



**Isle of Man**

*Ellan Vannin*

**AT 9 of 2018**

**CREDIT UNIONS (AMENDMENT) ACT 2018**





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## CREDIT UNIONS (AMENDMENT) ACT 2018

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**Isle of Man***Ellan Vannin*

## CREDIT UNIONS (AMENDMENT) ACT 2018

<i>Signed in Tynwald:</i>	<i>15 May 2018</i>
<i>Received Royal Assent:</i>	<i>15 May 2018</i>
<i>Announced to Tynwald:</i>	<i>15 May 2018</i>

**AN ACT** to amend the Credit Unions Act 1993 to impose a requirement for credit unions to be licensed by the Isle of Man Financial Services Authority; to make comprehensive and self-sufficient provision for the registration of credit unions; to break the reliance on the Industrial and Building Societies Acts 1892 to 1986; to subject credit unions to the requirements of the Financial Services Act 2008; and for connected purposes.

**BE IT ENACTED** by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### **1 Short title**

The short title of this Act is the Credit Unions (Amendment) Act 2018.

### **2 Commencement**

- (1) This Act comes into operation on such day or days as the Isle of Man Financial Services Authority (“the Authority”) may by order appoint, and different days may be appointed for different purposes of this Act.
- (2) An order under subsection (1) may make such transitional and saving provisions as the Authority considers necessary or expedient.

### **3 Amendment of the Credit Unions Act 1993**

The *Credit Unions Act 1993* is amended as follows.

### **4 Repeal and replacement of section 1**

Section 1 is repealed and replaced with the following —

**11** Incorporation of credit unions

- (1) For the purposes of this Act, a “**credit union**” is a body corporate —
- (a) which has a separate legal personality from those of its members;
  - (b) in which admission to membership is restricted to persons all of whom fulfil a specific qualification which is stated in the rules and is appropriate to a credit union (whether or not any other qualifications are also required by the rules), so that in consequence a common bond exists between its members;
  - (c) whose members, subject to section 9, each have equal rights to vote and participate in decisions affecting the credit union, without regard to the amount of savings or the volume of business;
  - (d) whose objects are those, and only those, of a credit union;
  - (e) whose business is conducted for the benefit of the community which, as set out in the rules, it is intended to serve; and
  - (f) which does not carry on business with the object of making profits mainly for the payment of interest, dividends or bonuses on money placed with, or lent to, it or any other person.
- (2) The following provisions have effect with respect to applications for incorporation as a credit union —
- (a) at least 21 prospective applicants, who must be resident in the Island, and the proposed secretary must complete and sign the prescribed application form, which must then be submitted to the Department along with two copies of the rules of the proposed credit union;
  - (b) the *Company and Business Names etc Act 2012* has effect in respect of applications for incorporation as a credit union, and the requirements of that Act are additional to the requirements of this Act;
  - (c) the word “limited” shall be the last word in the proposed name in every application for incorporation as a credit union;
  - (d) the Department, on being satisfied that the details set out in the application constitute compliance with the requirements of this Act, shall issue a certificate of incorporation in the prescribed form; and

- (e) a certificate of incorporation issued in accordance with paragraph (d) shall be conclusive evidence that the credit union named therein exists as a separate legal entity.

These provisions are subject to subsections (3) to (8).

- (3) An application for incorporation under this Act may not be granted unless —

- (a) the specified application form has been completed, signed and submitted;
- (b) no undischarged bankrupt has signed the application form;
- (c) it is shown to the satisfaction of the Authority that the following conditions have been fulfilled —


- (i) the proposed objects are only those of a credit union; and
- (ii) admission to membership of the proposed credit union is to be restricted to persons who reside in the Island and who fulfil any additional qualification (common bond) that —

- (A) falls within a category specified in; or
- (B) has been prescribed in accordance with, subsection (4) (whether or not any other qualifications are also required by the rules);

- (d) the rules of the credit union comply with section 4(1);
- (e) the proposed registered office is situated in the Island
- (f) the name of the proposed credit union is acceptable;
- (g) the required fee has been paid;
- (h) there will be fraud insurance in respect of the proposed credit union;
- (i) (there are proposed arrangements for savings protection and share guarantee for ordinary shares; and
- (j) any other requirements imposed by or in accordance with this Act have been satisfied.

- (4) The objects of a credit union are —

- (a) the promotion of thrift among the members of the credit union by the accumulation of their savings;
- (b) the creation of sources of credit for the benefit of the members of the credit union at a fair and reasonable rate of interest;
- (c) the use and control of the members' savings for their mutual benefit; and

- (d) the training and education of the members in the wise use of money and in the management of their financial affairs.
- (5) The additional qualifications for admission to membership (common bonds) may include —
- (a) following a particular occupation;
  - (b) residing in a particular part of the Island; or
  - (c) being employed by a particular employer,
- and such other qualifications as the Authority may prescribe by order.
- (6) Notwithstanding its incorporation under this Act and subject to section 27A, a credit union shall not —
- (a) begin to carry on the business of a credit union unless the Authority has issued it a licence under section 7 of the *Financial Services Act 2008*; or
  - (b) continue carrying on the business of a credit union whilst the licence referred to in paragraph (a) is suspended or after it has been revoked in accordance with section 9 of the *Financial Services Act 2008*,
- and in any case of contravention of this section the relevant provisions of the *Financial Services Act 2008* shall apply.
- (7) An order made under subsection (5) shall be subject to consultation with such persons as the Authority considers appropriate, and shall not come into operation until it has been approved by Tynwald.
- (8) For the avoidance of doubt —
- (a) none of the following actions constitutes holding oneself out as carrying on, in or from the Island, a regulated activity within the meaning of section 4 of the *Financial Services Act 2008* —
    - (i) submitting an application for incorporation under this section; or
    - (ii) the mere issue or the mere possession of a certificate of incorporation of a credit union, provided the required licence under the *Financial Services Act 2008* is sought from the Authority within 5 working days after the issue of the certificate of incorporation; and
  - (b) in keeping with subsection (6), a credit union's possession of a certificate of incorporation does not obviate the requirement to obtain the aforementioned licence before the credit union can lawfully carry on a regulated activity in or from the Island. 



## 5 Repeal and replacement of section 2

Section 2 is repealed and replaced with the following —

### **2 Registration or incorporation under the 1892 Act**

- (1) A society whose objects are wholly or substantially those of a credit union within the meaning of section 1(4) shall not be registered or incorporated under the 1892 Act but shall be incorporated as a credit union under this Act.
- (2) Any registration or incorporation of such a society under the 1892 Act shall be void. **22**.

