Handbook of Co-operative and Community Benefit Society Law

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CHAPTER 1

CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES IN THEIR LEGAL CONTEXT

1.1. INTRODUCTION

After an introductory outline of some of the legal requirements of co-operative and community benefit orientated businesses in Section **1.1.**, Section **1.2.** of this chapter sketches the legal context of co-operative and community benefit societies by comparing them with other legal structures available for business. Section **1.3.** deals with the protection of organisational purpose in legal structures and Section **1.4.** deals with the key legislative changes made to co-operative and community benefit society law in 2014.

1.1.1. The range of choice

The legal definition of a co-operative or community benefit society has at its core the requirement that it is 'a society for carrying on any industry business or trade (including dealings of any description with land), whether wholesale or retail' and that it registers as either a 'bona fide co-operative society' or a society conducting or intending to conduct its business 'for the benefit of the community'.[1]

Both types of society are business structures with particular practices or objectives. So where do co-operatives and community benefit societies fit in the wider picture of legal structures available for business in the UK?

Unlike many other legal systems, the UK jurisdictions do not generally require businesses of a particular type to use particular legal structures. Instead, they allow a wide choice of legal form to anyone starting a business. Business owners and founders also have a wide choice about the detailed rules in the organisation's constitution.

As a result, co-operative and community benefit societies might be said to be 'in competition' with other legal structures, such as companies and partnerships, from the point of view of people choosing between them. The special purposes or practices involved in being either a bona fide co-operative or a community benefit society also raise issues about the availability of other legal mechanisms or structures, such as trusts, charities, building societies or friendly societies, intended to achieve a similar outcome. That raises questions about locking assets into the purpose and how easy or difficult it is to demutualise the structure and turn the co-operative or community benefit society into an investor-owned company.

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[1] CCBSA 2014, s 2(1) and (2).

This chapter briefly compares available structures with that perspective in mind. **Chapter 2** examines the history of co-operative and community benefit society legislation and the range of societies in existence today and **Chapter 3**, dealing with the registration of societies, looks at the key features of organisations that qualify as co-operatives or community benefit societies.

For an excellent practical analysis of the range of legal structures available for co-operative and other 'third sector' organisations, consult Co-operatives UK's *Simply Legal*.[2] It is particularly helpful in analysing the types of organisations against the available legal forms, the advantages and disadvantages of incorporation, ownership issues, and charitable status.

1.1.2. Some key issues for co-operatives and community benefit business organisations

Both types of business share some of the needs of other businesses. They include:

Capital: This can only come from reinvested profits (reserves), shares, and debts. For organisations committed to giving a lower priority and return and fewer rights to investors, this can be particularly problematic. However, a legal structure that permits shares and loan securities of one kind or another to be issued is useful for some businesses.

Contracting and property ownership: This is necessary for any business. A sole trader can do this as an individual and so can the partners in an unregistered general partnership. However, for this purpose, corporate personality is particularly helpful.

Corporate personality: In a corporate body such as a co-operative or community benefit society, a company or a limited liability partnership, the entity contracts and holds property separately from its members. Similarly it sues and is sued and continues in existence until it is dissolved regardless of changes in membership or ownership.

Limited liability: This is linked to, but separate from, corporate personality. This feature means that the liability of members or business owners for the debts of the business, even if it becomes insolvent, are limited to an amount they have paid in or, sometimes, an amount they have agreed to pay. This usually takes the form of the amount paid or due on the shares in the corporate body but in the case of a company limited by guarantee is an amount pledged when the member joins but paid on insolvency.

Governance and decision-making: These matters have to be dealt with in every structure but they are affected by the particular legal structure used. They can vary from a flat structure in which all owners participate in all decisions, for example in small workers' co-operatives or small partnerships to complex tiered structures. However, the classic system involves a general meeting of members and a committee or board elected by them.

Distribution and level of risk: Some unincorporated structures distribute risks and liability unevenly. This is due to the absence of both corporate personality and limited liability and the variable effects of contract and agency law on the liability of members

[2] 2nd edn, 2009.

or committee members. Corporate bodies with limited liability generally equalise underlying risk, sometimes subject to personal guarantee contracts by some members with business creditors and possible liability on insolvency for decision-makers in the business.

Privacy or transparency: Broadly, greater public disclosure of business information and of the identity of members or board or committee members comes with incorporation and limited liability for debts. If creditors are to take the risk of being able to hold only the corporate body liable, they are thought to be entitled to information to assist them in assessing the level of risk. However, this is often mitigated for small businesses by exceptions and permission to file abbreviated accounts.

Administration costs: The costs attached to the registration of a business as a corporate body and the ongoing costs of filing returns are often seen as an extra cost of incorporation. However, anyone seriously embarking on a business venture would be well advised to ensure that the governing documents for the organisation meet its needs, whether or not the business is to be incorporated.

Co-operatives and community benefit societies have extra requirements that define them. For co-operatives that revolves around the ICA Statement of Co-operative Identity, Values and Principles. For community benefit societies, it means operating in the interests of a group other than the society's members, with or without an asset lock, charitable status, or stakeholder control of decision-making.[3] Registration under CCBSA 2014 involves compliance with those values as a condition of registration, enforced by the FCA.

This chapter considers a range of business structures in the light of these needs. Section **1.2.1.** deals with unincorporated business structures, Section **1.2.2.** considers incorporated business structures and Section **1.2.3.** looks at the role of structures not usually used for business.

1.2. AVAILABLE LEGAL STRUCTURES

1.2.1. Unincorporated business structures

1.2.1.1. Sole trader

This 'structure' barely deserves that name. It simply recognises that any human being with legal capacity can make contracts and so can conduct business. Legal capacity will depend on the individual being of age (at least 18 years old) and not suffering from mental incapacity so as to be unable conduct his or her affairs. Given this level of legal capacity, the individual can borrow, lend, buy, sell, employ others and otherwise make any legally binding contract needed to conduct business.

No special rules about the relationship between the different owners of the business are needed since the owner is one individual acting as such. Similarly, an individual can

[3] See Section **1.3.** below.

make a declaration of trust in respect of property or enter a contractual arrangement that may lead to a legally binding obligation to pursue a charitable or other altruistic objective.

The sole trader will have unlimited liability for business debts to the full extent of their wealth. The business will be conducted through contracts made by the individual sole trader with or without the use of agents in accordance with agency law. Assets will be held by or on behalf of the individual sole trader.

BIS estimates that, at the beginning of 2013, there were a total of 3.1 million sole traders, of whom only 231,000 had employees.[4]

1.2.1.2. Unregistered general partnership

Three different forms of partnership are possible:

- unregistered general partnerships, governed by Partnership Act 1890 is dealt with briefly here;
- for Limited Partnership under Limited Partnership Act 1907, see 1.2.2.4 below; and
- for Limited Liability Partnership (LLP) under the Limited Liability Partnerships Act 2000, see 1.2.2.1 below

Unregistered general partnerships and LLPs are commonly used by a range of businesses. Limited partnerships are used only for specialised purposes.[5]

Across the three types of partnership, almost 500,000 businesses use the partnership structure and the vast majority of them are unregistered general partnerships.[6]

General unregistered partnerships within the definition to be found in the Partnership Act 1890 (PA 1890) were the earliest form of partnership. They are governed by rules developed by the common law and equity and codified in the 1890 Act. These partnerships are predominantly governed by rules from the law of contract, the law of trusts, agency law, and those equitable rules that govern fiduciary relationships. The key features of this business structure are, in England and Wales, the absence of any separate legal personality on the part of the enterprise, and, in all the UK jurisdictions, the unlimited personal liability of the individual partners for the debts accrued by the business, with the ability of each partner to act as agent for the partnership.

These features are drawbacks to the use of the structure but lead, as a matter of public policy, to the absence of any public disclosure of accounting and financial information about the business. A partnership of this kind can be formed without first registering it with any public authority. Since the full personal wealth of the partners is available to meet business debts, those dealing with the business do not have the right to gain access to financial information unless they contract with the partners to have that right.

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4 See BIS Business Population estimates for the UK and Regions 2013, p 6.

5 For more information on partnerships consult: Geoffrey Morse *Partnership Law* (Oxford University Press, 7th edn, 2010) or Roderick I Banks *Lindley and Banks on Partnership* (Sweet and Maxwell, 19th rev edn 2010).

6 See BIS Business Population estimates for the UK and Regions 2013, p 7.

Similarly, since there is no separate corporate personality in the case of an 1890 Act partnership (other than in Scotland) there is no need to register founding documents to allow a registrar to confer such corporate personality on the entity. It is enough that the identities of the partners are made known in the course of business so that process can be served on them.[7] This transparency of the business form is also reflected in the tax treatment of unregistered general partnerships, which are not subject to corporation tax on the business profits but in which the individual partners pay income tax on their share of those profits.

The absence of corporate personality means that property is held by individual partners on trust for the whole firm and that ownership of it may need to be transferred as partners join and leave. Unless the contrary is agreed between the partners, the partnership is dissolved and a new one formed whenever a partner resigns or a new one joins.[8] This is cumbersome and is an important reason to have a properly drafted written partnership agreement from the beginning.

A partnership exists if the relationships between those involved in the operation of a business amount to 'the relation which subsists between persons carrying on a business in common with a view of profit'.[9] As a result, partnerships can be formed unintentionally. The test of whether a partnership exists is based on any evidence of the intention of the parties about whether they were carrying on business in common with a view to profit or had some other business or commercial relationship. Section 2 of the PA 1890 and later case law provide guidance on deciding the nature of the relationship. Limited partnerships and LLPs can only be formed deliberately as they have to be created by registration.

