

Co-operative and Community Benefit Societies

INTRODUCTION

The law of co-operative and community benefit societies is predominantly statute-based, but, as corporate bodies, societies are governed for some purposes, e.g. directors' duties, by case law rules. Large areas of discretion are left by the statute to the rules of individual societies. Co-operative and community benefit society law forms part of the wider topic of corporate law. It is also closely related to the topics of friendly society law, credit union law and building society law as these bodies all developed as self-help organisations in the nineteenth century. Co-operative and community benefit society law is predominantly domestic law. No EU legislation directly governs the area but Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE) has influenced national law indirectly and provides a pan-European structure available to certain co-operatives in the UK - see the European Cooperative Society Regulations 2006/2078 . No particular human rights issues arise in relation to industrial and provident society law.

OVERVIEW

A co-operative or community benefit society is registered on the basis of being and remaining either a co-operative or a community benefit society. Registration is with the Financial Conduct Authority (FCA). That function is separate from the FCA's role as the regulator of financial services firms and involves ensuring that societies conform with the registration requirements.

A registered society is a corporate body with perpetual succession and its members enjoy limited liability for business debts. Contractual formalities and powers are broadly similar to those applicable to companies. Societies are largely governed by their rules which are required to deal with certain matters and which contractually bind the society and its members. Their accounts must be published and are filed with the Mutual Societies Register of the FCA.

Member control of the society is a central feature of a co-operative society and should involve some community of interest among the members. Control of the society by the members should not be by reference to their level of

shareholding. Directors or officers are elected, directly or indirectly, by members under the society's rules. Co-operatives benefit their members. Community benefit societies benefit a community. Both usually operate businesses.

Limitation on the return available to share capital is a central concern for both co-operative and community benefit societies. Society shares may be withdrawable or transferable or neither. Interest on society shares should be limited and, in a co-operative, any surplus distribution to individual members should be proportionate to their transactions with the society as buyers, sellers or employees and not their capital stake. In the case of community benefit societies there should be no such distribution. Community benefit societies may register as charities and may choose to restrict the use that can be made of their assets.

A number of means of consolidation and transformation are open to societies on the basis of passing appropriate resolutions at members' meetings so that they can transfer their engagements with or without assets, amalgamate and convert into companies.

The legislation dates from the late nineteenth century but was updated significantly in the first decade of the twenty first century and consolidated in the Co-operative and Community Benefit Societies Act 2014 ("CCBSA 2014") with effect from 1 August 2014. Company winding up procedures have always applied to societies. The rescue procedures of administration and company voluntary arrangement and the possibility of Schemes or Arrangements and Reconstructions under Pt 26 of the Companies Act 2006 were only applied to societies from 6 April 2014 by the Industrial and Provident Societies and Credit Unions (Arrangements Reconstructions and Administration) Order 2014/229 . Receivership as a remedy for a floating charge holder applies in its pre-1986 form. The Company Director Disqualification Act 1986 was applied to society committee members from 6 April 2014 by the commencement of s.3 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010 by article 2 of SI 2014/183 . The FCA can cancel a society's registration on a number of grounds including its failure to satisfy the registration requirement under which it was registered by remaining either a bona fide co-

operative or a community benefit society.

In its 2012-13 Final Annual Report, the FSA indicated that 7,578 societies were on the register in Spring 2013 compared with 8,022 in the previous year. The FSA suggested that the main reason for the decline was the cancellation of the registration of societies that had failed to comply with the requirement to submit annual returns - FSA Annual Report 2012-2013 Appendix 67 p.201-202. No information seems to be available on society numbers for 2013-2014 but see Ch.2 of I. Snaith, Handbook of Co-operative and Community Benefit Society Law, Jordan Publishing, 2014 for estimates based on the use of model rules.