## 6 Insertion of new sections: 2A and 2B

The following shall be inserted immediately after section 2 —

### **2A Appeals from decisions of the Department**

- (1) Any person who is aggrieved by —
  - (a) the refusal of the Department to incorporate a credit union or to register any rules;
  - (b) the refusal of the Department to register or receive any document submitted to it; or
  - (c) any other act or decision of the Department under this Act,may appeal to a court of summary jurisdiction within 21 days after the date of the refusal or other act or decision, or within such further time as the court of summary jurisdiction may allow.
- (2) On hearing the appeal, the court of summary jurisdiction may —
  - (a) confirm the refusal or other act or decision of the Department; or
  - (b) give such directions or make such determination in the matter as it thinks fit.
- (3) If the refusal to incorporate is overruled on appeal, a certificate of incorporation in the prescribed form shall be issued to the credit union by the Department.
- (4) The certificate of incorporation issued in accordance with subsection (3) shall have the same effect as one issued in accordance with section 1(1)(e).
- (5) Notwithstanding any other provision of any enactment or any rule of law, where a person appeals or applies to the court of summary jurisdiction in respect of an act or decision of the Department under this Act —

- (a) the Department and any person authorised by it under that section for the purpose may continue to exercise its powers under that section as if no such appeal or application had been made; and
- (b) no person shall be excused from fulfilling his obligations under that section by reason of that appeal or application, until a decision on the appeal or application is given.

## 2B Appeals from decisions of the Authority

A person aggrieved by a decision of the Authority may appeal in accordance with section 32 of the *Financial Services Act 2008*. **22**.

## 7 Amendment of section 3

Section 3 is amended —

- (a) in subsection (1), by deleting “society registered as a”;
- (b) in subsection (2), by deleting “£2,500” and substituting **23** £5,000 **22**; and
- (c) by repealing subsection (4) and replacing it with the following —
  - 23** (4) The objects of a credit union shall not be regarded as wholly charitable or benevolent. **22**.

## 8 Repeal and replacement of section 4

Section 4 is repealed and replaced with the following —

### **23** 4 Rules

- (1) The rules of a credit union shall be in such form as the Authority may specify and shall contain —
  - (a) provision with respect to matters mentioned in the Schedule; and
  - (b) such additional provision as the Authority may determine.
- (2) The rules of a credit union may not be amended except by a resolution passed by not less than two-thirds of the members present at a general meeting called for the purpose after the giving of such notice as is by the rules required for such a resolution.
- (3) No rule and no amendment of a rule made by a credit union shall be valid until the same have been registered under this Act, and for that purpose the following steps shall be complied with —
  - (a) two copies of such rules or amendment of a rule, signed by three members and the secretary, shall be sent to the

- Department and one copy shall simultaneously be sent to the Authority; and
- (b) the Authority shall assess and, if satisfied, advise the Department that the rule or amendment of a rule is in conformity with the requirements of this Act and any other applicable law;
  - (c) only after having been notified by the Authority in accordance with paragraph (b), the Department shall —
    - (i) register the rule or amendment of a rule;
    - (ii) return one of the copies to the secretary or other officer of the credit union, to which copy shall be attached a certificate of registration in the prescribed form; and
    - (iii) retain, stamp and register the other copy.
- (4) The provisions of this Act as to appeals from a refusal to incorporate shall apply to rules and amendments of rules in respect of the role to be played by the Department, and in respect of the role to be played by the Authority the provisions of the *Financial Services Act 2008* shall apply.
- (5) A copy of the rules of a credit union shall be —
- (a) delivered by the credit union to every person on demand, on payment of a sum not exceeding such sum as may be prescribed under section 28; and
  - (b) made available on the credit union's website. **22**.

## 9 Insertion of new section: 4A

The following shall be inserted immediately after section 4 —

### **4A Inspection, production and evidence of documents kept by Department**

- (1) Any person may inspect a copy of any document kept by the Department, including the rules of a credit union, on payment of a fee not exceeding such sum as may be prescribed under section 28.
- (2) Any person may require —
  - (a) a copy of the certificate of incorporation of any credit union; or
  - (b) a copy or extract of any other document or any part of any other document,
 to be certified by the Department, on payment of such fees as may be prescribed under section 28.

- (3) A copy or extract from any document registered at the office for the registration of companies, certified to be a true copy by the Department, shall in all proceedings be admissible in evidence as of equal validity with the original document. **22**.

## 10 Amendment of section 5

Section 5 is amended —

- (a) by repealing subsection (1) and replacing it with the following —
- 22** (1) The following may be members of credit unions —
- (a) individuals; or
  - (b) bodies corporate and unincorporated societies, subject to the restriction that such members shall be permitted to save with the credit union but shall not be permitted to borrow therefrom. **22**;
- (b) in subsection (2), by inserting **22** ordinary **22** immediately before “share” and “shares”;
- (c) by repealing subsection (3) and replacing it with the following —
- 22** (3) A member of a credit union shall not have or claim any interest in the ordinary shares of the credit union exceeding £5,000.
- This subsection and subsection (2) are subject to section 9. **22**;
- (d) by repealing subsection (4) and replacing it with the following —
- 22** (4) The Authority may by order amend the amount in subsection (3) by prescribing a higher amount, expressed as a monetary amount or as a percentage of some monetary amount or determinable monetary amount. **22**;
- (e) in subsection (5), by deleting “section 21(4)” and substituting **22** section 29(2) **22**;
- (f) by repealing subsection (6) and replacing it with the following —
- 22** (6) The number of non-qualifying members of a credit union shall not exceed 10 per cent. of the total membership of the credit union.
- This is subject to subsection (11). **22**;
- (g) in subsection (8) —
- (i) by inserting **22** ordinary **22** immediately before “shares”;
  - and
  - (ii) by deleting “, subject to section 11(3),”;
- (h) by inserting immediately after subsection (9) the following —
- 22** (10) The liability of a member of a credit union in respect of any ordinary share or deferred share —

- (a) upon which no advance has been made, shall be limited to the amount agreed to be paid by him under the original rules of the credit union;
  - (b) upon which an advance has been made, shall be limited to the amount payable thereon under —
    - (i) any mortgage or other security;
    - (ii) the agreement pursuant to which any unsecured loan was issued; or
    - (iii) the rules of the credit union.
- (11) The Authority may by order amend —
- (a) subsection (6) to increase or decrease the maximum number of permitted non-qualifying members of a credit union; or
  - (b) any provision of this Act prescribing matters to be provided for in the rules of a credit union. **22**.

## 11 Repeal and replacement of section 6

Section 6 is repealed and replaced with the following —

### **6** Minimum and maximum number of members

- (1) In accordance with section 1(1), the minimum number of members of a credit union is 21.
- (2) The maximum number of members of a credit union shall be determined by the Authority and specified in the Rule Book. **22**.

