CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES (ENVIRONMENTALLY SUSTAINABLE INVESTMENT) BILL
EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Co-operative and Community Benefit Societies (Environmentally Sustainable Investment) Bill as introduced in the House of Commons on 5 February 2020 (Bill 12).

- These Explanatory Notes have been produced by the Public Bill Office on behalf of Anna McMorrin MP in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes are intended to be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The purpose of this Bill is to enable co-operatives and community benefit societies to issue "green shares" to raise external finance for the purposes of making environmentally sustainable investment. Such shares would be transferable but not withdrawable. This contrasts with the traditional form of capital investment in such societies, which can be withdrawn but not traded between buyers and sellers.[1]

2 The Bill also makes provisions seeking to maintain the integrity of mutual status for societies that issue green shares. These include restrictions on voting rights, conversion to company status and the distribution of capital on the winding up of a society.

Policy background

3 Co-operatives are "autonomous associations of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise".[2] To be registered as a co-operative in Great Britain, a society must not conduct its work "with the object of making profits mainly for the payment of interest, dividends or bonuses".[3]

4 A community benefit society is another form of mutual organisation. Whereas co-operative societies serve the interests of their members, a community benefit society aims to serve the broader interests of the community.

5 Limitations on the ability to raise external capital in a way that is consistent with the founding principles of co-operatives and community benefit societies has been identified as a constraint on their growth.[4]

6 In its May 2019 report, *Net zero: the UK's contribution to stopping global warming*, the Committee on Climate Change emphasised the importance of providing an "attractive investment environment" for green investment in achieving net zero greenhouse gas emissions:

> Government success in providing clear and stable mechanisms that attract sufficient volumes of low-cost capital will be key to the overall success in reaching a net-zero GHG target […]

The Committee found that the UK was "well-placed" to lead internationally on developing products to finance low-carbon investment.[5]

Legal background

7 The Co-operative and Community Benefit Societies Act 2014 ("the 2014 Act") consolidated existing law in the area. The Financial Conduct Authority is the registering authority for both co-operatives

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[1] See, for example, Mutuo, 2020, *Who Owns Europe?* Foundation for European Progressive Studies
[2] International Cooperative Alliance Statement on the Co-operative Identity
[3] Co-operative and Community Benefit Societies Act 2014, section 2(3)
[4] See, for example, Plurality, Stewardship & Engagement: The Report of the Ownership Commission, Mutuo, March 2012
[5] Committee on Climate Change, *Net Zero – The UK's contribution to stopping global warming*, May 2019. See, in particular, pages 118, 180, and 237.

and community benefit societies (hereafter referred to jointly as "registered societies") in Great Britain.[6]

Territorial extent and application

8 "Extent" means the jurisdictions in which the Bill would form part of the law. "Application" means where the provisions of the Bill would produce a practical effect. The Bill both extends and applies to England and Wales and Scotland, in line with the relevant provisions of the 2014 Act.

9 There is a convention that Westminster will not normally legislate on matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament or the National Assembly for Wales, so no legislative consent motion is being sought in relation to any provision of the Bill.

Commentary on provisions of Bill

Clause 1: Green shares

10 Clause 1 inserts several new provisions into the 2014 Act.

11 Clause 1(2) amends section 27 of the 2014 Act, which gives registered societies broad scope to invest funds. As capital may only be invested in green shares for the purpose of making environmentally sustainable investment, green shares are an exception to that broad scope.

12 Clause 1(3) inserts new sections 27A, 27B and 27C, which establish green shares, in the 2014 Act.

13 New section 27A introduces green shares. Subsections (4) and (5) define "environmentally sustainable" in relation to environmental sustainability goals. The goals are based on the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015. Subsection (6) allows the Treasury to amend the definition of "environmentally sustainable" by regulations.

14 New section 27B makes various provisions allowing societies to limit the use of green shares and restricting the powers of holders of green shares. These are intended to preserve the integrity of mutual status alongside injections of external capital. Subsection (6) allows the Treasury to make further provisions about green shares by regulations.

15 New section 27C offers general protections against unintended consequences of the Bill in relation to tax and fraud loopholes. Subsection (2) allows the Treasury to make regulations to address such concerns, while subsection (3) allows the Treasury to establish pilot schemes to test for potential unintended consequences. Subsection (4) provides that the regulations may not impose a charge upon the people.[7]

16 Clause 1(4) inserts a new section 29A in the 2014 Act requiring the Treasury to make regulations about the distribution of capital surpluses in registered societies with a green share. Under section (1)(a) those regulations must enable registered societies to choose to permanently prohibit the

[6] The Financial Conduct Authority is also the registering authority for co-operatives and community benefit societies in Northern Ireland under the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016.

[7] See Erskine May, *Parliamentary Practice*, 25th edition, paras 28.15 and 36.3

distribution of a surplus. Under subsections (1)(b) and (2), the regulations must provide that, on the solvent winding up or conversion to a company of a society, a capital surplus may only be distributed to another corporate body if it only allows shares to be redeemed at par value.

17 Clauses 1(5) and (6) make minor amendments to the 2014 Act in preparation for the new section 114A. Clause 1(7) inserts new sections 114A and 114B in the 2014 Act.

18 New section 114A requires the Treasury make regulations allowing a society with a green share to create rules prohibiting its conversion into, or amalgamation with, a company (under section 112 of the 2014 Act), either on its registration as a society or by passing a special resolution (under section 113 of the 2014 Act).

19 New section 114B enables the Treasury, by regulations, to apply Part 18 of the Companies Act 2006 to registered societies with a green share. Part 18 of the Companies Act 2006 establishes a general rule against a limited company acquiring its own shares and exceptions to that general rule.

20 Clause 1(8) adds all regulations under Clause 1 of the Bill to the list in the 2014 Act subject to the affirmative procedure. That means any such regulations could not be made unless they had been approved by resolutions of both Houses of Parliament.

Commencement

21 Clause 2(3) enables the Treasury to bring the substantive provisions of the Bill into force by commencement regulations (not requiring further Parliamentary authority) and provides that different provisions of the Bill may come into force at different times. Clause 2 comes into force on the day the Bill is given Royal Assent.

Financial implications

22 The Bill does require a Money or Ways and Means Resolution because it does not create any new charges on the public purse or the people respectively.

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Ordered by the House of Commons to be printed, 5 February 2020.

PUBLISHED BY AUTHORITY OF HOUSE OF COMMONS