SUMMARY OF MAIN LEGAL RULES AT NOVEMBER 2014:

Registration:

A society to carry on any business, with a registered office in Great Britain or the Channel Islands, can register as either a bona fide co-operative or a society to conduct business for the benefit of the community. Northern Ireland has its own separate but similar legislation and its own registrar. To register, a society must have at least three members (or two if made up of other registered societies) - CCBSA 2014 ss.2 and 3. A society to carry on business to make profits mainly to pay interest, dividends or bonuses on money invested, lent or deposited with any person cannot register as a co-operative society- CCBSA 2014 s.2(3) . The FCA applies the requirements set out in the non-statutory guidelines in the FCA Notes "Registering a Mutual Society" pp.8-9 only as registrar under this legislation - see Financial Services and Markets Act 2000 ss.338 and 339, and Sch.18, para.19 and CCBSA 2014 s.149 . The FCA must not see the society's name as undesirable, the word "limited" must be used (unless the FCA accepts that the society's objects are wholly charitable or benevolent)- CCBSA 2014 s.10 . The name must be appropriately displayed - CCBSA 2014 s.11 . The registration application must include a copy of the rules to satisfy the FCA that the registration conditions are met - CCBSA 2014 s.3(1) . Registration incorporates the society with limited liability and

corporate personality - CCBSA 2014 s.3(3) .

FCA Regulation, Prosecution, and Cancellation of Registration:

The FCA must maintain arrangements designed to enable it to decide whether societies and other persons are complying with obligations imposed on them by CCBSA 2014 and other mutual societies' legislation; Financial Services Act 2012 s.50 , CCBSA s.151 , Sch.5 and Financial Services Act 2012 (Mutual Societies) Order 2013/496 art.2 and Sch.1 para.5 . The FCA has a range of investigative powers in respect of societies under CCBSA 2014 ss 105-107 . Under those provisions, it can appoint an accountant or actuary to inspect a society's books or call a special members' meeting. In addition, it has power under Pt 14 of the Companies Act 1985 as applied by the Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014/574 to appoint an inspector with extensive powers to investigate a society and can give directions to the inspector. The FCA can also launch its own investigation under Companies Act 1985 s.447 . The latter power can be used by the FCA without appointing an outside inspector. Those provisions apply much as they do to company inspections and investigations but the FCA must, in deciding whether to use the powers, apply the principle of exercising them only to the extent necessary to maintain confidence in societies - Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014/574 reg.3 . The FCA can, in consultation with the PRA if the society is an authorised person, cancel the registration of a society on a number of grounds. They include: failure to meet the co-operative or community benefit society registration conditions; wilful breach of any other provision of the legislation; existence for an illegal purpose or ceasing to exist; membership falling below the minimum number; obtaining registration by fraud or mistake; or the society's request for its registration to be cancelled - CCBSA 2014 s.5 . Registration may be suspended for a period of up to three months at a time if some of the grounds apply - CCBSA 2014 s.8 . The FCA must generally give two months notice of its intention to cancel registration and, in some cases, there is a right of appeal to the High Court within that time. However, where cancellation is on the basis of failure to comply with the co-operative or community benefit conditions of registration, there is no right of appeal but the

FCA must consider the society's representations during the two months - CCBSA 2014 ss.6 and 9. If such a society has not taken reasonable steps to transform itself into a company or dissolve itself within the first month of the notice period, the FCA can give any directions it thinks fit to wind up the society's affairs before its registration is cancelled - CCBSA 2014 s.7 . The FCA also has power to prosecute societies and others for violations of CCBSA 2014 - CCBSA 2014 ss.127-133 . Cancellation of registration and prosecution powers are most commonly used for a society's failure to file an annual return.