## 12 Amendment of section 7

Section 7 is amended —

- (a) by repealing subsection (1) and replacing it with the following —
  - 6** (1) All ordinary and deferred shares in a credit union shall be of £1 denomination and ordinary shares may, subject to the rules of the credit union, be subscribed for either in full or by periodical or other subscriptions but no ordinary or deferred share shall be allotted to a member until it has been fully paid in cash. **22**;
- (b) by inserting immediately after subsection (1) the following —
  - 6** (1A) The Authority may by order prescribe that credit unions may issue deferred shares in addition to ordinary shares, and such an order may provide in respect of a specified credit union or group of credit unions that deferred shares may be issued subject to such conditions as the Authority may on a case by case basis determine and impose. Where the Authority exercises its power to impose

conditions on the ability to issue deferred shares, it must specify such conditions in writing to the credit union or group of credit unions on which the conditions are imposed. **22**;

(c) by repealing subsection (2) and replacing it with the following —

**23** (2) Ordinary shares in a credit union shall not be transferable and a credit union shall not issue to a member a certificate denoting ownership of an ordinary share.

This subsection is subject to sections 7A and 7B. **22**;

(d) by repealing subsection (3) and replacing it with the following —

**23** (3) Deferred shares are transferable. **22**;

(e) in subsection (4), by inserting **23** ordinary **22** immediately before “shares” in both places where it appears;

(f) by repealing subsection (5) and replacing it with the following —

**23** (5) If a withdrawal of ordinary shares would reduce a member’s paid-up shareholding in the credit union to less than his total liability (including contingent liability) to the credit union whether as borrower, guarantor or otherwise, then —

(a) in the case of a non-qualifying member, the withdrawal shall be only in the manner prescribed by order made by the Authority after consulting with such persons as appear appropriate; or

(b) in any other case, the withdrawal shall be permitted only at the discretion of the committee,

and in the case of an order made under paragraph (a), the order shall not come into operation until it has been approved by Tynwald. **22**; and

(g) by inserting immediately after subsection (5) the following —

**23** (6) Where a credit union has made a loan to a member which is treated by virtue of section 11A(2) as a secured loan, the member shall not be permitted to withdraw shares where his paid-up holding of ordinary shares in the credit union, is, or following the withdrawal would be, less than his total liability (including contingent liability) to the credit union whether as borrower, guarantor or otherwise.

(7) A credit union shall transfer to its reserves a sum equal to the amount paid up on deferred shares. **22**.

### 13 Insertion of new section: 7A

The following shall be inserted immediately after section 7 —

**7A Transfer in pursuance of nomination on death of nominator**

- (1) This section applies despite section 7(2).
- (2) A member of a credit union who is 18 years old or older (“the nominator”) may nominate any person or persons to whom all or a portion of any property held on his behalf by the credit union are to be transferred upon the member’s death; but such nomination shall not be valid unless –
  - (a) it is in writing and signed by the nominator, and
  - (b) during the nominator’s lifetime –
    - (i) is delivered at or sent to the registered office of the credit union; or
    - (ii) is recorded at the registered office of the credit union.
- (3) The nominator may not validly nominate under this section a person who is an officer of the credit union unless such officer is his spouse, civil partner, father, mother, child, brother, sister, nephew or niece.
- (4) A nomination made under this section may be revoked or varied by a subsequent nomination or by any similar document in the nature of a revocation or variation, in either case made in the manner prescribed in subsection (2); but a nomination shall not be revocable or variable by the will of the nominator or by any codicil to the will.
- (5) The credit union shall keep a register in which it shall record –
  - (a) the names of all persons so nominated; and
  - (b) all revocations or variations (if any) or such nominations,and the property comprised in any such nomination shall be payable or transferrable to the nominee although the rules of the credit union declare the ordinary shares not to be transferrable.

**7B Effect on nomination of marriage and civil partnership**

- (1) The marriage of, or the formation of a civil partnership by, a member of a credit union shall operate as a revocation of any nomination made by him before such marriage or formation of such civil partnership; but, in the event of an officer of a credit union having transferred any property of a member to a nominee in ignorance of a marriage contracted, or civil partnership formed, subsequent to the date of the nomination, the receipt of the nominee shall be a valid discharge to the credit union, and the credit union shall be under no liability to any other person claiming such property.

- (2) The formation of a civil partnership by a member of a credit union revokes any nomination made by the member before the formation of the civil partnership; but if any property of that member has been transferred by an officer of the credit union in pursuance of the nomination in ignorance of a civil partnership formed by the nominator after the date of the nomination —
- (a) the receipt of the nominee shall be a valid discharge to the credit union; and
  - (b) the credit union shall be under no liability to any other person claiming the property.
- (3) On receiving satisfactory proof of the death of a nominator, the committee of the credit union shall, subject to the limitation on account prescribed in section 7A, either —
- (a) transfer the property comprised in the nomination in manner directed by the nomination; or
  - (b) pay to every person entitled thereunder the full value of the property given to him,
- unless the shares comprised in the nomination, if transferred as directed by the nominator, would raise the share capital of any nominee to a sum exceeding the maximum for the time being permitted in the case of the credit union, in which case they shall pay him the value of such excess.
- (4) Where a nominee who is nominated under the provisions of this section or section 7A is under 16 years of age, the credit union may pay the sum nominated —
- (a) to either parent, or to a guardian of the nominee; or
  - (b) to any other person of full age who will undertake —
    - (i) to hold the same on trust for the nominee; or
    - (ii) to apply the same for his benefit,
 and whom the credit union may think a fit and proper person for the purpose,
- and the receipt of such parent, guardian, or other person shall be a sufficient discharge to the credit union for all moneys so paid. **22**.

## 14 Repeal and replacement of section 8

Section 8 is repealed and replaced with the following —

### **8 General prohibition on deposit taking**

- (1) A credit union shall not accept a deposit from any person.



- (2) In this section “deposit” has the same meaning it has in the Regulated Activities Order 2011.
- (3) The fact that a deposit is taken in contravention of this section shall not affect any civil liability arising in respect of the deposit or the money deposited. **22**.

## 15 Repeal and replacement of section 9

Section 9 is repealed and replaced with the following —

### **9 Persons under the age of 18**

- (1) A person under the age of 18 may be a member of a credit union unless the rules of the credit union provide otherwise.
- (2) Without limiting subsections (1) and (3), a person under the age of 18 may not borrow from a credit union.
- (3) A person under the age of 18 —
  - (a) may, subject to paragraph (b), enjoy all the rights of a member of a credit union unless the rules of the credit union provide otherwise;
  - (b) shall not be permitted to vote on any of the affairs of the credit union;
  - (c) if aged 16 or over, may execute all instruments and give all receipts necessary to be executed or given under the rules of a credit union.

This is subject to the rules of the credit union and the provisions of this Act.
- (4) A person under the age of 18 may not be a member of a credit union’s committee or a trustee, manager or treasurer of a credit union. **22**.

## 16 Repeal and replacement of section 10

Section 10 is repealed and replaced with the following —

### **10 Power to borrow and invest money**

- (1) A credit union may borrow and invest money.
- (2) The Authority may specify in the Rule Book such further terms, conditions or restrictions for the borrowing and investing of money by credit unions as it considers necessary or desirable.
- (3) The Authority may specify in the Rule Book the detailed requirements for investing money under this section. **22**.

