



Number 15 of 1997

CREDIT UNION ACT, 1997

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[No. 15.] *Credit Union Act, 1997.* [1997.]

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Bills of Sale (Ireland) Acts, 1879 and 1883	
Building Societies Act, 1989	1989, No. 17
Central Bank Act, 1971	1971, No. 24
Central Bank Acts, 1942 to 1997	
Companies Act, 1963	1963, No. 33
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Consumer Credit Act, 1995	1995, No. 24
Credit Union Act, 1966	1966, No. 19
Friendly Societies Acts, 1896 to 1977	
Industrial and Provident Societies (Amendment) Act, 1978	1978, No. 23
Industrial and Provident Societies Acts, 1893 to 1978	
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict. c.93
Powers of Attorney Act, 1996	1996, No. 12
Statute of Limitations, 1957	1957, No. 6
Statutory Instruments Act, 1947	1947, No. 44



Number 15 of 1997

CREDIT UNION ACT, 1997

AN ACT TO MAKE NEW PROVISION IN RELATION TO
CREDIT UNIONS AND FOR CONNECTED PURPOSES.

[3rd May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

Short title and
commencement.

1.—(1) This Act may be cited as the Credit Union Act, 1997.

(2) This Act shall come into operation on such day or days as may be fixed by order made by the Minister; and different days may be so fixed for different provisions and for different purposes.

(3) Without prejudice to the generality of *subsection (2)*, an order under that subsection may make different provision in relation to credit unions registered before the passing of this Act as compared with those registered later.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“Act of 1966” means the Credit Union Act, 1966;

“Advisory Committee” means the committee established under *section 180*;

“amendment”, in relation to the rules of a credit union, includes a new rule, and a resolution rescinding a rule, of the credit union;

“annual accounts” has the meaning given by *section 111 (6)*;

“the annual general meeting” has the meaning given by *section 78 (1)*;

“annual return” means the annual return which a credit union is required by *section 124* to send to the Registrar;

“board of directors” means the committee of management or other directing body of a credit union;

“books and documents” includes accounts and records made in any manner, and “books or documents” shall be construed accordingly;

“common bond” means a common bond falling within *section 6 (3)*;

“the Companies Acts” means the Companies Acts, 1963 to 1990, together with any enactment which is to be construed as one with those Acts;

“contravention” includes failure to comply;

“the Court” means the High Court;

“credit institution” means—

- (a) a recognised bank within the meaning of the Central Bank Acts, 1942 to 1997,
- (b) a trustee savings bank,
- (c) the Post Office Savings Bank, or
- (d) a building society within the meaning of the Building Societies Act, 1989;

“credit union” means a society registered as such under this Act, including a society deemed to be so registered by virtue of *section 5 (3)*;

“debentures” means any debentures, debenture stock or bonds of a credit union, whether constituting a charge on the assets of the credit union or not;

“general meeting” means an annual general meeting or a special general meeting;

“meeting”, includes, where the registered rules of a credit union so allow, a meeting of delegates appointed by members;

“member of the family”, in relation to any person, means that person’s parent, grandfather, grandmother, father-in-law, mother-in-law, husband, wife, son, daughter, grandson, granddaughter, brother, sister, half-brother, half-sister, uncle, aunt, nephew, niece, first cousin, son-in-law, daughter-in-law, brother-in-law or sister-in-law;

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

“non-qualifying member”, in relation to a credit union, has the meaning given by *section 17 (4)*;

“officer”, in relation to a credit union, includes a chairman (or president), vice-chairman (or vice-president), treasurer, secretary, a member of the board of directors or of a principal Committee or Supervisory Committee, employee, credit officer or credit control officer, but does not include an auditor appointed by the credit union in accordance with the requirements of this Act;

“the organisation meeting” has the meaning given by *section 77 (1)*;

“pass book” includes any type of written statement of account;

“principal Committee” in relation to a credit union, means a credit committee, credit control committee, membership committee;

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“persons claiming through a member” includes the executors or administrators and assignees of a member and, where nomination is allowed, his nominee; Pt.I S.2

“prescribed” means prescribed by regulations made by the Minister and “prescribe” shall be construed accordingly;

“the register” means the register maintained under *section 8 (5)*;

“registered” means for the time being entered in the register and “registration” shall be construed accordingly;

“Registrar” means the Registrar of Friendly Societies;

“regulations” means regulations made by the Minister under this Act;

“regulatory directions” has the meaning given by *section 87 (3)*;

“savings” includes shares and deposits (if any);

“savings protection scheme” has the meaning given by *section 46 (2)*;

“share” means, in relation to a credit union, each sum of one pound standing to the credit of a member of that credit union in the register of members required by this Act to be kept by that credit union;

“special general meeting” shall be construed in accordance with *section 79*;

“special resolution” means a resolution which—

(a) is passed by a majority of not less than three quarters of such members of a credit union for the time being entitled under the rules to vote as may have voted in person at any general meeting of which notice, specifying the intention to propose the resolution, has been duly given according to the rules, and

(b) is confirmed by a majority of such members for the time being entitled under the rules to vote as may have voted in person at a subsequent general meeting of which notice has been duly given held not less than 14 days and not more than 28 days from the day of the meeting at which the resolution was first passed;

“Supervisory Committee” has the meaning given it by *section 58 (1)*;

“surplus funds” shall be construed in accordance with *section 45 (2)*;

“voluntary assistant”, in relation to a credit union, means a member of the credit union who, although not an officer of the credit union, is engaged in any way (but without remuneration) in the operation of the credit union.

(2) Any reference in this Act to a member present at a meeting means, in the case of a member which is not a natural person, being represented at the meeting by a representative, as mentioned in *section 82 (4)*.

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(3) In this Act a reference to a Part, section or Schedule is to a Part, section or Schedule of or to this Act, unless it is indicated that reference to some other enactment is intended.

(4) In this Act a reference to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(5) In this Act a reference to an enactment includes a reference to that enactment as amended by or under any enactment, including this Act.

Orders and regulations.

3.—(1) Any power under this Act to make an order includes power to amend or revoke an order made in the exercise of that power.

(2) Every order or regulation made under this Act, other than an order under *section 1 (2)*, shall be laid before each House of the Oireachtas as soon as practicable after it is made; and, if a resolution annulling the order or regulation is passed by either such House within the next twenty-one days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) Except in so far as any provision of this Act otherwise provides, any power conferred by this Act on the Registrar to give directions shall be exercisable by rules and for the purposes of section 2 of the Statutory Instruments Act, 1947, any rules made by the Registrar under this Act shall be taken to be of a character which affects a class of the public.

(4) Any order, regulation, direction or rules made under this Act—

(a) may contain such consequential, supplementary and ancillary provisions as the Minister or, as the case may be, the Registrar considers necessary or expedient; and

(b) may make different provision for different cases or descriptions of cases.

Expenses.

4.—Any expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeals and transition from the former law.

5.—(1) The following enactments are hereby repealed—

(a) the Act of 1966; and

(b) Part III of the Industrial and Provident Societies (Amendment) Act, 1978.

(2) After the commencement of this subsection, a society may not become registered as a credit union except under this Act.

(3) A society which, immediately before the commencement of this subsection, was registered as a credit union under the Industrial and Provident Societies Acts, 1893 to 1978, shall, at that commencement, be deemed to be registered as a credit union under this Act and, accordingly—

- (a) after that commencement, no provision of those Acts shall apply to a credit union; and
- (b) except in so far as the rules of a credit union which is deemed to be so registered are contrary to any provision of this Act, those rules, as in existence immediately before the commencement of this subsection, shall be regarded as its registered rules at that commencement.

(4) Subject to *subsection (5)*, if at any time the Registrar is satisfied that a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, or the Friendly Societies Acts, 1896 to 1977, is carrying on its affairs in such a way that its objects are wholly or substantially those of a credit union, he may, notwithstanding anything in those Acts, direct the society, within a period specified in the direction—

- (a) to cease all its activities or some activities specified in the direction; or
- (b) to wind up its affairs; or
- (c) to register by virtue of this Act as a credit union;

and a society to which such a direction is given shall comply with it within the specified period.

(5) *Subsection (4)* does not apply to a society—

- (a) which was registered under the Industrial and Provident Societies Acts, 1893 to 1936, between 24th January 1962 and 31st August 1966; and
- (b) the objects of which have at all times been wholly or substantially those of a credit union.

(6) After the commencement of this subsection, a society the objects or proposed objects of which are wholly or substantially those specified in *section 6 (2)* may not be registered under the Industrial and Provident Societies Acts, 1893 to 1978.

(7) *Section 3 (3)* shall not apply to directions under *subsection (4)*.

PART II

REGISTRATION AND MEMBERSHIP

Registration

6.—(1) A society may be registered under this Act as a credit union if the Registrar is satisfied that each of the following conditions is fulfilled—

Conditions for registration as a credit union.

- (a) the society is formed for the objects specified in *paragraphs (a) to (c) of subsection (2)* and for no other purposes

beyond those specified in *paragraphs (d) to (g)* of that subsection;

- (b) admission to membership of the society is restricted to persons each of whom has, in relation to all the other members, at least one of the common bonds specified in *subsection (3)*;
 - (c) it has at least 15 members who are of full age;
 - (d) its rules comply with *section 13*;
 - (e) the place which under those rules is, or is to be, the society's registered office is in the State;
 - (f) if registered, it will participate in a savings protection scheme approved under *section 46 (1)*; and
 - (g) it has in force (or will have in force if registered) such a policy of insurance as is required by *section 47*.
- (2) The objects referred to in *subsection (1)(a)* are—
- (a) the promotion of thrift among its members by the accumulation of their savings;
 - (b) the creation of sources of credit for the mutual benefit of its members at a fair and reasonable rate of interest;
 - (c) the use and control of members' savings for their mutual benefit;
 - (d) the training and education of its members in the wise use of money;
 - (e) the education of its members in their economic, social and cultural well-being as members of the community;
 - (f) the improvement of the well-being and spirit of the members' community; and
 - (g) subject to *section 48*, the provision to its members of such additional services as are for their mutual benefit.
- (3) The common bonds referred to in *subsection (1)(b)* are—
- (a) following a particular occupation;
 - (b) residing or being employed in a particular locality;
 - (c) being employed by a particular employer or having retired from employment with a particular employer;
 - (d) being a member of a *bona fide* organisation or being otherwise associated with other members of the society for a purpose other than that of forming a society to be registered as a credit union;
 - (e) any other common bond approved by the Registrar.

(4) In ascertaining whether a common bond exists between the members of a society, the Registrar—

(a) shall have regard to the qualifications which are stated in the rules to be required for admission to membership of the society, and

(b) may, if he considers it proper in the circumstances of the case, treat the fact that admission to membership is restricted as mentioned in *subsection (1)(b)* as sufficient evidence of the existence of a common bond.

(5) For the purposes of this Act, if the rules of a credit union so provide, a person shall be treated as having the qualification required for admission to membership stated in those rules if he is a member of the same household as, and is a member of the family of, another person who is a member of the credit union and who has a direct common bond with those other members.

7.—(1) An application for the registration of a society as a credit union shall be made to the Registrar and shall be signed by 15 members of the society, all of whom have the same common bond and one of whom shall be the secretary.

Application for registration as a credit union.

(2) An application under *subsection (1)* shall be accompanied by two printed copies of the society's rules.

8.—(1) If the Registrar is satisfied that a society which has made an application for registration as a credit union has complied with the provisions of this Act as to such registration, the Registrar shall issue to the society, as a credit union, an acknowledgement of registration assigning it a registered number.

Acknowledgement or refusal of registration.

(2) Unless the contrary is shown, an acknowledgement of registration issued under *subsection (1)* shall be sufficient evidence that the society concerned is registered as a credit union.

(3) If the Registrar refuses to register as a credit union a society which has made an application for registration, he shall notify the society accordingly and, if the society is aggrieved by the Registrar's decision, it may apply to the Court for a review of that decision.

(4) If, on an application under *subsection (3)*, the Court considers that the decision of the Registrar should not be confirmed, the Court may give such directions as it thinks appropriate (whether to the Registrar or otherwise) for the purpose of resolving the matter.

(5) The Registrar shall enter the name of every credit union in a register maintained for the purposes of this Act (being a continuation of the register kept for the purposes of the Act of 1966).

9.—(1) By virtue of its registration, a credit union shall be a body corporate known by its registered name (by which it may sue and be sued) with perpetual succession, a common seal and limited liability.

Effect of registration.

(2) The registration of a credit union shall vest in the credit union all property for the time being vested in any person in trust for the credit union and all proceedings pending by or against the trustees of the credit union may be brought or continued by or against the credit union in its registered name.

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(3) Legal proceedings in respect of any contract or other transaction—

(a) entered into by an unincorporated society before the date on which it becomes a credit union, or

(b) purporting to be entered into by such a society or by any person on its behalf before that date,

may, on or after that date, be brought by or against the credit union, subject to the Statute of Limitations, 1957, as if it had been registered as a credit union at the date of the contract or other transaction.

Registered name.

10.—(1) The words “credit union” or “comhar creidmheasa” shall be included in the name of every credit union.

(2) The name of every credit union shall end with the word “Limited” or “Teoranta” which may be abbreviated to “Ltd.” or “Teo.” respectively.

(3) A credit union shall not use any name or title other than its registered name.

(4) A society shall not be registered—

(a) under a name which includes the word “bank”, “banker” or “banking” or any other word which is a translation, variant or derivative of any of those words, or

(b) under any other name which, in the opinion of the Registrar, is undesirable.

(5) A society shall not be registered under a name identical with that of an existing credit union or so nearly resembling such a name as to be likely to mislead members of the public as to its identity.

(6) As soon as practicable, every credit union shall cause its registered name to be painted or affixed, and to be kept painted or affixed, in a conspicuous position and in letters easily legible, on the outside of its registered office and every other office or place in which the business of the credit union is carried on, and shall have that name engraved in legible characters on its seal and set out in legible characters—

(a) in all notices, advertisements and other official publications of the credit union;

(b) in all business letters of the credit union;

(c) in all bills of exchange, promissory notes, endorsements, cheques, orders for money or goods and other instruments purporting to be signed by or on behalf of the credit union; and

(d) in all bills, invoices, receipts, and letters of credit of the credit union.

Change of registered name.

11.—(1) A credit union may not change its name except in accordance with this section.

(2) A credit union may change its name—

(a) by a resolution for the purpose passed at a general meeting Pr.II S.11
of the credit union after the giving of such notice as is
required by the rules of the credit union for such a resolu-
tion or, if the rules do not make special provision as to
notice of such resolution, after the giving of such notice
as is required by the rules for a resolution to amend the
rules; and

(b) with the prior approval in writing of the Registrar.

(3) If the Registrar declines to give his approval under *subsection (2)(b)*, the credit union may apply to the Court for a review of the Registrar's decision; and *subsection (4) of section 8* shall apply to such an application as it applies to an application under *subsection (3) of that section*.

(4) A change in the name of a credit union shall not affect any right or obligation of the credit union, or of any member thereof, and any pending legal proceedings may be continued by or against the credit union notwithstanding its new name.

(5) Where, in the opinion of the Registrar, a credit union is (through inadvertence or otherwise) for the time being registered under a name which is undesirable, the Registrar—

(a) within one year of its being registered under that name, or

(b) in the case of a society deemed to be registered under this Act by virtue of *section 5 (3)*, within one year from the commencement of this section,

may direct the credit union to change its name to a name approved by the Registrar.

(6) A credit union shall comply with a direction given to it under *subsection (5)*.

(7) Where a credit union changes its name under this section, the Registrar—

(a) shall enter the new name in the register in place of the former registered name; and

(b) shall issue to the credit union an acknowledgement of registration, altered to meet the circumstances of the case.

(8) *Section 3 (3)* shall not apply to a direction under *subsection (5)*.

12.—(1) The seal of a credit union shall be used only under the authority of a resolution of the board of directors and shall be attested by the signatures of two directors of the credit union and the countersignature of the secretary for the time being. Protection of use of seal and registered name of credit union.

(2) Any officer of a credit union, or any other person acting on a credit union's behalf, who—

(a) uses any seal purporting to be a seal of the credit union which does not have the credit union's registered name engraved on it in legible characters, or

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(b) issues or authorises the issue of any document such as is mentioned in *paragraph (a), paragraph (b) or paragraph (d) of subsection (6) of section 10* in which that name is not set out in legible characters, or

(c) signs or authorises to be signed on behalf of the credit union any document such as is mentioned in *paragraph (c) of that subsection* in which that name is not so set out,

shall be guilty of an offence.

(3) Subject to *subsection (4)*, any person, other than a credit union, who—

(a) uses in reference to himself, a name, title or descriptive expression containing the words “credit union” or “comhar creidmheasa” or any cognate term or any derivative of those words, or

(b) represents himself as being a credit union,

shall be guilty of an offence.

(4) *Subsection (3)* does not apply to—

(a) the use by an officer of a title or descriptive expression indicating his office or post with the credit union; or

(b) the use of the term “Irish League of Credit Unions” by the unincorporated association having that name immediately before the passing of this Act; or

(c) the use with reference to an association or group of credit unions of a name which has been approved in writing by the Registrar.

Rules

Rules.

13.—(1) The rules of a credit union shall be in such form as the Registrar may determine and shall contain—

(a) provisions with respect to the matters in the *First Schedule*; and

(b) such additional provisions as the Registrar may determine, after consultation with the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions.

(2) The rules of a credit union may specify the form of any instrument necessary for carrying the purposes of the credit union into effect.

(3) An acknowledgement of registration issued to a credit union under this Part shall constitute an acknowledgement, and, unless the contrary is proved, be sufficient evidence of the registration of the rules of that credit union in force at the date of the acknowledgement of the registration of the credit union.

Amendment of registered rules.

14.—(1) The rules of a credit union shall not be amended except by a resolution passed by not less than two-thirds of the members of

the credit union present and voting at an annual general meeting or at a special general meeting called for the purpose of considering a resolution proposing an amendment of the rules. Pr.II S.14

(2) An amendment of the registered rules of a credit union shall not be valid until the amendment has been registered under this Act, for which purpose two copies of the amendment, signed by four members, one of whom shall be the secretary and another a director, shall be sent to the Registrar.

(3) *Subsection (2)* shall not apply to a change in the name of a credit union, but, where a change in the name of a credit union is made in accordance with *section 11*, the change in the credit union's name shall be registered by the Registrar as an amendment of the credit union's rules.

(4) On being satisfied that an amendment of a credit union's rules sent to him under *subsection (2)* is not contrary to the provisions of this Act, the Registrar shall issue to the credit union, within three months of his receipt of the amendment, an acknowledgement of registration which, unless the contrary is proved, shall be sufficient evidence that the amendment is duly registered.

(5) If the Registrar is not satisfied as mentioned in *subsection (4)* with respect to an amendment of a credit union's rules sent to him under *subsection (2)*—

(a) the Registrar shall issue to the credit union, within three months of his receipt of the amendment, a notice of his refusal to register the amendment, specifying the grounds for the refusal; and

(b) the credit union may apply to the Court for a review of the Registrar's decision;

and *subsection (4)* of *section 8* shall apply to an application under *paragraph (b)* as it applies to an application under *subsection (3)* of that section.

(6) Notwithstanding anything in the rules of a credit union, the board of directors may, by resolution passed during the transitional period, make such amendments of the rules of the credit union as may be consequential on the provisions of this Act.

(7) For the purposes of *subsection (6)*, the transitional period is the period of one year from the commencement of this section or such longer period as may be determined by the Registrar.

(8) Notwithstanding anything in *subsection (4)*, after the expiry of one year from the commencement of this section, the Registrar shall not be required to register any amendment of a credit union's rules unless such consequential amendments of the registered rules as are mentioned in *subsection (6)* either—

(a) have been made before the Registrar receives the amendment; or

(b) are to be effected by the amendment.

15.—(1) Subject to *subsection (2)*, the registered rules of a credit union shall bind the credit union and all members of it and all persons claiming through them respectively to the same extent as if— Rules to bind members.

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(a) each member had subscribed his name and affixed his seal to those rules; and

(b) there were contained in those rules a covenant on the part of each member and any person claiming through him to conform to those rules subject to the provisions of this Act.

(2) A member of a credit union shall not, without his consent in writing having been first obtained, be bound by any amendment of the credit union's rules registered after he became a member, if and so far as that amendment—

(a) requires him to subscribe for more shares than the number held by him at the date of registration of the amendment; or

(b) requires him to pay upon the shares so held any sum exceeding the amount unpaid upon them at that date; or

(c) in any other way increases his liability to contribute to the share capital of the credit union.

Provision of copies of rules.

16.—(1) A copy of the rules of a credit union shall be supplied by the credit union to any person who demands it, on payment of such fee, not exceeding the permitted maximum, as may be determined by the credit union.

(2) The permitted maximum referred to in *subsection (1)* is £1 or such larger sum as may for the time being be prescribed.

Membership

Requirements of, and qualifications for, membership.

17.—(1) The minimum number of members of a credit union at any time shall be 15 except that, in the case of a credit union which—

(a) by virtue of *subsection (3) of section 5*, is at the commencement of that section deemed to be registered as a credit union, and

(b) has at that commencement a membership of not less than 7, but less than 15,

the minimum number of members at any time shall be the number of members on the register of the credit union at that commencement.

(2) Membership of a credit union shall be limited to, and consist of, the signatories to the application to register the society as a credit union and such other persons, having the common bond set out in the rules of the credit union, as have been duly admitted members of the credit union in accordance with the rules and comply with such of the rules as relate to membership.

(3) A person shall not be a member of a credit union unless he has at least one fully paid-up share in the credit union, but the rules of the credit union shall not require a person to have more than £10, or such larger sum as may be prescribed, in fully paid-up shares as a condition of membership.

(4) If a member of a credit union ceases to have the common bond required of members of that credit union, he may retain his

membership and voting rights, and continue saving; but any such member (in this Act referred to as a “non-qualifying member”) shall be left out of account in determining for any purpose whether a common bond exists between the members of the credit union. Pr.II S.17

(5) Subject to any provision to the contrary in the rules of a credit union, a person under the age of sixteen—

- (a) may be a member of the credit union, and
- (b) subject to *subsection (6)*, may enjoy all the rights of membership, other than voting rights, and can give all necessary receipts.

(6) Notwithstanding anything in *subsection (5)*, a member of a credit union who is under the age of sixteen may not be a member of the board of directors or of a principal Committee or an office manager of the credit union.

(7) Notwithstanding any other provision of this Act, a body (whether incorporated or unincorporated), the majority of the members of which are, and continue to be, eligible for membership of a credit union may itself be admitted to, and retain membership of, that credit union, with the same rights and obligations as a natural person.

(8) A member of a credit union shall not be excluded from membership by any amendment of the credit union’s rules registered after he became a member.

18.—(1) A person who applies for membership of a credit union in accordance with its rules and is refused membership may appeal against the refusal to a Judge of the District Court for the district in which the registered office of the credit union is situated. Appeal against refusal of membership.

(2) Notice of an appeal under this section shall be in writing and shall set out the grounds on which the appeal is based; and, on the hearing of the appeal, the District Court may either confirm the refusal of membership or direct the credit union to admit the appellant to membership.

(3) The decision of the District Court on an appeal under this section shall be final, except that any question of law arising on the appeal may be referred to the Court for its determination; and, by leave of the Court, an appeal shall lie to the Supreme Court from any such determination of the Court.

19.—(1) A member of a credit union may be expelled from the credit union by a resolution for his expulsion passed by not less than two-thirds of the members present and voting at a special general meeting called for the purpose, provided that the member concerned— Expulsion and withdrawal from credit union.

- (a) is given at least 21 days’ notice in writing of the meeting and the proposed resolution; and
- (b) is given a reasonable opportunity of being heard at the meeting.

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(2) A member who is expelled from a credit union may appeal against the expulsion to a Judge of the District Court for the district in which the registered office of the credit union is situated.

(3) Notice of an appeal under this section shall be in writing and shall set out the grounds on which the appeal is based; and, on the hearing of the appeal, the District Court may either confirm or cancel the expulsion.

(4) *Subsection (3) of section 18* shall apply to an appeal under this section as it applies to an appeal under that section.

(5) A member of a credit union may withdraw from membership of the credit union by giving notice in accordance with the rules of the credit union.

(6) Subject to *subsections (7) and (8)*, all moneys due in respect of withdrawable shares and deposits by a credit union to a member who withdraws or is expelled from the credit union shall be paid to him after deduction of all moneys due from him to the credit union; and the nominal value of non-withdrawable shares held by a member who is expelled (but not one who withdraws) may also be paid to him (after deduction of all moneys so due).

(7) Notwithstanding anything in its rules or in any contract, a credit union may, if it thinks fit, postpone payment of the whole or any part of the moneys to be paid as mentioned in *subsection (6)* until the end of the period of 60 days beginning on the date of the expulsion or withdrawal of the member concerned.

(8) No payment in respect of shares shall be made by a credit union to a withdrawing or expelled member while any claim due on account of deposits is unsatisfied and no payment of any description shall be made to such a member unless all his liabilities (including contingent liabilities) to the credit union, whether as borrower, guarantor or otherwise, have been fully discharged or otherwise fully provided for by a person other than the credit union.

(9) The withdrawal or expulsion of a member from a credit union shall not operate to relieve that member from any liability to the credit union which exists at the time of the withdrawal or expulsion.

Remedy for debts from members.

20.—(1) All money payable to a credit union by a member of it shall be recoverable summarily as a civil debt by the credit union from the member.

(2) A credit union shall have a lien on the shares, deposits, dividends and interest of any member for any debt due to the credit union from that member, and may set off any sum credited to the member on those shares, deposits, dividends and interest in or towards the payment of that debt.

Nomination of property in credit union.

21.—(1) Subject to *subsections (2) to (4)*, a member of a credit union who is of or over the age of sixteen may, by a written statement signed by him and—

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

(b) delivered at or sent to that office during his lifetime, Pr.II S.21

nominate a person or persons to become entitled at his death to the whole, or such part or parts as may be specified in the nomination, of any property in the credit union (whether in savings, loans, insurances or otherwise) which he may have at the time of his death.

(2) The nomination by a member of a credit union under *subsection (1)* of a person who is at the date of the nomination an officer of the credit union shall not be valid unless that person is a member of the nominator's family.

(3) For the purpose of the disposal of any property which is the subject of a nomination under *subsection (1)*, if at the date of the nominator's death the amount of his property in the credit union comprised in the nomination exceeds £10,000, the nomination shall be valid to the extent of £10,000 but not further or otherwise.

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

(5) Each credit union shall keep a record—

- (a) of the names of all persons nominated by its members under *subsection (1)* and such other details as will positively identify the nominees; and
- (b) of all revocations or variations (if any) of nominations under that subsection.

(6) The marriage of a member of a credit union shall operate as a revocation of any nomination made by him under *subsection (1)* before his marriage, but if, in ignorance of a later marriage, an officer of the credit union transfers any property of that member in pursuance of such a 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 the property.

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

22.—(1) Subject to *subsection (2)*, where any member of a credit union has made a nomination under *section 21*, the board of directors, on receiving satisfactory proof of the death of that member, and if and to the extent that the nomination is valid under *subsection (1)* of that section, shall in the case of each person entitled under the nomination either transfer to him, or pay him the full value of, the property to which he is so entitled. Proceedings on death of nominator.

(2) Where any of the property comprised in a nomination under *section 21* consists of shares in the credit union, *subsection (1)* shall have effect notwithstanding that the rules of the credit union declare the shares in the credit union not to be transferable; but if the transfer of any shares comprised in the nomination in the manner directed by the nominator would raise the shareholding of any nominee beyond the maximum for the time being permitted in the case of that credit union, the board of directors—

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(a) shall not transfer to that nominee more of those shares than will raise his shareholding to that maximum; and

(b) shall pay him or transfer to his deposit account the value of any of those shares not transferred.

(3) Where any sum falls to be paid under *subsection (1)* or *subsection (2)* to a nominee under the age of sixteen years, the credit union may pay that sum to either parent, or to a guardian, of the nominee or to any other person of full age—

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

(b) whom the credit union may think a fit and proper person for the purpose;

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

Provision for small payments on death.

23.—(1) If a member of a credit union dies and, at his death, his property in the credit union (whether in savings, loans, insurance or otherwise)—

(a) does not in the whole exceed the maximum relevant for the purposes of this section, and

(b) is not the subject of a nomination under *section 21*,

the board of directors may, without letters of administration or probate of any will, distribute that property among such persons as appears to the board (on such evidence as they consider satisfactory) to be entitled by law to receive it.

(2) The maximum referred to in *subsection (1) (a)* is £5,000 or such greater amount as may be prescribed.

Payments in respect of mentally incapable persons.

24.—(1) This section applies where, in the case of a member of a credit union or a person claiming through such a member, the credit union's board of directors is satisfied—

(a) after considering medical evidence, that the member or other person is incapable by reason of a mental condition to manage and administer his own property; and

(b) that no person has been duly appointed to administer his property on his behalf, whether by a court, pursuant to Part II of the Powers of Attorney Act, 1996, or otherwise.

(2) If, in a case where this section applies, it is proved to the satisfaction of the board of directors that it is just and expedient to do so, the credit union may pay the amount of any property belonging to the member or other person (whether in the form of savings, loans, insurances or otherwise) to any person whom the board judges proper to receive it on his behalf and who furnishes to the board such a statement as is referred to in *subsection (3)*; and a receipt for that amount signed by such a person shall be a sufficient discharge to the credit union for any sum so paid.

(3) The statement mentioned in *subsection (2)* is one which certifies that the proposed recipient— Pr.II S.24

- (a) understands that it is his duty to apply the amount which is proposed to be paid in the best interests of the person to whom it belongs; and
- (b) is aware that he may incur civil or criminal liability if he misapplies the whole or any part of that amount; and
- (c) is not aware that any other person has authority to receive the whole or any part of that amount, whether by virtue of an order of a court, a power of attorney or otherwise.

25.—All payments or transfers made by the board of directors of a credit union under *section 23* or *section 24* to a person appearing to the board at the time of payment or transfer to be entitled under the section in question shall be valid and effectual against any demand made upon the board or credit union by any other person. Validity of payments to persons apparently entitled.

PART III

OPERATION OF CREDIT UNIONS

Business and raising of funds

26.—(1) A credit union shall not carry on any business or activity which is not appropriate or incidental to the objects for which, in accordance with *section 6*, it is formed. General principles.

(2) Subject to *subsection (1)*, a credit union may—

- (a) acquire property of any description permitted by or under this Act; and
- (b) do anything expedient for accomplishing, or conducive to or consequential upon, the objects for which the credit union is formed.

(3) Where any act or other thing is done by a credit union—

- (a) which it had no power to do, but
- (b) which, if it had been empowered to do, would have been lawfully and effectively done,

that act or thing shall be effective in favour of any person who, relying on that act or thing, dealt with the credit union in good faith.

(4) The Court may, on the application of a member or the Registrar restrain a credit union from doing any act or thing which it has no power to do.

(5) Without prejudice to *subsection (4)*, if a credit union knowingly contravenes *subsection (1)*, it shall be guilty of an offence.

27.—(1) Subject to the following provisions of this Part and any provision of its rules, a credit union may raise funds to be used for its objects— Raising of funds by shares and deposits.

(a) by the issue to its members of shares in the credit union (which may be withdrawable or non-withdrawable); and

(b) by the acceptance of money on deposit from a member whose shares, at the time of the deposit, have a value of not less than £1,000.

(2) Subject to any dispensation granted under *subsection (3)*, the aggregate liabilities of a credit union in respect of deposits from members shall not at any time exceed 75 per cent. of its aggregate liabilities in respect of shares issued to members; and if a credit union accepts a deposit which would have the effect of causing the limit in this subsection to be exceeded (or to be further exceeded) the credit union shall be guilty of an offence.

(3) If the Registrar considers it expedient to do so in the circumstances of a credit union, he may, on such terms as he thinks proper, grant to the credit union a dispensation from *subsection (2)*.