Society rules:

It is a condition of registration that a society's rules deal with the matters listed in CCBSA 2014 s.14 and CCBSA 2014 s.2(2)(c) . This, and any other provision in legislation requiring or authorising society rules to deal with particular matters, is without prejudice to the society's power to make lawful rules on any other matter - CCBSA 2014 s.23(2) . CCBSA 2014 ss.2(2)(c) and 14 assist the FCA in deciding whether the society is a bona fide co-operative or a community benefit society. The acknowledgement of registration of the society is conclusive evidence of the content of the rules at that point - CCBSA 2014 s.3(7) . Later amendments to the rules are made as the society's rules provide but are valid only when registered with the FCA who acknowledge registration only if satisfied that the amended rules are not contrary to the Act - CCBSA 2014 ss.14(5) and 16. The rules bind the society and its members (or those claiming through them) as if each member had signed and sealed them and covenanted to conform with them - CCBSA 2014 s.15(1) . However, without her written consent, a member is not bound by a rule amendment increasing her liability to contribute to the society's share or loan capital - CCBSA 2014 s.15(2) . Members are entitled to one free copy of the registered rules society and others are entitled to a copy on paying not more than £5 - CCBSA 2014 s.18 .

Membership of societies:

Membership of a society is open to corporate bodies and individuals above any minimum age laid down in the society's rules - CCBSA 2014 ss.31 and 32. No minimum age for membership is laid down in CCBSA 2014 but society

committee members, trustees, managers and treasurers must be at least 16 years old - CCBSA 2014 s.31(3) . The FCA requires that, in a co-operative, members should have "a community of interest" - FCA Notes "Registering a Mutual Society" . However, the FCA has accepted that a category of non-user investor members may exist in a society registered as a co-operative - Investor Membership of Co-operatives registered under the Industrial and Provident Societies Act 1965 A Policy Note by Michael Cook and Ramona Taylor Financial Services Authority, 2006 . The terms of admission to membership, provisions about withdrawal, expulsion or suspension from membership, the holding of meetings, appointment and removal of a committee, managers and officers, members' voting rights and other governance arrangements must be determined by the society's rules - CCBSA 2014 ss.2(2)(c) , and 14(4),(5),(6) & (11) . Those matters will be central to any assessment by the FCA of whether a society is and remains a bona fide co-operative. The criterion is whether the society is controlled by its members equally and without any restriction on membership which would breach the "open membership" co-operative principle - FCA Notes "Registering a Mutual Society".

Governance:

Member control of a co-operative society should not be by reference to their level of shareholding, and will usually be based on "one member, one vote". Directors or officers are elected, directly or indirectly, by members under the society's rules and such "democratic control", whether direct or indirect, is central to the concept of a bona fide co-operative. Community benefit societies are usually governed on a similar basis, see FCA Notes "Registering a Mutual Society" and the International Co-operative Alliance, Statement of Identity, Values and Principles. A society's committee members and officers are subject to the case law based fiduciary and common law duties of directors and other fiduciaries. The codification of the general duties of company directors by s.170 et seq. of the Companies Act 2006 does not apply to societies. Co-operatives UK has produced Codes of Best Practice on Governance for both consumer and worker co-operatives - Co-operatives UK, Corporate Governance the Code of Best Practice for consumer co-operatives, May 2005 and Co-operatives UK Code for Worker Co-operatives.

Statutory provisions on membership:

Money due from a member to a society may be enforced as a debt in court or by a lien over the member's shares and can be set off against any amount credited to a member's share account - CCBSA 2014 s.35 . Members have a right to nominate persons to receive, on their death, a transfer by the society's committee of the member's property in the society, up to the value of £1500. Property up to the value of £5000 which is not subject to any nomination can be transferred to those appearing to be entitled in law, without letters of administration on their death intestate - CCBSA 2014 ss.37 - 40 . Similar formal rules apply to payments in respect of mentally incapable persons without any donee under an enduring power of attorney or deputy appointed by the Court of Protection to administer their property - CCBSA 2014 s.36 . Every registered society is required to keep a register of its members and officers at its registered office and the register may be inspected by any member or other person interested in the society's funds without another person's share account being revealed - CCBSA 2014 ss.30 and 103. Any dispute between a society or one of its officers and a member of the society, a recent ex-member, or someone claiming through them is to be decided as the society's rules direct, including by the magistrates court if that is the direction of the rules. The county court or, in Scotland, the Sheriff, may decide the dispute if both parties consent or if the rules contain no direction - see CCBSA 2014 ss.137-141 .