## 17 Repeal and replacement of section 11

Section 11 is repealed and replaced with the following —

### **11 Loans**

- (1) A credit union may make to a member who is 18 years old or older a loan for a provident or productive purpose, upon such security (or without security) and terms as the rules of the credit union may provide.

This is subject to the remainder of this section.

- (2) The maximum period within which a loan by a credit union must be repaid shall be 5 years in the case of a secured loan and 2 years in the case of an unsecured loan.

- (3) Where a loan by a credit union is made to a member and is not a secured loan within the meaning of section 11A, the terms of the loan must include provision as to whether, for the duration of the loan, the borrower is permitted to withdraw ordinary shares where his paid-up shareholding (excluding any deferred shares) in the credit union is, or following the withdrawal would be, less than his total liability (including contingent liability) to the credit union whether as borrower, guarantor or otherwise.

- (4) A credit union may charge interest on loans made by it but such interest shall be at a rate not exceeding one per cent. per month, on the amount of the loan outstanding and such interest shall be inclusive of all administrative and other expenses incurred in connection with the making of the loan.

- (5) The Authority may by order amend subsection (4) to prescribe a different rate of interest.

- (6) The total amount on loan to a member of a credit union shall not at any time be more than £5,000 in excess of his total paid-up shareholding in the credit union at that time.

In this subsection, “shareholding” refers to the holding of ordinary shares.

- (7) The Authority may by order amend —

- (a) subsection (2) and prescribe different limits for the maximum period within which a loan must be repaid; or  
(b) subsection (6) to prescribe an amount either less than or greater than £5,000.

- (8) An order made under either subsection (5) or (7) —

- (a) shall be subject to consultation with such persons as the Authority considers appropriate; and

- (b) shall not come into operation until it has been approved by Tynwald.

### 11A Loans to be treated as secured

- (1) This section applies where –
  - (a) a credit union makes a loan to a member of the credit union; and
  - (b) at the time the loan is made, the member's paid-up shareholding in the credit union, excluding any deferred shares, is equal to or greater than his total liability (including contingent liability) to the credit union, whether as borrower, guarantor or otherwise.
- (2) On the application of the member to the credit union, the loan shall be treated for the purposes of this Act as a secured loan. **22**.

## 18 Insertion of new section: 12A

The following shall be inserted immediately after section 12 –

### **12A Property and funds of credit unions**

Any body corporate may, if its constitutional documents permit, hold shares in a credit union in its corporate name. Such shares may be either ordinary shares or deferred shares, or both.

## 19 Repeal and replacement of section 13

Section 13 is repealed and replaced with the following –

### **13 Special resolutions, etc**

- (1) A credit union may, by a special resolution with the approval of the Department and the Authority in writing, change its name. This is subject to subsections (2) to (7).
- (2) The new name of a credit union shall not be identical to that of any credit union previously incorporated and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting credit union is in course of being terminated or dissolved, and consents to such incorporation.
- (3) Notice of a change of name under subsection (1) shall be sent to the Department and registered by it, and it shall give a certificate of the registration of such change of name.
- (4) A change of name shall not affect any right or obligation of the credit union, or of any member thereof, or other person, and any

pending legal proceedings may be continued by or against the credit union, notwithstanding its change of name.

- (5) At any meeting under this section a declaration by the chairman that a resolution has been carried shall be deemed as conclusive evidence of that fact.
- (6) A copy of every special resolution for any of the purposes mentioned in this section, signed by the chairman of the meeting and countersigned by the secretary, shall be sent to the Department and shall be registered there, and until such copy be registered such special resolution shall not take effect.
- (7) For the purposes of this section a “special resolution” is a resolution which meets the following requirements and in respect of which the following requirements are met, as the case may be —
  - (a) the resolution must have been passed by a majority of not less than three-fourths of such members of a credit union —
    - (i) who are for the time being entitled to vote by virtue of the rules of the credit union; and
    - (ii) who are present in person or by proxy (where the rules of the credit union allow proxies) at any general meeting which satisfies the requirements of paragraph (b);
  - (b) the requirements referred to in paragraph (a)(ii) are that —
    - (i) notice of the general meeting must have been duly given according to the rules of the credit union;
    - (ii) such notice must have specified the intention to propose the resolution;
    - (iii) the resolution must have been confirmed by the majority of the members —
      - (A) who are for the time being entitled to vote by virtue of the rules of the credit union; and
      - (B) who are present in person or by proxy (where the rules of the credit union allow proxies) at a subsequent general meeting which meets the requirements of paragraph (c);
  - (c) the requirements referred to in paragraph (b)(iii)(B) are that —
    - (i) notice of the subsequent general meeting must have been given; and

- (ii) the subsequent general meeting must have been held not less than 14 days, nor more than one month, from the day of the meeting at which the resolution was passed. **22**.

## 20 Repeal and replacement of section 14

Section 14 is repealed and replaced with the following —

### **14 Financial statements, dividends and general reserve**

- (1) Every credit union shall —
  - (a) submit to the Authority and to the Department annual financial statements; and
  - (b) maintain a general reserve.
- (2) A credit union may pay a dividend to its members.
- (3) This section is subject to such detailed requirements as shall be prescribed in the Rule Book. **22**.

## 21 Repeal of section 15 and substitution of preceding cross-heading

Section 15 is repealed.

Immediately before section 15, the cross-heading “*Insurance and other arrangements*” shall be deleted and **15 Other arrangements** **22** substituted.


## 22 Repeal and replacement of section 16

Section 16 is repealed and replaced with the following —

### **16 Savings compensation scheme**

- (1) The Treasury may make regulations establishing a scheme for compensating savers in credit unions in cases where credit unions are unable or likely to be unable to satisfy claims in respect of any description of civil liability incurred by them in connection with their business, and such regulations —
  - (a) shall be subject to consultation with the Authority and any other person the Treasury may consider appropriate; and
  - (b) shall not come into operation until they have been approved by Tynwald.
- (2) The provisions of subsections (2) and (3) of section 25 of the *Financial Services Act 2008* shall apply *mutatis mutandis* to regulations under subsection (1).
- (3) If at the material time no regulations made under subsection (1) are in operation, the Authority shall not approve an application

for incorporation as a credit union unless the Authority is satisfied that on incorporation there will be in force in relation to the credit union arrangements which are approved for the purpose by the Authority.

- (4) A credit union shall at all times maintain in force such arrangements as are referred to in subsection (3), and if it fails to do so it commits an offence and is liable on summary conviction to a fine not exceeding £5,000.
- (5) The Authority may make regulations prescribing the circumstances in which a credit union becomes insolvent, and such circumstance shall be subject to section 20.
- (6) Regulations made under subsection (5) shall be subject to consultation with such persons as the Authority considers appropriate and shall not come into operation until they have been approved by Tynwald. 

