



**AN BILLE UM CHUMAINN TIONSCAIL AGUS SOLATHAIR
(LEASU), 1978**

**INDUSTRIAL AND PROVIDENT SOCIETIES (AMENDMENT)
BILL, 1978**

EXPLANATORY MEMORANDUM

General

The purpose of the Bill is three fold:

- (i) to preclude industrial and provident societies from carrying on the business of deposit-taking and to introduce controls which may be applied to certain existing deposit-taking societies during a five year period following which they must cease such business,
- (ii) to provide a legislative base for the introduction of a system of inspection for credit unions,
- (iii) to amend certain aspects of existing law relating to all industrial and provident societies and to extend the power of the Minister to exempt bodies corporate from the scope of the Moneylenders Acts, 1900 and 1933.

The law relating to industrial and provident societies (more commonly referred to as co-operatives) is embodied in the Industrial and Provident Societies Acts, 1893 to 1971, the Principal Act being that of 1893. Minor amendments were made in 1894, 1895, 1913, 1936 and 1971. Industrial and provident societies may be formed "for carrying on any industry, trade or business". They are corporate bodies with the liability of members limited to the value of the shares they hold in the society. The maximum individual shareholding at present stands at £3,000.

Credit unions registered by virtue of the Credit Union Act, 1966, are industrial and provident societies. The 1966 Act represents the only major amendment to the Principal Act.

PART I

PRELIMINARY AND GENERAL

Part I, *Sections 1* to 3, contains the usual provisions regarding citation, interpretations and expenses under the Bill.

PART II

INDUSTRIAL AND PROVIDENT SOCIETIES

Sections 4 to 19 inclusive contain the provisions dealing mainly with the operations of deposit-taking societies and with the regulatory and supervisory powers being vested in the Registrar of Friendly Societies.

Section 4 provides that this Part does not apply to an agricultural co-operative society, a fishing co-operative society, a credit union or a limited number of societies which are largely analogous to the latter.

Section 5 provides that a society incorporated after 4th October, 1978, shall not accept deposits. It also provides that an existing society

which had not accepted deposits or which had accepted or held deposits which on that date amounted to less than £25,000 shall not accept any more deposits. Existing societies which held deposits of more than £25,000 on 4th October, 1978, cannot accept nor hold deposits after a period of five years from the passing of the Bill. This period is, however, extensible by Ministerial regulation.

Section 6 provides that a society cannot raise funds without the written permission of the Registrar. This does not apply to funds raised by way of (a) a bank loan (b) subscriptions for shares where the aggregate amount being raised in this way does not exceed £10,000 in any six month period and (c) the acceptance of deposits by a society to which, by virtue of *Section 9*, *Section 10* applies. (*Section 10* will permit the separate and extensive regulation of the latter activity). Permission under this section may relate to a specified class or classes of society denoted by reference to such matters as the Registrar thinks fit.

Section 7 refers to societies which on 4th October, 1978, had deposits not exceeding £25,000. The Section requires such a society to submit for the Registrar's approval, not later than three months after the passing of the Bill, a scheme for the repayment to depositors of any money deposited by them with a society.

Section 8 gives the Registrar extensive control over advertising by societies. The Registrar's permission is necessary in any case where a society wishes to advertise for funds or deposits.

Section 9 applies *Sections 10 to 18* to all societies which were incorporated before 4th October, 1978 and which had accepted and held deposits which on that date exceeded £25,000.

Section 10 provides that where the Registrar is of the opinion that it is in the interests of the public or of creditors to do so, he may regulate the acceptance and holding of deposits or the making of loans by societies. In exercising this power, the Registrar may give a direction in relation to, inter alia, the maintenance of ratios between assets and liabilities, and any other financial matters he thinks appropriate, including the maintenance by a society of adequate paid-up share capital.

Section 11 empowers the Registrar to appoint an authorised person to inspect books and other documents relating to the business of a society, to make copies of, or take extracts from, such documents; and also to inspect the books, etc., of any other society or body corporate associated with the first-mentioned society.

Section 12 provides that the Registrar may require that a society furnish him with such information and returns as he may specify from time to time. This provision is on the lines of *Section 18 (1)* of the Central Bank Act, 1971.

Section 13 empowers the Registrar, in certain circumstances, to appoint an inspector to investigate the affairs of a society or of any other society or body corporate associated with the first-mentioned society. The Registrar may act under this Section if he considers it expedient to do so in the interests of the public or of creditors of a society or of the orderly and proper regulation of a society's business. The Section empowers the inspector to examine, on oath, officers, members, agents and servants of the society. It also provides that the inspector shall report to the Registrar.

Section 14 contains provisions supplemental to *Section 13*. For example, it provides that it shall be the duty of all officers, members, agents and servants of the society to produce to the inspector concerned the books or documents in their custody and to give him all the assistance they can reasonably give. The Registrar shall send a copy of the inspector's report to the Minister and may have the report published. The provisions contained in this Section correspond,

in the main, with those in Section 30 of the Building Societies Act, 1976.

