5) provides that once the society has been registered, the persons named in the statement are deemed to have been automatically appointed as its first directors and secretary. The provision contributes to strengthening the governance of a co-operative society by ensuring that from the moment of its registration, the co-operative society will have directors and secretary.

Subhead (6) provides that if there is a conflict between the statement made under head 14 and the rules as to who the directors are, any names in the rules that are not in the statement are void, while subhead (7) provides that a person is deemed not to have been appointed if he or she is disqualified from being appointed a director under the Bill or the Companies Act 2014 or a provision of the Bill states that the person's appointment in particular circumstances is void.

HEAD 18 – Provisions as to name of co-operative societies

Provide that:

- (1) The name of a co-operative society shall include one of the following:
 - co-operative;
 - co-op;
 - comharchumann;
 - comhar.

- (2) The name of a co-operative society shall end with one of the following:
 - limited;
 - teoranta.

- (3) The word “limited” may be abbreviated to “ltd.” (including that abbreviation in capitalised form) in any usage after the co-operative society’s registration by any person including that society.

- (4) The word “teoranta” may be abbreviated to “teo.” (including that abbreviation in capitalised form) in any usage after the co-operative society’s registration by any person including that society.

- (5) A co-operative society carrying on activities under a name other than its corporate name shall register in the manner directed by law for the registration of business names but the use of the abbreviation set out in *subhead (2) or (3)* shall not of itself render such registration necessary.

- (6) No proposed co-operative society shall be registered on—
 - (a) its registration; or
 - (b) should such occur, its amalgamation or conversion from a company into a co-operative society, by a name which, in the opinion of the Registrar, is undesirable.

- (7) An appeal shall lie to the Circuit Court against a refusal by the Registrar to register a co-operative society (in any of the circumstances referred to in *paragraph (a) or (b) of subhead (6)*) on the ground there referred to.

Explanatory note: This head makes provisions on the name of the society. Subhead (1) provides that a co-operative society must have “co-operative”, “co-op”, “comharchuman” or “comhar” in its name. Subhead (2) provides that a co-operative society must have at the end of its name either “limited” or “teoranta”. While section 5(1) of the Industrial and Provident Society Act 1893 requires that the word “limited” be the last word in the name of every society, it does not give the option for using the Irish version, “teoranta”. Subheads (3) to (7) are based on section 26 of the Companies Act 2014.

Subheads (3) and (4) allow the words “limited” and “teoranta” to be abbreviated. Subhead (5) provides for the registration of a business name where the corporate name is not used.

Subhead (6) stipulates that undesirable names will not be registered but subhead (7) provides for the appeal of a decision by the Registrar under subhead (6).

HEAD 19 – Trading under a misleading name

Provide that:

- (1) Neither a body that is not a co-operative society nor an individual shall carry on any trade, profession or business under a name which includes, as its last part, the word “limited” or any abbreviations of the word “limited”.
- (2) Neither a body that is not a co-operative society nor an individual shall carry on any trade, profession or business under a name which includes, the words “co-operative society”, “cooperative society”, “co-operative”, “cooperative”, “co-op”, “coop”, “comharchuman”, “comhar” or any abbreviations of any of the foregoing words.
- (3) If a body or individual contravenes *subhead (1) or (2)*, the body or individual and, in the case of a body, any officer of it who is in default, shall be guilty of a category 3 offence.
- (4) *Subhead (1)* as it relates to the use of the word “limited”, or any abbreviation of that word, shall not apply to a —
 - (a) company, or
 - (b) a limited liability partnership (within the meaning of the Legal Services Regulation Act 2015).
- (5) *Subhead (2)* shall not apply to a company registered before the commencement of this head or an industrial and provident society.
- (6) A co-operative society shall not, in the following circumstances, use a name which may reasonably be expected to give the impression that it is any type of body corporate other than a co-operative society.
- (7) Those circumstances are circumstances in which the fact that it is a co-operative society is likely to be material to any person.
- (8) If a co-operative society contravenes *subhead (6)*, the society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: The head is based on section 27 of the Companies Act 2014.

Subhead (1) prohibits the use of the word “limited” by individuals or bodies that are not co-operative societies. Subhead (4) and (5) clarify that subhead (1) does not apply to companies and limited liability partnerships and Industrial and Provident Societies during the transition period

Subhead (2) prohibits an individual or a body that is not a co-operative society from carrying on any business under a name which contains the word “co-operative society” or abbreviations of those words, the exception being companies registered before the commencement of this head as specified in subhead (5). Subhead (3) provides that a breach of the provisions in subheads (1) and (2) is a category 3 offence. Subheads (6) and (7) prohibit a co-operative society from using a name which would give the impression that it is a body other than a co-operative society, in circumstances where the fact that it is a co-operative society is likely to be material to any person. A breach of this provision by the co-operative society or one of its officers is also a category 3 offence, as per subhead (8).

HEAD 20 – Change of name

Provide that:

- (1) A co-operative society may, by special resolution and with the approval of the Registrar, signified in writing, change its name.
- (2) *Subhead (3)* applies if, through inadvertence or otherwise, a co-operative society is registered by a name (whether on its first registration, or on its registration by a new name) which, in the opinion of the Registrar, is too like the name by which a co-operative society or a company in existence is already registered.
- (3) Where this subhead applies the first-mentioned co-operative society in *subhead (2)*—
 - (a) with the approval of the Registrar — may change its name; or
 - (b) if, within 6 months after the date of its being registered by the first-mentioned name in *subhead (2)*, the Registrar directs it to do so — shall change its name.
- (4) A direction under *subhead (3)(b)* shall be complied with within a period of 6 weeks after the date of its being given or such longer period as the Registrar may think fit to allow.
- (5) Where a co-operative society changes its name under this head, the Registrar shall enter the new name in the register in place of the former name, and shall issue a certificate of registration altered to meet the circumstances of the case.
- (6) A change of name by a co-operative society under this head shall not affect any rights or obligations of the co-operative society, or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.
- (7) If a co-operative society fails to comply with a direction under *subhead (3)(b)* within the period provided under *subhead (4)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: This head sets out the procedure for a co-operative society to change its name and is based on sections 5(3) and 52 of the Industrial and Provident Societies Act 1893 and section 30 of the Companies Act 2014.

Subhead (1) derives from section 52 of the Industrial and Provident Societies Act 1893 and allows a co-operative society, by special resolution and with the written approval of the Registrar, to change its name. Subhead (2) clarifies that the provisions of subhead (3) apply in a situation where a co-operative society has, whether inadvertently or otherwise, been registered with a name which in the Registrar's opinion is too similar to the name of another co-operative society or a company. Section 5(3) of the Industrial and Provident Societies Act 1893 prohibits the registration of a society under a name identical with that under which any other existing society is registered, or so nearly resembling such name as to be likely, in the opinion of the registrar, to mislead the members or the public as to its identity.

Subhead (3) provides that where a situation under subhead (2) arises, the co-operative society itself may change its name with the approval of the Registrar, or alternatively the Registrar may, within 6 months of

the co-operative society being registered by that name, direct it to change its name, and this direction must, according to subhead (4), be complied with within 6 weeks or such longer period as the Registrar allows. Failure to comply with such a direction is a category 4 offence under subhead (7).

Subhead (5) provides that where the society changes its name in accordance with this head, the Registrar shall enter the new name in the register in place of the former name, and shall issue a certificate of registration altered to meet the circumstances of the case.

Subhead (6) is similar to section 52 of the Industrial and Provident Society Act 1893 and provides that a change of a co-operative society's name under this head shall not affect any rights or obligations of the co-operative society, or any legal proceedings by or against the co-operative society, and that any legal proceedings may be continued or commenced against the co-operative society by its new name.

HEAD 21 – Effect of rules

Provide that:

- (1) Subject to the provisions of this Bill, the rules shall, when registered, bind the co-operative society and the members of it to the same extent as if it had been signed and sealed by each member, and contained covenants by the co-operative society and each member to observe all the provisions of the rules and any provision of this Bill as to the governance of the co-operative society.
- (2) For the avoidance of doubt, in *subhead (1)* the reference to any provision of this Bill as to the governance of the co-operative society includes a reference to any provision of this Bill that commences with words to the effect that the provision applies save where the co-operative society's rules provide otherwise or otherwise contains a qualification on the provision's application by reference to the co-operative society's rules.
- (3) All money payable by any member to a co-operative society under the rules shall be a debt due from him or her to the co-operative society.
- (4) An action to recover a debt created by this head shall not be brought after the expiration of 12 years after the date on which the cause of action accrued.

Explanatory note: This head is based on sections 22 and 23 of the Industrial and Provident Societies Act 1893 and section 31 of the Companies Act 2014. Subhead (1) provides that the rules, when registered, bind the co-operative society and its members to the same extent as if it had been signed and sealed by each member.

Subhead (2) clarifies that, where a provision of this Bill allows a society's rules to "provide otherwise" to that which is stated by that head of the Bill, and where the society's rules does not in fact "provide otherwise", then the provision of that head will apply to the society. Subhead (3) states that all money payable by a member to the co-operative society under the rules shall be a debt due from him or her to the co-operative society. Subhead (4) provides that an action to recover a debt created by this head shall not be brought after the expiration of twelve years from the date on which the cause of action accrued. This is in line with the provisions of the Statute of Limitations.

HEAD 22 – Amendment of the rules by special resolution

Provide that:

- (1) Subject to the provisions of this Bill, a co-operative society may by special resolution amend its rules.
- (2) Any amendment so made of the rules shall, subject to the provisions of this Bill, be as valid as if originally contained therein, and be subject in like manner to amendment by special resolution.
- (3) Where there is a proposed amendment to a co-operative society's rules notice of which *head 24* requires to be published as therein mentioned, the co-operative society shall deliver to the Registrar in the prescribed form—
 - (a) the amendment;
 - (b) a copy of the text of the rules as so amended; and
 - (c) the declaration referred to in *subhead (4)*.
- (4) The declaration shall state that co-operative society will continue to operate in accordance with the principles 1 to 4 listed in Schedule 2 and as far as is practicable operate in accordance with the principles 5 to 7 listed in that Schedule and be made by a director.
- (5) An amendment of the registered rules of a co-operative society shall not be valid until the amendment has been registered by the Registrar under this Bill.
- (6) The Registrar shall not register an amendment of the rules delivered for registration under this head unless he or she is satisfied that all the requirements of this Bill in respect of registration and of matters precedent and incidental thereto have been complied with.
- (7) The Registrar shall issue a certificate of registration of the amendment of the rules, and that certificate shall be conclusive evidence that all the requirements of this Bill have been complied with.
- (8) Subject to *subhead (9)*, and notwithstanding anything in the rules of a co-operative society, no member of the co-operative society shall be bound by an amendment made to the rules after the date on which he or she became a member, if and so far as the amendment—
 - (a) requires him or her to take or subscribe for more shares than the number held by him or her at the date on which the amendment is made, or
 - (b) in any way increases his or her liability as at the date referred to in paragraph (a) to—
 - (i) contribute to the share capital of the co-operative society, or
 - (ii) otherwise pay money to the co-operative society.
- (9) *Subhead (8)* shall not apply in any case where the member agrees in writing, either before or after the amendment is made, to be bound by the amendment.

Explanatory note: The head is based on section 10 of the Industrial and Provident Societies Act 1893 and section 32 of the Companies Act 2014. Subhead (1) states that the rules of a co-operative society may be amended by special resolution, subject to the provisions of the Bill. Subhead (2) confirms that any such amendment will be valid as if it had originally been contained in the rules, again subject to the provisions of the Bill. In order to reduce the administrative burden for the co-operatives and the Registrar, subhead (3) requires, along with the amendment, a copy of the entire set of rules as amended to be

delivered to the Registrar. A declaration, referred to in subhead (4) will also be required to be delivered with the amendment and copy of the rules. The declaration will be made by a director and shall state that co-operative society will continue to operate in accordance with the principles 1 to 4 listed in Schedule 2 and as far as is practicable operate in accordance with the principles 5 to 7 listed in that Schedule.

Subhead (5) provides that an amendment shall not be valid until it has been registered by the Registrar and subhead (6) provides that the Registrar shall not register an amendment of the rules unless he or she is satisfied that the requirements of this Bill in respect of registration and related matters have been complied with.

Subhead (7) provides that the Registrar shall issue a certificate of registration of the amendment of the rules, and the certificate shall be conclusive evidence that all the requirements of this Bill have been complied with.

Subheads (8) and (9) state that, unless a member agrees in writing to be bound by an amendment to the rules, he or she will not be bound by an amendment which is made after he or she becomes a member, so far as the amendment requires him or her to take more shares than the number held on the date of the amendment or which in any way increases his or her liability at that date to the share capital of the co-operative society or to pay money to the co-operative society.

HEAD 23 – Appeal against refusal to register a society or amendment of rules

Provide that:

- (1) If the Registrar refuses to register —
 - (a) a proposed co-operative society, or
 - (b) any rules or amendment of rules of a co-operative society,it shall, by notice in writing, inform that society of the refusal and the notice must include a statement setting out the grounds for the refusal.
- (2) If the Registrar refuses to register —
 - (a) a proposed co-operative society, or
 - (b) any rules or amendment of rules of a co-operative society,the proposed society or co-operative society may appeal from such refusal to the Circuit Court.
- (3) The jurisdiction conferred on the Circuit Court under *subhead (1)* may—
 - (a) as respects a refusal to register the society, be exercised by the judge of the court for the time being assigned to the Dublin Circuit, and
 - (b) as respects a refusal to register any rules or amendment of rules, be exercised by the judge of the circuit in which the registered office of the society is situated.
- (4) If a refusal of registry is overruled on appeal, the Registrar shall —
 - (a) register the proposed co-operative society, or
 - (b) the rules or amendments of rules of the co-operative society,as directed by the court and in accordance with the provisions of this Part.

Explanatory note: This head is largely based on section 7 of the Industrial and Provident Societies Act 1893 as amended by the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014. The head provides that if the Registrar refuses to register a proposed co-operative society, or any rules or amendments of rules of a co-operative society, it shall inform the society of the refusal in writing and shall include a statement setting out the reasons for the refusal. An appeal from a refusal by the Registrar to register a society, or to register any rules or amendments of rules, may be made to the Circuit Court and specifies the jurisdiction conferred on the Court depending on the refusal to register a society or register, or amend rules of a society. The court order may partially accept the rules or amendments of the rules of a co-operative society.

HEAD 24 – Publication of notices

Provide that:

(1) The Registrar shall publish in the RCT Gazette notice of the delivery to or the issue by the Registrar of the following documents and particulars—

- (a) any certificate of registration of the co-operative society;
- (b) the rules of the co-operative society;
- (c) any document making or evidencing an amendment of its rules;
- (d) every amended text of its rules;
- (e) any return relating to its register of directors or notification of a change of its directors;
- (f) any return relating to the persons, other than the board of directors, authorised to enter into transactions binding the co-operative society, or notification of a change among such persons;
- (g) any annual return and financial statements that are required to be published in accordance with Part 6 of the Act of 2014, as applied by head 169;
- (h) any notice of the situation of its registered office, or of any change therein;
- (i) any copy of a winding up order in respect of the co-operative society;
- (j) any copy of an order for the dissolution of the co-operative society on a winding up;
- (k) any return by the liquidator of the final meeting of the co-operative society on a winding up;
- (l) any notice of the appointment of a liquidator in a voluntary winding up of the co-operative society.
- (m) any special resolution under *Part 8* relating to an amalgamation, a transfer of engagements, a conversion of a company into a co-operative society, or a conversion of a co-operative society into a company.

(2) The publication referred to in *subhead (1)* shall occur within 10 days after the date of the relevant delivery or issue.

Explanatory note: This head is based on section 33 of the Companies Act 2014 and proposes that the Registrar shall publish in the RCT Gazette which will be set up, notice of the delivery to or the issue by the Registrar of certain documents and particulars listed in subhead (1). Subhead (2) requires such a notice to be published within 10 days after the date of the relevant delivery or issue.

HEAD 25 – Language of documents filed with Registrar

Provide that:

- (1) Without prejudice to any other provisions on the language of documents, any document delivered to the Registrar shall be in the Irish or English language.
- (2) A translation of any such document may be delivered to the Registrar in any official language of the European Union.
- (3) Every translation referred to in *subhead (2)* shall be certified, in a manner approved by the Registrar, to be a correct translation.
- (4) In any case of a discrepancy between a document delivered as mentioned in *subhead (1)* and a translation of it delivered pursuant to *subhead (2)*, the latter may not be relied upon by the co-operative society against a third party. A third party may, nevertheless, rely on that translation against that society, unless the society proves that the third party had knowledge of the document delivered as mentioned in *subhead (1)*.
- (5) In *subhead (4)*, “third party” means a person other than the co-operative society or a member, officer or employee of it.

Explanatory note: This head is based on section 34 of the Companies Act 2014. It provides that any document filed with the Registrar may be in Irish or English, and a certified translation of the document into any official language of the EU may also be filed with the Registrar. However, under subhead (4), if there is a discrepancy between the certified translation and the Irish or English version, the co-operative society may not rely on the certified translation, but a third party may so rely unless it is proven that the third party had knowledge of the Irish or English document.

HEAD 26 – Authorisation of an electronic filing agent

Provide that:

- (1) A co-operative society may authorise a person (who shall be known and is in this Bill referred to as an “electronic filing agent”) to do the following acts on its behalf.
- (2) Those acts are—
 - (a) the electronic signing of documents that are required or authorised, by or under this Bill or any other enactment, to be delivered by the co-operative society to the Registrar; and
 - (b) the delivery to the Registrar, by electronic means, of those documents so signed.
- (3) The authorisation of a firm (not being a body corporate) by its firm name to do the foregoing acts on behalf of a co-operative society shall operate to authorise the following persons to do those acts on the society’s behalf, namely those persons who are from time to time during the currency of the authorisation the partners in that firm as from time to time constituted.
- (4) Subject to the following conditions being satisfied, an act of the foregoing kind done by such an agent on behalf of a co-operative society pursuant to an authorisation by the society under this head that is in force shall be as valid in law as if it had been done by that society (and the requirements of this Bill or the other enactment concerned with respect to the doing of the act have otherwise been complied with (such as with regard to the period within which the act is to be done)).
- (5) The conditions mentioned in *subhead (4)* are—
 - (a) that prior to the first instance of the electronic filing agent’s doing of an act of the kind referred to in *subhead (2)*, pursuant to an authorisation by the co-operative society concerned under this head, the authorisation of the agent has been notified by the society to the Registrar in the prescribed form; and
 - (b) the doing of the act complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of the Electronic Commerce Act 2000.
- (6) It shall be the joint responsibility of a co-operative society and the electronic filing agent authorised by it under this head to manage the control of the documents referred to in *subhead (2)*.
- (7) An electronic filing agent shall not, by virtue of his or her authorisation under this head to act as such, be regarded as an officer or servant of the co-operative society concerned for the purposes of section 1535(2) or (3) of the Act of 2014.

Explanatory note: This head is based on section 35 of the Companies act 2014. It allows a co-operative society to appoint an electronic filing agent to electronic sign and file documents with the Registrar in electronic form. Advance notice must be given to the Registrar of such an appointment and the electronic agent, and the co-operative society have joint responsibility to manage the control of the documents specified under this head.

HEAD 27 – Revocation of the authorisation of an electronic filing agent

Provide that:

- (1) A co-operative society may revoke an authorisation by it under *head 26* of an electronic filing agent.
- (2) Such a revocation by a co-operative society shall be notified by it, in the prescribed form, to the Registrar.
- (3) Unless and until the revocation is so notified to the Registrar, the authorisation concerned shall be deemed to subsist and, accordingly, to be still in force for the purposes of *head 26(4)*.
- (4) If a revocation, in accordance with this head, of an authorisation under *head 26* constitutes a breach of contract or otherwise gives rise to a liability being incurred—
 - (a) the fact that it constitutes such a breach or otherwise gives rise to a liability being incurred does not affect the validity of the revocation for the purposes of head 26; and
 - (b) the fact of the revocation being so valid does not remove or otherwise affect any cause of action in respect of that breach or the incurring of that liability.

Explanatory note: This head is based on section 36 of the Companies Act 2014. It provides that a co-operative society may revoke an authorisation to act as an electronic filing agent, made under head 26, and the revocation takes effect once notified to the Registrar. If the revocation constitutes a breach of contract or gives rise to a liability, these facts do not affect the validity of the revocation, and the fact that the revocation is valid does not remove or affect any cause of action in respect of the breach or liability incurred.

HEAD 28 – Copies of rules to be given to members

Provide that:

- (1) A co-operative society shall, on being so requested by any member, send to him or her a copy of its rules—
 - (a) free of charge, and
 - (b) in the event of a second or subsequent such request by the member (the first request by him or her having been complied with) on payment to it of €5.00.
- (2) Where an amendment is made of the rules of a co-operative society, every copy of the rules issued after the date of the amendment shall be in accordance with the amendment.
- (3) If a co-operative society contravenes this head, the society and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: This head is based on section 10(4) of the Industrial and Provident Societies Act 1893 and section 37 of the Companies act 2014. It sets out that if a member requests a copy of the rules, the co-operative society shall send him or her a copy of the up-to-date rules. On the first request, the co-operative society must do this free of charge, but a payment of €5 may be sought for a subsequent request. Subhead (2) requires that every copy of the rules issued by a co-operative society shall contain any amendments which have been made to the rules. Subhead (3) imposes a category 4 offence for a breach of this head by a co-operative society or an officer.

Chapter 2 Corporate capacity and authority

HEAD 29 – Capacity of a co-operative society

Provide that:

- (1) A co-operative society shall have the capacity to do any act or thing stated in the objects set out in its rules.
- (2) For the purposes of *subhead (1)*—
 - (a) the reference in it to an object includes a reference to anything stated in the rules to be a power to do any act or thing (whether the word “power” is used or not),
 - (b) if an object is stated without the following also being stated in relation to it, the capacity of the co-operative society extends to doing any act or thing that appears to it to be requisite, advantageous or incidental to, or to facilitate, the attainment of that object and that is not inconsistent with any enactment, and a subsequent reference in this Part to an object of the society shall be read accordingly.

Explanatory note:

This head is based on section 972 of the Companies Act of 2014 and provides that a co-operative society shall have the capacity to do any act or thing stated in its objects as set out in its rules.

HEAD 30 – Capacity not limited to the rules of a co-operative society

Provide that:

- (1) The validity of an act done by a co-operative society shall not be called into question on the ground of lack of capacity by reason of anything contained in the co-operative society's objects.
- (2) A member of a co-operative society may bring proceedings to restrain the doing of an act which, but for *subhead (1)*, would be beyond the co-operative capacity but no such proceedings shall lie in respect of any act to be done in fulfilment of a legal obligation arising from a previous act of the co-operative society.
- (3) Notwithstanding the enactment of *subhead (1)*, it remains the duty of the directors to observe any limitations on their powers flowing from the co-operative society's objects and action by the directors which, but for *subhead (1)*, would be beyond the society's capacity may only be ratified by the society by special resolution.
- (4) A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; if relief from any such liability is to be conferred by the co-operative society it must be agreed to separately by a special resolution of it.
- (5) A party to a transaction with a co-operative society is not bound to enquire as to whether it is permitted by the co-operative society's objects.

Explanatory note:

This is head is based on section 973 of the Companies Act of 2014 and provides that the corporate capacity of a co-operative society is not limited by its rules. Persons dealing with a co-operative that is acting *ultra vires* will not be prejudiced, but the directors of the society may be held to account for causing a co-operative society to take such *ultra vires* action. This will be in the form of an in personal action against the directors and not an *in rem* action that would set aside the validity of the *ultra vires* transaction. Subhead (4) provides for the ratification of an act beyond the capacity of the co-operative society by special resolution. Subhead (5) provides that a person is not bound to enquire as to whether an activity is *intra vires*.

HEAD 31 – Registered person

Provide that:

- (1) Where the board of directors of a co-operative society authorises any person as being a person entitled to bind the society (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions), that society may notify the Registrar in the prescribed form of the authorisation and the Registrar shall register the authorisation.
- (2) A person so authorised, where his or her authorisation is registered in the foregoing manner, is referred to in this Bill as a “registered person”; where, in a provision of this Bill, that expression appears without qualification, it shall be taken as a reference to a registered person authorised by the board of the directors of the co-operative society to which the provision falls to be applied.
- (3) Where the board of directors of a co-operative society revokes an authorisation of a person as a person entitled to bind the society (being an authorisation notified to the Registrar in the prescribed form), the person shall, notwithstanding that revocation, continue to be regarded for the purposes of this Bill as a registered person unless and until the co-operative society notifies the Registrar in the prescribed form of that revocation.
- (4) References in this head to a person’s entitlement to bind the co-operative society are references to his or her authority to exercise any power of the society and to authorise others to do so.
- (5) In *subhead (4)* “power of the society” does not include—
 - (a) any power of management of the society exercisable by its board of directors (as distinct from any power of the board to enter into transactions with third parties), or
 - (b) a power of the society which this Bill requires to be exercised otherwise than by its board of directors.
- (6) For the avoidance of doubt, for the purposes of this head the provisions of a co-operative society’s rules with regard to a person’s office or powers shall not, in themselves, be taken as an authorisation by the board of the directors of the society of the person as a person entitled to bind that co-operative society.

Explanatory note: The provisions of this head mirror section 39 of the Companies Act 2014. The head facilitates co-operative societies that wish to authorise particular persons to act on behalf of the society to register such a person with the Registrar, as a person entitled to bind the society. Further, the head provides a safeguard in that any provision in a society’s rules relating to a person’s office shall not in and of itself be taken as authorisation to bind the society. Although the head may be of limited benefit to co-operative in practice, there may nonetheless be instances where it would be useful.

Where a co-operative society revokes such an authorisation, the person will be considered as a registered person until the Registrar is notified in the prescribed form of this revocation.

The purpose of such a provision is to reduce red tape for co-operative societies who wish to authorise a registered person to have full authority to exercise any power of the co-operative society. This will save

3rd parties having to search through the minutes of the co-operative society's board meetings to check if a person is authorised to bind the co-operative society. This authority is limited by any power of management of the co-operative society exercisable by its board of directors or where this Bill requires a power to be exercised otherwise.

HEAD 32 – Persons authorised to bind co-operative society

Provide that:

(1) For the purposes of any question whether a transaction fails to bind a co-operative society because of an alleged lack of authority on the part of the person who exercised (or purported to exercise) the society's powers, the following, namely—

- (a) the board of directors of that society; and
- (b) any registered person,

shall each be deemed to have authority to exercise any power of the co-operative society and to authorise others to do so.

(2) *Subhead (1)* applies regardless of any limitations in the co-operative society's rules on the board's authority or a registered person's authority, but subject to *subheads (5)* and *(8)*.

(3) *Subhead (1)* is not to be read as preventing the exercise of a co-operative society's powers otherwise than by the board, a registered person or a person authorised by the board or by a registered person, where authority for that exercise exists.

(4) *Subhead (1)* does not affect—

- (a) a director's duties (including a director's duty to observe any limitations in the co-operative society's rules on the board's authority), or his or her liability in respect of any breach of those duties; or
- (b) any duty arising on the part of any other person concerned in the transaction (including the registered person) or his or her liability in respect of any breach of that duty.

(5) Where a co-operative society is purportedly a party to a transaction—

- (a) in connection with which the board of directors exceeded limitations in the society's rules on their authority; and
- (b) to which a person referred to in *subhead (6)* is also a party,

subhead (1) does not apply in favour of the person so referred to.

(6) Each of the following is a person mentioned in *subhead (5)(b)*:

- (a) a director or shadow director of the co-operative society or of its holding company;
- (b) a person connected with such a director;
- (c) a registered person;
- (d) a person connected with a registered person,

and in this subhead references to a person's being connected with—

- (i) a director or shadow director are to be read in accordance with *head 123*; or
- (ii) a registered person are to be read in accordance with *head 123* as that head is applied by *subhead (7)*.

(7) For the purpose of *subhead (6)(ii)*, *head 123* applies as if—

- (a) for each reference in *subheads (1), (2), (3)* and *(8)* to a director of a co-operative society there were substituted a reference to the registered person;
- (b) for the first reference and the third reference in *subhead (5)* to a director of a co-operative society there were substituted a reference to the registered person;

- (c) the references in *subhead (5)* to another director or directors included references to one or more other registered persons; and
 - (d) the reference in *subhead (6)(b)* to a director included a reference to a registered person.
- (8) In *subhead (1)* “power of the co-operative society” does not include—
- (a) with reference to any registered person, the power of management referred to in *head 31(5)(a)*, and
 - (b) with reference to the board of directors or any registered person, the power referred to in *head 31(5)(b)*.
- (9) Without prejudice to *subhead (1)*, in determining any question whether a person had ostensible authority to exercise any of a co-operative society’s powers in a given case, no reference may be made to the rules of the co-operative society.
- (10) In this head a reference—
- (a) to limitations in a co-operative society’s rules includes a reference to limitations deriving from—
 - (i) a resolution of the society or of any class of its members; or
 - (ii) any agreement between the members of that society or of any class of its members;
 - (b) to a transaction includes a reference to any act or omission.
- (11) This head is in addition to, and not in substitution for, the Rule in *Royal British Bank v. Turquand*.

Explanatory note: This head is based on section 40 of the Companies Act 2014. It provides that the board of directors of a co-operative society and any registered persons are deemed to have authority to exercise any power of the co-operative society and to authorise others to do so, regardless of any limitations in its rules. This does not mean that the provisions prevent the exercise of a co-operative society’s powers otherwise than by the board, a registered person or a person authorised by the board or by a registered person.

Contracts between a co-operative society and ‘insiders’ – e.g. directors of the co-operative society and of its holding company and persons connected with them, registered persons and persons connected with them – will not, however, bind the co-operative society where it is entered into in breach of any limitations in the rules. A co-operative society may still be bound by contracts to bind the co-operative society entered into by persons with apparent or ostensible authority, save that in determining whether a person had such authority, no reference may be made to the provisions of a co-operative society’s rules.

HEAD 33 – Powers of attorney

Provide that:

(1) Notwithstanding anything in its rules, a co-operative society may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State.

(2) A deed signed by such attorney on behalf of the co-operative society shall bind the society and have the same effect as if it were under its common seal.

Explanatory note: This head is based on section 41 of the Companies Act 2014. It permits a co-operative society to appoint a person as its attorney. This appointment can be made generally or in respect of specified matters, and enables the attorney to execute deeds or do any other matter on behalf of the co-operative society.

Subhead (2) provides that a deed signed by an attorney on behalf of the co-operative society will bind the co-operative society as if it had been signed under the co-operative society's common seal.

Chapter 3 Contracts and other transactions

HEAD 34 – Form of contracts

Provide that:

- (1) Contracts on behalf of a co-operative society may be made as follows—
 - (a) a contract which, if made between natural persons, would be by law required to be in writing and to be under seal, may be made on behalf of the society in writing under the common seal of that society;
 - (b) a contract which, if made between natural persons, would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the society in writing, signed by any person acting under its authority, express or implied;
 - (c) a contract which, if made between natural persons, would by law be valid although made by parol only, and not reduced into writing may be made by parol on behalf of the co-operative society by any person acting under its authority, express or implied.
- (2) A contract made according to this head shall bind the co-operative society and its successors and all other parties to it.
- (3) A contract made according to this head may be varied or discharged in the same manner in which it is authorised by this head to be made.

Explanatory note:

This head is substantially unchanged from section 35 of the Industrial and Provident Societies Act 1893. It sets out how contracts on behalf of a co-operative society may be made, whom they bind and how they may be varied or discharged. The text is brought in line with the modern language used in section 42 of the Companies Act 2014.

HEAD 35 – The common seal

Provide that:

- (1) A co-operative society shall have a common seal or seals that shall state the society's name, engraved in legible characters.
- (2) Save as otherwise provided by this Bill or by the rules of the co-operative society—
 - (a) a co-operative society's seal shall be used only by the authority of its directors, or of a committee of its directors authorised by its directors in that behalf; and
 - (b) any instrument to which a co-operative society's seal shall be affixed shall be—
 - (i) signed by a director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them; and
 - (ii) be countersigned by the secretary or by a second (if any) director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them.
- (3) Save as otherwise provided by the rules of the co-operative society, if there be a registered person in relation to a co-operative society, the society's seal may be used by such person and any instrument to which that society's seal shall be affixed when it is used by the registered person shall be signed by that person and countersigned—
 - (a) by the secretary or a director of the society; or
 - (b) by some other person appointed for the purpose by its directors or a committee of its directors authorised by its directors in that behalf.

Explanatory note: The head derives from sections 12, 21 and Schedule 2 of the Industrial and Provident Societies Act 1893, and section 43 of the Companies Act 2014. The Industrial and Provident Societies legislation provides for a common seal and Schedule II sets out that societies should make provisions for the custody and use of the seal of society.

Subhead (1) provides that a co-operative society shall have a common seal that shall state the co-operative society's name, engraved in legible characters. Subhead (2) sets out that unless provided otherwise in the Bill or the rules of the co-operative society, it will be implied that its seal may only be used by the authority of its directors (or a board committee) and that any instrument to which it is affixed must be signed by a director, or an authorised person, and countersigned by the secretary, a second director, or an authorised person.

Subhead (3) provides that save where otherwise provided by the rules, the seal can be used by a registered person and that any instrument to which it is affixed must be signed by the registered person, and countersigned by the secretary, a director, or an authorised person.

HEAD 36 – Pre-registration contracts

Provide that:

- (1) Any contract or other transaction (including any application to any lawful authority) purporting to be entered into by a co-operative society prior to its formation, or by any person on behalf of that society prior to its formation, may be ratified by the society after its formation.
- (2) Upon such contract or other transaction being so ratified, the co-operative society shall become bound by it and entitled to the benefit of it as if that society had been in existence at the date of such contract or other transaction and had been a party to it.
- (3) Prior to such ratification (if any) by the co-operative society, the person or persons who purported to act in the name or on behalf of that society shall, in the absence of express agreement to the contrary, be personally bound by the contract or other transaction and entitled to the benefit of it.

Explanatory note: This head is based on section 45 of the Companies Act 2014, it concerns contracts purported to be entered into by a co-operative society prior to its formation. This head provides that any such contract may be ratified by the co-operative society after its formation as if it had been in existence at the date on which the contract was entered into. On ratification of the transaction the co-operative becomes bound by it while prior to the notification, the person who entered into the contract shall be personally bound by it in the absence of express agreement to the contrary.

HEAD 37 – Bills of exchange and promissory notes

Provide that:

A bill of exchange or promissory note shall be deemed to have been made, accepted or endorsed on behalf of a co-operative society, if made, accepted or endorsed in the name of or by or on behalf or on account of, that society by a person acting under its authority.

Explanatory note: This head re-enacts section 33 of the Industrial and Provident Societies Act 1893. It relates to bills of exchange and promissory notes which shall be deemed to have been made, accepted or endorsed on behalf of a co-operative society if made, accepted or endorsed in the name of or by or on behalf or on account of, the co-operative society by a person acting under its authority.

HEAD 38 – Liability for use of incorrect co-operative society name

Provide that:

(1) If an officer of a co-operative society or any person on its behalf does any of the following things, the officer or person shall be guilty of a category 4 offence.

(2) Those things are:

(a) uses or authorises the use of any seal purporting to be a seal of the co-operative society on which its name is not engraved in legible characters;

(b) issues or authorises the issue of any business letter of the co-operative society or any notice or other official publication of that society, or signs or authorises to be signed on behalf of the society any bill of exchange, promissory note, endorsement, cheque or order for money or goods, in which its name is not mentioned in the manner described in *head 40*;

(c) issues or authorises the issue of any invoice, receipt or letter of credit of the co-operative society in which its name is not mentioned in the manner described in *head 40*.

(3) In the circumstances of his or her doing a relevant thing mentioned in *subhead (2)(b)*, the officer or other person shall be personally liable to the holder of the bill of exchange, promissory note, cheque or order for money or goods for the amount thereof unless—

(a) it is duly paid by the co-operative society; or

(b) it appears to the court that no injustice will be done by imposing liability for the amount on that society.

Explanatory note: This head replicates section 47 of the Companies Act 2014. It sets out a number of offences, at category 4 level, in respect of the use of the society seal or the issue of a range of documents where the society's name is not properly displayed. The head provides for circumstances where an officer of the society or another person who commits the offences may be personally liable to the other party.

HEAD 39 – Authentication by co-operative society of documents

Provide that:

A document or proceeding requiring authentication by a co-operative society may be signed by a director, secretary, registered person or other authorised officer of that society, and need not be under its common seal.

Explanatory note: This head replicates section 48 of the Companies Act 2014. The head sets out the parties that may sign a document in order to authenticate it.

Chapter 4 Co-operative society name, registered office and service of documents

HEAD 40 – Publication of name by co-operative society

Provide that:

- (1) A co-operative society—
 - (a) shall display its name in a conspicuous position, in letters easily legible, outside every office or place in which its business is carried on and at its registered office; and
 - (b) shall have its name mentioned in legible characters in each of the following:
 - (i) all notices, and other official publications of that society;
 - (ii) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of that society;
 - (iii) all invoices, receipts and letters of credit of that society.
- (2) If a co-operative society contravenes *subhead (1)(a) or (b)*, that society and any officer of it who is in default shall be guilty of a category 4 offence.
- (3) The use of the abbreviation “ltd” instead of “limited” or “teo” instead of “teoranta” shall not be regarded as constituting a contravention of this head.
- (4) This head is without prejudice to *head 72*.

Explanatory note: This head is based on section 12 of the Industrial and Provident Act 1893 and section 49 of the Companies Act 2014. It deals with the display of a co-operative society’s name, both outside its places of business and outside its registered office, and on a range of business and official documents. Subhead (2) establishes that breach of these requirements by a co-operative society or an officer constitutes a category 4 offence, while subhead (3) clarifies that the use of the abbreviations “ltd” or “teo” instead of “limited” or “teoranta” does not constitute a breach. The head is without prejudice to head 72.

HEAD 41 – Registered office of co-operative society

Provide that:

- (1) A co-operative society shall, at all times, have a registered office in the State to which all communications and notices may be addressed.
- (2) Particulars of the situation of the proposed co-operative society's registered office shall be specified in the statement delivered pursuant to *head 13(1)(a)* prior to the registration of that society.
- (3) Notice of any change in the situation of the registered office of a co-operative society shall be given in the prescribed form, within 14 days after the date of the change, to the Registrar who shall record that change.
- (4) A co-operative society's registered office may be constituted by a statement (contained in the statement or notice referred to in *subhead (2)* or *(3)*) to the effect that the office is care of a specified agent, being a company, or a co-operative society registered under this Bill, and which is approved for this purpose by the Registrar; where a registered office is constituted by those means, references in this Bill to the situation of the society's registered office shall be read accordingly.
- (5) The notification to the Registrar by the agent approved for that purpose of any change in the situation of the agent's registered office shall, if made in the form prescribed for the purpose of *subhead (3)* and within the period there mentioned, be regarded as constituting compliance by the co-operative society concerned with *subhead (3)*.
- (6) If default is made in complying with this head, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: Subheads (1) to (3) are based on section 11 of the Industrial and Provident Society Act 1893 and require a co-operative society to have a registered office within the State, to which all communications must be addressed. Particulars of the situation of the office and any change in its situation shall be given to the Registrar. Subheads (2), (4), (5) and (6) are based on section 50 the Companies Act 2014. Subhead (2) requires that particulars of the situation of the proposed co-operative society's registered office shall be specified in the statement delivered under head 13(1)(a) prior to the registration of the society. Subhead (4) provides that registered office may be constituted by a statement to the effect that the office is care of a specified agent approved by the Registrar.

Under subhead (4), a co-operative society may have its registered office as care of a specified agent who has been approved by the Registrar for that purpose. Where a co-operative society is availing of an agent for the purposes of the co-operative society's registered office, such an agent must be a company or a co-operative society that is registered in Ireland. Subhead (5) requires notification to be given to the Registrar within 14 days of any change in the office of the specified agent. Subhead (6) makes a breach of these requirements by the co-operative society or an officer of the co-operative society a category 4 offence.

HEAD 42 – Service of documents

Provide that:

- (1) A document may be served on a co-operative society—
 - (a) by leaving it at or sending it by post to the registered office of that society; or
 - (b) if the society has not given notice to the Registrar of the situation of its registered office, by delivering it to the Registrar.
- (2) For the purposes of this head, any document left at or sent by post to the place for the time being recorded by the Registrar as the situation of the registered office of a co-operative society shall be deemed to have been left at or sent by post to the registered office of that society notwithstanding that the situation of its registered office may have changed.
- (3) It shall be the duty of the Registrar to enter on the register a document that has, by the means referred to in *subhead (1)(b)*, been served on a co-operative society.

Explanatory note: This head is based on section 51 of the Companies Act 2014. It sets out the procedure for serving documents on a co-operative society. Documents may be served on a co-operative society at its registered office or, where this cannot be properly identified, by delivery to the Registrar. Subhead (2) confirms that the registered office for this purpose will be that as heretofore has been recorded by the Registrar. The Registrar has a duty to enter on the register a document that has been served on a co-operative society.

HEAD 43 – Security for costs

Provide that:

Where a co-operative society is plaintiff in any action or other legal proceeding, any judge having jurisdiction in the matter, may, if it appears by credible testimony that there is reason to believe that that society will be unable to pay the costs of the defendant if successful in his or her defence, require security to be given for those costs and may stay all proceedings until the security is given.

Explanatory note: This head is based on section 52 of the Companies Act 2014. It provides that a court may require a co-operative society to give security for the costs of legal proceedings where the society is plaintiff, if it appears that the co-operative society will be unable to pay the costs if it loses the proceedings.

HEAD 44 – Enforcement of orders and judgments against co-operative societies and their officers

Provide that:

(1) Any judgment or order against a co-operative society wilfully disobeyed may, by leave of the court, be enforced by—

- (a) sequestration against the property of the society,
- (b) attachment against the directors or other officers of the society, or
- (c) sequestration against the property of such directors or other officers.

(2) An application may not be made, in the foregoing circumstances, for attachment against directors or other officers or for sequestration against their property unless the judgment or order of the court to which the application relates has contained a statement indicating the liability of such persons or of their property to attachment or sequestration, as the case may be, should the judgment or order be disobeyed by the co-operative society.

(3) In this head “attachment” and “sequestration” have the same meaning as they have in rules of court concerning the jurisdiction of the High Court and the Supreme Court.

Explanatory note: This head is based on section 53 of the Companies Act 2014 and is aimed at enhancing the enforcement of orders and judgements against co-operative societies and their officers. It provides that judgments or orders against co-operative societies may by leave of the court if wilfully disobeyed be enforced by sequestration against the property of the co-operative society or its directors or other officers and attachment against the directors or officers. Subhead (2) provides that, should the judgment or order be disobeyed by the co-operative society, an application may not be made for attachment against the directors or other officers or for sequestration against their property unless the judgment or order to which the application relates contains a statement indicating the liability of those persons or of their property. Subhead (3) clarifies the meaning of “attachment” and “sequestration” in light of subhead (1).

PART 3 SHARES, LEGAL RESERVE AND NOMINATIONS

Chapter 1 Shares

HEAD 45 – Interpretation (Part 3)

Provide that:

(1) In this Part—

“cash” includes funds in any currency or currencies;

“nominal value”, in relation to a share, means a monetary amount, expressed as an amount, multiple, fraction or percentage of any currency or currencies or combination thereof.

(2) For the purposes of this Part a share in a co-operative society shall be taken to have been paid up in cash or allotted for cash if the consideration for the allotment or the payment up is—

- (a) cash received by the co-operative society; or
- (b) a cheque received by the co-operative society in good faith which the directors have no reason for suspecting will not be paid; or
- (c) the release of a liability of the co-operative society for a liquidated sum; or
- (d) an undertaking to pay cash to the co-operative society on demand or at an identified or identifiable future date which the directors have no reason for suspecting will not be complied with.

Explanatory note: This head is based on some of the provisions of section 64 of the Companies Act 2014. It contains definitions of a number of terms used in Part 3.

HEAD 46 – Shares

Provide that:

- (1) Shares in the capital of a co-operative society shall have a nominal value.
- (2) A co-operative society may allot shares—
 - (a) of different nominal values;
 - (b) of different currencies;
 - (c) with different amounts payable on them; or
 - (d) with a combination of 2 or more of the foregoing characteristics.
- (3) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, any share in a co-operative society may be issued with such preferred, deferred or other special rights or such restrictions, as the co-operative society may from time to time by ordinary resolution determine.
- (4) Save to the extent that its rules provide otherwise, a co-operative society may allot shares that are redeemable (which shall be known, and are referred to in this Bill, as “redeemable shares”) on the basis of the rules approved by the co-operative society.
- (5) The shares or other interest of any member in a co-operative society shall be personal estate and shall not be of the nature of real estate.
- (6) Except as required by law, no person shall be recognised by a co-operative society as holding any share upon any trust and the co-operative society shall not be bound by or be compelled in any way to recognise (even when having notice of it)—
 - (a) any equitable, contingent, future or partial interest in any share or any interest in any fractional part of a share; or
 - (b) save only as this Bill or other law otherwise provides, any other rights in respect of any share, except an absolute right to the entirety of it in the registered holder.

Explanatory note: This head is based on section 66 of the Companies Act 2014. Under subhead (1), a share must have a nominal value. Subhead (2) provides for the allotment of shares. It provides that a co-operative society may allot shares with different amounts payable on them. Subhead (3) provides that a society may allot shares with preferred, deferred or other special rights or restrictions.

Subhead (4) provides that a society may allot redeemable shares unless its rules provide otherwise.

Subhead (5) deals with the nature of shares.

Subhead (6) provides that, unless required by law, a co-operative society will not recognise shares held on trust nor shall it recognise any share or any fractional part of a share held pursuant to an equitable, contingent or partial interest. In addition, a society shall not recognise any other rights in respect of shares except the absolute right of the registered holder to the entirety of the share.

HEAD 47 – Payment of shares

Provide that:

- (1) Shares may be paid up in money or money's worth (including goodwill and expertise).
- (2) Shares of a co-operative society shall not be allotted at a discount to their nominal value.
- (3) *Subheads (1) and (2)* shall not prevent a co-operative society from allotting bonus shares.
- (4) Where a co-operative society contravenes subhead (2), the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 71 of the Companies Act 2014. Subhead (1) provides that shares allotted by a co-operative society may be paid up in money or money's worth - this term includes goodwill and expertise. Subhead (2) prohibits the allotment of shares at a discount to their nominal value. Subhead (3) preserves the right of a co-operative society to allot bonus shares notwithstanding subheads (1) and (2). Under subhead (4), where a co-operative society contravenes subhead (2), the co-operative society and any of its officers in default shall be guilty of a category 3 offence.

HEAD 48 – Lien

Provide that:

- (1) Each provision of this head applies save to the extent that the co-operative society's rules provide otherwise.
- (2) A co-operative society shall have a first and paramount lien on every share (not being a fully paid share) for all moneys (whether immediately payable or not) called, or payable at a fixed time, in respect of that share.
- (3) The directors of a co-operative society may at any time declare any share in the co-operative society to be wholly or in part exempt from *subhead (2)*.
- (4) A co-operative society's lien on a share shall extend to all dividends payable on it.

Explanatory note: This head is based on section 23 of the Industrial and Provident Societies Act 1893 and section 80 of the Companies Act 2014.

Subhead (1) states that the provisions of this head apply in so far as they have not been excluded or modified by the co-operative society's rules. Subhead (2) provides that a co-operative society shall have a lien on every share which has not been fully paid up, as of the day on which the share is called up or payable. However, subhead (3) allows the directors to declare any shares exempt from such lien. Under subhead (4), the co-operative society's lien on a share shall extend to all dividends payable on that share.

HEAD 49 – Personation of shareholder: offence

Provide that:

If any person falsely and deceitfully personates any owner of any share or interest in a co-operative society and thereby—

- (a) obtains or endeavours to obtain any such share or interest;
 - (b) receives or endeavours to receive any money due to any such owner; or
 - (c) votes at any meeting as if the person were the true and lawful owner,
- he or she shall be guilty of a category 2 offence.

Explanatory note: This head is based on section 101 of the Companies Act 2014. It provides that it is a category 2 offence to personate a shareholder in order to obtain a share or interest, receive money or vote in a meeting.

Chapter 2 Legal Reserve

HEAD 50 – Legal reserve

Provide that:

(1) In this head—

‘legal reserve’ means a reserve that is a realised financial reserve which is—

- (a) distributable only in accordance with the rules of the co-operative society,
 - (b) identified separately in a co-operative society’s accounts, and
 - (c) to be maintained by a co-operative society pursuant to this head.
- (2) A co-operative society shall maintain a legal reserve, that is adequate having regard to the nature, scale, complexity and risk profile of its business.
- (3) The rules of the co-operative society shall prescribe at a minimum—
- (a) the amount required to be held in the legal reserve of the co-operative society,
 - (b) the conditions on accessing the legal reserve, and
 - (c) the manner in which the legal reserve shall be distributed on the dissolution of the co-operative society, if any of its legal reserve remains to be disposed of after the co-operative society pays or discharges its debts and other liabilities in full.

Explanatory note: This head introduces the concept of a legal reserve. The concept of setting up a reserve by co-operative societies is referred to in the internationally recognised co-operative principles. The principle of Member Economic Participation sets out that “Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible;”.

Subhead (1) sets out the meaning of a legal reserve, a realised financial reserve which shall be distributed only in accordance with the rules of the co-operative society, shall be identified separately in the accounts of the society and maintained according to this head. Subhead (2) provides that a co-operative society shall maintain an adequate legal reserve, having regard to the nature, scale, complexity and risk profile of its business. Subhead (3) requires that the rules of the co-operative society shall prescribes at a minimum the following conditions: the amount of the legal reserve required to be held; the conditions on accessing the reserve and the manner in which the reserve shall be distributed on winding up or dissolution of the society.

Chapter 3 Nomination of property

HEAD 51 – Nomination of property

Provide that:

(1) Subject to *subheads* (2) to (4) a member of a co-operative society who is not less than the age of sixteen may, by a written statement signed by him and—

(a) made in any book kept at the society's registered office, or

(b) delivered at or sent to that office during his lifetime,

nominate one or more persons to become entitled at his death to the whole of any property in the co-operative society (whether in shares, loans, or deposits, or otherwise) which he may have at the time of his death, or such part or parts of that property as may be specified in the nomination.

(2) The nomination by a member of a co-operative society under *subhead* (1) of a person who is at the date of the nomination an officer of the co-operative society shall not be valid unless that person is a member of the nominator's family.

(3) For the purpose of the disposal of any property which is the subject of a nomination under *subhead* (1), if at the date of the nominator's death the amount of his property in the co-operative society comprised in the nomination exceeds €15,000, the nomination shall be valid to the extent of €15,000, but not further or otherwise.

(4) A nomination by a member of a co-operative society under *subhead* (1) may be revoked or varied by a subsequent nomination by him or her under that subhead or by any similar document in the nature of a revocation or variation signed by the nominator and delivered to the co-operative society's registered office during his or her lifetime; but such a nomination shall not be revocable or variable by the will of the nominator or by any codicil to his will.

(5) Each co-operative society shall keep a record—

(a) of the names and addresses of all persons nominated by its members under *subhead* (1); and

(b) of any revocations or variations of nominations under that subhead.

(6) The marriage or civil partnership of a member of a co-operative society shall operate as a revocation of any nomination made by him or her before his marriage or civil partnership, but if, in ignorance of a later marriage or civil partnership, an officer of the co-operative society transfers any property of that member in pursuance of such a nomination, the receipt of the nominee shall be a valid discharge to the society, and the co-operative society shall be under no liability to any other person claiming the property.

(7) A nomination under *subhead* (1) shall be revoked by the death of the nominee before the death of the nominator.

(8) In this head, a member of the nominator's family means "in relation to any person, that person's father, mother, grandfather, grandmother, father-in-law, mother-in-law, spouse or civil partner, cohabitant, son, daughter, grandson, granddaughter, brother, sister, half-brother, half-sister, uncle, aunt, nephew, niece, first cousin, step-son, step-daughter, stepbrother, step-sister, son-in-law, daughter-in-law, brother-in-law or sister-in-law".

Explanatory note: This head derives from section 25 of the Industrial and Provident Societies Act 1893 as amended by the Industrial and Provident Societies (Amendment) Act 1913. The Acts provide an administratively simple mechanism to access a member's property in times of difficulty. The rationale for these provisions is linked to the general policy underlying the legislation which was to facilitate and simplify the operation of co-operative societies. The language has been modernised and civil partnership is added as a reason for revoking a nomination. Almost identical provisions exist in section 21 of the Credit Union Act, 1997.

The head provides that a member of a co-operative society who is not less than 16, may nominate by a written statement a person or persons to whom his property in the co-operative society may be transferred on his death. Subhead (2) provides that a nomination of an officer of the co-operative society shall not be valid unless that person is a member of the family of the nominator. Subhead (3) specifies that where the value of the property subject to the nomination shall exceeds €15,000, the nomination shall be valid up to €15,000.

Subhead (4) clarifies the procedure for revoking or varying a nomination by a member of a co-operative society and that a nomination shall not be revocable or variable by a will or a codicil to a will of the nominator. Subhead (5) requires that the co-operative society keep a record of the names and addresses of the nominees and of any revocations or variations of nominations.

Subhead (6) provides that a marriage or civil partnership of a member of a co-operative society which takes effect after the nomination, will invalidate any preceding nomination, but if, not knowing of the marriage or civil partnership, an officer of the co-operative society transfers any property of that member based on the nomination, the receipt of the property shall be a valid discharge to the society, and the co-operative society shall be under no liability to any other person claiming the property.

Subhead (7) provides that a nomination shall be revoked by the death of the nominee before the death of the nominator.

Subhead (8) provides the meaning of a member of the nominator's family.

HEAD 52 – Proceedings on death of nominator

Provide that:

(1) Where a member of a co-operative society has made a nomination under *head 51*, the board of directors, on receiving satisfactory proof of the death of that member, shall, subject to the amount specified in *head 51(3)*, and if and to the extent that the nomination is valid under *subhead (1)* of that head, in the case of each person entitled under the nomination either transfer to him or her, or pay him or her the full value of, the property to which he or she is so entitled.

(2) Where a person who is nominated under *head 51* is under the age of sixteen, the co-operative society may pay the sum nominated to either parent, or to a guardian, of the nominee or to any other person of full age—

(a) who will undertake to hold it on trust for the nominee or to apply it for his or her benefit; and

(b) whom the co-operative society may think a fit and proper person for the purpose;

and a receipt for that sum signed by that parent, guardian or other person shall be a sufficient discharge to the co-operative society for all money so paid.

Explanatory note: This head derives from section 26 of the Industrial and Provident Societies Act 1893 as amended by the Industrial and Provident Societies (Amendment) Act 1913. Similar provisions exist in section 22 of the Credit Union Act, 1997.

Subhead (1) provides that subject to the amount specified in subhead 51(3), the board of directors, on receiving satisfactory proof of the death of a nominator, shall either transfer or pay to each person entitled under the nomination the full value of, the property to which he or she is entitled.

Subhead (2) specifies the procedure for paying the nominee if he or she is under the age of 16.

PART 4 CORPORATE GOVERNANCE

Chapter 1 Preliminary

HEAD 53 – Access to documents during business hours

Provide that:

- (1) A reference in this Part to a document kept by a co-operative society being open to the inspection of a person, or a specified class of person, during business hours shall be read as a requirement that the document be open to such inspection subject to such reasonable restrictions as the society may in general meeting impose, but so that not less than 2 hours in each day be allowed for such inspection.
- (2) *Subhead (1)* applies to the provisions of other Parts of this Bill that are referred to in *Chapter 9* (which deals with, amongst other things, inspection of registers) as it applies to the provisions of this Part so referred to.

Explanatory note: This head is based on section 127 of the Companies Act 2014. It provides that documents being open to the inspection of persons should be accessible during business hours and subject to reasonable restrictions imposed by the society.

Chapter 2 Directors and secretaries

HEAD 54 – Directors

Provide that:

- (1) A co-operative society shall have at least three directors.
- (2) If default is made by a co-operative society in complying with *subhead (1)* for 28 consecutive days, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head derives from section 128 of the Companies Act 2014, however the requirement on the minimum number of directors reflects the specific features of co-operative societies. It provides that a co-operative society must have at least three directors. If a society does not comply with this requirement the society and any officer who is in default shall be guilty of a category 3 offence.

HEAD 55 – Secretaries

Provide that:

- (1) A co-operative society shall have a secretary, who may be one of the directors.
- (2) Anything required or authorised to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to any officer of the co-operative society authorised generally or specially in that behalf by the directors.
- (3) Subject to *head 17(5)*, the secretary shall be appointed by the directors of the co-operative society for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.
- (4) The directors of a co-operative society shall have a duty to ensure that the person appointed as secretary has the skills or resources necessary to discharge his or her statutory and other duties.
- (5) The cases to which *subhead (4)* applies includes the case of an appointment of one of the directors of the co-operative society as secretary.
- (6) In *subheads (2) to (5)* references to a secretary include references to joint secretaries.

Explanatory note: This head is based on section 129 of the Companies Act 2014. It explicitly provides that a co-operative society shall have a secretary. The secretary can be one of the directors. Joint secretaries could also hold the office of a secretary. If there is no secretary capable of acting, the secretary duties may be executed by an assistant, deputy secretary or an officer of the co-operative society. The secretary is appointed and removed by the directors and it is the directors' duty to ensure the secretary has the skills or resources necessary to discharge his or her statutory and other duties.

HEAD 56 – Prohibition of body corporate or unincorporated body of persons being director

Provide that:

- (1) A co-operative society shall not have as a director of the co-operative society a body corporate or an unincorporated body of persons.
- (2) Any purported appointment of a body corporate or an unincorporated body of persons as a director of a co-operative society shall be void.

Explanatory note: This head is based on section 130 of the Companies Act 2014. It prohibits a co-operative society to have as a director a body corporate or an unincorporated body of persons.

HEAD 57 – Prohibition of minor being director or secretary

Provide that:

(1) No person shall be appointed a director or, in the case of an individual, secretary, of a co-operative society unless he or she has attained the age of 18 years.

(2) Any purported appointment of a minor as a director or secretary of a co-operative society shall be void.

Explanatory note: This head is based on section 32 of the Industrial and Provident Societies Act 1893 which prohibits members who have not attained the age of 21 to be members of the management committee, trustees, managers or treasurers but does not prevent them from being a secretary.

The purpose of this head is to clarify that minors cannot be directors or secretaries of co-operative societies; the modern language of section 131 of the Companies Act 2014 has been used.

HEAD 58 – Prohibition of undischarged bankrupt being director or secretary or otherwise involved in co-operative society

Provide that:

- (1) If any person being an undischarged bankrupt—
 - (a) acts as a director or secretary of a co-operative society; or
 - (b) directly or indirectly takes part or is concerned in the promotion, formation or management of a co-operative society,the person shall (unless he or she does so with the leave of the court) be guilty of a category 2 offence.
- (2) Where a person is convicted of an offence under *subhead (1)* the person shall be deemed to be subject to a disqualification order from the date of such conviction for such period as the court specifies if he or she was not, or was not deemed to be, subject to such an order on that date.
- (3) In this section “disqualification order” has the same meaning as it has in Chapter 4 of Part 14 of the Act of 2014, as applied by *head 230*.

Explanatory note: This head derives from section 31 of the Industrial and Provident Societies (Amendment) Act 1978 which prohibits a bankrupt person and whose bankruptcy still subsists, be a member of the committee or take part in the management of the society or has his or her name put forward for election to a management post. The head uses the template of section 132 of the Companies Act 2014 and provides that if a person is undischarged bankrupt they cannot act as a director or secretary of a society or take part in the promotion, formation or management of the society. Subheads (2) and (3) provide that where a person is convicted of an offence under this head, he or she shall be deemed to be subject to a disqualification order from the date of the conviction, and the meaning of “disqualification order” is provided in Chapter 4 of Part 14 of the Act of 2014, as applied by head 230.

HEAD 59 – Examination as to solvency status

Provide that:

- (1) Where the Authority has reason to believe that a director or secretary of a co-operative society is an undischarged bankrupt, the Authority may exercise the following power.
- (2) That power is to require the director or secretary of the co-operative society to produce to the Authority, by a specified date, a sworn statement by him or her of all relevant facts pertaining to the director's or secretary's financial position, both within the State and elsewhere, and, in particular, to any matter relating to bankruptcy as at a particular date.
- (3) The court may, on the application of the Authority, require a director or secretary of a co-operative society who has made a statement under *subhead (2)* to appear before it and answer on oath any question pertaining to the content of the statement.
- (4) The court may, on the application of the Authority, make a disqualification order against a director or secretary of a co-operative society, to be for such period as the court specifies, on the grounds that he or she is an undischarged bankrupt.
- (5) A director or secretary of a co-operative society who fails to comply with a requirement under *subhead (2)* shall be guilty of a category 3 offence.
- (6) In this section “disqualification order” has the same meaning as it has in Chapter 4 of Part 14 of the Act of 2014, as applied by *head 230*.

Explanatory note: This head is based on section 133 of the Companies Act 2014. It provides that the Corporate Enforcement Authority, when it suspects that a director or secretary of a co-operative society is an undischarged bankrupt, may intervene by requiring the person concerned to furnish a sworn statement of his or her financial position and, in particular, any matter pertaining to bankruptcy.

In addition, it provides that the Authority may have the person examined before the court and may apply to the court to have a disqualification order made against the person.

HEAD 60 – Performance of acts by person in dual capacity as director and secretary not permitted

Provide that:

A provision of—

- (a) this Bill;
- (b) an instrument under it; or
- (c) a co-operative society's rules,

requiring or authorising a thing to be done by or to a director and the secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the secretary.

Explanatory note: This head is based on section 134 of the Companies Act 2014. It provides that where this Bill, its instruments or co-operative society rules require an action or authorisation by a director and secretary, this cannot be done by one person acting both as a director and secretary.

HEAD 61 – Validity of acts of director or secretary

Provide that:

The acts of a director or of a secretary shall be valid notwithstanding any defect which may afterwards be discovered in his or her appointment or qualification.

Explanatory note: This head is based on section 135 of the Companies Act 2014. It sets out that the acts of a director or a secretary shall be valid even if a defect is discovered in relation to his or her appointment or qualification.

HEAD 62 – Co-operative society to have director resident in an EEA state

Provide that:

- (1) At least one of the directors for the time being of a co-operative society shall be a person who is resident in an EEA state.
- (2) If *subhead (1)* is not complied with, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 4 offence.
- (3) In this head “director” does not include an alternate director.

Explanatory note: This head is based on some of the provisions of section 137 of the Companies Act 2014. It sets out the rule that a co-operative society must have at least one director resident in an EEA state. Subhead (2) is an offence provision and states that the co-operative society and any officer of the society in default of this head shall be guilty of a category 4 offence. Subhead (3) provides that an alternate director is not acceptable, for the purposes of this head, as fulfilling the requirement to have a resident director in a state of the EEA.