## 23 Repeal and replacement of section 17 and deletion of preceding cross-heading

Section 17 is repealed and replaced with the following —

### 17 Inspection of affairs by order of court

With respect to the inspection of the affairs of credit unions, the following provisions shall have effect —

- (a) upon the application, by petition of the Authority or of one-fifth of the whole number of members of a credit union, the court may —
  - (i) appoint one or more inspectors to examine the affairs of the credit union, and to report thereon, and the inspector or inspectors may require the production of all or any of the books and documents of the credit union, and may examine on oath its officers and members, in relation to its business, and may administer such oath; or
  - (ii) call a special meeting of the credit union in such manner and at such time and place as the court may direct, and the court may direct what matters shall be discussed and determined on at such meeting, which shall have all the powers of a meeting called according to the rules of the credit union, and shall in all cases have power to appoint its own chairman, any rule of the credit union to the contrary notwithstanding;

- (b) the application in the section mentioned shall be supported by such evidence as the court shall require for the purpose of showing that the applicants have good reason for requiring such inspection to be made, or meeting to be called, and that they are not actuated by malicious motives in their application, and such notice thereof shall be given to the credit union as the court shall direct;
  - (c) the court may, if it thinks fit, require the applicant to give security for the costs of the proposed inspection or meeting before appointing any inspection, or calling such meeting;
  - (d) all expenses of, and incidental to, any such inspection or meeting, shall be defrayed either by the applicants or out of the funds of the credit union, as the court shall direct; and
  - (e) the inspectors shall provide a copy of any report produced under paragraph (1)(a) to the Authority. **22**.
- (2) Immediately before section 17, the cross-heading “*Powers of the Authority*” shall be deleted.

#### 24 Amendment of section 18 and insertion of preceding cross-heading

- (1) Section 18 is amended in subsection (1) by deleting “section 22 of the 1892 Act (appointment of inspector or calling of special meeting by court),” and substituting **23** section 17 and the relevant provisions of the *Financial Services Act 2008*, **22**.
- (2) Immediately before section 18, the cross-heading **23** *Powers, duties, obligations and privileges* **22** shall be inserted.

#### 25 Repeal and replacement of section 19

Section 19 is repealed and replaced with the following –

##### **23** 19 Duties and obligations of credit unions

- (1) Every credit union shall –
  - (a) have its registered office in the Isle of Man, to which all communications and notices may be addressed, and send to the Department notice, in writing, of the situation of such office, and of every change therein;
  - (b) ensure compliance with the following requirements set out in subsections (2) and (3).
- (2) In addition to complying with subsection (1), every credit union shall ensure that –

- (a) the Secretary or other officer of each credit union prepares, once in every year at least, —
  - (i) an account of all receipts and expenditure of the credit union since the preceding statement; and
  - (ii) a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to members and creditors for loans, if any, and also the balance due or outstanding on their mortgage securities (not including prospective interest);
- (b) every such account and statement is submitted for audit to an auditor who is qualified under sections 14 to 14D of the *Companies Act 1982* and who shall —
  - (i) have access to all the books and accounts of the credit union;
  - (ii) examine the general statement of the receipts and expenditure, funds and effects of the credit union, and verify the same with the accounts and vouchers relating thereto; and
  - (iii) either sign the same as found by them to be correct, duly vouched, and in accordance with law, or specially report to the credit union in what respects they find it incorrect, unvouched, or not in accordance with law.
- (3) Every member and creditor for loans shall be entitled to receive from the credit union a copy of such account statement.

### **19A Additional duties and obligations of credit unions**

Every credit union shall —

- (a) once in every year before the 1<sup>st</sup> of June, send to the Department a general statement (to be called the annual return) of receipts and expenditure, funds and effects of the credit union as audited, which shall —
  - (i) show separately the expenditure in respect of the several objects of the credit union;
  - (ii) be made out to the 31<sup>st</sup> of December or such other date as the Department may in writing permit; and
  - (iii) state whether the audit has been conducted by an auditor qualified as required by section 19(2)(b), and if by any persons other than such an auditor shall state the name, address, and calling or



profession of each such person, and the manner in which, and the authority under which, he is appointed;

- (b) allow any member or person having an interest in the funds of the credit union to inspect the names of the members, at all reasonable hours, at the registered office of the credit union, or at any place where the same are kept; subject to such stipulations as to the time and manner of such inspection as may be made from time to time by the general meetings of the credit union, except that no such member or person, unless he be an officer of the credit union, or be specially authorised by a resolution thereof, shall have the right to inspect an account of any other member without the written consent of such member; and
- (c) supply gratuitously to every member or person interested in the funds of the credit union, on his application, a copy of the last annual return of the credit union for the time being.

### **19B Offences in respect of information**

It shall be an offence if a credit union —

- (a) fails to give any notice, send any return or document, or does or allows to be done any act or thing which the credit union is by this Act required to give, send, do, or allow to be done;
- (b) wilfully neglects or refuses to do any act or to furnish any information required for the purposes of this Act by the Department, or other person authorised under this Act, or does any act or thing forbidden by this Act; or
- (c) wilfully furnishes information, that is in any respect false or insufficient,

and the credit union, upon summary conviction for any such offence, is liable to a fine not exceeding £5,000.

### **19C Form and depositing of documents**

- (1) Each return and other document required for the purposes of this Act shall be made in such form, and shall contain such particulars, as the Department, or the Authority as appropriate, shall prescribe.
- (2) All documents by sections 19 and 19A required to be sent to the Department shall be deposited with the rules of the credit unions to which the same respectively relate, and shall be registered or

recorded by the Department, with such observations thereon, if any, as the Department shall direct.

#### 19D Privileges of credit unions

(1) The incorporation of a credit union shall render it a body corporate by the name described in the certificate of incorporation, by which it may sue and be sued, with perpetual succession, and with limited liability; and shall vest in the credit union all property for the time being vested in any person in trust for the credit union.

(2) The rules of the credit union shall bind the credit union and all members thereof, and all persons claiming through them respectively, to the same extent as if each member had subscribed his name thereto, and there were contained in such rules a covenant on the part of himself, his heirs, executors, and administrators, to conform thereto, subject to the provisions of this Act.

This subsection is subject to subsection (3).

(3) All moneys payable by a member to the credit union shall be a debt due from such member to the credit union, and shall be recoverable as such.

(4) Two or more persons may jointly hold a share or shares (whether ordinary or deferred) in a credit union, and all shares held jointly by any two or more persons in any credit union subsisting at the time of the promulgation of this Act, the rules of which do not prohibit such joint holding, shall be deemed to be lawfully so held.

This subsection is subject to section 5(2).

(5) Any register or list of members or shares (whether ordinary or deferred, or both) kept by any credit union shall be *prima facie* evidence of any of the following particulars entered therein —

(a) the names and addresses of the members, the number of shares held by them respectively, the numbers of such shares, if they are distinguished by numbers, and the amount paid or agreed to be considered as paid on any such shares;

(b) the date at which the name of any person, company, or credit union was entered in such register or list as a member; and

(c) the date at which any such person, company, or credit union ceased to be a member.