(4) Subject to *subsection (5)* and to any provision made by regulations, a member of a credit union—

(a) shall not hold on deposit with the credit union more than £20,000; and

(b) shall not have or claim an interest in shares in the credit union exceeding an amount which, when aggregated with the amount held by the member on deposit with the credit union, exceeds £50,000 or 1 per cent. of the total assets of the credit union, whichever is the greater.

(5) The Minister may from time to time by order increase the financial (including percentage) limits applicable under the preceding provisions of this section.

(6) Nothing in *subsection (1)(b)* shall render unlawful any deposit accepted before the commencement of this section; and nothing in *paragraph (a) of subsection (4)* shall render unlawful any deposit which is held by a member of a credit union immediately before that commencement and which exceeds the limit for the time being applicable under that paragraph.

Shares and deposits

Shares: general provisions.

28.—(1) All shares in a credit union shall be of £1 denomination and, subject to the rules of the credit union, may be subscribed for either in full or by periodical or other subscriptions, but no share shall be allotted to a member until it has been fully paid in cash.

(2) A credit union shall not issue to a member a certificate denoting ownership of a share.

(3) All withdrawable shares in a credit union shall have equal rights.

(4) All non-withdrawable shares in a credit union shall have equal rights, and repayments in respect of such shares shall not be capable of being made except as provided by this Act.

(5) Notwithstanding *subsection (1)*, whenever its board of directors so recommends, a credit union may apply any sum standing to the credit of its reserves (other than the statutory reserve) to the

payment up of shares, and may issue the shares to members as fully paid-up bonus shares in the proportions to which the members would have been entitled if the sum concerned had been distributed by way of dividend. Pr.III S.28

29.—(1) A member of a credit union may transfer a share in the credit union to another member so long as— Transfer of shares.

(a) the number of shares held by that other member does not exceed the limit imposed under this Act; and

(b) if the board of directors so require in any case, the transfer has the approval of the board.

(2) No charge shall be made by a credit union in respect of a transfer of shares by a member, and such a transfer shall entitle the transferee to any dividends in respect of the transferred shares which are unpaid at the date of the transfer.

(3) If, in a case where the board of directors of a credit union have imposed a requirement under *subsection (1)(b)*, the board refuses to approve the proposed transfer of shares in the credit union by a member, the member may appeal against the refusal to a Judge of the District Court for the district in which the registered office of the credit union is situated.

(4) Notice of appeal under *subsection (3)* shall be in writing and shall set out the grounds on which the appeal is based; and, on the hearing of the appeal, the District Court may either confirm the refusal or direct the board of directors to approve the transfer.

(5) A decision of the District Court on an appeal under *subsection (3)* shall be final, except that any question of law arising on the appeal may be referred to the Court for its determination; and, by leave of the Court, an appeal shall lie to the Supreme Court from every such determination.

30.—(1) At each annual general meeting of a credit union, a dividend on shares, not exceeding the permitted maximum, may be declared in respect of the preceding financial year by a resolution passed by a majority of the members present and voting. Dividends on shares.

(2) A dividend so declared shall be paid on all shares in the credit union but, in the case of shares which have been held during part only of the financial year to which the dividend relates, only a proportional part of the dividend shall be paid and, in determining such a proportional part, a part of a month may be disregarded.

(3) The permitted maximum referred to in *subsection (1)* is ten per cent. of the nominal value of the shares of the credit union or such other percentage of that value as may for the time being be prescribed.

(4) The rate of dividend declared under *subsection (1)* shall not exceed the rate recommended to the members by the board of directors.

(5) No dividend on shares shall be paid otherwise than out of—

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- (a) surplus funds in respect of the year in question (as ascertained under *section 45*) which are available for that purpose and have been accumulated after meeting the requirement for the statutory reserve; or
- (b) a reserve set aside in previous years to provide for dividends.

Interest on deposits.

31.—(1) Subject to *subsections (2) and (3)*, a credit union may pay interest on deposits at different rates determined from time to time by the board of directors.

(2) The rate of any interest payable at any time by a credit union on deposits of a particular class shall be the same for all deposits of that class.

(3) A credit union shall ensure that the rate of interest payable at any time on deposits of any class does not exceed the rate of return received by the credit union from the employment of its funds, whether in the form of loans or investments.

(4) If a credit union wilfully contravenes *subsection (3)*, it shall be guilty of an offence.

Restrictions on withdrawal of shares and deposits.

32.—(1) Notwithstanding anything in the rules of a credit union or in any contract, a credit union may require not less than 60 days' notice from a member of his intention to withdraw a share in the credit union and a member may not withdraw any shares at a time when a claim due on account of deposits is unsatisfied.

(2) Notwithstanding anything in the rules of a credit union or in any contract, a credit union may require not less than 21 days' notice from a member of his intention to withdraw a deposit.

(3) If a member of a credit union seeks to withdraw a share in or deposit with the credit union at a time when he has an outstanding liability (including a contingent liability) to the credit union, whether as borrower, guarantor or otherwise, that withdrawal shall not be permitted unless—

- (a) were the withdrawal to be permitted, the value of the member's savings immediately after the withdrawal would be not less than the amount of his outstanding liability; or
- (b) the withdrawal is approved, in accordance with the registered rules, by a majority of the members of the board of directors voting at a meeting of the board;

but no approval may be given under *paragraph (b)* if, were the withdrawal to be approved, the value of the member's savings immediately after the withdrawal would be less than 25 per cent. of his outstanding liability.

(4) If the Registrar sees fit to do so in the circumstances of a credit union, he may, on such terms as he thinks proper, by notice in writing addressed to the credit union provide that *subsection (3)* shall apply in relation to the credit union with the substitution of a higher or lower percentage than that for the time being applicable to the credit union under that subsection.

(5) Where a member of a credit union is indebted to the credit union and consents in writing to the credit union acting under this subsection, the credit union may, by way of set-off against the indebtedness, withdraw any of the member's shares or deposits; and such a withdrawal may be made notwithstanding anything in *subsections (2) and (3)*. Pr.III S.32

Borrowing

33.—(1) Subject to its rules, a credit union may borrow money, on security or otherwise, and may issue debentures accordingly, so long as the total amount outstanding in respect of moneys so borrowed does not at any time exceed 50 per cent. of the aggregate of the shares balance and the deposits balance of the credit union. Power to borrow.

(2) If a credit union proposes to borrow in accordance with *subsection (1)* to the extent that the sum of—

(a) the amount (if any) outstanding in respect of moneys so borrowed immediately before the proposed borrowing, and

(b) the amount proposed to be borrowed,

would exceed 25 per cent. of the aggregate specified in *subsection (1)*, the credit union shall give not less than 28 days' notice in writing to the Registrar of its intention to undertake the proposed borrowing.

(3) In calculating, for the purposes of *subsection (1)* or *subsection (2)*, the total amount outstanding in respect of moneys borrowed by a credit union at any time, a temporary loan obtained by the credit union from its bankers in the ordinary course of business shall be disregarded.

(4) A person dealing with a credit union shall not be obliged to satisfy himself or to inquire whether the limit imposed on the credit union by *subsection (1)* has been or is being observed; but if a person who lends money to a credit union or takes security in connection with such a loan has, at the time the loan is made or the security taken, actual notice of the fact that that limit has been or is thereby exceeded, the credit union's debt or, as the case may be, the security shall be unenforceable.

(5) Subject to *subsection (4)*, a transaction with a credit union shall not be invalid or ineffectual by reason of the fact that the limit on borrowing in *subsection (1)* has been or is by the transaction exceeded.

(6) If a credit union—

(a) borrows in excess of the limit imposed by *subsection (1)*, or

(b) fails to give notice in accordance with *subsection (2)*,

the credit union shall be guilty of an offence.

(7) References in this section to borrowing by a credit union do not include the issue of shares to, or the acceptance of deposits from, members of the credit union in accordance with the preceding provisions of this Part.

34.—(1) An instrument which is executed by a credit union and which creates or is evidence of a charge on any assets of the credit union shall not be a bill of sale for the purposes of the Bills of Sale (Ireland) Acts, 1879 and 1883 or be invalidated by those Acts if the charge is recorded in accordance with *subsection (2)*.

(2) An application for the recording of a charge under *subsection (1)* shall be made by delivering by post or otherwise to the Registrar, within the period of 21 days beginning with the date of execution of the instrument which creates or is evidence of the charge, or within any extended period allowed under *subsection (5)*—

(a) a copy of the instrument authenticated in such manner as may be specified by the Registrar and such additional particulars relating to the charge and authenticated as may be so specified; and

(b) such fee as may be prescribed.

(3) The Registrar shall ensure—

(a) that an acknowledgement of every application made for the purposes of this section is issued to the person by whom the application was made; and

(b) that the copy of the instrument included in such an application, a note of any particulars specified by the Registrar and so included and a copy of the acknowledgement of the application issued in pursuance of *paragraph (a)* are placed in the public file of the credit union;

and an acknowledgement issued under this subsection shall, unless the contrary is proved, be sufficient evidence that any document specified in the acknowledgement was delivered to the Registrar on the date so specified.

(4) Regulations may provide for the giving of notice to the Registrar of any release, discharge or other transaction relating to any charge in respect of which an application has been made for the purposes of this section and for the placing of any such notice on the public file of the credit union concerned.

(5) If, in the case of such an instrument as is mentioned in *subsection (1)*, it appears to the Court, on the application of the credit union which executed the instrument or of any other person claiming the benefit of the instrument, that by reason of inadvertence or other sufficient cause—

(a) an application for the recording of the charge to which the instrument relates was not made within the period of 21 days mentioned in *subsection (2)*; or

(b) any matters were omitted from or were mis-stated in such an application,

the Court may, on such terms as it thinks fit, order that the period for making such an application shall be extended or, as the case may be, that the omission or misstatement shall be rectified.

35.—(1) Subject to the following provisions of this Part, a credit union may make a loan to a member for a provident or productive purpose, upon such security (or without security) and terms as the rules of the credit union may provide; but no loan shall be made to a member who is under the age of 18 and neither is nor has been married unless an indemnity is provided by the member's parent or guardian or by a person approved by the board of directors.

Making of loans.

(2) A credit union shall not make a loan to a member—

(a) for a period exceeding five years if, were the loan to be made, the total amount outstanding in respect of all loans made by the credit union for periods exceeding five years would then exceed 20 per cent. of the total amount outstanding at that time in respect of all loans made by the credit union; or

(b) for a period exceeding ten years if, were the loan to be made, the total amount outstanding in respect of all loans made by the credit union for periods exceeding ten years would then exceed ten per cent. of the total amount outstanding at that time in respect of all loans made by the credit union; or

(c) in the circumstances specified in *subsection (3)*;

and, for the purposes of this subsection, the period of a loan shall be measured from the date on which the loan or, as the case may be, the first instalment of it is paid.

(3) The circumstances referred to in *subsection (2)(c)* are those where, were a loan to be made to a member, the amount of the member's outstanding liability (including a contingent liability) to the credit union, whether as borrower, guarantor or otherwise, would exceed whichever is the greater of—

(a) £30,000, and

(b) 1.5 per cent. of the total assets of the credit union.

(4) The total amount outstanding in respect of loans made by a credit union to non-qualifying members shall not exceed ten per cent., or such larger percentage as may be approved by the Registrar, of the total amount outstanding in respect of all loans made by the credit union to its members.

(5) Nothing in *subsection (4)* shall render unlawful any loan made to a member before the commencement of this section but all loans so made shall be taken into account in the application of the financial (including percentage) limits in the preceding provisions of this section.

(6) The Minister may from time to time by order increase the financial (including percentage) limits applicable under the preceding provisions of this section.

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(7) Every application to a credit union for a loan shall be in writing and shall state the purpose for which the loan is required and the security (if any) offered for it.

(8) Subject to its rules, in respect of a loan, a credit union may accept, in addition to other forms of security—

- (a) a guarantee by a member, or
- (b) a pledge by a member of shares in or deposits with the credit union;

and, where such a guarantee or pledge is accepted, it shall be deemed to be a security for the loan.

(9) Subject to the rules of a credit union—

- (a) the credit union may pay a loan to a member in instalments or in one sum; and
- (b) a member may repay such a loan in whole or in part on any day on which the office of the credit union is open for business.

(10) A credit union shall not accept from an officer of the credit union a guarantee for a loan to another member unless that other member is the officer's spouse, child or parent.

(11) If a credit union knowingly contravenes any of the provisions of this section, it shall be guilty of an offence.

Approval of loans.

36.—(1) A credit union shall not make a loan to a member unless it is approved in accordance with this section.

(2) Subject to *subsections (3) and (5)*, a loan must be approved, according as the rules of the credit union require—

- (a) by such number of members of the board of directors voting by secret ballot at a meeting of the board at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the members of the board as a whole; or
- (b) by such number of members of the credit committee present at a meeting of that committee at which the application for the loan is considered as represents at least two-thirds of those present and a majority of the committee members as a whole; or
- (c) by a credit officer.

(3) Subject to *subsection (5)*, a loan to a non-qualifying member may not be approved except as set out in *subsection (2)(a)* and a loan to an officer must be approved by not less than two-thirds of the members of a special committee voting by secret ballot at a meeting at which the application for the loan is considered.

(4) The special committee referred to in *subsection (3)* shall consist of— Pr.III S.36

- (a) a majority of the board of directors, and
- (b) at least one member of the credit committee, and
- (c) at least one member of the Supervisory Committee,

but shall not include the applicant for the loan.

(5) Notwithstanding the provisions of *subsection (3)*, a loan to an officer or a non-qualifying member which does not exceed the value of his savings may be approved as mentioned in *paragraph (b)* or *paragraph (c)* of *subsection (2)*.

(6) If a credit union knowingly contravenes *subsection (1)*, it shall be guilty of an offence.

37.—(1) If an application for a loan which was considered by the credit committee or by a credit officer was not approved under *section 36*, the applicant may appeal to an appellate body which, by a decision of such members of the body present at the meeting at which the appeal is considered as represents at least two-thirds of those present and a majority of the body as a whole, may give approval to the loan, overriding the decision of the credit committee or credit officer, as the case may be. Appeal against non-approval of loan.

(2) The appellate body referred to in *subsection (1)* shall consist of—

- (a) the board of directors, excluding, where the application for the loan was considered by the credit committee, any director who is a member of that committee; and
- (b) the members of the Supervisory Committee.

(3) For the purposes of the consideration of an appeal under this section, the appellate body shall not be regarded as quorate unless there are present a majority of the directors referred to in *subsection (2)(a)* and at least one member of the Supervisory Committee.

38.—(1) A credit union may charge interest on loans made to its members under *section 35* subject to the following conditions— Interest on loans.

- (a) the interest on a loan shall not at any time exceed one per cent. per month on the amount of the loan outstanding at that time;
- (b) the interest on a loan shall in every case include all the charges made by the credit union in making the loan;
- (c) the rate of interest charged on any class of loans granted at a particular time shall be the same for all loans of the class.

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(2) If a credit union knowingly charges or accepts interest on a loan at a rate greater than that permitted under this section, it shall be guilty of an offence and—

- (a) all the interest agreed to be paid by the member shall be deemed to have been waived by the credit union; and
- (b) any interest paid on the loan shall be recoverable summarily by the member (or his personal representative) as a simple contract debt.

Other transactions

Promissory notes and bills of exchange.

39.—(1) A promissory note or bill of exchange shall be deemed to have been made, accepted or endorsed on behalf of a credit union if made, accepted or endorsed in the name of the credit union by a person acting under its authority.

(2) Where no such authority as is referred to in *subsection (1)* exists, the Registrar may, if he thinks fit, appoint a person or persons to act on behalf of the credit union; and any person or persons so appointed shall have the like powers under *subsection (1)* as if acting under the authority of the credit union.

Contracts.

40.—(1) Contracts may be made, varied or discharged on behalf of a credit union as follows:

- (a) a contract which, if made between individuals, would be by law required to be in writing under seal may be made on behalf of the credit union in writing under the common seal of the credit union;
- (b) a contract which, if made between individuals, would be by law required to be in writing, signed by the parties to be charged with the contract, 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;
- (c) a contract which, if made between individuals, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the credit union by any person acting under the express or implied authority of the credit union;
- (d) a contract made according to this subsection may be varied or discharged in the same manner in which it is authorised by this section to be made and a contract under seal which, if made between individuals, might be varied or discharged in writing not under seal, signed by any person interested in the contract, may be similarly varied or discharged in writing not under seal on behalf of the credit union, signed by any person acting under the express or implied authority of the credit union.

(2) A signature purporting to be made by a person holding any office in a credit union attached to a writing by which any contract purports to be made, varied or discharged by or on behalf of the

credit union shall, unless the contrary is proved, be taken to be the signature of a person holding that office at the time when the signature was made. Pr.III S.40

(3) Where authority no longer exists for the discharge of a credit union's obligations under *subsection (1)*, the Registrar may, if he thinks fit, appoint a person to act on behalf of the credit union, and a person so appointed shall have the like powers to make, vary or discharge contracts on behalf of the credit union as if acting under its authority.

(4) A contract which may be or have been made, varied or discharged according to the provisions of this section shall be effectual in law and bind the credit union and its successors and all other parties to the contract.

41.—(1) A credit union may acquire and hold in its own name any land for the purpose of conducting its business on the land (including erecting a building on the land for that purpose) but for no other purpose. Acquisition, holding and disposal of land.

(2) A credit union may dispose of any land held by it and, where it does so—

(a) no person shall be bound to inquire as to the authority for any dealing with the land by the credit union; and

(b) a receipt of the credit union shall be a discharge for all money arising from or in connection with any dealing with land by it.

(3) For the purposes of *subsection (2)* (but not *subsections (4)* and *(5)*), a disposal of land held by a credit union includes the creation, out of the interest held by the credit union, of a lease, sub-lease or lesser interest.

(4) If a building held by a credit union entirely ceases to be occupied for the purposes of the business of the credit union, the credit union shall dispose of its interest in that building as soon as it is practicable to do so.

(5) If the Registrar is of the opinion that any building or other land held by a credit union is not in the best interest of the credit union, he may direct the credit union to dispose of its interest in it.

(6) A credit union which—

(a) holds any land contrary to *subsection (1)*, or

(b) fails to comply with a direction under *subsection (5)*,

shall be guilty of an offence.

(7) *Section 3 (3)* shall not apply to a direction under *subsection (5)*.

Pt. III
Receipt for
repayment of
secured debt.

42.—On payment of all money intended to be secured to a credit union on the security of any property, the debtor or his successor in title or personal representatives shall be entitled to a receipt in the form set out in the *Second Schedule*, or in a form to substantially the like effect.

Investments etc.

Investments.

43.—(1) Subject to any provision made by regulations, a credit union may invest any of its funds which are surplus to its operating requirements and are not immediately required for the purposes of the credit union—

- (a) in securities in which trustees are for the time being authorised by law to invest;
- (b) in the shares of or deposits with or loans to a credit union;
- (c) in the shares of a society registered under the Industrial and Provident Societies Acts, 1893 to 1978; or
- (d) in such other manner as may be prescribed, being a manner appearing to the Minister to be beneficial to the credit union.

(2) In so far as any such funds of a credit union as are referred to in *subsection (1)* are not either—

- (a) invested in accordance with *subsection (1)*, or
- (b) kept in cash in the custody of officers of the credit union,

those funds shall be kept by the credit union on current account with, or otherwise on loan to a credit institution.

(3) Where any funds of a credit union are on loan to an institution which ceases to be a credit institution, the credit union shall take all practicable steps to call in and realise the loan within the period of three months from the time when the institution so ceased or, if that is not possible, as soon after the end of that period as possible.

(4) Nothing in this section shall prevent one credit union from making a temporary loan to another.

(5) If, at the commencement of this section, a credit union holds any investments which were permitted before that commencement but do not fall within *paragraphs (a) to (d) of subsection (1)*, those investments shall be disposed of—

- (a) as soon as a disposal can be made without incurring a loss; and
- (b) in any event not later than the second anniversary of that commencement or such later date as the Registrar may permit;

but, prior to such a disposal, the investments shall continue to be regarded as lawful.

(6) If, at the commencement of this section, a credit union holds any investments which were not permitted before that commencement but which fall within any of *paragraphs (a) to (d) of subsection*

(1), these investments shall be regarded as having been validly made by virtue of this section. Pr.III S.43

(7) If a credit union knowingly contravenes any of the provisions of this section, it shall be guilty of an offence.

44.—(1) By a resolution passed by a majority of its members present and voting at a general meeting, a credit union may establish a special fund to be used by the credit union for such social, cultural or charitable purposes (including community development) as have been approved, either generally or specifically, by a similar resolution; and any such special fund shall be maintained separately from the rest of the credit union's finances. Special fund for social, cultural etc. purposes.

(2) Subject to *subsection (4)*, moneys may be paid into a special fund established by a credit union under this section only out of the annual operating surplus of the credit union; and no moneys may be so paid unless the directors are satisfied—

(a) that adequate provision has been made out of the surplus in question to cover all current and contingent liabilities and to maintain proper reserves; and

(b) that the payment of the moneys into the special fund will not affect the financial stability of the credit union.

(3) Subject to *subsection (5)*, the amount of moneys which may be paid as mentioned in *subsection (2)* out of the annual operating surplus of any year shall not exceed 0.5 per cent. of the value of the credit union's assets as shown in the accounts for the most recent financial year ending before the date of the payment.

(4) In respect of the financial year in which the special fund is established, there may be paid into the special fund (in addition to any amount paid as mentioned in *subsection (2)*) an amount not exceeding 2.5 per cent. of the accumulated reserves of the credit union, excluding the statutory reserve.

(5) If, by a resolution passed by not less than two-thirds of the members of the credit union present and voting at a general meeting called for the purpose, a credit union resolves to increase the percentage applicable to it under *subsection (3)* to a percentage to which the Registrar has consented in writing, that subsection shall have effect accordingly.

(6) Where a credit union has established a special fund under this section, the social, cultural or charitable purposes for which it is to be used may be varied by a further resolution passed as mentioned in *subsection (1)*.

(7) If at any time—

(a) the board of directors make a recommendation in writing to the members of a credit union that it is appropriate to wind up a special fund established under this section, and

(b) a resolution for winding up the special fund is passed by a majority of the members of the credit union present and voting at a general meeting,

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the moneys standing to the credit of the special fund shall be transferred to the general funds of the credit union and the special fund shall cease to exist.

Statutory reserve.

45.—(1) A credit union shall establish a reserve (to be known as its “statutory reserve”) by allocating in respect of each financial year not less than ten per cent. of the surplus funds of the credit union for that purpose.

(2) In ascertaining the surplus funds of a credit union in respect of a financial year—

(a) provision shall first be made for all operating expenses of the credit union in that year, together with any necessary provision for depreciation; but

(b) no provision shall be made in respect of amounts to be paid by way of dividends.

(3) A credit union shall not capitalise its statutory reserve by way of bonus shares or distribute it by way of dividends.

(4) Notwithstanding the provisions of *subsection (1)*, whenever the board of directors of a credit union so recommend to the members and a majority of the members present and voting at a general meeting by resolution so approve,

(a) the allocation to its statutory reserve may be increased; or

(b) if its statutory reserve at the end of the financial year in question equals or exceeds 15 per cent. of the sum of the shares balance and the deposits balance, the allocation may be reduced.

Savings protection scheme.

46.—(1) A credit union may incur expenditure in participating in a savings protection scheme which is approved by the Registrar.

(2) In this Act a “savings protection scheme” means a scheme established to protect, in whole or in part, the savings of members of a credit union in the event of insolvency or other financial default on the part of the credit union and, for this purpose, “savings” includes shares, deposits and all other funds held by a credit union on behalf of its members.

(3) It shall be a condition of the approval of a savings protection scheme under *subsection (1)* that *sections 90 and 91* shall apply in relation to it as they apply in relation to a credit union.

(4) Where a credit union participates in a savings protection scheme approved under *subsection (1)*, authorised representatives of the scheme shall be entitled to inspect the books of the credit union.

Insurance against fraud of officers etc.

47.—(1) A credit union shall at all times maintain in force, in respect of each financial year, a policy of insurance which complies with any prescribed requirements and which insures the credit union in respect of loss suffered or liability incurred by reason of the fraud or other dishonesty of its officers or voluntary assistants.

(2) If a credit union fails to comply with *subsection (1)*, it shall be guilty of an offence.

(3) By 1st December in each financial year, a credit union shall submit evidence to the Registrar of its cover in respect of the insurance required by this section. Pr.III S.47

Provision of additional services to members

48.—(1) Subject to the following provisions of this Part, a credit union may provide, as principal or agent, additional services of a description that appears to the Registrar to be of mutual benefit to its members. Power to provide additional services.

(2) In this section and the following provisions of this Part, “additional services”, in relation to a credit union, means any services other than those—

- (a) for which provision is made by the preceding provisions of this Part; or
- (b) which are prescribed for the purposes of this section as being services the provision of which appears to the Minister to involve no risk to the assets of the credit union or the funds of its members;

and regulations made for the purposes of *paragraph (b)* may make the exclusion of any services from being additional services conditional on compliance with such conditions as may be prescribed.

(3) Nothing in this section or the following provisions of this Part affects the operation of any enactment which is not contained in this Act and which, in whole or in part, relates to the provision of financial or other services of any description.

(4) In order to enable a credit union to provide additional services of any description—

- (a) the credit union must adopt a decision to provide additional services of that description by a resolution passed by not less than two-thirds of the members present and voting at an annual general meeting or at a special general meeting called for the purpose of considering the resolution;
- (b) the provision of the services must be approved by the Registrar in accordance with *section 49* and the services must be provided in accordance with the terms and conditions of the approval; and
- (c) the rules of the credit union must specify the provision of services of that description among the objects of the credit union.

(5) Notice shall be given of a resolution under *subsection (4)(a)* in accordance with the rules of the credit union or, if the rules do not make special provision as to notice of such a resolution, the like notice shall be given as is required by the rules for a resolution to amend the rules; and notice of the resolution shall contain or be accompanied by a statement giving—

- (a) a description of the services which it is proposed to provide;
- (b) an assessment of the financial and other implications for the credit union of the provision of those services; and

(c) details of such other matters as the Registrar may by notice in writing require to be brought to the attention of the members of the credit union concerned.

(6) Before giving notice of a resolution as mentioned in *subsection (5)*, a credit union shall consult the Registrar and the Registrar shall give a preliminary view as to whether and to what extent the provision of the service would be likely to be approved by him; but the giving of such a preliminary view shall not prejudice the decision of the Registrar under *section 49 (3)*.

(7) The Registrar may, by directions, specify such requirements as he considers necessary for credit unions providing additional services; and different requirements may be so specified in relation to different descriptions of additional services.

(8) A credit union shall not be able or, as the case may be, shall cease to be able to provide additional services of a description to which requirements under *subsection (7)* apply if—

- (a) the credit union does not satisfy those requirements; or
- (b) within the period of 12 months beginning on the date on which approval for the provision of the services is given under *section 49*, the credit union does not begin to provide those services;

but, if a credit union ceases to comply with any of those requirements, the cessation shall not, of itself, impose an obligation to dispose of any property or right acquired in connection with the provision of the additional services concerned.

The Registrar's approval of provision of additional services.

49.—(1) An application by a credit union for the approval of the provision of additional services of any description (in this section referred to as an “approval application”) shall be made to the Registrar in such manner as he may by rules direct, and shall be accompanied by such information as may be so specified.

(2) Without prejudice to the generality of the powers of the Registrar under *subsection (1)*, an approval application shall include information about—

- (a) the protection of members for whom the services are to be provided from conflicts of interest that might otherwise arise in connection with the provision of the services;
- (b) the provision proposed for securing that adequate compensation is available to those members in respect of negligence, fraud or other dishonesty on the part of officers or voluntary assistants of the credit union in connection with the provision of the services;
- (c) the extent to which and the manner in which the provision of the services will require the involvement of persons with particular qualifications or experience;
- (d) the cost of providing the services;
- (e) the income expected to accrue from any charges made for the services; and

- (f) the credit union's proposed principal, in a case where the approval application relates to the provision of services by the credit union as agent for another; Pr.III S.49

and, where an approval application relates to the provision of additional services of more than one description, the information referred to above shall be given separately in respect of each description of services.

(3) Having considered an approval application (which complies with *subsections (1) and (2)*), the Registrar shall give notice, either—

- (a) granting approval;
- (b) refusing to grant approval; or
- (c) granting approval subject to whatever conditions (including restrictions or exclusions) he considers appropriate;

and the Registrar shall not grant an approval application in respect of any description of additional services unless he is satisfied that the resolution required by *section 48 (4) (a)* in relation to services of that description has been passed.

(4) In making his decision on an approval application, the Registrar shall have regard to the interests of the public and of the members and creditors of the credit union, to the orderly and proper regulation of the business of the credit union and to such other considerations as he thinks proper.

(5) Subject to *subsection (6)*, within four months of the date on which he receives an approval application, the Registrar shall either notify the credit union of his decision on the application or require the credit union to supply to him such additional information as he considers necessary to enable him to reach a decision and, where the Registrar requires the provision of such additional information, he shall notify the credit union of his decision on the approval application not later than four months from the date of his receipt of that additional information.

(6) Where an approval application relates to the provision of services by the credit union as agent (and not also as principal), *subsection (5)* shall have effect with the substitution for any reference to four months of a reference to two months.

(7) Without prejudice to the generality of *subsection (3)(c)*, the conditions which the Registrar may impose in granting an approval application may, in particular, include provisions about—

- (a) the amount of funds that may be applied by the credit union to the services;
- (b) whether the credit union may act as principal or agent in providing the services;
- (c) the period during which the services may be provided;
- (d) limits on any guarantees, bonds, contracts of suretyship or indemnities given or entered into by the credit union;
- (e) whether and to what extent the approval of the Registrar is to be obtained in respect of particular proposals;

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- (f) the qualifications required to be held by officers or voluntary assistants of the credit union providing the services;
- (g) the avoidance of conflicts of interest;
- (h) the charges to be made in relation to the provision of any services;
- (i) the preparation of accounts in respect of services being provided;

and different conditions may be so imposed in relation to different descriptions of additional services.

(8) If, before the date on which this section comes into force, a credit union was providing a service which is an additional service, that service shall cease unless, within the period of twelve months after that date, the credit union makes an approval application with respect to that service and complies with *subsections (4)(a), (5) and (6) of section 48*; and, where such an application is made, the credit union may by virtue of this subsection continue to provide that service during that period.

Supplementary provisions as to Registrar's functions.

50.—(1) In the exercise of his powers under *sections 48 and 49* and this section, the Registrar may at any time consult the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions.

(2) Without prejudice to the generality of *subsection (1)*, the Registrar may commission an independent assessment of the capacity of a credit union to provide any or each description of the additional services in respect of which it has made an approval application; and, if the Registrar so directs, the credit union shall defray the costs of such an assessment.

(3) If it appears to him appropriate to do so, the Registrar may at any time by notice—

- (a) withdraw an approval granted under *section 49*;
- (b) revoke or vary any conditions imposed on such an approval;
or
- (c) impose new conditions on such an approval;

but any such action by the Registrar shall not require the disposal of any property or right already acquired.

(4) In this section “approval application” has the same meaning as in *section 49*.

Requirements applicable to credit unions providing additional services.

51.—(1) A credit union shall not make or offer to make a loan to a member subject to a condition that any additional services which the member may require (whether or not in connection with the loan) shall be provided by (or through the agency or assistance of) the credit union.

(2) Where, in connection with a loan by a credit union, any additional services are made available by a credit union, the credit union shall not make those services available except on terms which

distinguish the consideration applicable to each service which is so made available. Pr.III S.51

52.—(1) If a credit union is aggrieved by a decision of the Registrar— Review of Registrar's decisions by Court.

- (a) under *section 49 (3)(b)* to refuse to grant approval, or
- (b) under *section 50 (3)(a)* to withdraw an approval granted under *section 49*, or
- (c) under *subsection 50(3)(b)* to vary any condition imposed on such an approval, or
- (d) to impose any condition on such an approval (whether at the time the approval is granted or later by virtue of *section 50 (3)(c)*),

the credit union may apply to the Court for a review of the Registrar's decision.