The courts consider all the circumstances of the arrangement to decide whether it amounts to a partnership. The judges try to establish the real agreement of the parties. A statement in an agreement that they are, or are not, partners will not decide the matter if the circumstances do not bear it out. If the reality of the agreement and relationship indicates that they are borrower and lender, employer and employee, employer and independent contractor, or buyer and seller of a business and the goodwill in it, they will not be regarded as partners. If, on the other hand, they are sharing management and ownership of a common enterprise, seeking profits or contemplating losses that are to be shared, and so have a community of benefit rather than an opposition of interests, they will probably be partners.[10]

All partnerships need a minimum of two partners but the word 'persons' used in s 1(2) PA 1890 includes corporate bodies. As a result, any of the three types of partnership can be formed by any combination of individual people or corporate entities, such as companies or co-operative and community benefit societies societies, so long as the corporate body's constitution permits it to be a member of a partnership.[11]

Since 21 December 2002 there has been no maximum permitted number of partners.[12]

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7 CA 2006, ss 1200–1204.
8 PA 1890, ss 32–33.
9 PA 1890, s 1(2).
10 PA 1890, ss 1(1), 2 and 3 and the excellent discussion in Chapter 2 of Geoffrey Morse *Partnership Law* (Oxford University Press, 7th edn, 2010).
11 *Newstead (Inspector of Taxes) v Frost* [1980] 1 WLR 135.
12 Regulatory Reform (Removal of 20 Member Limit in Partnerships etc) Order 2002, SI 2002/3203.

An unregistered general partnership does not limit the partners' liability for debts and each partner is jointly and severally liable for the business debts.[13] In addition, any partner can contract as agent for all the partners and their acts and contracts carrying on the kind of business the partnership does in the usual way will usually bind all the partners.[14]

Internally, arrangements between the partners are governed by contract and their arrangements can always be changed by consent either expressly or by a course of dealings over time.[15] Property of any kind originally brought into the firm by partners or acquired since on behalf of the firm or for the purpose of its business is 'partnership property' held on trust for the purposes of the business.[16]

Other key features of the default provisions in the absence of agreement to the contrary are:

- Profits and losses are shared equally between partners.[17]
- Partners are not entitled to interest on capital or remuneration before profits are calculated.[18]
- Every partner has a right to take part in the management of the business.[19]
- Decisions are made by simple majority of the partners except admitting a new partner or changing the nature of the firm's business which both need unanimous agreement.[20]
- All partners to have access to the firm's books and accounts at any time.[21]
- There is no power to expel a partner unless expressly agreed.[22]
- The partnership must indemnify any partner for payments made and personal liabilities incurred in the ordinary and proper conduct of the partnership business or in doing anything necessary to preserve of the partnership's business or property.[23]
- If a partner, without the consent of their partners, carries on any business competing with the partnership, she must pay all profits to the partnership.[24]
- Each partner must account to her partners for any benefit she derives, without their consent, from any transaction concerning the partnership, or from any use by her of the partnership name or any partnership property or business connections.[25]

If a group has objectives involving the use of its resources for altruistic purposes and no intention to distribute any profits to the members of the group, it will want to avoid these default rules. Similarly, in a partnership the default position is that each partner has agency authority to bind all the other partners. In an unincorporated association, in the absence of explicit agreement in the association's rules or otherwise, only the

13 PA 1890, s 9.
14 PA 1890, s 5.
15 PA 1890, s 19.
16 PA1890, s 20.
17 PA1890, s 24(1).
18 PA 1890, s 24(4) and (6).
19 PA 1890, s 24(5).
20 PA 1890, s 24(7) and (8).
21 PA 1890, s 24(9).
22 PA 1890, s 25.
23 PA 1890, s 24(2).
24 PA 1890, s 30.
25 PA 1890, s 29(1).

committee members and officers are likely to be bound by contracts and the other members will be free of the contractual obligation and any other liability beyond the duty to pay any annual subscription.[26] Since neither legal form confers limited liability for the debts of the organisation, this is an important issue. Likewise, the rules applicable to a partnership under s 24(1) of the PA 1890 would give the members an equal share in profits or losses, in the absence of agreement to the contrary.

This highlights the importance of clarity at the beginning about the arrangements intended to apply to the organisation and care about ensuring that the legal structure being used will facilitate the aims of the group. If a group intend to establish a partnership under the PA 1890, they should use a written partnership agreement (or partnership deed) to set out their intention to operate as a partnership and the detailed rules they want to apply. That document establishes the business structure and modifies various provisions that would otherwise apply. Legal advice should be taken on this.

As a contractual arrangement, a partnership does not legally have to be created in writing and its existence can be proved by a course of conduct establishing the appropriate relationship. As a result, a failure to decide on the legal structure will amount to a decision by default, leaving the courts to decide on the parties' intention in the light of such evidence as is available and to deduce on that basis, the applicable legal rules as indicated above.

This apparently simple structure can be tailored to the needs of the partners by the free use of contract to establish their own structure. The PA 1890 default rules only operate in the absence of agreement to the contrary. The division of profits or losses among the partners, the level of reward for capital, the governance structure and the decision-making processes can all be created specifically to fit the needs of those using the structure. Since corporate bodies can be members of a general unregistered partnership, the structure can be tailored to confer limited liability on individuals by the use of that method.

BIS estimated that, at the beginning of 2013, a total of 434,000 of these 'general partnerships' existed and that 145,000 of them had employees.[27]

1.2.1.3. Unincorporated friendly society

Friendly societies were an original form of mutual insurance society out of which co-operative and community benefit societies grew. They are member-owned mutuals that operate on the basis of one member one vote and share surplus among their members by way of benefits without investor shareholders.

Until 1993 all friendly societies were registered but unincorporated. They can now be either incorporated or unincorporated. The Friendly Societies Act 1974 (FrndSocA 1974) governs unincorporated societies but since February 1993 no new societies have been able to register under that Act.[28] So this is a legacy business structure. For a brief outline of the incorporated friendly society structure that remains available for new registrations see Section **1.2.2.5.** below.

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[26] *Wise v Perpetual Trustee Co* [1903] AC 139.
[27] See BIS Business Population estimates for the UK and Regions 2013, p 7.
[28] FrndSocA 1992, s 93.

Existing unincorporated societies registered under FrndSocA 1974 as friendly societies can remain registered or incorporate under the 1992 Act.[29]

Other societies, such as cattle insurance societies and certain benevolent societies, registered under the FrndSocA 1974 but not as friendly societies can convert into co-operative or community benefit societies.[30]

The key feature of the friendly society business structure, whether it is incorporated or not, is that it can only be used for a strictly limited range of activities. In that respect it resembles a building society or a credit union. In Section **1.3.5.1.** that mechanism is examined as a way of protecting corporate purpose.

1.2.1.4. Co-operative and community benefit societies compared

A co-operative or community benefit society, unlike an unregistered general partnership, has corporate personality and gives its members the benefit of limited liability for business debts.

Unlike an unincorporated friendly society, it can pursue any form of business it chooses and is not confined to a particular type of business, such as insurance. However, it must operate as a co-operative or benefit the community as a condition of initial and continued registration.

1.2.2. Incorporated business structures

1.2.2.1. Registered company

The Companies Act 2006 (CA 2006) has consolidated most of the rules of company law, has changed some, and applies across the whole UK. It has been fully in force since October 2009. Like the previous legislation, it provides for the creation of a number of different types of company, the key features of which are outlined here. The Community Interest Company (CIC), which will be discussed more fully in Section **1.2.2.2.** of this chapter, was introduced and continues to be governed by the Companies (Audit, Investigations and Community Enterprises) Act 2004 (C(AICE)A2004).[31]

The company is the most popular form of corporate body for business activity in the UK. 2,778,400 were 'effectively' on the register across the UK on 31 March 2013. 2,771,400, were private limited companies, and only 7,000 were PLCs. This contrasts with a total of 7,578 industrial and provident societies (excluding those registered in Northern Ireland) on the register at the same date.[32]

The key feature shared by all companies registered under the CA 2006 or earlier legislation is corporate personality.[33] Any such company (like an LLP or a co-operative

[29] FrndSocA 1992, ss 6 and 93 and Sch 4.
[30] FrndSocA 1974, s 84A and Sch 6A inserted by the Friendly Societies Act 1992 and see Section **3.11**. below.
[31] For more information on company law see: *Boyle and Birds' Company Law* (Jordan Publishing, 9th edn, 2014) or Lord Millett and Alistair Alcock (eds) *Gore-Browne on Companies* (Jordan Publishing, 45th edn, looseleaf updated service).
[32] Companies' House, Statistical Tables on Registration Activities 2012/2013 (September 2013).
[33] CA 2006, s 16(2) and (3).

or community benefit society society) is regarded as a separate person at law. As a result it can own assets (legally or beneficially) in its own name, can sue and be sued, can make contracts and appoint agents, and enjoys continued existence until dissolved despite frequent changes in its membership or management. This contrasts with the unregistered general partnership,[34] which has no separate existence for legal purposes (in England and Wales) and so amounts to no more than the individual personalities of the partners. Similarly, the unincorporated association has no corporate personality.[35]

Most registered companies confer limited liability on their members for the debts of the business but it is possible to register an unlimited company.[36] They have to be registered and enjoy separate corporate personality but their members have unlimited liability for business debts. They are not required to make their accounts public and so this structure may be attractive to those seeking privacy.[37]

Limited companies can either be registered as limited by shares or limited by guarantee. A company limited by shares defines the limit on the liability of a member for the business debts by reference to the amount due and not yet paid on the shares held by the member at the point when the company is wound up.[38] In the case of a company limited by guarantee the liability of the member is limited to an amount stated in the company's constitution as payable by each member if the company is wound up and no shares can be issued.[39] Companies limited by guarantee are usually used for social, charitable or other non-commercial purposes and commercial businesses are usually registered as companies limited by shares so that capital may be raised by the issue of shares. This, however, is a matter of practice and the CA 2006 does not lay down any restrictions on the use that can be made of a company based on its status as limited by shares, or by guarantee, or unlimited.