HEAD 63 – Provisions for determining whether director resident in State

Provide that:

- (1) So far as it is the person's residence in the State that falls to be determined for the purposes of *head 62*, for the purposes of that *head* a person is resident in the State at a particular time (the “relevant time”) if—
 - (a) he or she is present in the State at—
 - (i) any one time or several times in the period of 12 months preceding the relevant time (the “immediate 12 month period”) for a period in the aggregate amounting to 183 days or more; or
 - (ii) any one time or several times—
 - (I) in the immediate 12 month period; and
 - (II) in the period of 12 months preceding the immediate 12 month period (the “previous 12 month period”),for a period (being a period comprising in the aggregate the number of days on which the person is present in the State in the immediate 12 month period and the number of days on which the person was present in the State in the previous 12 month period) in the aggregate amounting to 280 days or more; or
 - (b) that time is in a year of assessment (within the meaning of the Taxes Consolidation Act 1997) in respect of which the person has made an election under section 819(3) of that Act.
- (2) Notwithstanding *subhead (1)(a)(ii)*, where in the immediate 12 month period concerned a person is present in the State at any one time or several times for a period in the aggregate amounting to not more than 30 days—
 - (a) the person shall not be resident in the State, for the purposes of head 62, at the relevant time concerned; and
 - (b) no account shall be taken of the period for the purposes of the aggregate mentioned in subhead (1)(a)(ii).
- (3) For the purposes of *subheads (1) and (2)*—
 - (a) references in this head to a person’s being present in the State are references to the person’s being personally present in the State; and
 - (b) a person shall be deemed to be present in the State for a day if the person is present in the State at any time during that day.

Explanatory note: This head is based on section 141 of the Companies Act 2014. It contains provisions for determining whether a director is resident in the State. Paragraph (a)(i) of subhead (1) provides that a person is resident if he or she has been present for an aggregate of at least 183 days or more in any twelve-month period. The 183 days does not have to be consecutive. Paragraph (a)(ii) provides an alternative that, if a person has been present for an aggregate of 280 days over two twelve month periods, then he or she will also be regarded as resident, subject to the qualifications which follow in the next subhead. Paragraph (b) provides that where a person elects, under section 819(3) of the Taxes

Consolidation Act 1997, to be treated as resident, this can also be accepted for the purposes of these provisions. Subhead (2) qualifies the aggregate of 280 days in the previous period of two twelve-month periods, mentioned in subhead (1)(a)(ii), and provides that in the immediate twelve-month period, the person must have been present for at least 30 days. In other words, a person must have a minimum of 30 days in the previous twelve months - it would not be sufficient for that person to have 260 days in the penultimate twelve-month period and then just 20 days in the immediate twelve-month period.

Subhead (3) lays down what is meant by being present in the State. Paragraph (a) provides that the person must be personally present in the State. Paragraph (b) provides that the person is present where he or she is present in the State at any time during the day as opposed to at the end of the day. This aligns the provision with the Taxes Consolidation Act 2001 which will ensure consistency of treatment as regards the residence of directors for taxation and co-operative society law purposes.

HEAD 64 – Appointment of director

Provide that:

- (1) Any purported appointment of a director without that director's consent shall be void.
- (2) Subject to *subhead (1)*, the first directors of a co-operative society shall be those persons determined in writing by the subscribers of the rules or a majority of them.
- (3) Save to the extent that the rules of the co-operative society provide otherwise —
 - (a) subsequent directors of a co-operative society may be appointed by the members in general meeting, provided that no person other than a director retiring at the meeting shall, save where recommended by the directors, be eligible for election to the office of director at any general meeting unless the requirements of *subhead (4)* as to his or her eligibility for that purpose have been complied with;
 - (b) the directors of the co-operative society may from time to time appoint any person to be a director of the society, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors of the society shall not at any time exceed the number, if any, provided for in its rules;
 - (c) any director appointed as mentioned in *paragraph (b)* shall hold office only until the next following annual general meeting, and shall then be eligible for re-election;
 - (d) subject to *head 54(1)*, the co-operative society may from time to time, by ordinary resolution, increase or reduce the number of directors,;
 - (e) the co-operative society may, by ordinary resolution, appoint another person in place of a director removed from office under *head 67* and, without prejudice to the powers of the directors under *subhead (3)(b)*, the society in general meeting may appoint any person to be a director either to fill a casual vacancy or as an additional director.
- (4) The following are the requirements mentioned in *subhead (3)(a)* for the eligibility of a person (the “person concerned”) for election as a director at a general meeting, namely, not less than 3 nor more than 21 days before the day appointed for the meeting there shall have been left at the co-operative society’s registered office—
 - (a) notice in writing signed by a member of the co-operative society duly qualified to attend and vote at the meeting for which such notice is given, of his or her intention to propose the person concerned for such election; and
 - (b) notice in writing signed by the person concerned of his or her willingness to be so elected.

Explanatory note: This head is based on section 144 of the Companies Act 2014. The Industrial and Provident Societies Act 1893 specifies that the rules of the registered society should provide for the appointment and removal of a committee of management, by whatever name, of managers or other officers, but does not provide further details.

The head requires a director to consent to his or her appointment - if the consent is not provided, the appointment is void. It also requires that a member of the co-operative society submit a notice in writing proposing the person for election.

Subhead (2) provides that the first directors of a co-operative society shall be those persons determined in writing by the subscribers of the rules or a majority of them. Subhead (3)(a) relates to the appointment by the members of subsequent directors in general meeting. If the person to be put forward is in their view undesirable in any way, they can then prepare their opposition to him or her more efficiently. Subheads (3)(b) and (c) provide that the directors may appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors and that such new director will hold office only until the next annual general meeting. The principle underlying this is that the filling of a casual vacancy by the directors shall be regarded only as a temporary measure until the co-operative society has the next opportunity of dealing with the situation. Subject to ensuring that the co-operative society has 3 directors, subhead (3)(d) allows the society to increase or reduce the number of directors by an ordinary resolution. Subhead (3)(e) relates to the replacement of directors removed under head 67. Subhead (4) outlines the requirements for the eligibility of a person for election as a director.

HEAD 65 – Rotation of directors

Provide that:

- (1) Each provision of this head applies save to the extent that the rules of the co-operative society provide otherwise.
- (2) At the first annual general meeting of the co-operative society all the directors shall retire from office.
- (3) At the annual general meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third shall retire from office.
- (4) The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- (5) A retiring director shall be eligible for re-election.
- (6) The co-operative society, at the meeting at which a director retires in any of the foregoing instances, may fill the vacated office by electing a person to it.
- (7) In default of the co-operative society doing so, the retiring director shall, if offering himself or herself for re-election, be deemed to have been re-elected, unless—
 - (a) at such meeting it is expressly resolved not to fill such vacated office, or
 - (b) a resolution for the re-election of such director has been put to the meeting and lost.

Explanatory note: This head is based on section 1196 of the Companies Act 2014 and aims to strengthen the co-operative ethos of the societies registered under this Bill. It makes the default position for co-operative societies that directors must undergo regular rotation (i.e., resign periodically and present themselves for re-election, so that even where the board is completely unchanged, the membership will have a chance not to re-elect them). This is proposed in the interests of transparent and regular corporate governance and to encourage members to take part in the management of the co-operative society.

HEAD 66 – Appointment of directors to be voted on individually

Provide that:

- (1) At a general meeting of a co-operative society, a motion for the appointment of 2 or more persons as directors of the co-operative society by a single resolution shall not be made, unless a resolution that it shall be so made has first been agreed to by the meeting without any vote being given against it.
- (2) Subject to *subheads* (3) and (4), a resolution moved in contravention of this head shall be void, whether or not its being so moved was objected to at the time.
- (3) *Subhead* (2) shall not be taken as excluding the operation of *head 61*.
- (4) Where a resolution moved in contravention of this head is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment shall apply.
- (5) For the purposes of this head, a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his or her appointment.
- (6) Nothing in this head shall apply to a resolution amending the rules of the co-operative society.

Explanatory note: This head is based on section 145 of the Companies Act 2014. The object of the head is to ensure the activities of directors are closely under the control of the members. It provides that a motion for the appointment of 2 or more persons as directors of a society by a single resolution shall not be made unless the resolution has been agreed unanimously.

Subhead (2) provides that a resolution moved in contravention of this head shall be void, whether or not this was objected to at the time. The purpose of subhead (3) is to ensure that the avoiding provision in subhead (2) will not prejudice the universal application of head 61 (which provides that the acts of a director shall be valid notwithstanding any defect in his or her appointment or qualification which may be discovered afterwards) – in other words, if a director is improperly appointed in contravention of subhead (1) of this head, his or her acts will, by virtue of head 61, be valid. The effect of subhead (4) is that where a director is appointed improperly in contravention of subhead (1), any provision to this effect in the co-operative society's rules providing for automatic re-appointment of retiring directors will not apply to him or her. Subhead (5) provides that a motion approving or nominating a person shall be treated as a motion for his or her appointment as a director. Subhead (6) addresses situations where directors are named in the co-operative society's rules and where it is desired to change their relevant provision.

HEAD 67 – Removal of directors

Provide that:

- (1) A co-operative society may by ordinary resolution remove a director before the expiration of his or her period of office notwithstanding anything in its co-operative society's rules or in any agreement between it and him or her.
 - (2) In the case of a resolution to remove a director under this head or to appoint somebody instead of the director so removed at the meeting at which he or she is removed the following provisions shall apply—
 - (a) the co-operative society shall be given not less than 28 days' notice of the intention to move any such resolution except when the directors of the co-operative society have resolved to submit it;
 - (b) on receipt of notice of such an intended resolution, the co-operative society shall forthwith send a copy of it to the director concerned, and the director (whether or not he or she is a member of the co-operative society) shall be entitled to be heard on the resolution at the meeting; and
 - (c) the co-operative society shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of it either by advertisement in a daily newspaper circulating in the district in which the registered office of the co-operative society is situated or in any other manner allowed by this Bill or by the rules of the co-operative society, not less than 21 days before the date of the meeting.
 - (3) Any such resolution that is passed that does not comply with the foregoing provisions shall, subject to *subhead (4)*, not be effective.
 - (4) If, after notice of the intention to move such a resolution has been given to the co-operative society, a meeting is called for a date 28 days or less after the notice has been given, the notice, though not given within the time required by *subhead (2)(a)*, shall be deemed to have been properly given for the purposes of that provision.
 - (5) Subject to *subhead (7)*, where notice is given of an intended resolution to remove a director under this head and the director concerned makes in relation to that resolution representations in writing to the co-operative society (not exceeding a reasonable length) and requests their notification to the members of the co-operative society, the co-operative society shall, unless the representations are received by it too late for it to do so—
 - (a) in any notice of the resolution given to members of the co-operative society, state the fact of the representations having been made; and
 - (b) send a copy of the representations to every member of the co-operative society to whom notice of the meeting is sent (whether before or after receipt of the representations notice by the co-operative society).
 - (6) If a copy of the representations is not sent as mentioned in *subhead (5)* (either because they were received too late or because of the co-operative society's default) the director concerned may, without prejudice to his or her right to be heard orally, require that the representations shall be read out at the meeting concerned.
 - (7) Copies of the representations need not be sent out, and the representations need not be read out at the meeting concerned, as mentioned in *subhead (5)* or (6), if, on the application either of the co-operative society or of any other person who claims to be aggrieved, the court is satisfied that the rights conferred
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by this head are being abused to secure needless publicity for defamatory matter and orders that those things need not be done.

(8) The court may order the co-operative society 's costs on such an application to be paid in whole or in part by the director concerned, notwithstanding that he or she is not a party to the application.

(9) A vacancy created by the removal of a director under this head may be filled at the meeting at which he or she is removed and, if not so filled, may be filled as a casual vacancy.

(10) A person appointed director in place of a person removed under this head shall be treated, for the purpose of determining the time at which he or she or any other director is to retire, as if he or she had become director on the day on which the person in whose place he or she is appointed was last appointed director.

Explanatory note: This head is based on section 146 of the Companies Act 2014. The Industrial and Provident Societies Act 1893 specifies that the rules of the registered society should provide for the appointment and removal of a committee of management, by whatever name, of managers or other officers, but does not provide further details.

Subhead (1) sets out that the members can dispense with the services of any director with whom are not satisfied before the expiry of his or her period of office. Subhead (2) sets out the procedure for giving notice for a resolution to remove a director.

Subhead (3) sets out that subject to subhead (4) a resolution not complying with the provisions of this head shall not be effective. Subhead (4) clarifies that if after notice regarding the resolution specified in subhead (1) has been given to the co-operative society, a meeting is called for a date before the 28 days after the notice has been given, the notice, notwithstanding the time required by *subhead (2)(a)*, shall be deemed to have been properly given for the purposes of that provision. The object of subhead (5) is to enable the director to defend him or herself by making representations. Subhead (6) deals with a situation where a copy of the representations is not sent as required by subhead (5). Subhead (7) gives the court the power to disregard subheads (5) or (6), if, on the application of either the co-operative society or any other person claiming to be aggrieved, the court is satisfied that the representations contain defamatory matter and it is satisfied that there is no need to publish it. Subhead (8) relates to costs regarding the application to court. Subhead (9) provides that where a director is removed from office, a director may be appointed to take his or her place at the same meeting. The effect of subhead (10) is to place the new director in the shoes of the old one, and enable him or her to finish out the old director's term of office.

HEAD 68 – Compensation for wrongful termination, other powers of removal not affected by head 67

Provide that:

Nothing in *head 67* shall be taken—

- (a) as depriving a person removed under it of compensation or damages payable to him or her, or any other remedy available to the person, in respect of the termination of his or her appointment as director or of any appointment terminating with that as director; or
- (b) as derogating from any power to remove a director that may exist apart from that head.

Explanatory note: This head is based on section 147 of the Companies Act 2014. It clarifies that compensation or damages payable to a director as a result of removing him or her from office shall not be affected by the provisions of that head.

HEAD 69 – Vacation of office

Provide that:

- (1) The office of director shall be vacated if the director—
 - (a) is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction; or
 - (b) becomes or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014, as applied by *head 230*.
- (2) Save to the extent that the rules of the co-operative society provide otherwise, the office of director shall be vacated if—
 - (a) the director resigns his or her office by notice in writing to the society; or
 - (b) the health of the director is such that he or she can no longer be reasonably regarded as possessing an adequate decision-making capacity; or
 - (c) a declaration of restriction is made in relation to the director and the directors, at any time during the currency of the declaration, resolve that his or her office be vacated; or
 - (d) the director is sentenced to a term of imprisonment following conviction of an indictable offence; or
 - (e) the director is for more than 6 months absent, without the permission of the directors, from meetings of the directors held during that period.
- (3) In *subhead (2)(d)* the reference to a term of imprisonment includes a reference to such a term that is suspended.

Explanatory note: This head is based on section 148 of the Companies Act 2014. It requires the office of director to be vacated if a director is adjudged bankrupt, or, if that director, being a bankrupt, has not obtained a certificate of discharge in the relevant jurisdiction, or, if that director becomes or is deemed to be subject to a disqualification order. Subhead 2(a) provides that, save to the extent that the co-operative society’s rules provide otherwise, the office of the director must also be vacated if the director resigns his or her office by notice in writing to the co-operative society. Subhead 2(b) provides that the office of director shall be vacated if the health of the director is such that he or she can no longer be reasonably regarded as possessing an adequate decision-making capacity. Subhead 2(c) provides that the office of director shall be vacated if a declaration of restriction is made in relation to the director. Subhead 2(d) provides that the office of director shall be vacated if the director is sentenced to a term of imprisonment, while subhead 2(e) if the director is absent from meetings for more than 6 months. Subhead (3) clarifies that in subhead (2)(d), the word “imprisonment” includes suspended prison terms.

HEAD 70 – Register of directors and secretaries

Provide that:

- (1) A co-operative society shall keep a register (the “register”) of its directors and secretaries and, if any, its assistant and deputy secretaries.
 - (2) Subject to *subhead (4)* and *head 71(11)*, the register shall contain the following particulars relating to each director:
 - (a) his or her present forename and surname and any former forename and surname;
 - (b) his or her date of birth;
 - (c) his or her usual residential address;
 - (d) his or her nationality;
 - (e) his or her business occupation, if any; and
 - (f) particulars of any other directorships of bodies corporate whether incorporated in the State or elsewhere, held by him or her or which have been held by him or her.
 - (3) *Heads 118 to 120* (rights of inspection, requests for copies, etc.) apply to the register.
 - (4) It shall not be necessary for the register to contain on any day particulars of any directorship—
 - (a) which has not been held by a director at any time during the 5 years preceding that day;
 - (b) which is held or was held by a director in bodies corporate of which the co-operative society is or was the wholly owned subsidiary or which are or were the wholly owned subsidiaries either of the co-operative society or of another body corporate of which the society is or was the wholly owned subsidiary.
 - (5) Subject to *subhead (6)* and *head 71(11)*, the register shall contain the following particulars relating to the secretary or, where there are joint secretaries, in relation to each of them—
 - (a) in the case of an individual—
 - (i) his or her present forename and surname and any former forename and surname;
 - (ii) his or her usual residential address; and
 - (iii) his or her date of birth,and
 - (b) in the case of a body corporate, the corporate name and, if the body corporate is registered—
 - (i) its registered office;
 - (ii) the register in which it is registered; and
 - (iii) the number under which it is registered in that register.
 - (6) Where all the partners in a firm are joint secretaries of a co-operative society, the name and principal office of the firm may be stated instead of the particulars referred to in *subhead (5)*.
 - (7) In relation to any assistant or deputy secretary the same particulars shall be contained in the register as respects the assistant or deputy secretary as are required by *subhead (5)* to be contained in the register as respects a secretary or joint secretary.
-

- (8) The co-operative society shall, within the period of 14 days after the date of the happening of—
- (a) any change among its directors or in its secretary or assistant or deputy secretary; or
 - (b) any change in any of the particulars contained in the register,

send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred.

- (9) In the case of a person who is a director of more than one co-operative society (the “relevant societies”) the following provisions apply—

- (a) the person may send a notification in the prescribed form to the Registrar of a change in his or her usual residential address or of a change in his or her name and (in each case) of the date on which the change occurred;

- (b) if such a notification is sent to the Registrar and the relevant co-operative societies are listed in the notification as being societies of which the person is a director—

- (i) each of the relevant societies shall be relieved, as respects, and only as respects, that particular change or, as the case may be, those particular changes, of the obligation under *subhead (8)* to send a notification of it or them to the Registrar; and

- (ii) the Registrar may proceed to record the relevant change or changes concerning the person in relation to each of the relevant societies.

(10) A notification sent to the Registrar pursuant to *subhead (8)* of the appointment of a person as a director, secretary, joint secretary or assistant or deputy secretary of a co-operative society shall be accompanied by a consent signed by that person to act as director or secretary or assistant or deputy secretary or, where all the partners in a firm have been appointed joint secretaries of a society, by one partner on behalf of the firm, as the case may be.

(11) *Head 126(3)*, in the case of a director, and *head 129(5)*, in the case of a secretary, requires the inclusion of a particular statement in a foregoing consent by him or her.

(12) For the purposes of this head—

- (a) in the case of a person usually known by a title different from his or her surname, the expression “surname” means that title;

- (b) references to a “former forename” or “surname” do not include—

- (i) in the case of a person usually known by a title different from his or her surname, the name by which he or she was known previous to the adoption of or succession to the title; or

- (ii) in the case of any person, a former forename or surname where that name or surname was changed or disused before the person bearing the name attained the age of 18 years or has been changed or disused for a period of not less than 20 years, or

- (iii) in the case of a married person or civil partner, the name or surname by which he or she was known previously to his or her marriage or civil partnership.

Explanatory note: This head is based on section 149 of the Companies Act 2014. It provides that societies must maintain a register of directors and secretaries and file changes in the register.

Subhead (1) sets out the basic rule that a co-operative society must keep a register of its directors and secretaries at its registered office. Subhead (2) provides the particulars that are required to be entered into the register concerning each director. This is subject to head 71(11) which grants powers to make regulations in relation to the non-disclosure of residential addresses on the public register kept by the Registrar. In certain limited circumstances, co-operative society officers will be granted an exemption from listing their residential address on the public register. Such addresses will be kept separately by the Registrar who in turn will be granted powers to release such addresses to relevant authorities, for example, the Revenue Commissioners and an Garda Síochána.

Subhead (3) provides that rights of inspection, requests for copies, etc. provided for elsewhere in the Bill apply to the register.

Subhead (4) clarifies that it shall not be necessary for the register to contain on any day particulars of any directorship which has not been held by a director in the previous 5 years or which is held or was held by a director in bodies corporate of which the co-operative society is or was the wholly owned subsidiary.

Subhead (5) provides what the register must show for secretaries – being the name, former name, his or her date of birth and usual residential address in the case of an individual. If the secretary is a body corporate, its corporate name, its registered office, the register in which it is registered and the number under which it is registered therein is also required.

Subhead (6) states that where all the partners of a firm are joint secretaries, the name and principal office of the firm may be stated instead.

Subhead (7) provides the particulars that are required to be contained in the register as required by subhead (5) shall be the same for any assistant or deputy secretary.

Subhead (8) deals with the notification requirements to the Registrar when there have been changes in a director or secretary or assistant or deputy secretaries or any related particulars.

Subhead (9) deals with the case where a person is the director of more than one co-operative society and applies specific provisions in relation to notification in this regard in order to reduce the administrative burden on these co-operative societies.

Subhead (10) deals with the consent signed by the person who is acting as director, secretary, joint secretary, assistant or deputy secretary in a situation where all the partners in the firm have been appointed joint secretaries of a co-operative society, one partner on behalf of the firm shall sign the consent which accompanies the notification referred to in subhead (8).

Subhead (11) cross-references heads 126 and 129 on directors and secretaries' duties respectively and highlights the requirement to include a particular statement in the forgoing consent by the director or secretary.

Subhead (12) clarifies the use of the terms “surname” and “former forename”.

HEAD 71 – Supplemental provisions (including offences) in relation to head 70

Provide that:

(1) Without prejudice to the generality of *head 70(8)*, a change among the directors for the purposes of that provision shall be deemed to include the case of a director's becoming disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking; accordingly, in such a case, the notice under *head 70(8)* shall state, in relation to the director concerned—

- (a) the jurisdiction in which he or she has become so disqualified;
- (b) the date on which he or she has become so disqualified; and
- (c) the period for which he or she has become so disqualified.

(2) Without prejudice to *subhead (1)* and to the requirement under *head 70(10)* that the notification be accompanied by the consent there referred to, if—

- (a) the notification to be sent to the Registrar pursuant to *head 70(8)* is a notification of the appointment of a person as a director of a society; and
- (b) that person is a person who is disqualified under the law of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as a director or secretary of a body corporate or an undertaking,

that person shall ensure that the notification is accompanied by (but as a separate document from that notification) a statement in the prescribed form signed by the person specifying—

- (i) the jurisdiction in which he or she is so disqualified;
- (ii) the date on which he or she became so disqualified; and
- (iii) the period for which he or she is so disqualified.

(3) It shall be the duty of each director and secretary and assistant or deputy secretary, if any, of a co-operative society to give information in writing to the co-operative society as soon as may be of such matters as may be necessary to enable the co-operative society to comply with *head 70* and the preceding subheads of this head.

(4) If default is made in complying with *head 70(1), (2), (5), (7), (8) or (10)*, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 3 offence.

(5) A person who fails to comply with *subhead (1)* shall be guilty of a category 3 offence.

(6) If the second mentioned person in *subhead (2)* fails to comply with that subhead, he or she shall be guilty of a category 3 offence.

(7) A person who fails to comply with *subhead (3)* shall be guilty of a category 3 offence.

(8) Without prejudice to *subhead (3)* or (6) and notwithstanding anything in *subhead (2)*, it shall be the duty of a co-operative society to make reasonable enquiries of a person, on his or her appointment as director of the co-operative society, so as to ascertain whether the requirements of *subhead (2)* fall to be complied with by that person in relation to that appointment (but a failure of the co-operative society to do so does not relieve the person of his or her obligations under that subhead).

(9) If a person appointed a director of a co-operative society before the commencement of this head has, subsequent to his or her appointment but before that commencement, become disqualified under the law

of another state (whether pursuant to an order of a judge or a tribunal or otherwise) from being appointed or acting as director or secretary of a body corporate or an undertaking, then *subhead (1)* shall apply to such a case as it applies to a case of a director becoming so disqualified after that commencement.

(10) For the purpose of the application of *subhead (1)* to the case first-mentioned in the preceding subhead, *head 70* shall apply as if the following subhead were substituted for *subhead (8)*:

“(8) The co-operative society shall, within the period of 3 months after the commencement of this head, send to the Registrar a notification in the prescribed form of the change and of the date on which it occurred.”.

(11) The Minister may make regulations providing that any requirement of this Bill that the usual residential address of an officer of a co-operative society appear on the register referred to in *head 70(1)* or the register kept by the Registrar shall not apply in relation to a particular person who is such an officer if—

- (a) in accordance with a procedure provided in the regulations for this purpose, it is determined that the circumstances concerning the personal safety or security of the person warrant the application of the foregoing exemption in respect of him or her; and
- (b) such other conditions (if any) as are specified in the regulations for the application of the foregoing exemption are satisfied.

(12) Regulations under *subhead (11)* may contain such incidental, consequential and supplemental provisions as appear to the Minister to be necessary or expedient, including provision—

- (a) so as to secure that there is not otherwise disclosed, by virtue of this Bill's operation, the usual residential address of a person in respect of whom the exemption referred to in that subhead applies; and
- (b) limiting the regulations' application to a usual residential address that, but for the regulations' operation, would fall to be entered, on a register referred to in that subhead, on or after a date specified in the regulations.

Explanatory note:

This head is based on section 150 of the Companies Act 2014 and deals with the situation where a director is disqualified under the law of another state from being appointed or acting as director or secretary of a body corporate or an undertaking. Where this occurs, he or she must ensure that the statement delivered to the Registrar is accompanied by a separate document in the prescribed form, signed by him or her specifying the jurisdiction in which he or she is disqualified, the date on which he or she became disqualified and the period of his or her disqualification.

Subhead (3) provides that it is the duty of each director and secretary and assistant or deputy secretary of a society to give information in writing as soon as may be of such matters to enable the society to comply with the requirements of *head 70*.

Subhead (4) provides that in default of compliance with *head 70(1), (2), (5), (7), (8) or (10)*, a category 3 offence will apply. Under *subhead (5) and (7)*, a category 3 offence applies for default of compliance with *heads 71(1) and 71(3) respectively*. Similarly, *subhead (6)* states that a category 3 offence applies for default of compliance by the second mentioned person under *head 71(2)*.

Subhead (8) states that it is the duty of a society to make reasonable enquiries of a person, on his or her appointment as director, to ascertain whether the requirements of *subhead (2)* should be complied with by that person in relation to that appointment. However, a failure of a society to make these enquiries will not relieve the person of his or her obligations under *head 71(2)*.

Subheads (9) and (10) make provisions for foreign disqualification orders under the Bill. In this head directors who have become subject to disqualification under the law of another state are required to declare that fact to the Registrar within a prescribed period of time of the commencement of the relevant provisions of the Bill. Failure to comply with the disclosure requirement will constitute an offence. It is provided that foreign disqualification orders made before the commencement of the Bill are declared.

Subhead (11) and (12) grant the Minister powers to make regulations in relation to the non-disclosure of residential addresses on the public register kept by the Registrar. In certain limited circumstances, co-operative society officers will be granted an exemption from listing their residential address on the public register, provided their address has not been previously published on the Register of directors and secretaries. Such addresses will be kept separately by the Registrar who in turn will be granted powers to release such addresses to relevant authorities, for example, the Revenue Commissioners and an Garda Síochána.

HEAD 72 – Particulars to be shown on all business letters of co-operative society

Provide that:

- (1) A co-operative society shall, in all business letters on or in which the co-operative society's name appears and which are sent by the co-operative society to any person, state in legible characters in relation to every director of the co-operative society the following particulars:
 - (a) his or her present forename, or the initials thereof, and present surname;
 - (b) any former forename and surnames of him or her; and
 - (c) his or her nationality, if not Irish.
- (2) A co-operative society shall further have the following particulars on all its business letters and order forms:
 - (a) the name of the co-operative society;
 - (b) the place of registration of the society and the number under which it is registered; and
 - (c) the address of its registered office.
- (3) Where a co-operative society has a website, it shall display in a prominent and easily accessible place on that website the particulars referred to in *subhead (2)(a) to (c)*.
- (4) If a co-operative society makes default in complying with this head, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.
- (5) For the purposes of this head—
 - (a) “director” includes any person in accordance with whose directions or instructions the directors of the co-operative society are accustomed to act, and “officer” shall be read accordingly;
 - (b) “initials” includes a recognised abbreviation of a forename; and
 - (c) *head 70(12)* shall apply as it applies for the purposes of head 70.

Explanatory note: This head derives from section 12 of the Industrial and Provident Societies Act 1893 which, among others, lists the documents, that shall contain the registered name of the society. The head also borrows provisions from section 151 of the Companies Act 2014 and provides that the name of the co-operative society, its place of registration, registration number and address shall feature on a society's business letters and forms. Should a society have a website, these particulars shall be displayed in a prominent and easily accessible place on the website.

Subhead (1) sets out the rule as to what is required on business letters of co-operative societies regarding information on directors. Subhead (2) sets out further information required in addition to that in subhead (1). If the co-operative society has a website, subhead (3) provides for what information must be stated on it in relation to the co-operative society. Subhead (4) states that the co-operative society and any officer of the co-operative society, who is in default of the provisions of this head will be guilty of a category 4 offence. Subhead (5) contains definitions to aid in the interpretation of this head.

HEAD 73 – Entitlement to notify Registrar of changes in directors and secretaries if head 70(8) contravened

Provide that:

- (1) In this head “former director or secretary” means the person referred to in *subhead (2)*.
- (2) This head applies where a co-operative society fails to send, in accordance with *head 70(8)*, a notification, in the prescribed form, to the Registrar of the fact of a person's having ceased, for whatever reason, to be a director or secretary of the society and of the date on which that event occurred.
- (3) Where this head applies, the former director or secretary may serve on the co-operative society a notice—
 - (a) requesting it to send forthwith the notification of the matters mentioned in *subhead (2)*, in the prescribed form, to the Registrar; and
 - (b) stating that if the co-operative society fails to comply with that request within 21 days after the date of service of the notice on it, he or she will forward to the Registrar and to every person who, to his or her knowledge, is an officer of the co-operative society a copy of any notice of resignation by him or her as a director or secretary of the co-operative society or any other documentary proof of his or her having ceased to be such a director or secretary, together with—
 - (i) in the case of the Registrar, such additional information as may be prescribed (which may include a declaration made by the person stating the names of the persons who, to the knowledge of the person, are officers of the co-operative society); and
 - (ii) in the case of every other person forwarded as mentioned above, a written request of the person that he or she take such steps as will ensure that the failure of the co-operative society to comply with the notice continues no further.
- (4) If a co-operative society fails to comply with a request made of it under a notice referred to in *subhead (3)*, the former director or secretary may forward to the Registrar and to every person who, to his or her knowledge, is an officer of the co-operative society a copy of the notice of resignation or other documentary proof referred to in *subhead (3)(b)* if, but only if, there is forwarded together with that notice or proof—
 - (a) in the case of the Registrar, the additional information referred to in *subhead (3)(b)(i)*; and
 - (b) in the case of every other such person, the written request referred to in *subhead (3)(b)(ii)*.
- (5) No notice of resignation or other documentary proof of a person's having ceased to be a director or secretary of a co-operative society which is forwarded to the Registrar by that person (other than such a notice or other proof which is forwarded by him or her under and in accordance with the preceding subheads) shall be considered by the Registrar.
- (6) No additional information referred to in *subhead (3)(b)(i)* that is—
 - (a) included in a notice of resignation or other documentary proof referred to in this head; and
 - (b) forwarded, under and in accordance with the foregoing provisions of this head, to the Registrar, shall, of itself, be regarded as constituting defamatory matter.

Explanatory note: This head is based on section 152 of the Companies Act 2014. It provides persons who have ceased to be directors, but whose co-operative societies have failed to notify the Registrar of the cessation, with a mechanism to bring the matter to the attention of the Registrar.

Subheads (1), (2) and (3) provide that where the co-operative society fails to send the notification of a person having ceased to be a director or secretary, the person concerned is then empowered to serve a notice on the co-operative society as set out in subhead (3)(a) and (b). Subhead (4) provides that the former director or secretary may supply evidence directly to the Registrar together with evidence that they have informed the current officers in accordance with subhead (3)(b). Subhead (5) is designed to ensure that the Registrar will not be inundated with half complete notifications and can insist on having everything complete in every respect before he or she takes such notification into account. Subhead (6) provides that no representation made pursuant to this head to the Registrar will be regarded as constituting defamatory matter.

HEAD 74 – Provisions as to assignment of office by directors

Provide that:

(1) This head applies to any provision of—

(a) the rules of a co-operative society, or

(b) any agreement entered into between a co-operative society and any person,

under which a director of the co-operative society is enabled to assign his or her office as such to another person.

(2) Any assignment of office made in pursuance of a provision to which this head applies shall, notwithstanding anything to the contrary contained in the provision, be of no effect unless and until it is approved by a special resolution of the co-operative society.

Explanatory note: This head is based on section 153 of the Companies Act 2014. It provides that any assignment of office in pursuance of the rules of the society or based on an agreement under which a director of the society is enabled to assign his or her office to another person shall be of no effect unless and until it is approved by a special resolution of the society.

Chapter 3 Service contracts and remuneration

HEAD 75 – Copies of directors’ service contracts

Provide that:

- (1) Subject to the provisions of this head, a co-operative society shall keep—
 - (a) in the case of each director whose contract of service with the co-operative society is in writing, a copy of that contract;
 - (b) in the case of each director whose contract of service with the co-operative society is not in writing, a written memorandum setting out the terms of that contract;
 - (c) in the case of each director who is employed under a contract of service with a subsidiary of the co-operative society, a copy of that contract or, if it is not in writing, a written memorandum setting out the terms of that contract;
 - (d) a copy or written memorandum, as the case may be, of any variation of any contract of service referred to in *paragraph (a), (b) or (c)*,and all copies and memoranda kept by a society in pursuance of this subhead shall be kept at the same place.
- (2) *Heads 118 to 120* (rights of inspection, etc.) apply to those copies and memoranda.
- (3) Where a contract of service is only partially in writing, *paragraphs (a), (b), (c) and (d)*, as appropriate, of *subhead (1)*, and *subhead (4)* shall also apply to such a contract.
- (4) *Subhead (1)* shall not apply in relation to a director's contract of service with the co-operative society or with a subsidiary of the society if that contract required him or her to work wholly or mainly outside the State, but the co-operative society shall keep a memorandum—
 - (a) in the case of a contract of service with the society, setting out the name of the director and the provisions of the contract relating to its duration;
 - (b) in the case of a contract of service with a subsidiary of the society, setting out the name of the director, the name and place of registration of the subsidiary and the provisions of the contract relating to its duration,at the same place as copies and the memoranda are kept by the co-operative society in pursuance of *subhead (1)*.
- (5) If default is made in complying with *subhead (1)* or *(4)*, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 3 offence.
- (6) This head shall not require to be kept—
 - (a) a copy of, or memorandum setting out the terms of, a contract; or
 - (b) a copy of, or memorandum setting out the terms of a variation of, a contract,at a time at which the unexpired portion of the term for which the contract is to be in force is less than 3 years or at a time at which the contract can, within the next ensuing 3 years, be terminated by the co-operative society without payment of compensation.

Explanatory note: This head is based on section 154 of the Companies Act 2014. It makes provision for inspection by members of a co-operative society of copies of directors' service contracts, or memoranda of those contracts not in writing. This is to give the members a true and complete indication of the obligations of the co-operative society to the director. These must be kept at the co-operative society's registered office, the place where the register of members is kept if this place is not the registered office, or its principal place of business. Subhead (1) states that a co-operative society shall keep the documents specified in paragraphs (a) to (d) at the same place. Subhead (4) deals with the situation where a director is required by his or her contract to work wholly or mainly outside the State. Subhead (5) is the offence provision and provides any officer who is in default shall be guilty of a category 3 offence. Subhead (6) describes contracts that are not required to be kept for inspection.

HEAD 76 – Remuneration of directors

Provide that:

- (1) Each provision of this head applies save to the extent that the rules of the co-operative society provide otherwise.
- (2) The remuneration of the directors of a co-operative society shall be such as is determined, from time to time, by the board of directors and approved by a resolution of the co-operative society in general meeting and such remuneration shall be deemed to accrue from day to day.
- (3) The directors of a co-operative society may also be paid all travelling, hotel and other expenses properly incurred by them—
 - (a) in attending and returning from—
 - (i) meetings of the directors or any committee referred to in *head 81(9)*;
 - or
 - (ii) general meetings of the co-operative society,
 - or
 - (b) otherwise in connection with the business of the co-operative society.

Explanatory note: This head originates from section 155 of the Companies Act 2014. It provides for the remuneration of directors where the society rules do not deal with these matters. The remuneration of the directors shall be determined by the board of directors and approved by the co-operative society in a general meeting. subhead (2) provides that the remuneration shall be determined by the co-operative society in general meeting. The remuneration shall be determined from time to time, and it will be deemed to accrue from day to day. Subhead (3) makes provision for the payment to directors of their expenses properly incurred.

HEAD 77 – Prohibition of tax-free payments to directors

Provide that:

(1) It shall not be lawful for a co-operative society to pay a director of the society remuneration (whether as director or otherwise)—

- (a) free of income tax or the universal social charge, or
- (b) otherwise calculated by reference to or varying with the amount of his or her income tax or to or with the rate of income tax.

(2) Any provision contained in—

- (a) a co-operative society's rules;
- (b) any contract other than such a contract as is mentioned in *subhead (1)*; or
- (c) any resolution of a co-operative society or a society's directors,

for payment to a director of remuneration in the manner referred to in *subhead (1)* shall have effect as if it provided for payment, as a gross sum subject to income tax and the universal social charge, of the net sum for which it actually provides.

Explanatory note: This head is based on section 156 of the Companies Act 2014. It prohibits tax-free payment of remuneration to a director.

Chapter 4 Proceedings of directors

HEAD 78 – Heads 79 to 86 to apply save where rules provide otherwise

Provide that:

Each subsequent provision of this Chapter (other than *heads 87* and *88*) applies save to the extent that the rules of the co-operative society provide otherwise.

Explanatory note: This head is based on section 157 of the Companies Act 2014. It was inserted to aid the readability of the subsequent provisions in this chapter.

HEAD 79 – General power of management and delegation

Provide that:

(1) The business of a co-operative society shall be managed by its directors, who may pay all expenses incurred in promoting and registering the co-operative society and may exercise all such powers of the co-operative society as are not, by this Bill or by the rules of the co-operative society, required to be exercised by the society in general meeting, but subject to—

(a) any regulations contained in the rules;

(b) the provisions of this Bill; and

(c) such directions, not being inconsistent with the foregoing regulations or provisions, as the co-operative society in general meeting may (by special resolution) give.

(2) However, no direction given by the co-operative society in general meeting under *subhead (1)(c)* shall invalidate any prior act of the directors which would have been valid if that direction had not been given.

(3) Without prejudice to the generality of that subhead, *subhead (1)* operates to enable, subject to a limitation (if any) arising under any of *paragraphs (a) to (c)* of it, the directors of the co-operative society to exercise all powers of the co-operative society to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof.

(4) Without prejudice to *head 32*, the directors may delegate any of their powers to such person or persons as they think fit, including committees; any such committee shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

Explanatory note: This head is based on section 158 of the Companies Act 2014 and relates to general power of management and delegation. Subhead (1) states that the business of a society must be managed by its directors and that the directors may exercise all such powers of the society as are not, by this Bill or by the rules, required to be exercised by the society in general meeting. The delegation of the powers of management is subject to three express qualifications; (a) any regulations contained in the rules; (b) the provisions of this Bill, and (c) subject to directions given by the members. Subhead (2) provides that any directions made by the members to the directors will not invalidate prior acts of the directors. Subject to a limitation under subhead (1), subhead (3) provides that the directors are granted powers to borrow money and create charges. Subhead (4) provides directors with a power to delegate to committees.

HEAD 80 – Managing director

Provide that:

- (1) The directors of a co-operative society may from time to time appoint one or more of themselves to the office of managing director (by whatever name called) for such period and on such terms as to remuneration and otherwise as they see fit and, subject to the terms of any agreement entered into in any particular case, may revoke such appointment.
- (2) Without prejudice to any claim the person so appointed may have for damages for breach of any contract of service between the person and the co-operative society, the person's appointment shall cease upon his or her ceasing, from any cause, to be a director of the co-operative society.
- (3) A managing director of a co-operative society shall receive such remuneration whether by way of salary, commission or participation in the profits, or partly in one way and partly in another, as the directors may determine.
- (4) Without prejudice to head 32, the directors may confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit.
- (5) In conferring any such powers, the directors may specify that the conferral is to operate either—
 - (a) so that the powers concerned may be exercised concurrently by them and the managing director; or
 - (b) to the exclusion of their own such powers.
- (6) The directors may—
 - (a) revoke any conferral of powers under *subhead (4)*; or
 - (b) amend any such conferral (whether as to the powers conferred or the terms, conditions or restrictions subject to which the conferral is made).

Explanatory note: This head is based on section 159 of the Companies Act 2014. It provides that the directors may appoint one or more of the directors as managing directors and revoke the appointment. The powers conferred upon a managing director are exercisable by him or her in accordance with the agreed terms and conditions and restrictions. These powers may be exercised concurrently by the directors and the managing director, or to the exclusion of the directors own powers and may be revoked or amended.

Without prejudice to any claim the appointed person may have for damages for breach of any contract for service, the appointment shall cease when the director ceases to be a director.

HEAD 81 – Meetings of directors and committees

Provide that:

- (1) The directors of a co-operative society may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (2) Questions arising at any such meeting shall be decided by a majority of votes and where there is an equality of votes, the chairperson shall have a second or casting vote.
- (3) A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
- (4) All directors shall be entitled to reasonable notice of any meeting of the directors but, if the directors so resolve, it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.
- (5) Nothing in *subhead (4)* or any other provision of this Bill enables a person, other than a director of the co-operative society concerned, to object to the notice given for any meeting of the directors.
- (6) The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be 2.
- (7) The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Bill as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the co-operative society but for no other purpose.
- (8) The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.
- (9) The directors may establish one or more committees consisting in whole or in part of members of the board of directors.
- (10) A committee established under *subhead (9)* (a “committee”) may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.
- (11) A committee may meet and adjourn as it thinks proper.
- (12) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present, and where there is an equality of votes, the chairperson shall have a second or casting vote.

Explanatory note: This head is based on section 160 of the Companies Act 2014. It sets out that the directors may have meetings for the dispatch of business, adjourn and regulate their meetings as they

think fit. Decisions at such meetings are made by a majority of votes and in a case of an equality of votes, the chairperson shall have a second or casting vote. The meetings shall be summoned by a director, and the secretary on the requisition of a director.

The head requires that “reasonable notice” for any meeting of the directors shall be given. It is also stated in subhead (5) that no person other than a director may object to the notice given for directors’ meetings. This safety measure has been included to prevent third parties or an outsider challenging a resolution of the directors on the basis that insufficient notice for the meeting at which it was passed was given.

The quorum of the meeting shall be fixed by the directors, but if not fixed, shall be 2. The continuing directors may act notwithstanding any vacancy in their number but, if their number is reduced below the minimum number fixed by the Bill as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the co-operative society but for no other purpose.

Subhead (8) provides for the election of a chairperson, the period for which they can hold office and the time period which is allowed for the chairperson to arrive at the meeting. Subhead (9) provides that the directors may establish one or more committees consisting in whole or in part of members of the board of directors. Subhead (10) provides for the election of a chairperson to the committee. Subheads (11) and (12) provide that a committee may meet and adjourn as it thinks proper, and that questions arising at any meeting of a committee shall be determined by a majority of votes of the members. Where there is an equality of votes, the chairperson shall have a casting vote.

HEAD 82 – Supplemental provisions about meetings (including provision for acting by means of written resolutions)

Provide that:

(1) A resolution in writing signed by all the directors of a co-operative society, or by all the members of a committee of them, and who are for the time being entitled to received notice of a meeting of the directors or, as the case may be, of such a committee, shall be as valid as if it had been passed at a meeting of the directors or such a committee duly convened and held.

(2) Subject to *subhead (3)*, where one or more of the directors (other than a majority of them) would not, by reason of—

- (a) this Bill or any other enactment;
- (b) the co-operative society's rules; or
- (c) a rule of law,

be permitted to vote on a resolution such as is referred to in *subhead (1)*, if it were sought to pass the resolution at a meeting of the directors duly convened and held, then such a resolution, notwithstanding anything in *subhead (1)*, shall be valid for the purposes of that subhead if the resolution is signed by those of the directors who would have been permitted to vote on it had it been sought to pass it at such a meeting.

(3) In a case falling within *subhead (2)*, the resolution shall state the name of each director who did not sign it and the basis on which he or she did not sign it.

(4) For the avoidance of doubt, nothing in the preceding subheads dealing with a resolution that is signed by other than all of the directors shall be read as making available, in the case of an equality of votes, a second or casting vote to the one of their number who would, or might have been, if a meeting had been held to transact the business concerned, chairperson of that meeting.

(5) The resolution referred to in *subhead (1)* may consist of several documents in like form each signed by one or more directors and for all purposes shall take effect from the time that it is signed by the last director.

(6) A meeting of the directors or of a committee referred to in *head 81(9)* may consist of a conference between some or all of the directors or, as the case may be, members of the committee who are not all in one place, but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others and—

- (a) a director or member of the committee taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly; and
- (b) such a meeting shall be deemed to take place—
 - (i) where the largest group of those participating in the conference is assembled;
 - (ii) if there is no such group, where the chairperson of the meeting then is;
 - (iii) if neither *subparagraph (i)* or *(ii)* applies, in such location as the meeting itself decides.

(7) Subject to the other provisions of this Bill, a director may vote in respect of any contract, appointment or arrangement in which he or she is interested and he or she shall be counted in the quorum present at the meeting.

(8) The directors of a co-operative society may exercise the voting powers conferred by the shares of any other body corporate held or owned by the co-operative society in such manner in all respects as they think fit and, in particular, they may exercise the voting powers in favour of any resolution—

- (a) appointing the directors or any of them as directors or officers of such other body corporate; or
- (b) providing for the payment of remuneration or pensions to the directors or officers of such other body corporate.

(9) Any director of the co-operative society may vote in favour of the exercise of such voting rights notwithstanding that he or she may be or may be about to become a director or officer of the other body corporate referred to in *subhead (8)* and as such or in any other way is or may be interested in the exercise of such voting rights in the foregoing manner.

Explanatory note: This head is based on section 161 of the Companies Act 2014. The purpose of subhead (1) is to enable the directors to decide on any particular matter without coming together at a formal meeting. Meetings of a committee of directors have also been included in this head. A clarification regarding committees has been provided. As committees are to be allowed use written resolutions, and a reference to them is included. Therefore, committees of directors, as well as the full board of directors, may proceed by means of a unanimous written resolution.

Subhead (2) provides that where a minority of the directors are (pursuant to statute, the co-operative society's rules or a rule of law) unable to vote on a resolution of the directors, that minority may nonetheless sign such a resolution in writing. The resolution shall state the name of the directors who did not sign it and the basis on which they did not sign it.

Subhead (5) provides for the possibility of the directors signing a written resolution on separate pieces of paper and that it shall come into effect when the last director has signed it.

Subhead (6) provides that a directors meeting shall be valid if it consists only of telephone or other suitable electronic means, once all the directors can hear and be heard. Subhead (7) gives a general authority to directors to vote in respect of contracts, appointments or arrangements in which they are interested. Subheads (8) and (9) deal with the issue of the use of the votes to which the co-operative society is entitled by virtue of shares which it holds in any other body corporate. These subheads authorise the use of these voting powers in favour of a resolution appointing the directors as directors or officers of the other co-operative society. In addition, any director is empowered to vote in favour of the exercise of the co-operative society's voting powers in a manner which will be beneficial to him or herself.

HEAD 83 – Holding of any other office or place of profit under the co-operative society by director

Provide that:

(1) A director of a co-operative society may hold any other office or place of profit under the co-operative society (other than the office of statutory auditor) in conjunction with his or her office of director for such period and on such terms as to remuneration and otherwise as the directors of the co-operative society may determine.

(2) No director of a co-operative society or intending such director shall be disqualified by his or her office from contracting with the co-operative society either with regard to his or her tenure of any such other office or place of profit or as vendor, purchaser or otherwise.

(3) In particular, neither shall—

(a) any contract with respect to any of the matters referred to in *subhead (2)*, nor any contract or arrangement entered into by or on behalf of the co-operative society in which a director is in any way interested, be liable to be avoided, nor

(b) a director so contracting or being so interested be liable to account to the co-operative society for any profit realised by any such contract or arrangement,

by reason of such director holding that office or of the fiduciary relation thereby established.

Explanatory note: This head is based on section 162 of the Companies Act 2014. It provides that a director may hold any other office or place of profit under the society (other than the office of statutory auditor). In this regard, a secretary of the co-operative society may also be one of the directors. A director shall not be disqualified from contracting with the co-operative society either with regard to his or her tenure of other office or place of profit or as vendor, purchaser or otherwise.

HEAD 84 – Counting of director in quorum and voting at meeting at which director is appointed

Provide that:

A director of a co-operative society, notwithstanding his or her interest, may be counted in the quorum present at any meeting at which—

(a) that director or any other director is appointed to hold any such office or place of profit under the co-operative society as is mentioned in head 83(1), or

(b) the terms of any such appointment are arranged,

and he or she may vote on any such appointment or arrangement other than his or her own appointment or the arrangement of the terms of it.

Explanatory note: This head is based on section 163 of the Companies Act 2014. It clarifies that a director may be counted in the quorum present at any meeting at which that director or any other director is appointed or where the terms of appointment are arranged. A director is not however permitted to vote on his or her own appointment or the arrangement of the terms thereof.

HEAD 85 – Signing, drawing, etc., of negotiable instruments and receipts

Provide that:

Each—

(a) cheque, promissory note, draft, bill of exchange or other negotiable instrument, and

(b) receipt for moneys paid to the co-operative society,

shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such person or persons and in such manner as the directors of the co-operative society shall from time to time by resolution determine.

Explanatory note: This head is based on section 164 of the Companies Act 2014. It sets out that the directors of the society determine the person and the manner in which the instruments listed (cheques, promissory note, draft, bill of exchange and receipts for money paid by the society) shall be executed.

HEAD 86 – Alternate directors

Provide that:

- (1) Any director (the “appointer”) of a co-operative society may from time to time appoint any other director of it or, with the approval of a majority of its directors, any other person to be an alternate director (the “appointee”) as respects him or her.
- (2) Only one person may stand appointed at a particular time to be an alternate director as respects a particular director.
- (3) The appointee, while he or she holds office as an alternate director, shall be entitled—
 - (a) to notice of meetings of the directors of the co-operative society,
 - (b) to attend at such meetings as a director, and
 - (c) in place of the appointer, to vote at such meetings as a director,but shall not be entitled to be remunerated otherwise than out of the remuneration of the appointer.
- (4) Any appointment under this head shall be effected by notice in writing given by the appointer to the co-operative society.
- (5) Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors or by the co-operative society in general meeting.
- (6) Revocation of such an appointment by the appointer shall be effected by notice in writing given by the appointer to the co-operative society.

Explanatory note: This head is based on section 165 of the Companies Act 2014. It sets out that a director may appoint another director to be an alternate director. Only one person may be appointed as an alternate director at a time. The appointee shall be entitled to notice of meetings of the director, attend and vote in place of the appointer. The appointment shall be effected by a written notice prepared by the society and revoked by the appointer or majority of the other directors or by the society in a general meeting.

HEAD 87 – Minutes of proceedings of directors

Provide that:

- (1) A co-operative society shall cause minutes to be entered in books kept for that purpose of—
 - (a) all appointments of officers made by its directors;
 - (b) the names of the directors present at each meeting of its directors and of any committee of the directors;
 - (c) all resolutions and proceedings at all meetings of its directors and of committees of directors.
- (2) Such minutes shall be entered in the foregoing books as soon as may be after the appointment concerned is made, the meeting concerned has been held or the resolution concerned has been passed.
- (3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
- (4) Where minutes have been made in accordance with this head of the proceedings at any meeting of directors or committee of directors, then, until the contrary is proved—
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings had at the meeting shall be deemed to have been duly had; and
 - (c) all appointments of officers made by its directors at the meeting shall be deemed to be valid.
- (5) A co-operative society shall, if required by the Authority, produce to the Authority for inspection the book or books kept in accordance with *subhead (1)* by it and shall give to the Authority such facilities for inspecting and taking copies of the contents of the book or books as the Authority may require.
- (6) If a co-operative society fails to comply with *subhead (1)* or with a requirement made of it under *subhead (5)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: This head is based on section 166 of the Companies Act 2014. It sets out that co-operative societies shall keep minutes in relation to all appointments of officers made by directors, the names of the directors present at each directors or committee meeting and all resolutions and proceeding of the directors and committees. Any such minute, if signed by the chairperson of the meeting, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings. If the minutes of the meeting have been made in accordance with this head, until the contrary is proved, the meeting shall be deemed to have been duly held and convened; all proceedings shall be deemed to have been duly had; and all appointments of officers shall be deemed to be valid.

Subhead (5) has the effect of giving the Corporate Enforcement Authority access, on demand, to the minute books of a co-operative society in order to inspect or take copies of their contents. It is an offence for a co-operative society to refuse to allow inspection of its minute books by the Corporate Enforcement Authority.

HEAD 88 – Audit committees

Provide that:

(1) In this head—

“amount of turnover” and “balance sheet total” have the same meanings as they have in section 275 of the Act of 2014, as applied by *head 169*;

“relevant co-operative society” means either of the following—

(a) a co-operative society that, in both the most recent financial year of the co-operative society and the immediately preceding financial year, meets the following criteria—

(i) the balance sheet total of that co-operative society exceeds for the year—

(I) subject to clause (II), €25,000,000; or

(II) if an amount is prescribed under section 943(1)(i) of the Act of 2014, the prescribed amount;

and

(ii) the amount of turnover of that co-operative society exceeds for the year—

(I) subject to clause (II), €50,000,000; or

(II) if an amount is prescribed under section 943(1)(i) of the Act of 2014, the prescribed amount;

or

(b) a co-operative society which has one or more subsidiary undertakings, if the co-operative society and all those subsidiary undertakings together, in both the most recent financial year of that co-operative society and the immediately preceding financial year, meet the criteria set out in *paragraph (a)*.

(2) The board of directors of a “relevant co-operative society” shall either—

(a) establish a committee (an “audit committee”) that—

(i) has at least the responsibilities specified in *subhead (7)*; and

(ii) otherwise meets the requirements of this head;

or

(b) decide not to establish such a committee.

(3) The board of directors of a relevant co-operative society shall state in their report under section 325 of the Act of 2014, as applied by *head 169*—

(a) whether the co-operative society has established an audit committee or decided not to do so;

(b) if the co-operative society has decided not to establish an audit committee, the reasons for that decision.

(4) The members of the audit committee shall include at least one independent director of the relevant co-operative society, that is to say, a person who—

(a) is a non-executive director of it; and

(b) otherwise possesses the requisite degree of independence (particularly with regard to his or her satisfying the condition in *subhead (5)*) so as to be able to contribute effectively to the committee's functions.

- (5) The condition referred to in *subhead (4)(b)* is that the director there referred to does not have, and at no time during the period of 3 years preceding his or her appointment to the committee did have—
- (a) a material business relationship with the relevant co-operative society, either directly, or as a partner, shareholder, director (other than as a non-executive director) or senior employee of a body that has such a relationship with the co-operative society; or
 - (b) a position of employment in the relevant co-operative society.
- (6) The director referred to in *subhead (4)* (or, where there is more than one director of the kind referred to in that subhead, one of them) shall be a person who has competence in accounting or auditing.
- (7) Without prejudice to the responsibility of the board of directors, the responsibilities of the audit committee shall include:
- (a) the monitoring of the financial reporting process;
 - (b) the monitoring of the effectiveness of the relevant co-operative society's systems of internal control, internal audit and risk management;
 - (c) the monitoring of the statutory audit of the relevant co-operative society's statutory financial statements; and
 - (d) the review and monitoring of the independence of the statutory auditors and in particular the provision of additional services to the relevant co-operative society.
- (8) If an audit committee is established, any proposal of the board of directors of the relevant co-operative society with respect to the appointment of statutory auditors to the co-operative society shall be based on a recommendation made to the board by the audit committee.
- (9) The statutory auditors shall report to the audit committee of the relevant co-operative society on key matters arising from the statutory audit of the co-operative society, and, in particular, on material weaknesses in internal control in relation to the financial reporting process.
- (10) For the purposes of *subheads (4)* and *(5)(a)*, a non-executive director is a director who is not engaged in the daily management of the relevant co-operative society or body concerned, as the case may be.
- (11) Where a director of a relevant co-operative society fails to take all reasonable steps to comply with the requirements of *subhead (3)*, the director shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 167 of the Companies Act 2014. It requires the establishment of audit committees by boards of directors of large co-operatives. The term “large co-operative society” means a co-operative society whose balance sheet total exceeds €25 million (or such other amount prescribed under section 943(1)(i) of the Companies Act 2014 and whose amount of turnover exceeds €50 million (or such other amount prescribed under head 943(1)(i)) of that Act in both the most recent financial year and the immediately preceding financial year, or if the co-operative society and all of its subsidiary undertakings together meet the above balance sheet and turnover criteria. Subhead (3) requires the board of directors of a large co-operative society to state in their report under section 325 of the Companies Act 2014, as applied by head 169, whether the co-operative society has established an audit committee or, if the co-operative society has decided not to establish such a committee, the reasons for that decision. Subhead (4) and (5) stipulate that at least one independent director must sit on the committee and lay down other applicable criteria in relation to this independent director. Subhead (6)

requires the independent director to have competence in accounting or auditing, or, where there is more than one independent director, at least one of them must have such competence. The responsibilities of the audit committee are set out in subhead (7). Head (8) specifies that where an audit committee is established, proposals of the directors regarding appointment of statutory auditors shall be based on a recommendation made by the committee. Subhead (9) provides that the statutory auditors report to the audit committee on key matters arising from the audit of the co-operative society. Subhead (10) states that a non-executive director is a director who is not engaged in the daily management of the large co-operative society or body concerned, as the case may be. Subhead (11) states that where a director of a large co-operative society to take all reasonable steps to comply with the requirements of subhead (3), that director shall be guilty of a category 3 offence.

Chapter 5 Members

HEAD 89 – Definition of member

Provide that:

- (1) The subscribers to the rules of a co-operative society shall be deemed to have agreed to become members of the co-operative society, and, on its registration, shall be entered as members in its register of members.
- (2) Every other person who agrees to become a member of a co-operative society, and whose name is entered in its register of members, shall be a member of the co-operative society.
- (3) Subject to *subhead (4)*, only a person 18 years or more may become a member of a co-operative society.
- (4) The rules of the co-operative society may provide that a person aged 16 years or more and less than 18 years may become a member of that co-operative society.

Explanatory note: This head is based on section 32 of the Industrial and Provident Societies Act 1893 and section 168 of the Companies Act 2014. It gives the definition of “member”. It clarifies that members of the co-operative society are the subscribers to the rules and any other person who agrees to become a member of the society and whose name is entered in the register of members. Only a person aged 18 or more can become a member of the co-operative society unless the rules of the society allow a person between the age of 16 and 18 to become a member of the society.

HEAD 90 – Register of members

Provide that:

- (1) Subject to *subhead (5)* a co-operative society shall keep a register of its members and enter in it the following particulars:
 - (a) the names and addresses of the members and a statement of the shares held by each member, distinguishing each share by its number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member;
 - (b) the date at which the name of any person was entered in the register as a member; and
 - (c) the date at which any person ceased to be a member.
- (2) *Heads 118 to 120* (rights of inspection, requests for copies, etc.) apply to the register of members.
- (3) The entries required under *paragraphs (a) and (b) of subhead (1)* shall be made within 28 days after the date of conclusion of the agreement with the co-operative society to become a member or, in the case of a subscriber of the rules, within 28 days after the date of registration of the proposed co-operative society.
- (4) The entry required under *subhead (1)(c)* shall be made—
 - (a) within 28 days after the date when the person concerned ceased to be a member; or
 - (b) if the person ceased to be a member otherwise than as a result of action by the co-operative society, within 28 days after the date of production to the co-operative society of evidence satisfactory to the co-operative society of the occurrence of the event whereby the person ceased to be a member.
- (5) Where the co-operative society has converted any of its shares into stock, the register shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in *subhead (1)(a)*.
- (6) Where a co-operative society makes default in complying with any of the requirements of *subhead (1)* or *subheads (3) to (5)*, the society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head derives from section 34 of the Industrial and Provident Societies Act 2014 and provides the particulars to be entered in the register of members. The head has been expanded using provisions of section 169 of the Companies Act 2014 to provide for timeframe for making entries in the Register. Subhead (1) requires that the following particular are entered in the Register: the names and addresses and the shares held by each member, and the amount paid or agreed to be considered as paid on the shares of each member; the date at which the name of any person was entered in the register as a member; and the date at which any person ceased to be a member. Subhead (2) sets out that the provisions of heads 118 to 120 *on* rights of inspection, requests for copies, etc. apply to the register of members.

Subheads (3) and (4) provide a time limit within which the required entries in subhead (1)(a) to (c) must be made by the co-operative society. Subhead (5) provides that in cases where shares have been converted into stock, the register must show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares specified in subhead (1)(a).

HEAD 91 – Trusts not to be entered on register of members

Provide that:

No notice of any trust, express, implied or constructive, shall be entered—

- (a) on the register of members or be receivable by the keeper of the register; or
- (b) on any register kept by the Registrar.

Explanatory note: This head is based on section 170 of the Companies Act 2014. It provides that trusts shall not be entered on the register of members or any register kept by the Registrar.

HEAD 92 – Register to be evidence

Provide that:

The register of members shall be *prima facie* evidence of any matters by this Bill directed or authorised to be inserted in it.

Explanatory note: This head is based on section 171 of the Companies Act 2014. It provides that the register shall be *prima facie* evidence of any matters by this Bill directed or authorised to be inserted in it.

HEAD 93 – Consequences of failure to comply with requirements as to register owing to agent’s default

Provide that:

(1) Where—

- (a) by virtue of *head 119(2)* the register of members is kept by some person other than the co-operative society concerned; and
- (b) by reason of any default of that other person a failure on the part of the co-operative society to comply with *head 90* or *119*, or with any requirements of this Bill as to the production of the register, occurs amounting to the commission of an offence under this Bill by the co-operative society,

that other person shall also be guilty of an offence and may be charged with and convicted of it whether or not proceedings for an offence are brought against the co-operative society.

(2) A person guilty of an offence under *subhead (1)* shall be liable on conviction to the same range of fines and other penalties provided in this Bill that the co-operative society referred to in *subhead (1)* is or would be liable in respect of that offence.

(3) The power of the court under this Bill to require compliance with the provision concerned shall extend to the making of orders against the person referred to in *subhead (1)* and his or her officers and servants.

Explanatory note: This head is based on section 172 of the Companies Act 2014. It provides that liability attaches to a third party agent who keeps the register of members on default of compliance with head 90 or head 119 of the Bill or with any of the provisions regarding production of the register.

HEAD 94 – Rectification of register

Provide that:

(1) If—

(a) the name of any person is, without sufficient cause, entered in the register of members or omitted from it, in contravention of *subheads (1) and (3) of head 90*, or

(b) default is made in entering on the register, within the period fixed by *subhead (4) of head 90*, the fact of any person's having ceased to be a member,

the person aggrieved, or any member of the co-operative society, or the co-operative society, may apply to the court for rectification of the register.

(2) Where an application is made under this head, the court may either refuse the application or may order rectification of the register and payment by the co-operative society of compensation for any loss sustained by any party aggrieved.