(2) If, on an application under *subsection (1)*, the Court considers that the decision of the Registrar to which the application relates should not be confirmed, the Court may give such directions as it thinks appropriate (whether to the Registrar or otherwise) for the purpose of resolving the matter.

PART IV

MANAGEMENT OF CREDIT UNIONS

Directors

53.—(1) A credit union shall have a board of directors which shall have responsibility for the general control, direction and management of the affairs, funds and records of the credit union. Board of directors.

(2) The number of directors of a credit union shall be specified in the registered rules and shall be—

- (a) not less than seven;
- (b) not more than fifteen; and
- (c) an odd number.

(3) The first board of directors of a credit union shall be elected from among the members by secret ballot at the organisation meeting of the credit union and, subject to *section 57 (4)*, subsequent vacancies on the board shall be filled from among the members by secret ballot at an annual general meeting.

(4) The term of office of a director—

- (a) shall begin at the conclusion of the general meeting at which he is elected;
- (b) shall not extend beyond the third subsequent annual general meeting; and

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(c) subject to *paragraph (b)* and *subsection (5)*, shall be such as is determined in accordance with the registered rules;

but, except where the registered rules otherwise provide, a retiring director shall be eligible for re-election.

(5) At each annual general meeting the number of directors whose term of office expires shall, as near as possible, be the same.

(6) Neither a body corporate nor a person who is under the age of 18 may be a director of a credit union.

Directors:
procedural
provisions.

54.—(1) The board of directors shall meet as often as may be necessary for the proper discharge of its business provided that—

(a) the board shall endeavour to meet once a month but, as a minimum, shall hold not less than ten meetings in any year; and

(b) the interval between any two meetings of the board shall not be greater than six weeks.

(2) The secretary of a credit union shall keep minutes of all meetings of the board of directors.

(3) Subject to *section 53 (6)* and *subsection (4)*, the board of directors may at any time and from time to time appoint a member of the credit union (including a former director) to be a director to fill a casual vacancy.

(4) A director appointed under *subsection (3)* shall hold office from the date of the appointment to the next following annual general meeting of the credit union or, if it is earlier, the next special general meeting at which an election is held for members of the board of directors.

(5) Where the secretary of a credit union becomes aware that all the directors of the credit union intend to resign on the same date, he shall give written notice of their intention to the Registrar and the Supervisory Committee.

(6) If the secretary of a credit union fails to comply with *subsection (5)*, he shall be guilty of an offence.

Functions of board
of directors.

55.—Without prejudice to the generality of *section 53 (1)*, the board of directors shall have the following functions—

(a) the making of decisions on applications for loans;

(b) the fixing from time to time of the amount of the surety bond required by *section 73* in respect of any officer of the credit union who has custody of funds or other property of the credit union;

(c) the fixing from time to time of the rate of interest to be charged on loans to members, and of the rate of interest to be paid on deposits;

(d) the recommendation to members, for approval, of dividends to members;

- (e) the fixing from time to time of the maximum numbers of shares in the credit union which may be held by a member and of the maximum amount that a member may deposit with the credit union, such limits to apply equally to all members;
- (f) the fixing from time to time of the maximum amount which may be on loan at a particular time to a member in respect of loans, such limits to apply equally to all members;
- (g) the making of decisions in respect of the investment of funds of the credit union;
- (h) the employment and the terms of employment of such person or persons as the board of directors consider necessary for the purposes of the credit union;
- (i) the purchase, sale, renovation, repair and alteration of property for the credit union;
- (j) the borrowing of money by the credit union;
- (k) the designating of depositories for the funds of the credit union, and signatories to cheques, drafts or similar documents drawn on an account of the credit union;
- (l) the removal from office of an officer or committee member, except members of the Supervisory Committee, for failure to perform his duties;
- (m) the submitting of the accounts of the credit union for audit;
- (n) the making of arrangements for the annual general meetings, meetings of the board of directors and other meetings as deemed necessary from time to time;
- (o) the convening of a special general meeting in accordance with *section 79* whenever they think fit;
- (p) the sanctioning of expense payments whether by way of expense claim or invoice;
- (q) the taking, in accordance with the instructions of the members at a general meeting of the credit union, of any lawful action not inconsistent with the registered rules; and
- (r) appointing such committees or officers as the board of directors considers desirable or necessary to assist it in the proper discharge of the business of the credit union.

56.—(1) Subject to *subsection (2)*, a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a director from office. Removal of director from office.

(2) The secretary shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in *subsection (1)*, give written notice of the meeting to the director concerned.

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(3) Where notice is given of such a resolution as is mentioned in *subsection (1)* and the director concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (5)*, (unless the representations are received by it too late to do so)—

- (a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).

(4) Subject to *subsection (5)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (3)*, the director concerned may require that, without prejudice to his right to be heard orally, the representations made by him shall be read out at the special general meeting.

(5) *Subsections (3)* and *(4)* shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Registrar is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by them are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.

(6) A vacancy arising from the removal of a director under this section shall be filled in accordance with the provisions of *section 54(3)*.

Directors:
supplemental
provisions.

57.—(1) A register of directors shall be kept by the secretary of the credit union and signed by all the directors of a credit union each year after the annual general meeting of a credit union or, in the case of a director appointed to fill a casual vacancy, after his appointment.

(2) In the event that the number of directors of a credit union falls to less than half the number specified in the registered rules, the secretary of the credit union shall forthwith notify the Registrar and the Supervisory Committee of the credit union.

(3) The acts of a director of a credit union shall be valid notwithstanding any defect in the appointment of the director which may be subsequently discovered.

(4) Where any of the following events occurs—

- (a) the secretary of the credit union has given notice under *section 54 (5)* that all the directors of the credit union intend to resign on the same date,
- (b) all the directors have been removed or suspended in accordance with *section 96 (1)*, or
- (c) there is no board of directors,

the Supervisory Committee shall convene a special general meeting of the credit union, within one month of the occurrence of the event in question, to elect a board of directors.

(5) If the special general meeting referred to in *subsection (4)* is not convened in accordance with the provisions of that subsection, the Registrar may convene such a special general meeting under *section 92 (1)(b)*. Pt.IV S.57

Supervisory Committee

58.—(1) A credit union shall have a Supervisory Committee which shall consist of three or five members and shall have the general duty of overseeing the performance by the directors of their functions. Supervisory Committee.

(2) The first Supervisory Committee of a credit union shall be elected by secret ballot at the organisation meeting and, subject to *section 62 (4)*, subsequent vacancies on the Committee shall be filled by secret ballot at an annual general meeting.

(3) The Supervisory Committee shall appoint one of their number as secretary of the Committee.

(4) The term of office of a member of the Supervisory Committee—

- (a) shall begin at the conclusion of the general meeting at which the member is elected;
- (b) shall not extend beyond the third subsequent annual general meeting; and
- (c) subject to *paragraph (b)* and *subsection (5)*, shall be such as is determined in accordance with the registered rules;

but, except where the registered rules otherwise provide, a retiring member of the Supervisory Committee shall be eligible for re-election or appointment.

(5) The rules for retirement from the Supervisory Committee shall be as follows:

- (a) where the Committee consists of three members, one shall retire at each annual general meeting;
- (b) where the Committee consists of five members, two shall retire at each annual general meeting;
- (c) subject to *paragraph (d)*, the members to retire at any time shall be those who have served longest since they were last elected; and
- (d) as between members who were last elected on the same day, the member (or members) to retire shall be determined by agreement or, in default of agreement, by the drawing of lots.

(6) None of the following shall be a member of a Supervisory Committee of a credit union—

- (a) a member of the credit union who is under the age of 18;
- (b) a director of the credit union;
- (c) an employee of the credit union (full or part-time);

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(d) a person who performs any other function in the credit union;

(e) a body corporate.

Supervisory
Committee:
procedural
provisions.

59.—(1) A Supervisory Committee shall—

(a) hold at least one meeting in each month;

(b) hold, at least four times in a year, a meeting with the board of directors to review the directors' performance of their functions;

(c) submit, in advance of a meeting referred to in *paragraph (b)*, a written report to the board of directors on the directors' performance of their functions.

(2) Members of the Supervisory Committee shall have the right to attend all meetings of the board of directors and all meetings of committees of the credit union.

(3) A Supervisory Committee may notify the Registrar of any concern it may have as to the proper conduct of the credit union following a unanimous vote at a meeting of the Committee called for the purpose of considering such a notification.

(4) If a casual vacancy arises in the membership of a Supervisory Committee, then, within one month of the vacancy arising, the Committee shall appoint a member of the credit union (who may, if the Committee thinks fit, be a former member of the Committee) to fill the vacancy; and the member so appointed shall hold office until the next general meeting at which an election is held for members of the Supervisory Committee.

(5) Where the secretary of the Supervisory Committee becomes aware that all the members of the Supervisory Committee intend to resign on the same date, he shall give written notice of their intention to the Registrar and the board of directors.

(6) If the secretary of the Supervisory Committee fails to comply with *subsection (5)*, he shall be guilty of an offence.

Functions of
Supervisory
Committee.

60.—(1) Without prejudice to the generality of *section 58 (1)*, the Supervisory Committee of a credit union shall—

(a) keep minutes of meetings held by it;

(b) make or cause to be made, not less than twice in the period before the next annual general meeting, an examination of the books and documents of the credit union and that examination shall include an inspection of securities, cash accounts and all records relating to loans;

(c) make, or cause to be made, once in the period before the next annual general meeting, a comparison between the pass-book or statement of account of a random sample of at least 10 per cent. of all the members of the credit union and the appropriate records of the credit union;

(d) ascertain that all actions and decisions of the officers relating to the affairs of the credit union are in accordance with law and the registered rules; Pr.IV S.60

(e) furnish a written report on the result of its examinations and enquiries under this section to the next annual general meeting or, if it thinks fit, to a special general meeting.

(2) The Supervisory Committee shall have access, at all times, to the books and documents of the credit union.

61.—(1) Subject to *subsection (2)*, a credit union may, by resolution of a majority of the members present and voting at a special general meeting called for that purpose, remove a member of the Supervisory Committee from office. Supervisory Committee: removal from office.

(2) The secretary of the credit union shall, not less than 21 days before the date of the special general meeting at which it is proposed to move a resolution referred to in *subsection (1)*, give written notice of the meeting to the member concerned.

(3) Where notice is given of such a resolution as is mentioned in *subsection (1)* and the member of the Supervisory Committee concerned makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (5)*, (unless the representations are received by it too late to do so)—

(a) in any notice of the proposed resolution given to members of the credit union, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).

(4) Subject to *subsection (5)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (3)*, the member of the Supervisory Committee concerned may require that, without prejudice to his right to be heard orally, the representations made by him shall be read out at the special general meeting.

(5) *Subsections (3) and (4)* shall not apply if, on the application either of the credit union or of any person who claims to be aggrieved, the Registrar is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by them are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.

(6) A vacancy arising from the removal of a member of a Supervisory Committee under this section shall be filled in accordance with the provisions of *section 59(4)*.

62.—(1) A register of the members of the Supervisory Committee shall be kept by the secretary of the credit union and shall be signed Supervisory Committee: supplemental provisions.

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by each member of the Supervisory Committee after an annual general meeting or, in the case of a member appointed to fill a casual vacancy, after his appointment.

(2) In the event that the number of members of the Supervisory Committee falls to less than half the number specified in the registered rules, the secretary of the Supervisory Committee shall forthwith notify the Registrar and the board of directors.

(3) The acts of a member of the Supervisory Committee of a credit union shall be valid notwithstanding any defect in the election or appointment of the member which may subsequently be discovered.

(4) Where any of the following events occurs—

(a) the secretary of the Supervisory Committee has given notice that all the members of the Supervisory Committee intend to resign on the same date;

(b) all the members of the Supervisory Committee have been removed or suspended in accordance with *section 96 (1)*; or

(c) there are no members of the Supervisory Committee,

the board of directors shall convene a special general meeting of the credit union, within one month of the occurrence of the event in question, to elect a Supervisory Committee.

(5) If the special general meeting referred to in *subsection (4)* is not convened in accordance with the provisions of that subsection, the Registrar may convene such a special general meeting under *section 92 (1)(b)*.

(6) A credit union shall meet all such expenses as may be reasonably incurred by its Supervisory Committee in carrying out its function.

Officers

Officers: principal posts.

63.—(1) At a meeting of the board of directors of a credit union—

(a) which is held immediately after the organisation meeting, an annual general meeting or special general meeting at which an election is held for members of the board of directors, and

(b) which is chaired by a member of the Supervisory Committee,

the board shall elect by secret ballot directors to fill such of the principal posts in the credit union as are then vacant; and, for the purposes of this section, the principal posts in a credit union are the posts of chairman (or president), vice-chairman (or vice-president), treasurer and secretary.

(2) The registered rules shall ensure that the term of office of the holder of a principal post shall come to an end not later than the third annual general meeting after the meeting at which he is elected to that post; and, unless the registered rules provide otherwise, a

person who has been the holder of a principal post shall not be eligible for re-election to that post until after the expiry of one year since he last held it. Pr.IV S.63

(3) In the event of a casual vacancy in a principal post, the board of directors may by secret ballot elect a director to hold that post until the next meeting at which, in accordance with *subsection (1)*, an election should be held to fill any vacancy in the principal posts.

(4) Without prejudice to *subsection (3)*, if a principal post falls vacant or for any other reason there is no holder of a principal post, anything that is required or authorised to be done by the holder of that post may be done by a director authorised in that behalf by the board of directors.

(5) The chairman (or president) or secretary of a credit union shall notify the Registrar in writing of the election, appointment, retirement, removal or resignation from office of a chairman (or president), vice-chairman (or vice-president), director, secretary, treasurer or committee member and the notification shall—

(a) be made within fourteen days of the election, appointment, retirement, removal or resignation; and

(b) state the full name and address of the officer concerned.

(6) The chairman (or president) or secretary of a credit union who fails to make a notification referred to in *subsection (5)* shall be guilty of an offence.

64.—(1) The treasurer of a credit union shall act as the managing director of the credit union and shall, not later than the last day of each month, submit to the board of directors (in unaudited form and described as such) a financial statement showing— Functions of treasurer.

(a) the income and expenditure of the credit union for the period from the beginning of the current financial year to the end of the preceding month; and

(b) a balance sheet for the same period.

(2) Subject to such limitations and controls as may be imposed by the board of directors, the treasurer of a credit union shall—

(a) ensure that proper systems of internal control are kept by the credit union;

(b) have custody of all funds, securities and documentation relating to the assets of and other assets of the credit union;

(c) provide, or cause to be provided, and maintain full and complete records of all assets, liabilities, income and expenditure of the credit union;

(d) prepare, or cause to be prepared, and submit to the auditor of the credit union such financial reports and returns required by the auditor;

(e) ensure that all cash is deposited in accordance with the instructions of the board of directors;

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(f) report to the members of the credit union at the annual general meeting of the credit union; and

(g) in the exercise of his functions, comply with any instruction of the board of directors.

(3) With the approval of the board of directors, the treasurer may at any time delegate any function to a director who, in the opinion of the treasurer, is capable of discharging the function in a proper and competent manner.

(4) A director to whom a function has been delegated in accordance with *subsection (3)* (in this Part referred to as an “assistant treasurer”), shall comply with any instruction, limitation or control imposed by the treasurer and approved by the board of directors.

(5) Neither the treasurer nor an assistant treasurer shall be eligible for membership of any of the following committees of a credit union—

- (a) the credit committee;
- (b) the credit control committee;
- (c) the membership committee.

(6) Nothing in this section affects the power of a credit union to appoint, in addition to the treasurer, a manager who is not a director and whose functions are defined by the board of directors.

Credit officer and credit control officer.

65.—(1) The board of directors may—

(a) appoint a person, other than the treasurer, an assistant treasurer or a member of the credit control committee or a credit control officer, as a credit officer to work under the supervision of the credit committee; and

(b) delegate to the credit officer the power to approve credit—

- (i) that is fully secured by the shareholding of the borrowing member or to an amount in excess of that shareholding; or
- (ii) that qualifies as emergency credit within such definitions and limitations as to amount, the terms of repayment and security required for emergency credit as may be established in writing by the board of directors;

and the amount of the excess referred to in *paragraph (b)(i)*, shall be determined from time to time by the board of directors.

(2) A record of each application for credit which has or has not been approved shall be furnished by the credit officer to the credit committee within seven days of receipt of the application.

(3) Where there has been a delegation of power to approve credit under *subsection (1)(b)*, a credit officer shall inquire into the character and financial circumstances of an applicant for credit and the security offered, if any, in order to—

(a) ascertain the applicant's ability to repay a loan in accordance with its terms, and Pr.IV S.65

(b) determine whether the loan is for a provident or productive purpose.

(4) The board of directors may appoint a person, other than the treasurer, an assistant treasurer, member of the credit committee or a credit officer, as a credit control officer to assist the credit control committee and work under its supervision and control.

66.—(1) If the Supervisory Committee of a credit union considers that an officer who is not an employee has taken any action or decision which, in the opinion of the Committee, is not in accordance with the law or the registered rules, then, after consulting the Registrar, the Committee may either— Officers: suspension and removal by Supervisory Committee.

(a) suspend the officer by a unanimous vote of all the members of the Committee taken at a meeting of the Committee called for the purpose of considering his suspension; or

(b) convene a special general meeting of the credit union to consider whether to remove the officer in the light of the action or decision taken by him;

but no action shall be taken under this subsection without the officer concerned being given an opportunity to be heard by the members of the Supervisory Committee.

(2) If an officer who has been suspended by the Supervisory Committee in accordance with *subsection (1)(a)* does not resign within seven days of the vote by the Committee, the Committee shall convene, for a date not more than 21 days after the expiry of those seven days, a special general meeting—

(a) for the purpose of reviewing the suspension; and

(b) to consider whether to remove the officer in the light of the action or decision taken by him.

(3) Without prejudice to the requirements of *section 80*, not less than 10 days before—

(a) the date of a meeting of the Supervisory Committee called as mentioned in *subsection (1)(a)*, and

(b) the date of a special general meeting convened as mentioned in *subsection (1)(b)* or *subsection (2)*,

the Supervisory Committee shall give written notice of the meeting to the Registrar and to the officer concerned.

(4) At a special general meeting held under this section, the members of the credit union, according to the purpose or purposes for which the meeting was convened, may, by secret ballot—

(a) ratify the suspension of the officer concerned and remove him from office;

(b) rescind the suspension of that officer; or

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(c) remove that officer from office;

but no officer shall be so removed from office without being given an opportunity to be heard by the members present at the meeting.

(5) Where an officer of a credit union is removed from office at a special general meeting under *paragraph (a)* or *paragraph (c)* of *subsection (4)*, the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.

General provisions

Credit, credit control and membership committees.

67.—(1) Without prejudice to *paragraph (r)* of *section 55*, the board of directors shall appoint—

- (a) a credit committee, which shall decide on applications for credit;
- (b) a credit control committee, which shall seek to ensure the repayment of loans by members of the credit union in accordance with their loan agreements; and
- (c) a membership committee which shall consider applications for membership of the credit union;

and the provisions of the *Third Schedule* shall apply to the committees.

(2) The record of applications for credit furnished by a credit officer under *section 65 (2)* shall be considered by the credit committee at its next following meeting and become part of the records of the credit union.

(3) The membership committee shall—

- (a) at least once in every month notify the board of directors of the new members whose applications they have approved; and
- (b) where there is a doubt in respect of an applicant's qualification for membership of the credit union, submit the application for membership to the board of directors for a decision.

Limitation of remuneration.

68.—(1) A credit union shall not pay any remuneration, directly or indirectly, to—

- (a) a director of the credit union,
- (b) a member of the Supervisory Committee or a principal Committee of the credit union, or
- (c) a credit officer or credit control officer,

for any service performed by that person in that capacity.

(2) Nothing in *subsection (1)* shall be regarded as prohibiting the payment (or reimbursement) of expenses—

- (a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the credit union; and
- (b) which are approved by a majority of the directors voting at a meeting of the board.

(3) Nothing in *subsection (1)* shall be regarded as prohibiting any officer or voluntary assistant of a credit union, acting not as such but in his professional capacity, from tendering for the supply of, and if successful supplying, goods or services to the credit union.

(4) In any year the treasurer of a credit union may be paid such remuneration (whether described as such or as an honorarium or otherwise) as—

- (a) may from time to time be approved prior to its payment (or the payment of any part of it) by the members in general meeting; and
- (b) does not exceed an amount recommended by the board of directors.

69.—(1) An officer of a credit union shall not, in any manner, directly or indirectly, participate in the consideration or determination of any matter in which he, or a body with which he is connected, has a pecuniary interest and, accordingly, an officer shall withdraw from any meeting at which such a matter is to be considered or determined. Conflicts of interest.

(2) If, apart from this subsection, the withdrawal of an officer from a meeting in pursuance of *subsection (1)* would cause the meeting to become inquorate, the remaining members shall be treated as constituting a quorum while the matter in question is being considered or determined.

(3) An officer of a credit union who is or becomes interested, directly or indirectly, in a contract made or proposed to be made by a credit union shall declare the nature of his interest in writing to the board of directors as soon as possible after the contract is made or proposed or, as the case may be, after he becomes so interested.

- (4) A declaration under *subsection (3)* shall be made—
- (a) in person at a meeting of the board of directors at which the contract is to be considered; or
- (b) if the contract is not likely to be considered at such a meeting, by a notice in writing addressed to the board of directors and served on the secretary;

and where a notice is served as mentioned in *paragraph (b)*, the secretary shall read the notice at the next meeting of the board of directors.

(5) Subject to *subsection (6)*, for the purposes of this section, a general notice in writing which is given by an officer of a credit union to the board of directors and is to the effect that—

- (a) the officer is connected (whether as member, director, employee or otherwise) with a specified body and is to

be regarded as interested in any contract which, after the date of the notice, may be made with that body, or

- (b) the officer is to be regarded as interested in any contract which, after the date of the notice, may be made with a specified person who is connected with him,

shall be deemed to be a sufficient declaration of interest in relation to any such contract.

(6) A notice under *subsection (5)* shall be of no effect unless and until—

- (a) it is given in writing in person at a meeting of the board of directors; or
- (b) it is given in writing addressed to the board of directors and served on the secretary;

and where a notice is given as mentioned in *paragraph (b)*, the secretary shall read the notice at the next meeting of the board of directors.

(7) The provisions of this section shall apply in relation to a transaction or arrangement as they apply in relation to a contract; and, for the purposes of this section, an officer of a credit union shall be regarded as connected with a particular body if he has an interest in the body, whether directly or indirectly and whether as member, director, employee, shareholder or otherwise.

(8) Within three days (excluding a Saturday, Sunday or public holiday) after a declaration or notice under this section is made or given, the secretary of the credit union concerned shall cause a copy of the declaration or notice to be entered in a register kept for the purpose; and that register—

- (a) shall be open for inspection without charge by any officer, auditor or member of the credit union; and
- (b) shall be available at every general meeting of the credit union and, if adequate notice in advance is given to the secretary by any director, at any meeting of the board of directors.

Required signatories etc.

70.—(1) None of the documents specified in *subsection (2)* shall be effective in law to bind a credit union unless signed by at least two officers of the credit union, one of whom shall be a member of the board of directors.

(2) The documents to which *subsection (1)* applies are any of the following, so far as not required by law to be under the seal of a credit union—

- (a) a conveyance or transfer of property of any description by a credit union; and
- (b) any other document which does not fall within *section 55(k)* but by which a credit union enters into an obligation of any description.

(3) If the rules of a credit union make provision as to the officers by whom documents to which *subsection (1)* applies are to be signed,

a document which purports to be signed as required by that subsection shall not be invalid by reason of any failure to comply with any such provision of the rules. Pr.IV S.70

(4) The provisions of this section are without prejudice to any additional provisions as to signatures imposed by the Registrar by way of condition under *section 49*.

71.—(1) Subject to *subsection (2)*, during his term of office or at any time thereafter, an officer or voluntary assistant of a credit union shall not disclose or permit to be disclosed any information which concerns an account or transaction of a member with, or any other business of, the credit union. Confidentiality of information.

(2) *Subsection (1)* does not apply to a disclosure of information—

- (a) if or to the extent that it is necessary for the proper conduct of the business of the credit union; or
- (b) which is required by a court in connection with any proceedings; or
- (c) which is made with the consent of the person to whom the information relates and, where not the same person, of the person from whom the information was obtained; or
- (d) which, in a case where the credit union is acting or has acted as agent for a person, is made to that person in respect of that capacity; or
- (e) where the information is in the form of a summary or collection of information and is so framed as not to enable information relating to a particular member to be ascertained from it; or
- (f) which, in the opinion of the Registrar, is necessary for the protection of the funds of shareholders in or depositors with the credit union or to safeguard the interests of the credit union; or
- (g) which is made to the Registrar for the purposes of his functions in relation to credit unions.

(3) As soon as practicable after the beginning of his term of office or, in the case of any person whose term of office began before the commencement of this section, after that commencement, every officer or voluntary assistant of a credit union shall, in such manner as the Registrar may determine—

- (a) be informed by the credit union of his obligations under this section; and
- (b) in writing acknowledge that he has been so informed and understands his obligations.

(4) Any reference in the preceding provisions of this section to a term of office means—

- (a) in relation to an officer who is an employee, the period of his employment; and

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(b) in relation to a voluntary assistant, the period during which he is engaged in the operation of the credit union.

(5) A person who contravenes *subsection (1)* shall be guilty of an offence.

(6) In any proceedings for an offence under this section, the onus of proving that any of the *paragraphs* of *subsection (2)* excludes a disclosure from *subsection (1)* shall lie on the person who made or permitted the disclosure.

Persons disqualified from acting.

72.—(1) A person who has been adjudicated bankrupt and whose bankruptcy still subsists or who has been convicted of an offence in relation to a credit union or an offence involving fraud or dishonesty shall not—

- (a) sign an application form for the registration of a society as a credit union;
- (b) be qualified to be appointed or to act as a director, member of the Supervisory Committee, member of a principal Committee, voluntary assistant, auditor, receiver or liquidator of a credit union; or
- (c) directly or indirectly take part in or be concerned in the management or operation of a credit union; or
- (d) permit his name to be put forward for election or appointment to any of the positions referred to in *paragraph (b)*.

(2) If a person who is a member of the board of directors or of the Supervisory Committee or of a principal Committee of a credit union is adjudicated bankrupt or convicted of such an offence as is referred to in *subsection (1)*, he shall forthwith cease to hold his office and the vacancy thereby created shall be deemed to be a casual vacancy and be filled accordingly.

(3) A decision of the board of directors of a credit union shall not be affected by the presence at a meeting of the board of a person who, by virtue of this section, is disqualified from being a director; but any vote which such a person purports to cast shall be disregarded.

(4) Any person who, in relation to a credit union, purports to act in a manner or capacity which, by virtue of his being disqualified under this section, he is prohibited from doing shall be guilty of an offence.

Giving of security by officers etc.

73.—(1) Before taking up office, every officer or voluntary assistant of a credit union who will have the receipt or charge of money shall give security in such sum as the board of directors may direct conditioned—

- (a) for his rendering at all due times a just and true account of all money received and paid by him on account of the credit union; and
- (b) for the payment by him of all sums due from him to the credit union in his capacity as an officer or voluntary assistant.

(2) In *subsection (1)(a)*, “at all due times” means at such times as may be specified in the rules or as the credit union or its board of directors may require. Pr.IV S.73

(3) An officer or voluntary assistant of a credit union shall give security for the purposes of this section either—

- (a) by becoming bound, either with or without a surety as the board of directors may require, in a bond in such form and amount as the board may approve; or
- (b) in such cases as may be approved by the Registrar, by giving such other security as the board of directors may direct.

(4) In relation to a voluntary assistant, the reference in *subsection (1)* to taking up office is a reference to his becoming engaged in any way in the operation of the credit union.

74.—(1) Whenever required to do so in accordance with *subsection (2)*, every officer or voluntary assistant of a credit union who has the receipt or charge of money on behalf of the credit union shall— Duty to account.

- (a) render such an account as may be required by the credit union or its board of directors;
- (b) pay over all such money and deliver all such property of the credit union for the time being under his custody or control to such person as the credit union or its board of directors may appoint.

(2) Either or both of the requirements in *subsection (1)* shall arise—

- (a) on demand; or
- (b) on the service on the officer or voluntary assistant of a notice in writing imposing the requirement or, as the case may be, both of the requirements;

and the requirement in *paragraph (a)* of that subsection shall also arise at such times as may be determined under the rules of the credit union.

(3) After the death of an officer or voluntary assistant of a credit union, references in *subsections (1)* and *(2)* to the officer or voluntary assistant shall be taken to include references to his personal representatives.

(4) Without prejudice to the right of a credit union to sue on any bond or other security given under *section 73*, if any person fails to comply with a requirement under *subsection (1)*, the Circuit Court, on the application of the credit union, may make an order requiring that person to comply with the requirement.

(5) The jurisdiction of the Circuit Court under *subsection (4)* shall be exercised by the judge for the time being assigned to the circuit in which the registered office of the credit union is situated.

75.—(1) Every credit union shall keep at its registered office a register in which shall be entered— Register of members and officers.

- (a) the membership numbers, names and addresses of its members;
- (b) a statement of the number of shares and amount of deposits held by each member and, if the shares are distinguished by numbers, the numbers of the shares so held;
- (c) a statement of other property in the credit union, whether in loans or otherwise, held by each member;
- (d) the date at which the name of any person was entered in the register as a member;
- (e) the date at which any person ceased to be a member; and
- (f) the membership numbers, names and addresses of the officers of the credit union (excluding any person who is an officer solely by virtue of being an employee), with the offices held by them respectively, the dates on which they assumed office and, where applicable, on which they ceased to hold office.

(2) The register may be kept either by making entries in bound books or by recording the matters in question in any other manner; but, where the register is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken for guarding against, and facilitating the discovery of, any falsification.

(3) Every credit union shall either—

- (a) keep at its registered office, for the purposes of inspection under *section 76*, an abbreviated register, containing the particulars in the register kept under *subsection (1)*, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection; or
- (b) so construct the register kept under *subsection (1)* that it is possible to open to inspection the particulars in the register, excluding those entered under *paragraph (b)* or *paragraph (c)* of that subsection and without exposing the particulars so entered.

(4) Where a credit union keeps a register pursuant to *subsection (1)* by recording the matters in question in any manner other than by making entries in bound books, the credit union shall keep at a place other than its registered office a duplicate register containing the particulars in the register kept under *subsection (1)*.

(5) The Registrar or a person acting on his behalf or a person or persons duly authorised by the committee of, or other body administering, a savings protection scheme in which the credit union participates may at all reasonable hours inspect any particulars in any register or duplicate register kept under this section.

(6) A credit union's register or duplicate register kept under this section, or any other register or list of members or shares kept by the credit union shall be *prima facie* evidence of any of the following particulars entered therein, that is to say—

- (a) the membership numbers, names and addresses of members;

(b) the number of shares and the amount of deposits respectively held by the members, and the distinguishing numbers of those shares if they are distinguished by numbers; Pr.IV S.75

(c) the date at which the name of any person was entered in the register as a member; and

(d) the date at which any person ceased to be a member.

(7) A credit union shall ensure that a register or duplicate register kept under this section is up to date and, in particular, shall ensure that, if an event occurs which gives rise to the need for the making of an entry in, a change to or a deletion from, the register, that entry, change or deletion is made within 28 days of the event in question.

(8) A credit union which contravenes any provision of this section shall be guilty of an offence.

76.—(1) Notwithstanding anything in the rules of a credit union, except as provided by this Act or any other enactment, no-one (whether a member of the credit union or not) shall have the right to inspect the books of a credit union. Inspection of books.