Another key division between types of company relates to the way they raise capital. All companies are classed as either public or private. A public company (PLC) is a company limited by shares whose certificate of incorporation states that it is a PLC and that was registered or re-registered as a public company in accordance with CA 2006.[40] Every other company is a private company.[41] A company need only have one member.[42]

A public company must comply with a minimum capital requirement before it is allowed to do business and is permitted to offer its shares and other securities to the public. A private company is subject to no minimum capital requirement and is prohibited from offering its securities to the public.[43] A public company must end its name with 'public limited company', or 'PLC'.[44] A private company, unless it gains exemption, must end its name with 'limited' or 'Ltd'.[45] A PLC also registered as a CIC must use 'community

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34 See Section **1.2.1.2.**
35 See Section **1.2.3.1**.
36 CA 2006, s 3(4).
37 CA 2006, s 448.
38 CA 2006, s 3(2).
39 CA 2006, ss 3(3) and 5.
40 CA 2006, s 4(2) and (3).
41 CA 2006, s 4(1).
42 CA 2006, s 7(1).
43 CA 2006, ss 755–767.
44 CA 2006, s 58.
45 CA 2006, ss 59–60.

interest PLC' or 'community interest public limited company' while a private company also registered as a CIC must use 'community interest company' or 'cic'.[46]

While all PLCs are allowed to raise capital by a public offering of shares or other securities, only some PLCs choose to do so. Of those, only some have securities traded on a public market and even fewer have securities listed on the London Stock Exchange. Thus within the category of PLCs only some are 'quoted companies' with equity shares officially listed on the LSE, in another EEA member state, or on the New York Stock Exchange or Nasdaq.[47] The level of regulation applicable to companies broadly increases with the move from private company to PLC and on to 'quoted company'.

In the absence of objections by a certain proportion of shareholders, private companies can use written resolution procedures rather than calling meetings for members' decisions and need not hold an AGM. They can also benefit from more relaxed rules about the preparation of publicly available accounts and on audits if they qualify as small or medium-sized private companies. However, there is usually some requirement, even for a private company, to submit an annual accounts and reports to the registrar of companies. Parts 13, 15 and 16 of CA 2006 set out the detail of these rules and the exemptions.

The Listing Rules, applicable to companies with securities admitted to trading on a regulated market, impose even more onerous requirements about publicity of information, shareholder involvement in decision-making, and corporate governance.[48]

The precise rights and duties of company members, whether shareholders in a company limited by shares or simply members of a company limited by guarantee, are defined in the company's articles of association. Since October 2009, this is the only governing document for a company but for companies already registered at that date, the provisions of the memorandum of association which was formerly required are read as part of the articles.[49]

While most companies limited by shares will confer votes according to the number of shares held by the member, that is not legally required and one member one vote could be laid down as the rule in the articles as it normally is in a company limited by guarantee.[50] However, anyone using a company limited by shares for a co-operative or community benefit business would probably be concerned to entrench key provisions of the articles to prevent or restrict change by later members (see Section **1.3.4.** below).

Companies usually have a board of directors and a members' general meeting as the core of their governance structure and this is assumed in Parts 8 and 10 of the Companies Act 2006. However, it is possible within the limits of the mandatory requirements of the Act, for the company's articles of association to vary the allocation of powers to the different organs of the company and even to vary the number of organs.

A company can be used either to carry on a business or for some other purpose. In practice, it is common for a company limited by guarantee to be used where the purpose

46 C(AICE) Act 2004, s 33.
47 CA 2006, s 385.
48 See *FCA Handbook, Listing Rules* at http://fshandbook.info/FS/html/handbook/LR/ (last visited 22 April 2014).
49 CA 2006, s 28.
50 CA 2006, s 284.

is not commercial but this is not a legal requirement. As is noted below, the CIC is specifically intended for use for non-charitable and non-political community benefit purposes and such a company can be a PLC or a private company. If private, a CIC can be limited either by shares or by guarantee.

So the Companies Act 2006 provides one route for the incorporation of an association formed to pursue a non-commercial purpose whether as a members' club, a religious, political or social campaigning organisation, or for charitable objects.[51]

1.2.2.2. CIC

A Community Interest Company (CIC) is a company limited by shares (PLC or private company) or by guarantee that is either formed as or becomes a CIC in accordance with Part 2 of the C(AICE)A 2004. The Companies Act 2006 applies to CICs but subject to Part 2 of the 2004 Act.[52]

The key feature of a CIC is that it must satisfy additional registration conditions that seek to lock its assets in to serving its non-charitable and non political community benefit objective. A CIC's compliance with the C(AICE)A 2004 and the Regulations made under it is policed by the CIC Regulator who operates within the Department for Business Innovation and Skills (BIS).

The key sources of legal rules governing CIC's over and above Part 2 of the C(AICE)A 2004 are the Community Interest Companies Regulations 2005, SI 2005/1778 as amended in 2009 and 2012 by SI 2009/1942 and SI 2012/2335 respectively. In addition, extensive guidance has been published by the regulator on its website.[53]

To register as a CIC a company must, in addition to satisfying the other requirements for registration as a company, obtain the approval of the CIC Regulator.[54] That approval will depend on the Regulator being satisfied that the company meets the 'community interest test' and is not an 'excluded' company.[55]

The community interest test is laid down in s 35(2) of C(AICE)A 2004 and requires that 'a reasonable person might consider that its activities are being carried on for the benefit of the community'. SI 2005/1778 elaborates the test by excluding activities that a reasonable person might consider to promote or oppose changes to the law or to public policy, support a political party or political campaigning organisation or influence voters unless that activity can be seen as incidental to other activities for the benefit of the community. Equally, an activity that only benefits members or employees of a particular body will not qualify.[56]

Excluded companies include political parties or political campaigning organisations and their subsidiaries.[57]

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51 For a detailed analysis of companies Limited by Guarantee see: M Mullen and J Lewison *Companies Ltd by Guarantee* (Jordan Publishing Ltd, 3rd edn, 2011). On CICs see Section **1.2.2.2.** below.

52 CA 2006, s 6.

53 See https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a-cic.

54 C(AICE)A 2004, s 36.

55 C(AICE)A 2004, s 36(5).

56 SI 2005/1778, regs 3 and 4.

57 SI 2005/1778, reg 6.

While a CIC may have charitable objects, it will not be regarded as a charity for legal purposes and so cannot register with the Charity Commission or enjoy any of the tax or other advantages that flow from that status.[58]

As part of securing the 'asset lock' on a CIC, the legislation caps distributions to members of dividend on any shares and the payment of interest.[59] Distributions of assets on any winding up and conversions of a CIC into another type of corporate body are also restricted and regulated.[60]

The annual report that must be made to the CIC Regulator is intended to provide an indication of how far a CIC may have deviated from activities within its objectives or breached limits on dividends, interest and remuneration. It must include details of directors' remuneration, dividends paid on shares, interest paid on capped loans and information on community benefit and stakeholder involvement in the CIC.[61]

The CIC regulator has extensive powers to supervise, investigate, change directors, manage CIC property, bring civil proceedings and petition to wind up a CIC.[62]

In December 2013 there were a total of 8,784 CICs approved and regulated by the CIC Regulator.[63]

1.2.2.3. Limited liability partnerships (LLPs)

LLP's were introduced by the Limited Liability Partnerships Act 2000 (LLPA 2000). This business structure is popular with many professionals such as solicitors and accountants. It shares the main features of the general unregistered partnership such as the assumption that all partners will take part in management, the other main default rules to be found in the 1890 Act model and the freedom of the partners to agree their own rules.

However, the LLP has a corporate personality separate from that of its members and the partners enjoy limited liability for the business debts other than for liabilities arising from their own torts. As a result, an LLP can be created only by registration and the disclosure rules about company accounts and financial information broadly apply to the LLP. In effect, this structure offers most of the features of a limited company except the use of share capital. However, the default model for its governance is that found in the PA 1890. The LLP is taxed in the same way as an unregistered general partnership rather than as a company.[64]

The LLP provides the organisational flexibility of a partnership without the drawback of unlimited liability for partners (called members in an LLP) and provides a corporate entity that can hold property, sue and be sued and continue to exist despite changes of membership. The law applicable to LLP's is mainly to be found in a great swathe of

58 C(AICE)A 2004, s 26(3).
59 C(AICE)A 2004, s 30 and SI 2005/1778, regs 17 to 25.
60 C(AICE)A 2004, ss 31 and 52–56 and SI 2005/1778, regs 7 and 8 and para 1 of Schs 1 and 2 as amended.
61 C(AICE)A 2004, s 34 and SI 2005/1778, regs 26 to 29 as amended.
62 C(AICE)A 2004, ss 41–51 and SI 2005/1778, regs 30–33 of as amended.
63 Regulator of Community Interest Companies, Third Quarter Report, p 11 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279580/CIC14605-community-interest-companies-operational-_report-_third-_quarter-_2013–14.pdf.
64 Corporation Tax Act 2010, ss 59–61.

statutory instruments as the LLPA 2000 provides only an outline of the structure and leaves most detailed rules to be created by secondary legislation.