(6) Contracts on behalf of the credit union may be made, varied or discharged, as follows —

- (a) any contract which if made between private persons would be by law required to be by deed, may be made on behalf of the credit union in writing, signed by two members of the committee, and countersigned by the secretary, and may in the same manner be varied or discharged;
- (b) any contract which if made between private persons would be by law required to be in writing, signed by the persons to be charged therewith, may be made on behalf of the credit union in writing by any person acting under the express or implied authority of the credit union, and may in the same manner be varied and discharged;
- (c) a signature purporting to be made by a person holding any office in the credit union attached to a writing whereby any contract purports to be made, varied or discharged by or on behalf of the credit union, shall *prima facie* be taken to be the signature of a person holding, at the time when the signature was made, the office so stated,

and all contracts which may be, or have been made, varied, or discharged according to the provisions herein contained, shall, so far as concerns the form thereof, be effectual in law and binding on the credit union and all other parties thereto, their heirs, executors, or administrators, as the case may be.

### 19E Power to charge for ancillary services

- (1) A credit union which provides an ancillary service to a member may charge such fee as it considers appropriate for providing that service.
- (2) In this section, “ancillary service” means any service which is ancillary to the activity of accepting savings or making a loan, and includes —
  - (a) the making or receiving of payments, made by way of standing order, direct debit or any other means, as agent for a member or any other person from whom the credit union has accepted savings;
  - (b) issuing and administering means of payment (for example, chequebooks and debit cards);
  - (c) money transmission services; and
  - (d) giving advice on the services specified in paragraphs (a) to (c). **22**.

**26 Repeal and replacement of section 20**

(1) Section 20 is repealed and replaced with the following —

**20 Winding up and dissolution of credit unions**

- (1) A credit union may terminate or be dissolved —
- (a) upon the happening of any event declared by its rules to be the termination of the credit union;
  - (b) by dissolution in manner prescribed by its rules;
  - (c) by dissolution with the consent of three-fourths of the members, holding not less than two-thirds of the ordinary shares in the credit union, testified by their signatures to the instrument of dissolution;
  - (d) by winding-up (under the provisions of the Companies Acts, in like manner, as nearly as may be, as if the credit union were a company under such Acts) —
    - (i) voluntarily under the supervision of the court;
    - (ii) by the court, if the court shall so order, on the petition of any member authorised by three-fourths of the members present at a general meeting of the credit union specifically called for the purpose to present the same on behalf of the credit union; or
    - (iii) on the petition of the Authority or of any creditor.
- (2) The instrument of dissolution shall set forth —
- (a) the liabilities and assets of the credit union in detail;
  - (b) the number of members, and the amount standing to their credit in the books of the credit union; or the nature of their interests in the credit union respectively;
  - (c) the claims of members and other creditors, and the provision to be made for their payment;
  - (d) the intended appropriation of division of funds and property of the credit union;
  - (e) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration,
- and alterations in the instrument of dissolution may be made with the like consent, testified in the same manner.
- (3) The instrument of dissolution and all alterations therein shall be registered in the manner provided for the registration of rules, and shall be binding upon all members of the credit union.
- (4) Where a credit union is wound-up the liability of a present or past member of the credit union to contribute for payment of the debts

and liabilities of the credit union, the expenses of winding-up, and the adjustment of the rights of contributories amongst themselves, shall be qualified as follows —

- (a) no individual, credit union, or company who or which has ceased to be a member for one year or upwards prior to the commencement of the winding-up, shall be liable to contribute;
- (b) no individual, credit union, or company shall be liable to contribute in respect of any debt or liability contracted after he or it ceases to be a member;
- (c) no individual, credit union, or company not a member shall be liable to contribute, unless it appears to the court that the contributions of the existing members are insufficient to satisfy the just demands on the credit union;
- (d) no contribution shall be required from any individual, credit union, or company exceeding the amount (if any) unpaid on the shares in respect of which he or it is liable as a past or present member;
- (e) an individual, credit union, or company shall be taken to have ceased to be a member, in respect of any withdrawable share withdrawn, from the date of the notice or application for withdrawal.

(5) Without prejudice to subsection (3), a petition for the winding-up of a credit union may be presented to the court by the Authority if it appears to it that —

- (a) there has been, in relation to that credit union, a failure to comply with any provision of, or of any direction given under, the *Financial Services Act 2008*; or
- (b) there is no longer a common bond between members of the credit union,

or in any other case where it appears to the Authority that the winding up of the credit union is in the public interest or is just and equitable having regard to the interests of all the members of the credit union. <sup>22</sup>

- (2) Immediately before section 20, the cross-heading <sup>23</sup>Winding up and dissolution <sup>24</sup> shall be inserted.

## 27 Insertion of new section: 20A

The following shall be inserted immediately after section 20 —

**20A Power to make orders as to the disposal of valueless documents**

- (1) Where a credit union has been dissolved under this Act the Department, after consultation with the Authority and the Chief Registrar, may at any time after the expiration of 12 years (or 2 years where subsection (2) applies) from the date of dissolution, order the disposal, by destruction or otherwise, of documents relating to that credit union which are in the office for the registration of companies, the Public Record Office or any repository referred to in section 1(5) of the *Public Records Act 1999* and which are not of sufficient public value to justify their preservation.
- (2) The Department may make an order under subsection (1) at any time after the expiration of 2 years from such dissolution if it is satisfied that it has in its custody a copy of any document disposed of under that subsection.
- (3) A copy of any document to which subsection (2) applies shall for the purposes of this Act, be treated as if it were the original document and if the copy is not kept in a legible form, any duty of the Department to allow inspection of, or to furnish a copy of, the document or any part of it is to be treated as a duty to allow inspection of, or to furnish a reproduction of the copy or of the relevant part of it in legible form. **22**.

**28 Repeal and replacement of section 21**

Section 21 is repealed and replaced with the following —

**21 Amalgamations and transfers of engagements**

- (1) A credit union may —
  - (a) amalgamate with another credit union; or
  - (b) transfer its engagements to, or accept a transfer of engagements from, another credit union,but any such amalgamation or transfer shall not take effect unless the Department, having received the Authority's written agreement to the amalgamation or transfer, registers it.
- (2) A credit union shall not amalgamate with or transfer its engagements to or accept a transfer of engagements from any body corporate that is not a credit union. **22**.

**29 Repeal and replacement of section 22**

Section 22 is repealed and replaced with the following —

**22 No conversion of credit union into company**

The conversion of a credit union into a company is strictly prohibited.

**30 Repeal and replacement of section 23**

Section 23 is repealed and replaced with the following —

**23 Conversion of company into credit union prohibited**

The conversion of a company into a credit union is strictly prohibited.