(2) Any member of a credit union or any other person having an interest in the funds of a credit union may, at any reasonable hour, inspect at the registered office of the credit union or at any other place where they may be kept—

(a) the register kept under *section 75*, excluding the particulars entered therein under *paragraph (b)* or *paragraph (c)* of *subsection (1)* of that section; and

(b) his own account with the credit union;

but the right of inspection conferred by this subsection shall be exercisable subject to such conditions as to time and manner as may from time to time be determined by the board of directors.

(3) The rules of a credit union may make provision for the disclosure of its books and documents for the purpose of enabling it to enter into contracts for the benefit of the credit union.

(4) Subject to *subsection (5)*, on the application of thirty members of a credit union, the Registrar may appoint an accountant to inspect and report on the books and documents of the credit union.

(5) An application under *subsection (4)* shall contain such particulars as the Registrar may require and shall not be valid unless—

(a) each of the members making the application has been a member throughout the whole of the twelve months immediately preceding the date of the application; and

(b) the members making the application deposit with the Registrar as security for the costs of the proposed inspection such sum as the Registrar may reasonably require.

(6) An accountant appointed under *subsection (4)* may make copies of, and take extracts from, any books or documents of the credit union at all reasonable hours at the credit union's registered office or at any other place where those books or documents are kept.

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(7) All expenses of and incidental to an inspection by an accountant appointed under *subsection (4)* shall be defrayed in such proportions as the Registrar may direct—

- (a) by the members making the application;
- (b) out of the funds of the credit union; and
- (c) by the members or officers, or former members or officers, of the credit union.

(8) The Registrar shall make known the results of an inspection by an accountant appointed under *subsection (4)* to the members who made the application and to the credit union.

PART V

MEETINGS, RESOLUTIONS ETC.

The organisation meeting.

77.—(1) Not later than one month after the registration of a credit union, the signatories to the application to register the credit union shall by notice in writing summon a meeting (to be known as “the organisation meeting”) of all the persons who, on the date of issue of the notice, were members of the credit union.

(2) The notice required by *subsection (1)*—

- (a) shall state the date, time and place of the organisation meeting; and
- (b) shall, within the relevant period, be delivered personally or by post to each member of the credit union and, if delivered by post to any member, shall be so delivered to the address of that member as recorded in the books of the credit union.

(3) The reference in *paragraph (b)* of *subsection (2)* to the relevant period is a reference to the period which begins 21 days before and ends seven days before the date of the organisation meeting; and the reference in *subsection (1)* to the date of issue of the notice is a reference to the date or, as the case may be, the first date on which the notice is delivered to any member as mentioned in that paragraph.

The annual general meeting.

78.—(1) In respect of each financial year, a meeting (to be known as the “annual general meeting”) of the members of a credit union shall be held in the State at a time and place provided for under the rules.

(2) Subject to *subsections (3)* and *(4)*, the annual general meeting of a credit union in respect of any financial year shall be held in the October, November, December or January following the end of that financial year.

(3) If a credit union fails to hold an annual general meeting in respect of any financial year as required by *subsections (1)* and *(2)*, the Registrar may call or direct the calling of such a meeting on such date or within such period as he may specify and give such ancillary or consequential directions as he thinks expedient, including directions modifying or supplementing the operation of the rules of the

credit union in relation to the calling, holding and conduct of the meeting. Pr.V S.78

(4) Where, in the opinion of the Registrar, it is necessary to do so—

(a) in the interests of the members or creditors of a credit union, or

(b) in the interests of the orderly and proper regulation of the business of a credit union,

the Registrar may direct the credit union to postpone, for a period not exceeding nine months, the holding of the annual general meeting of the credit union in respect of the financial year specified in the direction.

(5) At each annual general meeting of a credit union, the directors shall lay before the credit union the annual accounts for the financial year in respect of which the meeting is held; and a copy of those accounts shall be delivered, together with the notice of the meeting, to every person entitled to receive such a notice.

(6) If, with respect to any annual general meeting, the directors of a credit union fail to comply with *subsection (5)*, every person who was a director at the date of the meeting shall be guilty of an offence.

(7) *Section 3 (3)* shall not apply to directions under this section.

79.—(1) The board of directors or the Supervisory Committee of a credit union may, whenever they think fit, convene a special general meeting of the credit union. Special general meetings.

(2) If requested to do so by the committee of or other body administering a savings protection scheme in which a credit union participates in accordance with *section 46*, the directors of the credit union shall convene a special general meeting of the credit union.

(3) If, by notice in writing addressed to the secretary of a credit union at its registered office, a qualifying group of members of the credit union so request, the board of directors shall convene a special general meeting of the credit union; and if, within one month from the date of the receipt of the notice at the credit union's registered office, the board of directors have not convened a special general meeting to be held within six weeks of that date, any ten members of the credit union, acting on behalf of the qualifying group who made the request, may convene a special general meeting.

(4) For the purposes of a request under *subsection (3)*, a group of members of a credit union is a qualifying group if—

(a) each of them has been a member throughout the period of 12 months ending on the date of the request; and

(b) they together number at least 50 or, if it is less, at least 10 per cent. of the membership of the credit union at that date.

(5) Where, in the opinion of the Registrar, it is necessary to do so—

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(a) in the interests of the members or creditors of a credit union, or

(b) in the interests of the orderly and proper regulation of the business of a credit union,

the Registrar may direct that no special general meeting of the credit union shall be held for a period not exceeding nine months from the date of the direction.

(6) Section 3 (3) shall not apply to directions under subsection (5).

Notice of general meetings.

80.—(1) Before a general meeting of a credit union is held, the secretary of the credit union shall, in accordance with subsection (2), give notice of the meeting to the Registrar, to the auditor of the credit union and to every member of the credit union who, at the beginning of the relevant period, is eligible to vote at the meeting.

(2) Subject to subsection (4), the notice required by subsection (1)—

(a) shall state the date, time and place of the general meeting;

(b) shall be accompanied by the agenda for the meeting;

(c) in the case of a notice of a special general meeting, shall contain a statement that the annual accounts for the most recent financial year may be obtained, not later than seven days before the date of the general meeting, at the registered office of the credit union; and

(d) shall, within the relevant period, be delivered personally or by post to the auditor and to each member of the credit union and, if delivered by post to any member, shall be so delivered to the address of that member as recorded in the books of the credit union.

(3) References in subsections (1) and (2) to the relevant period are references to the period which begins 21 days before and ends seven days before the date of the general meeting; and any provision in the rules of a credit union shall be void in so far as it provides for the calling of a general meeting of the credit union (other than an adjourned meeting) by less than seven or more than 21 days' notice.

(4) With the consent of the Registrar, given where the Registrar considers there are exceptional circumstances justifying the application of this subsection, the notice required by subsection (1) shall be given by publishing a notice, in accordance with subsection (5), at such times (or within such period) and in such form as the Registrar may require.

(5) Where subsection (4) applies, the notice, which shall include the agenda for the meeting, shall be published—

(a) in at least two appropriate newspapers published in the State and circulating in the area in which the registered office of the credit union is situated, and

(b) in any other manner which the Registrar requires as being necessary for bringing the notice to the attention of the persons entitled to attend the meeting,

and, for the purposes of *paragraph (a)*, the two appropriate newspapers are a local newspaper and a national daily newspaper or, if there is no local newspaper circulating in the area concerned, two national daily newspapers. Pr.V S.80

(6) The proceedings at a general meeting shall not be invalidated by—

- (a) the accidental omission to give notice to any member entitled to receive notice of the meeting; or
- (b) the non-receipt by any member of notice of the meeting.

(7) A general meeting of which notice is given less than seven days before the meeting but otherwise in accordance with *subsection (2)* shall not be invalid if not less than two-thirds of the members entitled to vote at the meeting and the auditor so agree in writing either before or during the meeting.

81.—(1) A general meeting of a credit union may, for good and sufficient reasons and with the consent of the majority of the members present and voting, be adjourned for not more than 90 days or such longer period as the Registrar may require but— General meetings: adjournment, quorum and minutes.

- (a) no business shall be transacted at an adjourned general meeting other than business left unfinished at the meeting from which the adjournment took place; and
- (b) when a general meeting is adjourned for 30 or more days, the secretary of the credit union shall give notice of the adjourned meeting to the auditor and to every member who, under *section 80 (1)*, was entitled to notice of the meeting which was adjourned.

(2) Subject to *subsection (3)*, in *section 80*—

- (a) *paragraphs (a), (b) and (d) of subsection (2)* shall apply to a notice under *subsection (1)(b)* of this section as they apply to a notice under *subsection (1)* of that section; and
- (b) *subsections (6) and (7)* shall apply in relation to an adjourned meeting as they apply in relation to a general meeting.

(3) In the application of *section 80 (2)(d)* in accordance with *subsection (2)*, for the words “within the relevant period” there shall be substituted “not later than seven days before the date of the adjourned meeting”.

(4) Subject to *subsection (5)*, the quorum for a general meeting of a credit union shall be ten per cent. of the members or 30 members, whichever is the less.

(5) Notwithstanding *subsection (4)*, in no case shall the quorum for a general meeting of a credit union be less than ten members, but, if the rules so provide, the quorum for an adjourned general meeting may be less than that specified in that subsection.

(6) It shall be the duty of the secretary to keep minutes of all general meetings of a credit union.

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Supplementing
provisions as to
general meetings.

82.—(1) The Registrar shall have the right to attend and speak at any general meeting of a credit union.

(2) At a general meeting of a credit union, or any adjournment thereof, each member shall have only one vote on each question, irrespective of his shareholding in the credit union.

(3) Subject to *subsection (4)*, a member of a credit union may not vote by proxy at a general meeting of the credit union.

(4) Where a member of a credit union is not a natural person, that member may be represented at a general meeting by a representative who may vote on behalf of the member if—

- (a) the representative is duly authorised in writing by the member to do so; and
- (b) the board of directors of the credit union have, expressly or by implication, accepted that authorisation;

and such a representative shall be entitled to exercise, on behalf of the member, the same powers as the member could exercise if the member were a natural person.

(5) Any provision in the rules of a credit union shall be void in so far as it would have the effect either—

- (a) of excluding the right to demand a poll at a general meeting (or an adjourned meeting) on any question, other than the election of the chairman of the meeting (or the adjourned meeting); or
- (b) of making ineffective a demand for a poll on any such question which is made by not less than ten members having the right to vote at the meeting (or, as the case may be, the adjourned meeting).

Special resolutions.

83.—(1) If, at any general meeting of which notice has been given specifying the intention to propose or confirm a special resolution, the chairman declares that the resolution has been passed or, as the case may be, confirmed as required by *paragraph (a) or (b) of the definition of “special resolution” in section 2 (I)*, that declaration shall, without more, be evidence of that fact until the contrary is proved.

(2) A copy of every special resolution for any of the purposes mentioned in this Act—

- (a) shall be signed by the chairman of the meeting at which the resolution was confirmed;
- (b) shall be countersigned by the secretary of the credit union; and
- (c) within 21 days of the date of the meeting at which the resolution was confirmed, shall be sent to the Registrar to be registered by him;

and the special resolution shall not take effect until that copy is so registered.

(3) If a copy of a special resolution, duly signed and countersigned Pr.V S.83 in accordance with *paragraphs (a) and (b) of subsection (2)* is not sent to the Registrar as required by *paragraph (c)* of that subsection, the credit union shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding £1,000; and
- (b) on conviction on indictment to a fine not exceeding £10,000.

PART VI

CONTROL AND SUPERVISION OF CREDIT UNIONS BY THE REGISTRAR

General

84.—(1) The Registrar shall administer the system of regulation Functions of the Registrar. and supervision of credit unions provided for by or under this Act with a view to—

- (a) the protection by each credit union of the funds of its members, and
- (b) the maintenance of the financial stability and well-being of credit unions generally.

(2) The Registrar shall have power to do anything which, in his opinion, is necessary to facilitate the exercise of his functions or is incidental to or consequential on their exercise; and, in the exercise of any such power, the Registrar may consult the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions.

(3) Neither the registration of a credit union nor the imposition of any prudential, supervisory or reporting requirements or conditions by the Registrar shall constitute a warranty as to the solvency of the credit union to which registration is given; and neither the State nor the Registrar shall be liable in respect of any losses incurred through the insolvency or default of a society which is registered as a credit union.

85.—(1) A credit union shall at all times keep a proportion of its Assets and liabilities ratios and structures. total assets in liquid form (hereinafter referred to as “liquid assets”), being such a proportion and having such a composition as to enable the credit union to meet its liabilities as they arise.

(2) For the purpose of complying with *subsection (1)*, a credit union shall have regard to the range and scale of its business and the composition of its assets and liabilities; but nothing in this Act shall be taken to prevent a credit union keeping liquid assets in addition to those required for complying with *subsection (1)*.

(3) The Registrar may from time to time by notice in writing require a credit union to maintain, between its assets and its liabilities—

- (a) a ratio specified in the requirement,
- (b) a ratio which does not exceed a ratio so specified, or
- (c) a ratio which is not less than a ratio so specified,

and a ratio may be so specified as a percentage of the assets or liabilities concerned.

(4) A requirement of the Registrar under *subsection (3)* may be expressed to apply in one or more of the following ways—

- (a) in relation to all credit unions or to credit unions of a category or categories specified in the requirement;
- (b) in relation to the total assets or total liabilities of the credit unions concerned or in relation to such assets or kinds of assets or such liabilities or kinds of liabilities as may be specified in the requirement;
- (c) in relation to such time or times or during such period or periods as may be so specified.

(5) The Registrar may, from time to time, by notice in writing specify, as respects a credit union, requirements as to the composition of its assets or, subject to *subsections (2) and (3) of section 27*, the composition of its liabilities.

(6) In this section—

- (a) “liabilities” include such contingent liabilities as the Registrar may from time to time specify by notice in writing for the purposes of this section; and
- (b) “liquid assets” mean such assets as the Registrar may from time to time specify by notice in writing for the purposes of this section;

and, until the Registrar specifies assets as mentioned in *paragraph (b)*, “liquid assets” include assets held in a form provided for by *section 43*.

(7) Where, under the preceding provisions of this section, the Registrar by notice in writing imposes a requirement or specifies any matter, and the requirement is to apply or the matter is specified otherwise than in relation to a particular credit union, the power to give the notice shall be exercisable by rules.

Control of advertising.

86.—(1) If the Registrar considers it necessary to do so in the case of any body (whether a credit union, a group or association of credit unions or otherwise) he may give the body directions in writing relating to the content or form (or both)—

- (a) of any advertisement or other means of soliciting deposits or subscriptions for shares in any one or more credit unions or credit unions generally; or
- (b) of any advertisement relating to any service provided or business undertaken by any one or more credit unions or credit unions generally;

and the Registrar may also give directions in writing requiring any such body to withdraw or amend an advertisement.

(2) Without prejudice to the generality of *subsection (1)*, directions under this section may do all or any of the following—

- (a) prohibit the issue by the body concerned of advertisements of all descriptions or any specified description;
 - (b) require the body concerned to modify advertisements of a specified description in a specified manner;
 - (c) prohibit the issue by the body concerned of any advertisements which are, or are substantially, repetitions of a specified advertisement;
 - (d) require the body concerned to withdraw any specified advertisement or any advertisement of a specified description;
 - (e) require the body concerned to include specified information in any advertisement to be published by it or on its behalf or in any statement to the public to be made by it or on its behalf.
- (3) In this section:
- (a) “advertisement” includes every form of recommendation of any matter to which this section relates, including in particular the display or publication of any such matter by way of leaflet, notice, circular, pamphlet, brochure, photograph, film, video, sound broadcasting, television, electronic communication or personal canvassing, and references to the issue of advertisements shall be construed accordingly; and
 - (b) “specified” means specified by directions in writing under this section.
- (4) *Section 3 (3)* shall not apply to directions under this section.
- (5) A credit union or other body which fails to comply with any directions given to it under this section shall be guilty of an offence.

Regulatory directions and prohibition orders

87.—(1) If, with respect to a credit union, the Registrar is satisfied—

Power of Registrar to give regulatory directions.

- (a) that the credit union has become, or is likely to become, unable to meet its obligations to its creditors or its members or suspends payments lawfully due from it, or
- (b) that it is expedient to do so in the public interest or in the interest of the orderly and proper regulation of the business of the credit union or in order to protect the savings of its members, or
- (c) that the credit union no longer possesses, or is not maintaining and is unlikely to be in a position to maintain, adequate capital resources and, in particular, no longer provides security for the funds entrusted to it, or
- (d) that the credit union is not a participant in a savings protection scheme approved by the Registrar or, although a participant, has failed to make satisfactory arrangements with the management of such a scheme, or

- (e) that any member or group of members of the credit union have, or are likely to achieve, a position in relation to the credit union that would enable the member or group to exercise a significant influence over the management or operation of the credit union,

the Registrar may give the credit union such regulatory directions as he thinks proper.

(2) The Registrar may also give regulatory directions to a credit union if it appears to him—

- (a) that the credit union has failed to comply with any requirements imposed by or under this Act (including requirements imposed by the Registrar by conditions, notices, directions or otherwise in the exercise of his powers under this Act); or
- (b) that the credit union has been convicted of an offence under *section 27 (2)* or *section 33 (6)* or an offence involving fraud, dishonesty or breach of trust; or
- (c) that, since the registration of the credit union, the factors taken into account in granting registration have so changed that, if the society were now applying for registration, it would be refused.

(3) For the purposes of this Act, “regulatory directions” are directions in writing given to a credit union by the Registrar which do one or more of the following—

- (a) prohibit the credit union, for such period not exceeding six months, to such extent, and subject to such conditions as may be specified, from carrying on all or any of the following activities, except with the written authority of the Registrar—
 - (i) the raising of funds (by whatever means);
 - (ii) the making of payments;
 - (iii) the acquisition or disposal of other assets or liabilities;
- (b) require the credit union to refrain from making, or to realise within a specified period, investments of a specified class or description;
- (c) specify, with respect to all loans which the credit union may make, the maximum amount of secured and unsecured loans which the credit union may make to its members, or the security or types of security which the credit union must require in respect of secured loans to its members;
- (d) require the credit union to establish and maintain, with respect to all loans which the credit union may make, such ratio or ratios regarding loans to shares or loans to savings as may be specified;

and, in this subsection and *subsection (4)*, “specified” means specified by regulatory directions.

(4) Subject to any express provision in *subsection (3)*, regulatory directions— Pr.VI S.87

- (a) may be expressed to have effect, either generally or with respect to specified matters, for a specified period or until varied or revoked; and
- (b) may make different provision for different classes of case (but not so as to make different provision for members, investments or loans within the same class).

(5) The giving of any regulatory directions shall not preclude a credit union—

- (a) from receiving funds by way of voluntary non-repayable donation from its members or from such other person as may be approved by the Registrar; or
- (b) from setting off to any extent a member's share capital against his indebtedness to the credit union (such a set-off being regarded as a repayment of share capital).

88.—(1) When the Registrar gives any regulatory directions to a credit union, he shall— Procedural provisions relating to regulatory directions.

- (a) serve the directions at the registered office of the credit union or cause the directions to be so served; and
- (b) send notice of the giving of the directions to every member of the board of directors and of the Supervisory Committee of the credit union;

but a failure to send notice as mentioned in *paragraph (b)* to a member of the board or of the Supervisory Committee shall not affect the validity of the directions.

(2) The Registrar may, if he thinks fit, cause to be published in *Iris Oifigiúil*, or in any other manner which appears to him to be necessary for informing the public, notice of the giving of any regulatory directions and of their amendment or revocation.

(3) The *Fourth Schedule* shall have effect with respect to regulatory directions.

(4) While any regulatory directions are in force with respect to a credit union, then, except with the leave of the Court—

- (a) no winding up proceedings may be commenced in relation to the credit union except in accordance with the *Fourth Schedule* and no resolution may be passed for winding it up;
- (b) no receiver may be appointed over the whole or any part of the property of the credit union; and
- (c) none of the property of the credit union may be attached, sequestered or distrained upon.

(5) Where the Court is satisfied that it is desirable, because of the nature or circumstances of the case or otherwise in the interest of

justice, the whole or any part of any proceedings under this section or the *Fourth Schedule* may be heard otherwise than in public.

(6) A credit union which fails to comply with any regulatory directions given to it shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding £1,000; and
- (b) on conviction on indictment, to a fine not exceeding £25,000.

Power of Court to prohibit continuance of certain contraventions.

89.—(1) Where, on an application made by the Registrar, the Court is of the opinion that there has occurred or is occurring—

- (a) a contravention of this Act,
- (b) a failure to comply with a direction under *section 86* or any regulatory directions, or
- (c) a failure to comply with a condition imposed on granting an approval application, within the meaning of *section 49*,

the Court may, by order, prohibit the continuance of the contravention or failure by the person or persons concerned or, in the case of *paragraph (c)*, require the cessation of the provision of the additional services to which the approval application related.

(2) When considering an application under this section, the Court may make such interim or interlocutory order as it considers appropriate.

(3) Where the Court is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be held otherwise than in public.

(4) The provisions of this section are without prejudice to the general functions of the Registrar.

Inspections and information

Inspection of books and documents of credit union.

90.—(1) The Registrar may authorise any person, including a body of credit unions, to carry out, when requested by the Registrar, an inspection under this section; and in this section—

- (a) “an authorised person” means a person so authorised or, as the case may require, a person nominated by a body of credit unions which is so authorised; and
- (b) in relation to an authorised person, “his authorisation” means the relevant authorisation of the Registrar, together, in the case of a person nominated by a body of credit unions, with his nomination.

(2) By his request for an inspection under this section, the Registrar may set such limits and conditions on the scope and conduct of the inspection as he considers appropriate; and, in carrying out the inspection, the powers of the authorised person under the following provisions of this section shall be limited accordingly.

(3) An authorised person requested by the Registrar to carry out an inspection under this section may, on production of his authorisation to any person concerned, at all reasonable times inspect and take copies of, or extracts from, any books or documents relating to a credit union, and for any of those purposes may enter any premises at which any such books or documents are kept.

(4) For the purpose of exercising his powers under *subsection (3)* to take copies or extracts, an authorised person may remove from the premises concerned, for such period and on such conditions (if any) as to access by officers of the credit union as may reasonably be necessary, any of the books or documents referred to in that subsection.

(5) An authorised person who is carrying out an inspection under this section in relation to a credit union (“the principal credit union”) may, with the approval of the Registrar (and subject to any limits imposed by that approval), carry out a similar inspection in relation to any other body (whether a credit union or not and whether corporate or unincorporated) which is or has at any relevant time been associated with the principal credit union, and for that purpose the authorised person may exercise, in relation to any such body, any power conferred by *subsections (3) and (4)*.

(6) Where an inspection is carried out under this section, the authorised person shall make a report of the inspection to the Registrar.

91.—(1) If required to do so by notice in writing served by the Registrar at any time or by an authorised person in the course of an inspection under *section 90*—

Notice to furnish books, information etc.

- (a) a credit union,
- (b) any person who is or has been an officer, member, voluntary assistant, agent or liquidator of a credit union, and
- (c) any other person who has in his possession or power any books or documents relating to a credit union,

shall furnish to the Registrar or authorised person such books or documents which relate to the credit union and are in his possession or power and such information relating to the business of the credit union as may be specified in the notice and as may be reasonably required by the Registrar or authorised person in the exercise of his powers under this Act.

(2) If required to do so by a notice in writing served on it by the Registrar or by an authorised person as mentioned in *subsection (1)*, a credit union shall furnish to the Registrar or authorised person a financial statement or periodic financial statements in such form and containing such information as may be specified in the notice and as may be reasonably required by the Registrar or authorised person in the exercise of his powers under this Act.

(3) If a notice under *subsection (1)* or *subsection (2)*—

- (a) requires that any item or information is to be furnished within a period, or at a time or place specified in the notice, or
- (b) requires that any information is to be verified by a statutory declaration,

the credit union or person on whom the notice is served shall not be regarded as complying with the notice unless that requirement is also complied with.

(4) The Registrar or an authorised person may take copies of or extracts from any item produced in compliance with a notice under *subsection (1)* or *subsection (2)* and, if so required by the Registrar or an authorised person, the person on whom a notice under *subsection (1)* was served or, in the case of a statement produced in compliance with a notice under *subsection (2)*, a person who is or has been an officer, member, voluntary assistant, agent or liquidator of the credit union shall provide any explanation which may reasonably be required of an item so produced.

(5) If a person on whom a notice is served under *subsection (1)* does not have in his possession or under his control any item specified in the notice but has knowledge of its whereabouts, he shall not be regarded as complying with the notice unless he states to the best of his knowledge and belief where the item is and, if so required, verifies that information by a statutory declaration.

(6) The production by any person of any item forming part of the books and documents of a credit union shall not prejudice any lien which that person claims over that item; but nothing in this section shall compel—

- (a) the production by a barrister or solicitor of any document containing a privileged communication made by or to him in that capacity; or
- (b) the furnishing of information contained in a privileged communication so made.

(7) A credit union or other person failing, without reasonable excuse, to comply with a notice under *subsection (1)* or *subsection (2)* shall be guilty of an offence.

(8) If the Registrar considers it just and so requires by notice in writing, all or any of the expenses incurred by him in exercising his powers under *subsection (1)* shall be met, either wholly or to such extent as he may so require—

- (a) out of the funds of the credit union; or
- (b) by the officers or former officers of the credit union or any of them;

and any sum which a credit union or other person is required to pay by a notice under this subsection shall be recoverable summarily by the Registrar as a civil debt.

(9) In this section “agent”, in relation to a credit union, includes its bankers, accountants, solicitors, auditors and its financial and other advisers.

92.—(1) Where—

- (a) an application is made to the Registrar by not less than 30 members of a credit union, each of whom has been a member of the credit union throughout the period of 12 months ending on the date of the application, or

- (b) the Registrar is of the opinion that it is necessary to do so Pr.VI S.92
in the interest of the orderly and proper regulation of the
business of a credit union,

the Registrar, as he thinks fit, may appoint one or more inspectors to investigate the affairs of the credit union or may call a special general meeting of the credit union.

(2) The Registrar may, either on the same or on different occasions, both appoint an inspector and call a meeting under *subsection (1)*.

(3) An application under *subsection (1)(a)* shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants—

- (a) have good reason for requiring the investigation to be made or the meeting to be called; and
- (b) are not actuated by malicious motives in their application;

and, if so required by the Registrar, the applicants shall deposit with him, prior to, and as security for the costs of, the investigation or meeting, such sum as he may reasonably require.

(4) If an inspector appointed under this section to investigate the affairs of a credit union (“the principal credit union”) thinks it necessary for the purpose of his investigation to investigate also the affairs of any other body (whether a credit union or not and whether corporate or unincorporated) which is or has at any relevant time been associated with the principal credit union, he may do so with the approval of the Registrar.

(5) Such notice of an application under *subsection (1)(a)* as the Registrar may require shall be given to the credit union concerned and, where applicable, to any other body whose affairs are to be investigated by virtue of *subsection (4)*.

(6) The Registrar may impose such requirements as he thinks fit in relation to the calling, holding and conduct of a meeting held by virtue of this section and, in relation to such a meeting—

- (a) any such requirements shall have effect notwithstanding anything in the rules of the credit union;
- (b) without prejudice to the generality, such requirements may include provision as to the time and place of the meeting and the matters to be discussed and determined at the meeting;
- (c) the Registrar may appoint a person to be chairman of the meeting but, if he does not do so, the members present at the meeting shall appoint the chairman; and
- (d) subject to the preceding provisions of this subsection, the meeting shall have all the powers of a meeting called according to the rules of the credit union.

(7) Before appointing an inspector or calling a meeting under this section, the Registrar shall, if he is of the opinion that it would not be prejudicial to the interests of the members or creditors of the credit union, notify the credit union in writing of the action which he proposes to take and of the grounds on which he proposes to take

it and, in such a case, the Registrar shall have regard to any explanatory statement in writing which may be given by the credit union within 14 days from the receipt of the notification.

(8) If the Registrar considers it just and so requires by notice in writing, all or any of the expenses of and incidental to an investigation or meeting under this section shall be met, either wholly or to such extent as he may so require—

- (a) out of the funds of the credit union; or
- (b) by the members or former members or the officers of the credit union or any of them;

but, in the case of an investigation (in whichever way instituted), the expenses may be defrayed in the first instance by the Registrar, but without prejudice to his rights to contribution under *section 93*.

Provisions supplementary to investigations under *section 92*.

93.—(1) The provisions of this section have effect in relation to an investigation under *section 92* of the affairs of a credit union or of any such other body as is referred to in *subsection (4)* of that section; and in the following provisions of this section—

- (a) any reference to the inspector, the credit union or the other body shall be construed accordingly; and
- (b) “agent” has the same meaning as in *section 91*.

(2) It shall be the duty—

- (a) of all the persons who are or have been officers, members, voluntary assistants and agents of the credit union or other body, and
- (b) of any other person who the inspector considers is or may be in possession of any information concerning the affairs of the credit union or other body,

to produce to the inspector all accounts, deeds, books, documents or other records (in whatever form) of or relating to the credit union or other body which are in their possession or power, to attend before the inspector and otherwise to give him all assistance in connection with the investigation which they are reasonably able to give.

(3) The inspector may examine on oath the persons referred to in *subsection (2)(a)* in relation to the affairs of the credit union or other body and may administer an oath accordingly.

(4) If any such person as is mentioned in *paragraph (a)* or *paragraph (b)* of *subsection (2)* fails without reasonable excuse—

- (a) to produce to the inspector any book or document which it is his duty to produce, or
- (b) to attend before the inspector when required to do so, or
- (c) to answer any question put to him by the inspector with respect to the affairs of the credit union or other body,

that person shall be guilty of an offence.

(5) Subject to *subsection (6)*, if the inspector makes an application to the Court on the ground that he thinks it necessary for the purpose of his investigation that a person referred to in *subsection (2)(b)* should be examined on oath, the Court may order that person to attend and be examined on oath before it on any matter relevant to the investigation; and where the Court orders such an examination—

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- (a) the inspector may take part in the examination by solicitor or counsel;
- (b) the Court may put such questions to the person examined as it thinks fit;
- (c) the person examined shall answer all such questions as the Court may put or allow to be put to him, but may at his own cost employ a solicitor (with or without counsel) who shall be at liberty to put to him such questions as the Court may think fit for the purpose of enabling him to explain or qualify any answers given by him; and
- (d) notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence.

(6) Notwithstanding anything in *subsection (5)(c)*, the Court may allow the person examined such costs as, in its discretion, it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.

(7) Nothing in this section—

- (a) shall compel the production by a barrister or solicitor of any document or other material containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made; or
- (b) shall require the disclosure by a credit institution of any information as to the affairs of any of its customers other than the credit union or the other body.

(8) Where the expenses of the investigation are defrayed in the first instance by the Registrar in accordance with *section 92 (8)*, the Registrar shall be entitled to be repaid those expenses as follows—

- (a) where the investigation results from an application under *section 92 (1)(a)*, by the applicants, to such extent (if any) as the Registrar may direct;
- (b) in any case, by the credit union or the other body, to such extent (if any) as the Registrar may direct; and
- (c) in any case, by a person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by which he was convicted may order;

and a person liable under any one of *paragraphs (a) to (c)* is entitled to contribution from any other person liable under the same paragraph according to the amount of their respective liabilities under it.

94.—(1) An inspector appointed under *section 92* may, and shall if the Registrar so requires, make an interim report to the Registrar and, on conclusion of the investigation, shall make a final report to the Registrar; but the inspector may at any time in the course of his investigation, without making an interim report, inform the Registrar of matters coming to his knowledge as a result of the investigation.

(2) With respect to any report made to him under this section the Registrar shall—

- (a) forward a copy to the Minister;
- (b) where the inspector who made the report makes or has made an application to the Court under *section 93 (5)*, furnish a copy to that Court;
- (c) if he thinks fit, furnish a copy to the credit union and its auditor and on request and on payment of such fee as he may fix, to any other person who is a member of the credit union or of any other body dealt with in the report by virtue of *section 92 (4)* or whose interests as a creditor of the credit union or other such body appear to him to be affected; and
- (d) if he thinks fit (and the investigation results from an application under *section 92 (1)(a)*) at the request of the applicants, furnish a copy to them on payment of such fee as may be fixed by him.