Shares:

The rules of a society must fix the maximum shareholding any member may hold - CCBSA 2014 s.14(7) . For withdrawable shares, that amount cannot exceed £100,000 except in the case of another society, holdings acquired by an authority under housing legislation, or certain holdings in agricultural societies - CCBSA 2014 s.24 . No statutory maximum limit applies to shares that are not withdrawable. A society's rules must lay down whether all or any of the society's shares are transferable and, if they are, how they are transferred and registered and how the committee consents to that. The rules must also

determine whether shares are to be withdrawable and if so how they can be withdrawn and how any balance is paid when a member leaves the society CCBSA 2014 ss.2(2)(c) and 14(9).

For a society to be registered as a bona fide co-operative, the FCA requires the rate of interest on share and loan capital provided by members to be "strictly limited" and never more than is needed to attract and retain capital. Voting by members must not be proportionate to shareholding. Any distribution of profits must be based on transactions with the co-operative and not the level of shareholding - FCA Notes "Registering a Mutual Society" pp.8-9. In the case of non-user investor members of a co-operative, the FCA accepts that investor shares may participate in a distribution of surplus - Investor Membership of Co-operatives registered under the Industrial and Provident Societies Act 1965, A Policy Note by Michael Cook and Ramona Taylor, Financial Services Authority, 2006 available from <http://www.iansnaith.com/wp-content/blogs.dir/8/files/2013/02/Investor-Membership-20061220-1.pdf>. In the case of a community benefit society, interest on share or loan capital must not be more than is needed to attract and retain capital and the rules should ensure that no profits or assets can be distributed to members either while the society is in operation or on dissolution - FCA Notes "Registering a Mutual Society".

Contracts and operations:

As a corporate body, a society has capacity to contract. Because a society, unlike a non-charitable company, is required to have an "objects rule" the common law ultra vires doctrine applies to all of them - Halifax Building Society v Chamberlain Martin & Spurgeon [1994] 2 B.C.L.C. 540 , CCBSA 2014 ss.2(2)(c) & 14(2) . Third parties enjoy protection from the consequences of acts beyond the capacity of the society and problems with the power of the society's committee to bind the society in exactly the same way as those dealing with a company with an objects clause - CCBSA 2014 ss.43-49 . Similarly, Company law rules on pre-incorporation contracts, seals, and the execution of documents all apply to societies - CCBSA 2014 ss.50-57 . Certain limits on the powers of societies remain. A society with withdrawable share capital is not permitted to carry on the business of banking and societies are generally permitted to lend to their own members only on security and then

only if the society's rules permit it - CCBSA 2014 ss.22,34 & 67-70 . Investments by a society in land may be prohibited by the society's rules but, otherwise, investments may generally be made "in or upon" any security authorised by the rules - CCBSA 2014 s.27 .

Accounts:

Within seven months from the end of its year of account every society must submit an annual return to the FCA which includes a balance sheet and an auditor or accountant's report on the accounts - CCBSA 2014 s.89 . A copy of the latest balance sheet must also be displayed in a prominent position at the society's registered office and any member or other person interested in the society's funds must be given a copy of the latest annual return on application, although, with their agreement, this may be done through a website - CCBSA 2014 s.81 and 90.

Societies are required to keep accounts and produce revenue accounts and balance sheets, including group accounts if appropriate, which provide a true and fair view of the position of the society (or group) - CCBSA 2014 s. 75 , 79-80, and 98-100. The renamed Co-operative and Community Benefit Societies (Group Accounts) Regulations 1969/1037 deal with the details of society group accounts. Generally accounts must be audited by an independent qualified auditor. However, exemptions permitting a less rigorous accountant's report apply to societies whose turnover and net assets fall below certain levels - CCBSA 2014 ss.83-88 . Generally only audited accounts, or those with an accountant's report, can be published but societies are permitted to publish an interim revenue account and balance sheet, clearly marked as unaudited, together with the latest audited year end accounts and balance sheet - CCBSA 2014 s.82 .