An LLP is a corporate body separate from its members with unlimited capacity.[65] Its debts are not those of its members. Members have limited liability for the LLP's debts.[66] They are, however, personally liable for their own torts (including negligence) on the basis of a court's analysis of whether the tort was committed by the member or the LLP.[67]

Members can be liable to contribute on the winding up of an LLP on the basis of wrongful or fraudulent trading as applied to LLP's.[68] In addition, they can be liable to do so on the basis of an agreement between LLP members or between a member and the LLP.[69]

An LLP is formed by filing an incorporation document with the Registrar of Companies signed by two or more persons 'associated for carrying on a lawful business with a view to profit'.[70] The document must state the name of the LLP with the suffix LLP or Welsh equivalent, the address of its registered office, details of the initial LLP members and which of them are 'designated members'.[71] Designated members are responsible for signing and delivering accounts, appointing an auditor and similar statutory roles and any change to the designated members must be registered.[72]

In addition, the members must have an express or implied agreement about the mutual rights and duties of LLP members and their rights and duties in respect of the LLP but there is no requirement to make that document public by registration.[73]

Like partners in a general unregistered partnership, members are agents for the LLP, so they can make contracts that are binding on the LLP as a corporate body.[74] However, because the LLP has corporate personality and members enjoy limited liability this will have fewer potentially adverse consequences for other partners.

After incorporation, the LLP, like a company, must notify the registrar of changes of name, registered office or members, file accounts and register any charge over its assets.[75] The duties to file annual returns and other accounting information are similar to those applicable to companies and are mainly dealt with in the LLP (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008 SI 2008/1911.

The other question about LLPs is how their internal governance and relationships work. Essentially that is a matter for the LLP agreement and its provisions will prevail. The mutual rights and duties both of the LLP members to each other and of each of them to

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65 LLPA 2000, s 1.
66 LLPA 2000, s 1(4) and (5).
67 See *Williams v Natural Life Health Foods Ltd* [1998] 1 WLR 830 HL on the similar position of company directors.
68 Insolvency Act 1986, s 214A.
69 Insolvency Act 1986, s 74 as applied by LLP Regulations 2001, SI 2001/1090, Sch 3.
70 LLPA 2000, s 2(1).
71 LLPA 2000, s 2(2).
72 LLPA 2000, s 6.
73 LLP Regulations 2001, SI 2001/1090, reg 2.
74 LLPA 2000, s 6.
75 See generally LLP (Application of Companies Act 2006) Regulations 2009, SI 2009/1804.

the LLP as a corporate body are as they have been agreed.[76] However, as in the case of an unregistered general partnership, there are certain default provisions which apply in the absence of agreement to the contrary. They are set out in LLP Regulations 2001, SI 2001/1090 and are similar to those applicable under the Partnership Act 1890:

- profits and losses are shared equally between members;[77]
- members are not entitled to remuneration before profits are calculated;[78]
- every member has a right to take part in the management of the business;[79]
- decisions are made by simple majority of the members except admitting a new member or changing the nature of the firm's business which both need unanimous agreement;[80]
- every member must share accounts and full information about anything affecting the limited liability partnership with any other member or her legal representatives;[81]
- the limited liability partnership must indemnify any member for payments made and personal liabilities incurred in the ordinary and proper conduct of the LLP's business or in doing anything necessary to preserve of the LLP's business or property;[82]
- if a member, without the consent of the LLP, carries on any business competing with the LLP, she must pay all profits to the limited liability partnership;[83]
- every member must account to the LLP for any benefit she derives, without the consent of the limited liability partnership, from any transaction concerning the limited liability partnership, or from any use by her of the LLP's property, name or business connections;[84]
- there is no power to expel a member unless expressly agreed;[85]
- all members can access to the firm's books and accounts at any time.[86]

An LLP is subject to company insolvency rules and procedures such as administration, winding up, and creditors' voluntary arrangements. The Company Directors Disqualification Act 1986 also applies.[87]

On 31 March 2013 there were 53,583 LLPs registered under the LLP Act 2000 on the register across the whole United Kingdom.[88]

1.2.2.4. Limited partnerships (LPs)

LP's have existed since the Limited Partnerships Act 1907 became law. The structure is little used except as an investment vehicle. It is particularly favoured by private equity

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76 LLPA 2000, s 5(1).
77 SI 2001/1090, reg 7(1).
78 SI 2001/1090, reg 7(4).
79 SI 2001/1090, reg 7(3).
80 SI 2001/1090, reg 7(5) and (6).
81 SI 2001/1090, reg 7(8).
82 SI 2001/1090, reg 7(2).
83 SI 2001/1090, reg 7(9).
84 SI 2001/1090, reg 7(10).
85 SI 2001/1090, reg 8.
86 SI 2001/1090, reg 7(7).
87 LLP Regulations 2001, SI 2001/1090, regs 4(2) and 5.
88 Companies' House, Statistical Tables on Registration Activities 2012/2013, September 2013.

funds and other venture capitalists. Before 2003, the structure was also frequently used to hold agricultural tenancies in Scotland, where LPs have corporate personality (see generally Morse *Partnership Law* Chapter 9).

A limited partnership is created by registration with the registrar of companies but does not have corporate personality in England and Wales. It must have at least one general partner who has unlimited liability for the debts of the partnership as is the case in an unregistered general partnership but may also have one or more limited partners who are not liable for the business debts beyond the amount that they contributed to the firm at the time of joining it. If a limited partner takes part in the management of the partnership business (beyond gaining information about the state and prospects of its business and discussing that with the other partners) he or she is liable in the same way as the general partners for any debts incurred during the time of his or her participation in management.

It is important to note that, because corporate bodies can be partners in any kind of partnership, the unlimited partners in a limited partnership could be companies or societies. No human being would then be faced with unlimited liability.

Apart from those special features, the rules governing limited partnerships are generally those that govern unregistered general partnerships. In 2009, the Legislative Reform (Limited Partnerships) Order 2009, SI 2009/1940 amended the 1907 Act to impose formal requirements about both the permitted use of names by LP's and the registration process. SI 2009/2160 prescribed forms to be used in that process.

On 31 March 2013 there were 23,828 LPs under the Limited Partnerships Act 1907 on the register across the whole United Kingdom.[89]

1.2.2.5. Incorporated friendly society

Friendly societies are member owned mutuals without investor shareholders which operate on the basis of one member one vote and share surplus among their members by way of benefits. From the 1980s onwards, the deregulation of the market in financial services and the changing structures for the regulation of the banking and insurance industries at both EU and UK level led to legislative reform for friendly societies with the Friendly Societies Act 1992 (FrndSocA 1992*)*. This permits larger friendly societies to incorporate and so use subsidiaries to carry on a wider range of business activities than those that remain unincorporated.

Registration under the 1992 Act is possible either for those establishing a new society or for existing unincorporated friendly societies registered under the Friendly Societies Act 1974. Like registration under the 1974 Act before that possibility was removed, registration under the 1992 Act is permitted only if the society is to be limited by its constitution to carrying on business within a limited range of activities: offering insurance and other discretionary benefits to members and those connected with them.[90]

Registration is with the FCA as registrar and that process and the structure of societies as well as their governance, amalgamation or reorganisation, the content and alteration

[89] Companies' House, Statistical Tables on Registration Activities 2012/2013, September 2013.
[90] FrndSocA 1992, s 1(2) and Schs 2 and 5.

of society rules, limited liability of members, name, registered office, contractual capacity, winding up and dissolution are all governed by the Friendly Societies Act 1992.

As insurers, friendly societies are also subject to prudential regulation by the PRA and the FCA under the Financial Services and Markets Act 2000 and Financial Services Act 2012. They are subject to similar regulatory requirements to other insurers and, at the time of writing, particular applications of those rules could be found in the Interim Prudential Sourcebook for Friendly Societies.[91]

1.2.2.6. Building society

Building societies are member-owned mutuals that operate on the basis of one member one vote and share surplus among their members by way of benefits. They developed from societies formed to assist people in building their own homes but most building societies now lend to members to permit them to buy homes and have two classes of member: savers and borrowers. They are registered under the Building Societies Act 1986 (BSA 1986), which lays down a full regime for them.

Like friendly societies, building societies must limit themselves to certain particular types of business, principally making loans secured on residential property and funded by their members.[92] They are subject to statutory funding and lending limits and limits on their powers to engage in various trading activities.[93]

For building societies their incorporation, constitution, governance, amalgamation or reorganisation, the content and alteration of their rules, the limited liability of members, the society's name, registered office, contractual capacity, and winding up and dissolution are all governed by the Building Societies Acts 1986 and 1997.

In addition, building societies are regulated by the PRA under the banking regulation regime and the FCA in respect of consumer protection under the Financial Services and Markets Act 2000 and the Financial Services Act 2012. At the time of writing the main specialist source book applying regulatory rules to building societies was the Building Societies Sourcebook BSOCS[94] which focuses on prudential issues. Building Societies are also subject to FCA regulation on issues about business standards and aspects of regulated mortgage lending.[95]

1.2.2.7. Co-operative and community benefit societies compared

A co-operative or community benefit society, like other incorporated structures, enjoys the benefit of corporate personality and gives its members the benefit of limited liability for business debts.

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91 See http://media.fshandbook.info/Handbook/IPRU-FSOC_Full_20140101.pdf.
92 BSA 1986, s 5(1).
93 BSA 1986, ss 6 to 9.
94 http://fshandbook.info/FS/html/handbook/BSOCS/1/1.
95 See Mortgages and Home Finance Conduct of Business Sourcebook MCOB at http://fshandbook.info/FS/html/handbook/MCOB.