(3) The Minister may lay the report under *subsection (1)* before each House of the Oireachtas and such publication shall be privileged; and the Registrar may, if he thinks fit, cause a report which is not so laid to be printed and published.

(4) Where it appears to the Registrar that any person has, in relation to the credit union or other body the affairs of which have been investigated under *section 92*, been guilty of any offence for which he is criminally liable, the Registrar shall refer the matter to the Director of Public Prosecutions.

(5) Where the Director of Public Prosecutions institutes proceedings consequent on the receipt by him of a report under *subsection (4)*, it shall be the duty of all officers, members, voluntary assistants and agents of the credit union or other body (other than the defendants in the proceedings) to give him all assistance in connection with the prosecution which they are reasonably able to give.

(6) Where it appears to the Registrar after consideration of an inspector's report under *subsection (1)* that it is expedient to do so, he may, unless the credit union is being wound up by the Court, petition the Court for an order to wind up the credit union under *section 134*.

(7) Where it appears to the Registrar after consideration of an inspector's report under *subsection (1)* that proceedings ought in the public interest to be brought by the credit union for damages, in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation of the credit union or the management of its affairs, or for the recovery of any property misapplied or wrongfully retained, he may bring proceedings for that purpose in the name of the credit union.

(8) The Minister may indemnify the credit union against any costs or expenses incurred by it in, or in connection with, any proceedings brought under *subsection (7)*. Pr.VI S.94

(9) A copy of any report of an inspector appointed under *section 92* shall be admissible in any legal proceedings as evidence of the opinion of the inspector in relation to any matter contained in the report.

(10) Expressions to which a meaning is assigned by *section 93 (1)* have the same meaning in this section.

Supervisory powers

95.—(1) Where the Registrar is of the opinion, after an inspection under *section 90* or after an investigation under *section 92*, that it is necessary to do so in the interest of the orderly and proper regulation of the business of a credit union, he may appoint a person to be a member of the board of directors of the credit union; but a person so appointed shall not be entitled to vote at any meeting of the board and shall be left out of account for the purposes of any provision of this Act relating to the minimum or maximum number of directors of a credit union. Registrar's power to appoint person as director of a credit union.

(2) Without prejudice to the generality of *subsection (1)*, before exercising a power conferred on him by this section, the Registrar shall have regard to any financial transactions which have been undertaken, or are in the course of being undertaken, by the credit union and which, in the Registrar's opinion, are likely to be prejudicial to the interest of the orderly and proper regulation of the business of the credit union.

(3) A person appointed under this section shall hold office for such period and on such terms as the Registrar may specify and, on the expiry of such a period, the Registrar may renew the appointment for such period or periods as he may specify.

(4) Notwithstanding anything in *section 68*, all expenses of and incidental to the appointment of a person under this section shall be defrayed out of the funds of the credit union, or by the members (or former members) or officers of the credit union, in such proportions as the Registrar shall direct.

(5) An officer, member, voluntary assistant or agent of a credit union shall at all times give all information required by a person appointed under this section for the full and satisfactory performance of his duties; and for this purpose *section 91* shall apply as if any reference therein to the Registrar included a reference to a person appointed under this section.

(6) A person appointed under this section shall report to the Registrar, in such manner and with such frequency as the Registrar may direct, on the affairs of the credit union.

(7) No claims shall lie against the Registrar, the Minister or the State in respect of any act or omission on the part of a person appointed under this section to be a member of the board of directors of a credit union.

Pt. VI
Removal or suspension of directors and members of Supervisory Committee.

96.—(1) Where the Registrar is of the opinion, after an inspection under *section 90* or after an investigation under *section 92*, that it is necessary to do so in the interest of the members or creditors of a credit union or of the orderly and proper regulation of the business of a credit union, he may—

- (a) remove from office, or
- (b) suspend from office for such period not exceeding three months as the Registrar considers appropriate,

all or any of the directors or members of the Supervisory Committee of the credit union.

(2) The *Fifth Schedule* to this Act shall have effect where the Registrar has removed or suspended a director or member of the Supervisory Committee of a credit union under *subsection (1)*; and in that Schedule—

- (a) references to removal or suspension shall be construed accordingly; and
- (b) “member” means a member of the Supervisory Committee.

(3) Where the Court is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of any proceedings under the *Fifth Schedule* may be heard otherwise than in public.

(4) Where any director or member of the Supervisory Committee of a credit union is removed by the Registrar under this section or by the Court under the *Fifth Schedule*, the vacancy caused by the removal shall be treated as a casual vacancy.

(5) If the Court so declares, a director or member of the Supervisory Committee of a credit union who is removed as mentioned in *subsection (4)* shall not, for a period of five years from the date when the removal takes effect, be an officer, auditor or voluntary assistant of a credit union.

(6) Where any director or member of the Supervisory Committee of a credit union is suspended under this section, the remaining directors or members of the Supervisory Committee shall be regarded as constituting the board of directors or the Supervisory Committee, as the case may be.

(7) No claim shall lie against the Registrar, the Minister or the State for any loss of office arising directly or indirectly from any of the provisions of this section or the *Fifth Schedule*.

Cancellation of registration.

97.—(1) Subject to the provisions of this section and *section 98 (2)*, the Registrar may, by writing under his hand, cancel the registration of a credit union—

- (a) if at any time it is proved to his satisfaction—
 - (i) that the number of the members of the credit union has been reduced to less than 15; or
 - (ii) that an acknowledgement of registration has been obtained by fraud or mistake; or

(iii) that the credit union has not commenced business within 12 months of the date on which it was registered; or

(iv) that the credit union has suspended its business for a period of not less than six months or has ceased to function;

(b) if he thinks fit, at the request of the credit union, to be evidenced in such manner as he shall from time to time direct;

(c) on proof to his satisfaction that the credit union exists or is being used for an illegal purpose or has wilfully and after notice from the Registrar violated any of the provisions of this Act;

(d) where it appears to him that the members of the credit union no longer have a common bond.

(2) The Registrar shall cancel the registration of a credit union that has been—

(a) dissolved by virtue of *section 128* or *129*; or

(b) wound up under *section 133* or *section 134*, or dissolved under *section 135*.

(3) Before the registration of a credit union is cancelled otherwise than—

(a) at its own request; or

(b) by virtue of *subsection (2)*,

the Registrar shall give the credit union not less than two months' previous notice in writing, specifying the ground of any proposed cancellation; and if, before the expiry of the period of that notice, the credit union duly lodges an appeal under *section 99 (1)*, then, without prejudice to *section 98 (2)*, the credit union's registration shall not be cancelled before the date of the determination or abandonment of the appeal.

(4) Notice of every cancellation under this section of a credit union's registration shall, as soon as practicable after it takes place, be published in *Iris Oifigiúil* and in any other manner which the Registrar considers necessary for bringing the cancellation to the notice of the persons affected by it.

(5) From the date of publication in *Iris Oifigiúil* under *subsection (4)* of a notice of the cancellation of a credit union's registration, the credit union shall cease to be entitled to any of the privileges of this Act as a credit union.

(6) *Subsection (5)* is without prejudice to any liability incurred by a credit union before the cancellation of its registration; and any such liability may be enforced against it as if the cancellation had not taken place.

98.—(1) In any case where, under *section 97 (1)*, the Registrar might cancel the registration of a credit union, he may, by writing under his hand—

Suspension of registration.

(a) subject to *subsection (3)*, suspend the registration of the credit union for a term not exceeding three months; and

(b) subject to *section 99 (2)*, renew any such suspension for a similar term.

(2) If, before the expiry of the period of a notice under *section 97 (3)* of the proposed cancellation of a credit union's registration, the credit union duly lodges an appeal from the proposed cancellation under *section 99 (1)*, the Registrar may by writing under his hand suspend the credit union's registration from the expiry of that period until the date of the determination or abandonment of the appeal.

(3) Before the registration of a credit union is suspended under *subsection (1)(a)*, the Registrar shall give the credit union not less than two months' previous notice in writing specifying the ground of the proposed suspension.

(4) Notice of every suspension of a credit union's registration under *subsection (1)(a)* or *subsection (2)* and of any renewal of a suspension under *subsection (1)(b)* shall, as soon as practicable after it takes place, be published in *Iris Oifigiúil* and in any other manner which the Registrar considers necessary for bringing the suspension to the notice of persons affected by it.

(5) From the date of publication in *Iris Oifigiúil* under *subsection (4)* of a notice of the suspension of a credit union's registration under *subsection (1) (a)* or *subsection (2)* until the period of the suspension and any renewal of it under *subsection (1)(b)* ends (whether on the expiry of that period or by virtue of an appeal under *section 99*), the credit union shall not be entitled to any of the privileges of this Act as a credit union.

(6) Notwithstanding *subsection (5)*, the suspension of the registration of a credit union shall not affect—

- (a) any liability incurred by the credit union before the suspension; or
- (b) the right of the credit union to continue to collect repayments due on loans which were outstanding at the time of the suspension.

Appeals against cancellation or suspension.

99.—(1) Where the Registrar gives notice to a credit union under *section 97 (3)* or *section 98 (3)* of the proposed cancellation or suspension of its registration, the credit union may, before the expiry of that notice, appeal to the Court against the Registrar's proposal.

(2) If the Registrar, under *section 98 (1)(b)*, renews the suspension of the registration of a credit union so that the suspension will extend beyond the period of three months from the date when the suspension began, the credit union may, within 30 days from the date of publication under *section 98 (4)* of notice of the renewal of the suspension, appeal to the Court against the renewal.

(3) Notice of an appeal under this section shall be in writing and shall set out the grounds for the appeal.

Administrative Provisions

Public file of a credit union.

100.—(1) The Registrar shall prepare and maintain at the Office of the Registrar of Friendly Societies a file relating to each credit union, to be known as the public file of the credit union; and each file shall contain—

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(a) the documents or, as the case may be, the copies of documents, and Pr.VI S.100

(b) the records of the matters,

which may be directed by or under this Act to be kept in the public file of a credit union.

(2) Without prejudice to *subsection (1)*, there shall be placed on the public file of a credit union a copy of—

(a) all special resolutions passed by the credit union;

(b) any instrument of transfer of engagements under *section 129* by which the credit union transfers its engagements or undertakes to fulfil the engagements of another credit union;

(c) any order winding up the credit union or an instrument of dissolution under *section 135*;

(d) any administration order under *section 137* made with respect to the credit union;

(e) any order (including an interim order) made by a Court with respect to the credit union under *Part XII*; and

(f) any other prescribed document relating to the credit union.

(3) Any member of the public shall be entitled—

(a) to inspect the public file of any credit union during normal business hours; and

(b) having first given reasonable notice, to be furnished with a copy of all or any of the documents or records kept in the public file of a credit union.

101.—(1) The Minister may prescribe the fees to be paid— Fees.

(a) for the inspection, or for the furnishing of copies, of any document in the custody of the Registrar;

(b) for the placing of any document on the public file of a credit union; and

(c) in connection with the exercise by the Registrar of any of his functions under this Act.

(2) Fees paid to the Registrar under this Act shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

102.—Where, under this Act, any information relating to any person is required to be delivered to the Registrar and is so received by him, the Registrar may apply such system of classification as he considers appropriate to such information and may assign symbols of identification to persons or classes of persons to whom any such information relates. Classification of information.

Pt. VI
Delivery to the
Registrar of
documents in
legible form.

103.—(1) This section applies to the delivery to the Registrar under any provision of this Act of documents in legible form.

- (2) The document must—
- (a) state in a prominent position the registered number of the credit union to which it relates,
 - (b) satisfy any requirements specified by the Registrar for the purposes of this section as to the form and content of the document, and
 - (c) conform to such requirements as may be so specified for the purpose of enabling the Registrar to copy the document.

(3) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more persons, on any of them) a notice indicating the respect in which the document does not comply.

(4) Except with the consent of the Minister, the Registrar may not serve a notice under *subsection (3)* after the expiry of three months from the date on which he receives the document to which the notice relates.

(5) Where the Registrar serves notice under *subsection (3)*, then, unless a replacement document—

- (a) is delivered to him within 28 days after the service of the notice, and
- (b) complies with the requirement of this section or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(6) For the purposes of any provision imposing a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 28 days after the service of the Registrar's notice under *subsection (3)*.

(7) In this section, “document” includes any periodic account, abstract, statement or return required to be delivered to the Registrar.

Delivery to the
Registrar of
documents
otherwise than in
legible form.

104.—(1) This section applies to the delivery to the Registrar under any provision of this Act of documents otherwise than in legible form (whether by electronic means or otherwise).

(2) Any requirement to deliver a document to the Registrar, or to deliver a document in the prescribed form, shall be satisfied by the communication to the Registrar of the requisite information in any non-legible form specified by the Registrar for the purposes of this section.

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(3) Any document which (in legible form) would be required to be signed or sealed, shall instead be authenticated in such manner as may be specified by the Registrar for the purposes of this section. Pr.VI S.104

(4) The document must—

- (a) contain in a prominent position the registered number of the credit union to which it relates,
- (b) satisfy any requirements specified by the Registrar for the purposes of this section, and
- (c) be furnished in such manner and conform to such requirements as may be so specified for the purposes of enabling the Registrar to read and copy the document.

(5) If a document is delivered to the Registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(6) Except with the consent of the Minister, the Registrar may not serve a notice under *subsection (5)* after the expiry of three months from the date on which he receives the document to which the notice relates.

(7) Where the Registrar serves a notice under *subsection (5)*, then, unless a replacement document—

- (a) is delivered to him within 28 days after the service of the notice, and
- (b) complies with the requirement of this section or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

(8) For the purposes of any provision imposing a penalty for failure to deliver a document, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 28 days after the service of the Registrar's notice under *subsection (5)*.

(9) The Minister may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.

(10) In this section "document" includes any periodic account, abstract, statement or return required to be delivered to the Registrar.

105.—In the absence of the Registrar, his functions may be exercised and performed by such person as the Minister may for the time being authorise. Exercise of Registrar's functions.

106.—(1) Not later than the end of September in each year, the Registrar shall make a report to the Minister with respect to the exercise of his functions under this Act. Annual report by Registrar.

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(2) As soon as possible after the receipt of a report from the Registrar under *subsection (1)*, the Minister shall lay a copy of the report before each House of the Oireachtas.

PART VII

ACCOUNTS AND AUDIT

Financial year of a credit union.

107.—(1) Subject to *subsections (2) and (3)*, the financial year of a credit union shall be the period of 12 months ending on the 30th day of September or such other date as the Registrar may determine.

(2) The initial financial year of a credit union shall be such period as begins on the date on which the credit union is registered and expires on the following 30th September or on such other date as the Registrar may have determined before the 30th September.

(3) The final financial year of a credit union shall be that period (of less than 12 months) which expires on the date to which the credit union makes up its final accounts and begins on the day following the end of the preceding financial year (as determined under *subsection (1)* or *subsection (2)*).

Accounting records etc.

108.—(1) Every credit union shall—

- (a) cause proper accounting records, whether in the form of documents or otherwise, to be kept on a continuous and consistent basis, that is to say, the entries shall be made in a timely manner and be consistent from one year to the next, and
- (b) establish and maintain systems of control of its business and records,

in accordance with this section and *section 109*.

(2) The accounting records of a credit union shall be such as—

- (a) correctly to record and explain the transactions of the credit union;
- (b) to disclose, with reasonable accuracy and promptness, the financial position of the credit union at any time;
- (c) to enable the officers properly to discharge the duties imposed on them by or under this Act;
- (d) to enable the credit union properly to discharge the duties imposed on it by or under this Act; and
- (e) to enable the accounts of the credit union to be readily and properly audited.

(3) Without prejudice to the generality of *subsections (1) and (2)*, accounting records kept pursuant to this section shall contain—

- (a) entries from day to day of all sums of money received and expended by the credit union and the matters in respect of which the receipt and expenditure take place;

- (b) a record of the assets and liabilities of the credit union and entries from day to day of every transaction entered into by the credit union which will or may give rise to liabilities or assets of the credit union; and
 - (c) in respect of the provision of services, whether under *section 48* or otherwise, a record of the services provided and all transactions relating to them.
- (4) For the purposes of *subsection (1)* proper accounting records shall be deemed to be kept if they comply with *subsections (2) and (3)* and give a true and fair view of the state of affairs of the credit union and explain its transactions.
- (5) The accounting records of a credit union—
- (a) shall be kept at the registered office of the credit union or at such other place in the State as the board of directors think fit; and
 - (b) shall at all reasonable times be open to inspection by the members of the board of directors and the Supervisory Committee.
- (6) Every record required to be kept under this section shall be preserved by the credit union for not less than six years from the latest date to which it relates.
- (7) Where the accounting records of the credit union are kept at a place other than the registered office of the credit union, the treasurer shall have responsibility for keeping a written record of their location.
- (8) Where a credit union conducts its business in more than one place, the board of directors shall ensure that such accounting records are kept and such systems of control are established and maintained for each of those places as will enable the credit union to comply with this section and *section 109*.
- (9) A credit union shall take adequate precautions to ensure the safe keeping of the accounting records of the credit union no matter what form they may take.

109.—(1) The systems of control which are to be established and maintained by a credit union pursuant to *section 108 (1)* are systems for the control of the conduct of its business as required by or under this Act and in accordance with the decisions of the board of directors and for the control of the accounting and other records of its business. Systems of control and safe custody.

(2) Without prejudice to the generality of *section 108 (1)*, the systems of control must be such as to secure that the credit union's business is so conducted and its records so kept that—

- (a) the information necessary to enable the officers, the credit union and the auditor to discharge their functions is sufficiently accurate, and is available with sufficient regularity and with sufficient promptness for those purposes, and
- (b) the information obtained by or furnished to the Registrar is sufficiently accurate for the purposes for which it is

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obtained or furnished and is available as required by the Registrar.

(3) Every credit union shall establish and maintain a system to ensure the safe custody of all documents of title belonging to the credit union.

Accounting principles.

110.—(1) Subject to *subsection (2)*, the amounts to be included in the accounts of a credit union in respect of items shown shall be determined in accordance with the following principles—

- (a) the credit union shall be presumed to be carrying on business as a going concern;
- (b) accounting policies shall be applied consistently from one financial year to the next;
- (c) the amount of any item in the accounts shall be determined on a prudent basis and in particular—
 - (i) only surpluses realised at the balance sheet date shall be included in the income and expenditure account, and
 - (ii) all liabilities and losses which have arisen or are likely to arise in respect of the financial year to which the accounts relate, or a previous financial year, shall be taken into account, including those liabilities and losses which only become apparent between the balance sheet date and the date on which the accounts are signed in pursuance of *section III*;
- (d) all income and charges relating to the financial year to which the accounts relate shall be taken into account without regard to the date of receipt of payment; and
- (e) in determining the aggregate amount of any item the amount of each individual asset or liability that falls to be taken into account shall be determined separately.

(2) If it appears to the directors of a credit union that there are special reasons for departing from any of the principles specified in *subsection (1)*, they may so depart, but particulars of the departure, the reasons for it and its effect on the balance sheet and income and expenditure account shall be stated in a note to the accounts, for the financial year concerned, of the credit union.

Annual accounts.

111.—(1) The directors of a credit union shall prepare or cause to be prepared, with respect to each financial year—

- (a) an income and expenditure account giving a true and fair view of the credit union's income and expenditure for that year,
- (b) a balance sheet giving a true and fair view of the state of its affairs as at the end of that year, and
- (c) any statement required by the body of accountants (referred to in *section 114 (1)(a)*) of which the auditor is a member to be included with the annual accounts so that the

annual accounts together with the statement or statements give such a true and fair view as is referred to in *paragraph (a)* or, as the case may be, *paragraph (b)*, Pr.VII S.111

and each of these shall be in such form and shall contain such particulars as the Registrar may direct.

(2) Unless the Registrar otherwise allows, for each financial year, the income and expenditure account, the balance sheet and the statement or statements referred to in *subsection (1)(c)* shall, where applicable, include corresponding particulars for the preceding financial year.

(3) The annual accounts shall also contain such supplementary information as is required by or under this Act.

(4) A credit union shall not publish, for any financial year, any income and expenditure account, balance sheet or statement unless—

- (a) it has been previously audited by the auditor last appointed to audit the annual accounts of the credit union, and
- (b) it incorporates a report by the auditor stating whether in his opinion it complies with *paragraph (a)* or *paragraph (b)* of *subsection (1)*, whichever is applicable in that case, and
- (c) it has been signed by the treasurer of the credit union, a member of the Supervisory Committee acting on behalf of the Supervisory Committee and a member of the board of directors acting on behalf of the board.

(5) If, in relation to any income and expenditure account or balance sheet of a credit union for a financial year, a member of the board of directors fails to take all reasonable steps to secure compliance with the provision of *subsection (1)* which is applicable in that case, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000 unless he proves that he had reasonable grounds to believe that a competent and reliable person was charged with the duty of seeing that the relevant provision was complied with, and was in a position to discharge that duty.

(6) The accounts prepared with respect to a credit union's financial year under this section together with the notes to them are referred to in this Act as the "annual accounts".

112.—(1) Every credit union shall keep available for inspection by its members at all reasonable times—

Balance sheet to be available to members.

- (a) a copy of the latest audited balance sheet of the credit union; and
- (b) a copy of the auditor's report on that balance sheet.

(2) Every credit union shall cause to be displayed at all times in a conspicuous position at its registered office a notice informing members of the availability of the documents referred to in *subsection (1)*.

(3) A credit union which fails to comply with the preceding provisions of this section shall be guilty of an offence.

113.—(1) At each annual general meeting a credit union shall, by a majority vote of the members present and voting, elect an auditor to hold office from the conclusion of that meeting until the next annual general meeting.

(2) Notwithstanding any agreement between the credit union and an auditor, and without prejudice to any rights of the auditor in relation to his removal under this Act, a credit union may by resolution at a general meeting remove an auditor before the term of his office expires and may elect in his place a person—

- (a) who has been duly nominated for election;
- (b) who is qualified under this Act to be an auditor of a credit union; and
- (c) of whose nomination due notice has been given to the members of the credit union and the Registrar.

(3) The first auditor of a credit union may be appointed by the directors at any time before the first annual general meeting; but no person shall be so appointed unless he is qualified for election as an auditor of a credit union.

(4) Where the directors fail to exercise their power under *subsection (3)*, the first auditor may be elected by a majority vote of the members present and voting at a general meeting of the credit union and thereupon the power of the directors under *subsection (3)* shall cease.

(5) Where, at an annual general meeting, no auditor is elected, the Registrar may appoint a person who is qualified under this Act to be an auditor of a credit union to fill the vacancy and the remuneration and expenses of an auditor so appointed shall be paid out of the funds of the credit union.

(6) A credit union shall—

- (a) within one week of the Registrar's powers under *subsection (5)* becoming exercisable, give the Registrar notice of that fact; and
- (b) where a resolution removing an auditor is passed, give notice of that fact to the Registrar in such form as may be required by the Registrar within 14 days of the meeting at which the resolution removing the auditor was passed.

(7) The directors of a credit union may fill any casual vacancy in the office of auditor with a person who is qualified to be elected an auditor of a credit union but, while any such vacancy continues, the surviving or continuing auditor or auditors, if any, may act.

(8) The election of a firm by the name of the firm to be the auditor of a credit union shall be deemed to be an election of those persons who from time to time during the period of appointment are the partners in that firm as from time to time constituted and are qualified to be auditors of a credit union.

(9) Where the Registrar is of the opinion that it would not be in the interest of the orderly and proper regulation of the business of a credit union or in its members' interests, he may by notice in writing order the credit union not to elect or re-elect to the office of auditor, or the directors not to fill a casual vacancy in that office with, a named person.

(10) Where the Registrar makes an order under *subsection (9)*, the credit union may appeal against the order to the Court but, subject to any direction or decision of the Court, the credit union shall comply with the order. Pr.VII S.113

114.—(1) A person shall not be qualified for election as auditor of a credit union unless— Qualification for appointment as auditor.

(a) he is a member of a body of accountants for the time being recognised by the Minister for the purposes of section 187 of the Companies Act, 1990, and holds a valid practising certificate; or

(b) he is otherwise for the time being authorised by the Minister under any provision of the Companies Acts to be appointed as a public auditor.

(2) None of the following persons shall be qualified for election as auditor of a credit union—

(a) a person who is or, at any time during the period of three years preceding the meeting at which the election is to be made, has been an officer or voluntary assistant of the credit union;

(b) a parent, spouse, brother, sister or child of an officer or voluntary assistant of the credit union; or

(c) a person who is a partner of, or in the employment of, or who employs, an officer or voluntary assistant of the credit union.

(3) Any election made by a credit union in contravention of *subsection (1)* or *subsection (2)* shall not be an effective election for the purposes of this Act.

(4) A person shall not act as auditor of a credit union at a time when he is disqualified under this Act or the Companies Acts for election or appointment to that office and, if an auditor of a credit union becomes so disqualified during his term of office, he shall—

(a) thereupon vacate his office; and

(b) give immediate notice in writing to the credit union and to the Registrar that he has vacated his office by reason of the disqualification.

(5) A person who contravenes *subsection (4)* shall be guilty of an offence.

115.—(1) A person who was elected (or appointed) to audit the annual accounts of a credit union for a financial year and who continues to be qualified under this Act to be an auditor of a credit union shall be eligible for re-election (or election) as auditor of the credit union for the following financial year unless— Eligibility of auditor for re-election.

(a) he has given to the credit union notice in writing of his unwillingness to be re-elected (or elected); or

(b) he is ineligible for election as auditor of the credit union for that financial year; or

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- (c) he has ceased to act as auditor of the credit union by reason of incapacity; or
- (d) the Registrar has made an order under *section 113 (9)* prohibiting his election or re-election as auditor of the credit union.

(2) For the purposes of *subsection (1)*, a person is ineligible for election as auditor of a credit union for a particular financial year if, at the date of the general meeting at which an auditor would be elected for that financial year, he is, by virtue of *section 114 (2)*, disqualified for election in relation to that credit union.

Removal of auditor by Registrar.

116.—(1) Where the Registrar considers it necessary in the interest—

- (a) of the members or creditors of a credit union, or
- (b) of the orderly and proper regulation of the business of a credit union,

the Registrar may remove from office the auditor of the credit union.

(2) In the *Fifth Schedule, paragraphs 1, 2, 4 and 5* shall have effect where an auditor is removed under *subsection (1)*, substituting a reference to the auditor for any reference to a director or member.

(3) If, in a case where any provision of the *Fifth Schedule* has effect by virtue of *subsection (1)*, the Court is satisfied, because of the nature or circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of any proceedings under that provision may be heard otherwise than in public.

Resolutions relating to appointment and removal of auditors.

117.—(1) Subject to *subsection (2)*, a resolution at a general meeting of a credit union—

- (a) nominating for election as auditor a person other than a retiring auditor,
- (b) providing that a retiring auditor shall not be nominated for election,
- (c) removing an auditor before the expiration of his term of office, or
- (d) nominating for election as auditor a retiring auditor who was appointed by the directors to fill a casual vacancy,

shall not be effective unless notice of the intention to move it has been given to the credit union and to the Registrar not less than 28 days before the meeting at which it is to be moved.

(2) Where, after notice of the intention to move such a resolution has been given to the credit union, a general meeting of the credit union is called for a date less than 28 days after the notice has been given, the notice, although not given within the time required by *subsection (1)* shall be deemed to have been properly given for the purpose of that subsection.

(3) Subject to *subsection (4)*, a credit union shall give its members notice of any such intended resolution at the same time and in the

same manner as it gives notice of the meeting or, if that is not practicable, it shall give them notice, the period of which has been approved by the Registrar, of the intended resolution by advertisement in at least two appropriate newspapers, within the meaning of *section 80 (5)(a)*, published in the State and circulating in the area in which the credit union's registered office is situated.

(4) A notice under *subsection (3)* shall not be given within 7 days of the date of the receipt of notice of the intended resolution under *subsection (1)*.

(5) On receipt of notice of an intended resolution under *subsection (1)*, the credit union shall forthwith—

(a) if the resolution is a resolution mentioned in *paragraph (a)*, *paragraph (b)* or *paragraph (d)* of that subsection, send a copy thereof to the retiring auditor;

(b) if the resolution is a resolution mentioned in *paragraph (c)* of that subsection, send a copy thereof to the auditor proposed to be removed.

(6) Where notice is given of such an intended resolution as is mentioned in any of *paragraphs (a)*, *(b)* and *(c)* of *subsection (1)* and the retiring auditor or the auditor proposed to be removed, as the case may be, makes in relation to it representations in writing to the credit union (not exceeding a reasonable length) and requests their notification to the members of the credit union, the credit union shall, subject to *subsection (8)*, (unless the representations are received by it too late for it to do so)—

(a) in any notice of the intended resolution given to members of the credit union, state the fact of the representations having been made; and

(b) send a copy of the representations to every member of the credit union to whom notice of the meeting is sent (whether before or after the credit union receives the representations).

(7) Subject to *subsection (8)*, and whether or not copies of any representations made by him have been sent as mentioned in *subsection (6)*, the auditor concerned may require that, without prejudice to his right to be heard orally, the representations made by him shall be read out at the meeting at which the intended resolution is to be moved.

(8) *Subsections (6)* and *(7)* shall not apply if, on the application either of the credit union or of any other person who claims to be aggrieved, the Registrar is satisfied that compliance with the subsections would diminish substantially public confidence in the credit union or that the rights conferred by it are being, or are likely to be, abused in order to secure needless publicity for defamatory matter.

(9) An auditor of a credit union who has been removed shall be entitled—

(a) to attend the annual general meeting of the credit union at which, but for his removal, his term of office as auditor of the credit union would have expired;

(b) to attend the general meeting of the credit union at which it is proposed to fill the vacancy occasioned by his removal;

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- (c) to receive all notices of, and other communications relating to, any such meeting which a member of the credit union entitled to notice of the meeting is entitled to receive; and
- (d) to be heard at any such meeting or any part of the business of the meeting which concerns him as a former auditor of the credit union.

Resignation of auditors.

118.—(1) An auditor of a credit union may, by a notice in writing which complies with *subsection (3)*, is served on the credit union and states his intention to do so, resign from the office of auditor to the credit union, and the resignation shall take effect on such date as may be specified in the notice, being not less than 28 days after the notice is served.

(2) A copy of a notice under *subsection (1)* shall be sent by the auditor to the Registrar at the same time as it is served on the credit union.

(3) A notice under *subsection (1)* shall contain either—

- (a) a statement to the effect that there are no circumstances connected with the resignation to which it relates that the auditor concerned considers should be brought to the notice of the members or creditors of the credit union; or
- (b) a statement of any such circumstances.

(4) Subject to *subsection (5)*, where a notice under *subsection (1)* is served on a credit union and the notice contains a statement falling within *subsection (3)(b)*, the credit union shall, not later than 14 days after the date of that service, send a copy of the notice to every person who is entitled to notice of a general meeting of the credit union.

(5) Copies of a notice served on a credit union under *subsection (1)* need not be sent to the persons specified in *subsection (4)* if, on the application of the credit union concerned or any other person who claims to be aggrieved, the Registrar is satisfied that the sending of the notice would be likely to diminish substantially public confidence in the credit union or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

Requisitioning of general meeting and circulation of statement by resigning auditor.

119.—(1) A notice served on a credit union under *section 118* by a resigning auditor which contains a statement falling within *subsection (3)(b)* of that section may also requisition the convening, by the directors of the credit union, of a general meeting of the credit union for the purpose of receiving and considering such account and explanation of the circumstances connected with his resignation from the office of auditor to the credit union as the auditor may wish to give to the meeting.

(2) Where an auditor makes a requisition under *subsection (1)*, the directors of the credit union shall, within 14 days of the service on the credit union of the notice containing the requisition, proceed duly to convene a general meeting of the credit union for a day not more than 28 days after the service of that notice.