Transformation of societies:

A society can use certain statutory processes to transform itself. They are a transfer of engagements or amalgamation to or with another society or a company, and the conversion of the society into a company. The Act provides that these procedures shall not prejudice the interests of any creditor of a

society that is a party to them - CCBSA 2014 ss.109(5) , 110(4), and 112(5).

A society may by special resolution transfer its engagements to any other registered society. The transferee undertakes "to fulfill" the engagements. The same resolution may also vest the whole or part of the society's property in the transferee without conveyance or assignment - CCBSA 2014 s.110(2) . This statutory procedure transfers the transferor's benefits and liabilities under a contract without breach of a contractual provision against assignment without permission - *Stansell Ltd (formerly Stansell (Builders) Ltd) v Co-operative Group (CWS) Ltd* [2006] EWCA Civ 538; [2006] 1 W.L.R. 1704 . Since the Second World War, transfers of engagements have been used extensively to consolidate UK consumer co-operative societies into a smaller number of larger societies.

Typically, all assets and liabilities are transferred and the members of the transferor become members of the transferee. However, the Act permits the retention of some property by the transferor and does not require that its members become members of the transferee. After the procedure is completed, the transferor society still exists until it is removed from the register. That is only possible after a certificate under CCBSA 2014 s.126 confirms that all of its property has been transferred. Only the transferor society need follow the statutory procedure by passing a special resolution. The procedure adopted by the transferee society depends on the provisions of its rules distributing powers between the committee and the members' meeting. A resolution of the committee is often sufficient. Two or more societies may, by special resolution of each one, amalgamate together "as one society", with or without any dissolution or division of their funds. The property of each society then vests in the amalgamated society - CCBSA 2014 s.109 . Amalgamation is used less often than transfer of engagements. Each society must pass a special resolution for them to amalgamate. Once that is done and the resolutions are registered the amalgamating societies automatically become one amalgamated society.

A society may also, by a different special resolution procedure, transfer its engagements to, amalgamate with, or convert itself into, a company - CCBSA 2014 s.112-114 . Conversion into a company will result in the society "becoming" a company. The procedure required to pass a special resolution for

transformation processes between societies involves two meetings of members, each held with the notice required by the society's rules. At the first meeting, two thirds of those voting in person or by proxy and entitled to do so must support the resolution. At the second, a simple majority of those present and voting must pass a confirming resolution. The second meeting must be held no less than 14 days and no more than a month after the first. The resolution must then be sent to the FCA for registration within 14 days of its confirmation and takes effect either on registration or at the later time specified in the resolution - CCBSA 2014 s.111 . In the case of a special resolution involving transformation into a company, the majority at the first meeting must be three quarters of those voting and is also subject to a requirement that at least half of the qualifying members of the society vote on it either in person or by proxy - CCBSA 2014 s.113 . Thus a minimum of 37.5% of possible votes must be cast for the resolution.

Dissolution and insolvency:

Societies can be dissolved in a number of ways. The legislation imports the company winding up procedure with necessary minor adaptations. As a result, any of the compulsory or voluntary winding up procedures available to companies can be applied to societies by either court order or resolution. That includes a members voluntary liquidation or a sale or arrangement under Insolvency Act 1986 ss.110 and 111 for a solvent society, a creditor's voluntary winding up and a petition for winding up by a member or creditor (see: Insolvency) - CCBSA 2014 s.123 . The liability of the members and former members of a society to contribute on an insolvent liquidation is limited to any amount unpaid on their shares. In addition, a former member is liable only for a year after ceasing to be a member, only for debts incurred while they were still a member and in any case only if the contributions of current members are insufficient. Where withdrawable share capital has been withdrawn, membership ceased on the date on which application was made, or notice given, to withdraw it - CCBSA 2014 s.124 .