Section 15 provides that if, following an inspection of books or an investigation of affairs of a society, the Registrar is of the opinion that it is necessary to do so in the interests of the orderly and proper regulation of the society's business, he may appoint a person to be a member of the committee of management of the society. In so doing, however, the Registrar would have to have regard to the compliance or otherwise by the society with any provision of the Bill, or to any financial transactions which have been or are being undertaken by the society and which, in the Registrar's opinion, are, or are likely to be, prejudicial to the interests of the public or of creditors of the society. The appointee is required to report to the Registrar.

Sections 16 and 17 empower the Registrar to suspend the acceptance of deposits or funds or the making of payments not authorised by him if, in his opinion, the society has contravened a direction under Section 10 or is unable to meet its obligations to creditors, or it is expedient in the interests of the public. Such a direction will not, however, prohibit the borrowing by the society of money from a bank or an officer of the society if the Registrar so consents in writing. The Registrar may, if he thinks fit, cause to be published a notice of a direction under this Section. Where the Registrar applies to the Court for an order confirming or extending the period of operation of a direction under Section 16, the society shall be deemed for the purposes of Section 19 to be unable to pay its debts. A society may apply to the Court for an order setting aside a direction. It is also provided that the whole or part of any such proceedings or of an appeal in relation thereto may be heard in chambers.

Section 18 provides that where a society makes loans, raises funds or accepts money on deposit in contravention of directions given in these areas by the Registrar, the officers or servants of the society who authorised the transactions involved shall be jointly and severally liable for any resultant loss occasioned to the society or investors.

Section 19 provides that a society to which Part II applies may only be wound up under Part VI of the Companies Act, 1963, subject to any necessary modifications. Part VI of the 1963 Act provides that a company may be wound up (a) by the Court, (b) by voluntary winding up by the members or (c) by voluntary winding up by creditors. Section 213 of that Act sets out the circumstances in which a company may be wound up by the Court, and because some of these would not be appropriate to a society, Section 19 modifies Section 213 of the 1963 Act appropriately. For example, one ground on which a society may be wound up by the Court under this Section is where it has, after notice from the Registrar, contravened a provision of the *Industrial and Provident Societies Acts, 1893 to 1978*, or a direction or permission given by the Registrar under these Acts. The Registrar is enabled under the Section to petition the Court for an order to wind up.

PART III

CREDIT UNIONS

For the purposes of this Part, "credit unions" includes societies to which, by virtue of Section 3 (4) of the Credit Union Act, 1966, Section 3 (3) of that Act does not apply.

Sections 21 to 27 give the Registrar of Friendly Societies powers to have the books of credit unions inspected and, in certain circumstances, their affairs investigated, to call a special meeting of a credit union, to appoint a person as a director of a credit union and to direct that the acceptance of deposits, loans or shares and the making of payments by a credit union be suspended.

PART IV

MISCELLANEOUS

This Part relates to all registered societies, including agricultural and fishing co-operatives and credit unions. In the main, the Part amends some outdated provisions of the Principal Act.

Section 28 creates offences and provides for penalties for contravention of the Act.

Section 29 provides that every society shall keep proper books of account which give a true and fair view of the state of the society's affairs. The section is on the lines of Section 59 of the Building Societies Act, 1976, and Section 147 of the Companies Act, 1963.

Section 30 provides that the committee of management shall lay before the annual general meeting of a society an income and expenditure account and a balance sheet covering the previous financial year and incorporating the true and fair view. The requirements now proposed are on the lines of Section 60 of the Building Societies Act, 1976, and Section 148 of the Companies Act, 1963. The Section also enables the Registrar to prescribe the form and content of the income and expenditure account and balance sheet.

Section 31 provides that a person who is bankrupt and whose bankruptcy still subsists, or who has been convicted on indictment of any offence involving fraud or dishonesty, shall not establish a society, act as a committee member or be directly or indirectly concerned in the management of a society. Where a founder, committee member or manager becomes ineligible under this Section, he must forthwith cease to hold office. The Section is based on Section 42 of the Building Societies Act, 1976, and Section 183 of the Companies Act, 1963.

Section 32 provides that no society, other than a credit union within the meaning of *Section 20*, shall issue withdrawable shares.

Section 33 provides that the Minister will be empowered, by regulation, to alter financial limits on the operations of societies by reference to a specified class or classes of society. The present position is that the Minister may, by regulation, under Section 35 of the Credit Union Act, 1966, raise the limits concerned without differentiating as between classes of societies.

Section 34 provides that the Registrar of Friendly Societies may cancel the registry of a society where it has been wound up by the High Court, where the society has ceased to function, or where it has suspended its business for at least six months. These powers of cancellation are additional to those already held by the Registrar under Section 9 of the Principal Act.

Section 35 provides that societies shall make such amendments to their rules as may be necessary as a consequence of this Bill. An offence is created where this is not done within six months after the passing of the Bill.

Section 36 amends the Money-lenders Act, 1900, to provide that the Minister may declare, by order, that the Moneylenders Acts, 1900 and 1933, do not apply to a specified class or classes of industrial and provident society. Such order may relate to any specified period and may be amended or revoked by the Minister.

*An Roinn Tionscail, Tráchtála agus Fuinnimh,
Deireadh Fómhair, 1978.*