(3) On an application under this head the court may decide any question relating to the title of any person who is a party to the application to have his or her name entered in or omitted from the register (whether the question arises between members or alleged members, or between members or alleged members on the one hand and the co-operative society on the other hand) and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The court when making an order for rectification of the register shall by its order direct, if appropriate, notice of the rectification to be given to the Registrar.

(5) A co-operative society may, without application to the court, at any time rectify any error or omission in the register but such a rectification shall not adversely affect any person unless he or she agrees to the rectification made.

(6) The co-operative society shall, within 21 days after the date on which the rectification under *subhead (5)* has been made, give notice, in the prescribed form, of the rectification to the Registrar if the error or omission referred to in *subhead (5)* also occurs in any document forwarded by the co-operative society to the Registrar.

Explanatory note: This head is based on section 173 of the Companies Act 2014. It sets out the circumstances in which a person, member or co-operative society may apply to the court for rectification of the register. Where an application is made under this head, the court may either refuse the application or may order rectification of the register and payment by the co-operative society of compensation for any loss sustained by any party aggrieved. The court may decide any question relating to the title of any person who is a party to the application and generally may decide any question necessary or expedient to be decided for rectification of the register. If appropriate, when making its order, the court may direct a notice of the rectification to be given to the Registrar.

Subhead (5) provides that the co-operative society has a statutory power to rectify any error or omission in the register, but rectification will not be allowed to affect adversely any person unless they agree to the

rectification being made. Subhead (6) provides that the co-operative society must give notice in the prescribed form of the rectification to the Registrar within 21 days. The subhead allows the Minister to prescribe the form of notice to be given under this subhead. This will minimise the risk of the Registry of Co-operative Societies and Trade Unions being sent non-standard and ambiguous notice of repetition of errors under subhead (6) of this head.

HEAD 95 – Power to close register

Provide that:

A co-operative society may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the co-operative society is situate, close the register of members for any time or times not exceeding in the whole 30 days in each year.

Explanatory note: This head is based on section 174 of the Companies Act 2014 and permits a co-operative society to close the register for up to 30 days per year if this is advertised in advance.

Chapter 6 General meetings and resolutions

HEAD 96 – Annual general meeting

Provide that:

- (1) Subject to *subhead (2)*, a co-operative society shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of a co-operative society and that of the next.
- (2) So long as a co-operative society holds its first annual general meeting within 18 months after the date of its registration, it need not hold it in the year of its registration or in the following year.
- (3) If default is made in holding a meeting of the co-operative society in accordance with *subhead (1)*, the Authority may, on the application of any member of the co-operative society, call or direct the calling of a general meeting of the co-operative society and give such ancillary or consequential directions as the Authority thinks expedient, including directions modifying or supplementing the operation of the co-operative society's rules in relation to the calling, holding and conducting of the meeting.
- (4) A general meeting held in pursuance of *subhead (3)* shall, subject to any directions of the Authority and *subhead (5)*, be deemed to be an annual general meeting of the co-operative society.
- (5) Where a meeting so held is not held in the year in which the default in holding the co-operative society's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless, at that meeting, the co-operative society resolves that it shall be so treated.
- (6) Where a co-operative society resolves that a meeting shall be so treated, a copy of the resolution shall, within 21 days after the date of passing of it, be delivered by it to the Registrar.
- (7) If default is made in holding a meeting of the co-operative society in accordance with *subhead (1)*, or in complying with any direction of the Authority under *subhead (3)*, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.
- (8) If default is made by a co-operative society in complying with *subhead (6)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: Schedule II of the Industrial and Provident Societies Act 1893 requires that the rules of the registered societies shall provide the mode of holding meetings and section 30 of the Industrial and Provident Societies (Amendment) Act, 1978 makes a reference to the annual general meeting but the legislation provides no further details on the annual general meetings.

This head is based on section 175 of the Companies Act 2014. It explicitly provides that a co-operative society shall in each year hold an annual general meeting. There shall be not more than 15 months between the date of one annual general meeting and the next one. A co-operative society does not need to hold its first annual general meeting within the year of registration as long as it holds it within 18 months after the date of its registration. If a co-operative society fails to hold a general meeting in accordance with the provisions of subhead (1) the Corporate Enforcement Authority may, on the application of any member of the co-operative society, call or direct the calling of a general meeting of the co-operative society and give ancillary or consequential directions to the society.

Subheads (5) and (6) provide that where a meeting is not held in the year in which the default in holding the AGM occurred, the meeting so held shall not be treated as the AGM for the year in which it was held unless at the meeting the co-operative society resolves that it shall be so treated. Where a co-operative society decides that a meeting shall be so treated, a copy of the resolution must be delivered to the register within 21 days after it was passed. Subheads (7) and (8) contain the offence provisions for contravention of subheads (1), (3) and (6) and state it will be a category 3 or category 4 offence to act in contravention of this head.

HEAD 97 – The location and means for holding general meetings

Provide that:

- (1) Subject to the provisions of this head, a general meeting of a co-operative society shall be held in the State.
- (2) A meeting referred to in *head (1)* may be held in 2 or more venues at the same time using any technology that provides attendees, as a whole, with a reasonable opportunity to participate.
- (3) Unless the rules of the co-operative society otherwise provide, a co-operative society need not hold a general meeting at a physical venue but may conduct the meeting wholly or partly by the use of electronic communications technology as long as all attendees have a reasonable opportunity to participate in the meeting in accordance with this head.
- (4)(a) A co-operative society may provide for participation in a general meeting by providing or facilitating, for that purpose, the use of electronic communications technology, including a mechanism for casting votes by a member, whether before or during the meeting.
 - (b) The mechanism referred to in *paragraph (a)* shall not require the member to be physically present at the general meeting or require the member to appoint a proxy who is physically present at the meeting.
- (5) The use of electronic communications technology pursuant to *subhead (4)* may be made subject only to such requirements and restrictions put in place by the co-operative society as are necessary to ensure the identification of attendees and the security of such technology, to the extent that such requirements and restrictions are proportionate to the achievement of those objectives.
- (6) A co-operative society shall inform attendees, before the general meeting concerned, of any requirements or restrictions which it has put in place pursuant to *subhead (5)*.
- (7) Attendees entitled to attend a general meeting shall not permit a person not entitled to attend that meeting to participate, listen or view the proceedings of a meeting by way of electronic communications technology unless authorised by the chairperson of the meeting.
- (8) A co-operative society that provides for the use of electronic communications technology for participation in a general meeting by an attendee shall ensure, as far as practicable, that—
 - (a) such technology—
 - (i) provides for the security of any electronic communications by the attendee,
 - (ii) minimises the risk of data corruption and unauthorised access,
 - (iii) provides certainty as to the source of the electronic communications,
 - (b) in the case of any failure or disruption of such technology, that failure or disruption is remedied as soon as practicable,
 - (c) such technology enables the attendee to—
 - (i) hear what is said by the chairperson of the meeting and any person introduced by the chairperson, and
 - (ii) speak and submit questions and comments during the meeting to the chairperson to the extent that the attendee is entitled to do so under the rules of the society,and

(d) in the case of a matter being the subject of a vote, guarantees the accuracy and confidentiality of an individual vote of the member in terms of it being communicated, recorded and counted.

(9) Any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the general meeting.

(10) Unless such failure or disruption is attributable to any wilful act of the co-operative society, a co-operative society shall not be liable in respect of any failure or disruption relating to the equipment used by an attendee to access a general meeting by electronic communications technology that occurs and which failure or disruption prevents or interferes with the attendee's participation, by way of such technology, in the meeting.

(11) The Minister may, if he or she considers it appropriate, by regulations make further provision for all or any of the following in relation to general meetings to be held by way of electronic communications technology:

- (a) the convening and conduct of the meetings;
- (b) attendance at the meetings;
- (c) access to and participation in the meetings.

(12) In this head and *heads 102(5)(b)* and *103(3)*,

'attendee', in relation to a general meeting of a co-operative society, means—

- (a) a member of the co-operative society,
- (b) a proxy of a member of the co-operative society,
- (c) an authorised person representing a body corporate under *head 106*,
- (d) the auditor, or
- (e) a person entitled to attend the meeting by virtue of provisions in the rules of the co-operative society;

'electronic communications technology', in relation to a general meeting of a co-operative society, means technology that enables real time transmission and real time two-way audio-visual or audio communication enabling attendees as a whole with a reasonable opportunity to participate in the meeting using such technology from a remote location;

'electronic platform', in relation to a general meeting of a co-operative society, means an electronic system for the delivery of audio-visual or audio communication, including websites, access software and access telephone details or any other electronic technology that delivers such communication;

'general meeting', in relation to a co-operative society, means any of the following:

- (a) an annual general meeting of the company;
- (b) an extraordinary general meeting of the company.

Explanatory note: This head derives from section 176 of the Companies Act 2014, section 174A of that Act (inserted on an interim basis by section 6 of the Companies (Miscellaneous Provisions (Covid-19) Act 2020) and the temporary provisions relating to conducting hybrid or fully virtual general meetings by industrial and provident societies contained in section 28 of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020.

Subhead (1) It clarifies that a general meeting shall be held in the State.

Subhead (2) provides that, a general meeting may be held in 2 or more venues at the same time using any technology that provides members, as a whole, with a reasonable opportunity to participate. Subhead (3) clarifies that unless the rules provide otherwise, a co-operative society does not need to hold a general meeting at a physical venue but may hold fully electronic meeting or a hybrid meeting (a meeting where some of the attendees attend at a venue while others participate by electronic means) as long as all attendees have a reasonable opportunity to participate in the meeting.

Subhead (4) sets out that a co-operative society may provide for participation in a general meeting by electronic communications, which shall include a mechanism for casting votes, and the mechanism adopted shall not require an attendee or his/her proxy to be physically present at the meeting.

Subhead (5) clarifies that the use of the electronic communications may be made subject only to such requirements as are necessary to ensure the identification of those taking part in the meeting and the security of the electronic communication. Such requirements and restrictions must be proportionate to the achievement of these objectives. Subhead (6) requires that attendees shall be notified of any of these requirements or restrictions.

Subhead (7) provides that attendees shall not permit a person, not authorised by the Chairman, to participate, listen or view the proceedings of a meeting.

Subhead (8) sets out that when providing for electronic communications for participating in a meeting, the co-operative society must ensure (as far as practicable) that the security of any electronic communication by the attendee is guaranteed, that the risk of data corruption and unauthorised access is minimised and that the source of the communication is certain. In addition, where there is a failure or disruption in the electronic communications, the co-operative society must ensure that the failure or disruption is remedied as soon as possible. The electronic communications must enable the attendee to hear, speak and submit questions, and if voting, members are guaranteed the accuracy and confidentiality of an individual vote.

Subhead (9) clarifies that a temporary failure or disruption of the communication does not invalidate the general meeting or any proceedings relating to it.

Subhead (10) provides that the society is not responsible for any technological failure or disruption relating to the electronic equipment of the attendee, provided that the failure is not attributable to the wrong doing of the society.

Subhead (11) empowers the Minister to make regulations to make further provision for the convening and conduct of general meetings held by electronic communications, attendance, access to and participation in such meetings.

Subhead (12) provides definition for ‘attendee’, ‘electronic communications and technology’, ‘electronic platform’ and a ‘general meeting’ for the purposes of this head.

HEAD 98 – Extraordinary general meetings

Provide that:

(1) All general meetings of a co-operative society, other than annual general meetings, shall be known, and in this Bill are referred to, as “extraordinary general meetings”.

(2) The directors of a co-operative society may, whenever they think fit, convene an extraordinary general meeting.

(3) If, at any time, there are not sufficient directors capable of acting to form a quorum, any director of the co-operative society or any member of it may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Explanatory note: This head is based on section 177 of the Companies act 2014. It clarifies that the meetings of the society, apart from the annual general meeting, shall be called extraordinary general meetings and shall be convened by the directors of the society.

Subhead (3) provides where there are insufficient directors capable of acting to form a quorum for a directors’ meeting, then any director or any member may convene an extraordinary general meeting in the same manner (as nearly as possible) as that in which meetings may be convened by the directors.

HEAD 99 – Convening of extraordinary general meetings by members

Provide that:

- (1) The rights conferred—
 - (a) by *subhead (2)* on a member or members have effect save where the rules of the co-operative society provide otherwise; and
 - (b) by *subheads (3) to (7)* on a member or members (and the corresponding duties on the part of the directors) have effect notwithstanding anything in the rules of the co-operative society.
- (2) Not less than 50 per cent (or such other percentage as may be specified in the rules of the co-operative society) of the members of the co-operative society as, at that time, carries the right of voting at general meetings of the society, may convene an extraordinary general meeting of the co-operative society.
- (3) The directors of a co-operative society shall, on the requisition of not less than 10 per cent of the members of the co-operative society, as at the date of the deposit of the requisition, carries the right of voting at general meetings of the society, forthwith proceed duly to convene an extraordinary general meeting of the co-operative society.
- (4) The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the co-operative society and may consist of several documents in like form each signed by one or more requisitionists.
- (5) If the directors do not within 21 days after the date of the deposit of the requisition proceed duly to convene a meeting to be held within 2 months after that date (the “requisition date”), the requisitionists, or not less than 50 per cent of them may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of 3 months after the requisition date.
- (6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the co-operative society and any sum so repaid shall be retained by the co-operative society out of any sums due or to become due from the co-operative society by way of fees or other remuneration in respect of their services to such of the directors as were in default.
- (7) For the purposes of *subheads (3) to (6)*, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice of it as is required by *head 102*.
- (8) A meeting convened under *subheads (2) or (5)* shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

Explanatory note: This head is based on section 178 of the Companies Act 2014. It deals with the way in which members can convene extraordinary general meetings. Subhead (1) states the extent to which the various rights conferred by this head have effect. Subhead (2) provides that 50% (or percentage specified in the rules) of the members of a co-operative society that carry the right of voting at general meetings have the right to convene extraordinary general meetings. Subhead (3) provides for the directors duty to convene an extraordinary general meeting when requisitioned by 10% of the members that carry the right

of voting at general meetings. Subheads (4) provides that the requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the co-operative society in like form each signed by one or more requisitionists. Subhead (5) provides the procedure for convening a meeting if the directors do not within 21 days after the date of the deposit of the requisition proceed duly to convene a meeting and subhead (6) deals with the expenses incurred by the requisitionists. Subhead (7) clarifies that for the purposes of subheads (3) to (6), if it is proposed that a resolution is passed as a special resolution at a meeting, the directors shall be deemed not to have duly convened the meeting if they do not give the notice of the meeting as is required by *head 102*. Subhead (8) specifies that the meetings convened under *subhead (2)* or *(5)* shall be convened in the same manner or as nearly as possible as the meetings convened by directors.

HEAD 100 – Power of court to convene meeting

Provide that:

- (1) Subject to *subhead (2)*, the court may on application being made to it by any of the persons specified in *subhead (3)*, or of its own motion, make an order requiring a general meeting of a co-operative society to be called, held and conducted in any manner that the court thinks fit.
- (2) An order shall not be made under *subhead (1)* unless the court is satisfied that for any reason it is impracticable or otherwise undesirable—
 - (a) for any person to call a general meeting of the co-operative society in any manner in which meetings of that co-operative society may be called; or
 - (b) to conduct a general meeting of the co-operative society in any manner provided by this Bill or the co-operative society’s rules.
- (3) The persons referred to in *subhead (1)* are—
 - (a) a director of the co-operative society referred to in that subhead (the “co-operative society”);
 - (b) a member of the co-operative society who would be entitled to vote at a general meeting of it;
 - (c) the personal representative of a deceased member of the co-operative society, which member would, but for his or her death, be entitled to vote at such a meeting; and
 - (d) the assignee in bankruptcy of a bankrupt member of the co-operative society, which member would be entitled to vote at such a meeting.
- (4) Where an order under *subhead (1)* is made, the court may give such ancillary or consequential directions as it thinks expedient.
- (5) Such directions may include a direction that one member of the co-operative society, or the personal representative of a deceased member of the co-operative society or the assignee in bankruptcy of a bankrupt member of it, present in person or by proxy, is a quorum.
- (6) A meeting called, held and conducted in accordance with an order under *subhead (1)* is for all purposes to be taken as a meeting of the co-operative society duly called, held and conducted.

Explanatory note: This head is based on section 179 of the Companies Act 2014. It provides for the power of the court to convene a meeting of a co-operative society. Under this head, the court may make an order requiring a general meeting to be called, held and conducted in any manner that it thinks fit, where it is satisfied that for any reason it is impractical or otherwise undesirable for any person to call a general meeting in any manner in which meetings of that co-operative society may be called, or to conduct a general meeting of the co-operative society in any manner provided by the Bill or the rules. Subhead (3) specifies the people that may apply to the court for such an order, and it includes a member, a director, a personal representative of deceased members and the assignee in bankruptcy or a bankrupt member of the co-operative society (which member would be entitled to vote at such a meeting). Subheads (4) and (5) deal with the ancillary or consequential directions the court may give. Subhead (6) states that a meeting under this head shall for all purposes be deemed to be a meeting of the co-operative society duly called, held and conducted.

HEAD 101 – Persons entitled to notice of general meetings

Provide that:

- (1) Notice of every general meeting of a co-operative society (“relevant notice”) shall be given to—
 - (a) every member;
 - (b) the personal representative of a deceased member of the co-operative society, which member would, but for his or her death, be entitled to vote at the meeting;
 - (c) the assignee in bankruptcy of a bankrupt member of the society (being a bankrupt member who is entitled to vote at the meeting); and
 - (d) the directors and secretary of the co-operative society.
- (2) Relevant notice may, in the case of joint holders of a share, be given by giving the notice to the joint holder first named in the register in respect of the share.
- (3) Relevant notice may be given by the co-operative society to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased or assignee in bankruptcy or by any like description at the address supplied for the purpose by the persons claiming to be so entitled.
- (4) Until such an address has been so supplied, relevant notice may be given to those persons by giving the notice in any manner in which it might have been given if the death or bankruptcy concerned had not occurred.
- (5) Unless its rules provide otherwise, no person, other than any person specified in the preceding subheads, shall be entitled to receive notices of general meetings of a co-operative society but this is without prejudice to *subhead (6)*.
- (6) Unless the co-operative society is entitled to and has availed itself of the audit exemption under section 360 of the Act of 2014 (and, where relevant, section 399 of the Act of 2014 has been complied with in that regard), as applied by *head 169*, the statutory auditors of a co-operative society shall be entitled to—
 - (a) attend any general meeting of a society;
 - (b) receive all notices of, and other communications relating to, any general meeting which any member of the co-operative society is entitled to receive; and
 - (c) be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as statutory auditors.

Explanatory note: This head is based on section 180 of the Companies Act 2014. It lists the persons entitled to receive notice of general meetings.

It states that every member (whether or not they are entitled to vote), the personal representative of a deceased member who has the right to vote, the assignee in bankruptcy of a bankrupt member (who has the right to vote), and the directors and secretary of the co-operative society are entitled to receive a notice of every general meeting. Subhead (2) deals with joint holders of shares. Subheads (3) and (4) deal

with the practicalities of the giving of notice to persons entitled to a share in the co-operative society as a result of the death or bankruptcy of a member. Subhead (5) provides that no persons other than those mentioned in this head shall be entitled to notice of a general meeting. Subhead (6) makes provision in relation to the giving of notice to statutory auditors. Where a co-operative society has auditors they too shall be entitled to attend, receive notices and other communications relating to general meetings and be heard at general meetings.

HEAD 102 – Notice of general meetings

Provide that:

- (1) Save where the rules of the co-operative society make provision for the giving of greater notice, notice of a meeting of a co-operative society, other than an adjourned meeting, shall be given—
 - (a) in the case of the annual general meeting, not less than 14 days before the day of the meeting;
 - (b) in the case of any other extraordinary general meeting, at least 7 days before the day of the meeting.
- (2) A meeting of a co-operative society shall, notwithstanding that it is called by shorter notice than that specified in *subhead (1)*, be deemed to have been duly called if it is so agreed by—
 - (a) all the members entitled to attend and vote at the meeting; and
 - (b) unless no statutory auditors of the co-operative stand appointed in consequence of the co-operative availing itself of the audit exemption under section 360 of the Act of 2014 (and, where relevant, section 399 of the Act of 2014 has been complied with in that regard) as applied by *head 169*, the statutory auditors of the co-operative.
- (3) Where notice of a meeting is given by posting it by ordinary prepaid post to the registered address of a member, then, for the purposes of any issue as to whether the correct period of notice for that meeting has been given, the giving of the notice shall be deemed to have been effected on the expiration of 24 hours following posting.
- (4) In determining whether the correct period of notice has been given by a notice of a meeting, neither the day on which the notice is served nor the day of the meeting for which it is given shall be counted.
- (5) The notice of a meeting shall specify—
 - (a) the place, the date and the time of the meeting;
 - (b) where the meeting is proposed to be held or to include participation by the use of electronic communications technology in accordance with *head 97* the notice shall specify, at a minimum—
 - (i) the electronic platform to be used for the meeting,
 - (ii) details for access to the electronic platform,
 - (iii) the time by and manner by which a attendee must confirm his or her intention to attend the meeting,
 - (iv) any requirements or restrictions which the society has put in place in order to identify attendees who intend to attend the meeting,
 - (v) the procedure for attendees to communicate questions and comments before and during the meeting, and
 - (vi) the procedure to apply for voting on resolutions proposed to be passed at the meeting.
 - (c) the general nature of the business to be transacted at the meeting;
 - (d) in the case of a proposed special resolution, the text or substance of that proposed special resolution;
 - (e) save where the rules of the society do not allow for a proxy, with reasonable prominence a statement, that—

- (i) a member entitled to attend and vote is entitled to appoint a proxy using the form set out in *head 105* or, where that is allowed, one or more proxies, to attend, speak and vote instead of him or her;
 - (ii) a proxy need not be a member; and
 - (iii) the time by which the proxy must be received at the co-operative society's registered office or some other place within the State as is specified in the statement for that purpose.
- (6) Save to the extent that the co-operative society's rules provide otherwise, the accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at the meeting.

Explanatory note: This head is based on section 181 of the Companies Act 2014. It provides the timeframe within which notice of general meetings shall be given. It also sets out the particulars contained in the notice.

Subhead (1) states that not less than 14 days' notice should be given in the case of an annual general meeting or an extraordinary general meeting for the passing of a special resolution and not less than 7 days' notice in the case of any other extraordinary meeting. It also provides that co-operative societies are entitled to increase the periods of notice. Subhead (2) makes provision for the giving of shorter notice than that specified in subhead (1). Subheads (3) and (4) set out the circumstances when a notice of a meeting is deemed to have been received. Subhead (5) provides for particular details which a notice must specify, including the place, the date and the time of the meeting; the general nature of the business to be transacted at the meeting; in the case of a proposed special resolution, the text or substance of the resolution; minimum requirements where the meeting is held or includes participation by the use of electronic communications; and requirements around proxy participation at the meeting, where members are entitled to appoint a proxy.

Subhead (6) provides for accidental failure to give notice of a meeting or resolution.

HEAD 103 – Quorum

Provide that:

- (1) No business shall be transacted at any general meeting of a co-operative society unless a quorum of members is present at the time when the meeting proceeds to business.
- (2) Save to the extent that the rules of the co-operative society provide otherwise, 20 per cent of the members of a co-operative society present in person or by proxy at a general meeting of it shall be a quorum.
- (3) Each member and proxy shall be counted in the quorum where they attend a general meeting by way of electronic communications technology in accordance with *head 97*.
- (4) *Subhead (5)* shall apply unless the co-operative rules provide otherwise.
- (5) Save where the rules of the co-operative society provide otherwise, if within 15 minutes after the time appointed for a general meeting a quorum is not present, then—
 - (a) where the meeting has been convened upon the requisition of members, the meeting shall be dissolved;
 - (b) in any other case—
 - (i) the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine; and
 - (ii) if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum.

Explanatory note: This head is based on section 182 of the Companies Act 2014 and deals with the quorum necessary for meetings. A quorum of members must be present at general meetings in order to conduct business. Unless the rules of the society provide for a different quorum, a quorum will constitute 20 percent of the members of a co-operative society present in person or, if the rules of the society provide for proxies, by proxy, at a general meeting. The head specifies that where a meeting is held by way of electronic communications technology the participants are counted in the quorum. Subhead (5) applies unless the rules of the co-operative society provide otherwise and specifies that where a quorum is not present within 15 minutes, the meeting shall be dissolved if convened upon the requisition of members or adjourned in any other case. However, a co-operative society can allow for the period to be modified by the society's rules.

HEAD 104 – Proxies

Provide that:

- (1) Save where the rules of the co-operative society provide otherwise and subject to *subhead (3)*, any member of a co-operative society entitled to attend and vote at a meeting of the co-operative society shall be entitled to appoint another person as his or her proxy to attend and vote instead of him or her.
 - (2) A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands or a ballot.
 - (3) Unless the rules of the co-operative society provide otherwise, a member of a co-operative society shall not be entitled to appoint more than one proxy to attend on the same occasion.
 - (4) The instrument appointing a proxy (the “instrument of proxy”) shall be in writing—
 - (a) under the hand of the appointer or of his or her attorney duly authorised in writing; or
 - (b) if the appointer is a body corporate, either under seal of the body corporate or under the hand of an officer or attorney of it duly authorised in writing.
 - (5) The instrument of proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the co-operative society concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the following time.
 - (6) That time is—
 - (a) 48 hours (or such lesser period as the rules of the co-operative society may provide) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (b) in the case of a ballot, 48 hours (or such lesser period as the rules of the co-operative society may provide) before the time appointed for the taking of the ballot.
 - (7) The depositing of the instrument of proxy referred to in *subhead (5)* may, rather than its being effected by sending or delivering the instrument, be effected by communicating the instrument to the co-operative society by electronic means, and this subhead likewise applies to the depositing of anything else referred to in *subhead (5)*.
 - (8) If *subhead (5) or (6)* is not complied with, the instrument of proxy shall not be treated as valid.
 - (9) Subject to *subhead (10)*, a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the appointer or revocation of the proxy or of the authority under which the proxy was executed or the transfer of the share in respect of which the proxy is given.
 - (10) *Subhead (9)* does not apply if notice in writing of such death, revocation or transfer as is mentioned in that subhead is received by the co-operative society concerned at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.
 - (11) Subject to *subhead (12)*, if, for the purpose of any meeting of a co-operative society, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the co-operative society's expense to some only of the members entitled to be sent a notice of the meeting and to vote at it by proxy, any officer of the co-operative society who knowingly and intentionally authorises or permits their issue in that manner shall be guilty of a category 3 offence.
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(12) An officer shall not be guilty of an offence under *subhead (11)* by reason only of the issue to a member, at his or her request in writing, of a form of appointment naming the proxy or of a list of persons willing to act as proxy if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

Explanatory note: This head is based on section 183 of the Companies Act 2014. It governs the area of proxies. The Industrial and Provident Societies Act 1893 makes references to voting by proxies in section 51 but does not provide a detailed procedure.

Subheads (1) and (2) allow for the appointment of a proxy unless the rules of a co-operative society provide otherwise and specify that the proxy shall have the same rights as the member to speak and to vote. Subhead (3) states that a co-operative society may not appoint more than one proxy to attend the same meeting on the same occasion, unless the rules of that co-operative society provide otherwise. Subheads (4), (5), (6) and (8) set out the formalities involved in relation to the instrument appointing a proxy. Subhead (7) provides that the deposition of an instrument of proxy, power of attorney or other authority at the registered office of a co-operative society may be effected by communicating the instrument by electronic means. Subheads (9) and (10) cover situations where the appointer of the proxy has died or where the proxy has been revoked. Subheads (11) and (12) deal with offences under this head.

HEAD 105 – Form of proxy

Provide that:

An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit—

[name of co-operative society] (“the Co-operative society”)

[name of member] (“the Member”) of [address of member] being a member of the Co-operative society hereby appoint/s [name and address of proxy] or failing him or her

[name and address of alternative proxy] as the proxy of the Member to attend, speak, vote and to demand or join in demanding a ballot” for the Member on behalf of the Member at the (annual or extraordinary, as the case may be) general meeting of the Co-operative society to be held on the [date of meeting] and at any adjournment of the meeting.

The proxy is to vote as follows:

Voting Instructions to Proxy (choice to be marked with an ‘x’)			
Number or description of resolution:	In Favour	Abstain	Against
1			
2			
3			
Unless otherwise instructed the proxy will vote as he or she thinks fit.			
Signature of member			
Dated: [date]			

Explanatory note: This head is based on section 184 of the Companies Act 2014. It sets out the form of the instrument appointing a proxy.

HEAD 106 – Representation of bodies corporate at meetings of co-operative societies

Provide that:

(1) A body corporate may, if it is a member of a co-operative society, by resolution of its directors or other governing body authorise such person (in this head referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of the co-operative society or at any meeting of any class of members of the company.

(2) A body corporate may, if it is a creditor (including a holder of debentures) of a co-operative society, by resolution of its directors or other governing body authorise such person (in this head also referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of any creditors of the co-operative society held in pursuance of this Bill or the provisions contained in any debenture or trust deed, as the case may be.

(3) An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the co-operative society, creditor or holder of debentures of the co-operative society.

(4) The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this head to produce such evidence of the person's authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

Explanatory note: This head derives from section 41 of the Industrial and Provident Societies Act 1893 and section 185 of the Companies Act 2014 and provides for the representation of bodies corporate at meetings of co-operative societies. Where a body corporate is a member of a co-operative society it may attend and vote at meetings in the following way: its board of directors or other governing body may appoint someone to act as its duly authorised representative. The authorised person shall be entitled to exercise the same powers on behalf of the co-operative society as that body corporate could exercise if it were an individual member, creditor or holder of debentures of the co-operative society. In the case of creditors meetings the body corporate is similarly entitled to appoint a duly authorised representative to attend and vote on its behalf. Subhead (4) provides a means by which a co-operative society may require proof of authority by an “authorised person” that a person is authorised to so act at that meeting.

HEAD 107 – The business of the annual general meeting

Provide that:

The business of the annual general meeting shall include—

- (a) the consideration of the co-operative society’s statutory financial statements and the report of the directors and, unless the co-operative society is entitled to and has availed itself of the audit exemption under section 360 of the Act of 2014, as applied by *head 169*, the report of the statutory auditors on the financial statements and that report;
- (b) the review by the members of the co-operative society’s affairs;
- (c) save where the rules of the co-operative society provide otherwise—
 - (i) the authorisation of the directors to approve the remuneration of the statutory auditors (if any);
 - (ii) the election and re-election of directors;
- (d) save where the co-operative society is entitled to and has availed itself of the exemption referred to in *paragraph (a)*, the appointment or re-appointment of statutory auditors; and
- (e) where the rules of the co-operative society so provide, the remuneration of the directors.

Explanatory note: This head is based on and section 186 of the Companies Act 2014. The business of the AGM is expressed to include considering the accounts, reviewing the co-operative society’s affairs, unless the rules provide otherwise, electing/re-electing directors, approving the auditors’ remuneration, where the rules so provide, fixing directors’ remuneration, and appointing auditors unless the society is granted an audit exemption.

HEAD 108 – Proceedings at meetings

Provide that:

- (1) Each provision of this head applies save to the extent that the co-operative society's rules provide otherwise.
- (2) The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the co-operative society, or if there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- (3) If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairperson of the meeting.
- (4) The chairperson may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- (5) However, no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (6) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, subject to that, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (7) Unless a ballot is demanded in accordance with *head 110*, at any general meeting—
 - (a) a resolution put to the vote of the meeting shall be decided on a show of hands; and
 - (b) a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the co-operative society shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- (8) Where there is an equality of votes, whether on a show of hands or on a ballot, the chairperson of the meeting, shall be entitled to a second or casting vote.

Explanatory Note: This head is based on section 187 of the Companies Act 2014. It makes provision for the proceedings at general meetings and applies unless the rules of the co-operative society provide otherwise. Subheads (2) and (3) set out the procedure regarding the selection of the chairperson which shall be the chairperson of the board of directors, a director or a member present at the meeting. Subheads (4) to (6) deal with adjournments of meetings. The chairperson may, if directed by a meeting adjourn the meeting. Only business left unfinished at the meeting that has been adjourned shall be transacted at any adjourned meeting. If a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Subheads (7) and (8) provide for the voting on resolutions. Unless a ballot is demanded in accordance with head 110, a resolution shall be decided on a show of hands and a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the co-operative society shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. Where there is an equality of votes, the chairperson of the meeting, shall be entitled to a second or casting vote.

HEAD 109 – Votes of members

Provide that:

- (1) Each provision of this head applies, save where the rules of the co-operative society provide otherwise.
- (2) Subject to any rights or restrictions for the time being in the rules of the co-operative society attached to any class or classes of shares, whether a matter is being decided—
 - (a) on a show of hands, or
 - (b) on a ballot,every member present in person and every proxy, shall have one vote, but so that no individual member shall have more than one vote.
- (3) Where there are joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose, seniority shall be determined by the order in which the names of the joint holders stand in the register of members.
- (4) Each of the following:
 - (a) a member of unsound mind;
 - (b) a member who has made an enduring power of attorney;
 - (c) a member in respect of whom an order has been made by any court having jurisdiction in cases of lacking capacity to make decisions;may vote, by his or her committee, donee of an enduring power of attorney, receiver, guardian or other person appointed by the foregoing court.
- (5) Any such committee, donee of an enduring power of attorney, receiver, guardian, or other person may speak and vote by proxy, whether on a show of hands or on a ballot.
- (6) No member shall be entitled to vote at any general meeting of a co-operative society unless all calls or other sums immediately payable by him or her in respect of shares in the co-operative society have been paid.
- (7) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- (8) Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.

Explanatory note: This head applies unless the rules of the co-operative society provide otherwise and is based on the co-operative principle of democratic membership. It provides that each member is entitled to one vote whether the matter is being decided on a show of hands or on a ballot. However, derogating from this rule is provided for, given the diversity of entities using the co-operative model, and particularly

that in some co-operatives different classes of shares may exist depending on the type of members in the co-operative society and their level of economic participation in the society. The head also incorporates provisions from section 188 of the Companies Act 2014. Where there are joint holders of a share, the senior shareholder shall tender the vote. Provision is also made for votes of members who are lacking capacity to make decisions, members who have made an enduring power of attorney and members in respect of whom a court order has been made on the issue of unsound mind. If all calls or other sums payable in relation to shares have not been paid by a member, the member shall not be entitled to vote at any general meeting of a co-operative society. Objection to the qualification of any voter can only be raised at the meeting or adjourned meeting at which the vote objected to is given or tendered, and if the vote is not disallowed at the meeting it shall be valid. Such objections shall be referred to the chairperson of the meeting, whose decision is final and conclusive.

HEAD 110 – Right to demand a ballot

Provide that:

- (1) At a meeting, a ballot may be demanded in relation to a matter (whether before or on the declaration of the result of the show of hands in relation to it).
- (2) A demand for such a ballot may be made by—
 - (a) the chairperson of the meeting;
 - (b) at least 3 members present in person or by proxy; or
 - (c) any member or members present in person or by proxy and representing not less than 10 per cent of the total voting rights of all the members of the co-operative society concerned having the right to vote at the meeting.
- (3) A demand for such a ballot may be withdrawn by the person or persons who have made the demand.
- (4) Subject to *subhead (5)*, if a ballot is duly demanded it shall be taken in such manner as the chairperson of the meeting directs, and the result of the ballot shall be deemed to be the resolution, in relation to the matter concerned, of the meeting at which the ballot was demanded.
- (5) A ballot demanded with regard to the election of a chairperson or on a question of adjournment shall be taken forthwith.
- (6) A ballot demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and any business other than that on which a ballot is demanded may be proceeded with pending the taking of the ballot.
- (7) The instrument appointing a proxy to vote at a meeting of a co-operative society shall be deemed also to confer authority to demand or join in demanding a ballot, and for the purposes of *subheads (2) and (3)*, a demand by a person as proxy for a member shall be the same as a demand by the member.

Explanatory note: This head is based on section 189 of the Act of 2014 and provides for the right to demand a ballot by certain persons. Subheads (1), (2) and (3) make provision for who may demand a ballot and how it may be demanded. Subsection (4) provides that the ballot shall be taken in a manner directed by the chairperson. Subheads (5) and (6) provide that where the ballot is demanded with regard to the election of a chairperson, it shall be taken forthwith, but otherwise a ballot will be taken at such time as the chairperson directs, whether before or after any other business. Subhead (7) provides for the position of proxies. A proxy's demand counts equally with that of a member because an instrument of proxy is deemed to confer authority to demand or join in demanding a ballot.

HEAD 111 – Meaning of special and ordinary resolution

Provide that:

- (1) In this Bill “ordinary resolution” means a resolution passed by a simple majority of the votes cast by members of a co-operative society as, being entitled to do so, vote in person or where the rules of a co-operative society allow for a proxy, by proxy at a general meeting of the co-operative society.
 - (2) In this Bill “special resolution” means a resolution—
 - (a) that is referred to as such in this Bill, or is required (whether by this Bill or by the rules of the co-operative society or otherwise) to be passed as a special resolution; and
 - (b) that satisfies the condition specified in *subhead (3)* or *(4)*, as the case may be, and
 - (c) without prejudice to *subheads (5)* and *(6)*, as respects which notice of the meeting at which the resolution is proposed to be passed has been given in accordance with *head 102(1)(a)* and *(5)*.
 - (3) The condition referred to in *subhead (2)(b)* is that the resolution is passed by not less than 75 per cent of the votes cast by such members of the co-operative society concerned as, being entitled to do so, vote in person or, where the rules of a co-operative society allow for a proxy, by proxy at a general meeting of it.
 - (4) The condition referred to in *subhead (2)(b)* for the purposes of —
 - (a) *head 192* to put an amalgamation or transfer of engagements into effect,
 - (b) *head 198* to convert to a company, or
 - (c) section 202(1)(a)(ii) of the Act of 2014 to wind up a co-operative society in a members' voluntary winding up under section 579 of the Act of 2014, as applied by *head 203*,is that the resolution is—
 - (i) passed by not less than 75 per cent of the votes cast by such members of the co-operative society concerned as, being entitled to do so, vote in person or, where the rules of a co-operative society allow for a proxy, by proxy at a general meeting of it, and
 - (ii) confirmed by a simple majority of such members of that society as, being entitled to do so, vote in person or, where the rules of a society allow for a proxy, by proxy at a subsequent general meeting of which notice has been duly given, not more than 2 months from the day of the meeting at which such resolution was first passed.
 - (5) Notwithstanding *head 102(1)(a)*, for the purposes of *subhead (2)(c)* a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together representing not less than 90 per cent of the total voting rights at that meeting of all the members.
 - (6) Nothing in either *subhead (2)(c)* (as it relates to *head 102(1)(a)*) or *(5)* prevents a special resolution from being regarded as having been passed (in a case where less than 21 days' notice of the meeting has been given) in the following circumstances:
 - (a) the agreement referred to in *head 102(2)* exists as regards the meeting; and
 - (b) the condition specified in *subhead (3)* or *(4)* is satisfied in relation to the resolution.
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(7) The terms of any resolution (whether special or otherwise) before a general meeting may be amended by ordinary resolution moved at the meeting provided that the terms of the resolution as amended will still be such that adequate notice of the intention to pass the same can be deemed to have been given.

Explanatory note: This head is based on section 191 of the 2014 Act and deals with resolutions, both ordinary and special. Subhead (1) is new in that it defines an ordinary resolution as a resolution passed by a simple majority of the votes cast by the members of a co-operative society, being entitled to do so, vote in person or by proxy at a general meeting. Subheads (2) and (3) define a special resolution as a resolution that is required to be passed as a special resolution whether by this Bill, by a co-operative society's rules or otherwise, by a majority of 75% of the votes cast by the members entitled to vote, who vote in person, or if allowed to vote by a proxy, by proxy at a general meeting. Subhead (4) provides that a special resolution for the purposes of an amalgamation, a transfer of engagements, conversion into a company or voluntary winding up requires a majority vote of 75% at the general meeting to be confirmed by a simple majority at a second meeting. This follows the two-step procedure for certain resolutions provided for in sections 51 and 51A of the Industrial and Provident Societies Act 1893. Subhead (5) states that if less than 21 days' notice is given, a special resolution may still be passed, provided that a majority of members are in favour (majority being defined in the subhead). Subhead (6) makes further provision for the passing of special resolutions where less than 21 days' notice of the meeting has been given. Subhead (7) provides for the amendment of the terms of any resolution.

HEAD 112 – Resolutions passed at adjourned meetings

Provide that:

Where a resolution is passed at an adjourned general meeting, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and shall not be deemed to have been passed on any earlier date.

Explanatory note: This head is based on section 192 of the Companies Act 2014. It clarifies that if a resolution was passed at an adjourned meeting, it will be treated as passed on the actual date of the adjourned meeting.

HEAD 113 – Registration of, and obligation of co-operative society to supply copies of, certain resolutions and agreements

Provide that:

- (1) A copy of every resolution or agreement to which this head applies shall, within 15 days after the date of passing or making of it, be forwarded by the co-operative society concerned to the Registrar and recorded by the Registrar.
- (2) A copy of every such resolution for the time being in force shall be embodied in, or annexed to, every copy of the rules of the co-operative society concerned issued by it after the passing of the resolution.
- (3) A copy of every special resolution shall be forwarded by the co-operative society concerned to any member of it, at his or her request, on payment of €10.00 or such lesser sum as the society may direct.
- (4) This head applies to resolutions that are required by—
 - (a) this Bill,
 - (b) Part 11 of the Act of 2014, as applied by head 203, or
 - (c) a co-operative society's rules to be special resolutions.
- (5) If a co-operative society fails to comply with *subhead (1), (2), and (3)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.
- (6) For the purposes of *subhead (5)*, a liquidator of a co-operative society shall be deemed to be an officer of the co-operative society.

Explanatory note: This head derives from section 56 of the Industrial and Provident Societies Act 1893 which requires that a copy of every special resolution, signed by the chairman of the meeting at which the resolution was confirmed, and counter-signed by the secretary of the society, is sent to the Registrar, and until that copy is so registered the special resolution shall not take effect.

The head enhances the provisions of that Act with provisions borrowed by section 198 of the Companies Act. The head provides that a copy of the special resolution is required to be sent to the Registrar for recording within 15 days of the meeting. Such a resolution shall be embodied in, or annexed to, every copy of the rules of the co-operative society after the passing of the resolution.

A member of co-operative society can request a copy of the resolution which shall be forwarded on payment of a fee. Failure to comply with subheads (1) to (3) renders the co-operative society and any officer of it who is in default guilty of a category 4 offence.

HEAD 114 – Minutes of proceedings of meetings of a society

Provide that:

- (1) A co-operative society shall, as soon as may be after their holding or passing, cause—
 - (a) minutes of all proceedings of general meetings of it, and
 - (b) the terms of all resolutions of it,to be entered in books kept for that purpose; all such books kept by a co-operative society in pursuance of this subhead shall be kept at the same place.
- (2) *Heads 118 to 120* (rights of inspection, requests for copies, etc.) apply to those books.
- (3) Any such minute, if purporting to be signed by the chairperson of the meeting at which the proceedings were had, or by the chairperson of the next succeeding meeting, shall be evidence of the proceedings.
- (4) Where minutes have been made in accordance with this head of the proceedings at any general meeting of a co-operative society then, until the contrary is proved—
 - (a) the meeting shall be deemed to have been duly held and convened;
 - (b) all proceedings had at the meeting shall be deemed to have been duly had; and
 - (c) all appointments of directors or liquidators shall be deemed to be valid.
- (5) A co-operative society shall, if required by the Authority, produce to the Authority for inspection the book or books kept in accordance with *subhead (1)* by it and shall give the Authority such facilities for inspecting and taking copies of the contents of the book or books as the Authority may require.
- (6) If a co-operative society fails to comply with *subhead (1)* or with a requirement made of it under *subhead (5)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.

Explanatory note: This head is based on section 199 of the Companies Act 2014. It provides that the minutes of general meetings and the terms of all resolutions shall be entered in the books promptly and kept at the same place. Heads 118 to 120 on the rights of inspection, requests for copies, etc. apply to those books. Where the minutes are signed by the chairperson of the meeting (or by the chairperson of the next meeting) those minutes shall be evidence of the proceedings. Subhead (4) provides that, until the contrary is proven, the meeting shall be deemed to have been duly held and convened, and all proceedings had at the meeting shall be deemed to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid. Head (5) empowers the Corporate Enforcement Authority to obtain copies of all minutes. Subhead (6) provides offences for breach of provisions in this head.

Chapter 7 Protection for minorities

HEAD 115 – Remedy in case of oppression

Provide that:

- (1) Any member of a co-operative society who complains that the affairs of the society are being conducted or that the powers of the directors of the co-operative society are being exercised—
 - (a) in a manner oppressive to him or her or any of the members (including himself or herself), or
 - (b) in disregard of his or her or their interests as members,may apply to the court for an order under this head.
 - (2) If, on an application under *subhead (1)*, the court is of opinion that the co-operative society's affairs are being conducted or the directors' powers are being exercised in a manner that is mentioned in *subhead (1)(a)* or *(b)*, the court may, with a view to bringing to an end the matters complained of, make such order or orders as it thinks fit.
 - (3) The orders which a court may so make include an order—
 - (a) directing or prohibiting any act or cancelling or varying any transaction;
 - (b) for regulating the conduct of the co-operative society's affairs in future;
 - (c) for the purchase of the shares of any members of the co-operative society by other members of the co-operative society or by the co-operative society and, in the case of a purchase by the co-operative society, for the reduction accordingly of the co-operative society's capital; and
 - (d) for the payment of compensation.
 - (4) Where an order under this head makes any amendment of any co-operative society's rules, then, notwithstanding anything in any other provision of this Bill, but subject to the provisions of the order, the co-operative society concerned shall not have power, without the leave of the court, to make any further amendment of the rules, inconsistent with the provisions of the order.
 - (5) However, subject to the foregoing subhead, the amendment made by the order shall be of the same effect as if duly made by resolution of the co-operative society, and the provisions of this Bill shall apply to the rules as so amended accordingly.
 - (6) A certified copy of any order under this head amending or giving leave to amend rules of a co-operative society shall, within 21 days after the date of the making of the order, be delivered by the co-operative society to the Registrar.
 - (7) If a co-operative society fails to comply with *subhead (6)*, the co-operative society and any officer of it who is in default shall be guilty of a category 4 offence.
 - (8) Each of the following—
 - (a) the personal representative of a person who, at the date of his or her death, was a member of a co-operative society, or
 - (b) any trustee of, or person beneficially interested in, the shares of a co-operative society by virtue of the will or intestacy of any such person,
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may apply to the court under *subhead (1)* for an order under this head and, accordingly, any reference in that subhead to a member of a co-operative society shall be read as including a reference to any such personal representative, trustee or person beneficially interested as mentioned in *paragraph (a)* or *(b)* or to all of them.

(9) If, in the opinion of the court, the hearing of proceedings under this head would involve the disclosure of information the publication of which would be seriously prejudicial to the legitimate interests of the co-operative society, the court may order that the hearing of the proceedings or any part of them shall be *in camera*.

Explanatory note: This head is based on section 212 of the Companies Act 2014. The purpose of the head is to provide a remedy in the case of oppression of minority shareholders. Subhead (1) lays down the right of a member to apply to the court for an order under this head in cases of oppression. Subhead (2) provides that if on application of a member, the court is of opinion that the co-operative society's affairs are being conducted or the directors' powers are being exercised in an oppressive manner or in disregard of the member's interests, the court may make an order.

Subhead (3) provides that the order made by the court may include an order for directing or prohibiting any act or cancelling or varying any transaction; for regulating the conduct of the co-operative society's affairs in future; for the purchase of the shares of any members of the co-operative society by other members of the co-operative society or by the co-operative society and, or for making an award of compensation.

Subheads (4) to (7) deal with court orders providing for an amendment to the co-operative society's rules. Where a court order makes any amendment to the co-operative society's rules, notwithstanding anything in any other provision of this Bill, the co-operative society shall be prohibited, without the leave of the court, from making further amendment of the rules which are inconsistent with the provisions of the order. Subject to this, the amendment made by the order shall have the same effect as if it was made by resolution of the co-operative society. A certified copy of the court order shall, within be delivered by the co-operative society to the Registrar within 21 days after the date of the making of the order. Subhead (7) provides the offence for failure to deliver the copy of the court order to the Registrar.

Subhead (8) provides for the right of personal representatives and trustees to apply to the court for an order under this head. Subhead (9) states that proceedings commenced under this head may be heard in camera.

Chapter 8 Form of registers, indices and minute books

HEAD 116 – Form of registers, minutes, etc.

Provide that:

- (1) Any register, index or minute book required by this Bill to be kept by a co-operative society or by the Registrar may be kept either by making entries in bound books or by recording the matters in question in any other manner.
- (2) Where any register, index or minute book to be kept by a co-operative society is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating discovery of such falsification, should it occur.
- (3) If default is made in complying with *subhead (2)*, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 213 of the Companies Act 2014. It specifies that the entries in registers, index or minute book kept by the society or the Registrar may be made either in bound books or recorded by some other means. Subhead (2) provides that where the entries are made by some other means adequate precautions shall be taken for guarding against falsification and facilitating discovery of such falsification, should it occur. If a co-operative society or any officer of it is in default of this obligation, they will be guilty of a category 3 offence under subhead (3).

HEAD 117 – Use of computers, etc., for certain society records

Provide that:

(1) Subject to *subheads* (2) and (5), the power conferred on a co-operative society by *head 116(1)* to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording the matters in question otherwise than in a legible form so long as the recording is capable of being reproduced in a legible form.

(2) *Subhead (1)* does not apply to the books required to be kept by *head 114* for the purpose mentioned in *subhead (1)* of that head.

(3) If the power under *subhead (1)* is availed of by a co-operative society, any duty imposed on the co-operative society by or under this Bill to allow inspection of, or to furnish a copy of, the register or other record concerned kept by the co-operative society otherwise than in legible form, or any part of it, shall be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

(4) *Subhead (5)* does not apply—

(a) if the services to the other computer there mentioned are provided by means of the technology commonly known as cloud computing or by any other distance hosting solution; or

(b) to the extent that regulations under *subhead (6)* provide that it shall not apply.

(5) Any computer (the “server computer”) that provides services to another computer, being services the provision of which to the latter is necessary so that the information of the kind referred in *subhead (1)* stored in the latter can be accessed at all times, shall be kept in a place in the State.

(6) The Minister may, by regulations, make such provision, being provision in addition to *subhead (3)*, as he or she considers appropriate in connection with such registers or other records as are mentioned in that *subhead* and are kept as there mentioned and may also, by regulations, provide for such exceptions to *subhead (5)* as he or she considers appropriate.

Explanatory note: This head is based on section 214 of the Companies Act 2014. It deals with electronic storage of records. This head permits a society to keep its statutory records, other than the minute book, on computer rather than the ‘hard copy’ form so long as the recording is capable of being reproduced in a legible form. Any duty under the Bill to allow inspection of, or to furnish a copy of, the register or other record concerned kept by the co-operative society shall be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a legible form.

Servers storing co-operative society records shall be kept in a place in the state. The head provides for the use of cloud computing in relation to the keeping of co-operative society records and further states that the Minister may, as he or she considers appropriate, regulate the provisions in this head.

Chapter 9 Inspection of registers, provision of copies of information in them and service of notices

HEAD 118 – Definitions for purposes of head 119 concerning registers, etc. and construction of reference to co-operative society keeping registers, etc.

Provide that:

In—

(a) *head 119*—

“copies of directors’ service contracts and memoranda” means the copies of directors’ service contracts and memoranda kept by the society pursuant to *head 75*;

“copies of instruments creating charges” means the copies of instruments creating charges kept by the co-operative society pursuant to *head 180* (including copies of any relevant judgment mortgage documentation referred to in that head);

“directors’ and secretaries’ register” means the register of directors and secretaries kept by the co-operative society pursuant to *head 70*;

“disclosable interests register” means the register of interests kept by the co-operative society pursuant to *head 164*;

“members’ register” means the register of members kept by the co-operative society pursuant to *head 90*;

“minutes of meetings” means the books kept by the co-operative society pursuant to *head 114*;

(b) this head a reference to any foregoing register or document being kept by the co-operative society includes a reference to the register or document being kept by another on the co-operative society’s behalf pursuant to *head 119(2)*;

(c) this head and *head 119* a reference to keeping includes a reference to maintaining; and

(d) *head 119(3)* the requirement thereunder to keep a register or other document at a place shall be deemed to be complied with if, by means of any computer, the register or document is (at that place) capable of being reproduced in legible form and inspected in that form, and references elsewhere in *head 119* and this Chapter to the keeping of a register or other document, and the inspection of it, shall be read accordingly.

Explanatory note: This head is based on section 215 of the Companies Act 2014. It sets out the definitions of the registers in respect of which there is a right of inspection. The requirement to keep a register or other document at a place shall be met if it is capable, by means of computer, of being reproduced and inspected at that place.

HEAD 119 – Where registers and other documents to be kept, right to inspect them, etc.

Provide that:

- (1) This head applies to:
 - (a) the copies of directors' service contracts and memoranda;
 - (b) the copies of instruments creating charges;
 - (c) the directors' and secretaries' register;
 - (d) the disclosable interests register;
 - (e) the members' register; and
 - (f) the minutes of meetings.
 - (2) An obligation imposed on a co-operative society under this Bill to keep a register or document to which this head applies may be discharged by another person keeping, on its behalf, the register or document.
 - (3) Subject to *subheads (4) and (5)*, a register or document to which this head applies shall be kept at—
 - (a) the registered office of the co-operative society;
 - (b) its principal place of business within the State; or
 - (c) another place within the State.
 - (4) Where the register or document is kept by another person on behalf of the co-operative society pursuant to *subhead (2)*, the place at which that register or document is kept by that person shall be a place within the State.
 - (5) In a case where a co-operative society keeps several of the registers or documents (or both) to which this head applies at a place other than that referred to in *subhead (3)(a) or (b)*, those registers or documents (or both) shall be kept by it at a single place.
 - (6) Where a register or document to which this head applies is kept at a place referred to in *subhead (3)(b) or (c) or subhead (4)*, the co-operative society shall send a notice to the Registrar in the prescribed form of that place and of any change in that place.
 - (7) A register or document to which this head applies shall, during business hours (except, in the case of the members' register, when it is closed under *head 95*), be open to inspection in accordance with *subheads (8) to (10)*.
 - (8) Every such register or document shall be open to the inspection of any member of the co-operative society without charge.
 - (9) The following shall be open to the inspection of any other person, on payment of the relevant fee:
 - (a) the directors' and secretaries' register;
 - (b) the disclosable interests register;
 - (c) the members' register.
 - (10) The copies of instruments creating charges shall be open to the inspection of any creditor of the society without charge.
 - (11) A member of the co-operative society may request a copy, or a copy of any part, of—
 - (a) the directors' and secretaries' register;
 - (b) the disclosable interests register;
 - (c) the members' register; or
-

- (d) the minutes of meetings.
- (12) Any other person may request a copy, or a copy of any part, of—
- (a) the directors’ and secretaries’ register;
 - (b) the disclosable interests register; or
 - (c) the members’ register.
- (13) A co-operative society shall, within 10 days after the date of receipt of a request under *subhead (11)* or *(12)* and on payment to it of the relevant fee by the requester, cause to be sent to the requester the copy, or part of it, concerned.

Explanatory note: This head is based on section 216 of the Companies Act 2014 and applies to copies of directors’ service contracts and memoranda, copies of instruments creating charges, the directors’ and secretaries’ register, the disclosable interest register, the members’ register and minutes of meetings. The rights of inspection of members and the general public are set out.

Under subhead (2), a person other than the co-operative society may keep the registers and documents on the co-operative society’s behalf. The intention of subhead (3)(c) is to allow the co-operative society to designate one place other than the places listed in (a) to (b) (the registered office of the society and its principal place of business in the State respectively) at which all documents that are not kept at a location mentioned in (a) to (b) should be kept. It is made clear that all documents and registers must be kept within the State. Subhead (4) allows different registers and documents to be kept by different persons on behalf of the co-operative society and such registers and documents must be kept within the State. Subhead (5) clarifies that, where a co-operative society keeps several of the registers or documents at a place other than the registered office or the principal place of business of the co-operative society (i.e. keeps the documents or registers at “another place within the state”), such registers and documents must be kept at a single place. Subhead (6) obliges the co-operative society to notify the Registrar of the location where the registers and documents are kept and to similarly notify the Registrar if that location changes.

Subhead (7) provides for the inspection of registers and documents during business hours. Subhead (8) allows for inspection of registers and documents listed under this head by members, subhead (9) allows for inspection of the directors’ and secretaries’ register, the disclosable interests register and the members’ register by any person and subhead (10) allow for inspection of copies of instruments creating charges by creditors. Similar, but more limited in scope provisions exist in the Industrial and Provident Societies Act 1893 as amended, where head 17(2) allows a member to inspect his own account and the books containing the names of the members and their holdings in the society (in shares or loans), while head 17A allows any person to inspect the books of the society containing the names of the members, and their holdings in shares.

Subheads (11) to (13) deal with requests for copies of registers and documents, and again, similar provisions exist in head 17A of the Industrial and Provident Societies Act 1893 as amended.

HEAD 120 – Supplemental provisions in relation to head 119 — “relevant fee”, power to alter the amount of it, offences, etc.

Provide that:

- (1) In *head 119* “relevant fee” means—
 - (a) in a case falling within subhead (9) of that head—
 - (i) where one register is inspected, €10.00 or such less sum as the co-operative society may determine; or
 - (ii) subject to *subhead (2)*, where more than one register is inspected on the same day or in any period of 24 consecutive hours, €15.00 or such less sum as the co-operative society may determine;
 - (b) in a case falling within *subhead (13)* of that head, €10.00 per copy or such less sum as the co-operative society may determine.
- (2) *Subhead (1)(a)(ii)* only applies if—
 - (a) the inspections concerned are made by, or on behalf of, the same person; and
 - (b) at the time the first request for inspection is made (by, or on behalf of, the same person) during the period concerned it is indicated to the co-operative society that more than one register will be inspected (by, or on behalf of, that person) during that period.
- (3) If a co-operative society fails to comply with any of *subheads (3) to (10)*, or *subhead (13)*, of *head 119*, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.
- (4) The court may, on application being made to it, make the following orders:
 - (a) in the case of a failure to comply with any of *subheads (7) to (10)* of *head 119*, an order compelling an immediate inspection of the register or document concerned;
 - (b) in the case of a failure to comply with *head 119(13)*, an order directing that the copy requested be sent to the person requesting it.
- (5) Subject to *subheads (6) to (8)*, the Minister may, by order, alter a sum specified in *paragraph (a)* or *(b)* of the definition of “relevant fee” in this head.
- (6) An order under *subhead (5)* may only be made, at a particular time (the “relevant time”), if it appears to the Minister the changes in the value of money generally in the State that have occurred during the period beginning—
 - (a) on this Bill’s passing, or
 - (b) if the powers under that subhead have previously been exercised, immediately after their last previous exercise,and ending at the relevant time warrant the exercise of powers under that subhead for the following purpose.
- (7) That purpose is to relieve co-operative societies of an additional financial expense that they would otherwise incur (by reason of the foregoing changes) in complying with the provisions specified in the definition of “relevant fee” in this head if the powers under *subhead (5)* were not exercised at the relevant time.

(8) Without prejudice to *subheads* (6) and (7), in making any order under *subhead* (5), the Minister shall take into account the general costs incurred by a co-operative society in facilitating the inspection, or providing copies, of the registers or other documents referred to in the provisions specified in the definition of “relevant fee” in this head.

Explanatory note: This head is based on section 217 of the Companies Act 2014 and applies to the members’ register and other documents. This head contains supplemental provisions in relation to head 119. It gives a meaning for “relevant fee” and provides for the power of the Minister to alter the amount of the fee in order to relieve co-operative societies of an additional financial expense in certain circumstances. The maximum inspection charge is €10 in the case of single register inspection and €15 in the case where more than one register is inspected on the same day or in any period of 24 consecutive hours. The head lays down a category 3 offence for failure to comply with obligations under head 120. Subhead (4) concerns the power of the court to give an order to compel inspection in certain circumstances.

HEAD 121 – Service of notices on members

Provide that:

- (1) *Subheads (3) and (4)* shall apply to any case in which a provision of this Bill, or of the rules of a co-operative society, requires or authorises a notice to be served on or given to a member of the co-operative society by the society, or an officer of it, but save to the extent that the rules provide otherwise.
- (2) *Subhead (5)* shall only apply if there is contained in the rules of the co-operative society a provision to the effect that it shall apply (but nothing in this subhead shall prevent alternative and reasonable provision being made in the rules with regard to one or more of the matters set out in that subhead and, to the extent that such alternative and reasonable provision is made, that provision shall apply instead of that subhead).
- (3) A notice referred to in *subhead (1)* shall, save where the means of serving or giving it specified in *paragraph (d)* is used, be in writing and may be served on or given to the member in one of the following ways:
- (a) by delivering it to the member;
 - (b) by leaving it at the registered address of the member;
 - (c) by sending it by post in a prepaid letter to the registered address of the member; or
 - (d) if the rules of the co-operative society permit the use of electronic means to serve or give the notice or the conditions specified in *subhead (4)* are satisfied, by electronic means.
- (4) The conditions referred to in *subhead (3)(d)* are—
- (a) the member has consented in writing to the co-operative society, or the officer of it, using electronic means to serve or give notices in relation to him or her;
 - (b) at the time the electronic means are used to serve or give the notice in relation to the member, no notice in writing has been received by the society or the officer concerned from the member stating he or she has withdrawn the consent referred to in *paragraph (a)*; and
 - (c) the particular means used to serve or give the notice electronically are those that the member has consented to.
- (5) Any notice served or given in accordance with *subhead (3)* shall be deemed, in the absence of any agreement to the contrary between the co-operative society (or, as the case may be, the officer of it) and the member, to have been served or given—
- (a) in the case of its being delivered, at the time of delivery (or, if delivery is refused, when tendered);
 - (b) in the case of its being left, at the time that it is left;
 - (c) in the case of its being posted (to an address in the State) on any day other than a Friday, Saturday or Sunday, 24 hours after despatch and in the case of its being posted (to such an address)—
 - (i) on a Friday — 72 hours after despatch; or
 - (ii) on a Saturday or Sunday — 48 hours after despatch;
 - (d) in the case of electronic means being used in relation to it, 12 hours after despatch, but this subhead is without prejudice to *head 102(3)*.
- (6) In this head “registered address”, in relation to a member, means the address of the member as entered in the register of members.

Explanatory note: This head is based on section 218 of the Companies Act 2014. It governs service of notice on members, wherever that is required in Part 4 of the Bill and includes service by electronic means.

Subhead (1) provides that subheads (3) and (4) shall apply where the Bill, or of the rules of a co-operative society require or authorise a notice to be served on or given to a member of the co-operative society by the society or its officers but save where the rules provide otherwise.

Subhead (3) provides that the notice shall be in writing (apart from if delivered by electronic means where the rules allow for it) and specifies the way it may be served on or given to the member. Subhead (4) provides conditions under which a notice can be served using electronic means.

Subhead (2) clarifies that *subhead (5)* shall only apply if the rules of the co-operative society specify that it shall apply. Subhead (5) provides the conditions under which any notice served or given in accordance with subhead (3) shall be deemed, in the absence of any agreement to the contrary between the co-operative society and the member, to have been served or given.

Subhead (6) clarifies the meaning of “registered address” for the purposes of this head.