(3) Subject to *subsection (4)*, where—

(a) a notice served on a credit union under *section 118* contains a statement falling within *subsection (3)(b)* of that section, and

(b) the auditor concerned requests the credit union to circulate to its members—

(i) before the general meeting at which, apart from the notice, his term of office would expire, or

(ii) before any general meeting at which it is proposed to fill the vacancy caused by his resignation or convened pursuant to a requisition under *subsection (1)*,

a further statement in writing prepared by the auditor of the circumstances connected with the resignation that the auditor considers should be brought to the notice of members,

the credit union shall in any notice of the meeting given to its members state the fact of the statement having been made, and send a copy of the statement to every person who is entitled to notice of a general meeting of the credit union.

(4) *Subsection (3)* need not be complied with by the credit union concerned if, on the application of either the credit union or of any other person who claims to be aggrieved, the Registrar is satisfied that the sending of the statement would be likely to diminish substantially public confidence in the credit union or that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) A person who has resigned from the office of auditor of a credit union shall be permitted—

(a) to attend any such meeting of the credit union as is mentioned in *subsection (3)(b)*; and

(b) to be heard at any such meeting on any part of the business which concerns him as a former auditor of the credit union;

and the credit union shall send to such a person all notices of, and other communications relating to, any such meeting that a member of the credit union who is entitled to notice of the meeting is entitled to receive.

120.—(1) The auditor of a credit union shall make a report to the members on the accounts examined by him, and on the annual accounts which are to be laid before the credit union at the annual general meeting during his tenure of office; and the auditor's report—

Auditor's report, right of access and to be heard.

(a) shall be read at the annual general meeting of the credit union, and

(b) shall be open to inspection by any member of the credit union.

(2) Before signing his report, the auditor of a credit union shall meet with and report to the directors of the credit union and the members of the Supervisory Committee on the annual accounts and any matter relating thereto which he considers should be drawn to their attention.

(3) The auditor's report shall state whether—

- (a) he has obtained all the information and explanations which, to the best of his knowledge and belief, were necessary for the purposes of his audit;
- (b) he is of the opinion that proper accounting records have been kept by the credit union;
- (c) the credit union's annual accounts are in agreement with the accounting records of the credit union;
- (d) he is of the opinion that the credit union's annual accounts have been properly prepared so as to conform with any requirements made by or under this Act and give a true and fair view—
 - (i) in the case of the balance sheet, of the credit union's state of affairs as at the end of the financial year;
 - (ii) in the case of the income and expenditure account, of the income and expenditure of the credit union for the financial year; and
- (e) the credit union's annual accounts contain any statement required under *section III (1)(c)* to be included by the body of accountants concerned.

(4) Without prejudice to *subsection (3)*, where the report of the auditor relates to any accounts other than the income and expenditure account for the financial year in respect of which he is appointed, that report shall state whether those accounts give a true and fair view of any matter to which they relate.

(5) It shall be the duty of the auditor in preparing his report under this section to carry out such investigations as will enable him to form an opinion as to whether—

- (a) the credit union has kept proper accounting records, and
- (b) the credit union has maintained satisfactory systems of control of its business and records,

and where the auditor is of the opinion that the credit union has failed to keep proper accounting records or to maintain a satisfactory system of control of its business or records, he shall so state in his report.

(6) Every auditor of a credit union shall have a right of access at all reasonable times to the books and documents of the credit union, and shall be entitled to require from the officers and voluntary assistants of the credit union such information and explanations that are within their knowledge or can be procured by them, as he thinks necessary for the performance of his duty as auditor.

(7) The auditor of a credit union shall be entitled— Pr.VII S.120

- (a) to attend any general meeting of the credit union; and
- (b) to be heard at any general meeting on any part of the business which concerns him as auditor of the credit union;

and the credit union shall give its auditor the same notice of, and any other communications relating to, a general meeting that a member of the credit union is entitled to receive.

121.—The Minister, after consultation with the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions, may by regulations make provision with respect to the annual accounts of credit unions and to their audit and, without prejudice to the generality of the power, any such regulations may— Power of Minister to make further provision about accounts and audit.

- (a) add to the documents to be comprised in the annual accounts of a credit union prepared with respect to a financial year under *section III*;
- (b) make further provision as to the matters to be included in any document comprised in a credit union's annual accounts; and
- (c) make further provision in relation to accounting principles and rules for the preparation of annual accounts including, if the Minister considers it necessary or desirable, adherence to particular formats of presentation.

122.—(1) If at any time the auditor of a credit union— Auditor's duty to report to Registrar.

- (a) has reason to believe that there exist circumstances which are likely to affect materially the credit union's ability to fulfil its obligations to its members or meet any of its obligations under this Act,
- (b) has reason to believe that there are material defects in the accounting records, systems of control of the business and records of the credit union,
- (c) has reason to believe that there are material inaccuracies in or omissions from any returns made by the credit union to the Registrar,
- (d) proposes to qualify any report which he is to provide under this Act,
- (e) has reason to believe that there are material defects in the system for ensuring the safe custody of all documents of title, deeds and accounting records of the credit union, or
- (f) considers that the board of directors have failed to respond to any recommendations made by him,

the auditor shall forthwith report the matter to the Registrar in writing.

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(2) The auditor of a credit union shall, if requested by the Registrar, furnish to the Registrar a report stating whether in his opinion and to the best of his knowledge the credit union has or has not complied with such requirements under this Act as the Registrar may have requested the auditor to furnish a report on.

(3) The auditor of a credit union shall send to it, forthwith, a copy of any report made by him to the Registrar under *subsection (1)* or *subsection (2)*.

(4) Whenever the Registrar is of the opinion that the exercise of his functions under this Act or the protection of the interests of the members of a credit union so requires, he may require the auditor of the credit union to supply him with such information as he may specify in relation to the audit of the business of the credit union.

(5) The Registrar may require that, in supplying information for the purpose of *subsection (4)*, the auditor shall act independently of the credit union.

(6) No duty to which the auditor of a credit union may be subject shall be regarded as contravened, and no liability to the credit union, its members, creditors or other interested parties shall attach to the auditor, by reason of his compliance with any obligation imposed on him by or under this section.

Penalty for false statements etc. to auditors.

123.—(1) An officer or voluntary assistant of a credit union who knowingly or recklessly makes a statement to which this section applies that is misleading, false or deceptive in a material particular shall be guilty of an offence.

(2) This section applies to any statement made to the auditor of a credit union (whether orally or in writing) which conveys, or purports to convey, any information or explanation which he requires under this Act, or is entitled so to require, as auditor of the credit union.

(3) An officer or voluntary assistant of a credit union who fails to provide to the auditor of the credit union, within five days of the making of the relevant requirement (not including a Saturday, Sunday or public holiday) any information or explanation that the auditor requires as auditor of the credit union and that is within the knowledge of, or can be procured by, the officer or voluntary assistant shall be guilty of an offence.

(4) In a prosecution for an offence under this section it shall be a defence for the defendant to show—

(a) that it was not reasonably possible for him to comply with the requirement under *subsection (3)* to which the offence relates within the time specified in that subsection; and

(b) that he complied with that requirement as soon as was reasonably possible after the expiry of that time.

Annual returns.

124.—(1) Subject to *subsection (3)*, every credit union shall, not later than 31st March in each year, send to the Registrar a return relating to its affairs for the most recent complete financial year, together with the annual accounts and a copy of the report of the auditor on the credit union's annual accounts for that financial year.

(2) A return required by this section shall contain, with respect to Pr.VII S.124 the financial year to which it relates—

- (a) the income and expenditure account prepared in accordance with *section 111 (1)(a)*;
- (b) the balance sheet as at the end of the financial year prepared in accordance with *section 111 (1)(b)*; and
- (c) any statement prepared in accordance with *section 111 (1)(c)*.

(3) If the Registrar is of the opinion that special circumstances exist, he may by notice in writing allow a credit union to make a return under this section up to a date other than the end of a financial year and, in that case—

- (a) *subsection (2)* shall apply subject to such modifications as may be specified in the notice;
- (b) the return shall be sent to the Registrar not later than three months after the date to which it is to be made up; and
- (c) the period of the next return (if any) under this section shall begin immediately after that date and end at the end of the financial year in which that date falls;

and, for the purposes of *subsection (2)*, such a return as is referred to in *paragraph (c)* shall be regarded as made in respect of the financial year referred to in that paragraph.

(4) The last return under this section by a credit union which is being dissolved by an instrument of dissolution under *section 135* shall be made up to the date of the instrument of dissolution.

(5) Every credit union shall supply free of charge to every member of the credit union who applies for it a copy of the latest return of the credit union under this section and shall so supply with every such copy a copy of the report of the auditor on the accounts and balance sheet contained in the return.

(6) A credit union which fails to comply with this section shall be guilty of an offence.

PART VIII

DISPUTES AND COMPLAINTS

125.—(1) Save as otherwise required by or under this Act, this section applies to any dispute between a credit union and— Settlement of disputes.

- (a) a member of the credit union in his capacity as a member;
- (b) any former member of the credit union (in that capacity) who ceased to be a member of the credit union not more than six months previously;
- (c) any person claiming through any such member or former member (in their capacity as such); or
- (d) any person claiming under the rules of the credit union;

and references in *subsections (2) to (5)* to a dispute shall be construed accordingly.

(2) Subject to *subsections (3) and (5)*, if a credit union's rules give directions as to the manner in which disputes are to be decided, every dispute to which the credit union is party shall be decided in that manner.

(3) Unless the rules of the credit union expressly forbid it, the parties to a dispute may by consent refer the dispute to the Registrar who shall hear and decide the dispute.

(4) A decision made on a dispute as mentioned in *subsection (2) or subsection (3)* shall be binding and conclusive on all parties without appeal; and—

(a) the decision shall not be removable into any court of law or restrainable by injunction; and

(b) application for the enforcement of the decision may be made to the District Court.

(5) Where the rules of a credit union contain no direction as to disputes, or where no decision is made on a dispute within 50 days after application to the credit union for a reference under its rules, any such person as is mentioned in *paragraphs (a) to (d) of subsection (1)* who is a party to the dispute may apply to the District Court which may hear and determine the matter in dispute.

(6) The jurisdiction of the District Court under this section shall be exercised by a Judge of the District Court for the district in which the registered office of the credit union is situated.

(7) Except in so far as the rules of a credit union expressly otherwise provide, any reference in any such rules to a dispute is a reference to a dispute to which this section applies.

(8) Nothing in this section (or in *section 126*) shall prevent—

(a) a credit union, or

(b) a member of a credit union, or

(c) any person claiming through or under a member of a credit union,

from obtaining in the ordinary course of law any remedy to which the credit union, member or person is entitled in respect of any contract, excluding that constituted by the rules of the credit union.

126.—(1) In this section—

(a) “dispute” means such a dispute as is referred to in *subsection (1) of section 125*; and

(b) “the Arbitration Acts” means the Arbitration Acts, 1954 and 1980.

(2) Where the registered rules of a credit union provide that a dispute shall be determined by arbitration, the Arbitration Acts

shall, subject to any necessary modifications, apply to that dispute and— Pr.VIII S.126

- (a) the rules of the credit union shall, for the purposes of this subsection, be deemed to be an arbitration agreement within the meaning of the Arbitration Acts;
- (b) arbitrators shall be named and selected in accordance with the rules of the credit union or, if the rules make no such provision, one arbitrator shall be named by the board of directors and one by the member, former member or other person who is a party to the dispute with the credit union; and
- (c) an arbitrator shall not be beneficially interested, whether directly or indirectly, in the funds of the credit union.

(3) Where the rules of a credit union provide that a dispute shall be determined by the Registrar, the Arbitration Acts shall, subject to any necessary modifications, apply to the dispute, and—

- (a) the rules shall, for the purpose of this subsection, be deemed to be an arbitration agreement within the meaning of the Arbitration Acts; and
- (b) the Registrar shall be deemed to be a single arbitrator for the purpose of the Arbitration Acts, and any provision contained in those Acts relating to the appointment of additional arbitrators or umpires shall not apply.

(4) The Minister may by regulations, made after consultation with the Registrar, the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions, provide that the functions of the Registrar under *subsection (3)* shall devolve—

- (a) on an adjudicator appointed under a scheme established pursuant to regulations under *section 127*; or
- (b) if there is no such scheme, on an adjudicator appointed under a non-statutory scheme for the adjudication of complaints against credit unions.

(5) So long as any regulations are in force under *subsection (4)*, references to the Registrar in *subsection (3)* shall be construed as including references to the adjudicator appointed under *subsection (4)*.

127.—(1) The Minister may by regulations, made after consultation with the Registrar, the Advisory Committee and such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions, require a credit union to establish or join in establishing a scheme or schemes for the investigation of complaints against the credit union in relation to a prescribed matter of complaint. Investigation of complaints.

(2) Without prejudice to the generality of *subsection (1)*, regulations under this section may make provisions in relation to any one or more of the following—

- (a) the establishment and administration of a scheme;
- (b) the manner of appointment of an independent adjudicator to conduct investigations;
- (c) the matters to be subject to investigation under the scheme;
- (d) the grounds on which a complaint must be based;
- (e) the powers of, and procedure to be followed in the conduct of investigations by, the adjudicator;
- (f) the circumstances in and the extent to which determinations are binding;
- (g) the procedures for the making of complaints;
- (h) the publication of the adjudicator's findings; and
- (i) the approval of the scheme by the Registrar.

(3) The reference of a complaint under a scheme established under this section shall not affect the rights of a member to have such a dispute as is referred to in *subsection (1) of section 125* determined as provided for by the rules of the credit union, but any such dispute that relates to a matter covered by such a scheme may, if both the complainant and the credit union agree, instead of being so determined be determined under such a scheme, such determination being binding on both parties.

PART IX

AMALGAMATIONS AND TRANSFERS OF ENGAGEMENTS

Amalgamation of credit unions.

128.—(1) Subject to compliance with *section 130*, any two or more credit unions may amalgamate by forming a credit union as their successor.

(2) In order to form a credit union as their successor the amalgamating credit unions shall—

- (a) agree on the rules for the regulation of their successor which comply with the requirements of the *First Schedule*;
- (b) each approve the terms of the amalgamation by a special resolution, which also approves the rules of their successor; and
- (c) jointly make an application under *section 131* to the Registrar for the confirmation of the amalgamation and send to the Registrar three copies of the rules of their successor, each copy signed by the secretary of each of the credit unions.

(3) If the Registrar—

- (a) confirms the amalgamation under *section 131*, and
- (b) is satisfied as respects the matters as to which he must be satisfied before he registers the rules of a credit union,

the Registrar shall register the rules of the successor credit union and issue to it a certificate of confirmation of his approval of the amalgamation and specify a date (“the specified date”) as from which the registration takes effect. Pr.IX S.128

(4) On the specified date, all the property, rights and liabilities of each of the credit unions whose amalgamation was confirmed by the Registrar shall by virtue of this subsection stand transferred to and vested in the credit union so registered as their successor.

(5) On the specified date, each of the credit unions to which the successor succeeds shall be dissolved by virtue of this subsection; but the transfer effected by *subsection (4)* shall be deemed to have been effected immediately before the dissolution.

129.—(1) Subject to compliance with *section 130*, a credit union may transfer its engagements to another credit union which, in accordance with this section, undertakes to fulfil the engagements. Transfer of engagements between credit unions.

(2) A credit union, in order—

(a) to transfer its engagements, or

(b) to undertake to fulfil the engagements of another credit union,

shall resolve to do so by a special resolution or, if the Registrar consents in either case in circumstances where he considers it expedient to do so, by a resolution of the board of directors.

(3) The transfer shall be recorded in an instrument of transfer of engagements.

(4) A transfer of engagements between credit unions shall be of no effect unless—

(a) the transfer is confirmed by the Registrar under *section 131*; and

(b) a certificate of confirmation of the transfer is issued in respect of the transfer under *subsection (5)(b)*.

(5) Where the Registrar confirms a transfer of engagements between credit unions, he shall—

(a) register a copy of the instrument of transfer of engagements; and

(b) issue to the credit union taking the transfer a certificate of confirmation of the transfer;

and, on such date as is specified in the certificate, all the property, rights and liabilities of the credit union transferring its engagements shall, by virtue of this subsection, stand transferred to and vested in the credit union taking the transfer.

(6) Where its engagements have been transferred, a credit union shall, by virtue of this subsection, be dissolved on the date specified in the certificate issued under *subsection (5)(b)*; but the transfer effected by *subsection (5)* shall be deemed to have been effected immediately before the dissolution.

Pt.IX

Statement for members relating to proposed amalgamation or transfer of engagements.

130.—(1) A credit union which proposes—

- (a) to amalgamate with one or more other credit unions,
- (b) to transfer its engagements to another credit union, or
- (c) to undertake to fulfil the engagements of another credit union,

shall, subject to *subsection (2)*, cause to be sent to every member entitled to notice of a general meeting of the credit union and to the auditor of the credit union a statement, in such form as the Registrar may direct, showing the matters specified in *subsection (3)*, together with a copy of the annual accounts for the most recent financial year.

(2) If, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union, the Registrar has consented under *section 129* to the credit union proceeding by a resolution of its board of directors, *subsection (1)* shall not apply but, within the seven days following the meeting of the board at which that resolution is passed, the secretary of the credit union shall send to every member and to the auditor of the credit union—

- (a) notice of the resolution passed by the board of directors; and
- (b) a statement, in such form as the Registrar may direct, showing the matters specified in *subsection (3)*.

(3) The matters referred to in *subsection (1)* are—

- (a) the financial position of each credit union concerned (as appearing from the most recent unaudited monthly statements);
- (b) details of any payments proposed to be made to members of each credit union concerned in consideration of the proposed amalgamation or transfer;
- (c) any changes to be made, in connection with the amalgamation or transfer, in the terms governing outstanding loans;
- (d) the details of the arrangements proposed in relation to employees of each credit union; and
- (e) any other matter which the Registrar may require in the case of a particular amalgamation or transfer.

(4) No statement shall be sent to the members of a credit union under *subsection (1)* unless its contents have been approved by the Registrar but, subject to that, such a statement shall be so sent that every member referred to in that subsection receives it not later than the date on which he receives notice of any resolution which—

- (a) is in favour of the proposal concerned; and
- (b) is to be moved at a general meeting of the credit union.

Confirmation of amalgamation or transfer.

131.—(1) An application for confirmation by the Registrar of an amalgamation of credit unions or a transfer of engagements shall be made in such manner as the Registrar may specify.

(2) A credit union which makes, or joins in making, an application for confirmation of an amalgamation or a transfer shall, within seven days after the date of the application, cause to be published, in at least two daily newspapers published in the State and circulating in the areas in which the registered offices of the credit unions concerned in the proposal are situated, a notice giving particulars of the application and indicating that representations relating to it (whether for or against) may be made in writing to the Registrar within such period (being not less than 21 days after the date of publication of the notice) as may be specified in the notice.

(3) A notice under *subsection (2)* shall be in such form as the Registrar may specify and shall indicate that a copy of the statement prepared under *section 130* may be obtained on demand at the registered office of the credit union during the ordinary office hours of the credit union.

(4) Representations relating to an application under *subsection (1)* may be made to the Registrar within the period specified in the relevant notice published under *subsection (2)*.

(5) The Registrar shall allow the credit union or credit unions seeking confirmation of an amalgamation or transfer an opportunity to comment on any representations made before the expiry of such period as the Registrar may specify in a notice to the credit union or credit unions.

(6) The Registrar, having considered any application, representation and comment under this section, shall either—

(a) confirm the amalgamation or transfer, subject to such conditions (if any) as he considers appropriate; or

(b) subject to *subsection (7)*, refuse to confirm the amalgamation or transfer if he is satisfied that—

(i) confirmation would be contrary to the public interest or the Registrar's functions as respects credit unions; or

(ii) in the case of an amalgamation or in the case of a transfer which was the subject of a special resolution, some information material to the members' decision about the amalgamation or transfer was not made available to all the members eligible to vote; or

(iii) some relevant requirement of this Act (including, in particular, *section 6*) or the rules of any of the credit unions participating in the amalgamation or transfer was not fulfilled or not fulfilled as regards that credit union.

(7) The Registrar shall not be precluded from confirming an amalgamation or transfer by virtue only of the non-fulfilment of some relevant requirement of this Act or the rules of a credit union if it appears to the Registrar that it could not have been material to the members' decision about the amalgamation or transfer and the Registrar is satisfied that the failure may be disregarded for the purposes of this section.

(8) A failure to comply with a requirement of this Part or any rules of a credit union shall not invalidate an amalgamation or transfer, but a credit union which and any person who fails to comply with a requirement of this Part shall be guilty of an offence.

Pt.IX
Distribution to
members.

132.—(1) Where the terms of an amalgamation of, or transfer of engagements between, credit unions include provision for the distribution among any of the members of the participating credit unions of part of the funds of one or more of those credit unions in consideration of the amalgamation or transfer, then in the case of each of the credit unions concerned in the amalgamation or transfer—

- (a) that provision must be approved by the special resolution referred to in *section 128 (2)(b)* or, as the case may be, *section 129 (2)*; or
- (b) the Registrar must give consent as mentioned in *subsection (2)*.

(2) Where, in the case of a credit union proposing to transfer its engagements or to fulfil the engagements of another credit union—

- (a) the terms of the proposed transfer of engagements include provision for a distribution of funds as in *subsection (1)*, and
- (b) the Registrar is considering under *section 129 (2)* whether to give consent to the credit union proceeding by way of a resolution of its board of directors, rather than by special resolution,

the Registrar shall not give that consent unless he is satisfied that the distribution proposed to be made by each credit union concerned is, in all the circumstances, justified and reasonable.

(3) Any reference in this section to a distribution of funds, with reference to members, includes a reference to a distribution by means of a special rate of interest available to members for a limited period.

PART X

WINDING UP

Petition of
Registrar to wind
up.

133.—(1) The Registrar may petition the High Court for an order to wind up a credit union if it appears to him that—

- (a) the credit union is unable to pay sums due and payable to its members or its creditors;
- (b) there has been, in relation to the credit union, a failure to comply with any provision made by, or under or by virtue of, this Act and the failure has continued after notice from the Registrar to the credit union to remedy it; or
- (c) less than one half of the members of the credit union have a common bond;

or in any other case where it appears to the Registrar 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.

(2) If a petition under this section is presented within one year after the credit union concerned has changed its name, the former name, as well as the existing name shall appear on all notices and advertisements relating to the winding up.

134.—(1) Subject to this section, a credit union may be dissolved by being wound up in accordance with the Companies Acts and, accordingly, those Acts shall, subject to any necessary modifications, apply as if a credit union were a company limited by shares.

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Winding up under
the Companies
Acts.

(2) In the application of the Companies Acts to the winding up of a credit union—

- (a) any reference in those Acts to the registrar of companies shall be construed as a reference to the Registrar;
- (b) any reference in those Acts to the articles of association shall be construed as a reference to the rules of a credit union; and
- (c) any reference in those Acts to a special resolution shall be construed as a reference to a special resolution within the meaning of this Act.

(3) Without prejudice to *subsection (2)*, where a credit union is being wound up as mentioned in *subsection (1)*, the Registrar shall be entitled to appear and be heard in any proceedings relating to the winding up.

(4) Where a credit union is wound up as mentioned in *subsection (1)*, the liability of a present or past member of the credit union for payment of the debts and liabilities of the credit union, the expenses of winding up and the adjustment of the rights of contributories among themselves shall be qualified as follows—

- (a) no person who ceased to be a member not less than one year before the beginning of the winding up shall be liable to contribute;
- (b) no person shall be liable to contribute in respect of any debt or liability contracted after he ceased to be a member;
- (c) no person who is 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 person exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a past or present member; and
- (e) in the case of a share which has been withdrawn, a person shall be taken to have ceased to be a member in respect of that share as from the date of his notice under *section 32 (1)* of intention to withdraw or, as the case may be, the approval of the withdrawal under *section 32 (3)(b)*.

(5) Where a credit union is wound up by virtue of this section, sections 293 to 299 of the Companies Act, 1963, and sections 202 to 204 of the Companies Act, 1990, in so far as they relate to the liabilities of directors and officers (within the meaning of those Acts) of a company being wound up, shall apply with the necessary modifications in relation to the officers, other than employees, of the credit union.

Pt.X
Winding up by
instrument of
dissolution.

135.—(1) Subject to the provisions of this section, if by a special resolution a credit union resolves that it be wound up by an instrument of dissolution, the credit union shall be dissolved by such an instrument, bearing the signatures of the secretary and a member of the board of directors.

- (2) An instrument of dissolution shall set forth—
- (a) the liabilities and assets of the credit union in detail;
 - (b) the number of the members and the nature of their respective interests in the credit union;
 - (c) the claims of creditors, if any, and the provision to be made for their payment; and
 - (d) the intended appropriation or division of any surplus or balance, as recommended by the board of directors and approved by the Registrar;

and in *paragraph (d)* “surplus or balance” means surplus or balance of funds and property of the credit union left after members have been paid in full.

(3) Alterations to the instrument of dissolution may be made by the consent of not less than three quarters of the members of the credit union present and voting at a special general meeting called for the purpose, which consent shall be testified by the signatures of the secretary and a member of the board of directors to the alteration.

(4) The instrument of dissolution shall be sent to the Registrar accompanied by a statutory declaration made by the secretary and three other members of the credit union stating that all relevant provisions of this Act have been complied with.

(5) After the Registrar has received such a final return as is referred to in *section 124 (4)*, the instrument of dissolution and any amendments to it shall be registered in like manner as an amendment of the rules of the credit union and shall be binding upon all the members of the credit union.

(6) The Registrar shall cause notice of the dissolution to be advertised at the expense of the credit union in *Iris Oifigiúil* and in any other manner which the Registrar considers necessary for bringing the notice to the attention of persons affected by the dissolution and, subject to *subsection (7)*, from the date of the advertisement or, if it is later, the date when the certificate required by *section 136 (1)* is lodged with the Registrar, the credit union shall be dissolved.

(7) A credit union shall not be dissolved as mentioned in *subsection (6)* if—

- (a) within three months of the date of the advertisement referred to in that subsection, a member or other person interested in or having any claim on the funds of the credit union commences proceedings in the Court to set aside the dissolution of the credit union;
- (b) not less than seven days before those proceedings are commenced, the person intending to institute them sends notice of his intention to the Registrar; and

(c) the dissolution of the credit union is set aside accordingly; Pr.X S.135

and, within seven days from the making of any order setting the dissolution aside, the credit union shall send notice of the order to the Registrar.

(8) If the date of the meeting at which the special resolution referred to in *subsection (1)* is confirmed falls within one year after the credit union has changed its name, the former name, as well as the existing name, shall appear on all notices and advertisements relating to its dissolution under this section.

136.—(1) Until a certificate under this section has been lodged with the Registrar—

Restriction on dissolution or cancellation of registration.

(a) a credit union shall not be dissolved in accordance with *section 135 (6)*; and

(b) the Registrar shall not cancel the registration of a credit union under *section 97 (2)(a)*.

(2) A certificate under this section is one which—

(a) is signed by the secretary or other officer of the credit union approved by the Registrar; and

(b) certifies that all property vested in the credit union has been duly conveyed or transferred to the persons entitled.

PART XI

APPOINTMENT OF CREDIT UNION ADMINISTRATOR

137.—(1) The Registrar may present a petition to the Court for an order (in this Part referred to as an “administration order”) for—

Administration orders.

(a) the administration of a credit union; and

(b) the appointment of a person nominated by the Registrar to be the administrator of the credit union;

and may do so notwithstanding that there is or may be another remedy or course of action available to him in relation to that credit union.

(2) On a petition under *subsection (1)*, the Court may make an administration order if it considers—

(a) that the manner in which the business of the credit union is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities, or

(b) that the business of the credit union is being or has been so conducted as to jeopardise or prejudice the rights and interests of its members, or

(c) that the credit union has become unable to comply with the requirements of this Act in a material respect,

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and that the making of an administration order would assist in the re-establishment, in the public interest, of the proper and orderly regulation and conduct of the credit union.

- (3) The administrator of a credit union—
 - (a) shall take over the management of the business of the credit union; and
 - (b) shall carry on that business as a going concern with a view to placing it on a sound financial footing; and
 - (c) shall have in relation to the credit union all such powers as may be necessary for or incidental to his functions in relation to the credit union, including the sole authority over, and direction of, all officers and voluntary assistants of the credit union.

(4) The administration of a credit union under this Part shall be deemed to have commenced at the time of the presentation of the petition for the administration order.

Provisional administrators.

138.—(1) At any time after the presentation of a petition under section 137 (1) (and before the making of an administration order), the Court may—

- (a) upon the *ex parte* application of the Registrar, and
- (b) upon *prima facie* proof by affidavit of one or more of the matters mentioned in paragraphs (a) to (c) of subsection (2) of section 137, and
- (c) without advertisement or notice to any person,

appoint such person as may be nominated by the Registrar to act as provisional administrator of the credit union pending the hearing of the petition.

(2) Unless the context otherwise requires, any reference in the following provisions of this Part to an administrator of a credit union includes a reference to a provisional administrator appointed under this section.

- (3) If—
 - (a) an appointment of a provisional administrator of a credit union is made under this section, but
 - (b) on the hearing of the petition no administration order is made,

the appointment of the provisional administrator shall be annulled; but the annulment shall not invalidate any act done or other function performed by him as provisional administrator.

(4) Where the appointment of a person as provisional administrator of a credit union is annulled under subsection (3), he shall nevertheless be entitled to be paid out of the assets of the credit union all the costs, charges and expenses properly incurred by him as provisional administrator, including such sum as the Court may fix for his remuneration, and may retain the amount of those costs, charges and expenses out of the assets of the credit union.

[1997.]

Credit Union Act, 1997.

[No. 15.]

139.—(1) For as long as the administrator of a credit union stands appointed under this Act, the following provisions shall have effect—

Pr.XI
Effect of
administration.

- (a) no proceedings or resolution for the winding up of the credit union shall be commenced or passed without the prior sanction of the Court;
- (b) no receiver over any part of the property of the credit union shall be appointed without the prior sanction of the Court;
- (c) no attachment, sequestration, distress or execution shall be put into force against any part of the property of the credit union without the prior sanction of the Court;
- (d) the words “under administration” shall be used in relation to the name of the credit union in all circumstances in which the words “in liquidation” would fall to be used in relation to the name of a company being wound up by the Court;
- (e) the functions of the administrator may be performed by him with the assistance of persons appointed or employed by him for that purpose;
- (f) all functions which are vested in the directors or in a principal Committee of the credit union (whether by virtue of its rules or by law or otherwise) shall be performable only by the administrator and all such powers of the credit union as are exercisable by a general meeting of the credit union shall be exercisable only by the administrator and that exercise shall be subject to the sanction of the Court;
- (g) the administrator may apply to the Court to determine any question arising in the course of the exercise of the administration of the credit union;
- (h) the administrator may resign or, upon the application of the Registrar, may be removed by the Court for cause shown; and
- (i) a vacancy in the office of administrator may be filled by the Court upon the nomination of the Registrar.

(2) Except as provided by this section, the business of a credit union in respect of which an administrator has been appointed shall be continued without interruption as a going concern, and no contract (including a contract of employment or service), policy, transaction, bank account or bank mandate, right, title, claim, debt, proceeding or obligation of the credit union or right, claim or proceeding against the credit union shall be avoided, cancelled, stayed or otherwise affected by reason only of the appointment of the administrator or the existence of an administration order.

(3) Where an administrator is appointed in respect of a credit union—

- (a) the costs and expenses of the performance of his functions and his remuneration shall be paid, and

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- (b) he shall be entitled to be indemnified in respect of the costs, expenses and remuneration referred to in *paragraph (a)* and to retain them from time to time,

out of the revenue of the business of the credit union or the proceeds of the realisation of the assets (including investments) or other funds available to the credit union.

(4) On the application of the administrator of a credit union, the Court shall by order fix the amount, or the basis of calculation of the amount, of the costs, expenses and remuneration of the administrator; and such an order may extend to a period prior to the date of the making of the order.