**31 Amendment of section 24**

Section 24 is amended —

- (a) by deleting the heading and substituting **Accounts**;
- (b) in subsection (1), by deleting “, but only at that office,” and substituting **and on its website**; and
- (c) in subsection (2) by deleting “Section 16(1)(c) and (g) of the 1892 Act (audit etc.)” and substituting **Section 19(1)(b)**.

**32 Repeal of section 25**

Section 25 is repealed.

**33 Amendment of section 26**

Section 26 is amended by inserting **this Act or the *Financial Services Act 2008*** immediately after “rules”.

**34 Repeal and replacement of section 27**

Section 27 is repealed and replaced with the following —

**27 Offences**

- (1) Where an offence under this Act which has been committed by a body corporate other than a credit union is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits that offence and shall be liable to be prosecuted and, if convicted, punished accordingly.
- (2) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid

the commission of such an offence by himself or any person under his control. **22**.

### 35 Insertion of new sections: 27A to 27F

The following sections shall be inserted immediately after section 27 —

#### **27A Commencing business before incorporation and failure to make returns, etc**

- (1) If —
- (a) any persons representing themselves to be a credit union commence business without first obtaining a certificate of incorporation as a credit union;
  - (b) any credit union —
    - (i) defaults in forwarding to the Department any returns or information required by this Act; or
    - (ii) submits a return that in any respect contains deliberately misleading or deliberately inaccurate information,

the persons commit, or the credit union commits, an offence and shall be liable on summary conviction to a fine not exceeding £2,500.

- (2) If any credit union issues shares (whether ordinary or deferred, or both) in excess of the limits prescribed in this Act, the members of the committee of management of such credit union shall be personally liable for the amount so received in excess.

#### **27B Penalties for falsification**

A person who wilfully makes, orders or allows to be made any entry, erasure, in or omission from —

- (a) any balance-sheet of a credit union;
- (b) any record of members' shares (whether ordinary or deferred, or both) and borrowing; or
- (c) any return or document,

required to be sent, produced, or delivered for the purposes of this Act, with intent to falsify the same, or to evade any of the provisions of this Act, commits an offence and is liable on summary conviction to a fine not exceeding £2,500.

#### **27C Not using name of credit union**

If any officer of the credit union, or any person on its behalf —



- (a) issues or authorises the issue of any notice, advertisement, or other official publication of the credit union;
- (b) signs or authorises to be signed on behalf of the credit union any bill of exchange, promissory note, endorsement, cheque, order for money or goods; or
- (c) issues or authorises to be issued any bills or parcels, invoice, receipt, or letters of credit of the credit union,

in which the credit union's name is not mentioned, the officer or person shall be liable to a penalty of £1,000, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless the same is duly paid by the credit union.

### **27D Recovery of penalties**

The penalties imposed or to be imposed —

- (a) by this Act; or
- (b) by any regulations made hereunder,

shall be recoverable in a court of summary jurisdiction at the suit of the Department, the Authority or the Treasury, as may be appropriate.

### **27E Penalties against officers**

Every credit union officer or member of a credit union, or other person convicted of an offence under this Act for which no penalty is expressly provided herein shall be liable to a fine not exceeding £2,500.

### **27F Determination of disputes**

(1) The rules of a credit union may direct disputes to be determined by —

- (a) a form of alternative dispute resolution agreed by the parties; or
- (b) the Department, if the parties agree thereto.

Subsection (3), by virtue of paragraph (a) thereof, applies to any form of alternative dispute resolution agreed by the parties in accordance with paragraph (a).

(2) Where —

- (a) the parties to any dispute arising in a credit union agree to refer the dispute to the Department; or
- (b) the rules of the credit union direct disputes to be referred to the Department,

the award of the Department shall have effect in accordance with subsection (3).

(3) Where either of the parties to the dispute refuses or neglects to comply with or conform to an award resulting from —

(a) the use, in accordance with subsection (1)(a), of a form of alternative dispute resolution; or

(b) an award of the Department under subsection (2),

the court shall enforce compliance with the award upon the petition of any party concerned, such petition to be heard summarily.

This subsection is subject to subsection (4) and only applies where the deadline for compliance with or conformity to the award (set out therein) has passed.

(4) The court shall not act in accordance with subsection (3) unless good and sufficient proof has been adduced —

(a) of an award having been made; and

(b) of the refusal of the party to comply therewith.

(5) The court may hear and determine a dispute in the following cases —

(a) if it appears to the court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the credit union, and that such application has not within 40 days been complied with; or

(b) where the rules of the credit union direct disputes to be referred to the court or to justices.

(6) Every determination by arbitrators or by the court under this Act of a dispute —

(a) shall be binding and conclusive on all parties;

(b) shall be final to all intents and purposes;

(c) shall not be subject to appeal; and

(d) shall not be removed or removable into, or restrained or restrainable by the injunction of any court.

This subsection is subject to subsection (7).

(7) Despite subsection (6), the arbitrators or the court, as the case may be —

(a) may, at the request of either party, state a case for the opinion of the Staff of Government Division of the High Court of Justice on any question of law; and

- (b) shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court, such discovery to be made on behalf of the credit union by such officer of the credit union as the arbitrators or court may determine. ~~22~~.

### 36 Repeal and replacement of section 28

Section 28 is repealed and replaced with the following —

#### **28 Additional provisions with respect to secondary legislation**

- (1) The Department may make regulations concerning any of the following matters —
  - (a) the fees to be paid to the Department for matters to be transacted, or for the inspection of documents under this Act;
  - (b) the maximum sum payable under section 4A(1);
  - (c) the maximum fee that a credit union may charge for supplying a copy of its rules; and
  - (d) incorporation of a credit union under this Act and any matters incidental thereto.
- (2) Regulations under subsection (1) shall not be made under paragraph (a) except with the concurrence of the Treasury and the Authority.
- (3) Before making any order, regulations or the Rule Book, the Authority shall consult —
  - (a) the Treasury;
  - (b) such persons or bodies as appear to be representative of interests likely to be affected; and
  - (c) such other persons or bodies as the Authority may determine.
- (4) The following shall not have effect unless they are approved by Tynwald —
  - (a) orders made by the Authority under this Act (except an order under section 30(3)); and
  - (b) any public document made by the Department (except regulations made under subsection (1), which shall be laid before Tynwald as soon as practicable after they are made).
- (5) Any form that the Department or the Treasury may or is required to prescribe under this Act must be made available on the website of the Department or the Treasury, as the case may be.