PART 5 DUTIES OF DIRECTORS AND OTHER OFFICERS

Chapter 1 Preliminary and definitions

HEAD 122 – Interpretation and application (Part 5)

Provide that:

(1) In this Part—

“credit transaction” has the meaning given to it by *subhead (3)*;

“guarantee” includes an indemnity;

“quasi-loan” has the meaning given to it by *subhead (2)*.

(2) For the purposes of this Part—

(a) a quasi-loan is a transaction under which one party (the “creditor”) agrees to pay, or pays otherwise than in pursuance of an agreement, a sum for another (the “borrower”) or agrees to reimburse or reimburses otherwise than in pursuance of an agreement, expenditure incurred by another party for another (the “borrower”)—

(i) on terms that the borrower (or a person on his behalf) will reimburse the creditor; or

(ii) in circumstances giving rise to a liability on the borrower to reimburse the creditor;

(b) any reference to the person to whom a quasi-loan is made is a reference to the borrower; and

(c) the liabilities of a borrower under a quasi-loan include the liabilities of any person who has agreed to reimburse the creditor on behalf of the borrower.

(3) For the purposes of this Part a credit transaction is, subject to *subhead (4)*, a transaction under which one party (the “creditor”)—

(a) supplies any goods or sells any land under, as the case may be, a hire-purchase agreement or conditional sale agreement;

(b) leases or licenses the use of land or hires goods in return for periodical payments;

(c) otherwise disposes of land or supplies goods or services, on the understanding that payment (whether in a lump sum or instalments or by way of periodical payments or otherwise) is to be deferred.

(4) For the purposes of this Part a lease of land which reserves a nominal annual rent of not more than €100 is not a credit transaction where a co-operative society grants the lease in return for a premium or capital payment which represents the open market value of the land thereby disposed of by the co-operative society.

(5) For the purposes of this Part the value of a transaction or arrangement is—

(a) in the case of a loan, the principal of the loan;

(b) in the case of a quasi-loan, the amount or maximum amount which the person to whom the quasi-loan is made is liable to reimburse the creditor;

- (c) in the case of a transaction or arrangement other than a loan or quasi-loan or a transaction or arrangement falling within *paragraph (d) or (e)*, the price which it is reasonable to expect could be obtained for the goods, land or services to which the transaction or arrangement relates if they had been supplied at the time the transaction or arrangement is entered into in the ordinary course of business and on the same terms (apart from price) as they have been supplied or are to be supplied under the transaction or arrangement in question;
 - (d) in the case of a guarantee or security, the amount guaranteed or secured;
 - (e) in the case of an arrangement to which *head 141(2) or (3)* applies, the value of the transaction to which the arrangement relates less any amount by which the liabilities under the arrangement or transaction of the person for whom the transaction was made have been reduced.
- (6) For the purposes of *subhead (5)*, the value of a transaction or arrangement (or, as the case may be, of a transaction to which an arrangement relates) which is not capable of being expressed as a specific sum of money, whether because the amount of any liability arising under the transaction or arrangement is unascertainable or for any other reason, shall be deemed to exceed €65,000, and this subhead applies irrespective of whether any liability under the transaction or arrangement has been reduced.
- (7) For the purposes of this Part, a transaction or arrangement is made for a person if—
- (a) in the case of a loan or quasi-loan, it is made to him or her;
 - (b) in the case of a credit transaction, he or she is the person to whom goods or services are supplied, or land is sold or otherwise disposed of, under the transaction;
 - (c) in the case of a guarantee or security, it is entered into or provided in connection with a loan or quasi-loan made to him or her or a credit transaction made for him or her;
 - (d) in the case of an arrangement to which *head 141(2) or (3)* applies, the transaction to which the arrangement relates was made for him or her; and
 - (e) in the case of any other transaction or arrangement for the supply or transfer of goods, land or services (or any interest therein), he or she is the person to whom the goods, land or services (or the interest) are supplied or transferred.
- (8) This Part shall have effect in relation to an arrangement or transaction whether governed by the law of the State or of another country.

Explanatory note: This head is based on section 219 of the Companies Act 2014. It contains definitions for the purposes of Part 5, including the meaning of “credit transaction”, “guarantee” and “quasi-loan” and provides how the value of a transaction or arrangement is established. The head also clarifies the circumstances in which a transaction or arrangement is made for a person, and that this Part of the Bill shall have effect in relation to an arrangement or transaction governed by the law of this and other jurisdictions.

HEAD 123 – Connected persons

Provide that:

- (1) For the purposes of this Part (and without prejudice to *subhead (3)*), a person is connected with a director of a co-operative society if, but only if, the person (not being himself or herself a director of the co-operative society) is—
 - (a) that director’s spouse, civil partner, parent, brother, sister or child;
 - (b) a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or any body corporate which that director controls; or
 - (c) in partnership with that director.
- (2) In *subhead (1)(a)* and *(b)* “child”, in relation to a director, shall be deemed to include a child of the director’s civil partner who is ordinarily resident with the director and the civil partner.
- (3) A body corporate shall also be, for the purposes of this Part, connected with a director of a co-operative society if it is controlled by that director or by another body corporate that is controlled by that director.
- (4) For the avoidance of doubt, *subhead (3)* is without prejudice to the application of section 18(c) of the Interpretation Act 2005 (“person” to include body corporate, etc.) to *subhead (1)(b)*.
- (5) For the purposes of this head, a director of a co-operative society controls a body corporate if, but only if, he or she is, alone or together with any other director or directors of the co-operative society or any person connected with the director or such other director or directors—
 - (a) interested in one-half or more of the equity share capital of that body; or
 - (b) entitled to exercise or control the exercise of one-half or more of the voting power at any general meeting of that body.
- (6) In *subhead (5)*—
 - (a) “equity share capital” has the same meaning as it has in section 7 of the Act of 2014; and
 - (b) references to voting power exercised by a director shall be read as including references to voting power exercised by another body corporate which that director controls.
- (7) For the purpose of *subheads (5)(b)* and *(6)(b)* “voting power” does not include any power to vote which arises only in specified circumstances.
- (8) The reference in *subhead (1)(c)* to a person being in partnership with a director are references to the person’s being in partnership, within the meaning of section 1(1) of the Partnership Act 1890, with that director and references to a partner of a person shall be read accordingly.

Explanatory note: This head is based on section 220 of the Companies act 2014. It defines “connected person” for the purposes of Part 5 of the Bill and provides for when a director of a co-operative society is to be regarded as associated with or in control of a body corporate.

Subhead (4) clarifies that subhead (3) does not interfere with the application of section 18(c) of the Interpretation Act 2005 to subhead (1)(b) of this head. In other words, this subhead clarifies that a body corporate can be a trustee under subhead (1)(b). Subhead (6) clarifies the meaning of “equity share capital” and subheads (6) and (7) the meaning of “voting power”. Subhead (8) is based on section 2(6) of the Companies Act 2014 and provides for the meaning of a person in partnership.

HEAD 124 – Shadow directors

Provide that:

- (1) Subject to *subhead (2)*, a person in accordance with whose directions or instructions the directors of a co-operative society are accustomed to act (in this Bill referred to as a “shadow director”) shall be treated for the purposes of this Part as a director of the co-operative society unless the directors are accustomed so to act by reason only that they do so on advice given by him or her in a professional capacity.
- (2) A body corporate is not to be regarded as a shadow director of any of its subsidiaries.
- (3) *Head 134* shall apply in relation to a shadow director of a co-operative society as it applies in relation to a director of a co-operative society, except that the shadow director shall declare his or her interest, not at a meeting of the directors, but by a notice in writing to the directors which is either—
 - (a) a specific notice given before the date of the meeting at which, if he or she had been a director, the declaration would be required by *subhead (3)* of that head to be made; or
 - (b) a notice which under *subhead (4)* of that head falls to be treated as a sufficient declaration of that interest or would fall to be so treated apart from the qualification of that *subhead (4)* contained in *subhead (5)* of that head.
- (4) As respects a declaration made by either of the means referred to in *subhead (3)*, *head 87* shall have effect as if the declaration had been made at the meeting in question and had accordingly formed part of the proceedings at that meeting.

Explanatory note: This head is based on section 221 of the Companies act 2014. It contains a definition of “shadow director”. A shadow director is someone in accordance with whose instructions the directors act. A saving provision that the person is not considered a shadow director if the directors act on advice given by him or her in a professional capacity is also contained in the head. The duties of a director to disclose his/her interest in contracts made by the co-operative society will apply to a shadow director, but the interest will be declared not at a meeting of the directors but by a notice to the directors given in accordance with the requirements of this head. A body corporate shall not be regarded as a shadow director of its subsidiaries.

HEAD 125 – De facto directors

Provide that:

- (1) Without limiting the manner in which the expression “director” is to be read by virtue of *head 2(1)*, a person who occupies the position of director of a co-operative society but who has not been formally appointed as such director shall, subject to *subhead (4)*, be treated, for the purposes of this Part, as a director of the co-operative society.
- (2) In particular, *head 134* shall apply in relation to such a director as it applies in relation to directors generally.
- (3) A person who is, by virtue of *subhead (1)*, treated, for the purposes of this Part, as a director of a co-operative society is in this Bill referred to as a *de facto* director.
- (4) A person shall not be a *de facto* director of a co-operative society by reason only of the fact that he or she gives advice in a professional capacity to the co-operative society or any of the directors of it.

Explanatory note: This head is based on section 222 of the Companies Act 2014. This head contains the definition of “de facto director”. The statutory label “de facto director” relates to a person who occupies the position of director but who has not been formally appointed as such. The duties and requirements of directors will apply to all directors, whether they have been formally appointed as such or whether they fall to be classified as de facto directors. A saving provision for those giving professional advice, similar to that in the previous head dealing with shadow directors, is contained in subhead (4).

Chapter 2 General duties of directors and secretaries and liabilities of them and other officers

HEAD 126 – Duty of each director

Provide that:

(1) It is the duty of each director of a co-operative society to ensure that this Bill is complied with by the co-operative society.

(2) The breach by a director of the duty under *subhead (1)* shall not of itself affect—

(a) the validity of any contract or other transaction, or

(b) the enforceability, other than by the director in breach of that duty, of any contract or other transaction by any person,

but nothing in this subhead affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom.

(3) The consent in respect of a director to accompany—

(a) a statement under *head 13(1)(a)*, and

(b) a notification under *head 70(8)*,

shall include a statement by the director (immediately above his or her signature on the consent) in the following terms:

“I acknowledge that, as a director, I have legal duties and obligations imposed by the Co-operative Societies Bill 2022, other statutes and at common law.”.

Explanatory note: This head is based on section 223 of the Companies Act 2014. While common law provisions on directors’ duties apply bodies corporate, it is considered that bringing directors’ duties onto the statute book will be a welcome clarification.

Subhead (1) provides that each and every director of a co-operative society is responsible for ensuring that the co-operative society complies with the requirements of this Bill. This obligation applies to directors who have been properly appointed and registered, shadow directors and de facto directors equally. Subhead (2) provides that a breach by a director of a duty under this head will not of itself affect the validity or enforceability of any contract or other transaction. However, a third party cannot benefit under this principle where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom. Subhead (3) requires that, upon registration, directors should be required to acknowledge the existence of their duties. This is achieved through requiring them to sign a declaration to that effect.

HEAD 127 – Directors to have regard to interests of employees

Provide that:

(1) The matters to which the directors of a co-operative society are to have regard in the performance of their functions shall include the interests of the co-operative society's employees in general, as well as the interests of its members.

(2) Accordingly, the duty imposed by this head on the directors shall be owed by them to the co-operative society (and the co-operative society alone) and shall be enforceable in the same way as any other fiduciary duty owed to a co-operative society by its directors.

Explanatory note: This head is based on section 224 of the Companies Act 2014. It provides that, in addition to taking account of the interests of the members of a co-operative society, the directors will be under a general duty to have regard also to the interests of its employees. The directors' duties are owed to the co-operative society and are enforceable in the same way as any other fiduciary duties of the directors to the co-operative society.

HEAD 128 – Directors’ compliance statement and related statement

Provide that:

(1) In this head—

“amount of turnover” and “balance sheet total” have the same meanings as they have section 275 of the Act of 2014, as applied by *head 169*;

“relevant obligations”, in relation to a co-operative society, means the co-operative society’s obligations under—

- (a) this Bill, where a failure to comply with any such obligation would (were it to occur) be a category 2 offence;
 - (b) the Act of 2014, as applied by heads 169, 203 and 224, 228 and 236 where a failure to comply with any such obligation would (were it to occur) be a category 1 offence or a category 2 offence;
 - (c) a serious Prospectus offence;
- and
- (d) tax law;

“serious Prospectus offence” means an offence referred to in section 1356 of the Act of 2014;

“tax law” means—

- (a) the Customs Acts;
 - (b) the statutes relating to the duties of excise and to the management of those duties;
 - (c) the Tax Acts;
 - (d) the Capital Gains Tax Acts;
 - (e) the Value-Added Tax Acts;
 - (f) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act;
 - (g) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act;
- and
- (h) any instruments made under an enactment referred to in any of *paragraphs (a) to (g)* or made under any other enactment and relating to tax.

(2) The directors of a co-operative society to which this head applies shall also include in their report under section 325 of the Act of 2014, as applied by *head 169*, a statement—

- (a) acknowledging that they are responsible for securing the co-operative society’s compliance with its relevant obligations; and
- (b) with respect to each of the things specified in *subhead (3)*, confirming that the thing has been done or, if it has not been done, specifying the reasons why it has not been done.

(3) The things mentioned in *subhead (2)(b)* are—

- (a) the drawing up of a statement (to be known, and in this Bill referred to as, a “compliance policy statement”) setting out the co-operative society’s policies (that, in the directors’ opinion, are appropriate to the co-operative society) respecting compliance by the co-operative society with its relevant obligations;

- (b) the putting in place of appropriate arrangements or structures that are, in the directors' opinion, designed to secure material compliance with the co-operative society's relevant obligations; and
 - (c) the conducting of a review, during the financial year to which the report referred to in *subhead (2)* relates, of any arrangements or structures referred to in *paragraph (b)* that have been put in place.
- (4) The arrangements or structures referred to in *subhead (3)(b)* may, if the directors of the co-operative society in their discretion so decide, include reliance on the advice of one or more than one person employed by the co-operative society or retained by it under a contract for services, being a person who appears to the directors to have the requisite knowledge and experience to advise the co-operative society on compliance with its relevant obligations.
- (5) For the purposes of this head, the arrangements or structures referred to in *subhead (3)(b)* shall be regarded as being designed to secure material compliance by the co-operative society concerned with its relevant obligations if they provide a reasonable assurance of compliance in all material respects with those obligations.
- (6) If default is made in complying with *subhead (2)*, each director to whom the default is attributable shall be guilty of a category 3 offence.
- (7) Subject to *subhead (8)*, this head shall apply to a co-operative society if, in respect of the financial year of the co-operative society to which the report referred to in *subhead (2)* relates—
- (a) its balance sheet total for the year exceeds—
 - (i) subject to *subparagraph (ii)*, €12,500,000; or
 - (ii) if an amount is prescribed under section 943(1)(i) of the Act of 2014, the prescribed amount;
 and
 - (b) the amount of its turnover for the year exceeds—
 - (i) subject to *subparagraph (ii)*, €25,000,000; or
 - (ii) if an amount is prescribed under section 943(1)(i) of the Act of 2014, the prescribed amount.

Explanatory note: This head is based on section 225 of the Companies Act 2014 and applies to very large co-operative societies. It provides that in accordance with subhead (7), where both the balance sheet of the co-operative society exceeds €12,500,000 and its turnover exceeds €25,000,000 (or such other amounts prescribed under head 943(1)(i) of the Companies Act 2014), the directors are required to produce a compliance statement to be included in the directors' report under section 325 of the Act of 2014.

Subhead (1) defines certain terms for the purposes of this head. The term “relevant obligations” which is used throughout the head is defined as the co-operative society's obligations under this Bill (the breach of which gives rise to an indictable offence), the Act of 2014, as applied by the heads specified in this head, where a failure to comply with any such obligation would be a category 1 or 2 offence and its obligations under tax law. Subheads (2) and (3) require the directors to include in the directors' report under section 325 of the Companies Act 2014, as applied by head 169, a statement acknowledging their responsibility for securing compliance by the co-operative society with its relevant obligations and further, in circumstances where their obligations have not been met, their responsibility to explain their non-

compliance. They must also confirm that a statement has been drawn up setting out the co-operative society's policies in respect of compliance with those obligations, confirming that the co-operative society has in place arrangements designed to achieve compliance with its relevant obligations, and confirming that the directors have reviewed the effectiveness of these procedures during the financial year to which the report relates.

Subhead (4) provides that the arrangements that must be put in place under subhead (3)(b) may include reliance on expert advice regarding compliance with the co-operative society's relevant obligations. Subhead (5) elaborates upon what is meant by arrangements designed to achieve compliance with the co-operative society's relevant obligations. That requirement is satisfied if the arrangements put in place provide a reasonable assurance of compliance in all material respects with those obligations. Subhead (6) provides that directors who fail to produce a statement in accordance with subhead (2) will be guilty of a category 3 offence.

HEAD 129 – Duties of secretary

Provide that:

- (1) The duties of the secretary of a co-operative society shall, without derogating from the secretary's statutory and other legal duties, be such duties as are delegated to the secretary, from time to time, by the board of directors of the co-operative society.
- (2) Without prejudice to the generality of *head 55(4)*, the directors of a co-operative society shall, in their appointment of a secretary, have a duty to ensure that the person appointed has the skills necessary so as to enable him or her maintain (or procure the maintenance of) the records (other than accounting records) required to be kept under this Bill in relation to the co-operative society.
- (3) The cases to which *subhead (2)* applies includes the case of an appointment of one of the directors of the co-operative society as secretary.
- (4) In *subheads (1) to (3)* references to a secretary include references to joint secretaries.
- (5) The consent in respect of a secretary or joint secretaries to accompany—
 - (a) a statement under *head 13(1)(a)*, and
 - (b) a notification under *head 70(8)*,shall include a statement by the secretary or secretaries (immediately above the signature or signatures of the secretary or secretaries on the consent) in the following terms:

“I/We acknowledge that, as a secretary, I/we have legal duties and obligations imposed by the Co-operative Societies Bill 2022, other statutes and at common law.”

Explanatory note: This head is based on section 226 of the Companies Act 2014. It sets out the duties and responsibilities of the co-operative society's secretary. The head reflects the fact that the secretary is appointed by and can be removed by the board of directors. The secretary is not responsible for the compliance of the society with co-operative law issues since they do not have authority to cause the society to comply, such authority being vested in the board of directors. Secretaries will have to consent to and acknowledge their legal duties.

Subhead (1) sets out and recognises the role of the secretary as the person who, by order of the board of directors, convenes meetings, records their proceedings, is custodian of the registers required by this Bill and the person to whom the directors are permitted and expected to delegate their responsibility to make filings under the Bill. It also reflects that it is the directors who are primarily responsible for the management and direction of the co-operative society, and to that extent primarily responsible for compliance with the Bill.

Subhead (2) imposes a duty on the directors to ensure that the secretary has the suitable skills to maintain records required by the Bill. Subhead (3) clarifies that subhead (2) applies in the case where one of the

directors of the co-operative society is appointed as secretary. Subhead (4) provides that the references to a secretary in the preceding subheads include references to joint secretaries.

Subhead (5) specifies that an acknowledgement of the existence of a secretary's duties by the secretary upon registration is desirable. This is achieved through requiring the secretary to sign a declaration to that effect. The wording of such a declaration recognises that the secretary may be a corporate body.

HEAD 130 – Fiduciary duties of directors – provisions introductory to head 131

Provide that:

- (1) Without prejudice to the provisions of any enactment (including this Bill), a director of a co-operative society shall owe the duties set out in *head 131* (the “relevant duties”) to the co-operative society (and the co-operative society alone).
- (2) The breach by a director of the relevant duties shall not of itself affect—
 - (a) the validity of any contract or other transaction, or
 - (b) the enforceability, other than by the director in breach of that duty, of any contract or other transaction by any person,but nothing in this subhead affects the principles of liability of a third party where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom.
- (3) The relevant duties shall be enforced in the same way as any other fiduciary duty owed to a co-operative society by its directors.
- (4) The relevant duties (other than those set out in *head 131(1)(b) and (h)*) are based on certain common law rules and equitable principles as they apply in relation to the directors of bodies corporate and shall have effect in place of those rules and principles as regards the duties owed to a co-operative society by a director.
- (5) The relevant duties (other than those set out in *head 131(1)(b) and (h)*) shall be interpreted, and the provisions concerned of *head 131* shall be applied, in the same way as common law rules or equitable principles; regard shall be had to the corresponding common law rules and equitable principles in interpreting those duties and applying those provisions.

Explanatory note: This head is based on section 227 of the Companies Act 2014 and provides an introduction to head 131, which enumerates the fiduciary duties of directors. The Bill proposes to bring into the statute book the common law and equitable duties which have been developed by the courts in respect of directors of corporate bodies. Subheads (1) and (3) provide that the directors owe the eight duties set out in head 131 to the co-operative society and that those duties may be enforced in the same way as any duties owed by the director to the society. Subhead (2) clarifies that a breach by a director of a duty will not of itself affect the validity or enforceability of any contract or other transaction. However, a third party cannot benefit under this principle where he or she has been an accessory to a breach of duty or has knowingly received a benefit therefrom. Subheads (4) and (5) provide that the fiduciary duties listed in head 131 (other than those listed in head 131(1)(b) and (h)) are derived from principles established by the courts and are to be interpreted as such. The duties listed in *head 131* are not intended to be exhaustive. Certain fiduciary duties namely, to act honestly and responsibly and the duty to have regard to the interests of its members specified in head 131(1)(b) and (h) derive from the company law statute and are not subject to the same rules and principles as common law provisions would be.

HEAD 131 – Statement of principal fiduciary duties of directors

Provide that:

- (1) A director of a co-operative society shall—
 - (a) act in good faith in what the director considers to be the interests of the co-operative society;
 - (b) act honestly and responsibly in relation to the conduct of the affairs of the co-operative society;
 - (c) act in accordance with the rules of the co-operative society and exercise his or her powers only for the purposes allowed by law;
 - (d) not use the co-operative society’s property, information or opportunities for his or her own or anyone else’s benefit unless—
 - (i) this is expressly permitted by the rules of the co-operative society; or
 - (ii) the use has been approved by a resolution of the co-operative society in general meeting;
 - (e) not agree to restrict the director’s power to exercise an independent judgment unless—
 - (i) this is expressly permitted by the rules of the co-operative society;
 - (ii) the case concerned falls within *subhead (2)*; or
 - (iii) the director’s agreeing to such has been approved by a resolution of the co-operative society in general meeting;
 - (f) avoid any conflict between the director’s duties to the co-operative society and the director’s other (including personal) interests unless the director is released from his or her duty to the co-operative society in relation to the matter concerned, whether in accordance with provisions of the rules of the co-operative society in that behalf or by a resolution of it in general meeting;
 - (g) exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both—
 - (i) the knowledge and experience that may reasonably be expected of a person in the same position as the director; and
 - (ii) the knowledge and experience which the director has; and
 - (h) in addition to the duty under *head 127*, have regard to the interests of its members.
- (2) If a director of a co-operative society considers in good faith that it is in the interests of the co-operative society for a transaction or engagement to be entered into and carried into effect, a director may restrict the director’s power to exercise an independent judgment in the future by agreeing to act in a particular way to achieve this.

Explanatory note: This head is based on section 228 of the Companies Act 2014 and sets out the principal fiduciary duties of directors. Subhead (1) enumerates the fiduciary duties of directors that have thus far been enunciated by the Irish courts.

The duties are stated in general rather than specific terms and since they are derived from principles established by the courts, they are not intended to be exhaustive.

Directors duties are as follows:

1. Act in good faith in interests of co-operative society
2. Act honestly, responsibly in conduct of co-operative society's affairs
3. Act in accordance with co-operative society's rules and the law
4. Not use co-operative society's property, information or opportunities for own/other third party benefit
5. Do not restrict director's power to exercise independent judgment
6. Avoid any conflict between director's duties and own interests
7. Exercise the care, skill & diligence that would be exercised by reasonable person with knowledge & experience a director expected to have and that director actually has
8. Have regard to interests of members, in addition to its employees in general

Subhead (1)(e)(iii) provides that the co-operative society may exercise its right in relation to a director's power to exercise independent judgment by a general resolution.

Subhead (2) elaborates on paragraph (e) of subhead (1).

HEAD 132 – Other interests of directors

Provide that:

(1) Save to the extent that the rules of a co-operative society provide otherwise, a director of a co-operative society may be or become a director or other officer of, or otherwise interested in, any co-operative society or company promoted by the co-operative society or in which the co-operative society may be interested as shareholder or otherwise; but neither this subhead nor anything in the rules of the co-operative society governing the foregoing matter overrides *head 131*.

(2) No such director shall be accountable to the co-operative society for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interest in, such other co-operative society or company unless the co-operative society otherwise directs.

Explanatory note: This head is based on section 229 of the Companies Act 2014 and relates to other interests of directors. Subhead (1) permits a director of a co-operative society to become a director or officer of another co-operative society or company that is promoted by the co-operative society or that it is interested in, save to the extent that its rules provide otherwise. However, this is subject to the overriding obligations in head 131. Subhead (2) provides that where a director has such an interest in a co-operative society or company, he or she shall not be required to be accountable to the co-operative society for any remuneration or benefits that he or she receives by reason of such an interest, unless the co-operative society otherwise directs.

HEAD 133 – Power of director to act in a professional capacity for co-operative society

Provide that:

Save to the extent that the rules of a co-operative society provide otherwise—

- (a) any director may act by himself or herself, or his or her firm, in a professional capacity for the co-operative society of which he or she is a director, and
- (b) any director, in such a case, or his or her firm, shall be entitled to remuneration for professional services as if he or she were not a director,

but nothing in this head authorises a director, or his or her firm, to act as statutory auditor of a co-operative society of which he or she is director.

Explanatory note: This head is based on section 230 of the Companies Act 2014. It provides that subject to the rules of a co-operative society, a director will be permitted to act in a professional capacity for the co-operative society and be entitled to remuneration, but the director cannot act as statutory auditor to a co-operative society.

HEAD 134 – Duty of director to disclose his or her interest in contracts made by co-operative society

Provide that:

- (1) It shall be the duty of a director of a co-operative society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the co-operative society, to declare the nature of his or her interest at a meeting of the directors of the co-operative society.
 - (2) *Subhead (1)* does not apply in relation to an interest that cannot reasonably be regarded as likely to give rise to a conflict of interest.
 - (3) The declaration required by this head to be made by a director shall—
 - (a) in the case of a proposed contract, be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she became so interested; and
 - (b) in the case of his or her becoming interested in a contract after it is made, be made at the first meeting of the directors held after the director becomes so interested.
 - (4) Subject to *subhead (5)*, for the purposes of this head a general notice given to the directors of a co-operative society by a director to the effect that—
 - (a) he or she is a member of a specified co-operative society, company or firm and is to be regarded as interested in any contract which may, after the date of the notice, be made with that body corporate or firm, or
 - (b) he or she is to be regarded as interested in any contract which may, after the date of the notice, be made with a specified person who is connected with him or her,shall be deemed to be a sufficient declaration of interest in relation to any such contract.
 - (5) No such notice as is mentioned in *subhead (4)* shall be of effect unless it is given at the meeting of directors or the director takes reasonable steps to secure that it is brought up and read at the next meeting of the directors after it is given.
 - (6) A copy of every declaration made and notice given in pursuance of this head shall, within 3 days after the date of making or giving of it, be entered into a book kept by the co-operative society for this purpose.
 - (7) That book shall be open for inspection, without any charge, by any director, secretary, statutory auditor or member of the co-operative society at the registered office of the co-operative society and shall be produced at—
 - (a) every general meeting of the co-operative society; and
 - (b) any meeting of its directors if any of its directors so requests in sufficient time to enable the book to be available at the meeting.
 - (8) A co-operative society shall, if required by the Authority, produce to the Authority for inspection the book kept by it in accordance with subhead (6) and shall give the Authority such facilities for inspecting and taking copies of the contents of the book as the Authority may require.
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(9) Nothing in this head shall be taken to prejudice the operation of any enactment or rule of law restricting directors of a co-operative society from having interests in contracts with the co-operative society.

(10) Any reference in this head to a contract—

(a) shall be read as excluding a reference to a contract the decision as to whether to enter into it is taken, or falls to be taken, other than by the board of directors or a committee of which the first-mentioned director in *subhead (1)* is a member;

(b) shall be read as including a reference to any transaction or arrangement, whether or not constituting a contract, but, in a case where the transaction or arrangement does not constitute a contract, a like limitation to that which applies under *paragraph (a)* applies to the construction of reference provided by this paragraph.

(11) For the purposes of this head, a transaction or arrangement of a kind described in *head 141* made by a co-operative society for a director of the co-operative society or a person connected with such a director shall, if it would not otherwise be so treated be treated as a transaction or arrangement in which that director is interested.

Explanatory note: This head is based on section 231 of the Companies Act 2014. It requires a director to disclose his or her interests in contracts made by the co-operative society. The provision does not apply if the interest cannot reasonably be regarded as likely to give rise to a conflict of interest. The purpose of the head is to ensure that where a number of people are taking a decision, that they are aware that one of them might have an interest that might colour his or her contribution to the decision they make collectively. In order to avoid undue inconvenience for directors, provision is made for a general notice by directors which is a sufficient declaration that they are interested in all dealings with stated co-operative societies, companies and firms. The notice shall not be in effect unless given at the meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given. The notice shall be entered into a book and kept by the co-operative society. It shall be available for inspection by any director, secretary, statutory auditor, member and the Corporate Enforcement Authority, and shall be produced at every general meeting and any meeting of the directors. The duty of directors to disclose their interests in contracts has been clarified so that it does not apply to contracts which would not be entered into by the board of directors on behalf of the co-operative society (e.g. contracts in the ordinary course of business which employees would be entitled to transact).

HEAD 135 – Breaches of certain duties: liability to account and indemnify

Provide that:

(1) Subject to *head 136*, where a director of a co-operative society acts in breach of his or her duty under *head 131(1)(a), (c), (d), (e), (f) or (g)*, he or she shall be liable to do either or both (as the corresponding common law rule or equitable principle with respect to the matter would have required) of the following things, namely—

(a) account to the co-operative society for any gain which he or she makes directly or indirectly from the breach of duty;

(b) indemnify the co-operative society for any loss or damage resulting from that breach.

(2) Subject to *subhead (6)*, where a co-operative society enters into a transaction or arrangement contrary to *head 140 or 141* with—

(a) a director of the co-operative society,

(b) a director of its holding company, or

(c) a person connected with a director of the co-operative society or its holding company, that director and the person so connected and any other director of the co-operative society who authorised the transaction or arrangement (or, as the case may be, any transaction entered into in pursuance of the arrangement) shall be liable—

(i) to account to the co-operative society for any gain which he or she makes directly or indirectly from the transaction or arrangement;

(ii) (jointly and severally with any other person liable under this subhead) to indemnify the co-operative society for any loss or damage resulting from the transaction or arrangement; or

(iii) to do both of those things as the circumstances may require.

(3) Subject to *head 136*, where a co-operative society makes a payment to a director contrary to *head 149 or 150* that director shall be liable—

(a) to account to the co-operative society for any gain which he or she makes directly or indirectly from the payment,

(b) to indemnify the co-operative society for any loss or damage resulting from the payment, or

(c) to do both of those things as the circumstances may require,

and, in the case of *head 150*, this is without prejudice to *subhead (3)* of that head.

(4) *Subhead (2)* applies irrespective of whether the transaction or arrangement concerned has been avoided.

(5) *Subheads (1) to (3)* are without prejudice to—

(a) the co-operative society's right at common law to claim damages for breach of duty, or

(b) the co-operative society's right to make an application seeking the grant of equitable relief, but the provisions of this head shall not be read as having the combined effect of enabling the co-operative society to be afforded more compensation for any damage or injury, or more protection of any proprietary right, than is just and equitable in the circumstances.

(6) Where a transaction or arrangement is entered into by a co-operative society and a person connected with a director of the co-operative society or of its holding company in contravention of *head 140* or *141*

- (a) that director shall not be liable under *subhead (2)* (or under any law referred to in *subhead (5)*) if he or she shows that he or she took all reasonable steps to secure the co-operative society's compliance with *head 140* or *141*, as the case may be, and
- (b) in any case, a person so connected and any such other director as is mentioned in *subhead (2)* shall not be so liable if he or she shows that, at the time the transaction or arrangement was entered into (or, as the case may be, at the time the particular transaction was entered into in pursuance of the arrangement), he or she did not know the relevant circumstances constituting the contravention.

Explanatory note: This head is based on section 232 of the Companies Act 2014 and codifies the common law duty of account and indemnity. It makes clear that a breach of a director's duties not to exploit the co-operative society's property or opportunities can result in the director and others being liable to account to the society for any gain made by them, in addition to their liability to indemnify the society for any loss incurred by it as a result of such a breach. This head also sets out the civil consequences for breaching other heads contained in Part 5, such as those in connection with substantial property transactions and loans to directors. It is clarified that where directors act in breach of their duties under head 131(1)(a), (c), (d), (e), (f) or (g) they shall be liable – as would have been the case under the corresponding common law rule or equitable principle – to do either or both of the following: account for gains made or indemnify the co-operative society for losses resulting. These provisions are without prejudice to the co-operative society's right at common law to claim damages for breach of duty or to make an application seeking grant of equitable relief but the provisions shall not be read as having the combined effect of enabling the society to be afforded more compensation than is right and equitable. The head clarifies the circumstances in which a director shall not be liable where an arrangement or transaction is entered into by the co-operative society and a person connected with the director or of its holding company in contravention of heads 140 or 141.

HEAD 136 – Power of court to grant relief to officers of co-operative society

Provide that:

- (1) This head applies to any proceedings for negligence, default, breach of duty or breach of trust against an officer of a co-operative society.
- (2) In proceedings to which this head applies the court hearing the proceedings has the power of granting relief provided under *subhead (3)* if it appears to the court that the officer concerned is or may be liable in respect of the negligence, default, breach of duty or breach of trust (the “wrong concerned”) but that he or she has acted honestly and reasonably and that, having regard to all the circumstances of the case (including those connected with his or her appointment), he or she ought fairly to be excused for the wrong concerned.
- (3) The power referred to in *subhead (2)* is to relieve the officer concerned, either wholly or partly, from his or her liability in respect of the wrong concerned on such terms as the court may think fit.

Explanatory note: This head is based on section 233 of the Companies Act 2014. It gives the court the power to grant relief from liability arising from breach of duty, negligence, default, or trust to officers of the co-operative society where it is satisfied that the officer has acted honestly and reasonably.

HEAD 137 – Anticipated claim: similar power of relief as under head 136

Provide that:

(1) If an officer of a co-operative society has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of duty or breach of trust (the “wrong concerned”) he or she may make the following application to the court.

(2) That application is an application to be relieved of liability in respect of the wrong concerned; on the making of such an application the court shall have the same power to relieve the applicant as it would have had (by virtue of *head 136*) if it had been a court before which proceedings against that person for the wrong concerned had been brought.

Explanatory note: This head is based on section 234 of the Companies Act 2014. It provides for a situation where an officer of a co-operative society anticipates that a claim will or might be made against him or her. He or she may make an application to court to be relieved of liability in respect of the wrong concerned. The court is given the power to grant relief where it is satisfied that the officer has acted honestly and reasonably.

HEAD 138 – Any provision exempting officers of co-operative society from liability void (subject to exceptions)

Provide that:

(1) Subject to the provisions of this head, the following provision shall be void, namely, any provision:

(a) purporting to exempt any officer of a co-operative society from; or

(b) purporting to indemnify such an officer against;

any liability which by virtue of any enactment or rule of law would otherwise attach to him or her in respect of any negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the co-operative society.

(2) *Subhead (1)* applies whether the provision concerned is contained in the rules of a co-operative society or a contract with a co-operative society or otherwise.

(3) Notwithstanding *subhead (1)*, a co-operative society may, in pursuance of any such provision as is mentioned in that subhead, indemnify any officer of the co-operative society against any liability incurred by him or her—

(a) in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted; or

(b) in connection with any proceedings or application referred to in, or under, *head 136 or 137* in which relief is granted to him or her by the court.

(4) Notwithstanding *subhead (1)*, a co-operative society may purchase and maintain for any of its officers insurance in respect of any liability referred to in that subhead.

(5) Notwithstanding any provision contained in any enactment, the rules of a co-operative society or otherwise, a director may be counted in the quorum and may vote on any resolution to purchase or maintain any insurance under which the director might benefit.

(6) For the avoidance of doubt, if—

(a) any business, trade or activity has been carried on by means of a co-operative society, or other body corporate, registered or formed under the laws of another country,

(b) the period for which that business, trade or activity was so carried on was not less than 12 months preceding the date on which this subhead falls to be applied,

(c) a provision of the kind referred to in *subhead (1)(a)* or *(b)* in relation to officers of the co-operative society or other body corporate was in being and valid under the laws of that country, and

(d) a co-operative society is formed and registered to carry on that business, trade or activity,

then nothing in this head invalidates the operation of the provision referred to in *paragraph (c)* in respect of any negligence, default, breach of duty or breach of trust occurring before that co-operative society is formed and registered.

(7) In this head—

(a) “officer” includes a statutory auditor,

(b) a reference to an officer includes a reference to any former or current officer of the co-operative society.

Explanatory note: This head is based on section 235 of the Companies Act 2014. It sets out that provisions exempting officers of a co-operative society from liability shall be void. However, an exception is made in favour of an indemnity against liabilities incurred by an officer in defending any proceedings in which judgment is given in his or her favour or in which he or she is acquitted. A co-operative society may purchase and maintain for its officers insurance in respect of any liability referred to in this head and a director may be counted in the quorum and may vote on any resolution to purchase or maintain any such insurance. It is clarified that if any business, trade or activity has been carried on by means of a co-operative society, or other body corporate, registered or formed under the laws of another country for not less than 12 months prior to the date on which this subhead falls to be applied, and the provision regarding exempting officers of a co-operative society or other body corporate from liability was in being and valid under the laws of that country, and a co-operative society is formed and registered to carry on that business, trade or activity, then nothing in this head shall invalidate the operation of the provision in respect of any negligence, default, breach of duty or breach of trust occurring before that co-operative society is formed and registered. “Officer” in this head means former and current officers of the co-operative society and includes a statutory auditor.

*Chapter 3 Evidential provisions with respect to loans, other transactions, etc.,
by directors to co-operative society*

HEAD 139 – Loans, etc., by directors or connected persons to co-operative society or holding company: evidential provisions

Provide that:

(1) In this head “relevant proceedings” means civil proceedings in which it is claimed that a transaction or arrangement entered into, or alleged to have been entered into—

- (a) by a director of a co-operative society with the co-operative society or its holding company, or
- (b) by a person connected with such director with that co-operative society or its holding company (the “related person”),

constitutes a loan or quasi-loan by the director or (as appropriate) the related person to that co-operative society or its holding company, as the case may be.

(2) In relevant proceedings, if the terms of the transaction or arrangement concerned either—

- (a) are not in writing, or
- (b) are in writing, or partially in writing, but are ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it constitutes a quasi-loan as distinct from a loan),

then it shall be presumed, until the contrary is proved, that the transaction or arrangement constitutes neither a loan nor a quasi-loan to the co-operative society or its holding company, as the case may be.

(3) In relevant proceedings, where it is proved that a loan or a quasi-loan was made to the co-operative society or its holding company by the director of the first-mentioned co-operative society or the related person (whether the terms of the loan or quasi-loan are in writing, partially in writing or wholly oral) then, if—

- (a) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan bears interest, it shall be presumed, until the contrary is proved, that the loan or quasi-loan bears no interest,
- (b) the case is one in which those terms are ambiguous with respect to whether, or the extent to which, the loan or quasi-loan is secured, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is not secured, or
- (c) in the event that the loan or quasi-loan is proved to be secured and the case is one in which those terms are ambiguous with respect to the priority that the security concerned is to have as against other indebtedness of the co-operative society, it shall be presumed, until the contrary is proved, that the loan or quasi-loan is subordinate to all other indebtedness of the co-operative society.

(4) If more than one of the cases referred to in *paragraphs (a) to (c) of subhead (3)* apply then each of the presumptions provided by the applicable paragraphs shall apply.

(5) The reference in *subhead (2)(b)* to the terms of a transaction or arrangement being ambiguous as to whether the transaction or arrangement constitutes a loan or quasi-loan or not (or as to whether it

constitutes a quasi-loan as distinct from a loan) shall, if the terms of the transaction or arrangement are partially in writing, be deemed to include a reference to the following case.

(6) That case is one in which—

- (a) the written terms of the transaction or arrangement do not specify what the nature of the transaction or arrangement is, and
- (b) the nature of the transaction or arrangement is alleged to be specified by those of its terms that are not in writing.

(7) References in *subhead (3)* to the terms of a loan or quasi-loan being ambiguous with respect to a matter shall, if the terms of the loan or quasi-loan are partially in writing, be deemed to include references to the following case.

(8) That case is one in which—

- (a) the written terms of the loan or quasi-loan do not make provision in respect of the matter concerned, and
- (b) provision in respect of that matter is alleged to be made by those of the terms of the loan or quasi-loan that are not in writing.

Explanatory note: This head is based on section 237 of the Companies Act 2014 and concerns evidence of loans made by directors. Where the terms of a transaction or arrangements are ambiguous if the transaction or arrangement constitutes a loan or quasi-loan made to the co-operative society by a director or a person connected with the director, there will be a rebuttable presumption that the transaction does not constitute a loan. Where a loan or a quasi-loan to the co-operative society is made by a director or person connected with a director to a co-operative society and the terms are ambiguous there will be a rebuttable presumption that the loan bears no interest, that it is not secured and that it is subordinated to all other creditors. If more than one case is raised under this head, then each of the presumptions provided by the applicable paragraphs of subhead (3) shall apply. The head addresses a potential issue of directors, in windings-up, to claim to be creditors of the co-operative society by having made unsubstantiated loans to their co-operative society.

Chapter 4 Prohibitions on loans to directors and restrictions on other particular transactions involving conflict of interest

HEAD 140 – Substantial transactions in respect of non-cash assets and involving directors, etc.

Provide that:

(1) Subject to *subheads (4) and (5)*, a co-operative society (the “relevant co-operative society”) shall not enter into an arrangement under which—

(a) a director of the relevant co-operative society or of its holding company, or a person connected with such a director, acquires or is to acquire, one or more non-cash assets of the requisite value from the relevant co-operative society, or

(b) the relevant co-operative society acquires or is to acquire, one or more non-cash assets of the requisite value from such a director or a person so connected,

unless the arrangement is first approved—

(i) by a resolution of the relevant co-operative society in general meeting, and

(ii) if the director or connected person is a director of its holding company or a person connected with such a director, by a resolution of the holding company in general meeting.

(2) For the purposes of this head a non-cash asset is of the requisite value if at the time the arrangement in question is entered into its value is not less than €5,000 but, subject to that, exceeds €65,000 or 10 per cent of the amount of the relevant co-operative society’s relevant assets, and for those purposes the amount of a co-operative society’s relevant assets is—

(a) except in a case falling within *paragraph (b)*, the value of its net assets determined by reference to the entity financial statements prepared under section 290 of the Act of 2014 and laid in accordance with section 341 of the Act of 2014, as applied by *head 169*, in respect of the last preceding financial year in respect of which such entity financial statements were so laid,

(b) where no entity financial statements have been prepared and laid under the foregoing heads before that time, the amount of its called-up share capital.

(3) An arrangement entered into by a co-operative society in contravention of this head and any transaction entered into in pursuance of the arrangement (whether by the co-operative society or any other person) shall be voidable at the instance of the co-operative society unless—

(a) restitution of any money or any other asset which is the subject-matter of the arrangement or transaction is no longer possible or the co-operative society has been indemnified in pursuance of *head 135* by any other person for the loss or damage suffered by it, or

(b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person who is not a party to the arrangement or transaction would be affected by its avoidance, or

(c) the arrangement is affirmed by a resolution of the co-operative society in general meeting passed within a reasonable period of time after the date on which the arrangement is entered into and, if it is an arrangement for the transfer of an asset by a director of its holding company or a person who

is connected with such a director, is affirmed by a resolution of the holding company in general meeting passed within a reasonable period of time after that date.

- (4) *Subhead (1)* shall not apply in relation to any arrangement for the acquisition of a non-cash asset—
- (a) if the non-cash asset in question is or is to be acquired—
 - (i) by a holding company from any of its wholly owned subsidiaries, or
 - (ii) from a holding company by any of its wholly owned subsidiaries, or
 - (iii) by one wholly owned subsidiary of a holding company from another wholly owned subsidiary of that holding company,or
 - (b) if the arrangement is entered into by a co-operative society which is being wound up unless the winding up is a members' voluntary winding up,
- or
- (c) if the arrangement involves the disposal of a co-operative society's assets by a receiver.
- (5) *Subhead (1)(a)* shall not apply in relation to any arrangement under which a person acquires or is to acquire an asset from a co-operative society of which he or she is a member if the arrangement is made with that person in his or her character as such member.
- (6) Without prejudice to *subhead (7)*, no approval is required to be given under this head by any body corporate unless it is a co-operative society formed and registered under this Bill.
- (7) No approval is required to be given under this head by a wholly owned subsidiary of any body corporate.
- (8) In this head—
- (a) "non-cash asset" means any property or interest in property other than cash, and for this purpose "cash" includes foreign currency,
 - (b) any reference to the acquisition of a non-cash asset includes a reference to the creation or extinction of an estate or interest in, or a right over, any property and also a reference to the discharge of any person's liability other than a liability for a liquidated sum, and
 - (c) "net assets", in relation to a co-operative society, means the aggregate of the co-operative society's assets less the aggregate of its liabilities, and for this purpose "liabilities" includes—
 - (i) where the co-operative society prepares Companies Act entity financial statements, any provision for liabilities (within the meaning of *paragraph 80* of Schedule 3, paragraph 65 of Schedule 3A or paragraph 39 of Schedule 3B of the Act of 2014, as applied by *head 169*, as the case may be) that is made in those financial statements,
 - (ii) where the co-operative society prepares IFRS entity financial statements, any provision that is made in those financial statements.

Explanatory note:

This head derives from section 238 of the Companies Act 2014 and is designed to regulate self-dealing by directors. The rationale for this provision is that if directors enter into transactions in respect of non-cash assets with the co-operative society, there is a danger that their judgment may be distorted by conflicts of

interest and loyalties. Subhead (1) prohibits a co-operative society from entering into an arrangement under which either a director, or a person connected with such a director, acquires or is to acquire non-cash assets of a requisite value specified in subhead (2) from the co-operative society, or the co-operative society acquires or is to acquire non-cash assets of the requisite value from a director, unless the arrangement is first be approved by an ordinary resolution of the co-operative society in a general meeting. A non-cash asset is of a requisite value if at the time of the transaction it is not less than €5,000 but subject to that, exceeds €65,000 or 10% of the amount of the relevant co-operative society's relevant assets. Any arrangement or transaction entered into by a co-operative society in contravention of this head will be voidable unless certain defined conditions are met. The head also specifies the conditions under which subhead (1) does not apply and where approval is not needed.

HEAD 141 – Prohibition of loans, etc., to directors and connected persons

Provide that:

- (1) Except as provided by *heads 142 to 144*, a co-operative society shall not—
 - (a) make a loan or a quasi-loan to a director of the co-operative society or of its holding company or to a person connected with such a director,
 - (b) enter into a credit transaction as creditor for such a director or a person so connected,
 - (c) enter into a guarantee or provide any security in connection with a loan, quasi-loan or credit transaction made by any other person for such a director or a person so connected.
- (2) A co-operative society shall not arrange for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, if it had been entered into by the co-operative society, would have contravened *subhead (1)*, but, for the purposes of this Part, the transaction shall be treated as having been entered into on the date of the arrangement.
- (3) A co-operative society shall not take part in any arrangement under which—
 - (a) another person enters into a transaction which, if it had been entered into by the co-operative society, would have contravened *subhead (1)* or (2), and
 - (b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the co-operative society or its holding company or a subsidiary of the co-operative society or its holding company.

Explanatory note: This head derives from section 239 of the Companies Act 2014 and introduces prohibition on co-operative societies to give direct or indirect loans or loan-type finance to directors or a person connected with a director. Subhead (1) provides that the co-operative society should not make a loan, enter into a credit transaction as creditor and enter into a guarantee or provide any security in respect of a loan to a director or a person connected to a director. Subhead (2) provides that the co-operative society is prohibited from arranging for the assignment to it or the assumption by it of any rights, obligations or liabilities under a transaction which, would have contravened *subhead (1)*, but, for the purposes of this Part, the transaction shall be treated as having been entered into on the date of the arrangement. Under subhead (3) the co-operative society is prohibited from taking part in arrangements where another person enters into a transaction that contravenes subheads (1) and (2), if it had been entered into by the society and the other person has obtained or is to obtain any benefit from the co-operative society, its subsidiary or a its holding company.

HEAD 142 – Intra-group transactions

Provide that:

- (1) *Head 141* does not prohibit a co-operative society from—
 - (a) making a loan or quasi-loan to any body corporate which is its holding company), subsidiary or a subsidiary of its holding company, or
 - (b) entering into a guarantee or providing any security in connection with a loan or quasi-loan made by any person to any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.
- (2) *Head 141* does not prohibit a co-operative society from—
 - (a) entering into a credit transaction as creditor for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company, or
 - (b) entering into a guarantee or providing any security in connection with any credit transaction made by any other person for any body corporate which is its holding company, subsidiary or a subsidiary of its holding company.

Explanatory note: This head is based on section 243 of the Companies Act 2014. It provides that any member of a group of co-operative societies can, in favour of another member of that group, make or enter into any of the transactions or arrangements that are otherwise prohibited by head 141 of this Bill.

HEAD 143 – Directors’ expenses

Provide that:

- (1) *Head 141* does not prohibit a co-operative society from doing anything—
 - (a) to provide any of its directors with funds to meet vouched expenditure properly incurred or to be incurred by him or her—
 - (i) for the purposes of the co-operative society, or
 - (ii) for the purpose of enabling him or her properly to perform his or her duties as an officer of the co-operative society,
 - or
 - (b) to enable any of its directors to avoid incurring such expenditure.
- (2) Where a co-operative society enters into any transaction that is permitted by *subhead (1)*, any liability falling on any person arising from any such transaction shall be discharged by him or her within 6 months after the date on which it was incurred.
- (3) A person who contravenes *subhead (2)* shall be guilty of a category 4 offence.

Explanatory note: This head is based on section 244 of the Companies Act 2014. Subhead (1) provides that the prohibition of loans to directors and connected persons does not prohibit a co-operative society from providing its directors with funds to meet vouched expenditure incurred for the purposes of the co-operative society or to enable him to properly perform his or her duties or to enable any director to avoid incurring such expenditure. Subhead (2) provides that where a co-operative society enters into such transactions, the loan must be repaid within 6 months from the date on which any liability was incurred. Failure to comply with subhead (2) results in the person concerned being guilty of a category 4 offence.

HEAD 144 – Business transactions

Provide that:

Head 141 does not prohibit a co-operative society from—

- (a) making a loan or quasi-loan,
- (b) entering into a credit transaction, or
- (c) entering into a guarantee or providing any security, of the kind described in that head if the following 2 conditions are satisfied.

(2) Those conditions are—

- (a) the co-operative society enters into the transaction concerned in the ordinary course of its business, and
- (b) the value of the transaction is not greater, and the terms on which it is entered into are no more favourable, in respect of the person for whom the transaction is made, than that or those which—
 - (i) the co-operative society ordinarily offers, or
 - (ii) it is not unreasonable to expect the co-operative society to have offered, to or in respect of a person of the same financial standing as that person but unconnected with the co-operative society.

Explanatory note: This head is based on section 245 of the Companies Act 2014. It provides that the prohibition of loans to directors and connected persons does not prohibit a co-operative society from making a loan, entering into a credit transaction or a guarantee or providing security if these are entered into in the ordinary course of its business and the value of the transaction is not greater (and the terms on which it is entered into are no more favourable) than the conditions ordinarily offered by the co-operative society.

HEAD 145 – Transaction or arrangement in breach of head 141 voidable at instance of co-operative society

Provide that:

If a co-operative society enters into a transaction or arrangement in contravention of *head 141* the transaction or arrangement shall be voidable at the instance of the co-operative society unless—

- (a) restitution of any money or any other asset which is the subject matter of the arrangement or transaction is no longer possible, or the co-operative society has been indemnified in pursuance of *head 135* for the loss or damage suffered by it, or
- (b) any rights acquired *bona fide* for value and without actual notice of the contravention by any person other than the person for whom the transaction or arrangement was made would be affected by its avoidance.

Explanatory note: This head is based on section 246 of the Companies Act 2014. It provides that a transaction or arrangement entered into by a co-operative society in contravention of head 141 is voidable at instance of the co-operative society. A transaction or arrangement in contravention of head 141 will not be voidable if restitution of any money or other assets the subject of the transaction or arrangement is no longer possible, or if the co-operative society has been indemnified in pursuance of head 135 for the loss and damage suffered by it. Alternatively, the transaction will not be voidable where any rights acquired *bona fide* for value without notice of the contravention by any person other than the person for whom the transaction was made would be affected.

HEAD 146 – Offence for contravention of head 141

Provide that:

If a co-operative society enters into a transaction or arrangement that contravenes *head 141*, any officer of it who is in default shall be guilty of a category 2 offence.

Explanatory note: This head is based on section 248 of the Companies Act 2014. It provides that if a co-operative society enters into a transaction or arrangement that contravenes head 141, any officer of it who is in default will be guilty of a category 2 offence.

HEAD 147 – Contracts of employment of directors — control by members over guaranteed periods of employment

Provide that:

(1) In this head “relevant term” means a term by which a director’s employment with the co-operative society of which he or she is a director or, where he or she is the director of a holding company, his or her employment by any co-operative society comprised in the group, is to continue or may be continued, otherwise than at the instance of the co-operative society, for a period exceeding 5 years during which the employment—

- (a) cannot be terminated by the co-operative society by the giving of notice, or
- (b) can be so terminated only in specified circumstances.

(2) References in *subhead (1)* to employment being continued (or its potential to be continued) are references to its being continued (or its potential to be continued) whether under the original agreement concerned or under a new agreement entered into in pursuance of the original agreement concerned.

(3) A co-operative society shall not incorporate in any agreement a relevant term unless the term is first approved by a resolution of the co-operative society in general meeting and, in the case of a director of a holding company, by a resolution of that co-operative society in general meeting.

(4) A resolution of a co-operative society approving a relevant term shall not be passed at a general meeting of the co-operative society unless a written memorandum, setting out the proposed agreement incorporating the term, is available for inspection by members of the co-operative society both—

- (a) at the registered office of the co-operative society for not less than the period of 15 days ending before the date of the meeting, and
- (b) at the meeting itself.

(5) A term incorporated in an agreement in contravention of this head shall, to the extent that it contravenes this head, be void and the agreement shall be deemed to contain a term entitling the co-operative society to terminate it at any time by the giving of reasonable notice.

(6) No approval is required to be given under this head by any body corporate unless it is a co-operative society formed and registered under this Bill, or a wholly owned subsidiary of a body corporate.

(7) For the purposes of this head—

“employment” includes employment under a contract for services;

“group”, in relation to a director of a holding company, means the group which consists of that co-operative society and its subsidiaries.

Explanatory note: This head is based on section 249 of the Companies Act 2014. It imposes restrictions on directors’ employment contracts with a co-operative society. The head provides that a “relevant term” is a term by which a director’s employment with the co-operative society, is to continue or may be continued, otherwise than at the instance of the co-operative society, for a period exceeding 5 years during which the employment either cannot be terminated by the co-operative society by the giving of notice, or can be so terminated only in specified circumstances. It provides that a co-operative society shall not

incorporate in an employment agreement a 'relevant term' unless the relevant term is first approved by a resolution of the society in general meeting and in the case of a director of a holding company, by a resolution of that co-operative in general meeting. The resolution approving the relevant term shall not be passed at a general meeting unless a written memorandum, setting out the proposed agreement which incorporates the term, is made available for inspection by members of the co-operative society both at the registered office of the co-operative society for a period of at least 15 days ending before the date of the meeting, and at the meeting itself. No approval is required to be given under this head by any body corporate unless it is a co-operative society formed and registered under this Bill or a wholly owned subsidiary of a body corporate.

HEAD 148 – Anti-avoidance provision — head 147

Provide that:

(1) In any case where—

- (a) a person is or is to be employed with a co-operative society under an agreement which cannot be terminated by the co-operative society by the giving of notice or can be so terminated only in specified circumstances, and
- (b) more than 6 months before the expiration of the period for which he or she is or is to be so employed, the co-operative society enters into a further agreement (otherwise than in pursuance of a right conferred by or by virtue of the original agreement on the other party to it) under which he or she is to be employed with the co-operative society, or where he or she is a director of a holding company, within the group,

the definition of “relevant term” in *head 147* shall apply as if to the period for which the person is to be employed under that further agreement there were added a further period equal to the unexpired period of the original agreement.

(2) Where *subhead (1)* has effect in relation to the definition of “relevant term” in *head 147, subhead (5)* of that head has effect as if there were substituted “the agreement and the original agreement referred to in *head 148(1)* shall each be deemed to contain a term entitling the co-operative society to terminate it at any time by the giving of reasonable notice” for “the agreement shall be deemed to contain a term entitling the society to terminate it at any time by the giving of reasonable notice”.

(3) For the purposes of this head “employment” and “group” have the same meaning as they have for the purposes of *head 147*.

Explanatory note: This head is based on section 250 of the Companies Act 2014. It provides that if a person is employed or to be employed with a co-operative society and the agreement cannot be terminated by giving of notice, and if more than 6 months before the expiration of the period for which he or she is or is to be so employed, the society enters into a further agreement, the definition of “relevant term” in *head 147* shall apply as if to the period of employment under that further agreement were added a further period equal to the unexpired period of the original agreement.

HEAD 149 – Approval of co-operative society necessary for payment by it to director for loss of office

Provide that:

(1) It shall not be lawful for a co-operative society to make to any director of the co-operative society any payment by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless the following conditions are first satisfied.

(2) Those conditions are—

(a) particulars relating to the proposed payment (including the amount of it) are disclosed to the members of the co-operative society, and

(b) the proposal is approved by resolution of the co-operative society in general meeting.

(3) Without prejudice to the exceptions provided for by *head 152(5)*, a payment made *bona fide* in discharge of an existing legal obligation does not fall within this head.

Explanatory note: This head is based on section 251 of the Companies Act 2014. It prohibits a co-operative society to pay a compensation to any director for loss of office or as consideration for or in connection with his or her retirement from office, unless the particulars of the proposed payment are disclosed to the members of the co-operative society, and the proposal is approved by resolution of the society in general meeting. A payment made *bona fide* in discharge of an existing legal obligation does not fall within this head.

HEAD 150 – Approval of co-operative society necessary for payment to director of compensation in connection with transfer of property

Provide that:

- (1) It shall not be lawful in connection with the transfer of the whole or any part of the undertaking or property of a co-operative society for any payment to be made to any director of the co-operative society by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office, unless the following conditions are first satisfied.
- (2) Those conditions are—
 - (a) particulars relating to the proposed payment (including the amount of it) are disclosed to the members of the co-operative society, and
 - (b) the proposal is approved by resolution of the co-operative society in general meeting.
- (3) Where a payment which is not lawful under *subhead (1)* is made to a director of a co-operative society the amount received shall be deemed to have been received by him or her in trust for the co-operative society.
- (4) Without prejudice to the exceptions provided for by *head 152(5)*, a payment made *bona fide* in discharge of an existing legal obligation does not fall within this head.

Explanatory note: This head is based on section 252 of the Companies Act 2014. It provides that the approval of the members of the co-operative society must be obtained for payment to a director of compensation in connection with the transfer of property. This head applies whether the payment is to be made by the co-operative society or by other persons. If a payment which is not lawful under this head is received by the director, the amount shall be deemed to have been received in trust for the co-operative society. A payment made *bona fide* in discharge of an existing legal obligation does not fall within this head.

HEAD 151 – Duty of director to disclose to co-operative society payments to be made to him or her in connection with transfer of shares in co-operative society

Provide that:

(1) The following duty arises on the part of a director where, in connection with the transfer to any persons of any of the shares in a co-operative society a payment is to be made to that director of the co-operative society by way of compensation for loss of office or as a consideration for or in connection with his or her retirement from office.

(2) That duty on the part of that director is to take all reasonable steps to secure that particulars of the proposed payment (including the amount of it) are included in or sent with any notice of the offer made for their shares which is given to any shareholders.

(3) Without prejudice to the exceptions provided for by *head 152(5)*, a payment to be made, or that is made, *bona fide* in discharge of an existing legal obligation does not fall within this head.

(4) If—

(a) any such director fails to take reasonable steps as mentioned in *subhead (2)*, or

(b) any person who has been properly required by any such director to include the particulars specified in that subhead in, or send them with, any such notice so mentioned fails to do so,

he or she shall be guilty of a category 3 offence.

(5) Unless—

(a) the requirements of *subheads (1)* and *(2)* are complied with in relation to any such payment as is mentioned in *subhead (1)*, and

(b) the making of the proposed payment is, before the transfer of any shares in pursuance of the offer, approved by a meeting summoned for the purpose of the holders of the shares to which the offer relates and of other holders of shares of the same class as any of those shares,

any sum received by the director on account of the payment shall be deemed to have been received by him or her in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by him or her in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum.

(6) Where the shareholders referred to in *paragraph (b)* of *subhead (5)* are not all the members of the co-operative society and no provision is made by the rules of the society for summoning or regulating such a meeting as is mentioned in that paragraph, the provisions of—

(a) this Part and the rest of *Parts 1* to *12*, and

(b) the rules of the co-operative society,

relating to general meetings of the society shall, for that purpose, apply to the meeting either without modification or with such modifications as the Authority, on the application of any person concerned, may direct for the purpose of adapting them to the circumstances of the meeting.

(7) If at a meeting summoned for the purpose of approving any payment as required by *paragraph (b)* of *subhead (5)*, a quorum is not present and after the meeting has been adjourned to a later date a quorum is again not present, the payment shall be deemed for the purposes of that subhead to have been approved.

Explanatory note: This head is based on section 253 of the Companies Act 2014. It imposes a duty on a director in connection with transfer of shares in co-operative society, to disclose to the society the particulars of a compensation payment to be received for loss of office or as consideration for or in connection with his or her retirement from office. An officer who fails to do so, will be guilty of a category 3 offence. A payment made *bona fide* in discharge of an existing legal obligation does not fall within this head.

Unless the director discloses to the co-operative society the particulars of the compensation payment and the making of the proposed payment, before the transfer of the shares in pursuance of the offer, approved by a meeting of the holders of the shares to which the offer relates, any sum received by the director shall be deemed to have been received in trust for any persons who have sold their shares as a result of the offer made and the expenses incurred by the director in distributing that sum amongst those persons shall be borne by him or her and not retained out of that sum. Where the shareholders are not all the members of the co-operative society and no provision is made by the rules of the society for summoning or regulating the meeting specified in (5)(b), the provisions on this Part and Parts 1 to 12 and the rules of the society relating to general meetings apply to the meeting without modifications or with such modifications as specified by the Corporate Enforcement Authority. If at a meeting summoned to approve the payment as required by *paragraph (b) of subhead (5)*, a quorum is not present and a quorum is again not present after the meeting has been adjourned to a later date, the payment shall be deemed to have been approved.

