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LEGAL WORKING GROUP

PROPOSAL FOR A CO-OPERATIVES ACT FOR THE UNITED KINGDOM

A. INTRODUCTION

A.1. The Background to the Project

The UKCC Legal Working Group was asked to take forward a number of issues that arose from the Institute of Public Policy (IPPR) Report "Public Policy and Co–operative Enterprise" presented to the 1992 UKCC Annual Forum.

That Report, set both the broad subject matter for deliberation by the Working Group and the main areas of policy that should guide its thought. To quote from the Executive Summary of the IPPR Report, these were:

"the framing of a single Co-operative Societies Act to replace the Industrial and Provident Societies Act as the basis for the registration and supervision of co-operatives, sufficiently broadly drawn to encompass all existing co-operatives however registered, and designed to keep abreast of developments both in Company and in EC law;

the establishment of a Co-operatives Commission or Commissioner under the Act to replace the Registrar of Friendly Societies as the sole regulatory authority for co-operatives and to play an active role in the promotion and development of co-operatives of all kinds....

reconsideration of the treatment of equity in co-operatives within the framework of a new Co-operative Societies Act;"

A.2. Terms of Reference

These policy guidelines were imported into the more detailed Terms of Reference given to the Group by the UK Co–operative Council which were:–

"1. To consider the appropriate legislative framework for the registration and supervision of co-operatives in the United Kingdom in the light of the issues about co-operative legal structures highlighted in the Report "Public Policy and the Co–operative Enterprise" prepared by the Institute for Public Policy Research and published by UKCC in June 1992.

2. In particular, as that report suggests, to consider:

(1) the framing (bearing in mind the existence of separate English and Scottish legal systems) of a Co-operative Societies Act to replace the Industrial and Provident Societies Act as the basis for the registration and supervision of co-operatives, sufficiently broadly drawn to encompass all existing co-operatives however registered, and designed to keep abreast of developments both in Company and EC Law;

(2) the possibility that some co-operative sectors will require their own legislation;

(3) the establishment of a Co-operatives Commission or Commissioner under the Act to replace the Registrar of Friendly Societies as the sole regulatory authority for co-operatives and to play an active role in the promotion and development of co-operatives of all kinds;

(4) the treatment of capital in co-operatives within the framework of a new Co-operative Societies Act;

(5) the needs of those organisations which behave as co-operatives without necessarily being structured in a purely co-operative way;

(6) the use of provisions in the rules of co-operatives to prevent the future "privatisation" of their assets while retaining the flexibility necessary to attract base capital.

3. To recommend changes necessary to ensure that the legislative framework harnesses co-operative enterprise in the interests of creating a flourishing sector and removing unnecessary obstacles to the creation operation and growth of co-operative businesses while ensuring proper accountability to members and safeguards to those dealing with co-operatives.

4. To produce firm and detailed recommendations in a form suitable for presentation to members of UKCC.

5. To consider how any recommended changes in law and practice might best be pursued by UKCC with the United Kingdom Government."

A.3. The Working Group

The Group originally had four members – Charlie Cattell of the Industrial Common Ownership Movement; Michael Finch, Adviser to the Federation of Agricultural Co–operatives; Roger Jones of Co–operative Wholesale Society Limited and Ian Snaith of Leicester University (in the Chair). In June 1995 it was joined by Barry Lewis solicitor to the CIS Ltd and at all stages it has engaged in valuable discussions with John Tilley of the Co-operative Union Parliamentary Office.

In November 1994 we issued a full proposal as a consultative document. The present document has been drafted in response to the process of consultation on that document which began at the UKCC Forum in November 1994 and lasted for almost a year.

The Working Group members were drawn from three different co-operative sectors but their individual views do not "represent" a definitive view from those sectors. Achieving a single Co-operatives Act involves a degree of compromise between the differing traditions, philosophies and practices within those sectors and the recommendations inevitably reflect that element of compromise. It is for each of the sectors and member organisations of the UKCC to come to a view through its own democratic process as to whether the solutions offered in the document are acceptable. This document has changed considerably as a result of the 1994 - 1995 consultation process.