(5) Within six weeks of each anniversary of his appointment (or at such other times as the Court may direct) the administrator of a credit union shall deliver to the Court a summary of the sums received or retained by him in each year for the costs and expenses of the administration and for his remuneration.

(6) Within four weeks of his appointment, and within four weeks of each anniversary of his appointment, the administrator of a credit union, in exercise of the power of the board of directors under *section 79 (1)*, shall convene a special general meeting of the credit union at which he shall report to the members on his work and plans as administrator of the credit union.

Termination of administration.

140.—(1) The administration of a credit union and the appointment of an administrator pursuant to an administration order shall terminate—

- (a) upon the making of an order for the winding up of the credit union concerned; or
- (b) upon the making of an order under *Part XII* for the appointment of an examiner to the credit union concerned; or
- (c) upon the making of an order by the Court, in accordance with *subsection (2)*, for the termination of the administration.

(2) The Court shall not make an order for termination of the administration of a credit union except—

- (a) on the application of the Registrar or of the administrator with the approval of the Registrar; and
- (b) in circumstances where the Court considers—
- (i) that, if the administration is terminated, the business of the credit union will not be so conducted as to jeopardise or prejudice the rights and interests of its members and will continue to be in all other respects on a sound financial footing; and
- (ii) that it would be unjust and inequitable not to make the order.

Procedural matters.

141.—(1) The whole or any part of any proceedings under this Part, or an appeal in relation thereto, may be heard otherwise than

in public if the Court considers that the interests of the credit union concerned or its members or creditors or the public interest so requires. Pr.XI S.141

(2) If at any time no rules of court in respect of the making of an administration order under this Part are in force, then, subject to *section 138 (4)* and *subsections (3) and (4)*, the provisions of Order 74 of the Rules of the Superior Courts (S.I. No. 15 of 1986), or any rules of court for the time being amending or replacing that Order, shall apply with any necessary modifications.

(3) Unless the Court otherwise directs—

(a) a petition under *section 137 (1)* shall be served only on the credit union; and

(b) on the hearing of such a petition, only the Registrar and the credit union concerned shall be entitled to be heard.

(4) In so far as the provisions of any such Order or other rules of court as are referred to in *subsection (2)* relate, in the case of an official liquidator, to the giving of security, the filing of accounts, the lodging of monies to a bank account or the fixing of the remuneration of the liquidator, those provisions shall not apply in the case of an administrator.

PART XII

APPOINTMENT OF EXAMINER

142.—(1) Where, on application by petition under this section, it appears to the Court that— Power of the Court to appoint examiner.

(a) a credit union is or is likely to be unable to pay its debts, and

(b) no resolution subsists for the winding up of the credit union, and

(c) no order has been made for the winding up of the credit union,

it may, subject to *subsection (2)*, appoint an examiner to the credit union for the purpose of examining the state of the credit union's affairs and performing such duties in relation to the credit union as may be imposed by or under this Part; and in the following provisions of this Part, "examiner" means an examiner appointed under this section.

(2) The Court shall not make an order under this section unless it is satisfied that there is a reasonable prospect of the survival of the credit union as a going concern.

(3) A petition under this section may be presented by the Registrar or, with the consent of the Registrar, by all or any of the following, together or separately—

(a) the credit union;

(b) the directors of the credit union;

(c) a qualifying group of members of the credit union; and

- (d) a creditor, or contingent or prospective creditor (including an employee), of the credit union;

and, at the hearing of a petition under this section, every such creditor as is mentioned in *paragraph (d)* shall have a right to be heard (whether or not he is a party to the presentation of the petition).

(4) For the purpose of *paragraph (c)* of *subsection (3)*, a group of members of a credit union is a qualifying group if—

- (a) each of them has been a member throughout the period of 12 months ending on the date of the application for the consent of the Registrar under that subsection; and
- (b) they together number at least 30 or, if it is less, at least ten per cent. of the membership of the credit union on that date.

(5) For the purposes of this section, a credit union is unable to pay its debts if—

- (a) it is unable to pay its debts as they fall due; or
- (b) the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

(6) In deciding whether to make an order under this section, the Court may also have regard to whether the credit union has sought from its creditors significant extensions of time for the payment of its debts, from which it could reasonably be inferred that the credit union was likely to be unable to pay its debts.

Petition for protection of the Court.

143.—(1) A petition presented under *section 142*—

- (a) shall nominate a person to be appointed as examiner;
- (b) subject to *section 146*, shall be accompanied by a report under *section 145*, prepared by a person (in this Part referred to as “the independent accountant”) who is either the auditor of the credit union concerned or a person who is qualified to be an auditor of a credit union; and
- (c) shall be accompanied by a consent signed by the person nominated to be examiner.

(2) The Court shall not give a hearing to a petition under *section 142* which is presented by a contingent or prospective creditor until such security for costs has been given as the Court considers reasonable.

(3) The Court shall not give a hearing to a petition under *section 142* if a receiver stands appointed to the credit union the subject of the petition and that receiver has stood so appointed for a continuous period of at least three days prior to the presentation of the petition, excluding a Saturday, Sunday or public holiday.

(4) The Court may decline to hear a petition under *section 142* or, as the case may be, may decline to continue hearing such a petition if it appears to the Court that, in the preparation or presentation of

the petition or in the preparation of the report of the independent Pr.XII S.143
accountant, the petitioner or independent accountant—

(a) has failed to disclose any information available to him which is material to the exercise by the Court of its powers under this Part; or

(b) has in any other way failed to exercise the utmost good faith.

(5) On hearing a petition under *section 142*, the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order it thinks fit.

(6) Without prejudice to the generality of *subsection (5)*, an interim order under that subsection may restrict the exercise of any powers of the directors or of the credit union (whether by reference to the consent of the Court or otherwise).

(7) On the making of an order under *subsection (5)*, the examiner or such other person as the Court may direct shall deliver an office copy of the order to the Registrar for placing on the public file of the credit union.

144.—(1) Where it appears to the Court that the total liabilities of the credit union (taking into account its contingent and prospective liabilities) do not exceed £250,000, the Court may, after making such interim or other orders as it thinks fit, order that the matter be remitted to the Circuit Court. Powers of the Circuit Court.

(2) Where an order is made by the Court under *subsection (1)*, the Circuit Court shall have full jurisdiction to exercise all the powers of the Court conferred by this Part in relation to the credit union and every reference to the Court in this Part shall be construed accordingly.

(3) Where, in any proceedings under this Part which have been remitted to the Circuit Court by virtue of *subsection (1)*, it appears to the Circuit Court that the total liabilities of the credit union exceed £250,000, it shall, after making such interim orders as it thinks fit, make an order transferring the matter to the Court.

(4) The jurisdiction of the Circuit Court under this section shall be exercised by the judge for the time being assigned to the circuit in which the registered office of the credit union is situated.

145.—(1) The report of the independent accountant referred to in *section 143 (1)(b)* shall comprise the following— The independent accountant's report.

(a) the names and permanent addresses of the officers of the credit union and, in so far as the independent accountant can establish, any person in accordance with whose directions or instructions the directors of the credit union are accustomed to act;

(b) the names of any other bodies corporate of which the directors of the credit union are also directors;

(c) a statement as to the affairs of the credit union showing, in so far as it is reasonably possible to do so, particulars of

the credit union's assets and liabilities (including contingent and prospective liabilities) as at the latest practicable date, the names and addresses of its creditors, the securities held by them respectively and the dates when the securities were respectively given;

- (d) whether in the opinion of the independent accountant any deficiency between the assets and the liabilities of the credit union has been satisfactorily accounted for or, if not, whether there is evidence of a substantial disappearance of property that is not adequately accounted for;
- (e) his opinion as to whether the credit union would have a reasonable prospect of survival as a going concern and a statement of the conditions which he feels are essential to ensure such survival, whether as regards the internal management and controls of the credit union or otherwise;
- (f) his opinion as to whether the formulation, acceptance and confirmation of proposals for a compromise or scheme of arrangement would offer a reasonable prospect of the survival of the credit union as a going concern;
- (g) whether, in his opinion, an attempt to keep the credit union in being would be likely to be more advantageous to the members as a whole and the creditors as a whole than a winding-up of the credit union;
- (h) recommendations as to the course he thinks should be taken in relation to the credit union including, if warranted, draft proposals for a compromise or scheme of arrangement;
- (i) his opinion as to whether the facts disclosed would warrant further inquiries with a view to proceedings under section 297 or section 297A of the Companies Act, 1963;
- (j) details of the extent of the funding required to keep the credit union in being during the period of protection and the sources of that funding;
- (k) his recommendations as to which debts incurred before the presentation of the petition should be paid;
- (l) his opinion as to whether the work of the examiner would be assisted by a direction of the Court in relation to the role or membership of any creditors' committee referred to in *section 160*; and
- (m) such other matters as he thinks relevant.

(2) The independent accountant shall supply a copy of his report under this section to the credit union and to the Registrar on the same day as his delivery of the report to the Court.

(3) The independent accountant shall also supply a copy of his report under this section to any member or creditor of the credit union on written application, provided that that supply may, if the Court so directs, be subject to the omission of such parts of the report as the Court thinks fit.

(4) The Court may, in particular, give a direction under *subsection (3)* if it considers that the inclusion of certain information in the copy of the report to be supplied under that subsection would be likely to prejudice the survival of the credit union as a going concern. Pr.XII S.145

146.—(1) If a petition presented under *section 142* shows, and the Court is satisfied— Interim protection pending report.

(a) that, by reason of exceptional circumstances outside the control of the petitioner, the report of the independent accountant is not available in time to accompany the petition, and

(b) that the petitioner could not reasonably have anticipated the circumstances referred to in *paragraph (a)*,

and, accordingly, the Court is unable to consider the making of an order under that section, the Court may make an order under this section placing the credit union under the protection of the Court for such period, not exceeding ten days, as the Court thinks appropriate in order to allow for the submission of the independent accountant's report.

(2) Where an order is made under this section it shall be the duty of the directors of the credit union to provide all reasonable assistance in the preparation of the report of the independent accountant and, in particular, to furnish the information specified in *paragraphs (a) to (c) of subsection (1) of section 145*.

(3) Any person who fails to comply with *subsection (2)* shall be guilty of an offence.

(4) If the report of the independent accountant is submitted to the Court before the expiry of the period of protection ordered under *subsection (1)*, the Court shall proceed to consider the petition together with the report as if they were presented in accordance with *section 143(1)*.

(5) If the report of the independent accountant is not submitted to the Court before the expiry of the period of protection ordered under *subsection (1)*, then, at the expiry of that period, the credit union shall cease to be under the protection of the Court, but without prejudice to the presentation of a further petition under *section 142*.

147.—(1) Subject to *section 146*, during the period beginning with the date of the presentation of a petition under *section 142* and (subject to *subsections (4) and (5) of section 157*) ending on the expiry of 70 days from that date or on the withdrawal or refusal of the petition, whichever first happens, the credit union shall be deemed to be under the protection of the Court. Effect of petition to appoint examiner on creditors and others.

(2) For so long as a credit union is under the protection of the Court in a case under this Part, the following provisions shall have effect—

(a) no proceedings for the winding up of the credit union may be commenced or resolution for winding up passed in relation to the credit union and any resolution so passed shall be of no effect;

- (b) any other proceedings in relation to the credit union may be commenced only with the leave of the Court and subject to such terms as the Court may impose;
- (c) on the application of the examiner, the Court may make such order as it thinks proper in relation to any existing proceedings, including an order to stay those proceedings;
- (d) no receiver shall be appointed over any part of the assets of the credit union and, if a receiver was appointed before the presentation of a petition under *section 142*, then, subject to *section 148*, he shall not be able to act;
- (e) no attachment, sequestration, distress or execution shall be put into force against the property of the credit union, except with the consent of the examiner;
- (f) where any claim against the credit union is secured by a charge, pledge, or other encumbrance of, on or affecting the whole or any part of the property of the credit union, no action may be taken to realise the whole or any part of that security, except with the consent of the examiner;
- (g) no steps may be taken to repossess goods in the credit union's possession under any hire-purchase agreement (within the meaning of *section 153*) except with the consent of the examiner;
- (h) where, under any enactment, rule of law or otherwise any person other than the credit union is liable to pay all or any part of the debts of the credit union—
 - (i) no attachment, sequestration, distress or execution shall be put into force against the property of that person in respect of the debts of the credit union, and
 - (ii) no proceedings of any sort may be commenced against that person in respect of the debts of the credit union;
- (i) no set-off between separate bank accounts of the credit union shall be effected, except with the consent of the examiner, and in this paragraph "bank account" includes an account with any person exempt by virtue of section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under section 9 of that Act.

Effect on receiver or provisional liquidator of order appointing examiner.

148.—(1) Where, at the time of the presentation of a petition under *section 142* with respect to a credit union, a receiver or provisional liquidator stands appointed to the whole or any part of the assets of that credit union, the Court may make such order as it thinks fit, including an order as to any or all of the following matters—

- (a) that the receiver or provisional liquidator shall cease to act as such from a date specified by the Court;
- (b) that, where a receiver stands appointed, he shall, from a date specified by the Court, act as such only in respect of certain assets specified by the Court;

(c) that, where a provisional liquidator stands appointed, he be appointed as examiner; Pr.XII S.148

(d) directing the receiver or provisional liquidator to deliver all books and documents which relate to the assets of the credit union (or any part thereof) and are in his possession or control, to the examiner within a period to be specified by the Court;

(e) directing the receiver or provisional liquidator to give the examiner full particulars of all his dealings with the assets of the credit union.

(2) In deciding whether to make an order under *paragraph (a)* or *paragraph (b)* of *subsection (1)*, the Court shall have regard to whether there is a reasonable prospect of the survival of the credit union as a going concern.

(3) Where the Court makes an order under *subsection (1)* it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it deems fit.

(4) Where a petition is presented under *section 142* in respect of a credit union at a date subsequent to the presentation of a petition for the winding up of that credit union, but before a provisional liquidator has been appointed or an order made for its winding up, both petitions shall be heard together.

149.—(1) Any provision of this Act relating to the rights and powers of an auditor of a credit union and the supplying of information to or co-operation with such an auditor shall, with the necessary modifications, apply to an examiner. Powers of an examiner.

(2) Notwithstanding any provision of this Act relating to notice of general meetings, an examiner shall have power to convene, set the agenda for, and preside at meetings of the board of directors and general meetings of the credit union to which the examiner is appointed and to propose motions or resolutions and to give reports to any such meetings.

(3) An examiner shall be entitled to reasonable notice of, to attend and be heard at, all meetings of the board of directors of a credit union and all general meetings of the credit union to which he is appointed.

(4) For the purpose of *subsection (3)* “reasonable notice”, in relation to a meeting, shall be deemed to include a description of the business to be transacted at the meeting.

(5) Where an examiner becomes aware of any actual or proposed act, omission, course of conduct, decision or contract, by or on behalf of the credit union to which he has been appointed, or by its officers, voluntary assistants, members or creditors or by any other person in relation to the income, assets or liabilities of that credit union which, in his opinion, is or is likely to be to the detriment of the credit union, or any member or creditor of the credit union, he shall, subject to the rights of parties acquiring an interest in good faith and for value in the income, assets or liabilities, have full power to take whatever steps are necessary to halt, prevent or rectify the effects of the act, omission, course of conduct, decision or contract.

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(6) The examiner may apply to the Court to determine any question arising in the course of his office.

(7) The examiner shall, if so directed by the Court, have power to ascertain and agree claims against the credit union to which he has been appointed.

Production of documents and evidence.

150.—(1) It shall be the duty of all persons who are, or at any material time were, officers, members, voluntary assistants or agents of a credit union to which an examiner has been appointed to produce to the examiner all books and documents of or relating to the credit union which are in their possession or power, to attend before him when required so to do and otherwise to give to him all assistance in connection with his functions which they are reasonably able to give.

(2) If the examiner considers that a person other than one falling within *subsection (1)* is or may be in possession of any information concerning the affairs of the credit union the examiner may require that person to produce to him any books or documents in that person's possession or power relating to the credit union, to attend before him and otherwise to give him all assistance in connection with his functions which that person is reasonably able to give; and it shall be the duty of that person to comply with the requirement.

(3) If the examiner has reasonable grounds for believing that a person who is, or at a material time was, an officer, member, voluntary assistant or agent of a credit union maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in the State or elsewhere, into or out of which there has been paid—

(a) any money which has resulted from or been used in the financing of any transaction, arrangement or agreement particulars of which have not been disclosed in the accounts of the credit union for any financial year as required by law; or

(b) any money which has been in any way connected with any act or omission, or series of acts or omissions, which on the part of that officer, member, voluntary assistant or agent constituted misconduct (whether fraudulent or not) towards the credit union or its members;

the examiner may require the person concerned to produce to him all books and documents in his possession or under his control relating to that bank account; and in this subsection "bank account" includes an account with any person exempt by virtue of section 7 (4) of the Central Bank Act, 1971, from the requirement of holding a licence under section 9 of that Act.

(4) An examiner may examine on oath, either by word of mouth or on written interrogatories, any person who is, or at a material time was, an officer, member, voluntary assistant or agent of the credit union or any other such person as is mentioned in *subsection (2)* in relation to the affairs of the credit union and may—

(a) administer an oath accordingly; and

(b) reduce the answers of any such person to writing and require him to sign them.

- (5) If any such person as is referred to in *subsection (4)*—
- (a) refuses to produce to the examiner any book or document which it is his duty under this section to produce, or
 - (b) refuses to attend before the examiner when required to do so, or
 - (c) refuses to answer any question which is put to him by the examiner with respect to the affairs of the credit union,

the examiner may certify the refusal under his hand to the Court, and the Court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, may make any order or direction it thinks fit.

(6) Without prejudice to the generality of *subsection (5)*, the Court may, after a hearing under that subsection, make a direction—

- (a) to the person concerned to attend or re-attend before the examiner or produce particular books or documents or answer particular questions put to him by the examiner; or
- (b) that the person concerned need not produce a particular book or document or answer a particular question put to him by the examiner.

(7) Nothing in this section shall compel the production by a barrister or solicitor of any books or documents containing a privileged communication made by or to him in that capacity or the furnishing of information contained in a privileged communication so made.

(8) In this section “agents”, in relation to a credit union, includes its bankers, accountants and solicitors, any person who is or has been an auditor of the credit union and its financial and other advisers.

151.—(1) Where it appears to the Court, on the application of the examiner, that, having regard to the matters referred to in *subsection (2)*, it is just and equitable to do so, it may make an order that all or any of the functions which are vested in or exercisable by the directors (whether by virtue of the rules of the credit union or by law or otherwise) shall be performable or exercisable only by the examiner. Further powers of the Court.

(2) The matters to which the Court is to have regard for the purpose of *subsection (1)* are—

- (a) that the affairs of the credit union are being conducted, or are likely to be conducted, in a manner which is calculated or likely to prejudice the interests of the credit union or of its members or of its creditors as a whole; or
- (b) that it is expedient, for the purpose of preserving the assets of the credit union or of safeguarding the interests of the credit union or of its members or of its creditors as a whole, that the carrying on of the business of the credit union by, or the exercise of the powers of, its directors should be curtailed or regulated in any particular respect; or

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(c) that the credit union, or its directors, have resolved that an order under *subsection (1)* should be sought; or

(d) any other matter in relation to the credit union the Court thinks relevant.

(3) Where the Court makes an order under *subsection (1)*, it may, for the purpose of giving full effect to the order, include such conditions in the order and make such ancillary or other orders as it sees fit.

(4) Without prejudice to the generality of *subsections (1)* and *(3)*, an order under this section may provide that the examiner shall have all or any of the powers that he would have if he were a liquidator appointed by the Court in respect of the credit union and, where such an order so provides, the Court shall have all the powers that it would have if it had made a winding up order and appointed a liquidator in respect of the credit union concerned.

Incurring of certain liabilities by examiner.

152.—(1) Any liabilities which are incurred by the credit union during the protection period and which fall within *subsection (2)* shall be treated as expenses properly incurred, for the purpose of *section 168*, by the examiner.

(2) The liabilities referred to in *subsection (1)* are those certified by the examiner at the time they are incurred, to have been incurred in circumstances where, in the opinion of the examiner, the survival of the credit union as a going concern during the protection period would otherwise be seriously prejudiced.

(3) In this section “protection period” means the period, beginning with the appointment of an examiner, during which the credit union is under the protection of the Court.

Power to deal with charged property etc.

153.—(1) Where, on an application by the examiner, the Court is satisfied that there is a reasonable prospect of the survival of the credit union as a going concern and that the disposal (with or without other assets) of—

(a) any property of the credit union subject to a security, or

(b) any goods in the possession of the credit union under a hire-purchase agreement,

would be likely to further that prospect, the Court may by order authorise the examiner to dispose of the property as if it were not subject to the security or dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the credit union.

(2) It shall be a condition of an order under *subsection (1)* that—

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement. Pr.XII S.153

(3) Where a condition imposed in pursuance of *subsection (2)* relates to two or more securities, that condition requires the net proceeds of the disposal and, where *paragraph (b)* of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(4) An office copy of an order under *subsection (1)* in relation to a security shall, within seven days after the making of the order, be delivered by the examiner to the Registrar.

(5) If the examiner without reasonable excuse fails to comply with *subsection (4)*, he shall be guilty of an offence and liable to a fine not exceeding £1,000.

(6) References in this section to a hire-purchase agreement include a conditional sale agreement, a retention of title agreement and an agreement for the bailment of goods which is capable of subsisting for more than three months.

154.—(1) Where a petition is presented under *section 142*, notice of the petition shall, within three days after its presentation, be placed on the public file of the credit union. Notification of appointment of examiner.

(2) An examiner shall, within the time limits specified in *subsection (3)*, cause notice of his appointment and the date thereof to be published in *Iris Oifigiúil* and in at least two daily newspapers circulating in the district in which the registered office of the credit union is situated.

(3) The time limits referred to in *subsection (2)* are—

(a) twenty-one days after the examiner's appointment in the case of *Iris Oifigiúil*, and

(b) three days after his appointment in the other case referred to in that subsection.

(4) An examiner shall, within three days after his appointment, deliver to the Registrar a copy of the order appointing him.

(5) Where a credit union is, by virtue of *section 146* or *section 147*, under the protection of the Court, every invoice, order for goods or letter issued by or on behalf of the credit union, being a document on or in which the name of the credit union appears, shall contain the statement “under the protection of the Court”.

(6) An examiner who fails to comply with the provisions of this section shall be guilty of an offence.

155.—(1) An examiner may resign or, on cause shown, be removed by the Court. General provisions as to examiners.

(2) If for any reason a vacancy occurs in the office of examiner, the Court, on an application made by the Registrar or by the person on whose petition the examiner was appointed, may by order fill the vacancy.

(3) An examiner shall be described by the style of “the examiner” of the particular credit union in respect of which he is appointed and not by his individual name.

(4) The acts of an examiner shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

(5) An examiner shall be personally liable on any contract entered into by him in the performance of his functions, whether the contract is entered into by him in the name of the credit union or in his own name as examiner or otherwise, unless the contract provides that he is not to be personally liable on the contract, and he shall be entitled in respect of that liability to indemnity out of the assets of the credit union.

(6) Nothing in *subsection (5)* shall be taken as limiting any right to indemnity which an examiner would have apart from that subsection, or as limiting his liability on contracts entered into without authority or as conferring any right to indemnity in respect of that liability.

(7) Where an examiner has been appointed to a credit union,—

- (a) the credit union,
- (b) the Registrar, or
- (c) a member or creditor of the credit union,

may apply to the Court for the determination of any question arising out of the performance or otherwise by the examiner of his functions.

Hearing relating to missing property etc.

156.—(1) Where, in relation to a credit union which is under the protection of the Court, there is evidence, whether contained in the report of the independent accountant or otherwise, of a substantial disappearance of property that is not adequately accounted for, or of other serious irregularities in relation to the affairs of the credit union, the Court shall, as soon as practicable, hold a hearing to consider that evidence.

(2) If, in advance of a hearing under *subsection (1)*, the Court so requests, the examiner shall prepare a report on the issues raised by the evidence in question.

(3) Where the examiner prepares a report as mentioned in *subsection (2)*, the examiner shall supply a copy of his report to the credit union and the Registrar on the same day as his delivery of the report to the Court.

(4) The examiner shall also supply a copy of a report prepared by him as mentioned in *subsection (2)*—

- (a) to every person who is mentioned in the report, and
- (b) on written application, to any member or creditor of the credit union,

provided that any supply may, if the Court so directs, be subject to the omission of such parts of the report as the Court thinks fit.

(5) The Court may, in particular, give a direction under *subsection (4)* if it considers that the inclusion of certain information in the copy of the report in question would be likely to prejudice the survival of the credit union as a going concern. Pr.XII S.156

(6) The following parties shall be entitled to appear and to be heard at a hearing under *subsection (1)*—

- (a) the examiner;
- (b) the Registrar;
- (c) the credit union;
- (d) any member or creditor of the credit union, and
- (e) any person who is referred to in the report.

(7) Following a hearing under *subsection (1)*, the Court may make such order or orders as it deems fit.

(8) An office copy of any order made by the Court under this section shall be delivered by the examiner, or by such other person as the Court may direct, to the Registrar for placing on the public file of the credit union.

157.—(1) As soon as practicable after he is appointed, the examiner shall formulate proposals for a compromise or scheme of arrangement for the survival of the credit union as a going concern and, notwithstanding any other provision of this Act, the Court may impose on the examiner such other duties as it deems appropriate. Duties of examiner.

(2) Notwithstanding any provision of this Act relating to notice of general meetings, (but subject to notice of not less than three days in any case) the examiner shall convene and preside at such meetings of members and creditors as he thinks proper, to consider such proposals as are referred to in *subsection (1)* and report thereon to the Court in accordance with *section 158* within 35 days of his appointment or such longer period as the Court may allow.

(3) The Registrar shall have the right to attend and speak at any meeting convened under *subsection (2)*.

(4) Where, on the application of the examiner, the Court is satisfied that the examiner would be unable to report to the Court within the period of 70 days referred to in *section 147 (1)* but that he would be able to make a report if that period were extended, the Court may by order extend that period by not more than 30 days to enable him to do so.

(5) Where the examiner has submitted a report under this section to the Court and, but for this subsection, the period mentioned in *section 147 (1)* (and any extended period allowed under *subsection (4)*) would expire, the Court may, of its own motion or on the application of the examiner, extend the period concerned by such period as the Court considers necessary to enable it to take a decision under *section 163*.

(6) The examiner shall deliver a copy of his report under this section—

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(a) to the credit union and to the Registrar on the same day as his delivery of the report to the Court, and

(b) to any member or creditor of the credit union on written application,

provided that delivery under *paragraph (b)* may, if the Court so directs, be subject to the omission of such parts of the report as the Court thinks fit.

(7) The Court may, in particular, give a direction under *subsection (6)* if it considers that the inclusion of certain information in the copy of the report to be delivered under *paragraph (b)* of that subsection would be likely to prejudice the survival of the credit union, as a going concern.

Contents of
examiner's report
under *section 157*.

158.—An examiner's report under *section 157* shall include—

- (a) the proposals placed before the required meetings;
- (b) any modification of those proposals adopted at any of those meetings;
- (c) the outcome of each of the required meetings;
- (d) the recommendation of the committee of creditors, if any, appointed under *section 160*;
- (e) a statement of the assets and liabilities (including contingent and prospective liabilities) of the credit union as at the date of his report;
- (f) a list of the creditors of the credit union, the amount owing to each such creditor, the nature and value of any security held by any such creditor, and the priority status of any such creditor under any statutory provision or rule of law;
- (g) a list of the officers of the credit union;
- (h) his recommendations; and
- (i) such other matters as the examiner deems appropriate or the Court directs.

Repudiation of
certain contracts.

159.—(1) Where proposals for a compromise or scheme of arrangement are to be formulated in relation to a credit union, the credit union may, subject to the approval of the Court, affirm or repudiate any contract under which some element of performance other than payment remains to be rendered both by the credit union and the other contracting party or parties.

(2) Any person who suffers loss or damage as a result of such a repudiation shall stand as an unsecured creditor for the amount of the loss or damage.

(3) In order to facilitate the formulation, consideration or confirmation of a compromise or scheme of arrangement, the Court may hold a hearing and make an order determining the amount of any such loss or damage as is referred to in *subsection (2)* and the amount so determined shall be due by the credit union to the creditor as a judgement debt.

(4) Where the examiner is not a party to an application to the Court for the purposes of *subsection (1)*, the credit union shall serve notice of the application on the examiner, and the examiner may appear and be heard on the hearing of the application. Pr.XII S.159

(5) Where the Court approves the affirmation or repudiation of a contract under this section, it may, in giving its approval, make such orders as it thinks fit for the purposes of giving full effect to its approval, including orders as to notice to, or declaring the rights of, any party affected by the affirmation or repudiation.

160.—(1) An examiner may, and if so directed by the Court shall, appoint a committee of creditors to assist him in the performance of his functions. Appointment of creditors' committee.

(2) Save as otherwise directed by the Court, a committee appointed under *subsection (1)* shall consist of not more than five members and shall include the holders of the three largest unsecured claims who are willing to serve.

(3) The examiner shall provide the committee with a copy of any proposals for a compromise or scheme of arrangement and the committee may express an opinion on the proposals on its own behalf or on behalf of the creditors or classes of creditors represented on the committee.

(4) As soon as practicable after the appointment of a committee under *subsection (1)* the examiner shall meet with the committee to transact such business as may be necessary.

161.—(1) Proposals for a compromise or scheme of arrangement shall— Proposals for compromise or scheme of arrangement.

- (a) specify the members and each class of creditors of the credit union;
- (b) specify any members or class of creditors whose interests or claims will not be impaired by the proposals;
- (c) specify any members or class of creditors whose interests or claims will be impaired by the proposals;
- (d) provide equal treatment for each interest or claim of a member or class of creditor unless the holder of a particular interest or claim agrees to less favourable treatment;
- (e) provide for the implementation of the proposals;
- (f) if the examiner considers it necessary or desirable to do so to ensure that there is a reasonable prospect of the survival of the credit union as a going concern, specify whatever changes should be made in relation to the management or direction of the credit union;
- (g) if the examiner considers it necessary or desirable as mentioned in *paragraph (f)*, specify any changes he considers should be made in the rules of the credit union, whether as regards the management or direction of the credit union or otherwise; and
- (h) include such other matters as the examiner deems appropriate;

and a copy of the proposals shall be sent to the Registrar in advance of any meeting of members or creditors under *section 162*.

(2) A statement of the assets and liabilities (including contingent and prospective liabilities) of the credit union as at the date of the proposals shall be attached to each copy of the proposals sent to the Registrar and submitted to meetings of members and creditors under *section 162*.

(3) There shall also be attached to each such copy of the proposals a description of the estimated financial outcome of a winding-up of the credit union for the members and each class of creditors.

(4) The Court may direct that the proposals include whatever other provisions it deems fit.

(5) For the purposes of this section and *sections 162* and *163*, a creditor's claim against a credit union is impaired if he receives less in payment of his claim than the full amount due in respect of the claim at the date of presentation of the petition for the appointment of the examiner.

(6) For the purposes of this section and *sections 162* and *163*, the interest of a member of a credit union in the credit union is impaired if—

- (a) he is deprived of all or any part of the rights accruing to him by virtue of his shareholding in, or membership of, the credit union; or
- (b) he is deprived of the whole or part of his shareholding in the credit union.

Consideration by members and creditors of proposals.

162.—(1) This section applies to a meeting of members or creditors or any class of creditors summoned to consider proposals for a compromise or scheme of arrangement.

(2) At a meeting to which this section applies, a modification of the proposals may be put to the meeting but may only be accepted with the consent of the examiner.

(3) Proposals shall be deemed to have been accepted by a meeting of members if a majority of the members present and voting vote in favour of the resolution for the proposals.