HEAD 152 – “Existing legal obligation”— definition and other provisions in relation to heads 149 to 151

Provide that:

- (1) “Existing legal obligation” for the purposes of—
 - (a) *head 149(3)*, means an obligation of the co-operative society concerned, or any body corporate associated with it, that was not entered into in connection with, or in consequence of, the event giving rise to the payment for loss of office in question,
 - (b) *heads 150(4)* and *151(3)*, means an obligation of the person making, or proposing to make, the payment that was not entered into for the purposes of, in connection with or in consequence of, the transfer in question.
- (2) In the case of a payment to which both *heads 149* and *150* apply, or to which both *heads 149* and *151* apply, *paragraph (a)* of *subhead (1)* and not *paragraph (b)* of it shall have effect.
- (3) Where in proceedings for the recovery of any payment which it is alleged is recoverable as having, by virtue of—
 - (a) *subheads (1)* and *(3)* of *head 150*, or
 - (b) *subheads (1)*, *(2)* and *(5)* of *head 151*,been received by any person in trust, it is shown that—
 - (i) the payment was made in pursuance of any arrangement entered into as part of the agreement for the transfer in question or within one year before or 2 years after the date of that agreement or the offer leading to it, and
 - (ii) the co-operative society or any person to whom the transfer was made was privy to that arrangement,the payment shall be deemed, except in so far as the contrary is shown, to be one to which the subheads concerned apply.
- (4) If, in connection with any such transfer as is mentioned in *head 150* or *151*—
 - (a) the price to be paid to a director of the co-operative society for any shares in the co-operative society held by him or her is in excess of the price which could at the time have been obtained by other holders of the like shares, or
 - (b) any valuable consideration is given to any such director,the excess or the money value of the consideration, as the case may be, shall, for the purposes of that head, be deemed to have been a payment made to him or her by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office.
- (5) References in *heads 149* to *151* to payments to any director of a co-operative society by way of compensation for loss of office or as consideration for or in connection with his or her retirement from office include references to payments to him or her by way of compensation for—
 - (a) loss of office as director of the co-operative society,
 - (b) the loss, while director of the co-operative society, or on or in connection with his or her ceasing to be a director of the co-operative society, of any other office in connection with the management of

the co-operative society's affairs or of any office as director or otherwise in connection with the management of the affairs of any subsidiary,
but do not include references to any *bona fide* payment by way of—
(i) damages for breach of contract, or
(ii) pension in respect of past services,
and, for the purposes of this subhead, “pension” includes any superannuation allowance, superannuation gratuity or similar payment.

(6) Nothing in *head 149* or *150* shall be taken to prejudice—
(a) the operation of any rule of law requiring disclosure to be made with respect to any such payments as are mentioned in that head or with respect to any other like payments made or to be made to the directors of a society, or
(b) the operation of any rule of law or enactment in relation to the accountability (if any) of any director for any such payment received by him or her.

(7) References in *heads 149* to *151* and this head to a director include references to a past director.

(8) For the purposes of *subhead (1)(a)* a body corporate is associated with a co-operative society if one is the subsidiary of the other or both are subsidiaries of the same body corporate.

Explanatory note: This head is based on section 254 of the Companies Act 2014. It seeks to prevent the making of disguised payments to the directors in an attempt to circumvent heads 149 to 151 of this Bill. Subhead (1) provides a definition for “existing legal obligation”.

Chapter 5 Disclosure of interests in shares and debentures

HEAD 153 – Interpretation generally (Chapter 5)

Provide that:

(1) In this Chapter—

- (a) “body corporate of the same group” means, in relation to a co-operative society, a body corporate which belongs to the same group of companies as that co-operative society belongs to;
- (b) “child” does not include a person who has attained the age of majority; and
- (c) a reference to a child of a director or secretary shall be deemed to include a reference to a child of the director’s civil partner or (as the case may be) the secretary’s civil partner who is ordinarily resident with (as the case may be)—
 - (i) the director and the civil partner, or
 - (ii) the secretary and the civil partner.

(2) For the avoidance of doubt, the use of the words “aggregate interest” in any provision of this Chapter, with reference to the interest of a director or secretary and the spouse (or civil partner) and children of the director or secretary in shares or debentures, does not operate to limit the provision’s effect (and, accordingly, does not prevent the director or secretary having the benefit of the provision) in either the situation where—

- (a) the director or secretary alone has an interest in shares or debentures reckonable for the purposes of the provision, or
- (b) one or more, but not all, of any foregoing class of persons has or have alone such a reckonable interest.

Explanatory note: This head is based on section 256 of the Companies Act 2014 and clarifies the meaning of various terms in Chapter 5, including “body corporate of the same group”, “child” and “aggregate interest”.

HEAD 154 – “Disclosable interest” — meaning of that term

Provide that:

- (1) Subject to *head 157*, in this Chapter “disclosable interest” means, in relation to shares or debentures, any interest of any kind whatsoever in shares in, or debentures of, a body corporate.
- (2) For that purpose, there shall be disregarded any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject.
- (3) It is also immaterial—
 - (a) whether or not the interest is held alone, jointly or in common with any other person, or
 - (b) whether the shares or debentures are identifiable or not.

Explanatory note: This head is based on section 257 of the Companies Act 2014. The head clarifies that “disclosable interest” in relation to shares or debentures is any interest of any kind in shares in, or debentures of a body corporate.

HEAD 155 – Circumstances in which person is to be regarded as having disclosable interest in shares or debentures

Provide that:

(1) Without prejudice to the other circumstances in which a person may have such an interest, a person shall, for the purposes of this Chapter, be regarded as having a disclosable interest in shares or debentures if—

- (a) the person enters into a contract for the purchase by him or her of them (whether for cash or other consideration),
- (b) the person is the registered holder or joint holder of them,
- (c) not being the registered holder, the person is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right,
- (d) a body corporate is interested in them and—
 - (i) that body corporate or its directors are accustomed to act in accordance with the person’s directions or instructions, or
 - (ii) the person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of that body corporate,
- (e) otherwise than by virtue of having an interest under a trust—
 - (i) the person has a right to call for delivery of the shares or debentures to himself or herself or to his or her order, or
 - (ii) the person has a right to acquire an interest in shares or debentures, or is under an obligation to take an interest in shares or debentures, whether in any case the right or obligation is conditional or absolute,
- (f) the person is a beneficiary of a trust and—
 - (i) the property held on trust for that beneficiary includes any interest in shares or debentures, and
 - (ii) that person, apart from this paragraph, does not have an interest in the shares or debentures.

(2) For the purpose of *subhead (1)(c)*, a person shall be taken to be entitled to exercise or control the exercise of any right conferred by the holding of shares or debentures if he or she—

- (a) has a right (whether subject to conditions or not), the exercise of which would make him or her so entitled, or
- (b) is under an obligation (whether so subject or not), the fulfilment of which would make him or her so entitled.

(3) For the purpose of *subhead (1)(d)*—

- (a) “voting power” does not include any power to vote which arises only in specified circumstances,
- (b) where a person is entitled to exercise or control the exercise of one third or more of the voting power at general meetings of a body corporate and that body corporate is entitled to exercise or control the exercise of any of the voting power at general meetings of another body corporate (the “relevant voting power”), then, for the purposes of that provision, the relevant voting power shall be taken to be exercisable by that person.

Explanatory note: This head is based on section 258 of the Companies Act 2014. It clarifies the circumstances in which a person is to be regarded as having disclosable interest in shares or debentures. These include if the person enters into a contract for the purchase by him or her of shares and debentures, the person is the registered holder or joint holder of them, the person, if not the registered holder, is entitled to exercise any right conferred by the holding of those shares or debentures or is entitled to control the exercise of any such right, the holding by a person of a mortgage or charge of shares should be regarded as having an interest in shares or debentures. A shadow director should be regarded as having an interest in any shares held by the body corporate. Where shares are held in the name of a nominee, the person on whose behalf the nominee acts will be treated as having an interest in the shares.

HEAD 156 – Circumstances in which person shall be regarded as having ceased to have disclosable interest

Provide that:

A person shall, amongst other circumstances, be taken to have ceased to have a disclosable interest in shares or debentures for the purposes of this Chapter upon—

- (a) delivery to another person's order of the shares or debentures in fulfilment of a contract for the purchase of them by that other person or in satisfaction of a right of his or her to call for delivery of them, or
- (b) failure by another person to deliver the shares or debentures in accordance with the terms of a contract or pursuant to a right to call for delivery of them, or
- (c) the lapse of that person's right to call for delivery of the shares or debentures.

Explanatory note: This head is based on section 259 of the Companies Act 2014. It clarifies the circumstances in which a person is to be regarded as having ceased to have disclosable interest in shares or debentures.

HEAD 157 – Interests that are not disclosable interests for the purposes of this Chapter

Provide that:

The following interests shall not constitute disclosable interests for the purposes of this Chapter—

- (a) where property is held on trust and an interest in shares or debentures is comprised in that property—
 - (i) an interest in reversion or remainder,
 - (ii) an interest of a bare trustee, or
 - (iii) any discretionary interest,
- (b) an interest of a person subsisting by virtue of—
 - (i) his or her holding—
 - (I) units in an authorised unit trust scheme within the meaning of the Unit Trusts Act 1990,
 - (II) units in an undertaking for collective investment in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011), or
 - (III) shares in an investment company within the meaning of Part 24 of the Act of 2014,or
 - (ii) a scheme made under section 46 of the Charities Act 1961,
- (c) an interest for the life of himself or herself or of another person under a settlement in the case of which the property comprised in the settlement consists of or includes shares or debentures, and—
 - (i) the settlement is irrevocable, and
 - (ii) the settlor (within the meaning of section 10 of the Taxes Consolidation Act 1997) has no interest in any income arising under, or property comprised in, the settlement,
- (d) an interest in shares or debentures held by a member of an authorised market operator carrying on business as a stock broker which is held by way of security only for the purposes of a transaction entered into by the person or other body concerned in the ordinary course of business of such person or other body,
- (e) any power or discretion vested in a person by virtue only of such person having been duly appointed as or acting as—
 - (i) an attorney of a person with an interest in shares or debentures,
 - (ii) a proxy of a member of, or holder of debentures in, co-operative society or a representative of a body corporate which is a member of the holder of debentures of a co-operative society,
- (f) any interest in shares in, or debentures of, a body corporate where the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary is in—
 - (i) shares representing 1 per cent or less, in nominal value, of the body corporate's issued share capital of a class carrying rights to vote in all circumstances at general meetings of the body corporate (provided that the temporary suspension of voting rights in respect of shares comprised in issued share capital of a body corporate of any such class shall be disregarded), or
 - (ii) shares or debentures not carrying the right to vote at general meetings of the body corporate, save a right to vote which arises only in specified circumstances,

- (g) as regards circumstances in which an offer is made in relation to shares in a body corporate, being an offer—
 - (i) to which the Irish Takeover Panel Act 1997 or the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006) applies or apply, and
 - (ii) which is conditional on acceptance to a given extent, an interest in those shares that would have arisen but for the offer not being accepted to the required extent,
- (h) such interests, or interests of such a class, as may be prescribed for the purposes of this subhead.

Explanatory note: This head is based on section 260 of the Companies Act 2014 and provides a list of interests which do not constitute disclosable interests for the purposes of this Chapter. These include interests which subsist by virtue of an authorised unit trust scheme, interests for the life of a person or of another person under a settlement where the property comprised in the settlement consists of or includes shares or debentures, exemptions for interests in shares which are held only as security by banks or stockbrokers. Paragraph (e) states which powers or discretion vested in a person constitute a non-disclosable interest. Paragraph (e)(i) includes an attorney of a person with an interest in shares or debentures. Paragraph (f) introduces an exception to the requirement of disclosure of shares or interests. This exception applies where the shares held amount to 1 per cent or less of the share capital of the entity, or where the shares or debentures do not carry a right to vote at general meetings, save in special circumstances.

HEAD 158 – Duty to notify disclosable interests — first of the 5 cases in which duty arises — interests held at commencement of Chapter

Provide that:

- (1) Subject *head 161*, a person who, at the commencement of this Chapter—
 - (a) is a director or secretary of a co-operative society, and
 - (b) is aware of—
 - (i) the person’s having, or
 - (ii) the person’s spouse or civil partner or a child of the person’s having, a disclosable interest in shares in, or debentures of, that co-operative society (the “relevant co-operative society”) or a body corporate of the same group,has the following duty.
- (2) That duty is to notify the relevant co-operative society in writing of the particulars specified in *head 162* of the disclosable interest and the fact of its being so held.

Explanatory note: This head is based on section 261 of the Companies Act 2014. It sets out the first case in which a duty to notify disclosable interests arises. It imposes an obligation on directors and secretaries to notify their interests in shares or debentures of the co-operative society held by themselves, or by their spouse or minor children.

HEAD 159 – Second and third cases in which duty to notify arises — interests acquired or ceasing to be held

Provide that:

- (1) Subject to *head 161*, a person who—
 - (a) is a director or secretary of a co-operative society, and
 - (b) becomes aware of—
 - (i) the person’s having acquired or having ceased to have, or
 - (ii) the person’s spouse or civil partner, or a child of the person’s, having acquired or having ceased to have,
a disclosable interest in shares in, or debentures of, that co-operative society (the “relevant co-operative society”) or any body corporate of the same grouphas the following duty.
- (2) That duty is to notify the relevant co-operative society in writing of the particulars specified in *head 162* of the disclosable interest and the fact of its being so acquired or, as the case may be, of its so ceasing to be held.
- (3) Subject to *head 161*, a person who—
 - (a) becomes aware of—
 - (i) the person’s having, or
 - (ii) the person’s spouse or civil partner or a child of the person’s having, a disclosable interest in shares in, or debentures of, a co-operative society (the “relevant co-operative society”) or a body corporate of the same group, and
 - (b) becomes a director or secretary of the relevant co-operative society (not being the secretary of the relevant co-operative society at the time of so becoming a director or not being a director at the time of so becoming the secretary of the relevant co-operative society),has the following duty.
- (4) That duty is to notify the relevant co-operative society in writing of the particulars specified in *head 162* of the disclosable interest and the fact of its being so held.

Explanatory note: This head is based on section 262 of the Companies Act 2014. It sets out the second and third cases in which a duty to notify arises. Where the disclosable interest acquired or ceasing to be held relates to the director or secretary themselves or to their spouse, civil partner or child, that director or secretary must notify the co-operative society in writing of the particulars of that disclosable interest (whether held or ceasing to be held). Furthermore, a person who becomes a director or secretary of a co-operative society must similarly notify the society in writing if he or she becomes aware that a director or secretary of the society or a spouse, civil partner or child of a director or secretary of the society has a disclosable interest in shares in, or debentures of a society or body corporate of the same group.

HEAD 160 – Fourth and fifth cases in which duty to notify arises — grant or assignment of subscription rights, etc.

Provide that:

- (1) Subject to *head 161*, a director or secretary of a co-operative society (the “relevant co-operative society”) who—
- (a) (i) is granted by another body corporate of the same group a right to subscribe for shares in, or debentures of, that other body corporate, or
 - (ii) exercises such a right so granted,
 - or
 - (b) becomes aware of a spouse or civil partner of the director’s or secretary’s or a child of the director’s or secretary’s—
 - (i) having been granted by such a body corporate such a right of subscription, or
 - (ii) having exercised such a right so granted,
 - has, subject to *subhead (3) and (5)*, the following duty.
- (2) That duty is to notify the relevant co-operative society in writing of—
- (a) the grant of the right of subscription, or the exercise of it, referred to in *paragraph (a) or (b)* of the preceding subhead (or, as the case may be, both the things referred to in those paragraphs),
 - (b) the number or amount, and class, of shares or debentures involved and the consideration payable, and
 - (c) if *head 162(6)* applies, the address there mentioned.
- (3) If a director or secretary, at the time of the thing referred to in *subhead (1)(a)* being done, is not aware of the fact of the thing being done (the “relevant fact”) by reason of—
- (a) in the case of the thing referred to in *subhead (1)(a)(i)*, the grantor of the right not informing the director or secretary immediately of the grant,
 - (b) in the case of the thing referred to in *subhead (1)(a)(ii)*, the thing being done on behalf of the director or secretary by another person pursuant to an authority conferred on the person by the director or secretary, or
 - (c) in either such case, other exceptional circumstances,
- then the duty under *subhead (2)*, with respect to that thing, only arises on the director or secretary becoming aware of the relevant fact.
- (4) However, in any proceedings (civil or criminal) it shall be presumed, unless the contrary is shown, that none of the circumstances referred to in *subhead (3)* applies.
- (5) If the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary in shares in the body corporate concerned (both before and after the occurrence of the event or events referred to in *subhead (2)(a)*) is such as to fall within *head 157(f)(i)*, then the duty of notification under *subhead (2)* does not arise.
- (6) Subject to *head 161* a director or secretary of a co-operative society (the “relevant co-operative society”) who—

- (a) enters into a contract to sell shares in, or debentures of, the relevant co-operative society or any body corporate of the same group,
- (b) assigns a right granted to him or her by the relevant co-operative society or a body corporate of the same group to subscribe for shares in, or debentures of, the relevant co-operative society or such body corporate, or
- (c) becomes aware of a spouse or civil partner of the director's or secretary's or a child of the director's or secretary's—
 - (i) having entered into a contract to sell such shares or debentures, or
 - (ii) having assigned a right that has been granted to the spouse, civil partner or child by the relevant co-operative society or such body corporate to subscribe for shares in, or debentures of, the relevant co-operative society or such body corporate,

has, subject to *subhead (8)* and *(10)*, the following duty.

(7) That duty is to notify the relevant co-operative society in writing of—

- (a) the entering into of the contract or the assigning of the right referred to in *paragraph (a), (b) or (c)* of the preceding subhead (or, as the case may be, the doing of 2 or more of the things referred to in those paragraphs),
- (b) the number or amount, and class, of shares or debentures involved and the consideration payable, and
- (c) if *head 162(6)* applies, the address there mentioned.

(8) If a director or secretary, at the time of the thing referred to in *subhead (6)(a) or (b)* being done, is not aware of the fact of the thing being done (the “relevant fact”) by reason of—

- (a) the thing being done on behalf of the director or secretary by another person pursuant to an authority conferred on the person by the director or secretary, or
- (b) other exceptional circumstances,

then the duty under *subhead (7)*, with respect to that thing, only arises on the director or secretary becoming aware of the relevant fact.

(9) However, in any proceedings (civil or criminal) it shall be presumed, unless the contrary is shown, that none of the circumstances referred to in *subhead (8)* applies.

(10) If the aggregate interest of the director or secretary and spouse (or civil partner) and children of such director or secretary in shares in the body corporate concerned (before the occurrence of the event or events referred to in *subhead (7)(a)*) is such as to fall within *head 157(f)(i)*, then the duty of notification under *subhead (7)* does not arise.

Explanatory note: This head is based on section 263 of the Companies Act 2014 and sets out the fourth and fifth cases in which a duty to notify arises. It imposes the obligation to notify on a director or secretary of the relevant co-operative society who is granted (by another body corporate of the same group) or exercises a right to subscribe for shares or debentures of that other body corporate or becomes aware of a spouse, civil partner or child of the director's or secretary's having been granted or exercising such a right.

It states that if a director or secretary is not aware of the fact of the thing being done then the duty only arises when they subsequently become aware of the relevant fact.

Subheads (6) and (7) impose an obligation on directors and secretaries who enter into a contract to sell shares in, or debentures of, the relevant society or any body corporate of the same group; assigns a right granted to him or her to subscribe for shares or debentures of the relevant society or any body corporate of the same group; or becomes aware of a spouse or civil partner of the director's or secretary's or a child of the director's or secretary's having entered into a contract to sell such shares or debentures; or having assigned a right that has been granted to the spouse, civil partner or child by the relevant society or such body corporate to subscribe for shares in, or debentures of, the relevant society or such body corporate. The director or secretary has a duty to notify the relevant society in writing. When a one per cent or less share option is granted by parent companies to a director it is not required that it is reported to the company. Subhead (8) states that if a director or secretary is not aware of the fact of the thing being done then the duty only arises when they subsequently become aware of the relevant fact.

HEAD 161 – Application of heads 158 to 160 and exceptions to them

Provide that:

- (1) With respect to the application of *heads 158 to 160* (by virtue of *heads 124 and 125*) to shadow directors and *de facto* directors, the making of a notification by a person under *head 158, 159 or 160* shall not, in itself, be proof that the person making the notification is a shadow director or *de facto* director.
- (2) Nothing in *heads 158 to 160* shall operate so as to impose an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate.
- (3) Nothing in *heads 158 to 160* shall operate to impose an obligation on a director or secretary of a co-operative society who is granted an option to subscribe for shares in, or debentures of, that co-operative society to make any notification to that co-operative society in respect of such grant.

Explanatory note: This head is based on section 264 of the Companies Act 2014 and deals with the application of head *158 to 160* and the exceptions to them. Subhead (1) provides that the making of a notification by a person under these heads shall not be proof in itself that the person making the notification is a shadow director or *de facto* director. Subhead (2) sets out that nothing in *heads 158 to 160* shall operate so as to impose an obligation with respect to shares in a body corporate which is the wholly owned subsidiary of another body corporate. Subhead (3) states that nothing in *heads 158 to 160* shall operate to impose an obligation on a director or secretary of the co-operative society who is granted an option to subscribe for shares in, or debentures of, that co-operative society to make any notifications to that co-operative society in respect of such a grant.

HEAD 162 – Mode of notification by directors and secretaries under this Chapter

Provide that:

(1) In relation to the acquisition or disposal by a director or secretary of a co-operative society of shares or debentures the means specified in *subhead (2)* shall, if the director or secretary opts to use them, constitute a sufficient notification in writing to the co-operative society, for the purposes of this Chapter, of the fact of their acquisition or disposal and the particulars of the disclosable interest.

(2) Those means are the delivery, within 30 days after the date of the instrument, to the co-operative society of an instrument of transfer in respect of the shares or debentures, being an instrument that identifies—

- (a) the director or secretary by name,
- (b) the shares or debentures in question,
- (c) the purchase or sale price therefor, and
- (d) if *subhead (6)* applies, the address there mentioned.

(3) In any case not falling within *subhead (1)* or where the director or secretary opts not to use the foregoing means in a case falling within *subhead (1)*, the following means shall be used to notify in writing, for the purpose of *head 158* or *159*, the fact of a disclosable interest being held or of its being acquired or being ceased to be held (as the case may be) and the particulars thereof.

(4) Those means are the delivery to the co-operative society concerned (within 8 days after the date of the event giving rise to the duty to make the notification) of a statement in writing by or on behalf of the director or secretary containing the following particulars:

- (a) a statement that the director or secretary, or his or her spouse or civil partner or a child of the director or secretary (as the case may be) has, has acquired or has ceased to have (as the case may be) a disclosable interest in shares in, or debentures of, the co-operative society or a body corporate of the same group,
- (b) the number of shares or debentures and their class, and a statement of the names of the registered holders of the shares or debentures,
- (c) in the case of an acquisition or disposal of shares or debentures, the consideration payable therefor, and
- (d) if *subhead (6)* applies, the address there mentioned.

(5) The notification referred to in *head 160(2)* or *(7)* shall be made to the co-operative society within 5 days after the date of the event giving rise to the duty to make the notification; in a case where the circumstances referred to in *subhead (3)* or *(8)* of *head 160* apply, the date of the event giving rise to the duty to make the notification is the date on which the director or secretary becomes aware of the relevant fact referred to in that *subhead (3)* or *(8)*.

(6) A shadow director or *de facto* director shall, in any notification made by him or her under this Chapter, specify his or her address and this applies whether the notification is in respect of himself or herself or a spouse or civil partner of such director or a child of such director.

Explanatory note: This head is based on section 265 of the Companies Act 2014 and its purpose concerns the mode of notification of interests by directors and secretaries under the Chapter. Subhead (1) states that, in relation to the acquisition or disposal by a director or secretary of the co-operative society, the means specified in subhead (2) constitute a sufficient notification if the director or secretary opts to use those means. Those means involve the delivery of an instrument of transfer in respect of the shares or debentures to the co-operative society within 30 days of the date of the instrument and that instrument of transfer must contain the particulars listed in subhead (2).

Subhead (3) sets out that in any case not falling within subhead (1) or where the director or secretary opts not to use the foregoing means in a case falling within subhead (1), the means laid down in subhead (4) must be used to notify in writing, for the purpose of head 158 or 159, the fact of a disclosable interest being held or of its being acquired or being ceased to be held. Those means are that a statement in writing by the director or secretary must be delivered to the co-operative society concerned within 8 days after the date of the event giving rise to the duty to make the notification. The statement must say that the person in question has acquired or has ceased to have (as the case may be) a disclosable interest in shares in, or debentures of, the co-operative society or a body corporate of the same group. It also must give details in relation to the shares or debentures in question such as the number, class and consideration paid therefor.

Subhead (5) deals with the notification referred to in head 160(2) or (7) – such notification shall be made to the co-operative society within 5 days after the date of the event giving rise to the duty to make the notification. In a case where the circumstances referred to in subhead (3) or (8) of head 160 apply, the date of the event giving rise to the duty to make the notification is the date on which the director or secretary becomes aware of the relevant fact referred to in that subhead (3) or (8).

Subhead (6) provides that a shadow director or de facto director giving a notification under this Chapter must give his or her address in that notification.

HEAD 163 – Enforcement of notification obligation

Provide that:

- (1) Where a person authorises any other person (the “agent”) to acquire or dispose of, on his or her behalf, interests in shares in, or debentures of, a co-operative society, the person shall secure that the agent notifies him or her immediately of acquisitions or disposals of interests in such shares or debentures effected by the agent which will or may give rise to any duty on the person’s part to make a notification under this Chapter with respect to his or her interest in those shares or debentures.
- (2) Subject to the subsequent provisions of this head, where a person fails to fulfil, within the period specified by this Chapter in that behalf, a duty to which he or she is, by virtue of *head 158, 159 or 160*, subject, no right or interest of any kind whatsoever in respect of the shares or debentures concerned shall be enforceable by him or her, whether directly or indirectly, by action or legal proceeding.
- (3) Where any right or interest is restricted under *subhead (2)*—
 - (a) any person in default as is mentioned in that subhead or any other person affected by such restriction may apply to the court for relief against a disability imposed by or arising out of that subhead,
 - (b) the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause or that on other grounds it is just and equitable to grant relief, may grant such relief either generally or as respects any particular right or interest, on such terms and conditions as it sees fit,
 - (c) where an applicant for relief under this subhead is a person referred to in *subhead (2)*, the court may not grant such relief if it appears that the default has arisen as a result of any deliberate act or omission on the part of the applicant.
- (4) Where a director or secretary is in default as mentioned in *subhead (2)*, then, notwithstanding that default, that subhead shall not apply in respect of the shares or debentures concerned if the following condition is satisfied.
- (5) That condition is that the identity of the director or secretary and his or her holding, acquisition and disposal (as the case may be) of the shares or debentures in question and the consideration paid or payable therefor has, from not later than 30 days after the date the duty arose, been apparent on the face of all or any of the following registers or documents of the co-operative society concerned (including some or all of them when consulted together), namely—
 - (a) the register of members,
 - (b) the register of directors and secretaries,
 - (c) the register of interests under *head 164*,
 - (d) documents made available by that society with those registers.
- (6) If a co-operative society in general meeting passes a special resolution providing that the following protection shall apply in favour of a third party having the following dealing in relation to shares in, or debentures of, the co-operative society specified in the resolution then, upon production of a copy of such resolution by the secretary of the society to the third party, a third party having any dealing with the co-

operative society or the registered holder of the shares or debentures in question shall be entitled to presume, without further enquiry, that—

(a) the provisions of this Chapter have been complied with in relation to the shares or debentures, and

(b) the registered holder is entitled to deal with the shares or debentures registered in his or her name.

(7) *Subhead (2)* shall not apply to a duty relating to a person ceasing to be interested in shares in, or debentures of, a co-operative society.

(8) A person who fails without reasonable excuse to comply with *subhead (1)* shall be guilty of a category 3 offence.

(9) A person who fails to fulfil, within the period specified in this Chapter in that behalf, a duty to which he or she is, by virtue of *head 158, 159 or 160*, subject shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 266 of the Companies Act 2014 and provides the manner in which the notification obligations should be enforced. In circumstances where a person has authorised an agent to acquire or dispose of shares or debentures on his or her behalf, that person must ensure that the agent notifies him or her of any such acquisitions or disposals immediately where such an acquisition or disposal would give rise to a notification duty under this Chapter. *Subhead (2)* provides a sanction where the relevant persons do not comply with the requirements and fail to notify within the required time. This will result in the rights and interests in the shares and debentures being unenforceable. *Subhead (3)* deals with circumstances where rights or interests are so curtailed.

Subheads (4) and (5) provide an exception to the curtailment of rights and interests under *subhead (2)* by reason of a failure to notify in circumstances where the identity of the director or secretary and the details of his or her holding, acquisition or disposal of shares or debentures has been clear on the face of all the relevant registers and documents of the co-operative society from not later than 30 days after the date on which the duty to disclose arose.

Subhead (6) allows a co-operative society's members to address a breach of the disclosure obligation by passing a special resolution which will offer protection to third parties dealing with the co-operative society so that that third party will be entitled to assume that all the requirements of this Chapter in relation to disclosure have been complied with and that the registered holder is entitled to deal with the shares or debentures in question.

Subhead (7) clarifies that *subhead (2)* does not apply to a duty of a person where he or she ceases to be interested in the shares or debentures.

Failure to comply with the provisions of this head in relation to ensuring an agent appointed informs the person appointing them of any relevant acquisitions or disposals will result in a category 3 offence for that person. A further category 3 offence is laid down in *subhead (9)* for failure to comply with the duty of disclosure found in *heads 158, 159 or 160*.

HEAD 164 – Register of interests: contents and entries

Provide that:

- (1) A co-operative society shall keep a register of interests (the “register of interests”) for the purposes of this Chapter.
- (2) *Heads 118 to 120* (rights of inspection, requests for copies, etc.) apply to the register of interests.
- (3) Whenever the co-operative society receives information from a director or secretary of the co-operative society in consequence of the fulfilment of a duty to which he or she is, by virtue of *head 158, 159 or 160*, subject, the co-operative society shall within 3 days after the date of such receipt enter in the register of interests that information and the date of the entry.
- (4) A co-operative society shall, whenever it grants to a director or secretary of the co-operative society a right to subscribe for shares in, or debentures of, the co-operative society, enter in the register of interests against his or her name—
 - (a) the date on which the right is granted,
 - (b) the period during which or time at which it is exercisable,
 - (c) the consideration for the grant (or, if it be the case that there is no consideration, that fact), and
 - (d) the description of shares or debentures involved and the number or amount thereof, and the price to be paid therefor.
- (5) Whenever such a right as is mentioned in *subhead (4)* is exercised by a director or secretary, the co-operative society shall enter in the register of interests against his or her name—
 - (a) that fact (identifying the right),
 - (b) the number or amount of shares or debentures in respect of which it is exercised, and
 - (c) if it be the case that they were registered in his or her name, that fact, and if not, the name or names of the person or persons in whose name or names they were registered, together (if they were registered in the names of 2 persons or more) with the number or amount thereof registered in the name of each of them.
- (6) The register of interests shall be so made up that the entries in it against the several names inscribed in it appear in chronological order.
- (7) The nature and extent of an interest recorded in the register of interests of a director or secretary in any shares or debentures shall, if he or she so requires, be recorded in that register.
- (8) A co-operative society shall not, by virtue of anything done for the purposes of this head, be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares or debentures.
- (9) If default is made by a co-operative society in complying with *subhead (1)* or any of *subheads (3) to (7)*, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 267 of the Companies Act 2014 and deals with the contents and entries in the register of interests. It provides that each co-operative society should keep a register of interests (the “register of interests”) for the purposes of this Chapter and that heads 118 to 120 (rights of inspection, requests for copies, etc.) apply to the register of interests. The co-operative society is

obliged to enter the relevant information specified in subhead (4) in the register of interests within 3 days after the date of receipt of the information. The entries in the register shall be in chronological order and a category 3 offence is envisaged for failure to comply with the provisions of this head.

HEAD 165 – Supplemental provisions in relation to head 164

Provide that:

(1) Unless the register under *head 164* is in such a form as to constitute in itself an index, the co-operative society shall keep an index of the names entered in it which shall—

(a) in respect of each name, contain a sufficient indication to enable the information inscribed against it to be readily found, and

(b) be kept at the same place as the register,

and the co-operative society shall, within 14 days after the date on which a name is entered in the register, make any necessary alteration in the index.

(2) In addition to the requirements of *head 119*, the register shall be, and remain, open and accessible to any person attending an annual general meeting of the co-operative society concerned at least one quarter hour before the appointed time for the commencement of the meeting and during the continuance of the meeting.

(3) If default is made by a co-operative society in complying with *subhead (1)* or *(2)*, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 268 of the Companies Act 2014. It provides supplemental provisions in relation to keeping the register of interests such as keeping an index of the names entered unless the register constitutes in itself an index and such an index must be updated within 14 days of any changes to entries in the register. This register must be kept open for inspection in the 15 minutes prior to the commencement of and during any AGM of the co-operative society. Failure to comply with the provisions of this head will result in a category 3 offence.

HEAD 166 – Register of interests: removal of entries from it

Provide that:

(1) A co-operative society may remove an entry against a person's name from the register required to be kept by it under *head 164* (the "register") if more than 6 years have elapsed after the date of the entry being made, and either—

(a) that entry recorded the fact that the person in question has ceased to have an interest notifiable under this Chapter in shares in, or debentures of, the co-operative society, or

(b) it has been superseded by a later entry made under *head 164* against the same person's name, and, in a case falling within *paragraph (a)*, the co-operative society may also remove that person's name from the register.

(2) Where a co-operative society removes a name from the register pursuant to *subhead (1)*, the co-operative society shall, within 14 days after the date of that removal, make any necessary alterations in any associated index.

(3) Entries in the register shall not be deleted except in accordance with *subheads (1)* and *(2)*.

(4) If an entry is deleted from the register in contravention of *subhead (1)*, the co-operative society concerned shall restore that entry to the register as soon as is reasonable and practicable.

(5) If default is made by a co-operative society in complying with *subhead (2)*, *(3)* or *(4)*, the co-operative society and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 269 of the Companies Act 2014 and deals with removal of entries from the register of interests. It provides that a co-operative society may remove an entry against a person's name if more than 6 years has elapsed and either (a) the entry recorded the fact that the person in question has ceased to have a notifiable interest or (b) it has been superseded by a later entry made under head 164. A category 3 offence is laid down for non-compliance.

Chapter 6 Responsibilities of officers of co-operative society — provisions explaining what being “in default” means and presumption regarding that matter

HEAD 167 – Meaning of “in default” in context of sanctions specified in respect of officers (whether directors or secretaries or not)

Provide that:

- (1) For the purposes of any provision of this Bill which provides that an officer of a co-operative society who is in default shall be guilty of an offence, an officer who is in default is any officer who authorises or who, in breach of his or her duty as such officer, permits the default mentioned in the provision.
- (2) In this head “default” includes a refusal to do a thing or a contravention of a provision.

Explanatory note: This head is based on section 270 of the Companies Act 2014 and provides the meaning of “default” in the context of sanctions in respect of officers.

Subhead (1) provides that, where a provision of the Bill makes reference to an officer who is in default, this is to be interpreted as any officer who authorises or who, in breach of his or her duty as such officer, permits the default in question. Subhead (2) provides that the word “default” includes a refusal to do something or a contravention of a provision. The defence in head 168 is not available where a defence is provided for elsewhere in the Bill.

HEAD 168 – Presumption that default permitted and certain defence

Provide that:

(1) In this head—

- (a) “basic facts concerning the default” means such of the facts, relating to the one or more acts or omissions that constituted the default, as can reasonably be regarded as indicating, at the relevant time, the general character of those acts or omissions,
- (b) “permitted”, in relation to the default, means permitted in breach of the defendant’s duty as an officer of the co-operative society concerned,
- (c) “relevant proceedings” means proceedings for an offence under a provision of this Bill, being a provision which provides that an officer of a co-operative society who is in default shall be guilty of an offence,
- (d) a reference to a defendant in those proceedings is a reference to—
 - (i) the defendant, or
 - (ii) if there is more than one defendant, each of the one or more persons, other than the co-operative society, alleged to be in default,

being, in every case, a person who was an officer of the co-operative society at the relevant time.

(2) In relevant proceedings, where it is proved that the defendant was aware of the basic facts concerning the default concerned, it shall be presumed that the defendant permitted the default unless the defendant shows that he or she took all reasonable steps to prevent it or that, by reason of circumstances beyond the defendant’s control, was unable to do so.

Explanatory note: This head is based on section 271 of the Companies Act 2014 and creates the presumption that an officer of a co-operative society has permitted the default and so be “officers in default” where it is proved that they were aware of the basic facts concerning the default concerned, unless they show they took all reasonable steps to prevent it or that, by reason of circumstances beyond their control, they were unable to do so. The head provides clarity to the fact that an officer may have a legitimate excuse as to why something happened, or did not happen, as the case may be, for example, the officer may have been absent at the time of the default in question.

PART 6 FINANCIAL STATEMENTS, ANNUAL RETURN AND AUDIT

Head 169 – Financial Statements, Annual Return and Audit

Provide that:

(1) The provisions of Part 6 of the Act of 2014, Schedules 2, 3, 3A, 3B, 4 and 4A and the other provisions of that Act relating to the—

- (a) the accounting records to be kept, and the financial statements to be prepared, by companies,
- (b) the periodic returns to be made by companies to the Registrar, and
- (c) the auditing of financial statements of companies and matters related to the auditing of them and, in particular, the rules governing the appointment of statutory auditors to, and their removal from, office,

apply, subject to the necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are that—

- (a) references to the date of a company’s incorporation are to the date on which the co-operative society was registered under *head 17(1)* of this Bill;
- (b) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions;
- (c) references to the constitution of the company are to the rules of the co-operative society;
- (d) references to a general meeting of the company are to a general meeting of the co-operative society;
- (e) references to an annual general meeting of the company are to an annual general meeting of the co-operative society;
- (f) references to a shadow director are to a shadow director of the co-operative society;
- (g) references to a *de facto* director are to a *de facto* director of the co-operative society;
- (h) in section 275(1) in the definition of “audit committee” the reference to section 167 is to *head 88* of this Bill;
- (i) in section 280A(3)—
 - (i) in paragraph (a) “2 million” is substituted for “12 million”, and

- (ii) in paragraph (b) “1 million” is substituted for “6 million”;
- (j) in section 280B(4)—
 - (i) in paragraph (a) “2 million (or €2.4 million gross)” is substituted for “12 million net (or €14.4 million gross)”, and
 - (ii) in paragraph (4) “1 million (or €1.2 million gross)” is substituted for “6 million net (or €7.2 million gross)”;
- (k) in section 305 by the substitution of the following subhead for subsection (14) —

“(14) A co-operative society that qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirements of this section.”;
- (l) in section 305A by the substitution of the following subhead for subsection (3) —

“(3) A co-operative society that qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirements of this section”;
- (m) in section 306(1) the reference to section 220 is a reference to *head 123* of this Bill;
- (n) in section 308—
 - (i) in subsection (2)(d) the reference to section 239 is a reference to *head 141* of this Bill, and
 - (ii) in subsection (8) the reference in—
 - (I) paragraph (a) to section 219 is a reference to *head 122* of this Bill,
 - (II) paragraph (b) to section 220 is a reference to *head 123* of this Bill, and
 - (III) paragraph (c) to section 219(7) is a reference to *head 122(7)* of this Bill;
- (o) in section 309—
 - (i) by the substitution of the following for subsection (1A) —

“(1A) A co-operative society that qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirements of subsection (1).”;
 - (ii) in subsection (8)(a) the reference to section 220 is a reference to *head 123* of this Bill;
- (p) in section 317 by the substitution of the following subhead for subsection (7B) —

“(7B) A co-operative society that qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirements of this section”;
- (q) in section 323(1A) by the substitution of the following paragraph for paragraph (b) —

“(b) qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirements of subsection (1).”;

(r) in section 325—

(i) in subsection (1A) by the substitution of the following paragraph for paragraph (b) —

“(b) qualifies for the micro companies regime may, if so authorised by its rules, be exempt from the requirement to prepare a directors’ report under subsection (1), provided that the information required under section 328 is included as a note or a footnote to the balance sheet.”, and

(ii) in subsection (2)—

(I) in paragraph (a) the reference—

(A) to section 167(3) is a reference to *head 88(3)* of this Bill, and

(B) to a “relevant private company” is to a “relevant co-operative” referred to in *head 88* of this Bill;

(II) in paragraph (b) to section 225(2) is a reference to *head 128(2)* of this Bill;

(s) in section 329 (4) the reference to section 267 is a reference to *head 164* of this Bill;

(t) in section 343—

(i) in subsections (9) and (10) the references to sections 731 to 733 is a reference to *heads 210 to 212* of this Bill,

(ii) in subsection (10) the reference to section 732 is a reference to *head 211* of this Bill;

(u) in section 358(1) by the insertion of “and the rules of the co-operative society authorise the society to avail of an audit exemption under that section” after “to that financial year”;

(v) in section 359(2) by the insertion of “and the rules of the co-operative society that is the holding company authorise the society to avail of an audit exemption under that section” after “to that financial year”

(w) it shall be read as if section 365 were deleted;

(x) in section 381(1)(b)(ii)(I) the reference to “extraordinary general meeting” of a company is a reference to an “extraordinary general meeting of a co-operative society”;

(y) in paragraph 16(7) of Part III of Schedule 4 and in paragraph 16(7) of Part III of Schedule 4A the reference to sections 71 to 77 is a reference to *head 47* of this Bill.

(3) Where it appears to the Minister to be expedient to modify the amounts substituted by paragraphs (i) or (j) of subsection (2) modifying sections 280A(3) and 280B(4) of the Act of 2014 for the purpose of assimilating the law relating to companies and the law relating to registered co-operative societies, the

Minister may make an order to amend the substituted amounts as he considers appropriate for that purpose.

(4) Where it is proposed to make an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

Explanatory note:

This head provides that the provisions of Part 6 of the Companies Act 2014 relating to Financial Statements, Annual Return and Audit that apply to a private company limited by shares, apply to a co-operative society, subject to any necessary modifications and the specific modifications in subhead (2). It contains provisions regarding the accounting records to be kept by co-operative societies, the financial statements to be prepared by them, the periodic returns to be made by co-operative societies to the Registrar of Co-operative Societies and Trade Unions, and the auditing of the financial statements of co-operative societies. It also covers other matters related to auditors, particularly rules governing the appointment of statutory auditors and their removal from office.

Head 11 requires a co-operative society to provide in its rules whether it may or may not avail of an audit exemption if it is entitled to avail of such an exemption. To avail of an audit exemption under section 360 of the Companies Act 2014, as cross applied with modifications, a small co-operative society must satisfy two of the following criteria: Balance sheet does not exceed €1m; Turnover does not exceed €2m; Number of employees does not exceed 50. and its rules must provide that it may avail of the audit exemption. Subheads (3) provides that the Minister may by order amend the financial thresholds for an audit exemption that apply to a co-operative society, facilitating future review of the thresholds should the need arise. Subhead (4) provides that an order amending the thresholds may not be made unless a resolution approving a draft of the order has been passed by both Houses of the Oireachtas.

A micro company may avail of a number of exemptions in relation to their financial statements, if so authorised by their rules under 305(14), 305A(3), 309(1A), 317(7B), 323(1A)(b) and 325(1A)(b) of the Companies Act 2014. These include the obligation to disclose the directors' remuneration, payments to third parties for services of directors, other arrangements, and transactions in which the directors have material interest, disclosures of particulars in relation to staff, information on arrangements not included in the balance sheet and the obligation prepare a directors' report for every financial year. Head 11 requires a co-operative to provide in its rules whether it may or may not avail of those exemptions in relation to their financial statements if it satisfies the conditions of a micro company. To further avail of those exemptions, it must satisfy two of the following: Balance sheet does not exceed €350,000m; Turnover does not exceed €700,000; Number of employees does not exceed 10.

PART 7 CHARGES AND DEBENTURES

Chapter 1 Interpretation

HEAD 170 – Definitions (Part 7)

Provide that:

(1) In this Part—

“charge”, in relation to a co-operative society, means a mortgage or a charge, in an agreement (written or oral), that is created over an interest in any property of the co-operative society (and in *head 171(8)* and *heads 176 to 181* includes a judgment mortgage) but does not include a mortgage or a charge, in an agreement (written or oral), that is created over an interest in—

- (a) cash,
- (b) money credited to an account of a financial institution, or any other deposits,
- (c) shares, including shares in a body corporate, bonds or debt instruments,
- (d) units in collective investment undertakings or money market instruments, or
- (e) claims and rights (such as dividends or interest) in respect of any thing referred to in any of *paragraphs (b) to (d)*;

“property”, in relation to a co-operative society, includes any assets or undertaking of the co-operative society.

(2) Any exclusion provided in *subhead (1)* to what is defined in that subhead as constituting a “charge” may be varied by order made by the Minister if the Minister considers that it is necessary or expedient to do so in consequence of any Community act adopted after the commencement of this head relating to financial collateral arrangements.

(3) For the avoidance of doubt, in the case of a mortgage or charge created over both—

- (a) an interest in anything specified in any of *paragraphs (a) to (e)* of *subhead (1)*; and
- (b) any property, assets or undertaking not falling within any of those paragraphs,

the mortgage or charge shall, other than to the extent to which it is created over an interest in anything specified in any of the foregoing paragraphs of *subhead (1)*, be regarded as a charge within the meaning of this Part.

Explanatory note:

This head is based on section 408 of the Companies Act 2014, and it sets out the definition of “charge” for the purposes of the Part. It provides that “charge” includes a mortgage or charge over an interest in

society property, assets or undertakings, including a judgment mortgage, but expressly excludes mortgages and charges over interests in cash, accounts in financial institutions, or any other deposits, shares or other financial instruments. This head defines property to include any assets or undertaking of the co-operative society.

Chapter 2 Registration of charges and priority

HEAD 171 – Registration of charges created by co-operative societies

Provide that:

(1) Every charge created, after the commencement of this head, by a co-operative society shall be void against the liquidator and any creditor of the co-operative society unless either the procedure set out in—

(a) *subhead (3)* — the “one-stage procedure”, or

(b) *subhead (4)* — the “two-stage procedure”,

with respect to the charge’s registration is complied with.

(2) If, in purported compliance with the requirements of this Part as to the taking of steps in that behalf, there is received by the Registrar particulars of a charge that omit the required particulars in respect of one or more properties to which the charge relates, *subhead (1)* shall be read as operating to render void (as against the liquidator and any creditor of the co-operative society) the charge as it relates to the particular property or properties in respect of which that omission occurs but not otherwise.

(3) The procedure for registration under this subhead referred to in *subhead (1)* as the one-stage procedure consists of the taking of steps so that there is received by the Registrar, not later than 21 days after the date of the charge’s creation, the prescribed particulars, in the prescribed form, of the charge.

(4) The procedure for registration under this subhead referred to in *subhead (1)* as the two—stage procedure consists of the following, namely the taking of steps:

(a) so that there is received by the Registrar a notice stating the co-operative society’s intention to create the charge (being a notice in the prescribed form and containing the prescribed particulars of the charge); and

(b) so that, not later than 21 days after the date of the Registrar’s receipt of the notice under *paragraph (a)* (the “first-mentioned notice”), there is received by the Registrar a notice, in the prescribed form, stating that the charge referred to in the first-mentioned notice has been created.

(5) If the requirement under *paragraph (b)* of *subhead (4)* is not complied with, within the period specified in that paragraph, the notice received under *paragraph (a)* of that subhead in relation to the charge shall be removed by the Registrar from the register.

(6) *Subhead (1)* is without prejudice to any contract or obligation for repayment of the money secured by the charge concerned and when a charge becomes void under that subhead, the money secured by it shall immediately become payable.

(7) Where a charge comprises property outside the State, the prescribed particulars, in the prescribed form (and, as the case may be, the notice under *subhead (4)(b)*) may be sent for registration under this head, notwithstanding that further proceedings may be necessary to make the charge valid or effectual according to the law of the country in which the property is situate.

(8) If there is a change among the one or more persons entitled to a charge registered under this Part, the fact of that change having occurred, and particulars of the person or persons now entitled to the charge, may be delivered, in the prescribed form, to the Registrar and registered by him or her.

(9) Nothing in this head or any other provision of this Part authorises the delivery to the Registrar of a deed, or any supplemental document to it, and this Part does not impose or confer any duty or power on the Registrar to examine any deed or any supplemental document to it.

(10) An instrument which is executed by a co-operative society and which creates or is evidence of a charge on any assets of the co-operative society shall not be a bill of sale for the purposes of the Bills of Sale (Ireland) Acts, 1879 and 1883 or be invalidated by those Acts if the charge is registered in accordance with this head.

Explanatory note: This head is based on section 409 of the Companies Act 2014 and governs the registration of co-operative society charges. It provides that the charge created by a co-operative society shall be void against the liquidator and any creditor of the co-operative society unless the “one-stage procedure”, or the “two-stage procedure”, with respect to the charge’s registration is complied with.

The one-stage procedure requires that the prescribed particulars, in the prescribed form, of the charge shall be received by the Registrar, not later than 21 days after the date of the charge’s creation. The two-stage procedure for registration allows prospective chargees to send an initial notice to the Registrar immediately before creation of the charge. Not later than 21 days after the date of the Registrar’s receipt of that notice, the Registrar shall receive a notice, in the prescribed form, stating that the charge has been created. The purpose of the two-step procedure is to grant priority from the date of the initial notice, ensuring that there is no risk of chargees losing priority during the “registration gap” between creation and registration of the charge.

The head also clarifies that failure to provide particulars in respect of property covered by a charge renders that charge void insofar as it relates to that property. It also provides that the Registrar will not accept deeds or supplemental documents when registering a charge.

Subhead (10) is based on section 34(1) of the Credit Union Act 1997. It exempts co-operative societies from the provisions of the Bills of Sale (Ireland) Acts 1879 to 1883, in order that co-operative societies may issue debentures secured on both floating and fixed charges. A facility for issuing debentures on floating charges is not available to non-agricultural industrial and provident societies at present.

HEAD 172 – Duty of co-operative society with respect to registration under head 171 and right of others to effect registration

Provide that:

- (1) It shall be the duty of the co-operative society that creates the charge to comply with the procedure under *head 171(3)* or *(4)* with respect to the charge's registration but this is without prejudice to *subhead (2)*.
- (2) Any person interested in the charge may use the procedure under *head 171(3)* or *(4)* with respect to its registration and the person's using that procedure (and in compliance with *head 171(3)* or *(4)*) shall have the same effect as if the co-operative society had used that procedure (and in compliance with *head 171(3)* or *(4)*).
- (3) Where such a person uses that procedure (and in compliance with *head 171(3)* or *(4)*), the person may recover from the co-operative society the amount of fees properly paid by that person to the Registrar in respect of the registration of the charge concerned.

Explanatory note: This head is based on section 410 of the Companies Act 2014. It imposes on the chargor co-operative society a duty to register the charge in accordance with head 171. The head provides that any interested person may register the charge, in which case the person may recover from the co-operative society the fees paid to the Registrar for registration of the charge.

HEAD 173 – Duty of co-operative society to register charges existing on property acquired

Provide that:

- (1) Where a co-operative society acquires any property which is subject to a charge that, if it had been created by the co-operative society after the acquisition of the property, would have given rise to the duty under *head 171(1)* on the part of the co-operative society with respect to the charge's registration, then the co-operative society shall have the following duty.
- (2) That duty is to take steps so that there is received by the Registrar, not later than 21 days after the date on which acquisition of the property concerned is completed, the prescribed particulars, in the prescribed form, of the charge.
- (3) If default is made in complying with this head, the co-operative society and any officer of the co-operative society who is in default shall be guilty of a category 4 offence.

Explanatory note: This head is based on section 411 of the Companies Act 2014. It provides that if the co-operative society acquires property which is subject to a charge created before the acquisition of the property, the co-operative society has the obligation to register the charge with the Registrar not later than 21 days after the date on which acquisition of the property is completed.

HEAD 174 – Priority of charges

Provide that:

- (1) For the purposes of this head—
 - (a) “relevant rule of law” means a rule of law that governs the priority of charges created by a co-operative society, and for the avoidance of doubt, any enactment governing the priority of such charges is not encompassed by that expression,
 - (b) the reference in *subhead (2)* to any priority that one charge, by virtue of a person’s not having notice of a matter, enjoys over another charge or charges shall be deemed to include a reference to any priority that an advance made on foot of a charge, by virtue of a person’s not having notice of a matter, enjoys over a subsequent charge or charges.
 - (2) On and from the commencement of this head, any relevant rule of law shall stand modified in the manner specified in *subhead (3)*, but not so as to displace any priority, whether before or after that commencement, that one charge, by virtue of a person’s not having notice of a matter, enjoys over another charge or charges.
 - (3) That modification is that, for the part of the rule that operates by reference to the time of creation of the 2 or more charges concerned, there shall be substituted a part that operates by reference to—
 - (a) the dates of receipt by the Registrar of the prescribed particulars of the 2 or more charges concerned, or
 - (b) if the date of receipt by the Registrar of the prescribed particulars of the 2 or more charges is the same, the respective times, on the date concerned, of receipt by the Registrar of those particulars.
 - (4) References in *subhead (3)* to the date, or time, of receipt of the prescribed particulars are references to—
 - (a) if the procedure under *subhead (3)* of *head 171* is complied with in relation to a particular charge, the date, or time, of receipt by the Registrar of the prescribed particulars, in the prescribed form, of the charge, or
 - (b) if the procedure under *subhead (4)* of *head 171* is complied with in relation to a particular charge, the date, or time, of receipt by the Registrar of the notice, in the prescribed form and containing the prescribed particulars, in relation to the charge under *paragraph (a)* of that *subhead (4)*.
 - (5) *Subheads (2)* and *(3)* shall not affect any agreement between persons in whose favour charges have been created in relation to the priority that those charges shall, as between them, have.
 - (6) Subject to *subhead (7)* in relation to particulars of a charge received by the Registrar pursuant to *head 171(3)* or *(4)*, the following provisions apply so far as those particulars consist of particulars of a negative pledge, any events that crystallise a floating charge or any restrictions on the use of any charged asset (and particulars of any such matter are referred to subsequently in this subhead as “extraneous material”):
 - (a) the Registrar shall not be under any duty to enter in the register under *head 176* particulars of the extraneous material pursuant to that head;
 - (b) the fact that the Registrar has received the particulars of the extraneous material shall have no legal effect;
-

but nothing in the foregoing affects the validity of the receipt by the Registrar of the other particulars of the charge.

(7) *Subhead (6)* does not apply to particulars of a negative pledge included in particulars of a floating charge granted by a co-operative society to the Central Bank for the purposes of either providing or securing collateral.

(8) In this head “negative pledge” means any agreement entered into by the co-operative society concerned and any other person or persons that—

(a) provides that the co-operative society shall not, or shall not otherwise than in specified circumstances—

(i) borrow moneys or otherwise obtain credit from any person other than that person or those persons,

(ii) create or permit to subsist any charge, lien or other encumbrance or any pledge over the whole or any part of the property of the co-operative society, or

(iii) alienate or otherwise dispose of in any manner any of the property of the co-operative society, or

(b) contains a prohibition, either generally or in specified circumstances, on the doing by the co-operative society of one or more things referred to in one, or more than one, provision of *paragraph (a)*.

Explanatory note: This head is based on section 412 of the Companies Act 2014 and governs priority of charges. It provides that priority shall be determined by reference to the date (and, where necessary, the time of day) of registration.

This head also provides that chargees may compromise the ordinary rules of priority by agreement, and prohibits (in most circumstances) the entering onto the register of particulars relating to a negative pledge.

HEAD 175 – Registration and priority of judgment mortgages

Provide that:

(1) If judgment is recovered against a co-operative society and that judgment is subsequently converted into a judgment mortgage affecting any property of the co-operative society, the judgment mortgage shall be void against the liquidator and any creditor of the co-operative society unless the procedure set out in *subhead (2)* with respect to the judgment mortgage's registration is complied with.

(2) The procedure for registration under this subhead consists of the taking of steps so that there is received by the Registrar, together with the relevant judgment mortgage document, the prescribed particulars, in the prescribed form, of the judgment mortgage, not later than 21 days after the following date.

(3) That date is the date on which notification by the Property Registration Authority of the judgment mortgage's creation is received by the judgment creditor.

(4) In *subhead (2)* the "relevant judgment mortgage document" means a certified copy of, as appropriate—

(a) Form 60, 60A or 60B set out in the Schedule of Forms to the Land Registration Rules 2012 (S.I. No. 483 of 2012) as amended by the Land Registration Rules 2013 (S.I. No. 389 of 2013), or

(b) Form 16 set out in the Schedule to the Registration of Deeds (No. 2) Rules 2009 (S.I. No. 457 of 2009),

used for the purposes of converting the judgment concerned into a judgment mortgage.

(5) For the purposes of this head, it shall be presumed, until the contrary is proved, that the judgment creditor received notification, of the judgment mortgage's creation, from the Property Registration Authority on the third day after the date on which that notification is sent by it to the judgment creditor or his or her agent.

(6) If rules are made under section 126 of the Registration of Title Act 1964 or, as the case may be, section 48 of the Registration of Deeds and Title Act 2006—

(a) replacing a form that is referred to in *subhead (4)(a)* or *(b)*, as appropriate, the reference in that provision to the form shall be read as a reference to the form as so replaced, or

(b) amending a form that is so referred to, the reference in that provision to the form shall be read as a reference to the form as it stands so amended.

(7) This head shall not apply to any judgment mortgage created before the commencement of this head.

Explanatory note: This head is based on section 413 of the Companies Act 2014 and deals with the registration and priority of judgement mortgages. The procedure involved in the registration of a judgement mortgage is set out. The relevant judgement mortgage document and the particulars of the judgment mortgage in the prescribed form must be lodged with the Registrar together with the relevant mortgage document not later than 21 days after the judgement creditor has been notified by the Property Registration Authority of the creation of the judgement mortgage. The relevant judgement mortgage

document is a certified copy of Form 60, 60A, 60B or 6 used for the purposes of converting the judgement concerned into a judgement mortgage.

HEAD 176 – Register of charges

Provide that:

(1) The Registrar shall keep, in relation to each co-operative society, a register in the prescribed form, of the charges requiring registration under this Part, and shall, on payment of such fee as may be prescribed, enter in the register, in relation to such charges, the following particulars:

- (a) without prejudice to *paragraphs (e) and (f)*, in the case of a charge created by the co-operative society, the date of its creation and—
 - (i) where the procedure for registration under *head 171(3)* is complied with, the date and time of receipt by the Registrar under that provision of the prescribed particulars, in the prescribed form, of the charge, and
 - (ii) where the procedure for registration under *head 171(4)* is complied with, the respective dates and times of receipt by the Registrar of the notices under *paragraphs (a) and (b)* of that provision in relation to the charge;
- (b) without prejudice to *paragraphs (e) and (f)*, in the case of a charge existing on property acquired by the co-operative society, the date of the acquisition of the property by the co-operative society;
- (c) without prejudice to *paragraphs (e) and (f)*, in the case of a judgment mortgage, the date of the mortgage's creation and the date and time, in relation to it, of receipt by the Registrar, under *head 175(2)*, of the prescribed particulars in the prescribed form together with the relevant judgment mortgage document referred to in that provision;
- (d) without prejudice to *paragraphs (e) and (f)*, in the case of floating charge granted by the co-operative society to the Central Bank for the purposes either of providing or securing collateral, particulars of any provision of the charge that has the effect of prohibiting or restricting the co-operative society from issuing further securities that rank equally with that charge or modifying the ranking of that charge in relation to securities previously issued by the co-operative society;
- (e) short particulars of the property charged; and
- (f) the persons entitled to the charge.

(2) The register kept in pursuance of this head shall be open to inspection by any person on payment of such fee, if any, as may be prescribed.

Explanatory note: This head is based on section 414 of the Companies Act 2014, and it governs the maintenance of the register of charges. It provides that the Registrar shall keep, in relation to each co-operative society, a register of the charges requiring registration and shall, on payment of a fee enter in the register the particulars specified in this head.

The register shall be open to inspection by any person on payment of a prescribed fee.

HEAD 177 – Certificate of registration of any charge

Provide that:

(1) The Registrar shall give a certificate of the registration of any charge registered in pursuance of this Part.

(2) Subject to *subhead (3)*, such a certificate shall be conclusive evidence that the requirements of this Part as to the registration of the charge have been complied with.

(3) To the extent that the particulars of a charge delivered to the Registrar in purported compliance with this Part omit the required particulars in respect of one or more properties to which the charge relates, the evidential effect of the certificate provided under *subhead (2)* shall not extend to the particular property or properties in respect of which that omission occurs.

(4) Without prejudice to the generality of the definition, in *head 170*, of that expression, in *subhead (3)* “property” includes an interest in, or right over, property.

Explanatory note: This head is based on section 415 of the Companies Act 2014 and provides for the issuance of certificates of registration of any charge registered by the Registrar. The certificate is conclusive evidence that registration has been complied with in regard to such prescribed particulars as have been filed.

HEAD 178 – Entries of satisfaction and release of property from charge

Provide that:

(1) The Registrar may exercise the powers under *subhead (2)*, on evidence being given to his or her satisfaction with respect to any charge registered under this Part—

- (a) that the debt in relation to which the charge was created has been paid or satisfied in whole or in part, or
- (b) that part of the property charged has been released from the charge or has ceased to form part of the co-operative society's property,

and, where the satisfaction or release has not been signed by or on behalf of the chargee, after giving notice to the person who, for the time being, stands registered as the person entitled to such charge or to the judgment creditor, as the case may be.

(2) Those powers are to enter on the register a memorandum—

- (a) of satisfaction in whole or in part, or
- (b) of the fact that part of the property has been released from the charge or has ceased to form part of the co-operative society's property,

as the case may be.

(3) Where the Registrar enters such a memorandum of satisfaction in whole, he or she shall, if required, furnish the co-operative society with a copy of it.

(4) The Registrar may accept as evidence of a satisfaction or release referred to in *subhead (1)(a)* or *(b)* a statement in the prescribed form signed by a director and secretary of the co-operative society, or by 2 directors of the co-operative society, stating that the satisfaction or release has occurred.

(5) Where a person signs a statement referred to in *subhead (4)* knowing it to be false, the person shall be guilty of a category 2 offence.

(6) Where a person signs a statement referred to in *subhead (4)* and in doing so did not honestly believe on reasonable grounds that the statement was true, and the court considers that the making of that statement—

- (a) contributed to the co-operative society being unable to pay its debts,
- (b) prevented or impeded the orderly winding up of the co-operative society, or
- (c) facilitated the defrauding of the creditors of the co-operative society,

the court, on the application of the liquidator or examiner or receiver of the property of, or any creditor or contributor of, the co-operative society, may, if it thinks it proper to do so, make the following declaration.

(7) That declaration is that that signatory shall be personally liable, without limitation of liability, for all or such part as the court may specify of the debts and other liabilities of the co-operative society.

Explanatory note: This head is based on section 416 of the Companies Act 2014. It provides for entries of memorandum of satisfaction of charges by the Registrar, on evidence that the debt in relation to which

the charge was created has been paid or satisfied in whole or in part, or that part of the property charged has been released from the charge or has ceased to form part of the co-operative society's property.

The Registrar may accept as evidence of a satisfaction a statement signed by a director and secretary of the co-operative society, or by 2 directors of the co-operative society, stating that the satisfaction or release has occurred.