Three fourths of the members of a solvent society can use an Instrument of Dissolution to dissolve the society by setting out in the Instrument its assets and liabilities, provisions for the payment of creditors and the intended division

of any surplus. Dormant societies can be dissolved by an Instrument of Dissolution passed by a special resolution passed by a two thirds majority of eligible members who vote in its favour at a meeting called for the purpose. For other societies, three fourths of the whole membership must sign the instrument. The instrument is sent to the FCA with a statutory declaration of compliance with the legislation. The FCA, then advertises the dissolution in the Gazette and a local newspaper and registers the Instrument. In the absence of a successful application within three months of the date of the advertisement to set aside the dissolution, the society is dissolved from the date of the advertisement or the later date on which a final Return is filed for the society - CCBSA 2014 ss.119 .

Before April 2014, societies were not subject to the other insolvency procedures available to companies such as creditors' voluntary arrangements, the administration procedure and administrative receivership. In the case of a society, receivership as a remedy of a floating charge holder is based on the contractual provisions of the charge and the law applicable to company receiverships as it stood before the enactment of the Insolvency Act 1986 - Dairy Farmers of Britain Ltd, Re [2009] EWHC 1389 (Ch); [2010] Ch. 63 . Enterprise Act 2002 s.255 empowered HM Treasury to apply company voluntary arrangement and administration procedures under the Insolvency Act 1986 and Schemes or Arrangements and Reconstructions under Part 26 of the Companies Act 2006 to societies by order. Those procedures were applied to societies from 6th April 2014 by The Industrial and Provident Societies and Credit Unions (Arrangements Reconstructions and Administration) Order 2014 SI 2014/229 but the application of them is subject to certain requirements for FCA and, in some cases, PRA approval. Section 22E of the Company Directors Disqualification Act 1986 was inserted so as to apply the 1986 Act to society directors from 6th April 2014 of by commencing CCBSCUA 2010 s.3 as amended by CCBSA 2014 from that date.

Community benefit societies are permitted, on formation or by later rule amendment, to restrict the use of their assets. This limits the possibility of converting the society into a company or even a society registered as a co-operative. The restriction closely controls the disposal of any assets. They can only be used to repay withdrawable share capital with interest, pay creditors

and transfer any surplus on dissolution to another community benefit society with the same restriction, a CIC or a charity - CCBSA 2014 s.29 and the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006/264 . This level of protection of assets is similar to the rules that govern any company registered as a Community Interest Companies (CIC) (see: CIC's).

Advantages of co-operative and community benefit societies societies:

Societies provide limited liability for members and confer corporate personality on the society. These advantages are shared with other legal structures, including companies and limited liability partnerships (LLP). In addition, for those seeking to preserve the co-operative or community benefit nature of their enterprise, the role of the FCA as registrar, with its powers to cancel or suspend registration and to vet rules and rule amendments, provides some assurance that the structure will remain a co-operative or community benefit business. No such assurance is available for co-operative structure if a company is used but the Community Interest Company (CIC) structure with its own regulator does meet that need for a community benefit enterprises. A community benefit society that meets the relevant requirements, unlike a CIC, may also be registered as a charity.

Withdrawable share capital allows members an exit route in the absence of any market in society shares and is an advantage of societies not shared by any company structure. Building societies share that feature but have strictly limited business objects (see: Building societies etc.). Like other non-transferable shares, withdrawable shares in societies also enjoy certain advantages in respect of prospectus requirements, anti-money laundering rules, deposit taking regulation, and financial promotion rules - Financial Services and Markets Act 2000 s.102A(3) and art 4.1(18) of Directive 2004/39 on markets in financial instruments ; the Financial Services and Markets Act 2000 (Exemption) Order 2001/1201 art. 4 and Sch.1 para.24 ; the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529 art.35 and Sch.1 para.14 .

The availability of the transfer of engagements, amalgamation and conversion procedures for the reorganisation or transformation of societies is an advantage not shared by the company form and facilitates decisions on these matters by resolution and without court involvement, including both reorganisations involving societies in financial difficulties and those which further strengthen the position of economically successful societies in a market.