(4) Proposals shall be deemed to have been accepted by a meeting of creditors or of a class of creditors when a majority in number representing a majority in value of the claims represented at that meeting have voted, either in person or by proxy, in favour of the resolution for the proposals.

(5) Where a State authority is a creditor of the credit union, that authority shall be entitled to accept proposals under this section notwithstanding—

- (a) that any claim of the State authority as a creditor would be impaired under the proposals; or
- (b) any other enactment;

and in this subsection “State authority” means the State, a Minister of the Government, a local authority or the Revenue Commissioners.

(6) With every notice summoning a meeting to which this section applies which is sent to a creditor or member, there shall be sent also a statement explaining the effect of the compromise or scheme of arrangement and, in particular, stating any material interests of the officers of the credit union, whether as officers or as members or as creditors of the credit union or otherwise and the effect thereon of the compromise or arrangement, in so far as it is different from the effect on the like interest of other persons. Pr.XII S.162

(7) Where a resolution is passed at an adjourned meeting to which this section applies, the resolution shall for all purposes be treated as having been passed on the date on which it was passed and shall not be deemed to have been passed on any earlier date.

163.—(1) The report of the examiner under *section 157* shall be set down for consideration by the Court as soon as may be after receipt of the report by the Court. Consideration of proposals by the Court.

(2) The following persons shall be entitled to appear and be heard at the hearing under *subsection (1)*—

- (a) the examiner;
- (b) the Registrar;
- (c) the credit union;
- (d) the savings protection scheme in which the credit union participates; and
- (e) any creditor or member whose claim or interest would be impaired if the proposals for a compromise or scheme of arrangement were implemented;

and the Court may permit to appear and be heard any other person who it considers to have a sufficient interest in the matter.

(3) At a hearing under *subsection (1)* the Court may, as it thinks proper, subject to the provisions of this section, confirm, confirm subject to modifications, or refuse to confirm the proposals.

(4) The Court shall not confirm any proposals unless one member and one class of creditor whose interests or claims would be impaired by implementation of the proposals have accepted the proposals and the Court is satisfied that—

- (a) the proposals are fair and equitable in relation to any member or class of creditors that has not accepted the proposals and whose interests or claims would be impaired by implementation; and
- (b) the proposals are not unfairly prejudicial to the interests of any member or creditor;

nor shall the Court confirm any proposals if the sole or primary purpose of them is the avoidance of payment of tax due.

(5) At a hearing under this section, the Registrar or a member or creditor whose interest or claim would be impaired by the proposals may object in particular to their confirmation by the Court on any of the following grounds—

- (a) that there was some material irregularity at or in relation to a meeting to which *section 162* applies;
- (b) that acceptance of the proposals by the meeting was obtained by improper means;
- (c) that the proposals were put forward for an improper purpose; or
- (d) that the proposals unfairly prejudice the interests of the objector.

(6) Any person who voted to accept the proposals may not object to their confirmation by the Court except on the grounds—

- (a) that acceptance of the proposals was obtained by improper means; or
- (b) that, after voting to accept the proposals, he became aware that they were put forward for an improper purpose.

(7) Where the Court upholds an objection to the confirmation of any proposals, the Court may make such order as it deems fit, including an order that the decision of any meeting be set aside and an order that any meeting be reconvened.

(8) Notwithstanding *subsection (4)*, or any other provision of this Part, nothing in this Part shall prevent the examiner from including in his report under *section 157* proposals which will not involve the impairment of the interests of members or creditors of the credit union, nor the Court from confirming any such proposals.

Confirmation or otherwise of proposals by the Court.

164.—(1) Where the Court confirms proposals for a compromise or scheme of arrangement (with or without modification), the proposals shall be binding on all the members of the credit union and also on the credit union itself.

(2) Where the Court confirms the proposals (with or without modification) the proposals shall, notwithstanding anything in any other enactment, be binding on all the creditors or the class or classes of creditors, as the case may be, affected by the proposals in respect of any claim or claims against the credit union and any person, other than the credit union who, under any enactment, rule of law or otherwise, is liable for all or any part of the debts of the credit union.

(3) Any alterations in, additions to or deletions from the rules of the credit union which are specified in the proposals shall, after confirmation of the proposals by the Court, take effect from the date fixed by the Court; and where the Court confirms proposals, it may make such orders for the implementation of its decision as it deems fit.

(4) A compromise or scheme of arrangement, the proposals for which have been confirmed by the Court, shall come into effect from a date fixed by the Court, being not later than 21 days from the date of their confirmation.

(5) If, at any time after a compromise or scheme of arrangement has come into effect, it appears to the Registrar that an amendment of the rules of the credit union sent to him under *section 14 (2)* conflicts with the proposals confirmed by the Court, he may on that

ground refuse to register the amendment, and *section 14 (5)* shall apply accordingly. Pr.XII S.164

(6) As soon as practicable after the confirmation of proposals by the Court, an office copy of any order made by the Court under this section shall be delivered by the examiner, or by such other person as the Court may direct, to the Registrar for placing on the public file of the credit union.

(7) Where—

- (a) the Court refuses to confirm proposals for a compromise or scheme of arrangement for a credit union, or
- (b) the report of an examiner under *section 157* concludes that, following the required meetings of members and creditors of a credit union under this Part, it has not been possible to reach agreement on a compromise or scheme of arrangement,

the Court may, if it considers it just and equitable to do so, make an order for the winding up of the credit union, or any other order it deems fit.

(8) Where the Court makes an order for the winding-up of a credit union under this Part, the winding-up shall be deemed to have commenced on the date of the making of the order, unless the Court otherwise orders.

165.—(1) Notwithstanding anything in the preceding provisions of this Part, any protection deemed to be granted to a credit union under those provisions shall cease— Ending of protection.

- (a) on the coming into effect of a compromise or scheme of arrangement under this Part; or
- (b) on such earlier date as the Court may direct.

(2) Where a credit union ceases to be under the protection of the Court, the appointment of the examiner shall terminate on the date of that cessation.

166.—(1) If, within six months after the confirmation by the Court of proposals for a compromise or scheme of arrangement— Revocation of confirmation on grounds of fraud.

- (a) the credit union concerned,
- (b) the Registrar, or
- (c) a member or creditor of the credit union,

applies to the Court for the revocation of the confirmation on the grounds that it was procured by fraud and the Court is satisfied that that is the case, the Court may by order revoke the confirmation.

(2) A revocation of a confirmation under this section shall be on such terms and conditions, particularly with regard to the protection of the rights of parties acquiring interests or property in good faith and for value in reliance on that confirmation, as the Court deems fit.

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(3) As soon as practicable after the revocation of a confirmation under this section, an office copy of the order made by the Court under this section shall be delivered by such person as the Court may direct for placing on the public file of the credit union.

Disqualification to act as examiner.

167.—(1) A person shall not be qualified to be appointed or to act as an examiner of a credit union if he would not be qualified to act as its liquidator.

(2) A person who acts as an examiner of a credit union while disqualified under this section shall be guilty of an offence.

Remuneration, costs and expenses of examiners.

168.—(1) The Court may from time to time make such orders as it thinks proper for payment of the remuneration and costs of, and reasonable expenses properly incurred by, an examiner.

(2) Unless the Court otherwise orders, the remuneration, costs and expenses of an examiner shall be paid, and the examiner shall be entitled to be indemnified in respect thereof, out of the income of the credit union to which he has been appointed, or the proceeds of realisation of its assets (including investments).

(3) The remuneration, costs and expenses of an examiner which have been sanctioned by order of the Court shall be paid in full and shall be paid before any other claim, secured or unsecured, under any compromise or scheme of arrangement or in any receivership or winding-up of the credit union to which he has been appointed.

(4) The functions of an examiner may be performed by him with the assistance of persons appointed or employed by him for the purpose, provided that an examiner shall, in so far as it is reasonably possible, make use of the services of the officers and facilities of the credit union to which he has been appointed to assist him in the performance of his functions.

(5) In considering any matter relating to the costs, expenses and remuneration of an examiner the Court shall have particular regard to the proviso to *subsection (4)*.

Publicity.

169.—(1) An examiner or, where appropriate, such other person as the Court may direct, shall within 14 days after the delivery to the Registrar of every order made under *section 156*, *section 164* or *section 166* cause notice of that delivery to be published in *Iris Oifigiúil*.

(2) A person who fails to comply with this section shall be guilty of an offence.

Hearing of proceedings otherwise than in public.

170.—The whole or any part of any proceedings under this Part may be heard otherwise than in public if the Court, in the interests of justice, considers that the interests of the credit union concerned or its creditors or its members as a whole so require.

PART XIII

OFFENCES AND CIVIL PROCEEDINGS

Offences: general provisions.

171.—(1) If a credit union or any other person contravenes any provision of *Part II*, that credit union or other person shall be guilty of an offence.

(2) A credit union or other person who is guilty of an offence under *subsection (1)* or any other provision of this Act, other than an offence for which a different penalty is expressly provided, shall be liable— Pr.XIII S.171

- (a) on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding three months or both; or
- (b) on conviction on indictment to a fine not exceeding £5,000 or to imprisonment for a term not exceeding two years or both.

(3) If the contravention in respect of which a credit union or other person is convicted of an offence under any provision of this Act is continued after that conviction, that credit union or other person shall be guilty of a further offence for every day on which the contravention continues and for each such offence shall be liable on summary conviction to a fine not exceeding £250 or, on conviction on indictment, to a fine not exceeding £1,500.

(4) Summary proceedings for an offence under any provision of this Act may be instituted by the Registrar.

(5) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under any provision of this Act may be instituted within three years from the date of the offence.

172.—(1) Where an offence under this Act which is committed by 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 officer or member of the credit union, that officer or member (as well as the credit union) shall be guilty of an offence and liable to be proceeded against and punished as if guilty of the offence committed by the credit union. Offences by officers etc.

(2) Where an offence under any provision of this Act which is 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 person who, when the offence was committed, was a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person (as well as the body corporate) shall be guilty of an offence and liable to be proceeded against and punished as if guilty of the offence committed by the body corporate.

173.—(1) Any person who— Fraud or misappropriation.

- (a) obtains possession by false representation of any property of a credit union, or
- (b) having any such property in his possession, withholds or misapplies it or wilfully applies any part of it to purposes which are not authorised by the rules of the credit union or which are not in accordance with this Act,

shall be guilty of an offence and may be ordered to deliver up that property or to repay all money improperly applied.

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(2) A person guilty of an offence under *subsection (1)* shall be liable—

- (a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding one year or both; or
- (b) on conviction on indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding five years or both.

Falsification of documents and other records.

174.—Any person who, with intent to falsify any document or record referred to in *paragraphs (a) to (e)* or to evade any of the provisions of this Act, wilfully makes, or orders or allows to be made, any entry or erasure in, or omission from, or amendment to—

- (a) any balance sheet of a credit union, or
- (b) any contribution or collecting book, passbook or statement, or
- (c) any return or document required for the purposes of this Act, or
- (d) any account or balance sheet which is available for inspection under this Act, or
- (e) any other record whatsoever, whether produced by electronic or other means, which is used by a credit union in the conduct of its business,

shall be guilty of an offence.

Furnishing false information etc.

175.—(1) Any person who, in purported compliance with any provision made by or under this Act—

- (a) provides an answer or explanation, makes a statement or produces or delivers any return, certificate, balance sheet or other document which is false in a material particular and which he knows to be so false, or
- (b) recklessly provides an answer or explanation, makes a statement or produces or delivers any return, report, certificate, balance sheet or other document which is false in a material particular,

shall be guilty of an offence.

(2) If the court by which a person is found guilty on indictment of an offence under *subsection (1)* is of the opinion that any act, omission or conduct which gave rise to that offence has—

- (a) substantially contributed to a credit union being unable to pay its debts, or
- (b) prevented or seriously impeded the orderly winding up of a credit union, or
- (c) substantially facilitated the defrauding of creditors of a credit union or of any other person,

then, in place of the penalty provided by *section 171(2)(b)*, that person shall be liable on conviction on indictment to a fine not exceeding £10,000 or to imprisonment for a term not exceeding five years or both. Pr.XIII S.175

176.—Any cost or expenses ordered or directed by the Registrar to be paid by any person shall be recoverable by the Registrar from that person summarily as a civil debt. Recovery of costs and expenses.

177.—(1) Subject to *subsection (2)*, any provision (whether contained in the rules of a credit union or in any contract with a credit union or otherwise) for exempting an officer or voluntary assistant of a credit union from, or indemnifying him against, any liability which, by virtue of any rule of law, would otherwise attach to him in respect of any negligence, breach of duty or breach of trust of which he may be guilty in relation to the credit union shall be void. Liability of officer etc.

(2) A credit union may indemnify an officer or voluntary assistant against any liability incurred by him in defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with an application under *section 178* in which relief is granted.

178.—(1) Where, in any proceedings for negligence, default, breach of duty or breach of trust against an officer or voluntary assistant of a credit union, it appears to the court hearing the case— Power of court to grant relief to officer etc.

(a) that the officer or voluntary assistant is or may be liable in respect of the negligence, default or breach in question but that he acted honestly and reasonably, and

(b) that, having regard to all the circumstances of the case (including those connected with his appointment), he ought fairly to be excused for the negligence, default or breach,

the court may relieve him (either wholly or partly) from his liability on such terms as the court may think fit.

(2) Where an officer or voluntary assistant of a credit union who has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, applies to the Court for relief, the Court shall have the same power to relieve him as it would have under this section if it were a court before which proceedings against him had been brought for the negligence, default or breach.

(3) Where any case to which *subsection (1)* applies is being tried by a judge with a jury, the judge, after hearing the evidence, may, if he is satisfied that the defendant ought under that subsection to be relieved either in whole or in part from the liability sought to be enforced against him, withdraw the case in whole or in part from the jury and direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge may think proper.

179.—(1) Whenever a person (in this section referred to as a “judgment creditor”) obtains in any court a judgment, order or decree against a credit union for the payment of a sum of money due to the judgment creditor by the credit union, the registrar or clerk Judgments against a credit union.

of the court concerned shall notify the Registrar as soon as may be of the judgment, order or decree and of its terms and of any appeal against the judgment, order or decree and of the result thereof.

(2) Subject to *subsection (3)* if, within the period of 21 days or such further period as the court concerned may allow, beginning on the date of the judgment, order or decree, the credit union does not pay all moneys due (or in the case of costs, at the option of the credit union, give security therefor in lieu of payment) or satisfy all claims under the judgment, order or decree, the credit union shall be deemed to be unable to meet its obligations to its creditors and, accordingly, for the purposes of *section 133*, to be unable to pay sums due and payable to its creditors.

(3) If an appeal is instituted in any court against the judgment, order or decree, that court or the court by which the judgment, order or decree was made may by order postpone the application of *subsection (2)* for such period and, subject to *subsection (4)*, on such terms as the court concerned may fix and specify in the order.

(4) If a court makes an order under *subsection (3)*, it may require the credit union to which the order relates either, as that court thinks fit, to lodge in court an amount equal to the amount of all moneys due under the judgment, order or decree (or such lesser amount as the court may direct) or to give such security as the court may determine for the payment to the judgment creditor of all such moneys, together with, in either case, such further sum or security for the costs of the appeal as the court shall consider just.

(5) An order under *subsection (3)* may be varied or revoked by the court that made it or before which an appeal in relation to it is brought.

PART XIV

MISCELLANEOUS AND GENERAL

Credit Union
Advisory
Committee.

180.—(1) There shall continue to be a body known as the Credit Union Advisory Committee (in this Act referred to as “the Advisory Committee”) which shall exercise the functions assigned to it by this Act.

(2) The Advisory Committee shall advise the Minister and such other persons as the Minister thinks fit in relation to—

- (a) the improvement of the management of credit unions;
- (b) the protection of the interests of members and creditors of credit unions; and
- (c) other matters relating to credit unions upon which the Minister, the Registrar or such other persons as may be specified by the Minister may from time to time seek the advice of the Committee.

(3) The Advisory Committee shall consist of not more than seven persons appointed for such period as the Minister thinks fit; and every person so appointed shall be chosen by the Minister for appointment—

- (a) by reason of that person’s knowledge of matters pertaining to credit unions; or

(b) because that person is capable of giving substantial practical assistance in the work of the Advisory Committee. Pr.XIV S.180

(4) Any person who is for the time being entitled under the Standing Orders of either of the Houses of the Oireachtas to sit therein shall, while so entitled, be disqualified from being a member of the Advisory Committee.

(5) Where a member of the Advisory Committee becomes a member of either House of the Oireachtas he shall, upon becoming entitled under the Standing Orders of that House to sit therein, cease to be a member of the Committee.

(6) The Minister shall from time to time nominate one member of the Advisory Committee to act as its chairman.

(7) There shall be paid to every member of the Advisory Committee such remuneration and expenses as the Minister, with the consent of the Minister for Finance, may determine.

(8) Nothing in *subsection (3)* shall be taken to affect the term of appointment of any person who is a member of the Advisory Committee at the commencement of this section.

181.—Without prejudice to the generality of any reference in this Act to bodies appearing to the Minister or to the Registrar to be expert or knowledgeable in matters relating to credit unions, any such reference shall be taken to include the unincorporated association known as the Irish League of Credit Unions. Consultation.

182.—(1) After consultation with the Registrar, the Advisory Committee and any other bodies appearing to the Minister to be expert or knowledgeable in matters relating to credit unions, the Minister may make regulations— General regulations.

- (a) prescribing forms and procedures for use by a credit union in the conduct of its business;
- (b) prescribing the maximum amount of secured and unsecured loans which a credit union may make to borrowers;
- (c) prescribing the security or types of security which a credit union shall require in respect of a secured loan to a member;
- (d) prescribing the maximum amount of shares or deposits that may be held by a member;
- (e) prescribing the maximum amount of shares or deposits that may be held by credit unions;
- (f) prescribing the investments (including investments other than those permitted by *section 43*) in which a credit union may invest its funds;
- (g) making provision with respect to the further defining of the exercise of a significant influence as mentioned in *section 87(1)(e)*;
- (h) making provision with respect to the operation, or bringing into operation, of *section 48*, or for securing or facilitating

its operation, or for removing any difficulty that may arise in bringing into operation any provision of that section or in relation to the operation of any such provision;

- (i) altering from time to time the financial (including percentage) limits or time limits applicable under any provision of this Act;
- (j) providing for the inspection, and furnishing of copies, of documents in the custody of the Registrar;
- (k) making provision with respect to registration and procedures under this Act;
- (l) making provision with respect to the settlement of disputes in accordance with *section 125*;
- (m) relating to the operation generally of credit unions for the protection of the members' interests; and
- (n) prescribing any other matter which, under any provision of this Act, is to be prescribed.

(2) Regulations under this section may relate to all or any one or more of the matters referred to in *subsection (1)*.

(3) Regulations under this Act may provide that any person contravening the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding an amount specified in the regulations.

(4) The amount which may be specified in regulations as mentioned in *subsection (3)* shall not exceed—

- (a) on summary conviction, £1,000, or
- (b) on conviction on indictment, £10,000.

(5) Regulations under this section may apply either generally or by reference to a specified category or categories of credit unions, or to a specified time or times, or during a specified period or periods or by reference to any other matter as the Minister may consider appropriate.

(6) Without prejudice to any specific provision of this Act, regulations may contain such incidental, consequential, transitional or supplementary provisions (including provisions for the purpose of effecting the transition to this Act from the enactments repealed by this Act and the Industrial and Provident Societies Acts, 1893 to 1978), as may appear to the Minister to be necessary or proper for any purpose of this Act or in consequence of, or to give full effect to, any provision of this Act.

Regulations to
remove difficulties.

183.—If, in any respect, any difficulty arises in bringing any provision of this Act into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to him to be necessary or expedient for the purposes of removing the difficulty, bringing that provision into operation, or securing or facilitating its operation.

184.—The following enactments, namely—

- (a) the Central Bank Acts, 1942 to 1997,
- (b) the Building Societies Act, 1989, and
- (c) the Consumer Credit Act, 1995,

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Certain enactments
not to apply to
credit unions etc.

shall not apply to a credit union or to a body the members of which are credit unions and the principal objects of which are the promotion of the credit union movement and the provision of services to credit unions.

185.—(1) Stamp duty shall not be chargeable on any instrument effecting the transfer of a share in a credit union.

Exemptions from
stamp duty.

(2) Stamp duty shall not be chargeable on any transfer, conveyance or other instrument executed for the purposes of effecting, under *Part IX*, an amalgamation of credit unions or a transfer of engagements between credit unions.

186.—(1) A credit union shall maintain, in addition to the records required to be kept by a credit union by virtue of *section 108*, such other records as may be specified by directions made by the Registrar.

Records and
registers.

(2) Any register or record required to be kept by or under this Act may be kept either by making entries in bound books or by recording the matters in any other manner, provided that the recording is readily accessible and readily converted into written form in an official language of the State.

(3) Any duty imposed by this Act to allow inspection of, or to furnish a copy of, a record, or any part of it, is to be treated as a duty to allow inspection of, or to furnish, a reproduction of the recording or of the relevant part of it in a written form in an official language of the State.

(4) Where any register or record required to be kept by or under this Act is not kept by making entries in a bound book but by some other means, adequate precautions shall be taken by the person required to keep the register or record for guarding against falsification and for facilitating the discovery of any falsification.

187.—(1) Without prejudice to *section 124 (2)* and subject to any provision made by regulations, every return or other document required for the purposes of this Act—

Form, deposit and
evidence of
documents.

- (a) shall be made in such form,
- (b) shall contain such particulars, and
- (c) shall be deposited and registered or recorded, with or without observations on the return or other document, in such manner,

as may be specified by directions given by the Registrar.

(2) An acknowledgement of registration or other document relating to a credit union, purporting to be signed by the Registrar or a

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person duly authorised by the Minister, including in particular any document purporting to be a copy or extract of a credit union's rules or of any other instrument or document whatsoever, and every document purporting to be signed by any inspector under this Act shall, unless the contrary is proved, be deemed to have been issued by the Registrar or such a duly authorised person, or an inspector, as the case may be, and shall be received in evidence without proof of the signature.

(3) A printed document purporting to be a copy of the rules of a credit union and certified by an officer of the credit union to be a true copy of its registered rules shall, unless the contrary is proved, be deemed to be a true copy of its rules and shall be received in evidence accordingly.

Service of notices
etc.

188.—(1) Where a notice, direction, or other document is authorised or required by or under this Act to be served on a person, it shall, unless otherwise specified in this Act, be addressed to him and served on or given to him in one of the following ways—

- (a) where it is addressed to him by name, by delivering it to him;
- (b) by leaving it at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by ordinary prepaid post addressed to him at the address at which he ordinarily resides or, in a case in which an address for service has been furnished, at that address; or
- (d) in the case of an officer of a credit union, by sending it to him by ordinary prepaid post addressed to him at the address of the registered office of the credit union.

(2) Any such document may, in the case of a credit union, be served on the secretary of the credit union.

Transitional
provisions.

189.—(1) In so far as any order, regulation, rule, agreement, application, decision or reference made, approval, consent or direction given, requirement imposed, certificate or other instrument issued, register kept, resolution passed, notice served or other thing done under an enactment repealed by this Act could have been made, given, imposed, issued, kept, passed, served or done under a corresponding provision of this Act, it shall not be invalidated by the repeal effected by this Act but, except in so far as this Act otherwise provides, shall have effect as if made, given, imposed, issued, kept, passed, served or done under that corresponding provision.

(2) Where any document refers to an enactment repealed by this Act and provision is made by this Act corresponding to that enactment, then, unless the context otherwise requires, that reference shall be construed as or, as the case may be, as including a reference to the corresponding provision of this Act.

(3) Where an act or omission is an offence under an enactment repealed by this Act and that enactment provides a penalty for the continuation of the offence, then, if provision is made by this Act corresponding to that enactment, the continuation of the act or omission after the commencement of this section shall be treated for the

purposes of the corresponding provision of this Act as a continuation Pr.XIV S.189
of an offence under that provision.

(4) Any reference in this section to an enactment repealed by this Act includes a reference to an enactment contained in the Industrial and Provident Societies Acts, 1893 to 1978, which, though not so repealed, ceases by virtue of this Act to apply to a credit union.

FIRST SCHEDULE

Section 13.

MATTERS TO BE PROVIDED FOR IN RULES OF CREDIT UNION

1. The name of the credit union, which shall comply with *section 10*.

2. The objects of the credit union which shall comply with *section 6 (1) (a)*.

3. The place 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 required 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 shares.

5. The mode of holding meetings and the method of notice, 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 the board of directors, the Supervisory Committee and any principal Committee and of other officers and their respective powers and remuneration.

7. Determination (subject to *section 27 (4)*) of the maximum amount of the 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 payment of the balance due on shares 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 custody and use of the credit union's seal.

11. Provision for the audit of accounts by one or more auditors appointed by the credit union.

12. Whether disputes between the credit union and any of its members, or any person claiming by or through any member or under the rules, shall be settled by reference to the Circuit Court, arbitration or the Registrar.

13. Provision for the withdrawal of members from the credit union and for the claims of the representatives of deceased members or the assignees or trustees of the property of bankrupt members and for the payment of nominees.

SECOND SCHEDULE

FORM OF RECEIPT

Section 42.

..... Limited hereby acknowledges that it has this
..... day of, 19..... received the sum of,
representing all money intended to be secured by the [within (or
above) written] [annexed] deed [and by a further charge dated, etc.,
or otherwise as required].

) Board of Directors
)
)
) Secretary

Section 67.

THIRD SCHEDULE

CREDIT COMMITTEE, CREDIT CONTROL COMMITTEE AND MEMBERSHIP
COMMITTEE

1. The membership of a credit committee, credit control committee and membership committee shall include at least one director.
2. A credit committee, credit control committee and membership committee shall—
 - (a) meet as often as necessary to carry out their functions;
 - (b) submit a written report to the board of directors at each meeting of the board; and
 - (c) comply with any instruction of the board of directors.
3. A credit committee shall have not less than three members and a member of the credit control committee, the credit control officer or a credit officer shall not be eligible for membership.
4. A credit control committee shall have not less than three members and a member of the credit committee, the credit control officer or a credit officer shall not be eligible for membership.
5. A membership committee shall have not less than one member.
6. If a director of a credit union who is a member of—
 - (a) the credit committee, or
 - (b) the credit control committee, or
 - (c) the membership committee,

ceases to hold the office of a director, he shall thereupon cease to be a member of the committee in question and, if he held the office of

chairman, vice-chairman, treasurer or secretary of that committee, SCH.3
he shall also thereupon cease to hold that office.

FOURTH SCHEDULE

Section 88.

SUPPLEMENTARY PROVISIONS IN RELATION TO REGULATORY
DIRECTIONS

1. The Registrar may not revoke a regulatory direction if an order under *paragraph 3* has been made by the Court in respect of the direction.

2. A credit union to which a regulatory direction has been given may apply to the Court for, and the Court may grant, an order setting aside the direction.

3. The Registrar may apply to the Court for, and the Court may grant, an order confirming a regulatory direction or confirming it and, subject to *paragraph 5*, extending the period of its operation for such time as the Court, having regard to all the circumstances, may consider appropriate.

4. In addition to or in lieu of an order under *paragraph 3*, the Court may make such other order in the case as may appear to it to be necessary, including an order directing any person who holds money or other assets for or on behalf of the credit union, or a person specified in the order, not to dispose of any of those assets except on such conditions and in such circumstances as are so specified.

5. A regulatory direction which has been confirmed by the Court shall terminate when whichever of the following first occurs—

- (a) the end of the period of operation specified by the Court;
- (b) the making by the Court of an order for termination on the application of the Registrar;
- (c) the making of a winding up order in respect of the credit union;
- (d) the making by the Court of an order for termination where the Court considers that the circumstances that gave rise to the direction have ceased to exist and that it would be unjust and inequitable not to make the order.

6. If the Registrar forms the opinion that a credit union to which a regulatory direction was given is able to meet its obligations to its members and creditors but the circumstances which gave rise to the direction are unlikely to be rectified, the Registrar shall forthwith apply to the Court for, and the Court may grant, an order directing the credit union—

- (a) to prepare, in consultation with the Registrar, a scheme for the orderly termination of its business and the discharge of its liabilities to its members and creditors under the supervision of the Registrar; and

(b) to submit that scheme to the Court within two months for approval.

7. The Court shall not approve the terms of a scheme under *paragraph 6* without hearing the Registrar and, in the event of dispute about the terms of the scheme, the Registrar or the credit union may apply to the Court to adjudicate on the matter.

8. If a credit union fails to comply with an order of the Court under *paragraph 6* or fails to adhere to a scheme approved by the Court, the Registrar may apply to the Court for, and the Court may make, such further order as it considers appropriate, including an order for the winding up of the credit union on the ground that it is just and equitable that it be wound up.

9. The Court may by order revoke or amend an order (except an order under *paragraph 5*) made by it under this Schedule.

10. Where any regulatory directions are in force with respect to a credit union—

(a) the credit union shall take all necessary steps to secure that its assets, wherever held, are not depleted without the prior authorisation of the Registrar; and

(b) the Registrar may apply to the Court for an order directing a bank or any institution exempt under section 7 of the Central Bank Act, 1971, which holds an account of the credit union to suspend the making of payments from the account for such time as the Court may, having regard to all the circumstances, consider appropriate; and

(c) the credit union shall make reasonable arrangements for using its funds to meet applications (duly made in accordance with its rules) by members for repayment of moneys subscribed or deposited by them; and

(d) if it appears to the Registrar that the credit union has been applying an undue proportion of its funds in making loans, in preference to making such arrangements as are referred to in *paragraph (c)*, the Registrar, after giving notice to the credit union and affording it an opportunity of making representations, may apply to the Court for the winding up of the credit union.

FIFTH SCHEDULE

SUPPLEMENTARY PROVISIONS AS TO REMOVAL OR SUSPENSION BY THE REGISTRAR OF DIRECTORS AND MEMBERS OF SUPERVISORY COMMITTEE

1. (1) Any director or member who has been removed may apply to the Court for an order setting aside the removal.

(2) On an application under *subparagraph (1)*, the Court may make—

(a) an order setting aside the removal; or

(b) an order confirming the removal; or

(c) such other order as may appear to the Court to be necessary. SCH.5

2. The Registrar may apply to the Court for, and the Court may grant, an order confirming the removal.

3. (1) In addition to or in lieu of making an order under *paragraph 2*, the Court may make such other order in the case as may appear to it to be necessary, including an order removing from office any director or member of the credit union.

(2) The Court shall not make an order under *subparagraph (1)* without giving the director or member concerned an opportunity to be heard.

4. The Court may by order revoke or vary an order made by it under this Schedule.

5. Unless an order has been made by the Court in respect of a removal, the Registrar may at any time revoke the removal.

6. (1) Any director or member who has been suspended may apply to the Court for, and the Court may grant, an order setting aside the suspension.

(2) On an application under *subparagraph (1)*, the Court may make—

(a) an order setting aside the suspension;

(b) an order confirming the suspension; or

(c) such other order as may appear to the Court to be necessary.

7. The Registrar may apply to the Court for, and the Court may grant, an order confirming a suspension or confirming it and extending the period of its operation for such time, not exceeding six months from the date the suspension took effect, as the Court may consider appropriate.

8. (1) In addition to or in lieu of making an order under *paragraph 7*, the Court may make such other order in the case as may appear to it to be necessary, including an order removing from office any director or member of the credit union.

(2) The Court shall not make an order under *subparagraph (1)* without giving the director or member concerned an opportunity to be heard.

9. A suspension which has been confirmed by the Court shall terminate when whichever of the following first occurs—

(a) the end of the period of operation specified by the Court;

(b) the making by the Court of an order for termination on the application of the Registrar;

(c) the making of a winding up order in respect of the credit union;

(d) the making by the Court of an order for termination where the Court considers that the circumstances that gave rise to the suspension have ceased to exist and that it would be unjust and inequitable not to make the order.

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10. The Court may by order revoke or vary an order made by it under this Schedule.

11. Unless an order has been made by the Court in respect of a suspension, the Registrar may at any time revoke the suspension.