Where an officer signs a false statement and does not honestly and reasonably believe it to be true, the court may (in prescribed circumstances) order that that officer be personally liable for any or all of the co-operative society's liabilities.

HEAD 179 – Extension of time for registration of charges and rectification of register

Provide that:

(1) The court may grant the following relief where it is satisfied that the omission to register a charge within the time required by this Part or that the omission or misstatement of any particular with respect to any such charge or in a memorandum of satisfaction—

(a) was accidental or due to inadvertence or to some other sufficient cause, or

(b) is not of a nature to prejudice the position of creditors or shareholders of the co-operative society, or that on other grounds it is just and equitable to grant that relief in respect of such an omission or misstatement.

(2) That relief is to order, on such terms and conditions as seem to the court just and expedient, that the time for registration shall be extended, or, as the case may be, that the omission or misstatement shall be rectified.

(3) An application for relief under this head may be made on behalf of the co-operative society or any other person interested.

Explanatory note: This head is based on section 417 of the Companies Act 2014. It permits the court to extend the time for registration of charges if the omission to register a charge within the timeframe required or the omission or misstatement of any particular with respect to the charge or in a memorandum of satisfaction was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the society, or that on other grounds it is just and equitable to grant that relief in respect of such an omission or misstatement.

HEAD 180 – Copies of instruments creating charges to be kept

Provide that:

- (1) A co-operative society shall keep a copy of every instrument creating any charge in relation to it and requiring registration under this Part, including, in the case of a judgment mortgage, a copy of the relevant judgment mortgage document that was received by the Registrar.
- (2) All such copies kept by the co-operative society shall be kept at the same place.
- (3) *Heads 118 to 120* (rights of inspection, etc.) apply to those copies.
- (4) If default is made in complying with *subhead (1)* or *(2)*, the co-operative society concerned and any officer of it who is in default shall be guilty of a category 3 offence.

Explanatory note:

This head is based on section 418 of the Companies Act 2014. It imposes an obligation on co-operative societies to keep copies of instruments creating charges at the same place. These copies can be inspected under Part 4 of the Bill.

HEAD 181 – Netting of Financial Contracts Act 1995 not to affect registration requirements

Provide that:

Nothing in section 4(1) of the Netting of Financial Contracts Act 1995 affects—

- (a) the requirement to register a charge under this Part, or
- (b) the consequences of failing to register a charge under this Part.

Explanatory note: This head is based on section 421 of the Companies Act 2014 and serves to limit the breadth of the Netting of Financial Contracts Act 1995, insofar as it affects the requirements to register charges under this Part. It provides, inter alia, that a mortgage or charge to secure a liability under a “financial contract” shall be legally enforceable against the chargor, notwithstanding any “rule of law relating to bankruptcy, insolvency or receivership, or in the Companies Acts.” The 1995 Act was introduced to facilitate international bodies wishing to do business in Ireland. The prohibition of set-off or other creditor remedies on the appointment of an examiner discouraged contractual relations for swaps and similar arrangements with Irish incorporated counterparty. The effect of the Netting Act has been to enable persons to enter into financial contracts with Irish incorporated counterparties without the risk that an examiner appointed to the counterparty would put a stay on the enforcement of the financial contracts. the creation of financial instruments (such as swaps) with Irish-incorporated bodies, without the risk of such a company going into examinership (which would put a stay on the enforcement of such instruments)

When examining the issue, the CLRG considered that the absence of a requirement to register a charge can give a distorted picture to a person inspecting a company’s file at the CRO. Accordingly, the CLRG recommended the Netting Act be amended by specifying that particulars of a charge to secure obligations under a “financial contract” over cash, a bank account, shares, bonds and debt instruments would not require registration as it would not fall within the category of a registrable charge. Particulars of charges over other assets such as land or equipment, to secure obligations under a “financial contract” are generally filed with the CRO in practice.

The recommendations proposed by the CLRG have been taken on board and applied in the same manner in case of registration of a charge by a co-operative society.

Chapter 3 Provisions as to debentures

HEAD 182 – Liability of trustees for debenture holders

Provide that:

(1) Subject to the provisions of this head, the following provision shall be void, namely, any provision contained—

(a) in a trust deed for securing an issue of debentures, or

(b) in any contract with the holders of debentures secured by a trust deed,

in so far as it would have the effect of exempting a trustee of it from, or indemnifying him or her against, liability for breach of trust where he or she fails to show the degree of care and diligence required of him or her as trustee, having regard to the provisions of the trust deed conferring on him or her any powers, authorities or discretions.

(2) *Subhead (1)* shall not invalidate—

(a) any release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release, or

(b) any provision enabling such a release to be given—

(i) on the agreement to the provision of a majority of not less than three-fourths in value of the debenture holders present and voting in person or, where proxies are permitted, by proxy at a meeting summoned for the purpose, and

(ii) either with respect to specific acts or omissions or on the trustee dying or ceasing to act.

Explanatory note: This head originates from section 422 of the Companies Act 2014. Many deeds under which trustees for debenture holders are appointed contain clauses which absolve the trustees from liability for everything but wilful neglect or default. It is considered desirable that some check should be placed upon the power of trustees to escape liability for failure to carry out functions for which they receive payment. A prohibition of such provisions, subject to certain exceptions, is therefore put in place.

HEAD 183 – Perpetual debentures

Provide that:

A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that the debentures are by those means made irredeemable or redeemable only on the happening of a contingency however remote, or on the expiration of a period however long, notwithstanding any rule of law to the contrary.

Explanatory note: This head is based on section 423 of the Companies Act 2014. It provides that a condition contained in any debentures that the debentures are irredeemable or redeemable on the happening of a remote contingency or the expiration of a long period shall not be invalid only because of this condition, notwithstanding any rule of law to the contrary.

HEAD 184 – Power to reissue redeemed debentures

Provide that:

(1) Where a co-operative society has redeemed any debentures then—

(a) unless any provision to the contrary, whether express or implied, is contained in the rules or in any contract entered into by the co-operative society, or

(b) unless the co-operative society has, by passing a resolution to that effect or by some other act, shown its intention that the debentures shall be cancelled,

the co-operative society shall have power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

(2) On a re-issue of redeemed debentures, the person entitled to the debentures shall have the same priorities as if the debentures had never been redeemed.

(3) Where a co-operative society has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the co-operative society having ceased to be in debit whilst the debentures have remained so deposited.

Explanatory note: This head is based on section 424 of the Companies Act 2014. It gives co-operative societies the power to re-issue redeemed debentures or issue other debentures in their place unless the co-operative society rules do not permit that or it has the intention to cancel the debentures. The person entitled to the debentures shall have the same priorities as if the debentures had never been redeemed. Subhead (3) deals with situations where debentures are deposited to secure advances from time to time on current account, or otherwise.

HEAD 185 – Specific performance of contracts to subscribe for debentures

Provide that:

A contract with a co-operative society to take up and pay for any debentures of the co-operative society may be enforced by an order for specific performance.

Explanatory note: This head is based on section 426 of the Companies Act 2014. It provides that specific performance may be a remedy for a breach of a contract to take up and pay for any debentures.

*Chapter 4 Prohibition on Registration of Certain Matters affecting Shareholders
or Debentureholders*

HEAD 186 – Registration against co-operative society of certain matters prohibited

Provide that:

(1) Subject to *subhead (3)*, the Registrar has, in relation to any co-operative society, no jurisdiction to accept receipt of, or to register in the register—

(a) an order of any authority (whether judicial or otherwise) affecting a shareholder or debentureholder of the co-operative society, or

(b) any notice of the making thereof.

(2) Nothing in this head affects the jurisdiction of any authority (whether judicial or otherwise) under Chapter 3 of Part 13 of the Act of 2014, as applied by *head 224* and Chapter 2 of Part 14 of the Act of 2014, as applied by *head 227*.

Explanatory note: This head is based on section 427 of the Companies Act 2014 and provides that the Registrar has no jurisdiction to accept or register an order of any authority (whether judicial or otherwise) affecting a shareholder or debentureholder of the co-operative society or any notice of the making thereof.

PART 8 AMALGAMATION, TRANSFER OF ENGAGEMENTS AND CONVERSION

Chapter 1 Amalgamation and transfer of engagements between co-operative societies

Head 187 – General

Provide that:

- (1) Any two or more co-operative societies, in this Chapter referred to as “amalgamating co-operative societies” may amalgamate by forming a new co-operative society, in this Chapter referred to as a “successor co-operative society”.
- (2) Any co-operative society, in this Chapter referred to as the “transferor co-operative society”, may transfer its engagements to another co-operative society, in this Chapter referred to as the “transferee co-operative society”, which undertakes to fulfil the engagements.
- (3) An amalgamation or a transfer of engagements may not be put into effect save under and in accordance with the relevant provisions of this Chapter.
- (4) An amalgamation or transfer of engagements shall not take effect under this Chapter (or any operation to the same or similar effect under Chapter 1) in the absence of the approval, authorisation or other consent, if any, that is required by any other enactment or a Community act for the amalgamation or transfer of engagements to take effect.

Explanatory Note: This chapter provides for the modernisation of section 53 of the Industrial and Provident Societies Act 1893 which provides for the amalgamation of and transfer of engagements between industrial and provident societies and companies. The Chapter provides a bespoke procedure for the amalgamation and transfer of engagements between co-operative societies based on the concepts and language of Chapter 3 of Part 8 of the Companies Act 2014.

The head sets out the names by which the societies involved in an amalgamation or a transfer of engagements are referred in this Chapter. The head also specifies that an amalgamation or a transfer of engagements must be put into effect in accordance with the relevant provisions of this Chapter.

HEAD 188 – Common draft terms for an amalgamation and transfer of engagements

Provide that:

(1) Where—

- (a) an amalgamation, or
- (b) a transfer of engagements

is proposed to be entered into, the directors of the amalgamating co-operative societies or the directors of the co-operative societies proposing to enter into a transfer of engagements, shall draw up common draft terms, in this Chapter referred to as “common draft terms” and approve those terms in writing.

(2) The common draft terms of an amalgamation shall state, at least:

- (a) in relation to each of the amalgamating co-operative societies—
 - (i) its name,
 - (ii) its registered office, and
 - (iii) its registered number;
- (b) in relation to the successor co-operative society what are proposed as the particulars specified in subparagraphs (i) and (ii) of paragraph (a);
- (c) (i) the proposed share exchange ratio and amount of any cash payment; and
 - (ii) the proposed terms relating to allotment of shares or other securities in the successor co-operative society;
- (d) the date from which transactions of the amalgamating co-operative societies are to be treated for accountancy purposes as being those of the successor co-operative society;
- (e) the rights, if any, to be conferred by the successor co-operative society on members of the amalgamating societies;
- (f) the rules of the successor co-operative society;
- (g) information on the evaluation of the assets and liabilities to be transferred to the successor co-operative society; and
- (h) the dates of the financial statements of the amalgamating co-operative societies which were used for the purpose of preparing the common draft terms of amalgamation.

(3) The common draft terms of a transfer of engagements shall state, at least—

- (a) in relation to the transferor co-operative society and the transferee co-operative society—
 - (i) its name,
 - (ii) its registered office, and
 - (iii) its registered number;
- (b) where the members of the transferor co-operative society become members of the transferee co-operative society –
 - (i) the proposed share exchange ratio in relation to the shares of the transferor co-operative society and amount of any cash payment; and
 - (ii) the proposed terms relating to allotment of shares or other securities in the transferee co-operative society, that apply to those members;

(c) information on the evaluation of any undertaking, assets or liabilities to be transferred to the transferee co-operative society;
and

(d) in the case of the transferor co-operative society, the transferee co-operative society rules.

(4) The common draft terms of an amalgamation and a transfer of engagements may include such additional terms as are not inconsistent with this Chapter.

(5) The date of the common draft terms shall, for the purposes of this Chapter, be the date when the common draft terms are approved in writing under *subhead (1)* by the boards of directors of the

(a) the amalgamating co-operative societies, or

(b) the co-operative societies involved in a transfer of engagements,

as the case may be, or where the dates on which those terms are so approved by each of the boards of directors are not the same, then, for the foregoing purposes, the date shall be the latest date on which those terms are so approved by a board of directors.

Explanatory Note: This head sets out what must be included in the common draft terms of amalgamation/transfer of engagements. It borrows, with modifications, some of the items included in the draft terms of merger specified in section 466 of the Companies Act 2014. The common draft terms of amalgamation/transfer of engagements must be drawn up by the directors of the amalgamating co-operative societies or societies entering into a transfer of engagements and those terms must be approved in writing. Subhead (5) provides the date of the common draft terms for the purposes of the Chapter.

HEAD 189 – Directors’ explanatory report

Provide that:

- (1) Subject to *subhead (4)* a separate written report (the “explanatory report”) shall be prepared in respect of each of the amalgamating co-operative societies or the co-operative societies involved in a transfer of engagements by the directors of each such co-operative society.
- (2) The explanatory report shall at least give particulars of, and explain—
 - (a) the common draft terms, and
 - (b) the legal and economic grounds for and implications of the common draft terms of either—
 - (i) an amalgamation, with particular reference to the proposed share exchange ratio, organisation and management structures, recent and future commercial activities and the financial interests of the holders of the shares and other securities in the society, or
 - (ii) a transfer of engagements, with particular reference to the proposed terms relating to the transfer of any undertakings, assets or liabilities to be transferred to the transferee co-operative society and to the proposed share exchange ratio in the transferee co-operative society where the members of the transferor co-operative society become members of the transferee co-operative society,as the case may be.
- (3) On the explanatory report being prepared by a co-operative society, the board of directors shall approve the report in writing.
- (4) This head shall not apply where the members of any of the—
 - (a) amalgamating co-operative societies, or
 - (b) co-operative societies involved in a transfer of engagements,as the case may be, who are entitled to vote at a general meeting, have agreed that this head shall not apply by virtue of the passing of a special resolution to that effect.

Explanatory Note: This head uses the concepts and some of the language of section 467 of the Companies Act 2014. It sets out that the directors of each amalgamating co-operative society or a society involved in a transfer of engagements must prepare a separate written report giving particulars of the common draft terms of amalgamation or transfer and the legal and economic grounds for and implications of those draft terms. The explanatory report shall be approved by the directors in writing. Subhead (4) provides that the provisions of this head will not apply where the members of the co-operatives involved in the amalgamation or transfer of engagements who are entitled to vote at a general meeting have agreed so by passing a special resolution.

HEAD 190 – Expert’s report

Provide that:

- (1) Subject to *subhead (2) and (3)*, there shall, in accordance with this head, be appointed one or more persons to—
 - (a) examine the common draft terms, and
 - (b) make a report on those terms to the members of the amalgamating co-operative societies or the co-operative societies involved in a transfer of engagements, as the case may be.
- (2) This head shall only apply to —
 - (a) an amalgamation, or
 - (b) a transfer of engagements where the members of the transferor co-operative society become members of the transferee co-operative society.
- (3) *Subhead (1)* shall not apply where the members of each of—
 - (a) the amalgamating co-operative societies, or
 - (b) the co-operative societies involved in a transfer of engagements,as the case may be, who are entitled to vote at a general meeting, have agreed that such report is not necessary by virtue of the passing of a special resolution to that effect.
- (4) The functions referred to in *subhead (1)(a) and (b)* shall be performed in relation to each of the amalgamating co-operative societies or co-operative society involved in a transfer of engagements, as the case may be, by one or more persons appointed for that purpose in relation to the particular co-operative society by its directors (and the directors of each co-operative society may appoint the same person or persons for that purpose).
- (5) The person so appointed, or each person so appointed, is referred to in this Chapter as an “expert” and a reference in this Chapter to a report of an expert or other action (including an opinion) of an expert shall, in a case where there are 2 or more experts, be read as reference to a joint report or joint other action (including an opinion) of or by them.
- (6) A person shall not be appointed an expert unless the person is a qualified person.
- (7) A person is a qualified person for the purposes of this head if the person—
 - (a) is a statutory auditor, and
 - (b) is not—
 - (i) a person who is or, within the period of 12 months before the date of the common draft terms has been, an officer or employee of any of the amalgamating co-operative societies or co-operative society involved in a transfer of engagements,
 - (ii) except with the leave of the court, a parent, spouse, civil partner, brother, sister, or child of an officer of any of the amalgamating co-operative societies or co-operative society involved in the transfer of engagements (and a reference in this subparagraph to a child of an officer shall be deemed to include a child of the officer’s civil partner who is ordinarily resident with the officer and the civil partner), or

(iii) a person who is a partner, or in the employment, of an officer or employee of any of the amalgamating co-operative societies or co-operative society involved in the transfer of engagements,

as the case may be.

(8) The report of the expert shall be made available not less than 30 days before the date of the passing of the special resolution referred to in *head 192*, by each of the amalgamating co-operative societies or co-operative societies involved in a transfer of engagements, as the case may be, shall be in writing and shall—

- (a) state the method or methods used to arrive at the proposed share exchange ratio,
- (b) give the opinion of the expert as to whether the proposed share exchange ratio is fair and reasonable,
- (c) give the opinion of the expert as to the adequacy of the method or methods used in the case in question,
- (d) indicate the values arrived at using each such method
- (e) give the opinion of the expert as to the relative importance attributed to such methods in arriving at the values decided on, and
- (f) specify any special valuation difficulties which have arisen.

(9) The expert may—

- (a) require each of the amalgamating co-operative societies, or co-operative societies involved in a transfer of engagements and their officers to give to the expert such information and explanations (whether oral or in writing), as the case may be and
- (b) make such enquiries,

as the expert thinks necessary for the purposes of making the report.

(10) If an amalgamating co-operative society or a co-operative society involved in a transfer of engagements fails to give to the expert any information or explanation in the power, possession or procurement of that co-operative society, on a requirement being made of it under *subhead (9)(a)* by the expert, that co-operative society and any officer of it who is in default shall be guilty of a category 2 offence.

(11) If an amalgamating co-operative society or a co-operative society involved in a transfer of engagements makes a statement (whether orally or in writing), or provides a document, to the expert that conveys or purports to convey any information or explanation the subject of a requirement made of it under *subhead (9)(a)* by the expert and—

- (a) that information is false or misleading in a material particular, and
- (b) the co-operative society knows it to be so false or misleading or is reckless as to whether it is so false or misleading,

the co-operative society and any officer of it who is in default shall be guilty of a category 2 offence.

(12) If a person appointed an expert under *subhead (4)* ceases to be a qualified person, that person—

- (a) shall immediately cease to hold office, and
- (b) shall give notice in writing of the fact of the person's ceasing to be a qualified person to each amalgamating co-operative society or co-operative society involved in a transfer of engagements, as the case may be,

but without prejudice to the validity of any acts done by the person under this Chapter before that cessation.

(13) A person who purports to perform the functions of an expert (in respect of an amalgamation or a transfer of engagements concerned) under this Chapter after ceasing to be a qualified person (in respect of the amalgamation or transfer of engagements concerned) shall be guilty of a category 2 offence.

Explanatory Note: This head uses the concepts and language set out in section 468 of the Companies Act 2014 and provides that one or more experts must be appointed to examine the draft terms of amalgamation or transfer of engagements and to make a report thereon to the members of the co-operative societies concerned. Such a report is not needed where the members of every amalgamating co-operative society or society involved in a transfer of engagements waive the requirement of producing such a report by passing a special resolution. The head only applies to a transfer of engagements if the members of the transferor co-operative society become members of the transferee society.

An expert must be a “qualified person”, which term is described under subhead (7) as a statutory auditor who has not been an officer or employee of any of the co-operative societies concerned in the previous 12 months or is not related (within the meaning of this head) to an officer of any of the amalgamating co-operative societies or societies involved in the transfer. Subhead (8) stipulates when the experts report must be delivered and what information it must include.

Subhead (9) gives powers to the expert to obtain information and explanations from the amalgamating co-operative societies or the societies involved in the transfer and their officers and to make enquiries necessary for the purposes of making his or her report. Any co-operative society and any officer of it who fails to give the required information and explanations shall be guilty of a category 2 offence under subhead (10). Similarly, the provision of false or misleading information or explanations will result in a category 2 offence. Subheads (12) and (13) deal with the situation where a person appointed as an expert ceases to be a qualified person.

HEAD 191 – Inspection of documents

Provide that:

- (1) Subject to *subhead (5)*, each of the amalgamating societies or co-operative societies involved in a transfer of engagements shall, in accordance with *subhead (3)*, make available for inspection free of charge by any member of the co-operative society at its registered office during business hours:
 - (a) the common draft terms;
 - (b) subject to *subhead (2)*, the statutory financial statements for the preceding 3 financial years of each co-operative society (audited, where required by that Part, in accordance with Part 6 of the Act of 2014, as applied by *head 169*),
 - (c) except in the case where such a report is not required to be prepared by that head, the explanatory report relating to each of the amalgamating societies or co-operative societies involved in the transfer of engagements, as the case may be, referred to in *head 189*; and
 - (d) if such a report is required to be prepared by that head, the expert's report relating to each of the amalgamating co-operative societies or co-operative societies involved in the transfer of engagements, as the case may be, referred to in *head 190*.
- (2) For the purposes of *paragraph (b) of subhead (1)*—
 - (a) if any of the amalgamating societies or co-operative societies involved in the transfer of engagements, as the case may be, has traded for less than 3 financial years before the date of the common draft terms, then, as respects that co-operative society, that paragraph is satisfied by the statutory financial statements for those financial years for which the co-operative society has traded (audited, where required by that Part, in accordance with Part 6 of the Act of 2014, as applied by *Head 169*) being made available as mentioned in that subhead by each of the amalgamating societies or co-operative societies involved in the transfer of engagements, or
 - (b) if, by reason of its recent registration, the obligation of any of the foregoing co-operative societies to prepare its first financial statements under Part 6 of the Act of 2014, as applied by *head 169*, had not arisen as of the date of the common draft terms, then the reference in that paragraph to the financial statements of that co-operative society shall be disregarded.
- (3) The provisions of *subhead (1)* shall apply in the case of each of the amalgamating societies or co-operative societies involved in the transfer of engagements for a period of 30 days before the date of the passing of the special resolution on the common draft terms in accordance with *head 192*.
- (4) *Head 53(1)* (access to documents during business hours) shall apply in relation to *subhead (1)* as it applies in relation to the relevant provisions of *Part 4*.
- (5) *Subhead (1)* shall not apply in relation to an amalgamating society or a co-operative society involved in a transfer of engagements if it publishes free of charge on its website the documents specified in that subhead for a continuous period of at least 2 months, commencing at least 30 days before the date of the general meeting of the co-operative society which, by virtue of *head 192*, is to consider the common draft terms, and ending at least 30 days after that date.
- (6) Where, in the period referred to in *subhead (5)*, access to the co-operative society's website is disrupted for a continuous period of at least 24 hours or for separate periods totalling not less than 72

hours, the period referred to in *subhead (5)* shall be extended for a period corresponding to the period or periods of disruption.

(7) A reference in this head to statutory financial statements shall be deemed to include a reference to a directors' report and a reference to auditing shall, in the case of such a report, be read as a reference to the operation referred to in *section 336(5)* of the Act of 2014, as applied by *head 169*.

Explanatory Note: This head is based on section 471 of the Companies Act 2014 and provides for the inspection of the documents relating to the amalgamation and transfer of engagements. The head provides for the inspection of specified documents free of charge by any member of the amalgamating societies or societies involved in a transfer of engagements for a period of 30 days before the date of the passing of the special resolution in accordance with head 192. Provision is made in subhead (5) for exemption from the obligations under this head where the documents specified in subhead (1) are published on the co-operative society's website.

HEAD 192 – Approval of amalgamation or transfer of engagements

Provide that:

- (1) An amalgamation or a transfer of engagements shall not be put into effect unless—
 - (a) a special resolution of each of the amalgamating co-operative societies, or co-operative societies involved in a transfer of engagements, as the case may be, is passed not more than 12 months prior to the amalgamation or transfer of engagements, and
 - (b) each of the co-operative societies has forwarded with each notice of the general meeting at which the special resolution or other foregoing resolution is to be considered, a copy of a declaration which complies with *subhead (4)* and the other relevant provisions of this Chapter as regards its contents or the documents to be attached to it.
- (2) Subject to subhead (3), on the delivery, in accordance with *head 193*, to the Registrar of each declaration referred to in that head, the Registrar shall register the dissolution of the amalgamating co-operative societies or the transferor co-operative society, as the case may be.
- (3) The Registrar shall not register the dissolution of an amalgamating co-operative society unless the successor co-operative society is registered in accordance with this Bill.
- (4) The declaration referred to in subhead (1)(b) is a declaration in writing that is made at a meeting of the directors held not earlier than 30 days before the date of the meeting referred to in *subhead (1)(b)*, and that is made by the majority of the directors.
- (5) The terms of the resolution referred to in *subhead (1)* shall be that the common draft terms are approved.
- (6) A declaration referred to in *head 193(1)* shall have no effect for the purposes of this Bill unless it is accompanied by a document prepared by the declarants either—
 - (a) confirming that the common draft terms provide for such particulars of each relevant matter prescribed as will enable each of the prescribed effects provisions in *head 194* to operate without difficulty in relation to the amalgamation or transfer of engagements; or
 - (b) specifying such particulars of each relevant matter as will enable each of those effect provisions to operate without difficulty in relation to the amalgamation or transfer of engagements.

Explanatory Note: This head borrows provisions from sections 202 (1), (5) to (7) and 209(1) of the Companies Act 2014 and provides the procedure for approving an amalgamation or a transfer of engagements. Subhead (1) sets out that an amalgamation or a transfer of engagements shall be effected by a special resolution passed by each of the amalgamating co-operative societies, or societies involved in a transfer of engagements not more than 12 months prior to the amalgamation or transfer. Subhead (5) specifies that the terms of the resolution shall be that the common draft terms are approved. A copy of the directors’ declaration referred to in subhead (1)(b) is required to be delivered with the notice of the general meeting at which the special resolution is to be considered. Upon delivery of the directors’ declaration, and in the case of an amalgamation, once the successor co-operative society is registered in accordance with this Bill, the Registrar shall register the dissolution of the amalgamating co-operative

societies or the transferor co-operative society. Subhead (4) sets out that the declaration required must be made at a meeting of the directors held no earlier than 30 days before the date of the meeting at which the special resolution is to be considered, and subhead (6) sets out the particulars of the document that shall accompany the directors' declaration.

HEAD 193 – Declaration to be made by directors

Provide that:

(1) The declaration (that is to say, each declaration by the majority of the directors of each of the amalgamating co-operative societies, or co-operative societies involved in a transfer of engagements), as the case may be, shall state—

(a) the total amount of the assets and liabilities of each amalgamating co-operative society or co-operative society involved in a transfer of engagements in question as at the latest practicable date before the date of making of the declaration and in any event at a date not more than 3 months before the date of that making; and

(b) either—

(i) in the case of an amalgamation, that the declarants have made a full inquiry into the affairs of the co-operative society and the other amalgamating co-operative societies and that, having done so, they have formed the opinion that the successor co-operative society will be able to pay or discharge the debts and other liabilities of it and those other co-operative societies in full as they fall due during the period of 12 months after the date on which the amalgamation or transfer of engagements takes effect, or

(ii) in case of a transfer of engagements, that the declarants have made a full inquiry into the affairs of the co-operative society and the other co-operative society involved in the transfer of engagement and that, having done so, they have formed the opinion that the transferee co-operative society will be able to pay or discharge the debts and other liabilities of it and the transferor co-operative society in full as they fall due during the period of 12 months after the date on which transfer of engagements takes effect,

as the case may be.

(2) A copy of each declaration under this head shall be delivered to the Registrar not later than 21 days after the date on which the carrying on of the amalgamation or transfer of engagements concerned is commenced.

(3) On application to it by any interested party, the court may, in any case where there has been a failure to comply with *subhead* (2), declare that the carrying on of the amalgamation or transfer of engagements, as the case may be, shall be valid for all purposes if the court is satisfied that it would be just and equitable to do so.

Explanatory Note: This head borrows provisions from section 206 and 203(4) of the Companies Act 2014. It sets out what the directors' declaration must state in a case of an amalgamation or a transfer of engagements between co-operative societies. Each declaration by the directors must state the assets and liabilities of the amalgamating co-operative societies or societies involved in a transfer of engagements, that the declarants have made a full enquiry into the affairs of the co-operative society and the other co-operative societies, and having done so they have formed the opinion that the successor or transferee co-

operative society will be able to pay the debts of the amalgamating or transferor co-operative society respectively as they fall due. A copy of this declaration must be delivered to the Registrar not later than 21 days after the date on which the carrying on of the amalgamation or transfer of engagements commenced. Where the directors fail to make a declaration in respect of an amalgamation or a transfer of engagements, the court may nonetheless declare the activity valid if it is just and equitable to do so.

HEAD 194 – Effect of an amalgamation or transfer of engagements

Provide that:

- (1) An amalgamation shall, from the effective date, have the following effects:
 - (a) all the assets and liabilities of the amalgamating co-operative societies, are transferred to the successor co-operative society;
 - (b) the amalgamating societies are dissolved;
 - (c) the members of the amalgamating co-operative societies become members of the successor co-operative society;
 - (d) all legal proceedings pending by or against any amalgamating society shall be continued with the substitution, for the amalgamating co-operative society, of the successor co-operative society as a party;
 - (e) every contract, agreement or instrument to which an amalgamating co-operative society is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the successor co-operative society had been a party thereto instead of the amalgamating co-operative society,
 - (ii) for any reference (however worded and whether express or implied) to the amalgamating co-operative society there were substituted a reference to the successor co-operative society, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the amalgamating co-operative society, or any of them—
 - (I) were, respectively, a reference to the directors, officers, representatives or employees of the successor operative society or to such director, officer, representative or employee of the successor co-operative society as the successor co-operative society nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the successor co-operative society who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;
 - (f) every contract, agreement or instrument to which an amalgamating co-operative society is a party becomes a contract, agreement or instrument between the successor co-operative society and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the amalgamating co-operative society and the counterparty;
 - (g) any money due and owing (or payable) by or to an amalgamating co-operative society under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (f)* shall become due and owing (or payable) by or to the successor co-operative society instead of the amalgamating co-operative society; and

- (h) an offer or invitation to treat made to or by an amalgamating co-operative society before the effective date shall be read and have effect, respectively, as an offer or invitation to treat made to or by the successor co-operative society.
- (2) The following provisions have effect for the purposes of *subheads (1) and (2)*—
- (a) “instrument” in that subhead includes—
- (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and
 - (ii) an instrument relating to personalty;
- (b) *paragraph (e)(ii)* of that subhead applies in the case of references to the amalgamating co-operative society and its successor co-operative society and assigns as it applies in the case of references to the amalgamating co-operative society personally;
- (c) *paragraph (f)* of that subhead applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the amalgamating co-operative society or to benefit or bind (as appropriate) the society and its successor co-operative society and assigns.
- (3) Subhead (1) shall apply to a transfer of engagements, from the effective date, with the following modifications:
- (a) the reference to an amalgamation is to a transfer of engagements;
 - (b) references to amalgamating co-operative society or societies is a to a transferor co-operative society;
 - (c) references to a successor co-operative society is to a transferee co-operative society: and
 - (d) subhead (c) shall only apply to a transfer of engagements where the members of the transferor co-operative society become members of the transferee co-operative society.
- (4) For the purposes of this head, on the passing of the resolution referred to in *head 192(1)* by each of the co-operative societies, the amalgamation, subject to *subhead (5)*, or the transfer of engagements shall, in accordance with the common draft terms and any supplemental document, take effect on the date specified in those terms or in that supplemental document.
- (5) An amalgamation shall not take effect unless the successor co-operative society is registered by the Registrar in accordance with this Bill.

Explanatory Note:

Subheads (1) and (2) borrow the language of the provisions in sections 480(3) and (4) of the Companies Act 2014 and provide for the effects that follow an amalgamation. Subhead (3) modifies subhead (2) to apply to the effects to following a transfer of engagements. Subhead (4) is based on section 472(2) of the Companies Act 2014 and provides that the amalgamation or transfer of engagements will take place on the date specified in the common draft terms or supplemental document to the terms. Subhead (5) provides that an amalgamation shall not take effect unless the successor co-operative society is registered under the Bill.

Head 195 – Civil sanctions where opinion as to solvency stated in declaration without reasonable grounds

(1) Where a director of a co-operative society makes a declaration without having reasonable grounds for the opinion referred to in subparagraphs (i) or (ii) of *head 193(1)(b)*, the court, on the application of—

(a) a liquidator, creditor, member or contributory of the successor co-operative society or the transferee co-operative society or

(b) the Authority,

may declare that the director shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the successor co-operative society or, the transferee co-operative society, as the case may be.

(2) If a successor co-operative society or, the transferee co-operative society, as the case may be, is wound up within 12 months after the date of the making of a declaration and its debts are not paid or provided for in full within 12 months after the commencement of the winding up, it shall be presumed, until the contrary is shown, that each director of, as appropriate—

(a) the amalgamating co-operative societies, or

(b) the transferor co-operative society and transferee co-operative society,

who made the declaration did not have reasonable grounds for the opinion referred to in section, subparagraphs (i) or (ii) of *head 193(1)(b)* as the case may be.

(3) If the court makes a declaration under *subhead (1)*, it may give such further directions as it thinks proper for the purpose of giving effect to the declaration.

Explanatory Note:

This head is based on section 210 of the Companies Act 2014. It provides that the court may make a declaration of personal liability in circumstances where a director makes a declaration of solvency under head 193(1)(b) without reasonable grounds.

HEAD 196 – Civil liability of directors and experts

Provide that:

(1) Any shareholder of any of the amalgamating co-operative societies or societies involved in a transfer of engagements who has suffered loss or damage by reason of misconduct in the preparation or implementation of the amalgamation or transfer of engagements by a director of any such co-operative society or by the expert, if any, who has made a report under *head 190* shall be entitled to have such loss or damage made good to him or her by—

- (a) in the case of misconduct by a person who was a director of that co-operative society at the date of the draft terms— that person,
- (b) in the case of misconduct by any expert who made a report under *head 190* in respect of any of the amalgamating co-operative societies or co-operative societies involved in a transfer of engagements — that person.

(2) Without prejudice to the generality of *subhead (1)*, any shareholder of any of the amalgamating co-operative societies or societies involved in a transfer of engagements who has suffered loss or damage arising from the inclusion of any untrue statement in any of the following, namely:

- (a) the common draft terms;
- (b) the explanatory report, if any, referred to in *head 189*;
- (c) the expert’s report, if any, under *head 190*,

shall, subject to *subheads (3)* and *(4)*, be entitled to have such loss or damage made good to him or her—

- (i) in the case of the document or report referred to in *paragraph (a)* or *(b)*— by every person who was a director of that co-operative society at the date of the common draft terms, or
- (ii) in the case of the report referred to in *paragraph (c)* — by the person who made that report in relation to that co-operative society.

(3) A director of a co-operative society shall not be liable under *subhead (2)* if he or she proves—

- (a) that the document or report referred to in *subhead (2)(a)* or *(b)*, as the case may be, was issued without his or her knowledge or consent and that, on becoming aware of its issue, he or she forthwith informed the shareholders of that co-operative society that it was issued without his or her knowledge or consent, or
- (b) that as regards every untrue statement he or she had reasonable grounds, having exercised all reasonable care and skill, for believing and did, up to the time the amalgamation or transfer of engagements took effect, believe that the statement was true.

(4) A person who makes a report under *head 190* in relation to a co-operative society shall not be liable in the case of any untrue statement in the report if he or she proves—

- (a) that, on becoming aware of the statement, he or she forthwith informed that co-operative society and its shareholders of the untruth, or
- (b) that he or she was competent to make the statement and that he or she had reasonable grounds for believing and did up to the time the amalgamation or transfer of engagements took effect believe that the statement was true.

Explanatory Note: This head is based on section 483 of the Companies Act 2014 and allows for the civil liability of directors and experts in relation to the preparation or implementation of an amalgamation or a transfer of engagements. Any shareholder of an amalgamating or a transferor and transferee co-operative society who has suffered loss or damage by reason of misconduct of a director or expert or by reason of the inclusion of any untrue statement in the documentation relating to the amalgamation or a transfer of engagements shall have a cause of action and shall be entitled to have such loss or damage made good to him or her. Subheads (3) and (4) provide for circumstances where directors and experts can be absolved from liability under this head.

HEAD 197 – Criminal liability for untrue statements in amalgamation and transfer of engagements documents

Provide that:

(1) Where any untrue statement has been included in—

- (a) the common draft terms, or
- (b) the explanatory report, if any, referred to in *head 189*,

the following:

- (i) each of the persons who was a director of any of the amalgamating co-operative societies or co-operative societies involved in a transfer of engagements at the date of the draft terms of amalgamation or transfer of engagements, in the case of the foregoing explanatory report, at the time of the report's preparation; and
- (ii) any person who authorised the issue of the document;

shall be guilty of a category 2 offence.

(2) Where any untrue statement has been included in the expert's report prepared under *head 190*, the expert and any person who authorised the issue of the report shall be guilty of a category 2 offence.

(3) In any proceedings against a person in respect of an offence under *subhead (1) or (2)*, it shall be a defence to prove that having exercised all reasonable care and skill, the defendant had reasonable grounds for believing and did, up to the time of the issue of the document concerned, believe that the statement concerned was true.

Explanatory Note: This head is based on section 484 of the Companies Act 2014 and provides for criminal liability for untrue statements in documents relating to an amalgamation or a transfer of engagements – whether of the directors, the expert or any person who authorised the issue of such document containing untrue statements. A category 2 offence is applied in subhead (2) and subhead (3) provides for a defence to any proceedings against a person under this head.

*Chapter 2 Conversion of a co-operative society to a company and of a
company to a co-operative society*

HEAD 198 – Conversion of a co-operative society to a company

Provide that:

- (1) A co-operative society may by special resolution determine to convert itself to a company.
- (2) A conversion of a co-operative society to a company shall not be put into effect unless—
 - (a) a special resolution to convert the society to a company is passed not more than 12 months prior to the conversion at a general meeting of the society,
 - (b) the society has forwarded with the notice of the general meeting at which the special resolution or other foregoing resolution is to be considered, a copy of the constitution of the company following conversion,
 - (c) an application for the purpose, in the prescribed form is delivered to the Registrar of Companies, including—
 - (i) a copy of the resolution referred to in paragraph (a), together with the constitution of the company referred to in paragraph (b);
 - (ii) the statement and consent referred to in section 22 of the Act of 2014; and
 - (iii) the declaration referred to in section 24 of the Act of 2014, and, where appropriate—
 - (I) the bond referred to in section 22(6) of the Act of 2014;
 - (II) the statement referred to in section 23 of the Act of 2014,
 - (d) the society has delivered to the Registrar all annual returns required by section 343 of the Act of 2014, as applied by head 169, that are outstanding in respect of the co-operative society as at the date of the application; and
 - (e) the constitution of the company referred to in *paragraph (b)* is registered by the Registrar of Companies under the Act of 2014.
- (3) The Registrar of Companies shall not register the constitution of a company delivered for registration unless he or she is satisfied that all the requirements of this head and Part 2 of the Act of 2014 in respect of registration and of matters precedent and incidental thereto have been complied with.
- (4) On the date of registration of the constitution of the company referred to in *subhead 2(b)* the following shall take effect:
 - (a) all the assets and liabilities of the co-operative society are transferred to the company;
 - (b) the co-operative society is dissolved;
 - (c) all legal proceedings pending by or against the co-operative society shall be continued with the substitution, for the co-operative society, of the company as a party;

- (d) every contract, agreement or instrument to which the co-operative society is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the company had been a party thereto instead of the co-operative society,
 - (ii) for any reference (however worded and whether express or implied) to the co-operative society there were substituted a reference to the company, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the co-operative society, or any of them—
 - (I) were, respectively, a reference to the directors, officers, representatives or employees of the company or to such director, officer, representative or employee of the company as the company nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the company who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;
 - (e) every contract, agreement or instrument to which the co-operative society is a party becomes a contract, agreement or instrument between the company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the co-operative society and the counterparty;
 - (f) any money due and owing (or payable) by or to the co-operative society under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (e)* shall become due and owing (or payable) by or to the company instead of the co-operative society; and
 - (g) an offer or invitation to treat made to or by the co-operative society before the date of incorporation shall be read and have effect, respectively, as an offer or invitation to treat made to or by the company.
- (5) The following provisions have effect for the purposes of *subhead (4)*—
- (a) “instrument” in that subhead includes—
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and
 - (ii) an instrument relating to personalty;
 - (b) *paragraph (d)(ii)* of that subhead applies in the case of references to the co-operative society and its successor and assigns as it applies in the case of references to the co-operative society personally;
 - (c) *paragraph (e)* of that subhead applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the co-operative society or to benefit or bind (as appropriate) the society and its successor and assigns.

Explanatory Note: This head derives from section 54 of the Industrial and Provident Societies Act 1893 and borrows some of the language of section 480 of the Companies Act 2014. It provides that a co-operative society may convert itself to a company by passing a special resolution at a general meeting and the special resolution shall contain the constitution of the company. The co-operative society shall apply to the Registrar for the confirmation of the conversion and the application form shall be accompanied by a copy of the special resolution and the statements and declarations required under sections 22(2) and 24 of the Act of 2014. The procedure for passing the special resolution is specified in sections (2) and (4) of head 111. If the Registrar of Companies is satisfied that the provisions of Part 2 of the Companies Act 2014 are complied with, he/she shall register the constitution of the company and issue to it a certificate of incorporation. Subhead (4) sets out the effects that will flow from the date of registration of the constitution of the company. Subhead (5) sets out the provisions that have effect for the purposes of subhead (4).

Head 199 – Conversion of a company to a co-operative society

Provide that:

- (1) A company may by special resolution determine to convert itself to a co-operative society.
- (2) A conversion of a company to a co-operative society shall not be put into effect unless—
 - (a) a special resolution to convert the company to a society at a general meeting of the company is passed not more than 12 months prior to the conversion at a general meeting of the company,
 - (b) the company has forwarded with the notice of general meeting at which the special resolution or other foregoing resolution is to be considered, a copy of the rules of the co-operative society following conversion,
 - (c) an application for the purpose, in the prescribed form is delivered to the Registrar, including—
 - (i) a copy of the resolution referred to in paragraph (a), together with the rules of the co-operative society referred to in paragraph (b);
 - (ii) the statement and consent referred to in *head 14*;
 - (iii) the declaration referred to in *head 16*, and
 - (iv) where appropriate the statement referred to in *head 15*,
 - (d) the company has delivered to the Registrar of Companies all annual returns required by section 343 of the Act of 2014 that are outstanding in respect of the company as at the date of the application; and
 - (e) the rules of the co-operative society referred to in *paragraph (b)* are registered by the Registrar under this Bill.
- (3) The Registrar shall not register the rules of a co-operative society delivered for registration unless he or she is satisfied that all the requirements of this head and Part 2 of this Bill in respect of registration and of matters precedent and incidental thereto have been complied with.
- (4) On the date of registration of the rules of the co-operative society referred to in *subhead 2(b)* the following shall take effect:
 - (a) all the assets and liabilities of the company are transferred to the co-operative society;
 - (b) the company is dissolved;
 - (c) all legal proceedings pending by or against the company shall be continued with the substitution, for the company, of the co-operative society as a party;
 - (d) every contract, agreement or instrument to which the company is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the co-operative society had been a party thereto instead of the company,
 - (ii) for any reference (however worded and whether express or implied) to the company there were substituted a reference to the co-operative society, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the company, or any of them—

- (I) were, respectively, a reference to the directors, officers, representatives or employees of the co-operative society or to such director, officer, representative or employee of the co-operative society as the co-operative society nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the co-operative society who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;
- (e) every contract, agreement or instrument to which the company is a party becomes a contract, agreement or instrument between the co-operative society and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the company and the counterparty;
 - (f) any money due and owing (or payable) by or to the company under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (e)* shall become due and owing (or payable) by or to the co-operative society instead of the company; and
 - (g) an offer or invitation to treat made to or by the company before the date of registration shall be read and have effect, respectively, as an offer or invitation to treat made to or by the co-operative society.
- (5) The following provisions have effect for the purposes of *subhead (4)*—
- (a) “instrument” in that subhead includes—
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and
 - (ii) an instrument relating to personalty;
 - (b) *paragraph (d)(ii)* of that subhead applies in the case of references to company and its successor and assigns as it applies in the case of references to the company personally;
 - (c) paragraph (e) of that subhead applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the company or to benefit or bind (as appropriate) the company and its successor and assigns.
- (6) In this head, “special resolution” means a special resolution in accordance with section 191 of the Act of 2014.

Explanatory Note: This head derives from section 55 of the Industrial and Provident Societies Act 1893 and borrows some of the language of section 480 of the Companies Act 2014. It provides that a company may convert itself to a co-operative society by passing a special resolution at a general meeting and the special resolution shall contain the rules of the co-operative society. The co-operative society shall apply to the Registrar for the confirmation of the conversion and the application form shall be accompanied by a copy of the special resolution and the statements and declarations required under heads 14(2) and 16 of this Bill. If the Registrar is satisfied that the provisions of Part 2 of this Bill are complied with, he/she shall register the rules of the co-operative society and issue to it a certificate of registration. Subhead (4)

sets out the effects that will flow from the date of registration of the rules of the co-operative society.
Subhead (5) sets out the provisions that have effect for the purposes of subhead (4).

PART 9 EXAMINERSHIP AND RESCUE PROCESS FOR SMALL AND MICRO CO-OPERATIVE SOCIETIES

Chapter 1 Examinership

Head 200 – Examinership

Provide that:

(1) The provisions of Part 10 of the Act of 2014, and the other provisions of that Act relating to the examinership of companies apply, subject to the necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are the following:

- (a) references to a general meeting of the company are to a general meeting of the co-operative society;
- (b) references to a shadow director of a company are to a shadow director of a co-operative society;
- (c) references to the constitution of the company are to the rules of the co-operative society;
- (d) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions;
- (e) the references in sections 509(7)(b) and 517(8) “to a small company by virtue of section 280A or 280B” include a co-operative society, if the society meets the qualifying criteria for a small company set out in sections 280A or 280B of the Act of 2014;
- (f) the following paragraph is substituted for paragraph (d) of subsection 510(1):
 - “at least ten per cent of the members of the co-operative society”;
- (g) the reference in sections (4)(g) and (6) of 520 to section 212 is a reference to *head 115* of this Bill;
- (h) the references in subsections (1) and (2) of section 524 and sections 534(1)(b) and 542(1) to that Act include this Bill;
- (i) the reference in section 526(4)(b) to section 220 is a reference to *head 123* of this Bill;
- (j) the reference in section 534(2) to “Part 4” is to “Part 4 of this Bill”;
- (k) the reference in section 539(6)(d) to issued share capital shall be construed as a reference to shares in a co-operative society;
- (l) the reference in section 540 —
 - (i) in subsection (8) to section 192 is to *head 112* of this Bill; and
 - (ii) in subsection 540(10) the following paragraph be inserted after paragraph (b):
 - “and (c) the reference in section 452(7) to shadow directors and to de facto directors include shadow directors and de facto directors of a co-operative society.”;

(m) the reference in section 542(8) to section 191(1) is to *head 111(1)* of this Bill;

(n) the reference in section 555(1) to “CRO Gazette” is to “RCT Gazette”.

(3) For the avoidance of doubt, the modifications in *subhead (2)(e)* to sections 509(7)(b) and 517(8) of the Act of 2014 provide that a petition to the court to appoint examiner may be made to the Circuit Court in the case of a small co-operative that meets the small company criteria under sections 280A or 280B of the Act of 2014 and not the criteria as applied by paragraphs (i) and (j) of *head 169(2)* in the application of those sections.

Explanatory note:

The Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014 cross-applied the provisions on examinership from the Companies (Amendment) Act 1990, so that they apply, subject to minor modifications, to Industrial and Provident Societies. A similar approach is followed in this Chapter, the provisions of the Companies Act 2014 will apply to co-operative societies with minimal amendments made in the Bill to reflect the particular nature of co-operatives.

This head cross applies the provisions of Part 10 of the Companies Act 2014 in relation to examinership of a private company limited by shares to a co-operative society. It is subject to any necessary modifications and the specific modifications in subhead (2). It provides a mechanism for the rescue and return to health of ailing, but potentially viable companies. The co-operative society has to have a reasonable prospect of survival. When considering whether to grant an application to place a co-operative society in examinership, the court will have more information available to it, in the form of an independent accountant’s report. Creditors also have the right to be heard during the court hearing when the appointment of an examiner is being considered. However, a winding up of the co-operative society may not be in progress, voluntary or compulsory. The court makes an order for the appointment of an examiner for the purpose of examining the state of the co-operative society’s affairs and performing such duties in relation to the co-operative society as may be imposed by the Act. A petition to the Court for the appointment of an examiner may be presented by the co-operative society or its directors, a creditor or contingent or prospective creditor (including an employee) of the co-operative society, or by ten percent of the members. Where the Court appoints an examiner to a co-operative society, it may at the same time, or at any time thereafter, make an order appointing the examiner to a related company. The duration of the protection of the Court is 70 days from the date of the presentation of the petition. The modifications in subhead (2)(e) provide that a petition to the court to appoint examiner may be made to the Circuit Court in the case of a small co-operative that meets the small company criteria under sections 280A or 280B of the Companies Act 2014. Subhead (3) confirms that a petition to the court to appoint examiner may be made to the Circuit Court in the case of a small co-operative that meets the small company criteria under sections 280A or 280B of the Act of 2014 and not the criteria as applied by paragraphs (i) and (j) of head 169(2). The small company criteria applies as it will allow more co-operatives to avail of the option to make an application to the Circuit Court.

Chapter 2 Rescue Process for Small and Micro Co-operative Societies

Head 201 – Rescue process for small and micro co-operative societies

Provide that:

(1) The provisions of Part 10A of the Act of 2014, and the other provisions of that Act relating to the rescue process for small and micro companies, apply, subject to necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are the following:

- (a) references to the Registrar are to the Registrar of Co-operatives Societies and Trade Unions;
- (b) references to a general meeting of the company are to a general meeting of the co-operative society;
- (c) the reference in section 558A(1) —
 - (i) to a shadow director in the definition of “director” includes a shadow director of a co-operative society, and
 - (ii) to a small company in the definition of an “eligible company” includes a co-operative society, if the society meets the qualifying conditions for a small company set out in section 280A of the 2014 Act; and
 - (iii) to a micro company in the definition of an “eligible company” includes a co-operative society, if the society meets the qualifying conditions for a micro company set out in section 280D of the 2014 Act;
- (d) the reference in section 558N(4)(g) to section 212 is to *head 115* of this Bill;
- (e) the reference in section 558Q(6)(f) to “the constitution” of the eligible company is to the rules of a co-operative society;
- (f) the reference in section 558Y(9) to section 192 is to *head 112* of this Bill;
- (g) the reference in section 558ZD(10)(c) to “this Act” includes this Bill;
- (h) the reference in section 558ZS(2) to “this Act” is to this Bill;
 - (i) the reference in section 558ZT(4) —
 - (i) to “shadow director” includes any past or present shadow director of a co-operative society, and
 - (ii) to “any person connected” includes a connected person within the meaning of *head 123* of this Bill;
- (j) the reference in section 558ZAG to section 185 is to *head 106* of this Bill.

(3) For the avoidance of doubt, the modification in *subhead (2)(c)(ii)* to section 558A(1) of the Act of 2014 provide the definition of an “eligible company” includes a co-operative society, if the society meets the qualifying conditions for a small company set out in section 280A of the 2014 Act and not the criteria as applied by paragraph (i) of *head 169(2)* in the application of those sections.

Explanatory note:

This head cross applies the provisions of Part 10A of the Companies Act 2014 relating to the rescue process for small and micro companies. The head clarifies that the provisions on the rescue process of a private company limited by shares apply to a co-operative society with any necessary modifications and the specific modifications in subhead (2). It applies to micro and small co-operative societies which meet the thresholds of a small company in section 280A of the Companies Act 2014 or a micro company in section 280D of that Act. The Part provides an alternative to examinership, for the benefit of micro and small co-operative societies, which is more accessible and cost efficient than the examinership process and capable of conclusion within a shorter period of time and to assist viable micro and small companies to remain in business while trading through periods of temporary difficulty.

In order to avail of the rescue process a co-operative society must be fundamentally viable and capable of trading its way out of its current difficulties. Assessing the viability of the co-operative society is the first determination which the Process Adviser is required to make following his/her initial appointment by the directors of the co-operative society. The modification in subhead (2)(c) provides that a small co-operative that meets the small and micro company regime criteria under subsection 280A and 280D may avail of this rescue process. Subhead (3) confirms that the co-operative society may avail of the rescue process if it meets the small and micro company regime criteria.

PART 10 RECEIVERS AND WINDING UP

Chapter 1 Receivers

Head 202 – Receivers

Provide that:

(1) The provisions of Part 8 of the Act of 2014, and the other provisions of that Act relating to receivers, apply, subject to the necessary modifications and to the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are the following:

- (a) references to the Register are to the Registrar of Co-operative Societies and Trade Unions;
- (b) the reference in section 433(1)(f) to body corporate included a company;
- (c) the reference in section 439(4)—
 - (i) to section 238 in the definition of “non-cash asset” is to *head 140* of this Bill;
 - (ii) to section 220 in the definition of “officer” and in paragraph (a) is to head 123 of this Bill;
 - (iii) in paragraph (b) to a shadow director are to a shadow director of a co-operative society;
 - (iv) in paragraph (c) to a de facto director are to a de facto director of the co-operative society.

Explanatory note:

This head is based on section 153 of the Irish Collective Asset-management Vehicles Act 2015. It cross-applies the provisions of Part 8 of the Companies Act 2014, relating to the receivers of private companies limited by shares, to co-operative societies subject to any necessary modifications and specific modifications in subhead (2). Receivership is a method available to a charge holder of enforcing its security and recovering monies from co-operative societies where a loan given on foot of a debenture is in default pursuant to the terms of the debenture. Depending on the terms of his/her appointment, a receiver will take possession of the charged assets, realise those assets and discharge the debt owing to the debenture holder by either continuing the business with a view to maximising the value of the co-operative society’s assets, selling the business as a going concern or selling part of the business whilst winding down the unprofitable part.

Chapter 2 Winding up

Head 203 – Winding up

Provide that:

- (1) The provisions of Part 11 of the Act of 2014, and the other provisions of that Act relating to the winding up of companies (including, in particular, the provisions about summary approval procedure) apply, subject to the necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.
- (2) The modifications are the following:
 - (a) references to a shadow director of a company are to a shadow director of a co-operative society;
 - (b) references to the constitution of a company are to the rules of a co-operative society;
 - (c) references to a general meeting of the company are to a general meeting of the co-operative society;
 - (d) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions;
 - (e) references to a body corporate include a company;
 - (f) references in section 202 to a “special resolution” shall be deemed to be a special resolution in accordance with *subheads (2) and (4)(c) of head 111*;
 - (g) section 211 is omitted;
 - (h) in the definition of “connected person” in section 559(1) and in 629(5) the reference to section 220 is to *head 123* of this Bill;
 - (i) the reference in sections 566(4) and 595(5) to that Act is to this Bill;
 - (j) in section 569(1) the reference in—
 - (i) subsection (1)(a) to a “special resolution” shall be deemed to be a special resolution in accordance with *subheads (2) and (3) of head 111*, and
 - (ii) in subsection (1)(b) to the date of incorporation of a company shall be to the date of registration of a co-operative society under *head 17(1)* of this Bill;
 - (k) the references in sections 569(2) and 571(3) to section 212 are to *head 115* of this Bill;
 - (l) the reference in section 628(c)(ii) to that Act shall include this Bill;
 - (m) in section 629(5) the reference in—
 - (i) “officer” in—
 - (I) paragraph (a) to section 220 is to *head 123* of this Bill, and
 - (II) paragraph (b) to a shadow director is to a shadow director of a co-operative society;
 - (ii) “non-cash asset” to section 238 is to *head 140* of this Bill.
 - (n) in section 636—
 - (i) the reference in subsection (3) to Part 4 is to *Part 4* of this Bill,
 - (ii) the reference in subsection (5) to section 218 is a reference to *head 121* of the Bill, and

- (iii) the reference in subsection (6) to “this Act or the company’s constitution” is a reference to “the Co-operative Societies Bill 2022 or the rules of the co-operative society”;
- (o) the reference in section 656 to section 173 is to *head 94* of this Bill;
- (p) the reference in section 664(1) to a company includes a co-operative society;
- (q) the reference in section 677(4) to section 40 is to *head 32* of this Bill;
- (r) the reference in section 703 to section 185 is to *head 106* of this Bill.

Explanatory note:

The Industrial and Provident Societies (Amendment) Act 1978 cross-applied the provisions on winding up from the Companies Act, 1963, subsequently transferred to the Companies Act 2014, so that they apply, subject to minor modifications, to Industrial and Provident Societies. A similar approach is followed in this Chapter, a co-operative society will be wound up in accordance with the provisions of Part 11 of the Companies Act 2014 subject to the minimal amendments made in the Bill to reflect the particular nature of co-operatives.

This head is based on section 154 of the Irish Collective Asset-management Vehicles Act 2015. It cross-applies the provisions of Part 11 of the Companies Act 2014 relating to winding up of a private companies limited by shares to co-operative societies. It is subject to any necessary modifications and ‘specific modifications’ listed in subhead (2). Co-operatives may be wound up in three ways: 1. members’ voluntary liquidation, 2. creditors’ voluntary liquidation, and 3. court ordered/compulsory liquidation. Subhead (2)(f) modifies the 2014 Act to provide that a special resolution to wind up a co-operative society in a member’s voluntary winding requires a 75% majority vote at a first meeting and confirmation of the vote by a simple majority at a second meeting of the co-operative society. The liquidator is the person appointed to supervise and implement the co-operatives’ winding up. The intention is that parties are familiar with such procedures and all interests will understand how matters are dealt with under the Companies 2014 Act. The company law provisions on winding up are currently applicable to industrial and provident societies by virtue of the cross-application of these provisions by the Industrial and Provident Societies (Amendment) Act 1978.

PART 11 STRIKE OFF AND RESTORATION

Chapter 1 Strike off of co-operative society

HEAD 204 – When Registrar may strike off co-operative society

Provide that:

- (1) Except in the case of an application by a co-operative society to be struck off the register, the Registrar may strike a co-operative society off the register if—
 - (a) there exists one or more of the grounds for striking off set out in *head 205* — “involuntary strike off”, and
 - (b) the Registrar has followed the procedure set out in heads *206, 207, 209* and *212(1)*.
- (2) In the case of an application by a co-operative society to be struck off the register, the Registrar may strike the co-operative society off the register if—
 - (a) the conditions for striking off set out in head *210* have been satisfied — “voluntary strike off”, and
 - (b) the Registrar has followed the procedure set out in *heads 211* and *212 (2)*.

Explanatory note: The head is based on section 725 of the Companies Act 2014. Section 9 of the Industrial and Provident Societies Act 1893 provides for the cancelling and suspension of registered societies. When an industrial and provident society is cancelled, it is not dissolved and its assets are not vested in the State. It is considered that using the term “strike off” which is followed by a dissolution and transferring the assets of the society in the State is more appropriate. The new head distinguishes between voluntary and involuntary strike off and makes clear that the Registrar may only strike a co-operative society off the Registrar where one or more of the relevant grounds exist, and the appropriate procedure is followed.

HEAD 205 – Grounds for involuntary strike off

Provide that:

The grounds referred to in *head 204(1)(a)* are:

- (a) the co-operative society has failed to make an annual return as required by section 343 of the Act of 2014, as applied by *head 169*;
- (b) the Revenue Commissioners have given a notice under section 882(3) of the Taxes Consolidation Act 1997 to the Registrar of the co-operative society's failure to deliver the statement required under section 882 of that Act;
- (c) the Registrar has reasonable cause to believe that *head 62(1)* is not being complied with in relation to the co-operative society;
- (d) the co-operative society is being wound up and the Registrar has reasonable cause to believe that no liquidator is acting;
- (e) the co-operative society is being wound up and the Registrar has reasonable cause to believe that the affairs of the co-operative society are fully wound up and that the returns required to be made by the liquidator have not been made for a period of 6 consecutive months;
- (f) there are less than three persons recorded in the office of the Registrar as being current directors of the co-operative society;
- (g) the Registrar has reasonable cause to believe the co-operative society is operating with less than the number of members required by *head 8(1)*;
- (h) the co-operative society has failed to make a final annual return as required by *head 261* transitional provisions

Explanatory note: The head derives from section 726 of the Companies Act 2014 and lists the grounds for involuntary strike off. The ground in the Industrial and Provident Societies Act 1893 relating to a society operating with less than the required minimum number of members has been preserved. The list of the grounds for involuntary strike off are as follows:

Paragraph (a): failure to make an annual return.

Paragraph (b): where the Revenue Commissioners have given a notice to the Registrar of the co-operative society's failure to deliver the required statement under the Taxes Consolidation Act 1997.

Paragraph (c): where the Registrar has reasonable cause to believe that none of the directors of the company are EEA resident.

Paragraph (d) and (e): where the co-operative society is being wound up and no liquidator is acting or returns have not been made by the liquidator for a period of 6 consecutive months.

Paragraph (f): the society is required to have at least 3 directors but there are less than three persons recorded as directors.

Paragraph (g): the number of members required to form and operate a co-operative society is below the minimum number specified in head 8(1).

Paragraph (h): where the co-operative society has not filed the final annual return required under head 261.

HEAD 206 – Registrar’s notice to co-operative society of intention to strike it off register

Provide that:

- (1) The Registrar may give notice in accordance with *head 207* of the Registrar’s intention to strike a co-operative society off the register on a ground set out in any of *paragraphs (a) to (h)* of *head 205*.
- (2) The Registrar shall send the notice by registered post—
 - (a) except where *paragraph (b)* applies, to the co-operative society at its registered office,
 - (b) if the ground for striking off is that set out in *head 205(d)* or *(e)* and an individual is recorded in the office of the Registrar as the liquidator of the co-operative society, to the liquidator.
- (3) The Registrar shall also send a copy of the foregoing notice by prepaid ordinary post to such persons, if any, as are recorded in the office of the Registrar as being current directors of the co-operative society but non-compliance with this subhead does not affect the validity of a notice that otherwise complies with *subhead (1)*; the address to which a notice under this subhead is sent shall be the usual residential address, as recorded in the office of the Registrar, of the addressee concerned.

Explanatory note: This head is based on section 727 of the Companies Act 2014. While section 9(3) of the Industrial and Provident Societies Act 1893 sets out that the Registrar shall give notice in writing to the registered society specifying briefly the ground of any proposed cancelling or suspension of registry, the new head provides the clear structure (together with head 207) of the notification procedure on the commencement of the strike off process of the co-operative society. The notification procedure has not been re-stated for each of the circumstances of striking off envisaged in the preceding head. Instead, a general procedure is provided for here.

The Registrar should follow the notice procedure under subheads (1) and (2), whereby notice must be sent by registered post to the co-operative society at its registered office, unless the co-operative society is being wound-up, and in such case notice must be sent to the liquidator of the co-operative society.

Subhead (3) provides that the Registrar should write to the directors of the co-operative society at their home address (as contained in the Register of Co-operative Societies and Trade Unions records) enclosing a copy of the strike off notice which is being sent to the co-operative society at its registered address. Failure to do so does not affect the validity of a notice that otherwise complies with subhead (1).

