

Co-operatives, Mutuels and Friendly Societies Bill

Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by HM Treasury (HMT) to assist with its scrutiny of the Co-operatives, Mutuels and Friendly Societies Bill (“the Bill”). The Bill was introduced in the Commons on June 15 2022 by Sir Mark Hendrick MP (Labour, Preston) and had its first reading on June 15 2022. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains why the power has been taken and explains the nature of it, the reason for, and the procedure selected.
2. The Bill contains 1 provision which includes a delegated power, set out below at paragraph 7. HMT has considered the use of the delegated power in the Bill and is satisfied that it is necessary and justified.

B. PURPOSE AND EFFECT OF THE BILL

3. The purpose of the Bill is to provide HMT with the power to make regulations which would allow certain prescribed co-operatives, mutual insurers, and friendly societies (“relevant mutual entities”) to opt to restrict the use of their assets. This would disallow member access to locked funds upon dissolution of the mutual or sale or conversion of the mutual to a company.
4. The Bill proposes creating the new power through the Co-operatives, Mutuels and Friendly Societies Bill, which would allow relevant mutual entities to choose to adopt legal restrictions on the use of their assets.
5. The intention is that, where members choose to adopt these restrictions, the use of the assets would be limited to specific purposes in line with the objectives of the mutual entity. This should prevent financial incentives for demutualisation (where a mutual entity converts into a company either via conversion or sale to a company), given that if a mutual entity has an asset lock in place, their members will not receive a pay-out from the surplus assets.
6. The use of any of these assets for other purposes would then carry legal recourse.

C. DELEGATED POWERS

Clause : Power to enable relevant mutual entities through regulations to ensure that all or certain assets of the entity cannot be used or dealt with except in certain cases as prescribed in regulations.

Power conferred on: HMT

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution Procedure

Justification for taking the Power

7. The HMT view is that the level of detail required to enable relevant mutual entities to opt into a statutory asset lock and provide for this in their rules would be such that it would be appropriate for it to be set out in secondary, not primary legislation. The regulations would include provisions on matters such as prescribing the assets; the purposes and circumstances for which the assets can be used; how the locked in assets must be dealt with in certain circumstances and when the asset lock may cease to apply. The approach will also allow HMT to review and update the regulations should circumstances dictate (e.g., to provide clarity on the application of the regulations with respect to the future emergence of new relevant mutual entities).

Justification for the Procedure

8. HMT is proposing that the regulations are subject to the affirmative procedure which would allow for Parliamentary scrutiny over the HM Treasury's use of the delegated power.

HM Treasury

24 October 2022