Disadvantages of co-operative and community benefit societies societies:

CCBSA 2014 has resolved much of the former complexity that arose from the proliferation of primary and secondary amending legislation.

However, as a consolidation, the 2014 Act could not address some of the areas of complexity or uncertainty. In addition, the secondary legislation applying insolvency rescue procedures and Companies Act scheme of arrangement provisions to societies have dealt with some of the key problems arising from the changes to company law that had not previously been applied to societies.

Similarly, secondary legislation has given the FCA Companies Act 1985 inspection and investigation powers on a par with those available to BIS in respect of companies. CCBSA 2014, ss 134-136 have consolidated significant powers to use secondary legislation to assimilate certain provisions applicable society to company law by amending CCBSA 2014.

Despite that, some areas of unnecessary discrepancy remain between societies and companies. For example, the consolidated directors' duties set out in Companies Act 2006 s.170 et seq do not apply to directors of societies and the rules about maintenance of capital found in the companies legislation do not apply to societies.

As a result, societies are subject to earlier common law rules developed in the context of late nineteenth and early twentieth century Company Law, albeit duly modified by the application of the co-operative and community benefit society legislation which, for example expressly permits withdrawable share

capital . The application of common law capital maintenance rules without statutory modification affects issues such as exit for holders of non-withdrawable shares in societies, issuing society shares at a premium (no share premium account apparently required), or a discount, or in return for non-cash assets, and the legal rules on funds available for the payment of dividend.

The fact that the key registration requirement for societies that they be and remain co-operatives or community benefit bodies is a matter of administrative decision and is not generally capable of appeal to the courts speeds up decision-making and reduces costs. However, it also prevents the development of any jurisprudence on the nature of co-operatives or the meaning of community benefit. It puts a premium on the consistency and transparency of FSA decision-making.

There is no easily usable equivalent for societies of Table A under the Companies Act 2006 - see the Companies (Model Articles) Regulations 2008/3229. Societies rely on the use of Model Rules available from sponsoring bodies listed by the FCA or bespoke rules drafted by or for the founders of the society. This may limit the use of the structure. Because the FCA, as registrar, has to ensure compliance with the registration requirements, the registration fee is more costly for societies than it is for companies - especially if bespoke rules are used.

The threat of cancellation of registration for failure to comply with the registration requirements may facilitate the very change that those seeking to "demutualise" a society seek as conversion into a company is the most likely consequence of this step by the FSA. Some protection against the use of the administration procedure or schemes of arrangement for demutualisation have been included in the secondary legislation applying those procedures.

WHAT HAPPENS NEXT?

The FCA was, in November 2014, still consulting on formal Guidance which it intends to issue in 2015 on its role under CCBSA 2014 - see CP14/22 Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 at <http://www.fca.org.uk/your->

THE EU AND CO-OPS AND BENCOMS

No EU Law applies only to UK co-operative and community benefit society law. They are subject to the same general rules as any other UK business. Co-operatives, like companies enjoy the right of secondary establishment under arts 49 & 54 of the Treaty on the Functioning of the European Union. In addition, Regulation 1435/2003 and the European Cooperative Society Regulations 2006/2078 and the European Cooperative Society (Involvement of Employees) Regulations 2006/2059 permit the registration in the UK of a European Co-operative Society when certain conditions are met.

In Joined Cases C-78/08 to C-80/08 *Amministrazione delle Finanze v Paint Graphos Sarl* (C-78/08) at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=109241&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=719321> the European Court of Justice (First Chamber) discussed the nature of a co-operative society in EU Law in the context of the tax treatment of co-operatives in Italian Law and found that different treatment on the basis of the co-operative nature of the organisation does not of itself violate State Aid provisions of EU Law.

KEY ACTS

Co-operative and Community Benefit Societies Act 2014 (CCBSA 2014): the main code about co-operative and community benefit societies.