HEAD 207 – Contents of Registrar’s notice to co-operative society

Provide that:

- (1) The Registrar’s notice under *head 206* shall—
 - (a) state that the issue of the notice is the first step in a process that may lead to the co-operative society being struck off the register;
 - (b) state the ground or grounds for striking off being invoked by the Registrar;
 - (c) state that the co-operative society will be dissolved if it is struck off the register;
 - (d) if *subhead (3)* applies, set out the information required by that subhead;
 - (e) specify the remedial step;
 - (f) specify the date on or before which the remedial step must be taken; and
 - (g) state that failure to take the remedial step on or before the date so specified may result in the Registrar giving public notice of an intention to strike the co-operative society off the register.
- (2) The date to be specified for the purposes of *subhead (1)(f)* shall be a date falling not less than 28 days after the date of the notice.
- (3) Except where the ground for striking off is that set out in *head 205(d), (e), (f), (g), or (h)* the notice shall also state that each director of the co-operative society at the date that the notice is sent is liable for disqualification under section 842(h) of the Act of 2014, as applied by *head 230* if the co-operative society is struck off the register.

Explanatory note: This head derives from section 728 of the Companies Act 2014 and lays down what is to be included in the notice from the Registrar to the co-operative society of the intention to strike off the register. The notice must state that this is the first step in a process that may lead to the co-operative society being struck off, it must state the ground(s) for striking off and that the co-operative society will be dissolved if it is so struck off. Subhead (1)(e) to (g) deal with the “remedial step”, which is elaborated on in head 208, which, if taken, can halt the striking off process. The co-operative society has at least 28 days from the date of the notice within which to take the appropriate remedial step. Except in the case of incomplete liquidation induced strike off, where there is no director recorded in the Register, or the co-operative operates with less than 3 directors, where the co-operative society operates with membership below the required by the Bill, or the co-operative society has not filed a final annual return as required by *head 261*, the notice to the co-operative society should also state that each director of the co-operative society is liable to be disqualified under head 842(h) of the Companies Act 2014, as applied by head 230 if the co-operative society is eventually struck off the Register.

HEAD 208 – Meaning of remedial step

Provide that:

For the purposes of *heads 207, 209 and 212*, the remedial step is whichever of the following applies:

- (a) in the case of the ground for striking off set out in *head 205(a)*, the delivery to the Registrar of all annual returns as required by section 343 of the Act of 2014, as applied by *head 169*, that the co-operative society has failed to make;
- (b) in the case of the ground for striking off set out in *head 205(b)*, the delivery to the Revenue Commissioners of the statement that the co-operative society is required to deliver under section 882(3) of the Taxes Consolidation Act 1997;
- (c) in the case of the ground for striking off set out in *head 205(c)*, the provision to the Registrar of evidence that *head 62(1)* is being complied with in relation to the co-operative society;
- (d) in the case of the ground for striking off set out in *head 205(d)* or *(e)*, the provision to the Registrar of the details of the liquidator and of up to date periodic statements having been furnished under section 681 of the Act of 2014, as applied by *head 203*;
- (e) in the case of the ground for striking off set out in *head 205(f)* the notification to the Registrar under *head 70(8)* of the appointment of a director or directors of the co-operative society as required by *head 54(1)*;
- (f) in the case of the ground for striking off set out in *head 205(g)*, the production to the Registrar of evidence that the co-operative society has the minimum number of members as required by *head 8(1)*;
- (g) in the case of the ground for striking off set out in *head 205(h)*, the delivery to the Registrar of the final annual return as required by *head 261* that the co-operative society has failed to make.

Explanatory note: This head is based on section 729 of the Companies Act 2014 and lays down the meaning of “remedial step”. This affords an opportunity to the co-operative society to avert the continuation of the striking off process by doing one of the things listed in this head. Section 9 of the current legislation gives the Registrar the power to suspend a registered society based on a number of grounds such as reducing the number of members below the minimum required by law or if the society obtained registration by fraud or mistake. The legislation does not specify the steps that the society shall take to reverse the suspension. It is considered that the provisions in the Companies Act, 2014 are clearer and provide more details on the necessary steps to avoid striking off and therefore the draft Bill reflects that approach. Depending on the circumstances which led to the initiation of the strike off procedure, this could be: to deliver all outstanding annual returns to the Registrar; to deliver the required statement under the Taxes Consolidation Act 1997 to the Revenue Commissioners; to provide evidence to the Registrar that it is not the case that none of the directors of the co-operative society are EEA resident; to appoint a director or directors where less than the required number of directors are recorded, to provide evidence

that the co-operative society complies with the requirement of having a minimum number of members, or to file the annual return required under head 261. Where the striking off is for a reason of incomplete liquidation, the provision of both the details of the liquidator and of the up-to-date periodic statements to the Registrar will constitute the remedial step.

HEAD 209 – Public notice of intention to strike co-operative society off register

Provide that:

- (1) If the Registrar has given a notice under *head 206* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *head 207(1)(f)*, the Registrar may, by publishing a notice in the RCT Gazette that complies with *subhead (2)*, give public notice of the Registrar's intention to strike the co-operative society off the register.
- (2) The notice shall—
 - (a) specify the ground for striking the co-operative society off the register;
 - (b) specify the remedial step;
 - (c) specify the date on or before which the remedial step must be taken; and
 - (d) state that, unless that remedial step is taken on or before the date so specified, the Registrar may strike the co-operative society off the register and, if the Registrar does so, the co-operative society will be dissolved.
- (3) The date to be specified for the purposes of *subhead (2)(c)* shall be a date falling not less than 28 days after the date of publication of the notice.

Explanatory note: This head is based on section 730 of the Companies Act 2014 and deals with the public notice of the Registrar's intention to strike a co-operative society off the register. Where the co-operative society has not taken the remedial step required of it to avoid striking off, the Registrar may publish a public notice in the RCT Gazette of his or her intention to strike the co-operative society off. The notice should specify the grounds for striking off and the appropriate remedial step. The co-operative society then has at least a further 28 days in which it can take the remedial step and halt the striking off process.

HEAD 210 – Conditions for voluntary strike off

Provide that:

- (1) A co-operative society may apply to the Registrar to be struck off the register if the following conditions are satisfied:
- (a) the circumstances relating to the co-operative society are such as to give the Registrar reasonable cause to believe that it has never carried on business or has ceased to carry on business;
 - (b) the co-operative society has, within 3 months before the date of the application, by special resolution—
 - (i) resolved to apply to the Registrar to be struck off the register on the ground that it has never carried on business or has ceased to carry on business; and
 - (ii) resolved that pending the determination (or, should it sooner occur, the cancellation, at its request, of this process) of its application to be struck off, the co-operative society will not carry on any business or incur any liabilities;
 - (c) the co-operative society has delivered to the Registrar all annual returns required by section 343 of the Act of 2014, as applied by *head 169*, that are outstanding in respect of the co-operative society as at the date of the application;
 - (d) the co-operative society has delivered to the Registrar a certificate in the prescribed form signed by each director certifying that as at the date of the application—
 - (i) the amount of any assets of the co-operative society does not exceed €150;
 - (ii) the amount of any liabilities of the co-operative society (including contingent and prospective liabilities) does not exceed €150; and
 - (iii) the co-operative society is not a party to ongoing or pending litigation;
 - (e) the Registrar has received from the Revenue Commissioners written confirmation dated not more than 3 months before the date on which the Registrar receives the application that the Revenue Commissioners do not object to the co-operative society being struck off the register; and
 - (f) the co-operative society has caused an advertisement, in the prescribed form, of its intention to apply to be struck off the register to be published within 30 days before the date of the application in at least 1 daily newspaper circulating in the State.
- (2) Where an application under this head by a co-operative society to be struck off the register is made within one year after the date on which the co-operative society has changed its name or its registered office (or both), then, as the case may be—
- (a) the former name of the co-operative society, as well as the existing name of the co-operative society, or
 - (b) the former address, as well as the current address, of the co-operative society's registered office, or
 - (c) both its former name and the former address of its registered office, as well as the existing name of the co-operative society and the current address of its registered office,
- shall be stated in the advertisement referred to in *subhead (1)(f)*.

Explanatory note: This head is based on section 731 of the Companies Act 2014 and builds on the provisions of section 9(1)(b) of the Industrial and Provident Societies Act 1893 which allows the Registrar if he thinks fit, at the request of a society, to be evidenced in such manner as he shall from time to time direct, cancel the registration of a society. The head sets out the steps to be completed by a co-operative society in applying for voluntary strike off.

Subhead (1) requires that if a co-operative society wishes to apply for voluntary strike off, the co-operative society shall pass a special resolution to such effect within the 3 months preceding the date of the application. Other conditions include the Registrar has reasonable cause to believe that the co-operative society has never carried on business or has ceased to carry on business (section 9(1)(bc) of the Industrial and Provident Societies Acts 1893-2021 has stated a similar condition, “where the society has ceased to function or where it has suspended its business for a period of not less than six months”); the co-operative society has delivered to the Registrar all annual returns required by head 343 of the Act of 2014, as applied by head 169, that are outstanding in respect of the co-operative society as at the date of the application; the co-operative society has delivered to the Registrar a certificate in the prescribed form signed by each director certifying that the co-operative society is not a party to ongoing or pending litigation; the Registrar has received from the Revenue Commissioners written confirmation that the Revenue Commissioners do not object to the co-operative society being struck off the register; and the co-operative society has caused an advertisement of its intention to apply to be struck off the register to be published.

Subhead (2) makes provision for the circumstance where an application for voluntary strike off is made within 1 year of the co-operative society changing its name or registered office. In such a case, the co-operative society must also provide to the Registrar its former name and the address of its former registered office, as appropriate.

HEAD 211 – Public notice in case of voluntary strike off

Provide that:

(1) As soon as practicable after the receipt of an application by a co-operative society to be struck off that satisfies the conditions set out in *head 210*, the Registrar shall, by publishing a notice in the RCT Gazette that complies with *subhead (2)*, give public notice of the Registrar's intention to strike the co-operative society off the register.

(2) The notice shall—

(a) state that the co-operative society has applied to be struck off the register;

(b) state—

(i) that any person may deliver to the Registrar an objection to the striking off of the co-operative society in the prescribed form; and

(ii) that any such objection must be confined to the ground that one or more of the conditions set out in *head 210* have not been satisfied;

(c) specify the period within which such an objection may be delivered to the Registrar; and

(d) state that, unless the Registrar has received—

(i) an objection to the striking off of the co-operative society within that period, being an objection that the Registrar sustains; or

(ii) a request for the cancellation of the process of strike off in accordance with *subhead (4)*;

the Registrar may strike the co-operative society off the register and, if the Registrar does so, the co-operative society will be dissolved.

(3) The period to be specified for the purposes of *subhead (2)(c)* shall be the period ending 90 days after the date of publication of the notice.

(4) Within the period specified for the purposes of *subhead (2)(c)*, the co-operative society may request of the Registrar, by delivering to the Registrar a notice in that behalf in the prescribed form, the cancellation of the process of its being struck off the register.

Explanatory note: The head is based on section 732 of the Companies Act 2014 and contains provisions in relation to the public notice in cases of voluntary strike off. Where the Registrar receives an application from a co-operative society to be struck off the register, the Registrar shall publish a notice of the fact of that application in the RCT Gazette. That notice should invite objections to the striking off and should stipulate that, if no objections are received within 90 days, the Registrar may proceed to strike the co-operative society off the register. Within that 90 day period, the co-operative society is entitled to cancel the process of its being struck off the register. The current legislation gives the power to the Registrar to cancel a society at its request and requires a notice of the cancellation to be published in *Iris Oifigiúil* and a local newspaper circulating in the locality in which the registered office of the society is situated as soon as practicable after the cancellation. The new provisions increase transparency and protection of creditors as they allow for objections to be delivered to the Registrar.

HEAD 212 – Striking off (involuntary and voluntary cases) and dissolution

Provide that:

- (1) If the Registrar has given a notice under *head 209* and the remedial step has not been taken on or before the date specified in that notice for the purposes of *head 209(2)(c)*, the Registrar may strike the co-operative society off the register.
- (2) If the Registrar has given a notice under *head 211* and—
 - (a) no objection referred to in *head 211(2)(b)* has been delivered to the Registrar within the period specified in that notice for the purposes of *head 211(2)(c)* or the Registrar is of opinion that there is no reasonable basis to such an objection that has been so delivered, and
 - (b) the co-operative society has not requested, in accordance with *head 211(4)*, the cancellation of the process of its being struck off the register,the Registrar may strike the co-operative society off the register.
- (3) The Registrar shall publish in the RCT Gazette a notice of the striking of a co-operative society off the register.
- (4) The co-operative society is dissolved on the date of publication by the Registrar of the notice in the RCT Gazette of its being struck off the register and that date is referred to subsequently in this Part as the “date of dissolution”.

Explanatory note: The head is based on section 733 of the Companies Act 2014. It describes the act of striking off by the Registrar (in voluntary and involuntary cases) and states the point at which a co-operative society will be deemed to be dissolved. In cases of involuntary striking off, where the Registrar has given the required notice and where the co-operative society has not taken the remedial step required of it, the Registrar is entitled to strike the co-operative society off the register. In cases of voluntary striking off, the Registrar may proceed to strike the co-operative society off the register where, after the giving of the requisite notice, no objection has been received and no request has been received from the co-operative society to cancel the striking off process. The notice of the striking off must be published in the RCT Gazette, and the date that it is so published will be the “date of dissolution”.

The current legislation requires a notice of the cancellation of a registered society to be published in *Iris Oifigiúil* and a local newspaper circulating in the locality in which the registered office of the society is situated as soon as practicable after the cancellation. The proposed provisions reduce the administrative and financial burden on the co-operative society and the Registrar.

HEAD 213 – Effect of removal and dissolution

Provide that:

(1) The liability, if any, of a director, other officer or a member of a co-operative society that has been dissolved under *head 212(4)* shall continue and may be enforced as if the co-operative society had not been dissolved.

(2) Nothing in this head or in *head 212* shall affect the power of the court to wind up a co-operative society that has been struck off the register or dissolved under that head.

(3) For the purposes and the purposes only of—

(a) an application for the restoration of the co-operative society to the register under *head 216* or *217*,
or

(b) in so far as is necessary for the making of such an application (or the doing of anything required by or under *Chapter 2* to be done consequent on the making of it),

a co-operative society shall be deemed not to have been dissolved under *head 212*.

(4) *Subhead (3)* shall not be read as authorising the dealing with, or the exercising of control over, any property that has become the property of the State pursuant to Part III of the State Property Act 1954.

Explanatory note: The head is based on section 734 of the Companies Act 2014. It details the effect of the removal of the co-operative society from the Register and its dissolution. Subhead (1) provides that, even where a co-operative society is dissolved, the liability of a director, other officer or member of that co-operative society shall continue as if the co-operative society had not been dissolved. Subhead (2) states that nothing in this head affects the power of the court to wind up a co-operative society that has been struck off the register or dissolved.

Subhead (3) provides that a co-operative society that has been struck off shall have the capacity necessary to apply for a restoration. Its purpose is to overcome the difficulties facing the directors and auditors of the co-operative society that, although an application may be successful and the co-operative society will be deemed to have never been struck off, at the time of the purported re-instatement the co-operative society will not, in fact, exist. Accordingly, all actions necessary for the restoration process may be taken on the basis that, for this purpose only, the co-operative society has, in fact, an existence.

Subhead (4) follows on from this and makes it clear that this provision does not authorise the dealing with, or exercising of control over, any property which has become the property of the State under the State Property Act 1954. Under that Act where the co-operative society is struck off the register, all property which was vested in or held in trust for such co-operative society upon its dissolution will become the property of the State.

HEAD 214 – Power of Authority to obtain information

Provide that:

- (1) Where a co-operative society has been struck off the register under *head 212(1)* on any of the grounds set out in *head 205(a) to (c)*, the Authority may, by notice to the directors of the co-operative society, require those persons to produce to the Authority a statement of affairs of the co-operative society in accordance with this head.
- (2) The persons to whom a notice is sent under *subhead (1)* shall, within the period specified in the notice in that behalf, produce to the Authority a statement of affairs of the co-operative society that complies with *subhead (3)*.
- (3) The statement of affairs shall—
 - (a) be in the prescribed form (if any);
 - (b) be verified by an affidavit;
 - (c) contain the following information in respect of the co-operative society as at the date of dissolution:
 - (i) particulars of its assets, debts and liabilities;
 - (ii) the names and addresses of its creditors;
 - (iii) particulars of securities given by the co-operative society, including the name of the secured creditor in each case and the date on which the security was given;
 - (iv) such further or other information as may be prescribed or that the Authority may reasonably require.
- (4) On the application of the Authority, the court may require a person who has made a statement under *subhead (2)* to appear before it and answer on oath any question relating to the content of the statement.
- (5) A person who fails to comply with *subhead (2)* shall be guilty of a category 3 offence.

Explanatory note: The head is based on section 735 of the Companies Act 2014. It gives the Corporate Enforcement Authority the power to obtain information where a co-operative society has been struck off the register further to an involuntary strike off under head 212(1). It provides that, in the event of striking off he or she could require a director of a co-operative society to produce a statement of affairs as at a date preceding the commencement of the striking off. Upon examination of such statement, the Corporate Enforcement Authority could then decide whether to make an application to court to require the director of the co-operative society to appear before it and answer on oath any question relating to the statement. Non-compliance with the requirement for producing a statement of affairs is a category 3 offence.

Chapter 2 Restoration of co-operative society to register

HEAD 215 – Application of Chapter

Provide that:

This Chapter applies to a co-operative society that has been struck off the register under *Chapter 1*.

Explanatory note: The head is based on section 736 of the Companies Act 2014. It clarifies that this Chapter applies to co-operative societies that have been struck off the register under Chapter 1 of this Part.

HEAD 216 – Restoration on application to Registrar

Provide that:

- (1) On an application by a person specified in *subhead (8)*, the Registrar may restore a co-operative society to the register if—
 - (a) the Registrar has reasonable cause to believe that the strike off of the co-operative society has disadvantaged the applicant,
 - (b) the application is made in the prescribed form,
 - (c) the application is received by the Registrar within the period of 12 months after the date of dissolution of the co-operative society, and
 - (d) the requirements of *subhead (2)* have been satisfied within the period of 15 months after the date of dissolution of the co-operative society.
 - (2) Subject to *subheads (3), (4) and (5)*, the requirements referred to in *subhead (1)(d)* are the following:
 - (a) the Registrar has received from the co-operative society all annual returns outstanding, if any, being annual returns prepared in accordance with Part 6 of the Act of 2014, as applied by *head 169*;
 - (b) the Registrar is satisfied that *head 62(1)* is being complied with in relation to the co-operative society;
 - (c) the Registrar is satisfied that no notification required by *head 70(8)* remains outstanding in relation to the co-operative society;
 - (3) If the ground, or one of the grounds, on which the co-operative society had been struck off the register is that referred to in *head 205(b)*, *subhead (2)* shall have effect as if the following paragraph were inserted after *paragraph (a)* of that subhead:

“(aa) the Registrar has received written confirmation from the Revenue Commissioners that they have no objection to the co-operative society being restored to the register under this head;”.
 - (4) If the ground, or one of the grounds, on which the co-operative society had been struck off the register is that referred to in *head 205(g)*, *subsection (2)* shall have effect as if the following paragraph were inserted after *paragraph (b)* of that subsection:

“(bb) the Registrar is satisfied that the co-operative society has the minimum number of members as required by *head 8(1)*;”.
 - (5) If the ground, or one of the grounds on which the co-operative society had been struck off the register is that referred to in *head 205(h)*, *subhead (2)* shall have effect as if the following paragraph were inserted after *paragraph (c)* of that subhead:

“(cc) the Registrar has received from the co-operative society the final annual return required under *head 261*”
 - (6) The Registrar may restore a co-operative society to the register on the application of a person who was a member or an officer of the co-operative society at the date of its dissolution.
 - (7) On the registration of an application under this head and on payment of such fee as may be prescribed, the Registrar shall restore the co-operative society to the register and the co-operative society shall be deemed to have continued in existence as if it had not been struck off the register.
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(8) Subject to any order made by the court in the matter, the restoration of a co-operative society to the register under this head shall not affect the rights and liabilities of the co-operative society in respect of any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of the co-operative society between the date of its dissolution and the date of restoration.

Explanatory note: This head is based on section 737 of the Companies Act 2014 and sets out the procedure for restoring a co-operative society to the register. Currently, a society, whose registration has been cancelled is required to apply to the Court for restoration. The Bill provides a co-operative society with the option, on an application made to the Registrar, to have the co-operative society restored to the register. The application must be received by the Registrar (in the prescribed form) within 12 months of the date of dissolution of the co-operative society. In accordance with subhead (6) the application for restoration shall be made by a person who was a member or officer of the co-operative society at the date of its dissolution who feels “disadvantaged” by the co-operative society having been struck off. Once restored, the society shall be deemed to have continued in existence as if it had not been struck off the register as per subhead (7). Subhead (2) states the requirements that must be addressed before the restoration can occur.

Subhead (3) concerns striking off that has been initiated by the Revenue Commissioner. If Revenue has given the Registrar notice under section 882(3) of the Taxes Consolidation Act, 1997, the Registrar has grounds, pursuant to head 205 (b) of this Bill to effect involuntary striking of the co-operative society off the register. In order for the Registrar to have powers to restore such a co-operative society administratively to the register, the Registrar must be in receipt of a letter of no objection from Revenue before such a co-operative society can administratively be restored.

Subhead (4) deals with restorations where the co-operative was struck off because it operated with less than the minimum number of members. In this circumstance, the Registrar is required to be satisfied that the co-operative society is in compliance with the provisions of head 8(1) regarding a minimum number of members.

Subhead (5) sets out the requirement for restoring a co-operative society who has been struck off because it had not filed the final annual return required under head 261; the co-operative society shall be restored once the Registrar has received the required return.

Subhead (8) makes it clear that, subject to any order made by the court in the matter, the restoration of a co-operative society to the register shall not affect the rights and liabilities of the co-operative society in respect of any debt or obligation incurred, or any contract entered into, by, with or on behalf of the co-operative society between the date of its dissolution and the date of restoration.

HEAD 217 – Restoration on application to court

Provide that:

- (1) On an application in accordance with *head 218* by a person specified in *subhead (2)*, the court may order that a co-operative society that has been struck off the register be restored to the register if—
 - (a) the striking off of the co-operative society has disadvantaged the applicant,
 - (b) the application is made within the period of 20 years after the date of dissolution of the co-operative society; and
 - (c) it is just and equitable to do so.
- (2) The court may make the order on the application of—
 - (a) the co-operative society
 - (b) a creditor of the co-operative society;
 - (c) a person who was a member of or an officer of the co-operative society at its date of dissolution; or
 - (d) a person who, at the date of its dissolution, had an entitlement (disregarding any right of the directors to decline to register the person as such) to be registered as a member of the co-operative society by virtue of—
 - (i) the execution, in the person’s favour, of an instrument of transfer of a share; or
 - (ii) the transmission, by operation of law, to the person of a right to a share.
- (3) Subject to a supplementary order made under *head 221(c)* the co-operative society shall be deemed to have continued in existence as if it had not been struck off the register upon the Registrar receiving a certified copy of the order under *subhead (1)* within 28 days after the date of its perfection.

Explanatory note: This head is based on section 738 of the Companies Act 2014 and contains provisions governing the restoration of a co-operative society to the register by way of court application.

While section 9(4) of the Industrial and Provident Societies Acts 1893-2018 makes a reference to restoring a society by providing that a society may appeal from cancelling its registry by appealing to the Circuit Court pursuant to section 7, the procedure is not set out in detail. This head provides that an application for restoration can be brought to the court by the co-operative society, a creditor of the co-operative society, a member or officer of the co-operative society or a person who had an entitlement to be registered as a member of the co-operative society. The court may restore the co-operative society to the register where not more than 20 years has passed since the dissolution of the co-operative society and where the striking off has “disadvantaged” the applicant. In addition to these requirements, the court must also be satisfied that it is just and equitable to restore the co-operative society to the register. Subhead (3) states that a co-operative society will be deemed to have continued in existence as if it had not been struck off the register, provided that the Registrar receives a certified copy of the court order for restoration within 28 days of its perfection.

HEAD 218 – Requirements for application to court under head 217

Provide that:

- (1) An application under *head 217* shall be made on notice to the Registrar, the Minister for Public Expenditure and Reform and the Revenue Commissioners.
- (2) In the case of an application under *head 217* by a creditor, the application shall in addition be made on notice to—
 - (a) such officers of the co-operative society at the date of dissolution whose names are known, or ought reasonably to be known, by the creditor; and
 - (b) such other members or officers of the co-operative society at the date of dissolution as the Registrar, the Revenue Commissioners or the Minister for Public Expenditure and Reform, upon being notified of the application, indicate in writing should be joined as notice parties to the application.

Explanatory note: The head is based on section 739 of the Companies Act 2014 and lists the notice requirements for making an application to the court under the preceding head 217. Subhead (1) provides that the Registrar, the Minister for Public Expenditure and Reform and the Revenue Commissioners must be notice parties to such an application.

Subhead (2) contains additional notice requirements in circumstances where the application to have the co-operative society restored is made by a creditor. This provision is designed to ensure that, in a creditor's application, the parties who ought to be subject to the restoration order are notified of the application – namely relevant officers and members of the co-operative society.

HEAD 219 – Terms of court order on application under head 217

Provide that:

(1) In making an order under *head 217* on the application of a member or an officer of the co-operative society, the court shall, unless reason to the contrary is shown to the satisfaction of the court, make it a term of the order that the order shall not have effect unless, within a specified period, there is done each of the things (save where it has already been done) that are set out in *subhead (2)*.

(2) Those things are—

- (a) all outstanding annual returns in relation to the co-operative society are delivered, in accordance with Part 6 of the Act of 2014, as applied by *head 169*, to the Registrar;
- (b) all outstanding statements as required by section 882 of the Taxes Consolidation Act 1997 in relation to the co-operative society are delivered to the Revenue Commissioners;
- (c) the co-operative society appoints at least 3 directors and delivers to the Registrar the notification and consent required by *head 70(8)* and *(10)*, respectively, and at least one of the persons so appointed is a resident in an EEA state;
- (d) the society provides evidence to the Registrar that it has the minimum number of members as required by *head 8(1)*; and
- (e) if the ground or one of the grounds on which the co-operative society had been struck off the register is that referred to in *head 205(h)*, the society delivers the final annual return required by *head 261* to the Registrar.

(3) For the avoidance of doubt, *subhead (1)* requires, unless reason to the contrary there mentioned is shown, the order of the court to specify that a thing set out in *subhead (2)* is to be done (save where it has already been done) notwithstanding that the ground on which the co-operative society had been struck off the register did not relate to that thing.

(4) In making an order under *head 217* on the application of a creditor of the co-operative society, the court shall direct that, within a specified period (save where the particular thing has already been done)—

- (a) there is procured by one or more specified members or officers of the co-operative society the delivery by the co-operative society of all outstanding annual returns, in accordance with Part 6 of the Act of 2014, as applied by *head 169*, to the Registrar;
- (b) there is delivered by such specified members or officers all outstanding statements as required by section 882 of the Taxes Consolidation Act 1997 in relation to the co-operative society to the Revenue Commissioners;
- (c) such specified members or officers take all reasonable steps to ensure that the co-operative society appoints at least 3 directors and delivers to the Registrar the notification and consent required by *head 70(8)* and *(10)*, respectively, and at least one of the persons so appointed is a resident in an EEA state;
- (d) if the ground or one of the grounds on which the co-operative society had been struck off the register is that referred to in *head 205(h)*, there is procured by one or more specified members or officers of the co-operative society the delivery of the final annual return, in accordance with *head 261*, to the Registrar.

(5) For the avoidance of doubt, paragraphs (a) to (c) of subhead (4) requires the order of the court to specify that a thing set out in that subhead is to be done (save where it has already been done) notwithstanding that the ground on which the co-operative society had been struck off the register did not relate to that thing.

(6) In making an order under head 217 on the application of a creditor of the co-operative society, the court may award the applicant the costs of the application against the co-operative society.

Explanatory note: This head is based on section 740 of the Companies Act 2014. It lists what must happen before the order of the court to restore the co-operative society to the register can have effect. Subheads (1) to (3) deal with applications from a member or officer of the co-operative society and provide that, in relation to the co-operative society, all outstanding annual returns must be delivered to the Registrar and all outstanding statements required under the Taxes Consolidation Act 1997 must be delivered to the Revenue Commissioners before the court order can have effect. In addition, the co-operative society must appoint at least 3 directors, at least one of which is a resident in the EEA and deliver the notification and consent in relation to that appointment to the Registrar. The co-operative society is also required to ensure compliance with head 8(1) which requires that the co-operative has a minimum number of members. If applicable, the Co-operative Society shall submit the final annual return under the industrial and provident society legislation as required by head 261. This is to ensure that if the society intends to resume activities it will not be in breach of this provision. It is at the discretion of the court to include these conditions as terms of the order.

Subheads (4) to (6) deal with applications from creditors and are similar to the provisions in relation to applications from members and officers of the co-operative society. It is necessary to procure the delivery of all outstanding annual returns to the Registrar together with any outstanding statements to the Revenue Commissioners. Furthermore, specified members or officers must take all reasonable steps to ensure that at least 3 directors are appointed to the co-operative society and that the notification and consent concerning that appointment is sent to the Registrar.

Subhead (6) provides that, in circumstances where the application for restoration is made by a creditor, the court should be permitted to award the applicant the costs of the application against the co-operative society.

HEAD 220 – Court order for restoration on application of Registrar

Provide that:

(1) On an application by the Registrar in accordance with *subhead (2)*, the court may order that a co-operative society that has been struck off the register be restored to the register if—

- (a) the application is made within the period of 20 years after the date of dissolution of the co-operative society, and
- (b) it is just and equitable to do so.

(2) An application under this head shall be made on notice to each person who, to the knowledge of the Registrar, was an officer of the co-operative society at the date of its dissolution.

(3) On the making of the order, the co-operative society shall be deemed to have continued in existence as if it had not been struck off the register.

(4) In making an order under this head, the court may award the Registrar the costs of the application against the co-operative society restored to the register.

Explanatory note: This head is based on section 741 of the Companies Act 2014. It is similar to head 217 and governs the situation where the Registrar applies to the court to have the co-operative society restored. Such an application must be made within 20 years of the date of dissolution of the co-operative society and must be on notice to each person who, to the knowledge of the Registrar, was an officer of the co-operative society at that date. The court may grant the restoration order if it is just and equitable to do so and on the making of the order, and the co-operative society will be deemed to have continued in existence as if it had never been struck off. Subhead (4) allows the court to award the Registrar the costs of the application against the co-operative society restored to the register.

HEAD 221 – Supplementary court orders

Provide that:

In ordering that a co-operative society be restored to the register under *head 217* or *220*, the court may—

- (a) except to the extent that the court makes an order under *paragraph (c)*, give such directions as it thinks fit for placing the co-operative society and all other persons as nearly as possible in the same position as if the co-operative society had not been struck off the register;
- (b) direct the co-operative society to change its name if the name of the co-operative society is too similar to the name of another co-operative society already on the register;
- (c) if and to the extent that it thinks fit, order that the officers of the co-operative society, or any one or more of them as specified in the order, shall be liable for a debt or liability incurred by or on behalf of the co-operative society during the period when it stood struck off the register;
- (d) make any other order that it thinks fit.

Explanatory note: This head is based on section 742 of the Companies Act 2014. It provides for supplementary orders that the court may make when restoring a co-operative society to the register, whether on application from the Registrar or any of the parties listed in head 217. Under paragraph (a), the court may give directions so that the co-operative society and other persons are placed as nearly as possible in the same position as if the co-operative society had not been struck off the register. Paragraph (b) deals with the situation where the name of the co-operative society is too similar to the name of another co-operative society already on the register – in such a case the court may order that the co-operative society being restored change its name.

Paragraph (c) allows the court to order that the officers of the co-operative society be liable for a debt or liability incurred by or on behalf of the co-operative society during the period when the co-operative society was struck off. Under paragraph (d), the court may make any other order as it sees fit.

HEAD 222 – Meaning of court

Provide that:

- (1) For the purposes of an application under *head 217* or *220* by a creditor or the Registrar, in this Chapter “court” means either the High Court or the Circuit Court.
- (2) In the case of an application under *head 217* by a creditor to the Circuit Court, the application shall be made to the judge of the Circuit Court—
 - (a) for the circuit in which the registered office of the co-operative society was situated immediately before the co-operative society was struck off the register, or
 - (b) if there was no registered office of the co-operative society at that time, for the circuit in which the creditor resides, or
 - (c) if there was no registered office of the co-operative society at that time and the creditor resides outside the State, for the Dublin Circuit.
- (3) An application under *head 220* to the Circuit Court shall be made to the judge of the Circuit Court for the Dublin Circuit.

Explanatory note: This head is based on section 743 of the Companies Act 2014. The head clarifies that the term “court” means the High Court or the Circuit Court, for the purposes of this Chapter.

Subhead (2) explains which circuit of the Circuit Court the application should be made in, in cases where the application is made to the Circuit Court by a creditor. Subhead (3) provides that an application by the Registrar for restoration to the Circuit Court should be made to the Dublin Circuit.

Chapter 3 Miscellaneous

HEAD 223 – Disclosure of information by Revenue Commissioners to Registrar

Provide that:

(1) This head applies if the Registrar, for the purpose of exercising any of his or her powers under this Part, is required to determine whether a statement that a co-operative society has failed to deliver to the Revenue Commissioners in accordance with section 882(3) of the Taxes Consolidation Act 1997 has or has not been subsequently delivered to them.

(2) In any case to which this head applies, the Revenue Commissioners may, notwithstanding any obligations as to secrecy or other restriction upon the disclosure of information imposed by or under statute or otherwise, disclose to the Registrar any information in their possession required by the Registrar for making the determination.

Explanatory note: This head is based on section 745 of the Companies Act 2014 and is designed to ensure that the Revenue Commissioners have the necessary authority to communicate information to the Registrar which they have in relation to making, or failure to make, returns under the Taxes Consolidation Act 1997, without breaching their obligations to confidentiality contained in other legislation.

PART 12 INVESTIGATIONS, COMPLIANCE AND ENFORCEMENT

Chapter 1 Investigations

HEAD 224 – Investigations

Provide that:

(1) The provisions of Part 13 of the Act of 2014, and the other provisions of that Act relating to investigations of companies, apply, subject to necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are the following:

(a) references to a body corporate include a company;

(b) in section 747(2) by the substitution of the following paragraph for paragraph (c):

“(c) at least ten per cent of the members of the co-operative society”;

(c) the references in sections 747(6)(b), 748(5)(b) and 750(4) to—

(i) a “small company” include a co-operative society, if the society meets the qualifying criteria for a small company set out in sections 280A or 280B of the Act of 2014, and

(ii) a “medium company” includes a co-operative society, if the society meets the qualifying criteria for a medium company set out in sections 280F or 280G of the Act of 2014;

(d) the reference in section 755(4) —

(i) to “any person connected” includes a connected person within the meaning of *head 123* of this Bill, and

(ii) to “shadow director” includes any past or present shadow director of a co-operative society;

(e) the reference in section 763(1) to Chapter 5 of Part 5 is to *Chapter 5 Part 5* of this Bill;

(f) the references to the Registrar in paragraphs (b) and (c) of section 765(4) and 770(b) are to the Registrar of Co-operative Societies and Trade Unions.

(g) the reference in section 787(13) in the definition of “material information” and in subsection 1(a) and (2)(a) of section 793 to “this Act” include this Bill.

(3) For the avoidance of doubt, the modifications in subhead (2)(c)(i) to sections 747(6)(b), 748(5)(b) and 750(4) of the Act of 2014 provide that those sections apply to a small co-operative that meets the small company criteria under sections 280A or 280B of the Act of 2014 and not the criteria as applied by paragraphs (i) and (j) of *head 169(2)* in the application of those sections.

Explanatory note:

This head is based on section 173 of the Irish Collective Asset-management Vehicles Act 2015 and provides that the provisions of the Companies Act 2014 relating to investigations will apply to a co-operative society as if the co-operative society were a private company limited by shares, subject to any necessary and specific modifications. It governs inspections of a co-operative society by court appointed inspectors. It empowers the Corporate Enforcement Authority to, among other things, appoint an inspector, carry out his or her own inquiry into share and debenture ownership, impose restrictions on shares in connection with an investigation or inquiry, require the production of company documents and books. The head confirms that an application may be made to the Circuit Court rather than the High Court in the case of a co-operative society that meets the small company criteria under sections 280A or 280B of the Act of 2014 and not the criteria as applied by paragraphs (i) and (j) of *head 169(2)*.

Chapter 2 Compliance and Enforcement

HEAD 225 – Court may order compliance by co-operative society or officer

Provide that:

- (1) This head applies if a co-operative society or an officer of a co-operative society —
 - (a) has failed to comply with a provision of this Bill or the Act of 2014 as applied by this Bill, and
 - (b) the co-operative society or officer has failed to remedy the default within 14 days (or such longer period as may be specified in the notice) after the date of service by any person referred to in *subhead (3)* on the co-operative society or officer of a notice requiring the co-operative society or officer to remedy the default.
 - (2) In any case to which this head applies, the court, on the application of a person specified in *subhead (3)*, may order the co-operative society or officer in default to remedy the default within such time as the court specifies.
 - (3) The court may make the order only on the application of one of the following:
 - (a) any member of the co-operative society;
 - (b) any creditor of the co-operative society;
 - (c) the Authority; or
 - (d) the Registrar.
 - (4) In making an order under *subhead (2)*, the court may order that the co-operative society or the officers responsible for the default pay all costs of and incidental to the application.
 - (5) Subject to *subhead (6)*, no order may be made under this head in relation to a default that, in the opinion of the court, constitutes a wrong done to the co-operative society an action in respect of which, under the general law, is maintainable by the co-operative society alone, as distinct from another by derivative proceedings.
 - (6) *Subhead (5)* does not apply if the facts constituting the default in question amount, in the opinion of the court, to the commission of an offence.
 - (7) Nothing in this head shall be taken to prejudice the operation of any enactment imposing penalties (including restriction or disqualification) on a co-operative society or its officers in respect of the default in question.
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(8) In this head, “officer” means director, shadow director, promoter, receiver, liquidator, statutory auditor or secretary.

Explanatory note:

This head based on section 797 of the Companies Act 2014. It provides for the power of the court to order compliance by a co-operative society or its officer with the provisions of this Bill or the 2014 Act as applied by this Bill. Any member or creditor of the co-operative society, the Registrar or the Corporate Enforcement Authority may apply to the court for an order that the co-operative society or officer in default of the provisions of this Bill remedy the default within a specified timeframe. In making such an order, the court may stipulate that the co-operative society or the officers of it pay all the costs of the application. Subhead (5) states that the court may not make an order under this head if it is of the opinion that the default in question constitutes a wrong done to the co-operative society, which, under the general law, is actionable by the co-operative society alone. This head is distinct from and will not prejudice the operation of any enactment imposing penalties on a co-operative society or its officers for failing to comply with the provisions of this Bill.

HEAD 226 – Court may restrain directors and others from removing assets

Provide that:

(1) The court may make an order restraining a director or other officer of a co-operative society, or a co-operative society, from—

- (a) removing his or her or the co-operative society's assets from the State, or
- (b) reducing his or her or the co-operative society's assets within or outside the State below an amount specified in the order.

(2) The court may make the order if it is satisfied that—

- (a) the applicant has a qualifying claim, and
- (b) there are grounds for believing that the director or officer, or the co-operative society, may remove or dispose of his or her assets or the assets of the co-operative society with a view to evading his or her obligations or those of the co-operative society and frustrating an order of the court.

(3) The court may make the order only on the application of—

- (a) the co-operative society,
- (b) a director, member, liquidator, receiver or creditor of the co-operative society, or
- (c) the Authority.

(4) In *subhead (2)(a)*, “qualifying claim” means a claim that—

- (a) is a substantive civil cause of action or right to seek a declaration of personal liability or to claim damages against the director, officer or co-operative society, and
- (b) arises—
 - (i) under this Bill, or
 - (ii) the Act of 2014 as applied by this Bill, or
 - (iii) under the rules of the co-operative society, or
 - (iv) from the holding of an office of the co-operative society.

Explanatory note:

This head is based on section 798 of the Companies Act 2014. It confers on the court a statutory jurisdiction to make a Mareva-type injunction against any director or other officer of a co-operative society and the co-

operative society itself when, it is believed, an individual or co-operative society will try to place assets beyond the reach of the co-operative society's creditors. In effect, the injunction freezes the assets of the co-operative society or individual, preventing that person or co-operative society from removing or disposing of those assets. The court may make the order on application from the co-operative society, a director, member, liquidator, receiver or creditor thereof or the Corporate Enforcement Authority. The circumstances in which an injunction can be granted are limited to cases where the primary cause of action also arises under this Bill. Alternatively, the cause of action must arise under the provisions of the rules of the co-operative society or relate to the holding of an office of the co-operative society.

HEAD 227 – Disclosure Orders

Provide that:

(1) The provisions of Chapter 2 of Part 14 of the Act of 2014 relating to disclosure orders (within the meaning of section 800 of that Act), apply subject to necessary modifications and the specific modifications specified in *subhead (2)*, in relation to a co-operative society as if it were a private company limited by shares.

(2) The modifications are that—

- (a) references to a body corporate include a company,
- (b) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions, and
- (c) the reference in section 812(4)(a) to that Act is to this Bill.

Explanatory note:

This head cross applies Chapter 2 of Part 14 of the Companies Act 2014 subject to the necessary modifications and the specific modifications in subhead (2). The head provides that persons who have a financial interest in a co-operative society may apply to the court for an order compelling the disclosure of certain information about interests held by other persons in shares or debentures of a co-operative society.

HEAD 228 – Restrictions on directors of insolvent co-operative societies

Provide that:

(1) The provisions of Chapter 3 of Part 14 of the Act of 2014, and the other provisions of that Act relating to restrictions on directors of an insolvent company (within the meaning of section 818), have effect in accordance with *subhead (2)*.

(2) Those provisions have effect as if—

(a) the following references:

- (i) the reference to a company referred to in section 819(6) in the definition of “company” in section 818(1);
- (ii) the references to a company in section 818(3), subsections 1(a) and 1(b) of section 821, subsections (1) and (2) of section 825 and sections 827(3), 836, 853(5), 855(1), 858 and 859;
- (iii) the final 5 references to a company in section 819(1);
- (iv) the references to a company in the definition of “restriction” in section 849; included a co-operative society;

(b) the reference in section 827(3) to section 245 included *head 144* of this Bill.

(3) The provisions of the Act of 2014 mentioned in *subhead (1)* apply, subject to necessary modifications and to the specific modifications specified in *subhead (4)*, in relation to directors of an insolvent co-operative society as if they were directors of a company.

(4) The modifications are that—

- (a) references to a company in the definitions of “director of an insolvent company” and “insolvent company” in subsection (1) and (2) of section 818 are to a co-operative society;
- (b) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions;
- (c) in the application of section 819(3) to a co-operative society, paragraphs (a) to (c) of it shall be disregarded and, instead, that subsection shall be read as if it set out both of the following requirements:

“(a) that the rules of the co-operative society specify that the amount of the contribution on the part of the member of it, or at least one member of it, being the contribution undertaken to be made by the member as mentioned in *head 11(1)(c)* of the Bill, is not less than €100,000, and

(b) that the member whose foregoing contribution is to be not less than that amount is an individual, as distinct from a body corporate.”;

(d) the reference in section 823(5) to section 895 is to head 249 of this Bill;

(e) in section 828 the references—

(i) in subhead (2) to the “constitution” is to the “rules of a co-operative society”, and

(ii) in subhead (3) an "ordinary resolution" shall be deemed to be a special resolution in accordance with *head 111(1)* of this Bill;

(f) in section 829(4) the reference to “company’s register of members” is to the register of members of a co-operative society referred to in *head 90* of this Bill.

Explanatory note:

This head is based on section 86 of the Irish Collective Asset-Management Vehicles Act 2015 and cross applies the provisions of Chapter 3 of Part 14 of the Companies Act 2014 and other provisions of that Act relating to the restriction of directors of companies to the directors of co-operative societies, with appropriate modifications to cater for co-operative societies. Where a director is restricted, he or she can be a director of another body corporate, but any such body is subject to specific restriction, whether as regards minimum capital, that shares have to be fully paid-up, and some restrictions are placed on the entity’s freedom to avail of provisions in the Bill.

This provision in effect will restrict directors of insolvent companies and directors of insolvent co-operative societies from involvement with a company or a co-operative society. A register of directors that are restricted arising from proceedings involving an insolvent co-operative society will be maintained by the Registrar of Co-operative Societies and Trade Unions.

HEAD 229 – Powers to vary amounts specified in section 228 (4)(c) (Restrictions on directors of insolvent co-operative societies)

Provide that:

(1) Subject to *subhead (4)*, the Minister may from time to time, by order, increase any amount specified in head 228(4)(c).

(2) An order under *subhead (1)* may only be made, at a particular time (the “relevant time”), if it appears to the Minister the changes in the value of money generally in the State that have occurred during the period beginning—

(a) on this Bill's passing, or

(b) if the powers under that subhead have previously been exercised, immediately after their last previous exercise,

and ending at the relevant time, warrant the exercise of powers under that subhead so as to secure the continued effectiveness of section 819 of the 2014 Act, as applied by *head 228*, as regards the amounts specified for the time being in subsection (3) of it.

Explanatory note:

This head is based on section 835 of the Companies Act 2014. It refers back to head 228(4)(c) (Restrictions on directors of insolvent companies) of the Bill (in relation to the cross applied capitalisation requirements for a company or co-operative with a restricted director) and provides that the Minister may increase the capitalisation amounts by order, subject to subhead (2) of this head.

Subhead (2) provides that an order under this head may only be made where it appears to the Minister that the changes in the value of money generally in the State over a specified period of time warrant the exercise of the power to vary the capitalisation amounts so as to secure the continued effectiveness of the capitalisation requirements.

HEAD 230 – Disqualification of directors etc.

Provide that:

(1) The provisions of Chapter 4, 5 and 6 of Part 14 of the Companies Act 2014, and the other provisions of that Act relating to the disqualification of a person from being appointed or acting as a director or other officer, statutory auditor, receiver or liquidator, or being in any way (whether directly or indirectly) concerned or taking part in the promotion, formation or management of a company, have effect in accordance with *subhead (2)*.

(2) Those provisions have effect as if—

(a) in section 837—

(i) in the definition of “company” after “Act” there were inserted “(including a co-operative society)”, and

(ii) in the definition of “default order” the reference to section 797 included *head 225* (Court may order compliance by co-operative society or officer),

(iii) in the definition of “relevant requirement” in that section the reference to that Act included this Bill and the reference to the Registrar included the Registrar of Co-operative Societies and Trade Unions,

(b) the references to a company within the meaning of section 819(6) in sections 838, 848, 849 and 851 included a co-operative society,

(c) the reference to that Act in section 839(1)(a) included this Bill,

(d) in section 840—

(i) the references to section 149(8) included *head 70(8)* of this Bill,

(ii) the references to section 150(1) included *head 71(1)* of this Bill,

(iii) the reference to section 150(3) included *head 71(3)* of this Bill,

(iv) the reference to section 150(9) included *head 71(9)* of this Bill,

(v) the reference to section 150(10) included *head 71(10)* of this Bill and

(vi) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions,

(e) in section 841—

(i) the references to section 23 included *head 15* of this Bill,

(ii) the references to section 150(2) included *head 71(2)* of this Bill,

(iii) the reference to section 149(8) included *head 70(8)* of this Bill, and

- (iv) the reference to section 21(1)(a) included *head 13(1)(a)* of this Bill,
 - (v) references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions,
- (f) in section 842—
- (i) the reference to section 727 included *head 206* of this Bill,
 - (ii) the reference to Chapter 1 of Part 12 included *Chapter 1* of *Part 11* of this Bill, and
 - (iii) the reference to section 733 included *head 212* of this Bill,
- (g) the references in sections 844(3), 851(3), 853(3), 863(2) and 864 to the Registrar included the Registrar of Co-operative Societies and Trade Unions,
- (h) the references in sections 855(1), 858, 859, 860, and 862 to a company included a co-operative society,
- (i) the references in section 862 to companies included co-operative societies, and
- (j) in section 863(2), in the case of an offence in relation to a co-operative society the reference to the Registrar were a reference to the Registrar of Co-operative Societies and Trade Unions.

Explanatory note:

This head is based on section 87 of the Irish Collective Asset-management Vehicles Act 2015 and cross applies the provisions Chapters 4, 5 and 6 of Part 14 of the Companies Act 2014 and the other provisions of that Act relating to the disqualification of directors of companies to the directors of co-operative societies, with appropriate modifications to cater for the co-operative societies. Disqualification means a person being disqualified from being appointed or acting as a director or other officer, statutory auditor, receiver, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of any company or co-operative. Disqualification occurs automatically upon conviction for an offence in relation to a company or a co-operative society or may be ordered by the Court if appropriate grounds are established upon application by the Corporate Enforcement Authority, the DPP, the Registrar of Companies, the Registrar of Co-operative Societies and Trade Unions, or any member of a company or co-operative society. A register of directors that are disqualified arising from proceedings involving a co-operative society will be maintained by the Registrar of Co-operative Societies and Trade Unions.

HEAD 231 – Summary prosecutions

Provide that:

(1) Summary proceedings in relation to an offence under this Bill may be brought and prosecuted by the:

- (a) the Director of Public Prosecutions; or
- (b) the Corporate Enforcement Authority.

(2) Without prejudice to the generality of subhead (1), summary proceedings in relation to an offence under each of the following provisions may be brought and prosecuted by the Registrar:

- (a) *head 20(7)*;
- (b) *head 62(2)*.

(3) In the application of the following sections of the Act of 2014—

- (a) section 343(11);
- (b) section 430(10), in so far as it relates to a default under section 430(3);
- (c) section 441(3);
- (d) section 530(7);
- (e) section 531(8), (9) or (10);
- (f) section 555(2);
- (g) section 592(4);
- (h) section 631(4);
- (i) section 651;
- (j) section 669(8) or (9);
- (k) section 680(9);
- (l) section 681(5);
- (m) section 704(6);

as applied by *heads 169, 200, 202 and 203*, subsection (2) of section 865 of the Act of 2014 has effect as if as if the reference to the Registrar is to the Registrar of Co-operative Societies and Trade Unions in relation to paragraphs (c) to (o) of that subsection.

Explanatory note:

This head is based on section 865 of the Companies Act 2014. Subhead (1) provides that summary offences may be brought and prosecuted by the DPP or the Corporate Enforcement Authority. Subhead (2) lists

offences which may be prosecuted by the Registrar under this Bill. Subhead (3) lists the offences in the Companies Act 2014 cross applied by this Bill which may be prosecuted by the Registrar. The offences which can be prosecuted by the Registrar, include only those offences which can be prosecuted on the basis of evidence obtained directly from internal Registrar's records, or on the production of a court order. The Registrar will not have an investigative function and, accordingly, it is not considered appropriate to vest the Registrar with a capacity to prosecute offences which require that evidence be adduced which can be obtained only following a more comprehensive investigation. Such offences will be prosecutable by the Corporate Enforcement Authority.

HEAD 232 – District court district within which summary proceedings may be brought

Provide that:

(1) Summary proceedings against a co-operative society or an officer of a co-operative society acting in his or her capacity as such (or a person purporting to so act) for an offence under this Bill may be brought, heard and determined—

(a) before and by a judge of the District Court as provided for under section 79 or 79A of the Courts of Justice Act 1924, or

(b) before and by a judge of the District Court for the time being assigned to the district court district in which the registered office of the co-operative society is situated immediately prior to the commencement of the proceedings;

(c) where the offence is an offence under section 343(11) (but without prejudice to the alternative venues provided under the preceding paragraphs) before a judge of the District Court for the time being assigned to—

(i) the Dublin Metropolitan District; or

(ii) the district court district of which the district court area of Carlow forms part;

but only to the extent, in the case of the district court district referred to in subparagraph (ii), that the judge so assigned is exercising jurisdiction in the district court area of Carlow so referred to.

(2) In this head “officer of a co-operative society” includes a director, shadow director, promoter, statutory auditor, receiver, liquidator or secretary of a co-operative society.

(3) For the purposes of this head, the place for the time being recorded by the Registrar as the situation of the registered office of the co-operative society shall be deemed to be the registered office of the co-operative society notwithstanding that the situation of its registered office may have changed.

Explanatory note:

This head is based on section 866 of the Companies Act 2014. It makes provision for the District Court area within which summary proceedings against a co-operative society or an officer thereof may be brought, heard and determined. Firstly, the proceedings may be heard by a judge of the District Court as provided for in section 79 or 79A of the Courts of Justice Act 1924 - i.e. in the district where the accused resides or was arrested or where the crime was committed. Secondly, the proceedings may be heard in the District Court area in which the registered office of the co-operative society is situated immediately prior to the commencement of the proceedings.

HEAD 233 – Application of other provisions relating to offences

Provide that:

- (1) Sections 867 and 870 of the Act of 2014 shall apply in relation to offences under this Bill as in relation to offences under that Act.
- (2) Section 868 of that Act shall apply in relation to a co-operative society as in relation to a private company limited by shares.
- (3) Section 872 of that Act shall apply as if references to that Act included this Bill.
- (4) Section 873 of that Act shall apply as if —
 - (a) the reference to a category 3 or 4 offence within the meaning of that Act included a category 3 or 4 offence under this Bill, and
 - (b) the reference to a company in subsection (6) included a co-operative society.

Explanatory note:

This head is based on section 178 of the Irish Collective Asset-management Vehicles Act 2015 and cross-applies further provisions of the Companies Act 2014—

- Section 867 ‘Period within which summary proceedings may be commenced’

It provides that any summary proceedings may be commenced within 3 years from the date on which the offence was committed. Alternatively, if at the end of the period of 3 years, the person against whom the proceedings are to be brought is outside the State, then it will be possible to bring proceedings within 6 months from the date on which that person next enters the State. The final time period within which proceedings may be brought is laid down in subsection (1)(c) which enables the proceedings to be brought at any time within 3 years from the date of which evidence of the breach comes to the attention of the party bringing the prosecution.

- Section 868 ‘Prosecution of companies on indictment’

This section provides for procedural matters concerning the representation of co-operative societies when charged with an indictable offence and the entering of pleas.

- Section 870 ‘Further offence, where contravention continued after conviction for an offence, and penalties for such offence’

If the contravention in respect of which a person is convicted of an offence under this Bill is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues. Each day of continued breach following conviction constitutes an offence, and the penalties

range from fines of up to €5,000 per day for a category 1 offence prosecuted on indictment, down to €50 per day for category 3 and 4 offences.

- Section 872 ‘Court may order that convicted person remedy breach’

This section provides that, following a conviction for an offence under this Bill, the trial court may order that the convicted person should remedy any breach of the Co-operative Societies Bill 2022 in respect of which they were convicted.

- Section 873 of the Companies Act relates to ‘Notice by Authority to remedy default’

This section provides that the Corporate Enforcement Authority may impose a on-the-spot fines in the prescribed form where there are reasonable grounds for believing that a person has committed a category 3 or 4 offence. The person on whom the notice is served has 21 days to remedy the default that constitutes the offence and pay the requisite fine to the Corporate Enforcement Authority. If that person does so remedy the default and pay the fine, he or she will not be prosecuted in respect of the alleged offence.

HEAD 234 – Special provisions applying where default in delivery of documents to Registrar

Provide that:

(1) The Registrar may deliver a notice that complies with *subhead (2)* to a person if the Registrar has reasonable grounds for believing that the person is in default in the delivery, filing or making to the Registrar of a return or similar document required under this Bill (being a default that constitutes a category 3 or 4 offence).

(2) The notice referred to in *subhead (1)* is a notice that—

(a) is in the prescribed form,

(b) states that the person has failed to deliver, file or make a specified return or similar document to the Registrar under a specified provision of this Bill,

(c) states that the person to whom the notice is delivered may during a period of 21 days beginning after the date of the notice, or such greater period as may be specified in the notice—

(i) remedy the default, and

(ii) pay to the Registrar a prescribed amount which shall be accompanied by the notice,

and

(d) states that a prosecution of the person to whom the notice is delivered—

(i) will not be instituted during the period referred to in *paragraph (c)*, and

(ii) will not be instituted in any event if, within the period referred to in *paragraph (c)*, the default is remedied, and payment is made in accordance with the notice.

(3) Where a notice is delivered under *subhead (1)*—

(a) a person to whom it is delivered may, during the period specified in the notice, make to the Registrar payment of the amount specified in the notice, accompanied by the notice,

(b) the Registrar may receive the payment and issue a receipt for it and no payment so received shall in any circumstances be recoverable by the person who made it, and

(c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice and if the default is remedied to the satisfaction of the Registrar and payment of the amount specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted in any event.

(4) In a prosecution for an offence to which this head applies, the defendant shall bear the onus of showing that a payment pursuant to a notice under this head has been made.

(5) All payments made to the Registrar in pursuance of this head shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

(6) If the person mentioned in *subhead (1)* is a co-operative society, then that subhead authorises the delivery of the notice mentioned in it to an officer of the co-operative society but, where the notice is delivered to that officer, the second reference in that subhead to person, and each reference in *subheads (2) and (3)* to the person to whom the notice is delivered or otherwise to person, is to be read as a reference to the co-operative society.

Explanatory note:

This head is based on section 874 of the Companies Act 2014. It provides that the Registrar of Co-operative Societies and Trade Unions may impose an on-the-spot fines in the prescribed form where he or she has reasonable grounds for believing that a person has committed a category 3 or 4 offence. The person on whom the notice is served has 21 days to remedy the default that constitutes the offence and pay the requisite fine to the Registrar. If that person does so remedy the default and pay the fine, he or she will not be prosecuted in respect of the alleged offence.

HEAD 235 – Civil enforcement of prohibition on trading under misleading name

Provide that:

(1) On the application of the Registrar or the Authority, the court may order that a person shall cease, within the time specified in the order, to carry on any trade, profession or business in contravention of *subheads (1) and (2) of head 19* if that person has—

- (a) been convicted of an offence under *head 19(3)*,
- (b) been served with a notice by the Registrar or Authority requiring that person to cease to carry on a trade, profession or business in contravention of *subheads (1) and (2) of head 19*, and
- (c) failed to comply with the notice within 14 days after the date of service of the notice, or such greater period as may be specified in the notice in that behalf.

(2) In making an order under *subhead (1)* the court may order that all costs of and incidental to the application shall be borne by the person against whom the order is made.

Explanatory note:

This head is based on section 875 of the Companies Act 2014 and ensures that all persons are covered by the offence of trading under a false name by using the words limited, company limited by shares or the variation of the word co-operative.

HEAD 236 – Additional General Offences

Provide that:

Section 876, 877 and 878 of the Act of 2014, and other provisions of that Act relating to those provisions, have effect as if—

- (a) the references to a company included a co-operative society,
- (b) the references to the Registrar included the Registrar of Co-operative Societies and Trade Unions, and
- (c) the references to that Act included this Bill.

Explanatory note:

This head is based on section 180 of the Irish Collective Asset-management Vehicles Act 2015 and cross-applies further provisions of the Companies Act 2014—

- Section 876 ‘Offence of providing false information’
This section makes provision for a category 2 offence where a person, in purported compliance with this Bill, knowingly gives false information or is reckless as to whether the information is false or not. It provides for greater maximum penalties in certain cases where the conviction is on indictment and the commission of the offence has substantially contributed to the co-operative society being unable to pay its debts or impeded the winding up of the co-operative society or facilitated the defrauding of creditors.
- Section 877 ‘Offence of destruction, mutilation or falsification of book or document’
This section provides a category 2 offence for the destruction, mutilation or falsification of a book or document affecting or relating to the property or affairs of the co-operative society. It shall be a defence for a person to prove that, in carrying out the destruction, mutilation or other act concerned, that the person had no intention to defeat the process of the law.
- Section 878 ‘Offence of fraudulently parting with, altering or making omission in book or document’
This section makes it an offence to fraudulently part with, alter or make an omission in any book or document affecting or relating to the property or affairs of a co-operative.

HEAD 237 – Evidential matters

Provide that:

(1) Sections 879 to 886 of the Act of 2014 have effect as if references to that Act (or Parts 1 to 15 of that Act) included this Bill.

(2) In the application of section 883(3), the following paragraph is substituted for paragraph (d):

“(d) in respect of functions that, under this Act, are to be performed by the Registrar of Co-operative Societies and Trade Unions, an assistant Registrar of Co-operative Societies and Trade Unions or any other person authorised by the Minister under *head 239(7)* of the Co-operative Societies Bill 2022;”

(3) In the application of section 886(6) in relation to a declaration that purports to be made in pursuance of or for the purposes of—

(a) this Bill, or

(b) a provision of that Act in its application by virtue of this Bill,

the references to the Registrar are to the Registrar of Co-operative Societies and Trade Unions.

(4) Section 885 of that Act shall apply as if the reference to a company included a co-operative society.

Explanatory note:

This head is based on section 181 of the Irish Collective Asset-management Vehicles Act 2015 and cross-applies further provisions of the Companies Act 2014—

- Section 879 ‘Proof of certificate as to overseas incorporation’

It applies where the existence of a body corporate or undertaking outside the State is alleged or is otherwise in issue. It is provided that a certificate of incorporation or registration in relation to a body corporate in another country will be taken to be prima facie evidence of the incorporation or registration of that body corporate in the country concerned.

- Section 880 ‘Proof of incorporation under overseas legislation’

Where the incorporation of a corporation, by virtue of any Act passed in any country other than the State, is alleged or otherwise at issue, a copy of that Act will be prima facie evidence of the incorporation of that

corporation where that Act has been passed in any country prescribed for the purposes of this section and has been published by the Government publishers of that country.

- Section 881 ‘Admissibility in evidence of certain matters’

This section provides that, where evidence is given by a person in response to a question put to him or her in the exercise of powers under a number of specified sections of this Bill, the answer given by that person may be used in evidence against that individual in any civil proceedings but not in criminal proceedings, unless the prosecution is for perjury in respect of any answer given. Subsection (4) deals with the admissibility of an inspectors’ report as evidence in civil proceedings.

- Section 882 ‘Provision of information to juries’

A trial judge may order a variety of documents be made available in a trial on indictment of an offence under this Bill. If the prosecution wishes to apply to have a document given to the jury, a copy of the document must first be given to the accused, who then may make representations to the court in relation to that document. Under subsection (3), where an affidavit by an accountant is given to the jury, the court may require that accountant to explain to the jury any relevant accounting procedures or principles in order to assist the jury in their deliberations.

- Section 883 ‘Certificate evidence’

This section contains provisions relating to certificate evidence which, in the context of any legal proceedings, streamline the giving of evidence by the Minister, the Corporate Enforcement Authority, an inspector appointed under Part 13 of the Companies Act 2014, the Registrar of Companies, Registrar of Co-operative Societies and Trade Unions, in respect of their performance of their respective statutory functions. For the purpose of the legal proceedings, the relevant officer need not give evidence in court to prove the certificate in question.

- Section 884 ‘Documentary evidence’

This section allows for the admission in evidence of documents that are certified copies or extracts from the records of the Corporate Enforcement Authority, the Minister, an inspector or the Head of Financial Regulation of the Central Bank, without further proof. Subsection (8) clarifies that this section does not in any way derogate from any other provision of this Bill that provides for the receiving in evidence of a particular document.

- Section 885 ‘Saving for privileged communications in context of requirements under section 724’

This section provides where proceedings are brought under this Bill against any person, nothing in section 724 (duty to provide assistance to the DPP and the Corporate Enforcement Authority) shall be taken to require any person who has acted as solicitor for the co-operative society to disclose any privileged communication made to him or her in that capacity.