We have taken our terms of reference literally by "framing" rather than "drafting" a proposed Act. We have, however set out the document within a framework of Parts and Sections in the order and covering the topics that we believe could be adopted in a Co-operatives Act. We trust that any future Parliamentary draftsman would forgive us that small presumption.

The Working Group is conscious that, given the wide range of matters covered, it is a lengthy document. We have tried to make it more accessible by drafting a separate summary of the main recommendations divided into the same parts as this document.

B. THE NEXT STAGE

The Legal Working Group are keen that the final policy agreed by UKCC on this question should form a sound and detailed basis for lobbying and that it is acceptable at all levels within the Co-operative movement. The lengthy and full consultation process that has led to this proposal may have assisted in achieving that. The next step is to enter discussions with politicians, civil servants and other opinion formers on the basis of the present proposal to promote legislation in the interests of all co-operative sectors.

We have tried to devise an up–to–date framework that meets the needs of all sectors. It should accommodate co-operatives of all sizes. We hope it removes unevenness in the "playing field" as against companies and recognises the special nature of co-operatives as part of the mutual sector.

We hope that UKCC and its member organisations will feel able to move into the phase of promoting this proposal in 1996 and beyond. That process should gather pace as legislators and civil servants, on the one hand and the media on the other are approached, persuaded of the merits of this proposal and the urgency of reform. That twin track process should be pursued in liaison with the various co-operative sectors and in consultation with those within the sectors who are skilled in the arts of lobbying and public relations after the proposal has received the broad approval of the member organisations of UKCC.

C. THE CO–OPERATIVES ACT

Title of the Act

The terms of reference used the title "Co–operative Societies Act". However, given the wide range of co-operatives already operating in the UK, many of which are not well described by the term "society", and the potential for further development of the co-operative business model, we see advantage in any Act being the "Co-operatives Act".

In this document, we have, therefore, reflected our preference by using that title throughout. The consultation process indicated that our preference was shared by most respondents.

PART I – THE CO-OPERATIVES COMMISSIONER

1.1. Introduction

The creation of a Co-operatives Commission or Commissioner was envisaged in our terms of reference and we agree with that approach.

We originally envisaged a body modelled to a significant extent on the provisions of the Friendly Societies Act 1992 and the Building Societies Act 1986 which create Commissions responsible for those bodies. However, it was clear from our consultation with the various parts of the co-operative sector that there were serious concerns about the cost of such a body and the unrepresentative nature of a state body with substantial regulatory powers. There were fears that a Commission might usurp the traditional self regulatory role of promotional and federal bodies such as the Co-operative Union Ltd. As a result, we now propose that the regulator be a single Commissioner who would be a civil servant with a limited regulatory role. That role would centre on the registration of societies, ensuring that the legislation was used only by genuine co-operatives which then retained that structure while they remained registered under the Act.

The title of the official would be the Co-operatives Commissioner to demarcate and identify the bodies governed by the Act and registering with the Commissioner.

The modest role and scale of the Co-operatives Commissioner's organisation compared to the Commissions which regulate building societies and friendly societies should mean that this civil service function will continue to be financed from the Consolidated Fund (or general tax revenue) as the Registry of Friendly Societies is at present.

1.2. Functions of the Commissioner

The Commissioner would be a civil servant appointed by government but the Act would require the appointment to be the subject of consultation with the various co-operative sectors. The new system would build on the existing legislation and the present role of the Registry of Friendly Societies in relation to industrial and provident societies. The Commissioner would be the sole state body dealing with co-operatives under the Act and would operate both the system of registration and the regulatory function of ensuring that only co-operatives were registered and that they remained co-operatives while they were registered under the Act.

Because the legislation and therefore the Commissioner and his or her staff would deal only with co-operatives, the new legislation would reinforce the clear and special identity of co-operatives as mutually owned and controlled businesses. A new and separate register of co-operatives would be

operated under the new legislation while industrial and provident societies currently registered on the basis of their community benefit function would remain registered as industrial and provident societies.