- (6) The Authority may specify on its website any form it requires a credit union to submit. <sup>22</sup>

### 37 Amendment of section 29

Section 29 is amended —

- (a) in subsection (1) —
- (i) by inserting in the appropriate alphabetical position the following —

- <sup>22</sup> **“amend”** includes alter or rescind; <sup>22</sup>
- <sup>22</sup> **“committee”** means the committee of management, or other directing body of a credit union; <sup>22</sup>
- <sup>22</sup> **“the Court”** means the Civil Division of the High Court of Justice; <sup>22</sup>
- <sup>22</sup> **“the Companies Acts”** means the Companies Acts 1931 to 2004 and the *Companies Act 2006*; <sup>22</sup>
- <sup>22</sup> **“Department”** means the Department for Enterprise; <sup>22</sup>
- <sup>22</sup> **“employee”** includes an unpaid volunteer; <sup>22</sup>
- <sup>22</sup> **“meeting”** includes (where the rules so allow) a meeting of delegates appointed by the members of a credit union; <sup>22</sup>
- <sup>22</sup> **“land”** includes hereditaments; <sup>22</sup>
- <sup>22</sup> **“officer”** has the meaning assigned by section 1(2) (disqualification orders: introduction) of the *Company Officers (Disqualification) Act 2009*; <sup>22</sup>
- <sup>22</sup> **“ordinary shares”** means shares other than deferred shares;
- <sup>22</sup> **“persons claiming through a member”** include the heirs, executors, administrators, and assigns of a member, and also his nominees where nomination is allowed; <sup>22</sup>
- <sup>22</sup> **“property”** means all real and personal estate (including books and papers); <sup>22</sup> <sup>22</sup> **“Rule Book”** has the meaning given by section 18 of the *Financial Services Act 2008*, and includes any conditions imposed on a credit union’s licence under section 7 or 8 of that Act; <sup>22</sup> <sup>22</sup> **“rules”** means the rules of a credit union for the time being in force; and “amendment of a rule” includes a new rule, and a resolution or rule rescinding a rule; <sup>22</sup>;

“**specify**” includes power to specify by non-legislative means; <sup>22</sup> and

- (ii) by deleting the definitions of “authorised bank”, “credit union” and “the Societies Acts”; and

- (b) by repealing subsection (2) and replacing it with the following —

- <sup>22</sup> (2) In this Act, **“non-qualifying member”** —

- (a) in relation to a credit union, means a person who remains a member of the credit union by virtue of section 5(5); and
  - (b) in relation to an amalgamated credit union or a credit union which has accepted a transfer of engagements, includes a person who does not fulfil the qualifications for admission to membership of that credit union but became a member of it by virtue of the amalgamation or transfer of engagements, having been immediately before the amalgamation or transfer a non-qualifying member of one of the amalgamating credit unions or, as the case may be, the credit union from which the transfer of engagements was made.
- (3) In this Act, references to “**deferred shares**” are to a class of shares where —
- (a) the rights and obligations of the credit union and the member in respect of those shares are set out in a single document, or in a series of documents (“the issue documents”);
  - (b) the issue documents is provided to every applicant for the shares;
  - (c) the issue documents contains a prominent statement to the effect that the shares are deferred shares for the purposes of this Act;
  - (d) the issue documents contains a prominent statement stating that the deferred shares are not covered by any compensation scheme;
  - (e) any document evidencing title to the shares contains the statements required by paragraphs (c) and (d);
  - (f) the issue documents contains a term which prohibits the repayment of any principal to the shareholder except in Case A or Case B
- (4) Case A, as referred to in subsection (3)(f), is the winding up or dissolution of the credit union in circumstances where all sums due from the credit union to creditors claiming in the winding up or dissolution are paid in full.
- (5) Case B, as referred to in subsection (3)(f), is where —
- (a) the credit union applies to the Authority for consent to repay principal to the shareholder;
  - (b) the credit union so applies otherwise than in consequence of a provision in any of the issue documents which requires it to apply, grants it any benefit for applying or imposes a sanction against failure to apply; and

- (c) the Authority grants consent.
- (6) “Creditors” in subsection (4) includes members holding ordinary shares in the credit union, as regards the principal of those shares and any interest or dividend due on them. **22**.

### 38 Amendment of section 30

Section 30 is amended by repealing subsection (2).

### 39 Repeal and replacement of Schedule 1

Schedule 1 is repealed and replaced with the following —

#### **23** Schedule

#### **MATTERS TO BE PROVIDED FOR IN RULES OF CREDIT UNION**

##### Section 4(1)

1. The name of the credit union.
2. The objects of the credit union.
3. The place in the Island which is to be the registered office of the credit union to which all communications and notices to the credit union may be addressed.
4. The qualifications for, and the terms of, admission to membership of the credit union, including any special provision for the insurance of members in relation to their ordinary shares.
5. The mode of holding meetings, including provision as to the quorum necessary for the transaction of any description of business, and the mode of making, altering or rescinding rules.
6. The appointment and removal of a committee, by whatever name, and of managers or other officers and their respective powers and remuneration.
7. Determination (subject to section 5(3)) of the maximum amount of interest in the shares of the credit union which may be held by any member.
8. Provision for the mode of withdrawal of shares and for payment of the balance due thereon on withdrawing from the credit union.
9. The mode and circumstances in which loans to members are to be made and repaid, including any special provision for the insurance of members in relation to loans made to them.
10. Provision for the audit of accounts by one or more auditors appointed by the credit union, subject to the requirements that —

- (a) accounts must be in accordance with section 3A of the *Companies Act 1982*; and
  - (b) auditors must be qualified in accordance with sections 14 to 14F of that Act.
11. Provision for the withdrawal of members from the credit union and for the claims of the representatives of deceased members or the trustees of the property of bankrupt members, and for the payment of nominees.
12. Provision for terminating the membership of members in order to comply with —
- (a) the limit on the number of members of a credit union for the time being provided for in accordance with section 6; and
  - (b) the limit provided for in section 5(6) on the number of non-qualifying members of a credit union,
- and for the repayment of the shares held by, and of any loans made to, a member whose membership is terminated for such a purpose.
13. Provision for the dissolution of the credit union, including provision requiring any assets remaining after the payment of debts, repayment of share capital and discharge of other liabilities —
- (a) to be transferred to another credit union; or
  - (b) if not so transferred, to be applied for charitable purposes. <sup>22</sup>.

#### 40 Repeal of Schedule 2

Schedule 2 is repealed.

#### 41 Consequential amendments

The *Company and Business Names Etc Act 2012* is amended as follows —

- (a) in section 3(1), in the definition of “appropriate name approval authority”, delete “and (g),” and substitute <sup>66</sup>, (g) and (i), <sup>22</sup>;
- (b) in section 4(1) —
  - (i) delete the full stop at the end of paragraph (h) and substitute <sup>66</sup>; and <sup>22</sup>; and
  - (ii) insert the following immediately after paragraph (h) —
    - <sup>66</sup> (i) a credit union incorporated under the *Credit Unions Act 1993*. <sup>22</sup>; and
- (c) in section 5(2) —

- (i) delete the full stop at the end of paragraph (h) and substitute **43**; and **42**; and
- (ii) insert the following immediately after paragraph (h) —
  - 43** (i) an application to incorporate a credit union under section 1 of the *Credit Unions Act 1993*. **42**.



## ENDNOTES

### Table of Endnote References