- Section 886 ‘Statutory declaration made in foreign place’

It provides that statutory declarations for the purposes of the Bill made overseas before Irish solicitors or local notaries or other persons authorised to take declarations are valid.

HEAD 238 – Corporate Enforcement Authority

Provide that:

(1) Sections 944P, 944Q and 944W of the Act of 2014 have effect as if references to that Act included this Bill.

(2) Without prejudice to the generality of *subhead (1)*, and in addition to the functions under section 944D of the Act of 2014, the Authority may perform the functions conferred on the Corporate Enforcement Authority by this Bill and do such acts or things as are necessary or expedient in the performance of those functions.

Explanatory note:

This head is based on section 192 of the Irish Collective Asset-management Vehicles Act 2015. It cross-applies sections 944P, 944Q and 944W of the Companies Act 2014 which excludes the Corporate Enforcement Authority members and staff from liability for damages arising from their actions if done in good faith. It also places a duty of professional confidentiality on the Corporate Enforcement Authority members and staff and that the Director may receive and use confidential information from an Garda Síochána, the Revenue Commissioners and other persons.

PART 13 FUNCTIONS OF REGISTRAR

HEAD 239 – Registration office, “register”, officers and RCT Gazette

Provide that:

(1) The Minister shall maintain and administer an office or offices in the State at such places as the Minister thinks fit for the purposes of—

- (a) the registration of co-operative societies under this Bill, and
- (b) the performance of the other functions under this Bill expressed to be performable by the Registrar.

(2) A reference in this Bill to the register (where the context is not that of a register to be kept by a co-operative society) is a reference to, as appropriate—

- (a) the register to be kept by the Registrar (which the Registrar is empowered by this subhead to keep) in which notices or other documents, information or things delivered in pursuance of this Bill to the Registrar are to be registered or recorded (and in which, in particular, in the case of a registration of a co-operative society, the fact of the society’s registration is to be disclosed), or
- (b) the particular register that a provision of this Bill requires the Registrar to keep for a special purpose,

but any such register as is mentioned in *paragraph (b)* shall, for the purposes generally of this Bill, be regarded as forming part of the first-mentioned register.

(3) The Minister may appoint a registrar (who shall be known as the “Registrar of Co-operative Societies and Trade Unions”) and such assistant registrars as he or she thinks necessary for any of the purposes referred to in *subhead (1)*, and may make regulations with respect to their duties and may remove any persons so appointed.

(4) The Minister may direct a seal or seals to be prepared for the authentication of documents required for or connected with any of the purposes referred to in *subhead (1)*.

(5) The Registrar shall maintain on the website of the Co-operative Societies and Trade Unions Registration Office a gazette kept in solely electronic form which shall be known and is in this Bill referred to as the RCT Gazette.

(6) The RCT Gazette referred to in *subhead (5)* is for the purposes of publication of the documents and particulars that may or shall be published in it in accordance with the requirements of this Bill.

(7) Any act required or authorised by—

- (a) this Bill,
- (b) the Trade Union Acts 1871 to 1990,
- (c) the Industrial and Provident Societies Acts 1893 to 2021, or
- (d) the Friendly Societies Acts 1896 to 2021,

to be done to or by the Registrar or a person referred to in the enactment as “the registrar”, as the case may be, may be done to or by a registrar or assistant registrar appointed under *subhead (3)*, or any other person so authorised by the Minister.

Explanatory note: The head is based on section 887 of the Companies Act 2014. The head establishes a new Registrar of Co-operative Societies and Trade Unions and sets out provisions on keeping a register by the Registrar. It also, in subheads (5) and (6), clarifies that the registrar shall maintain on the website of the Registrar an electronic gazette called the RCT Gazette for publication of documents and particulars in accordance with the provisions of the Bill. The head clarifies that acts required or authorised by the Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021, to be done to or by the Registrar of Co-operative Societies and Trade Unions or his/her assistant registrar, or any other person authorised by the Minister.

HEAD 240 – Transfer of functions of Registrar of Friendly Societies to Registrar

Provide that:

- (1) All functions that, immediately before the commencement day, were vested in the Registrar of Friendly Societies are transferred to the Registrar.
- (2) References to Registrar of Friendly Societies contained in any Act (other than this Bill or any instrument under an enactment) shall be construed as a reference to the Registrar of Co-operative Societies and Trade Unions.
- (3) References to the chief registrar of Friendly Societies in any Act (other than this Bill or any instrument under an enactment) shall be construed as a reference to the Registrar of Co-operative Societies and Trade Unions.
- (4) References to an assistant registrar to the Registrar of Friendly Societies in any Act (other than this Bill or any instrument under an enactment) shall be construed as a reference to an assistant registrar of Co-operative Societies and Trade Unions appointed under *head 239(3)*.
- (5) Anything commenced before the establishment day by or under the authority of the Registrar of Friendly Societies may, in so far as it relates to functions transferred by *subhead (1)* to the Registrar, be carried on or completed on or after that day by the Registrar.
- (6) Where immediately before the establishment day, any legal proceedings are pending to which the Registrar of Friendly Societies is a party or the prosecutor and the proceedings have reference to any functions transferred to the Registrar by *subhead (1)*, the name of the Registrar shall, in so far as the proceedings relate to functions transferred by *subhead (1)*, be substituted in those proceedings for that of the Registrar of Friendly Societies or added in those proceedings and those proceedings shall not abate by reason of such substitution.
- (7) Nothing in this Part affects the validity of any act done before the commencement of this head by or under the authority of the Registrar of Friendly Societies and every such act shall, if and in so far as it was operative immediately before that day, have effect on and after that day as if it had been done by or on behalf of the Registrar.

Explanatory Note:

This head is based on section 944E of the Companies Act 2014, section 37 of the Consumer Protection Act 2007 and section 13 of the Companies (Corporate Enforcement Authority) Act 2021. Subhead (1) provides that all functions vested in the Registrar of Friendly Societies are transferred to the Registrar. Subhead (2) provides any references in any enactment or instrument under an enactment to the Registrar of Friendly Societies are construed as references to the Registrar. Subheads (3) and (4) provide that any

references to the chief registrar or assistant registrars of friendly societies are references to the Registrar and assistant registrars of the Registrar of Co-operative Societies and Trade Unions. Subhead (5) provides that anything commenced by the Registrar of Friendly Societies may be completed by the Registrar. Subhead (6) provides that the Registrar will be substituted for the name of the Registrar of Friendly Societies in any legal proceedings pending following the transfer of functions. Subhead (7) provides nothing in this Part affects the validity of any action by the Registrar of Friendly Societies done before the establishment day in so far as if was operative immediately before that day, has effect on and after that day as if it had been done by or on behalf of the Registrar.

HEAD 241 – Authentication of documents other than by signing or sealing them

Provide that:

A requirement of this Bill that a document shall be signed or sealed shall be satisfied if the document is authenticated in the prescribed manner.

Explanatory note: This head is based on section 888 of the Companies Act 2014 and allows for documents to be authenticated in a prescribed, as an alternative to signature or sealing. This provision will facilitate the use of new technology in a co-operative law context.

HEAD 242 – Cases in which director must supply certain data

Provide that:

(1) Notwithstanding section 262(9) of the Social Welfare Consolidation Act 2005, a director shall include his or her personal public service number (or, in any case where the director does not have a personal public service number, such other information concerning the identity of the director as stands determined by the Registrar for the purposes of this head) in—

- (a) an application made under this Bill by him or her to register a proposed co-operative society,
- (b) an annual return made under this Bill by a co-operative society of which he or she is a director, and
- (c) a notice of change of directors or secretaries made under this Bill by a co-operative society of which he or she is a director.

(2) Any person who, without just cause, fails to comply with *subhead (1)* shall be guilty of a category 4 offence.

(3) In this head, ‘personal public service number’, in relation to a director, means the number that has been issued to the director in accordance with section 262(2) of the Social Welfare Consolidation Act 2005.”.

Explanatory note: This head is based on section 888A of the Companies act 2014. It provides in subhead (1) that when submitting certain forms to the Registrar a director of a co-operative society shall provide his or her Personal Public Service Number (PPSN), or such other information required by the Registrar. The forms concerned are the application to register a co-operative society, an annual return by a co-operative society, and a notice of change of directors or secretaries by a co-operative society. Subhead (2) sets out the offence for failing to comply with this head.

HEAD 243 – Fees

Provide that:

(1) In respect of the doing of the following (where the provision concerned does not, itself, expressly provide for the payment of a prescribed fee in that behalf), namely—

- (a) the registration of a co-operative society,
- (b) the registration of any notice, return or other document, or
- (c) the doing of any other thing that the Registrar is required or authorised by or under this Bill to do (whether, at the request or direction of, or on application of any person, or otherwise in the circumstances provided by or under this Bill),

regulations may be made by the Minister requiring the payment to the Registrar of a fee, of an amount specified in the regulations, by the person concerned.

(2) The references in *subhead (1)(a)* and *(b)* to registration, and the reference in *subhead (1)(c)* to the doing of any other thing, include a reference to—

- (a) a case in which, in accordance with this Bill or an instrument thereunder, registration or the doing of the other thing is declined or otherwise not proceeded with by the Registrar, and
- (b) a case in which the application or request for registration or the doing of the other thing is withdrawn.

(3) Where a provision of this Bill expressly provides for the payment of a prescribed fee in respect of the doing of a thing referred to in *subhead (1)(a)* or *(b)*, that provision shall be read as imposing liability for payment of the fee notwithstanding that the matter eventuates in a case referred to in *subhead (2)(a)* or *(b)*.

(4) In *subhead (1)* “person concerned” means—

- (a) in a case where the registration is to be effected or the other thing concerned is to be done by the Registrar at the instance of a person — that person, or
- (b) in any other case — the person who is specified in the regulations to be the person concerned for the purpose of that case (and the person so specified may be such person as the Minister reasonably determines to be the person for whom the principal benefit will enure by the thing concerned being done by the Registrar).

(5) Different amounts of fees may be so specified for different classes of case in which a thing falling within any particular paragraph of *subhead (1)* is done and any such class of case may be defined in the regulations concerned by reference to such matter or matters as the Minister considers reasonable and appropriate for the purpose.

(6) Without prejudice to the generality of *subhead (5)*, a different amount of fee may be so specified in respect of the doing of a foregoing thing, where the step or steps by another person, in consequence of, or on foot of which, the thing is authorised or required to be done, have not been taken in observance of a time limit specified by or under this Bill.

(7) In a case falling within *subhead (6)*, any different amount of fee that is specified may be specified by reference to the period of time that has elapsed between the latest date, in observance of the particular time limit specified by or under this Bill, by which the one or more steps concerned ought to have been taken and the date on which they have been taken.

(8) Where regulations under this head require, in respect of the doing of a thing referred to in *subhead (1)*, the payment of a fee of an amount specified in them and the fee of the specified amount is not paid to the Registrar, then, subject to any special cases that the Minister may deem it expedient to provide for in the regulations, the Registrar is not obliged to do (where the Registrar would otherwise be so obliged) the thing concerned.

(9) *Subhead (7)* is in addition to, and not in derogation from, any particular provision of or under this Bill that provides or the effect of which is that a fee of a prescribed amount must be paid to the Registrar as a condition, or one of the conditions, for the Registrar's doing the particular act concerned.

(10) All fees paid to the Registrar in pursuance of this Bill shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

Explanatory note: This head expands on section 73 of the Industrial and Provident Societies Act 1893 and is based on section 889 of the Companies Act 2014 and allows the Minister to make regulations to prescribe fees for the registration of co-operative societies and the registration of documents and notices with the Registrar of Co-operative Societies and Trade Unions. The Registrar will now have the power to charge a fee where the registration or other action is declined by the Registrar or withdrawn by the presenter. This provision will facilitate the use of new technology in a co-operative law context.

HEAD 244 – Annual Report by Registrar

Provide that:

- (1) The Registrar shall, as soon as may be, but not later than 4 months, after the end of each year, make a report in writing to the Minister of the Registrar's activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas not later than 6 months after the end of that year.
- (2) The Minister may, after consultation with the Registrar, prescribe the form of a report under this head and the manner in which any matter is to be addressed in such a report.

Explanatory note: This head is partly new. It is based on section 890 of the Companies Act 2014 and provides that the Registrar shall make a report to the Minister in writing, as soon as may be (but not later than 4 months after the end of each year), of the Registrar's activities during that year and shall cause copies of the report to be laid before each house of the Oireachtas not later than 6 months after the end of that year. While an obligation on the Registrar to prepare an annual report exists in the Industrial and Provident Societies Act 1893, the law does not specify when the report shall be presented to the Minister and laid before the Oireachtas.

Subhead (2) is new and allows the Minister, after consultation with the Registrar to prescribe the form of a report under this head and the manner in which any matter is to be addressed in the report.

HEAD 245 – Inspection and production of documents kept by Registrar

Provide that:

- (1) On payment of the prescribed fee, any person may—
 - (a) inspect any document which has been received and recorded by the Registrar in pursuance of this Bill,
 - (b) require the Registrar to certify a certificate of registration of any co-operative society, or
 - (c) require the Registrar to certify a copy of or extract from any other document or any part of any other document kept by the Registrar.
- (2) A process for compelling the production of any document kept by the Registrar—
 - (a) shall not issue from any court except with the leave of that court, and
 - (b) if so issued, shall state that it is issued with the leave of the court.

Explanatory note: This head is based on section 891 of the Companies Act 2014. It governs the inspection and production of documents kept by the Registrar. Currently, section 74 of the Industrial and Provident Societies Act 1893 provides that the Minister may make regulations in respect of the inspection of documents kept by the Registrar. The new head clarifies in subhead (1) that the Registrar is only obliged to provide documents for inspection that it has received and recorded.

HEAD 246 – Admissibility of certified copy or extract

Provide that:

(1) A copy of or extract from any document registered with and kept by the Registrar shall be admissible in evidence in all legal proceedings and be of the same evidential effect as the original document if it has been certified as a true copy under the signature of the Registrar, an assistant registrar or another officer authorised by the Minister.

(2) For the purposes of *subhead (1)* it shall not be necessary to prove the official position of the person whose signature appears on the copy concerned.

(3) In subhead (1) “a copy of or extract from any document” includes a document registered under the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021.

Explanatory note: This head is partly new. It expands on the provisions in section 75 of Industrial and Provident Societies Act 1893 and is based on section 892 of the Companies Act 2014. It allows a copy of a document registered and kept by the Registrar to be admissible as evidence in legal proceedings and to have the same effect as the original document provided that it has been certified as a true copy. Subhead (2) provides that the official position of the person who has signed the certified copy or extract does not need to be proven. Subhead (3) clarifies that a copy of or extract from a document in accordance with this head includes documents registered by the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021.

HEAD 247 – Certificate by Registrar admissible as evidence of facts stated

Provide that:

A certificate in writing and signed by the Registrar shall be admissible in all legal proceedings as evidence without further proof of any of the following facts stated in the certificate unless the contrary is shown—

- (a) the contents of a register kept by the Registrar,
- (b) the date on which a document was filed or registered with or delivered to the Registrar,
- (c) the date on which a document was received by the Registrar, or
- (d) the most recent date (if any) on which a requirement under this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 was complied with.

Explanatory note: This head is based on section 893 of the Companies Act 2014. It allows a certificate in writing from the Registrar as to the contents of a register, the date on which a document was filed, registered with or delivered to or received by the Registrar, or the date on which a requirement under the Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 was complied with to be admissible in all legal proceedings as prima facie evidence, provided that evidence to the contrary is not given.

HEAD 248 – Disposal of documents filed with Registrar

Provide that:

(1) The Registrar may, as respects any document that has (whether pursuant to this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021) been received and recorded by the Registrar, destroy the document if the following conditions are satisfied—

- (a) 6 or more years have elapsed after the date of its receipt by him or her, and
- (b) its destruction is authorised by the Director of the National Archives under section 7 of the National Archives Act 1986,

but this is subject to *subhead (2)*.

(2) Without prejudice to *subhead (3)*, for so long as a—

- (a) co-operative society's,
- (b) trade union's,
- (c) industrial and provident society's, or
- (d) friendly society's

existence is recorded in the register, and for a period of 20 years after the date of its dissolution, the Registrar shall keep in electronic form a copy of every document that, in relation to that society or trade union, has been received and recorded (whether pursuant to this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021) by the Registrar and the keeping of such copy in that form shall be such as to ensure the authenticity and accuracy of the data and that the data may be reliably accessed.

(3) On and from the expiry of 20 years after the date of its dissolution, a copy of every document kept, in relation to a co-operative society, a trade union, an industrial and provident society or a friendly society by the Registrar under *subhead (2)*, and in the form specified therein, shall be kept and maintained by the Registrar in an archival database comprising the records of co-operative societies, trade unions, industrial and provident societies and friendly societies, the length of the period of dissolution of which stands at 20 or more years.

(4) The means of keeping, in electronic form, the archival database referred to in *subhead (3)* shall be such as are, in the opinion of the Registrar (after consultation with the Director of the National Archives), best calculated to preserve and maintain the integrity of the data.

Explanatory note: This head is based on section 894 of the Companies Act 2014. It sets out the practices related to the destruction of documents received and recorded by the Registrar pursuant to this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021. Such destruction must be authorised by the Director of the National Archives under section 7 of the 1986 National Archives Act and a period of more than 6 years will have

elapsed after its receipt by the Registrar. The provision also allows the Registrar to maintain an electronic record of every document he or she has received and recorded for a period of 20 years after a co-operative society has been dissolved. After 20 or more years have elapsed, the Registrar has an option to store such data in an archival database.

HEAD 249 – Registrar may apply system of information classification

Provide that:

- (1) The Registrar may, as he or she considers appropriate—
 - (a) apply a system of classification to information to which this head applies, and
 - (b) assign symbols of identification to persons or classes of persons to whom any such information relates.
- (2) This head applies to any information that, under this Bill, is required to be delivered to the Registrar and is so received by the Registrar.
- (3) The Minister may make regulations—
 - (a) requiring that the symbol assigned by the Registrar to a person individually or as one of a class of persons shall be entered on all documents that are required under this Bill to contain the name of that person, and
 - (b) specifying particular persons whose duty it shall be to comply or ensure compliance with the regulations.
- (4) If a person is required under a regulation made under *subhead (3)* to comply or ensure compliance with a requirement referred to in *subhead (3)(a)* and fails to do so, the person shall be guilty of a category 3 offence.

Explanatory note: This head is based on section 895 of the Companies Act 2014. It gives the power to the Registrar to introduce a system of information classification (NACE classification) to co-operative societies. This means that persons wishing to register new co-operatives will be required to classify the principal activity of the co-operative society using the NACE classification for economic activities. The Minister may make regulations requiring that symbols of identification assigned to persons or classes of persons to whom the information relates be entered on the documents required by the Bill to contain the name of that person.

HEAD 250 – Delivery to Registrar of documents in legible form

Provide that:

- (1) This head applies to the delivery under any provision of this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 of a document to the Registrar in legible form.
- (2) The document shall—
 - (a) state in a prominent position the registered number of the co-operative society to which the document relates, and
 - (b) comply with regulations (if any) prescribing—
 - (i) the form and contents of the document,
 - (ii) requirements to enable the Registrar to copy the document.
- (3) Regulations made for the purposes of this head may prescribe different requirements for the form and content of a document with respect to different classes of document.
- (4) In this head, “document” includes any periodic account, abstract, statement or return.

Explanatory note: This head is based on section 896 of the Companies Act 2014. It sets out the principles and policies related to the requirement for delivery of documents to the Registrar in legible form.

HEAD 251 – Delivery of documents in electronic form may be made mandatory

Provide that:

(1) If the Minister, after consultation with the Registrar, considers that the performance by the Registrar of functions under this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 with respect to the receipt and registration of information under any particular provision of it could be more efficiently discharged if an order under this head were to be made in relation to that provision then the Minister may make such an order accordingly.

(2) The order referred to in *subhead (1)* is an order providing that the sole means to be used to deliver, under the particular provision concerned, a document (within the meaning of *head 250*) to the Registrar shall be those provided for under the Electronic Commerce Act 2000 and, accordingly, where such an order is made, those means shall, for that purpose, be used to the exclusion of any other means.

(3) An order under this head may relate to more than one, or to every, provision of this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021.

(4) In *subhead (1)* “information” shall be read in the same manner as *head 250* provides “document” in that head is to be read.

(5) In *subhead (2)* the reference to the use of the means provided for under the Electronic Commerce Act 2000 is a reference to their use in a manner that complies with any requirements of the Registrar of the kind referred to in sections 12(2)(b) and 13(2)(a) of that Act.

Explanatory note: This head is based on section 897 of the Companies Act 2014. It provides for the Minister to make an order (after consultation with the Registrar) that any requirement under the Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 to deliver some document to the Registrar may only be discharged by electronic delivery, as provided for under the Electronic Commerce Act 2000. The head aims at facilitating the full use of new technology in a co-operative law context.

HEAD 252 – Registrar’s notice that document does not comply

Provide that:

- (1) On receipt of a non-complying document the Registrar may, in his or her discretion—
 - (a) serve on the person delivering the document (or, if there is more than one such person, any of them) a notice that the document does not comply, or
 - (b) neither serve such a notice nor otherwise advise or give notice to any such person that the document does not comply, and the provision made by the following provisions of this head, in a case where the course under *paragraph (a)* is taken by the Registrar, is not to be read as implying that, in a case where the course under *paragraph (b)* is taken by the Registrar, any legal consequences arising from the fact that a non-complying document has been delivered are thereby avoided.
- (2) A notice under *subhead (1)(a)* shall state in what respects the document is a noncomplying document.
- (3) A document referred to in *subhead (1)* shall be deemed not to have been delivered to the Registrar if—
 - (a) it is the subject of a notice served under *subhead (1)(a)*, and
 - (b) the Registrar has not received within 14 days after the date of service of the notice a replacement document that—
 - (i) complies with the requirements referred to in *subhead (4)(b)*, or
 - (ii) is not rejected by the Registrar for non-compliance with those requirements.
- (4) In this head, a non-complying document is a document that—
 - (a) is required or authorised to be delivered to the Registrar under this Bill, the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 and
 - (b) fails to comply with—
 - (i) the relevant requirements of this Bill (and, in particular, the provisions of any head under which the requirement to deliver the document to the Registrar arises) or regulations made under this Bill,
 - (ii) the relevant requirements of the Trade Union Acts 1871 to 1990, the Industrial and Provident Societies Acts 1893 to 2021, or the Friendly Societies Acts 1896 to 2021 or regulations made under those Acts, or
 - (iii) any requirements imposed by or under any other enactment relating to the completion of a document and its delivery to the Registrar.

Explanatory note: This head is based on section 898 of the Companies Act 2014. It empowers the Registrar to serve notice on a co-operative society, trade union, industrial and provident society or a friendly society rejecting documents which are delivered to him or her in a non-compliant form. If within 14 days the co-operative society fails to re-deliver the replacement document, the document will be deemed never to have been delivered at all.

HEAD 253 – Supplementary and clarificatory provisions for head 252

Provide that:

(1) For the purposes of any provision which—

(a) imposes a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, or

(b) provides for the payment of a fee in respect of the registration of a document, being a fee of a greater amount than the amount provided under the provision in respect of the registration of such a document that has been delivered to the Registrar within the period specified for its delivery to him or her,

no account shall be taken of the period between the delivery of the original document referred to in *head 252(1)* and the end of the period of 14 days after the date of service of the notice under *head 252(1)(a)* in relation to it (but only if, before the end of the latter period, a replacement document that complies with the requirements referred to in *head 252(4)(b)* is delivered to the Registrar).

(2) Nothing in this head or *head 252* shall have the effect of making valid any matter which a provision of this Bill or of any other enactment provides is to be void or of no effect in circumstances where a document in relation to it is not delivered to the Registrar within the period specified for the document's delivery to him or her.

Explanatory note: This head is based on section 899 of the Companies Act 2014. It contains supplementary and clarificatory provisions following on from head 252.

PART 14 TRANSITIONAL PROVISIONS

HEAD 254 – Interpretation

Provide that:

(1) In this Part “transition period” means the period expiring 30 months after the commencement of this Part.

Explanatory note:

This head provides a transition period of 30 months after the commencement of this Part for Industrial and Provident Societies to adopt the co-operative principles and register under this Bill, wind up under Part 11 of the Companies Act 2014 or convert to a company under section 54 of the Industrial and Provident Societies Act 1893. Industrial and Provident Societies that do not avail of one of these options will, at the end of the transition period, be deemed to be dissolved.

HEAD 255 – Extension of transition period in the event of difficulties

Provide that:

(1) If, in any respect, any difficulties arise in the operation of the provisions of the Bill which, in the opinion of the Minister, necessitate the giving of more time for affected or interested parties to undertake any necessary actions or procedures in the period provided for in the definition of “transition period” in *head 254*, the Minister may by order substitute a longer period (but not a period of longer than 30 months) for the period mentioned in that definition.

(2) Where it is proposed to make an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House.

Explanatory note:

This head is based on section 16 of the Companies Act 2014. It provides the Minister with the power to extend the “transition period” by order, in circumstances where difficulties arise in the operation of provisions of the Bill to the extent that more time is required for affected or interested parties to carry out any procedures under the Bill.

HEAD 256 – Provision for the dissolution of industrial and provident societies

Provide that:

- (1) Subject to *subhead (2)*, on the expiry of the transition period, every industrial and provident society—
- (a) registered under sections 3 or 6 of the Act of 1893, and
 - (b) cancelled or suspended under section 9(1) of the Act of 1893,
- shall become and be dissolved.
- (2) *Subhead (1)* shall not apply where —
- (a) the winding up of an industrial and provident society is deemed commenced in accordance with section 589(1), 589(2) or 590 of the Act of 2014, as applied by *head 203*, and the society is not dissolved in accordance with sections 704(4), 705(7) or 706(7) of the Act of 2014, as applied by *head 262*,
 - (b) the court has made an order under section 708 of the Act of 2014, as applied by *head 262*, that the dissolution of an industrial and provident society is void,
 - (c) the court has made an order under *head 217* that an industrial and provident society shall be restored to the Register for the purposes of winding up under Part 11 of the Act of 2014, as applied by *head 262*, or
 - (d) there is an appeal lodged by an industrial and provident society to the Circuit Court under *head 259*.

Explanatory Note: This head provides for the dissolution of Industrial and Provident Societies on the expiration of the transition period. Subhead (1) provides that all industrial and provident societies registered, cancelled or suspended under the Industrial and Provident Societies Act 1893 shall become and be dissolved on the expiration of the transition period. Subhead (2) provides that subhead (1) does not apply to a society that has commenced winding up under Part 11 of the Companies Act 2014, as applied by *head 262*, if the Court has made an order under section 708 of the 2014 Act, as applied by *head 262*, or under *head 217* of this Bill or an industrial and provident society has made an appeal to Circuit Court under *head 259*.

HEAD 257 – Conversion of industrial and provident society to co-operative society

Provide that:

- (1) An industrial and provident society may before the expiration of the transition period by special resolution determine to convert itself to a co-operative society.
 - (2) A conversion of an industrial and provident society to a co-operative society shall not be put into effect unless—
 - (a) a special resolution to convert the industrial and provident society to a co-operative society is passed at a general meeting of the industrial and provident society not more than 12 months prior to the conversion,
 - (b) the society has forwarded with the notice of general meeting at which the special resolution or other foregoing resolution is to be considered, a copy of the rules of the co-operative society following the conversion,
 - (c) an application for the purpose in the prescribed form is delivered to the Registrar, more than 6 months before the expiration of the transition period, including—
 - (i) a copy of the special resolution referred to in paragraph (a), together with the rules of the co-operative society referred to in paragraph (b);
 - (ii) the statement and consent referred to in *head 14*;
 - (iii) the declaration referred to in *head 16*,
 - (iv) where appropriate the statement referred to in *head 15*, and
 - (v) a schedule of the charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a co-operative society registered under this Bill, have been registrable under *Chapter 2 of Part 7* and such particulars of those security interests and charges as are specified in relation to charges by *head 176*,
 - (d) the rules of the co-operative society referred to in *paragraph (b)* are registered by the Registrar under this Bill, and
 - (e) the society has delivered to the Registrar all annual returns required by section 3(2) of the Act of 1913 and section 14 of the Act of 1893 that are outstanding, if any, in respect of the industrial and provident society as at the date of the application.
 - (3) The Registrar shall register the rules of a co-operative society delivered for registration if he or she is satisfied that all the requirements of this head and Part 2 of this Bill in respect of registration and of matters precedent and incidental thereto have been complied with.
 - (4) On the date of registration of the rules of the co-operative society referred to in *subhead 2(b)* the following shall take effect:
 - (a) all the assets and liabilities of the industrial and provident society are transferred to the co-operative society;
 - (b) the industrial and provident society is dissolved;
 - (c) all legal proceedings pending by or against the industrial and provident society shall be continued with the substitution, for the industrial and provident society, of the co-operative society as a party;
-

- (d) every contract, agreement or instrument to which the industrial and provident society is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the co-operative society had been a party thereto instead of the industrial and provident society,
 - (ii) for any reference (however worded and whether express or implied) to the industrial and provident there were substituted a reference to the co-operative society, and
 - (iii) any reference (however worded and whether express or implied) to the directors, officers, representatives or employees of the industrial and provident society, or any of them—
 - (I) were, respectively, a reference to the directors, board of directors, officers, representatives or employees of the co-operative society or to such director, officer, representative or employee of the co-operative society as the co-operative society nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the co-operative society who corresponds as nearly as may be to the first-mentioned director, officer, representative or employee;
 - (e) every contract, agreement or instrument to which the industrial and provident society is a party becomes a contract, agreement or instrument between the co-operative society and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the industrial and provident society and the counterparty;
 - (f) any money due and owing (or payable) by or to the industrial and provident society under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (e)* shall become due and owing (or payable) by or to the co-operative society instead of the industrial and provident society; and
 - (g) an offer or invitation to treat made to or by the industrial and provident society before the date of registration shall be read and have effect, respectively, as an offer or invitation to treat made to or by the co-operative society.
- (5) The following provisions have effect for the purposes of *subhead (4)*—
- (a) “instrument” in that subhead includes—
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and
 - (ii) an instrument relating to personalty;
 - (b) paragraph (d)(ii) of that subhead applies in the case of references to the industrial and provident society and its successor co-operative society and assigns as it applies in the case of references to the industrial and provident society personally;
 - (c) paragraph (e) of that subhead applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the industrial and provident society or to benefit or bind (as appropriate) the society and its successor co-operative society and assigns.
- (6) For the purposes of this head, “special resolution” has the meaning given to it by section 51 of the Act of 1893.
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Explanatory Note:

This head provides for the conversion of an Industrial and Provident Society to a co-operative society before the expiry of the transition period. Subhead (1) provides that an Industrial and Provident Society may determine to convert itself to a co-operative society by a special resolution. Subhead (2) provides that a conversion shall not take effect unless a special resolution is passed by the industrial and provident society not more than 12 months prior to the conversion, the society has forwarded with the notice of the general meeting at which the resolution is to be considered the rules of the proposed co-operative society and an application is made to the Registrar, more than 6 months before the expiration of the transition period, in the prescribed form for the registration of the conversion. The application shall be accompanied by a copy of the special resolution; the statement and consent referred in head 14; the declaration referred in head 16; where appropriate the statement referred to in head 15; a schedule of the charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a co-operative society registered under this Bill have been registrable under *Chapter 2 of Part 7*; the rules of the proposed co-operative society and all outstanding annual returns required by the Industrial and Provident Societies Acts 1893 to 2021. Subhead (3) provides the Registrar shall register the conversion if he or she is satisfied if all the requirements of this head and Part 2 of the Bill in respect of registration have been complied with. Subheads (4) and (5) are based on sections 503(4) and (5) of the Companies Act 2014 and deal with the consequences of a conversion of an industrial and provident society to a co-operative society. Subhead (6) confirms that a special resolution is a resolution in accordance with section 51 of the Industrial and Provident Society Act 1893.

HEAD 258 – Conversion of industrial and provident society to company

Provide that:

- (1) An industrial and provident society may before the expiration of the transition period by special resolution determine to convert itself to a company.
- (2) A conversion of an industrial and provident society to a company shall not be put into effect unless—
 - (a) a special resolution to convert an industrial and provident society to a company is passed at a general meeting of the society not more than 12 months prior to the conversion,
 - (b) the society has forwarded with the notice of general meeting at which the special resolution or other foregoing resolution is to be considered, a copy of the constitution of the company following the conversion,
 - (c) an application for the purpose in the prescribed form is delivered to the Registrar of Companies, more than 6 months before the expiration of the transition period, including—
 - (i) a copy of the special resolution that the society shall convert to a company, together with the constitution of the company referred to in paragraph (b);
 - (ii) the statement and consent referred in section 22 of the Act of 2014;
 - (iii) the declaration referred to in section 24 of the Act of 2014,
 - (iv) where appropriate —
 - (I) the bond referred to in section 22(6) of the Act of 2014,
 - (II) the statement referred to in section 23 of the Act of 2014, and
 - (v) a schedule of the charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a company registered under the Act of 2014, have been registrable under Chapter 2 of Part 7 of the Act of 2014 and such particulars of those security interests and charges as are specified in relation to charges by section 414 of the Act of 2014,
 - (d) the constitution of the company referred to in paragraph (b) for registration by the Registrar of Companies under the Act of 2014, and
 - (e) confirmation from the Registrar that all annual returns required by section 3(2) of the Act of 1913 and section 14 of the Act of 1893 have been delivered to him or her at the date of the application.
- (3) The Registrar of Companies shall register the constitution of a company delivered for registration under this head if he or she is satisfied that all the requirements of this head and Part 2 of the Act of 2014 in respect of registration and of matters precedent and incidental thereto have been complied with.
- (4) On the date of registration of the constitution of the company referred to in *subhead (3)* the following shall take effect:
 - (a) all the assets and liabilities of the industrial and provident society are transferred to the company;
 - (b) the industrial and provident society is dissolved;
 - (c) all legal proceedings pending by or against the industrial and provident society shall be continued with the substitution, for the industrial and provident society, of the company as a party;

- (d) every contract, agreement or instrument to which the industrial and provident society is a party shall, notwithstanding anything to the contrary contained in that contract, agreement or instrument, be read and have effect as if—
 - (i) the company had been a party thereto instead of the industrial and provident society,
 - (ii) for any reference (however worded and whether express or implied) to the industrial and provident there were substituted a reference to the company, and
 - (iii) any reference (however worded and whether express or implied) to the committee of management, representatives or employees of the industrial and provident society, or any of them—
 - (I) were, respectively, a reference to the directors, board of directors, officers, representatives or employees of the company or to such director, officer, representative or employee of the company as the company nominates for that purpose, or
 - (II) in default of such nomination, were, respectively, a reference to the director, officer, representative or employee of the company who corresponds as nearly as may be to the first-mentioned committee of management, representative or employee;
 - (e) every contract, agreement or instrument to which the industrial and provident society is a party becomes a contract, agreement or instrument between the company and the counterparty with the same rights, and subject to the same obligations, liabilities and incidents (including rights of set-off), as would have been applicable thereto if that contract, agreement or instrument had continued in force between the industrial and provident society and the counterparty;
 - (f) any money due and owing (or payable) by or to the industrial and provident society under or by virtue of any such contract, agreement or instrument as is mentioned in *paragraph (e)* shall become due and owing (or payable) by or to the company instead of the industrial and provident society; and
 - (g) an offer or invitation to treat made to or by the industrial and provident society before the date of registration shall be read and have effect, respectively, as an offer or invitation to treat made to or by the company.
- (5) The following provisions have effect for the purposes of subhead (4)—
- (a) “instrument” in that subhead includes—
 - (i) a lease, conveyance, transfer, charge or any other instrument relating to real property (including chattels real); and
 - (ii) an instrument relating to personalty;
 - (b) paragraph (d)(ii) of that subhead applies in the case of references to the industrial and provident society and its successor company and assigns as it applies in the case of references to the industrial and provident society personally;
 - (c) *paragraph (e)* of that subhead applies in the case of rights, obligations and liabilities mentioned in that paragraph whether they are expressed in the contract, agreement or instrument concerned to be personal to the industrial and provident society or to benefit or bind (as appropriate) the society and its successor company and assigns.
- (6) For the purposes of this head, “special resolution” has the meaning given to it by section 51 of the Act of 1983.

Explanatory Note:

This head provides for the conversion of an Industrial and Provident Society to a company. Subhead (1) provides that an Industrial and Provident Society may determine to convert itself to a company by a special resolution. Subhead (2) provides that a conversion shall not take effect unless a special resolution is passed by the industrial and provident society not more than 12 months prior to the conversion, the society has forwarded with the notice of the general meeting at which the resolution is to be considered the constitution of the proposed company and an application is made to the Registrar, more than 6 months before the expiration of the transition period, in the prescribed form for the registration of the conversion. The application shall be accompanied by a copy of the special resolution; the statement and consent referred to in section 22; the declaration referred to in section 24 of the of the Companies Act 2014; where appropriate, the bond referred to in section 22(6) and the declaration referred to in section 24 of the Act of 2014; a schedule of the charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a company registered under the Act of 2014, have been registrable under Chapter 2 of Part 7 of the Act of 2014; the constitution of the proposed company and confirmation from the Registrar that all outstanding annual returns required by the Industrial and Provident Societies Acts 1893 to 2021 have been delivered. Subhead (3) provides that the Registrar shall register the conversion if he or she is satisfied that all of the provisions of the Companies Act in relation to registration have been complied with. Subheads (4) and (5) are based on sections 503(4) and (5) of the Companies Act 2014 and deal with the consequences of a conversion of an industrial and provident society to a company. Subhead (6) confirms that a special resolution is a resolution in accordance with section 51 of the Industrial and Provident Society Act 1983.

HEAD 259 – Appeal against refusal to register a society

Provide that:

- (1) If the Registrar refuses to register the rules for the conversion of an industrial and provident society to a co-operative society under *head 257(3)*, it shall, by notice in writing, inform the industrial and provident society of the refusal and the notice must include a statement setting out the grounds for the refusal.
- (2) If the Registrar refuses to register the rules for the conversion of an industrial and provident society to a co-operative society under *head 257(3)*, the industrial and provident society may appeal from such refusal to the Circuit Court.
- (3) The jurisdiction conferred on the Circuit Court under *subhead (1)* may
 - (a) as respects a refusal to register the society, be exercised by the judge of the court for the time being assigned to the Dublin Circuit, and
 - (b) as respects a refusal to register any rules, be exercised by the judge of the circuit in which the registered office of the industrial and provident society is situated.
- (4) If a refusal of registry is overruled on appeal, the Registrar shall register the rules for the conversion of the industrial and provident society to a co-operative society under *head 257(3)* in accordance with the provisions of this Bill.

Explanatory Note:

This head is based on section 7 of the Industrial and Provident Societies Act 1893 (as substituted by section 10(b) of the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014. Subhead (1) provides that if the Registrar refuses to register the rules for the conversion of an industrial and provident society into a co-operative society, the Registrar shall inform the industrial and provident society of the refusal in writing and shall include a statement setting out the reasons for the refusal. Subhead (2) provides that an appeal from a refusal by Registrar to register the co-operative society or the rules for a conversion may be made to the Circuit Court. Subhead (3) specifies the jurisdiction conferred on the Court under subhead (1). Subhead (4) provides that the Registrar shall register the rules for the conversion if the court overrules the refusal of registry.

HEAD 260 – Registration of charges created before the conversion of industrial and provident society

Provide that:

- (1) Where the Registrar issues a certificate of registration to a co-operative society converted under *head 257* and registered in accordance with *head 17(1)*, he or she shall enter in the register maintained for the purposes of *head 176*, in relation to charges and security interests of the society, the particulars specified by *head 257(2)(c)(v)* which have been supplied by the industrial and provident society.
 - (2) If an Industrial and Provident Society fails to comply with *head 257(2)(c)(v)*, upon conversion of the society to a co-operative society registered under *head 17(1)*, every officer of the society or other person who is knowingly a party to the default shall be guilty of a category 3 offence.
 - (3) The failure of the industrial and provident society to send to the Registrar any charge or security interest of society in accordance with *head 257(2)(c)(v)* shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder.
 - (4) *Head 179* shall apply in relation the registration of particulars specified in *head 257(2)(c)(v)* with the modifications in—
 - (a) *subhead (1)* “under *head 257(2)(c)(v)*” shall be substituted for “within the time required by this Part”, and
 - (b) *subhead (2)* the words “that the time for registration shall be extended, or, as the case may be,” are omitted.
 - (5) Where the Registrar of Companies issues a certificate of incorporation to a company converted under *head 258* and registered in accordance with section 25(1) of the Act of 2014, he or she shall enter in the register maintained for the purposes of section 414 of the Act of 2014, in relation to charges and security interests of the society, the particulars specified by *head 258(2)(c)(v)* which have been supplied by the industrial and provident society.
 - (6) If an Industrial and Provident Society fails to comply with *head 258(2)(c)(v)*, upon conversion of the society to a company registered under section 25(1) of the Act of 2014, every officer of the company or other person who is knowingly a party to the default shall be guilty of a category 3 offence.
 - (7) The failure of the industrial and provident society to send to the Registrar of Companies any charge or security interest of society in accordance with *head 258(2)(c)(v)* shall not prejudice any rights which any person in whose favour the charge was made or security interest created may have thereunder.
 - (8) Section 417 of the Act of 2014 shall apply in relation the registration of particulars specified in *head 258(2)(c)(v)* with the modifications in—
 - (a) *subhead (1)* “under *head 258(2)(c)(v)* of the Co-operatives Societies Bill 2022” shall be substituted for “within the time required by this Part”, and
 - (b) *subhead (2)* the words “that the time for registration shall be extended, or, as the case may be,” are omitted.
 - (9) The modification by *head 174* and section 412 of the Act of 2014 of any rule of law shall not apply in relation to the issue of the priority of any charge registered under this head.
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Explanatory Note:

This head is based on some of the provisions of section 112 of the Companies Act 1963 and provides for the registration of charges created before the conversion of an industrial and provident society to a co-operative society under head 257 or a company under head 258. Subhead (1) provides that the Registrar shall enter on the Register of Charges, the particulars of the schedule of charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a co-operative society registered under this Bill. Subhead (2) provides that every officer who knowingly omits such charges or security interest shall be guilty of a category 3 offence. Subhead (3) provides the failure of an industrial and provident society to provide details of a charge or security when applying to convert to a co-operative society shall not prejudice any rights in whose favour the charge was made, or security interest created. Subhead (4) modifies head 179 to provide that an application may be made to court for the rectification of Register of Charges for any omission or misstatement made by a co-operative society that converted from an industrial and provident society under head 257.

Subhead (5) provides that the Registrar of Companies shall enter on the Companies Act Register of Charges, the particulars of the schedule of charges or security interests created or granted by the industrial and provident society that would, if such charges or security interests had been created or granted by a company registered under the Companies Act 2014. Subhead (6) provides that every officer who knowingly omits such charges or security interest shall be guilty of a category 3 offence. Subhead (7) provides the failure of an industrial and provident society to provide details of a charge or security when applying to convert to a company shall not prejudice any rights in whose favour the charge was made, or security interest created. Subhead (8) modifies section 417 of the Act of 2014 to provide that an application may be made to court for the rectification of Companies Act Register of Charges for any omission or misstatement made by a company that converted from an industrial and provident society under head 258.

Subhead (9) provides that the priority of charges applied by this Bill and the Companies Act 2014 shall not apply to a charge registered under this head.

HEAD 261 – Final annual return of former Industrial and Provident Society

Provide that:

- (1) A co-operative society referred to in *head 257(3)* shall, within 6 months of the dissolution of the industrial and provident society ('the former society') referred to in *head 257(2)(e)*, submit to the Registrar the final annual return of the former society required under section 3(2) of the Act of 1913 and section 14 of the Act of 1893.
- (2) A company referred to in *head 258(3)* shall, within 6 months of the dissolution of the former society referred to in *head 258(2)(e)*, submit to the Registrar the final annual return of the former society required under section 3(2) of the Act of 1913 and section 14 of the Act of 1893.
- (3) A co-operative society restored to the Register under *head 217(4)(b)*, as applied by *head 263* by order of the court, shall within 6 months of its registration under *head 257(3)*, submit to the Registrar the final annual return of the former society required under section 3(2) of the Act of 1913 and section 14 of the Act of 1893.
- (4) In this head, "final annual return" means an annual return that covers the period of the last published balance sheet submitted to the Registrar to the date of dissolution of the former society.

Explanatory note:

This head provides that an industrial and provident society converted to a co-operative society or company shall submit a final annual return to ensure that all information on a public register is up to date. Subhead (1) provides that a co-operative converted under head 257 shall submit a final annual return for its former corporate form as an industrial and provident society within six months of the dissolution of that form to the Registrar. Subhead (2) provides that a company converted under head 258 shall submit a final annual return for its former corporate form as an industrial and provident society return within six months of the dissolution of that form to the Registrar. Subhead (3) provides that a co-operative society registered by order of the court under head 217(4)(b), as applied by head 263, shall submit a final annual return of its former corporate form as an industrial and provident society within six months of its registration as a co-operative society to the Registrar. Subhead (4) provides that an annual return covers the period from the last balance sheet of the former industrial and provident society submitted to the Registrar to the date of dissolution of that society.

HEAD 262 – Winding up of an Industrial and Provident Society

Provide that:

(1) The provisions of Part 11 of the Act of 2014, and the other provisions of that Act relating to the winding up of companies apply, subject to the necessary modifications and the specific modifications specified in *subhead (2)*, in relation to an industrial and provident society as if it were a private company limited by shares.

(2) The modifications are the following:

- (a) a director shall be construed as a reference to a member of the committee of management or other directing body of an industrial and provident society,
- (b) the constitution of a company shall be construed as a reference to the rules of an industrial and provident society,
- (c) the Registrar shall be construed as a reference to the Registrar of Co-operative Societies and Trade Unions,
- (d) equity share capital or issued share capital shall be construed as a reference to shares in a registered society,
- (e) a related company shall be construed as including a reference to a related registered society.

Explanatory Note:

This head updates the provisions of section 19 of the Industrial and Provident Society (Amendment) Act 1978 and cross-applies the provisions of Part 11 of the Companies Act 2014 relating to winding up of private companies limited by shares to industrial and provident societies, subject to any necessary modifications. On the commencement of the Bill, industrial and provident societies may continue to be wound up under the Companies Act 2014 while the other provisions in the industrial and provident societies legislation in relation to the dissolution of those societies will be repealed. On the expiration of the transition period an application may be made to the court to restore the industrial and provident society to the register for the purposes of winding up under Part 11 of the 2014 Act under head 263.

HEAD 263 – Provision for the restoration of dissolved industrial and provident societies

Provide that:

- (1) Subject to *subhead (2)*, *heads 217 to 219, 221, 222, 257 and 259* shall apply to an industrial and provident society that has been dissolved ('a dissolved industrial and provident society') under *head 256(1)*.
- (2) *Subhead (1)* shall only apply to an industrial and provident society where an application to the court under *head 217(1)* is made within 20 years after the date of dissolution of the society.
- (3) For that purpose—
 - (a) references in the foregoing provisions of *Chapter 2 of Part 11* to a co-operative society that has been struck off the register under *Chapter 1* shall be read as references to a dissolved industrial and provident society,
 - (b) references in the foregoing provisions of *Chapter 2 of Part 11* to the date of dissolution of the co-operative society shall be read as references to the date of dissolution of the industrial and provident society by virtue of *subhead (1)*,
 - (c) references in the foregoing provisions of *Chapter 2 of Part 11* to an officer of the co-operative society shall be read as references to a member of the committee of management under the Act of 1893,
 - (d) in *head 217*—
 - (i) *subhead (3)* shall be disregarded, and
 - (ii) new *subhead (4)* shall be inserted after *subhead (3)*:

“(4) Subject to a supplementary order made under —

 - (a) *head 219(2)(e) or 219(4)(e)*, the industrial and provident society shall be restored to the Register for the purposes of winding up under Part 11 of the Act of 2014 as applied by head 262, upon the Registrar receiving a certified copy of the order under *subhead (1)* within 28 days after the date of its perfection, or
 - (b) *head 219(2)(f)*, the industrial and provident society shall be registered as a co-operative society converted under *head 257* upon —
 - (i) the Registrar receiving a certified copy of the order under *subhead (1)* within 28 days of the order, and
 - (ii) the society being registered under *head 257* after the date of its perfection.”,
 - (e) in *head 219*—
 - (i) *subhead (1)*, “either of the following things” is substituted for “each of the things (save where it has already been done) that are set out”,
 - (ii) *subhead (2)*—
 - (I) *paragraphs (a), (b), (c) and (d)* shall be disregarded, and
 - (II) new *paragraphs (e) and (f)* are inserted after *paragraph (c)*:

“(e) an application to the court is made under section 571(1) of the Act of 2014, as applied by head 262, for the winding up of the industrial and provident society, or

(f) the rules of the society are delivered to the Registrar for registration in accordance with 257(2) and registered in accordance with *head 257*.”,
 - (iii) *subhead (4)*—

- (I) paragraphs (a), (b) and (c) shall be disregarded, and
- (II) new *paragraph (d)* is inserted after *paragraph (c)*:
 - “(d) an application to the court is made by the creditor under section 571(1) of the Act of 2014, as applied by head 262, for the winding up of the industrial and provident society, and
 - (iv) *subhead (5)* shall be disregarded,
- (f) the foregoing provisions of *Chapter 2 of Part 11* shall apply with other necessary modifications,
- (g) in *head 257* —
 - (i) references to an industrial and provident society shall be read as references to dissolved industrial and provident society,
 - (ii) *subhead (1)* and *paragraphs (a)* and *(b)* of *subhead 2* shall be disregarded,
 - (iii) in *subhead (2)(c)(i)* “a copy of the special resolution referred to in paragraph (a), together with” is omitted, and
 - (iv) in *subhead 2(d)* “referred to in *paragraph (b)*” is omitted, and
- (h) in *head 259* —
 - (i) references to an industrial and provident society shall be read as references to dissolved industrial and provident society,
 - (ii) the reference in *subhead (2)* to the “Circuit Court” shall be read as reference to the “High Court”, and
 - (iii) *subhead (3)* shall be disregarded.

Explanatory Note:

This head provides that an industrial and provident society dissolved by virtue of head 256 may be restored to the register of industrial and provident societies to wind up or may be registered as a co-operative society that converted from an industrial and provident society by order of the court. Subhead (1) provides that this head applies to an industrial and provident society that is and has become dissolved. Subhead (2) provides that this head will only apply to an industrial and provident society for 20 years after the date of its dissolution. Subhead (3) provides that references in heads 217 to 219, 221, and 222 to a co-operative, its date of dissolution and its officers are references to a dissolved industrial and provident society, its date of dissolution and its officers. Subhead 3(d) modifies head 217 to provide that a court may order that a dissolved industrial and provident society may be restored to the register of industrial and provident societies for the purpose of winding up under Part 11 of the Companies Act 2014 or to the register of co-operatives converted to a co-operative society under head 257. Subhead 3(e) modifies head 219 to provide that the court shall make it a term of the order that an application is made for the winding up for the industrial and provident under section 571(1) of the Act of 2014 or in the case of the conversion of an industrial and provident society to a co-operative society, an application is submitted to the Registrar under head 257. It also provides that where an application is made to the court by a creditor for restoration of the industrial

and provident society to wind up under Part 11, the court shall make it a term of the order the creditor shall apply to the court to wind up the industrial and provident society under section 571(1) of the Act 2014. Subhead 3(g) modifies head 257 for the restoration of a dissolved industrial and provident society as a converted co-operative society. Subhead 3(h) modifies head 259 to provide that

PART 15 AMENDMENTS TO OTHER ACTS

HEAD 264 – Amendments to the Trade Union Act 1871

Provide that:

The Trade Union Act 1871 is amended by the substitution of the following section for section 17:

“17(1) The Registrar of Co-operative Societies and Trade Unions shall be the registrar for the purposes of this Act.

(2) Such persons appointed as an assistant registrar under *head 239(3)* of the Co-operative Societies Bill 2022 shall be assistant registrars for the purposes of this Act.

(3) Any act required or authorised by this Act to be done to or by the Registrar may be done to or by an assistant registrar referred to in subsection (2) or any other person authorised in that behalf by the Minister.”.

Explanatory note:

This head substitutes section 17 of the Trade Union Act 1871 to provide that the Registrar of Co-operative Societies and Trade Unions is the Registrar under the Act. Head 240 provides that all functions vested in the Registrar of Friendly Societies are transferred to the Registrar. It provides any references in any enactment or instrument under an enactment to the Registrar of Friendly Societies, the chief registrar or assistant registrar are construed as references to the Registrar and his or her assistant registrars.

HEAD 265 – Amendments to the Act of 1893

Provide that:

The Act of 1893 is amended—

- (a) by the insertion of the following section after section 6:

“Cessation of registration of new societies

5. (1) Notwithstanding sections 4, 5, 6 and 55 of the Act of 1893 and section 1 of the Act of 1913, no society shall be registered under this Act after the commencement of Part 14 of the Co-operative Societies Bill 2022.”;

- (b) in section 54 by the substitution of following subsection for subsection (1):

“A registered society may by special resolution determine to amalgamate with or transfer its engagements to a company registered under the Companies Act 2014.”;

- (c) by the deletion of sections 54(2), 55 and 58 to 61.

Explanatory note:

This head provides for consequential amendments to the Industrial and Provident Societies Act 1893. It provides that no industrial and provident society shall be registered after the commencement of Part 14 Transitional Provisions. The head amends section 54(1) and deletes section 54(2) of the Act of 1893 as an industrial and provident society will now convert to a company under head 258. The head also deletes section 55 as a company will no longer be able to convert to an industrial and provident society. The head also deletes sections 58 to 61 of the Act of 1893 as head 262 in Part 14 Transitional Provisions provides for the winding up of societies following the commencement of that part.

HEAD 266 – Amendments to the Friendly Societies Act 1896

Provide that:

The Friendly Societies Act 1896 is amended—

- (a) by the deletion of sections 1 to 6;
- (b) by the insertion of the following section before section 7:

“Registrars

7A (1) The Registrar of Co-operative Societies and Trade Unions shall be the registrar for the purposes of this Act.

(2) Such persons appointed as an assistant registrar under *head 239* of the Co-operative Societies Bill 2022 shall be assistant registrars for the purposes of this Act.

(3) Any act required or authorised by this Act to be done to or by the Registrar may be done to or by an assistant registrar referred to in subsection (2) or any other person authorised in that behalf by the Minister.”

Explanatory note:

This head amends the Friendly Societies Act 1896. Paragraph (a) deletes sections 1 to 6 of the Act of 1896 which provides for the establishment of an office and Registrar of Friendly Societies. Paragraph (b) inserts section 7A to provide that the Registrar of Co-operative Societies and Trade Unions is the Registrar under the Act. Head 240 provides that all functions vested in the Registrar of Friendly Societies are transferred to the Registrar. It provides any references in any enactment or instrument under an enactment to the Registrar of Friendly Societies, the chief registrar or assistant registrar are construed as references to the Registrar and his or her assistant registrars.

HEAD 267 – Amendment to the Industrial and Provident Societies (Amendment) Act 1978

Provide that:

The Industrial and Provident Societies (Amendment) Act 1978 is amended by the deletion of section 19.

Explanatory note:

The head deletes section 19 of the Industrial and Provident Society (Amendment) Act 1978 as an industrial and provident society may only wind up under head 262 winding up in Part 14 Transitional Provisions following the commencement of that part.

HEAD 268 – Amendment to the Electoral Act 1997

Provide that:

The Electoral Act 1997 is amended in section 26(1) by the insertion of “or the Co-operative Societies Bill 2022,” after “Friendly Societies Acts, 1896 to 1977”.

Explanatory note:

This head amends the Electoral Act 1997 and requires co-operative societies to disclose political donations in the director’s report which accompanies societies financial statements.

HEAD 269 – Amendment to the Taxes and Consolidation Act 1997

Provide that:

The Taxes and Consolidation Act 1997 is amended in section 882(3) by the insertion of “or the Registrar of Co-operative Societies and Trade Unions (within the meaning of the Co-operative Societies Bill 2022)” after “Companies Act 2014”).

Explanatory note:

This head amends section 882(3) of the Taxes and Consolidation Act 1997 to include the Registrar of Co-operative Societies and Trade Unions. Section 882 of the Act of 1997 requires every company which is incorporated or begins a trading activity in the State to give a Statement of Particulars to Revenue within 30 days. Section 4(1) of the Act of 1997 provides that a company means any body corporate. If a company fails to submit the statement, the Revenue Commissioners may notify the Registrar and the Registrar may then begin the strike-off process, under head 206 of the Co-operative Societies Bill 2022. The company and the secretary shall each be liable to a separate penalty under section 1073 of the Act of 1997.

HEAD 270 – Amendment to the Companies Act 2014

Provide that:

The Act of 2014 is amended —

(a) in section 27(3) by the insertion of “or the Co-operative Societies Bill 2022” after “Acts 1893 to 2014”;

(b) in section 726 by the insertion the following after paragraph (f):

“(g) the company has failed to make a final annual return as required by *head 261(2)* of the Co-operative Societies Bill 2022.”;

(c) in section 727(1) by the substitution of “paragraphs (a) to (g)” for “paragraphs (a) to (f)”;

(d) in section 728(3) by the substitution of “section 726(d), (e), (f) or (g)” for “section 726(d), (e) or (f)”;

(e) in section 729 by the insertion of the following after paragraph (e):

“(f) in the case of the ground for striking off set out in section 726(g), the delivery to the Registrar of Co-operative Societies and Trade Unions of the final annual return as required by *head 261(2)* of the Co-operative Societies Bill 2022 that the company has failed to make.”;

(f) in section 737 —

(i) in subsection (2) by the substitution of “subsection (3) and (3A)” for “subsection (3)”, and

(ii) by inserting the following subsection after subsection (3):

“(3A) If the ground, or one of the grounds, on which the company had been struck off the register is that referred to in section 726(g), subsection (2) shall have effect as if the following paragraph were inserted after paragraph (b) of that subsection:

“(bb) the Registrar has received written confirmation from the Registrar of Co-operative Societies and Trade Unions that the final annual return required by *head 261(2)* of the Co-operative Societies Bill 2022 was received.”;

(g) in section 740 —

(i) in subsection (2) by the insertion of the following paragraph after paragraph (c):

“(d) if applicable, the final annual return required by *head 261(2)* of the Co-operative Societies Bill 2022 is delivered to the Registrar Co-operative Societies and Trade Unions.”, and

(ii) in subsection (4) by the insertion of the following paragraph after paragraph (c):

“(d) if applicable, there is procured by one or more specified members or officers of the company the delivery by the company of the final annual return required by *head 261(2)* of the Co-operative Societies Bill 2022, to the Registrar of Co-operative Societies and Trade Unions”;

(h) in section 791(a) by the insertion of the following after subparagraph (vi):

“(vii) the Co-operative Societies Bill 2022”;

(i) in section 792(2) by the insertion of the following after paragraph (l):

“(m) the Registrar of Co-operative Societies and Trade Unions.”;

(j) in section 819(6) by the insertion of the following after paragraph (f):

“(g) a co-operative society registered under head 17(1) of the Co-operative Societies Bill 2022.”.

Explanatory note:

This head makes consequential amendments to the Companies Act 2014. The amendment in paragraph (a) provides that a co-operative society may register using “limited” in its name. Paragraphs (b) to (g) make amendments to Part 12 of the Companies Act and provide that the Register of Companies may involuntarily strike off a company converted from an industrial and provident society under this Bill that does not submit its final annual return as required by head 261(2) to the Registrar of Co-operative Societies and Trade Unions. The company may be restored by the Registrar of Companies within 12 months or by the Court after 12 months if the final annual return is submitted. The amendment to section 791(a) in paragraph (h) provides that the Corporate Enforcement Authority may disclose/publish information, books or documents in relation to an investigation under the Bill without the consent of the co-operative society. The amendment to section 792(2) of the Companies Act 2014 in paragraph (i) provides the Corporate Enforcement Authority may disclose books or documents in relation to an investigation under the Bill to the Registrar of Co-operative Societies and Trade Unions without the

consent of the co-operative society. The amendment to section 819(6) of the Companies Act 2014 in paragraph (j) provides that a restricted director shall not take part in the formation or promotion of a co-operative society.

HEAD 271 - Amendment of European Communities (European Cooperative Society) Regulations 2009

Provide that:

The European Communities (European Cooperative Society) Regulations 2009 (S.I. No. 433 of 2009) is amended —

(a) in Regulation (1) by the insertion of the following paragraph after paragraph (2):

“(3) The Co-operative Societies Bill and these Regulations shall be construed together as one Act.”

(b) in Regulation (2)(1) by the insertion of —

(i) the following definition after the definition of “Act of 1893”:

““Act of 2022” means the Co-operative Societies Bill 2022 (No. of 2022);”,

(ii) “or a co-operative society registered in accordance with the Act of 2022” after “Act of 1893” in the definition of “cooperative”, and

(iii) the following definition after the definition of “prescribed”:

““registered co-operative society” means a co-operative society registered under the Act of 2022”.

(c) in Regulation (28) by the insertion of the following paragraph after paragraph (4):

“(5) Any enactment or rule of law which applies in relation to a registered co-operative society shall, in the absence of any express provision to the contrary in these Regulations, where it is required by the EC Regulation, apply with any necessary modifications in relation to an SCE as it applies in relation to such a registered co-operative society.

(6) Without prejudice to the generality of paragraph (5), the Act of 2022 shall, in its application to SCEs, have effect with the modifications specified in these Regulations.”.

Explanatory note: This head amends the European Communities (European Cooperative Society) Regulations 2009 (S.I. No. 433 of 2009) to give further effect to Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) by providing for the inclusion of a registered co-operative society in the 2009 Regulations. The Council Regulation provides for the establishment of a European Cooperative Society to be known as an “SCE”. The objective of the Statute is to facilitate cross-border activities by cooperative entities.

SCHEDULE 1
REPEALS AND REVOCATIONS

Head 4

ACTS OF THE OIREACHTAS REPEALED ON EXPIRATION OF TRANSITION PERIOD

Number and Year	Short title	Extent of Repeal
56 & 57 Vict., c. 39	Industrial and Provident Societies Act 1893	The whole Act except sections 13, 14, 73, 74, 76 and 79.
58 & 59 Vict., c. 30	Industrial and Provident Societies Act 1895	The whole Act
3 & 4 Geo. 5, c. 31	Industrial and Provident Societies (Amendment) Act 1913	The whole Act except section 3(2)
No. 31 of 1971	Industrial and Provident Societies (Amendment) Act 1971	The whole Act
No. 23 of 1978	Industrial and Provident Societies (Amendment) Act 1978	The whole Act
No. 19 of 2014	Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014	Parts 3 and 4

SCHEDULE 2

CO-OPERATIVE PRINCIPLES

Head 9

The co-operative principles are the following principles adopted as part of the Statement on the Co-operative Identity, Values and Principles by the General Assembly of the International Co-operative Alliance in 1995—

1. Voluntary and Open Membership

Cooperatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control

Cooperatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary cooperatives members have equal voting rights (one member, one vote) and cooperatives at other levels are also organised in a democratic manner.

3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their cooperative. At least part of that capital is usually the common property of the cooperative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their cooperative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the cooperative; and supporting other activities approved by the membership.

4. Autonomy and Independence

Cooperatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their cooperative autonomy.

5. Education, Training, and Information

Cooperatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Cooperation among Cooperatives

Cooperatives serve their members most effectively and strengthen the cooperative movement by working together through local, national, regional and international structures.

7. Concern for Community

Cooperatives work for the sustainable development of their communities through policies approved by their members.