The general functions of the Commissioner would be:

(i) To ensure that the purposes and governance of co-operatives are in conformity with the Act and with Co-operative principles by use of the means suggested in paragraph 2.2.

(ii) To administer the system of registration and disclosure by co-operatives.

(iii) To keep under review the content and operation of the laws governing or affecting co-operatives (including this Act) with a view to ensuring that co-operatives are not at a competitive disadvantage as against other business structures and that unnecessary obstacles to the creation, operation or growth of co-operative businesses are eliminated while ensuring that such businesses operate:

(a) in accordance with Co-operative principles and

(b) in a manner that ensures proper accountability to members and to those dealing with the co-operative and

(c) subject to adequate prudential controls for the protection of members and others.

(iv) To make recommendations to Government Departments on any matter relating to co-operatives.

(v) To carry out the limited number of additional functions conferred on it by this or any other Act.

In carrying out these functions the Commissioner would liaise with co–operative representative bodies. The Act would specifically require the Commissioner to consult such bodies on the guidelines envisaged in Part II as criteria for the registration or continued registration of societies as "bona fide co-operatives" and they would be consulted on the appointment of the Commissioner. In addition there would be a general obligation to consult such bodies on policy issues involved in carrying out the Commissioner's other functions. The Commissioner would have power to do anything necessary to facilitate the discharge of his or her functions or reasonably incidental to that purpose.

A Schedule to the Act (on the model of Schedule 1 to the FSA and BSA) would deal with the detail of the Commissioner's status and with the tenure and remuneration of the Commissioner, his or her power to appoint staff, the power to delegate functions and the formalities of the execution and authentication of its instruments. These provisions would replace and, where necessary, re-enact the current legal basis for the registry which is to be found in the Friendly Societies Act 1974.

1.3. Financial Provision for the Commissioner

As we have noted the Commissioner's role differs substantially from that of the Commission's in the building society and friendly society sectors. On this basis, the organisation should be funded as the registry is at present. However, the enormous discrepancy between the formation costs for companies and for industrial and provident societies has demonstrably distorted the market in favour of the use of companies, particularly amongst new co–operatives and this imbalance needs to be addressed.

The main new regulatory function of protecting assets built up by earlier generations from misuse by the conversion of the trading body into a non-co-operative business is analogous to the role of the Charity Commissioners whose services are provided free of charge. In the case of all co–operatives the main functions of the Co–operatives Commissioner would involve providing just that kind of

protection and so modest fees, if any, appear appropriate. For the most part the legislation that we propose would not involve a substantial regulatory role for the Commissioner. The Act itself would lay down specific rules on certain matters; some issues would be left to self regulation by the co-operative promotional and federal bodies; and most of the Commissioner's regulatory functions develop out of the existing role of the Registry of Friendly Societies. As a result the modest costs of the new system could be defrayed in much the same way as those of the registry are at present.

1.4. Accounts Audit and Reports of the Commissioner

The Commissioner would be required to keep proper accounts and records and to submit an annual statement of accounts to the Treasury and the Comptroller and Auditor General. An annual report would be laid before the Treasury and Parliament and the Commissioner would be empowered to lay additional reports (on co-operatives generally or a particular co-operative) before Parliament if it considered this to be necessary.

1.5. The Registry

The function of the Central Office of the Registry of Friendly Societies would be dealt with in this Part by consolidating the present provisions of the Friendly Societies Act 1974, the Industrial and Provident Societies Act 1965 and updating the provisions to deal, for example, with records and returns in electronic form. We recommend that the registry be renamed the Registry of Co-operatives and Mutuals to reflect the full range of its functions.

Formal matters of registration and the maintenance of records would be dealt with by the Registry under the Commissioner who would also be responsible for the regulation and supervision of co-operatives. As far as co-operatives were concerned, it would operate under the supervision and control of the Co-operatives Commissioner. The Chief Registrar would probably serve as Co-operatives Commissioner although the Act would not require this - just as the de facto position of the Chief Registrar in relation to the Building Societies Commission is not laid down in the Building Societies Act 1986.