Like companies limited by share, but unlike the LLPs, LPs and companies limited by guarantee, co-operative and community benefit societies can issue share capital providing the return to holders of shares is limited.[96]

They share the feature of limited returns to investors with CICs. However, unlike CICs, co-operative or community benefit societies can issue withdrawable shares and enjoy certain exemptions from the regulation of share issues.[97]

The CIC structure, like community benefit societies, can only be used for altruistic purposes and a community benefit society can choose to subject itself to an 'asset lock', which resembles some of the rules that apply to all CICs.[98] A co-operative society, on the other hand, is typically set up to pursue the interests of its members.

Unlike incorporated friendly societies and building societies, co-operatives and community benefit societies can pursue any form of business they choose providing a society that has withdrawable shares does not carry on the business of banking.[99] Co-operatives and community benefit societies other than credit unions (see **Chapter 13**) are not confined to a particular type of business, such as insurance or financial services.

The key feature of co-operatives and community benefit societies is the obligation to meet the registration requirements that define them.[100] Failure to do so empowers the FCA: to refuse to register the society; to refuse to register a rule amendment; or to cancel the society's registration.[101]

1.2.3. Structures not mainly used for businesses

1.2.3.1. Unincorporated association

An unincorporated association is an association set up by a group of people for some purpose other than carrying on a business. It is not incorporated either as a company or under any other legislation and so has no legal personality separate from its members. Like an unregistered general partnership, an association is governed by the law of contract, trust law and agency law. The rules of the association will define the rights and duties of the members between themselves and agency law will determine who has authority to make contracts and whether this is done on behalf of all the members or only on behalf of the committee or officers of the association.

This has been expressed judicially by Lawton LJ in *Conservative and Unionist Central Office v Burrell*:[102]

> 'two or more persons bound together for one or more common purposes, not being business purposes, by mutual undertakings each having mutual duties and obligations, in an organisation which has rules which identify in whom control of it and its funds rest and on what terms and which can be left or joined at will.'

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96 See Section **3.4.** and **Chapter 8** below.
97 See **Chapter 8** below.
98 See Sections **1.2.2.2.**
99 CCBSA 2014, s 67.
100 See **Chapter 3**.
101 **Chapters 3**, **4** and **12** below.
102 [1982] 1 WLR 522 at p 525 quoted by Warburton (below) at p 2.

It is by the use of the rules of the association, analysis of the facts of the particular case and the application of agency rules about express or implied agency authority that the possible liability of members, committee members or officers on contracts is determined. In the absence of explicit agreement, only the committee members and officers are likely to be bound by contracts and the other members will be free of the contractual obligation.[103] A similar process, with the application of principles such as vicarious liability linked to the rules defining individual status as a tortfeasor, will determine tort liability.

Since the association can have no corporate personality, property will either be held by individuals or corporate bodies. It may be held on trust for the membership or the association's purposes or directly by the members, depending on the evidence about contractual arrangements and intentions of the parties, the application of property law rules, and whether or not any trust, charitable or otherwise, is found to exist on the facts.[104]

Many practical issues can arise if this legal structure is used, especially if there is no express or implied agreement among the members about them. If there are clear agreed rules in a constitution they will be followed. In their absence and without evidence of agreement among the members on an issue the default position will be determined by case law.

For example, the objects of an association are important to the relationship between members as a member using assets outside their scope could be liable to the other members to repay funds misspent.[105] A member contracting beyond the objects with an outsider will be personally liable on the contract as she acted without the authority of the other members and so was not their agent. Similarly, unanimous agreement by all members will be needed to change the rules or constitution unless a procedure for amendment by a majority has been agreed in the rules and there is no power to expel a member unless that has been explicitly agreed. Contracts of employment, with all the potential liabilities they can cause, may be with all members, or the committee, or individual members depending on the application of the agreement between the members and the law of agency.

For these reasons, it is vital to consider the use of an unincorporated association carefully and to ensure that a clear, comprehensive, and well-drafted set of rules is agreed and regularly reviewed. For those reasons, this is only an appropriate legal structure for simple organisations with few potential risks and liabilities.[106]

1.2.3.2. Trust

Trusts are not normally seen as business structures and are not usually associated with organisational structures of any other kind. The trust device often operates in an unincorporated structure so that property held in the name of certain people or corporate bodies is held on behalf of others. Some of the partners in an unregistered

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[103] *Wise v Perpetual Trustee Co* [1903] AC 139.

[104] See, for example, *Hanchette-Stamford v A-G* [2008] EWHC 330 (Ch).

[105] *Taylor v NUM* [1985] BCLC 237.

[106] For more information on the law of unincorporated associations, see Jean Warburton *Unincorporated Associations: Law and Practice* (Sweet and Maxwell, 2nd edn, 1992) and David Ashton and Paul W Reid *Ashton and Reid on Clubs and Associations* (Jordan Publishing, 2nd edn, 2011).

general partnership or some members of an unincorporated association may be registered as legal owners of property but in fact hold it on trust for all the partners or members. In those circumstances, the person holding the legal title to the property is a trustee and all the partners or members are beneficiaries of the trust. The terms of the trust define the rights of the beneficiaries on the basis of express or implied agreement between the partners or members and the underlying rules and principles of the law of trusts and equity. It is outside the scope of this book to examine those rules in any detail.

However, in some circumstances, the trust device can be used alone or in conjunction with other legal devices to dedicate assets, including the ownership of an ongoing business, to a particular purpose or the benefit of a particular group of people. In those cases the trust device is being used to achieve similar results to the registration of a co-operative or community benefit society.

This may be illustrated most clearly by considering two organisations that use this technique: Guardian Newspapers Ltd and The John Lewis Partnership, the UK's best-known employee-owned business.

1.2.3.2.1. The Scott Trust and the Guardian

From 1872 to 1929 CP Scott served as editor of the *Guardian* newspaper. From 1907 he owned it. After his death his surviving son John inherited the newspaper, and transferred all the assets to the Scott Trust. He intended to ensure continuity of purpose and editorial independence. Until 2008, the Trust operated under a deed of 1948. It owned the Guardian Media Group plc, a multimedia holding company created in 1993 as successor to the Guardian and Manchester Evening News plc. Thus the trust structure was used to own the PLC that ran the business and ensure that it was run so as to further the trust's objectives: 'To secure the financial and editorial independence of the Guardian in perpetuity; as a quality national newspaper without party affiliation; remaining faithful to its liberal tradition; as a profit-seeking enterprise managed in an efficient and cost-effective manner.'[107]

In 2008, the Scott Trust incorporated but its corporate constitution enshrines the values and purpose of the Guardian and The Scott Trust Limited is the parent of GMG, the operating company. The core purpose of The Scott Trust Limited cannot be altered or amended. The company is not permitted to pay dividends, and its constitution has been drafted to ensure that no individual can ever personally benefit from the arrangements. In the event of winding up, the assets of the company would be transferred to some other entity which has a similar purpose.[108]

This use of a combination of corporate and trust structures seeks to ensure the continuation of a commercially viable business dedicated to a particular purpose. There is an obvious parallel with the nature of a community benefit society or a CIC but, instead of using an available 'off-the-shelf' structure, a bespoke arrangement has been designed.

[107] http://www.theguardian.com/newsroom/story/0,11718,658482,00.html.
[108] See http://www.pressgazette.co.uk/node/42189 and http://www.gmgplcco.uk/the-scott-trust/.

1.2.3.2.2. The John Lewis Partnership

This well-known UK retail business uses a combination of a trust mechanism and corporate structures to establish a subtle and finely balanced governance system which seeks to combine business efficiency in the market place with democratic employee involvement and financial benefit. Basic information on the John Lewis Partnership structure can be found at http://www.johnlewispartnership.co.uk/about/the-partnership.html on which this account of them is based. The business is not a partnership in the technical legal sense of the word but rather a collaborative relationship among the employee co-owners in their joint interests. The partners, as they are known, enjoy bonuses of a proportion of salary depending on the performance of the business.

The structure was established when the owner of the business decided to hand it over to the employees in the 1920s and created a trust to do so. Currently, the John Lewis Partnership Trust Ltd, a private company formed in 1950, whose objects are to uphold the partnership constitution and the employee benefit objectives of the trust, controls the PLC carrying on the business. The voting rights attached to the only two classes of voting shares in the company, ensure that a majority of votes on crucial decisions are held by trustees who are bound to exercise their votes in pursuit of the trust objectives and maintenance of the partnership constitution. Crucial decisions include changing the voting rights or winding the company up, and all decisions made by the company general meeting during an interregnum after the removal of a chairman by the Partnership Council – a key mechanism backing up the Chairman's accountability to the employee partners.[109]

The governance practice of the Partnership, within this legal framework follows the Listing and Disclosure and Transparency Rules and the UK Corporate Governance Code applicable to listed companies, despite the fact that the Partnership's companies are not listed or bound to follow those rules. The Partnership constitution consists of principles and rules that respectively set out its purpose and policies. The duty to uphold it is a key element in the objects of the trust company.[110]

The key top-level governing bodies are the Partnership Council, the Partnership Board and the chairman. The council is 80% elected by secret ballot every three years by the partners, all of whom can vote in the elections or stand for election. The elections are based on one or two representatives from each local constituency, the detail being decided by the trustees. Remaining council members are appointed by the chairman, often from people holding posts such as director of communications, director of legal services or company secretary. The intention is to provide the council with specialist knowledge but their presence, together with that of the board members who are automatically council members, also ensures full participation by senior management. The council meets at least four times a year and the chairman attends and reports to it twice a year. It is the council that has the power to remove the chairman. There are also divisional regional and local democratic bodies composed of partners. Together, these bodies are intended to hold management to account.