KEY SUBORDINATE LEGISLATION

Co-operative and Community Benefit Societies (Group Accounts) Regulations 1969/1037 : contain detailed provisions about group accounts.

Community Benefit Societies (Restriction on Use of Assets) Regulations 2006/264 governs the use of a restriction on the use of assets in the rules of a community benefit society.

The Financial Services Act 2012 (Mutual Societies) Order 2013/496 transferred the registration function for societies to the Financial Conduct Authority from the Financial Services Authority.

The Co-operative and Community Benefit Societies and Credit Unions (Investigations) Regulations 2014/574 confers investigatory powers under Part 14 of the Companies Act 1985 and secondary legislation made under it on the FCA in respect of societies.

The Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014/1815 amends secondary legislation to refer to co-operative and community benefit societies rather than industrial and provident societies.

The Co-operative and Community Benefit Societies and Credit Unions (Arrangements Reconstructions and Administration) Order 2014 SI 2014/229 and the Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) Order 2014/1822 apply company voluntary arrangement and administration procedures under the Insolvency Act 1986 and Schemes or Arrangements and Reconstructions under Part 26 of the Companies Act 2006 to societies with appropriate consequential amendments and subject to FCA and/or PRA approval of certain decisions.

KEY QUASI LEGISLATION

Non-statutory indication by the FCA of the administrative criteria used to decide whether the registration conditions for a bona fide co-operative or a community benefit society are met - FCA Notes "Registering a Mutual Society" pp.8-9. For co-operatives, see also the International Co-operative Alliance, Statement of Identity, Values and Principles on which the FCA notes are based.

KEY EUROPEAN LEGISLATION

None applies directly to industrial and provident society law but Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE) , Directive 2003/72 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees , and the European Cooperative Society Regulations 2006/2078 and European Cooperative Society (Involvement of Employees) Regulations 2006/2059 permit the registration in the UK of a European Co-operative Society when certain conditions are met.

KEY CASES

Hole v Garnsey [1930] A.C. 472

Boyle v Collins [2004] EWHC 271 (Ch); [2004] 2 B.C.L.C. 471

Dairy Farmers of Britain Ltd, Re [2009] EWHC 1389 (Ch); [2010] Ch. 63

Stansell Ltd (formerly Stansell (Builders) Ltd) v Co-operative Group (CWS) Ltd [2006] EWCA Civ 538; [2006] 1 W.L.R. 1704

FURTHER READING

Ian Snaith (ed.), Handbook of Co-operative and Community Benefit Society Law, Jordan Publishing, 2014, isbn 978 1 78473 0130C available to order from <http://s.coop/handbook>.

http://www.iansnaith.com/?page_id=279 for ongoing commentary on law and policy in respect of co-operative and community benefit societies.

Mulqueen Tara, "When a Business isn't a Business: Law and the Political in the History of the United Kingdom's Co-operative Movement" (2012) 2 Onati Socio-Legal Series 36 - <http://ssrn.com/abstract=2050353>

Spreading the wealth L. Ex. 2011, Jun, 42-43

Co-operatives UK, Strictly Legal, 2009, available from: http://www.uk.coop/sites/storage/public/downloads/simplylegal_0.pdf for a brief outline of legal frameworks for co-operative and community benefit businesses.

Snaith Ian, "Recent reforms to corporate legal structures for social enterprise in the UK: opportunity or confusion?" (2007) 3(1) Social Enterprise Journal pp.20-30

Snaith Ian, "Mutuals and Co-operatives: Property, Obligations, Business and Dedicated Assets" in A Hudson (ed.), New Perspectives on Property Law, Obligations and Restitution (Cavendish, 2004).

Supporting the not-for-profit sector: the Government's review of charitable and social enterprise M.L.R. 2004, 67(4), 632-657

Snaith Ian, "What Is an Industrial and Provident Society?" (2001) 34 Journal of Co-operative Studies pp.37-42 available from <https://docs.google.com/file/d/0B3k1mIyJumBSTWhvRHpvbkpwLWc/edit>