The Partnership Board manages commercial activities. Its members include the chairman, five directors appointed by him or her, five elected by the Partnership Council

[109] Articles of Association of John Lewis Partnership Trust Ltd.
[110] http://www.johnlewispartnership.co.uk/about/our-constitution.html.

and three non-executive directors. It is thus linked to the Partnership Council, partly by a partners' counsellor whose remit is to uphold the values, ethics and integrity of the business as set out in the constitution. The counsellor sits on the partnership board and convenes meetings of the elected directors from which executive directors are excluded as appropriate and at least once a year.

The Chairman's Committee consists of the chairman and the board members appointed by him or her plus the partners' counsellor. It meets frequently and informally to develop strategy, business plans and budgets and to review operational and management issues including results, forecasts and proposals.

Separate divisions such as John Lewis and Waitrose are managed day to day by divisional management boards, which are accountable to the chairman for performance but are also held to account by their own divisional partners' councils.

This structure illustrates the use of the trust mechanism and also represents an intricate set of organs that have separate roles of democratic representation and business management but that link together both at the apex (in the Partnership Board) and at divisional level with the divisional councils.

The values and purposes enshrined in the constitution and the trust objectives are fully legally secured and worked out institutionally. In addition, the partnership councils are forums for questions and concerns from the employee owners and the whole organisation is served by the *Gazette*, an internal newspaper where partners can raise issues and suggest ideas. At the time of writing, the organisation enjoys significant commercial success while maintaining its identity as a values-based employee-owned business.

1.2.3.3. Charitable incorporated organisation (CIO)

CIOs are governed by Part 11 of the Charities Act 2011 (ChA 2011) and the Charitable Incorporated Organisation (General) Regulations 2012, SI 2012/3012 and have been available for use since 2 January 2013. Full information about this new legal structure can be found on the Charity Commission website.[111]

A CIO is registered with the Charity Commission as a charity and also a body corporate with a constitution (which includes its name and purpose) and a principal office in England and Wales.[112] At the moment of registration any property held by the applicants on trust for the CIO's charitable purposes vests in it and it gains corporate personality under the name stated in the constitution with the applicants for registration as its first members.[113] This provides the key advantage of this structure. There is no need for filings with two bodies, such as the Registrar of Companies and the Charity Commission. Both functions are carried out by the Charity Commission. The benefits of corporate personality and limited liability are gained. In a CIO the obligations of charity trustees and the dedication of the assets to charitable objects are both secured.

[111] https://www.charitycommission.gov.uk/frequently-asked-questions/faqs-about-charitable-incorporated-organisations-(cios)/cios-general-information/.
[112] ChA 2011, s 205.
[113] ChA 2011, s 210.

Provision is made in the legislation for the conversion of charitable companies, CICs and community benefit societies into CIOs but this does not apply to a company with any unpaid share capital or to any company or society that is an exempt charity.[114] However, the time of writing (April 2014) no regulations had been made to deal with these conversions and so the conversion procedures were not yet available.

It is possible for CIOs to amalgamate with each other to create a new CIO or to transfer their undertakings to an existing CIO.[115] These reorganisation decisions can all be made by resolution but also require the approval of the Charity Commission.

The constitution of a CIO must deal with other matters and meet the requirements laid down in Part 3 of SI 2012/3012. Amendments to the constitution require either a 75% majority at a meeting of members or unanimity in the absence of a meeting. They do not become effective until registered by the Charity Commission, which may refuse to register them if they violate any legislative requirement, mean that the CIO ceases to be a charity, or are, in the Commission's opinion, otherwise beyond the powers of the CIO. Registration will also be refused if the CIO's name is to be changed to one for which permission would be refused on an initial registration. Constitutional amendments that alter the CIO's purposes or the application of its surplus on dissolution, or provide for some direct or indirect benefit to its trustees require advance authorisation by the Charity Commission.[116]

Requirements about publicity for the name of the CIO and a requirement to make clear that the entity is a CIO by using that description are laid down in ss 211–215 of the ChA 2011.

The CIO can have one or more members and they can either have no liability to contribute to the CIO's assets on its winding up or limited liability up to a maximum amount as defined in its constitution.[117] The constitution will also lay down rules about eligibility for membership of the CIO and the selection and qualifications of trustees, whether or not the trustees must or can be members and whether or not the trustees and membership are to be identical.[118] This indicates the possible use of the CIO structure as a 'foundation' with perhaps a single corporate or individual member or a 'membership' model with many members and trustees who may be elected by them. In each case the CIO can only operate within the limits imposed by its charitable objects, its constitution, and the requirements of charity law.

The constitution must state how the CIO's property is to be applied if it is dissolved.[119] Other rules about the winding up, insolvency, and dissolution of a CIO are laid down in SI 2012/3013 made under s 245 ChA 2011, which applies a modified version of the Insolvency regime to be found in the Insolvency Act 1986 and empowers the Charity Commission and the Official Custodian to deal appropriately with the CIO's property. They also deal with the restoration of a CIO to the register.

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[114] ChA 2011, ss 228–234.
[115] ChA 2011, ss 235–244.
[116] ChA 2011, ss 224–227.
[117] ChA 2011, s 205.
[118] ChA 2011, s 206.
[119] ChA 2011, s 206(2)(c).

1.2.3.4. Co-operative and community benefit societies compared

Co-operative and community benefit societies differ from the structures discussed in this section by being intended for use in business and generally being used in that way.[120] That distinguishes both co-operatives and benefit of the community societies from unincorporated associations which by definition have no business purpose.[121] It also distinguishes them from trusts, which are classically not used for business but which can be combined with other corporate structures as in the examples of The Scott Trust and the John Lewis Partnership. The HMRC trading rules applicable to charities, including charitable trusts, CIO's, community benefit societies, and charitable companies restrict trading within the charitable entity.[122]

Community benefit societies can operate as charities, as the CIO does and there is some resemblance between community benefit societies, whether or not they have an asset lock or charitable status, and a trust that dedicates assets to particular purposes or the benefit of particular people.

Co-operative societies can be established and operate to benefit only their members providing they do so as co-operatives. However, societies registered under CCBSA 2014 can generally be converted into companies without continuing their co-operative or community benefit identity if the necessary statutory procedures are followed.[123] The societies whose freedom to convert and lose their identity is restricted are community benefit societies with an asset lock or charitable status and credit unions.[124]

1.3. PROTECTING PURPOSE

1.3.1. Charitable status

A number of tax benefits and regulatory controls apply to bodies which pursue charitable purposes. These apply regardless of the legal form of the body concerned. In addition, the legislation dealing with charities provides the charitable incorporated organisation (CIO), a separate legal structure that can be used by charities as an alternative to the use of the structures referred to above.[125]

A charity in England and Wales is defined in the ChA 2011 as an institution that is established for charitable purposes only and is subject to the charity jurisdiction of the High Court.[126] Section 2 of the Act defines charitable purposes as ones which both fall within a specific list and are for the public benefit. The purposes listed in s 3(1) are:

> '(a) the prevention or relief of poverty;
> (b) the advancement of education;
> (c) the advancement of religion;
> (d) the advancement of health or the saving of lives;
> (e) the advancement of citizenship or community development;

[120] CCBSA 2014, s 2(1).
[121] *Conservative and Unionist Central Office* [1982] 1 WLR 522.
[122] *HMRC Guidance CC35*.
[123] See Section **12.4**. below.
[124] See respectively: CCBSA 2014, s 29 and SI 2006/264 and CCBSA 2014, s 151 and Sch 5, para 5; Finance Act 2010, s 30 and Sch 6; and CUA 1979, s 22.
[125] See Section **1.2.3.(c)** above.
[126] ChA 2011, s 1(1).

(f) the advancement of the arts, culture, heritage or science;
(g) the advancement of amateur sport;
(h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
(i) the advancement of environmental protection or improvement;
(j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
(k) the advancement of animal welfare;
(l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;'

The list also includes any purpose regarded as charitable by the law as it was before the Charities Act 2006 became effective on 1 April 2008 and any purpose that might reasonably be regarded as analogous to or within the spirit of any of the above purposes.[127]

The public benefit requirement cannot be presumed to be satisfied just because one of the detailed purposes applies and the Charity Commission must publish guidance on what will be regarded as being for the public benefit.[128] The guidance is to be considered by the trustees of charities when exercising their powers or duties.

The Charity Commission maintains a register of charities on which every charity must be registered if it has a gross income exceeding £5000 a year and is neither exempted by nor excepted by the Charity Commission or by regulations made by the Secretary of State.[129] Exempt charities are broadly those that are regulated by a body which performs the same function as would be carried out by the charity commission (a 'principal regulator'). Examples include universities and other educational institutions.

Co-operative societies are unlikely to be charities as they benefit their members. Community benefit societies may be charities. All registered societies were previously exempt charities by virtue of being registered under the Industrial and Provident Societies Acts and so regulated by the FCA. That meant that the key advantages of charitable status depended on HMRC recognition of that status without registration with the Charity Commission.

From a date yet to be fixed, charitable community benefit societies (other than registered social landlords[130]) may have to register with the Charity Commission in the same way as is required for a charitable trust, company, or unincorporated association. The logic of this change would be to provide consistent regulation to charities whether they are companies, trusts, unincorporated associations or community benefit societies. The exclusion of registered social landlords from the change ensures that housing associations with charitable objectives only need to comply with the regulatory controls imposed by the housing regulator and the basic registration requirements of the FCA under CCBSA 2014 without also having to meet Charity Commission requirements. This means that, like a company or any other charitable society, they only have to file returns to two bodies.

At the time of writing the position as stated on the Charity Commission website on community benefit societies is:

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127 ChA 2011, s 3(1)(m).
128 Ch A 2011, ss 4(2) and 17(1).
129 ChA 2011, ss 22–33 and Sch 3.
130 ChA 2011, Sch 3, paras 26 and 27.

> **'Industrial and Provident (Community Benefit) and Friendly Societies including social housing providers:**
>
> This category includes any of the following types of organisations that have exclusively charitable purposes for the public benefit:
> - registered friendly societies
> - industrial and provident societies (community benefit societies)
>
> These organisations are registered with the Financial Conduct Authority (FCA). Many of them are also social housing providers registered with, and regulated by, the housing regulator …
> - no firm decision has been made on the future regulation of community benefit societies and friendly societies as charities. One possibility is that those which are registered social housing providers may remain exempt whilst others may lose their exemption if no suitable principal regulator can be found.'[131]

The Charity Commission has extensive powers of investigation and enforcement and can remove a charity from the register so that it ceases to be entitled to any of the tax benefits available to charities and will no longer be able to refer to itself as a registered charity when trying to raise funds or engaging in any other activities. The Commission can remove charity trustees and, after an investigation, has a wide power to give specific directions to charities about what they are to do. The Commission can order anyone holding the property of the charity to apply it for the charity's purposes and the Commission can grant or deny a certificate authorising an organisation to undertake a charitable collection in a public place or house to house. Local authorities decide whether to grant a permit for a particular collection in a public place. The role of the Charity Commission is intended to ensure the proper use of charitable funds and to provide transparency about the financial affairs of charities so as to maintain public confidence in the sector.[132]

Organisations register as charities partly to be able to raise funds more readily from donors who will have confidence that the assets are to be dedicated to charitable purposes. The role and powers of the Charity Commission give some assurance on that point. However, the tax concessions available to registered charities provide a further incentive for registration. Charities are exempt from tax on most income and gains from investments, estates, land and property. They can arrange to receive bank interest, income from land and royalties paid gross, before tax is deducted and can reclaim tax paid on other investment gains or income. On 'Gift Aided' donations, charities can claim back tax that has been paid by the donor.[133]

VAT need not usually be paid on a charity's fund raising events.[134] In addition, some trading activities carried on by a charity enjoy exemption from income tax or corporation tax. Trading that is part of, or ancillary to, the charity's primary purpose, trading by the charity's beneficiaries and trading with a sales turnover of 25% or less of the charity's total gross income from all sources are exempt.[135] However, many charities set up a separate trading subsidiary to operate a business and pass all its profits to the

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[131] Charity Commission Guidance CC23 'Exempt Charities' http://www.charitycommission.gov.uk/detailed-guidance/registering-a-charity/exempt-charities-cc23/ last visited 12 May 2014.

[132] The Charity Commission's own outline of its role can be found at http://www.charity-commission.gov.uk/spr/regstance.asp and see Parts 5 and 6 of ChA 2011.

[133] See generally http://www.hmrc.gov.uk/charities/tax/advantages.htm.

[134] http://www.hmrc.gov.uk/charities/fund-raising-events.htm.

[135] http://www.hmrc.gov.uk/charities/trading/tax-exemptions.htm.

charity as a donor. This allows the charity to trade on a more substantial basis purely for fund raising purposes and still gain a tax advantages in respect of the profits.[136]

1.3.2. Trusts

This ancient and elaborate legal mechanism permits assets to be held by one person for the benefit of one or more others and allows for the enforcement by the beneficiaries of the obligations of the trustees who hold the property. Charitable trusts are a variety of trust in which the assets are held for charitable objects rather than specific persons and the objects are enforceable. Such a trust is one way of establishing a charity and so achieving charitable status.[137]

As noted in Section **1.2.3.2.** above, this mechanism can also be used, together with other business structures such as registered companies, to protect a purpose while pursuing a business. In addition to structures of the kind discussed there, a common combination is for a registered charity to hold all the shares in a subsidiary trading company which covenants all its profits up to the owning charity. This overcomes the restrictions placed by the Charity Commission on trading by charities, locks all profits from the trading company in to the charitable purpose and gains the tax advantages of charitable status for the trading operation. This structure is used for the retail shops, commonly known as 'charity shops', that are an important feature of UK High Streets.[138]

1.3.3. Asset locks

The concept of an 'asset lock' is a way of describing a set of legal rules or mechanisms that restrict the uses to which the assets of an organisation can be put both while it is in operation and on its dissolution or transformation into a different legal form. Three types of asset lock are relevant to this book:

- community interest companies;
- community benefit societies; and
- charities.

In each case, the term 'asset lock' is misleading. The assets such as land, goods, or money, can generally be sold, exchanged or otherwise converted freely (subject to the need for prior Charity Commission permission for some assets in the case of charities). However, the obligations of the directors of the CIC or community benefit society or the charity trustees require them to seek to benefit the company, society or charity in such transactions and not to deliberately or negligently dispose of assets at a significant undervalue. This means that it is *the value* rather than the assets that the law seeks to 'lock in'. In each case, the value is locked in to an altruistic purpose. For CICs and community benefit societies, that is 'community benefit'. For charities it is the particular charitable objects listed in the trust deed or corporate constitution.

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[136] For more information on charity law, see Hubert Picarda *The Law Relating to Charities* (Bloomsbury Professional, 4th rev edn, 2010) or Con Alexander *Charity Governance* (Jordan Publishing Ltd, 2nd edn, 2014).

[137] See Section **1.3.1.** above.

[138] For more information on this, see Charity Commission Guidance CC35 at http://www.charitycommission.gov.uk/detailed-guidance/fundraising/trustees-trading-and-tax-how-charities-may-lawfully-trade-cc35/#d1 (last visited 12 May 2014).

All CICs and registered charities are 'asset locked'. In the case of community benefit societies, that is a choice made either on registration of the society or later by amendment of its rules. In a community benefit society without an asset lock, conversion into a co-operative or a company remains possible. Once an asset lock is included in the rules, that is no longer possible unless the community benefit purpose will continue to be served after the conversion, amalgamation or transfer of engagements.[139]

1.3.4. Entrenchment in constitution

1.3.4.1. What is 'entrenchment'?

Asset locks provide assistance from statutory provisions or trust law to limit the possibility of changes to move the organisation away from its founders' intentions. Another technique is to use the constitution of the organisation itself, without that support, to 'entrench' certain provisions. That amounts to an attempt to prevent or make difficult the amendment of the articles of a company or the rules of a co-operative or community benefit society.

There are a number of ways to achieve that including specific provisions in the corporate constitution making parts of it impossible or difficult to change. It is important that the provision that seeks to achieve that is itself entrenched. Techniques of entrenchment include requiring special majorities or the agreement of a particular person (human or corporate) to the change and special procedural requirements. For example, an exceptionally high turnout or a very high majority may be needed for a decision to change certain provisions. The scope for such entrenching provisions may be limited by the legislation governing the particular structure. This section looks briefly at the rules surrounding entrenchment in the constitutions of companies and co-operative and community benefit societies.

A trust mechanism can also be used to support entrenchment in a very legally effective way.[140]

1.3.4.2. Entrenchment in companies

Company articles of association can generally be amended by a special resolution subject, in the case of a charitable company, to the permission of the charity commission for certain changes that might threaten the charitable nature of the company.[141] A special resolution needs a 75% majority of the votes cast.[142]

However, a company's articles can contain a 'provision for entrenchment' to the effect that specified provisions of the articles may be amended or repealed only if certain

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[139] For more detail on these asset locks look in the following places: Community benefit society asset lock: see Sections **4.3**. and **12.6.1**. below; CIC asset lock: see the caps on distributions to members of dividend on any shares and the payment of interest: C(AICE)A 2004, s 30 and SI 2005/1778, regs 17 to 25. The rules on distributions of assets on any winding up and conversions of a CIC into another type of corporate body can be found in C(AICE)A 2004, ss 31 and 52–56 and SI 2005/1778, regs 7 and 8 and para 1 of Sch 1 and 2 as amended; charities: are asset locked by their objects, the duties of their trustees, and the powers of the Charity Commission under ChA 2011, Parts 6 to 10 and 13. In addition, for the CIO asset lock: see ChA 2011, Part 11 and, on dissolution, SI 2012/3013 made under ChA 2011, s 245.

[140] See, for example, the discussion of the John Lewis Partnership in **Section 1.2.3.2.(ii)** above.

[141] CA 2006, s 21.

[142] CA 2006, s 283.

conditions are met or procedures followed that are more restrictive than is the case for a special resolution[143] That includes a condition that the consent of all members is required for a change but not one preventing change by the agreement of all the members or when a court orders a change.[144] Companies House must be notified of the introduction or removal of such a provision and, while the provision is in place, compliance with the provision must be confirmed to Companies House whenever the articles are amended.[145]

If a group wished to fully entrench a provision using those sections, it could add to the permitted entrenchment provision a suitable trust mechanism to effectively prevent change due to the obligation placed on someone whose consent to change was required.

1.3.4.3. Entrenchment in co-operative and community benefit societies

CCBSA 2014 leaves the procedure for changing society rules to those rules but requires them to contain such a provision.[146] Most society rules require a special majority of two-thirds or three-quarters of the members voting in person or by proxy for a rule amendment.[147]

This suggests that there is considerable freedom to entrench particular provisions by requiring certain conditions to be met or procedures to be followed before certain rule amendments are possible. That reflects the contractual nature of society rules and societies' freedom under the legislation to decide their own rules. That freedom is always subject to the FCA's duty to ensure that the society is and remains a co-operative or a community benefit society.

However, for certain decisions, such as transfers of engagements, amalgamations and conversions of societies, CCBSA 2014 lays down statutory requirements about the procedure to be followed, including the majorities required. Society rules cannot change those legal requirements[148]

Subject to those statutory limits on the right to amend society rules, the law generally implements the rules as they are drafted, including any rules making particular amendments difficult or impossible to change or remove. Some further judge made rules may also be relevant. A court may interpret certain rules as so fundamental to the intentions of the founders of the society that they cannot be changed. In addition, members voting on amendments must do so honestly in what they believe to be the interests of the society as a whole.[149]

1.3.5. Limited business capacity

One way of seeking to protect the particular purpose or identity of an organisation is to restrict its activities or the way it carries them out. In some cases legislation effectively

[143] CA 2006, s 22(1).
[144] CA 2006, s 22(3).
[145] CA 2006, ss 23 and 24.
[146] CCBSA 2014, s 14(5).
[147] See Section **4.6** below.
[148] See Sections **12.2 to 12.5**.
[149] See Section **4.4.6.** below.

achieves that. In others, the legal rules governing the capacity of the organisation to contract or act in other ways and the obligation of directors and employees to remain within such limits may assist. This section looks briefly at each approach.

1.3.5.1. Restriction by the law establishing structure

In the context of mutuals, the main examples of this practice are to be found in the financial services sector. Sections **1.2.1.3.**, and **1.2.2.5.** and **1.2.2.6.** outline the position of building societies and friendly societies. **Chapter 13** deals with credit unions at greater length.

This technique, in each case, mandates the organisations using the structure to maintain their mutual character and to limit their activities to transactions with members either wholly or in part. Since 2001 all three types of organisation have been subjected to the regulatory regime applicable to equivalent financial services businesses. Before that, the Building Society and Friendly Society Commissions carried out the regulatory role specifically for those societies, alongside the registration function. Credit unions have, since the 2001 abolition of the Registrar of Friendly Societies, experienced the removal of specific rules and limitations from the CUA 1979 and their replacement with more flexible principles expressed in rules and guidance from, first, the FSA and, since 2013, the PRA in the CRED and then CREDS sections of their Handbooks.

1.3.5.2. Corporate capacity generally

Historically, corporate bodies were restricted to carrying on activities mentioned in the objects clause of the corporate constitution. This represented the Victorian judges' attempt to ensure that resources were devoted only to activities envisaged by founders.[150] However, during the twentieth century a combination of drafting techniques applied by those writing constitutions and gradual law reform made this 'ultra vires approach' almost wholly ineffective outside the public sector where it could have serious consequences.[151]

In the case of registered companies, the modern law gives non-charitable companies unrestricted objects unless the constitution specifically restricts them.[152] Co-operative and community benefit societies are still required to state their objects in their rules.[153] However, the validity of acts of non-charitable companies with restricted objects and non-charitable societies cannot be called into question on the ground of lack of capacity because of any provision in the constitution.[154] A violation of restrictions in the corporate constitution can, however, result in liability on the part of directors or committee members.[155] **Chapter 11** deals with this issue for societies and similar rules apply to building societies.[156] The protection for those dealing with incorporated friendly societies is more limited but they are protected from the full rigour of the nineteenth century ultra vires doctrine.[157]

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[150] *Ashbury Railway Carriage Company v Riche* (1875) LR 7 HL 653.
[151] See *Hazell v Hammersmith and Fulham LBC* [1992] 2 AC 1.
[152] CA 2006, s 31(1).
[153] CCBSA 2014, s 14 para. 2.
[154] CA 2006, s 39 and CCBSA 2014, s 43(1).
[155] CA 2006, ss 40 and 41 and CCBSA 2014, ss 43–49.
[156] BSA 1986, s 5(8) and Sch 2, paras 16–18.
[157] FrndSocA 1992, s 8.

The result of this legal position is that, outside the area of charities, the enforcement mechanisms available for actions outside restricted corporate objects are usually wholly internal and will not generally be available to set aside acts involving outsiders who had no knowledge of the violation of the corporate constitution.

In the case of partnerships, the question of corporate capacity does not arise because general unregistered partnerships and limited partnerships are not corporate bodies and LLPs have unrestricted objects.[158]

1.3.6. FCA role for co-operative and community benefit societies

Sections 3.4. and **12.7.** explain that, for co-operative and community benefit societies, the key restraints on acting outside the corporate purpose are the registration requirements and the power of the FCA to refuse or cancel registration.

1.4. CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETY LEGISLATION IN 2014

The main subject matter of this book is co-operative and community benefit society law. This short section outlines the main sources of the current law and deals briefly with their commencement dates, territorial extent and some of the transitional provisions.

1.4.1. Sources of law

The main legislation is the Co-operative and Community Benefit Societies Act 2014 (CCBSA 2014).

That Act repealed and consolidated most of the legislation that governed societies before CCBSA 2014 came into effect. The Consolidating Bill was produced by the Law Commission which also produced a memorandum justifying the few substantive changes and a table of derivations.[159]

Main Statutes consolidated:

- Industrial and Provident Societies Act 1965
- Industrial and Provident Societies Act 1967
- Friendly and Industrial and Provident Societies Act 1968
- Industrial and Provident Societies Act 1975
- Industrial and Provident Societies Act 1978
- Industrial and Provident Societies Act 2002
- Co-operative and Community Benefit Societies Act 2003
- Co-operative and Community Benefit Societies and Credit Unions Act 2010, ss 1, 2 and 4.

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158 LLPA 2000, s 1(3).

159 General information on the consolidation process is available at http://lawcommission.justice.gov.uk/areas/consolidation.htm. For more specific information on the Co-operative and Community Benefit Societies Bill visit: http://lawcommission.justice.gov.uk/areas/co-operative_community_benefit_societies_bill.htm.

Main statutory instruments consolidated:

- Industrial and Provident Societies (Increase in Deposittaking Limits) Order 1981, SI 1981/394
- Deregulation (Industrial and Provident Societies) Order 1996, SI 1996/1738, arts 3 to 5, 7 to 9 and 12
- Financial Services and Markets Act 2000 (Mutual Societies) Order 2001, SI 2001/2617, Sch 3, paras 214 to 263
- Friendly and Industrial and Provident Societies Act 1968 (Audit Exemption (Amendment) Order 2006, SI 2006/265
- Mutual Societies (Electronic Communications) Order 2011, SI 2011/593, arts 22 and 24
- Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011, SI 2011/2687, arts 3 to 7, 8(1), 9 and 10
- Financial Services Act 2012 (Mutual Societies) Order 2013, SI 2013/496, Schs 2 to 4.
- Industrial and Provident Societies and Credit Unions (Electronic Communications) Order 2014, SI 2014/184
- Industrial and Provident Societies (Increase in Shareholding Limit) Order 2014, SI 2014/210.

Remaining legislation that was not consolidated at the time of writing consists of statutory instruments changing the law applicable to societies from 6 April 2014:

- Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229 made under s 255 of the Enterprise Act 2002 (now replaced by s 118 of CCBSA 2014) applying insolvency rescue procedures and schemes of arrangement to societies; and
- Industrial and Provident Societies and Credit Unions (Investigations) Order 2014, SI 2014/574 made under ss 4, 6 and 7 of CCBSCUA 2010 (now ss 135 & 136 CCBSA 2014) giving the FCA the Companies Act 1985 investigation powers in relation to societies that have long been available to BIS for companies.
- Section 151 and paras 1 and 5 of Sch 5 of CCBSA 2014 continue such SI's in force as if they had been made under the powers now contained in CCBSA 2014.
- Societies registered or treated as registered under the IPSA 1965 are included in any reference in CCBSA 2014 to societies registered under CCBSA 2014 subject to detailed transitional provisions in Sch 3 of CCBSA 2014.[160]

It is important note that such 'pre-commencement societies' are registered as co-operative and community benefit societies while those registered on or after 1 August 2014 are registered specifically as either co-operative or community benefit societies.[161]

[160] CCBSA 2014, s 150(1).
[161] CCBSA 2014, ss 1 and 2 and Sections **3.3.** and **3.4.** below.

1.4.2. Commencement dates

The CCBSA 2014 came into force on 1 August 2014, immediately after s 1 of the CCBSCUA 2010 which was commenced so as to be consolidated by CCBSA 2014. From 1 August 2014 societies had to be registered as either co-operative societies or community benefit societies.[162]

The application of insolvency rescue procedures and schemes of arrangement to societies by SI 2014/229 and the additional investigation powers conferred on the FCA by SI 2014/574 both came into force on 6 April 2014.

1.4.3. Territorial extent

Most of the provisions of CCBSA 2014 apply to Great Britain ie England, Scotland and Wales.[163] Section 142 of CCBSA 2014 applies relevant provisions of the Act to any Northern Ireland societies that choose to record their rules with the FCA so as to conduct business in Great Britain. Those CCBSA 2014 provisions only apply to acts or omissions by such societies in Great Britain and not to anything done or left undone in Northern Ireland.[164]

CCBSA 2014 provisions, like those of legislation it consolidated, can be applied by Order in Council to the Channel Islands and no repeals in CCBSA 2014 affect any existing Order so applying them.[165]

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[162] See **Chapter 3**.

[163] CCBSA 2014, s 153.

[164] See Section **3.9.** below and s 142(3) for the full list of CCBSA 2014 provisions that apply to Northern Ireland societies in that way.

[165] CCBSA 2014, ss 152 and 153(6).