The Registry could continue to be used by community benefit societies whose status as industrial and provident societies would not be regulated under the Co-operatives Act. A review of the law applying to such voluntary bodies might provide them with a new legal form in the future.

PART II – FORMATION OF CO-OPERATIVES

2.1. Introduction

This Part of the Act would deal with the preconditions and formalities necessary to form a co-operative, endow it with corporate personality and its members with limited liability. The Commissioner would only permit the registration of a co–operative that met its criteria and it is here that the question of defining co-operatives would be tackled.

2.2. Definition of Co–operative

We see great value in linking the Commissioner's criteria for registering co-operatives to the Statement of Co-operative Identity approved by the International Co–operative Alliance in Manchester in September 1995. It sets out a definition and set of values in addition to a revised version of the time honoured co-operative principles. That document is set out in Appendix I.

Following the policy of building on the existing system, we favour the retention in the new Co-operatives Act of the phrase "bona fide co-operative" as the statutory definition of those bodies that may be registered and remain registered under the legislation. This has the advantage of retaining the body of experience and precedent that has built up over the last sixty years during which the phrase has been used.

We would, however, acknowledge in the new Act the obligation of the Commissioner to issue and follow guidelines on the interpretation of that phrase. They would be issued after consultation with the representative bodies of the various co-operative sectors. The Act would require the Commissioner, in framing them, to have regard to the ICA Statement of Co-operative Identity in Appendix I which would be set out in full in a Schedule to the Act.

This solution avoids undue rigidity and provides continuity with the present test. Organisations already acknowledged as bona fide co-operatives would be secure in the knowledge that they would retain that status while new forms of co-operation and new and imaginative applications of co-operative principles would not be prevented by a narrow definition. At the same time, this approach acknowledges in the statute the need for guidelines, the right of the various co-operative sectors to be consulted on their content, and the significance of the ICA criteria which form the basis of the legal and administrative definition of a co-operative in so many countries. The guidelines would replace the present Registry Form F. 617.

2.3. Classes of Co–operative to be Registered

The combination of the use of the phrase "bona fide co-operative" in the Act and application by the Commissioner of Co–operative Principles which are widely accepted and understood gives an appropriate mix of legislative provision and flexibility to register co–operatives in all sectors – consumer, producer, worker, housing and so on. We do not favour listing co–operatives by sector type in the Act, as we believe that this would lead to inflexibility and unnecessary complexity.

The Act would allow for the membership of a co-operative to consist of individuals, other co-operatives, partnerships, companies or any other legal persons or any combination of these. This allows for federations of co-operatives, co-operative joint ventures between businesses and second third or fourth tier organisations controlled by other co-operatives. In this way it would accommodate federals and secondary or tertiary co–operatives.

Part II would, however, acknowledge the attributes of one of the many different forms of co–operative covered by the Act – the Common Ownership Co–operative.

Where registration would result in the prohibition of any distribution of surplus on solvent dissolution and stricter rules about conversion or other fundamental restructuring a Common Ownership co-operative would be created and the words "Common Ownership" could be used in the name of the co-operative. All other co-operatives registered under the Act would be free to apply a regime permitting the distribution of surplus to members on an equitable basis and might subject themselves to less stringent rules about conversion and other fundamental changes of structure.

This distinction between two particular types of co–operative is intended to allow watertight legal protection for those co-operatives which are based on the concept that assets should never be distributable to or owned by individual members. The concept of "common ownership" allows for collectively owned assets to be built up which remain available in the business to serve present and future members. The concept is widely used by housing, worker and community co–operatives at present. The main benefit of the system is the continued existence and, it is hoped, growth of the assets. The Group recommends that members who understand that they wish to use this system should

be able to set up a co-operative which can never be converted from the Common Ownership system. Since the assets of such societies would be effectively dedicated to particular purposes there might be a development of tax or other advantages for such organisations as there was under the Industrial Common Ownership Act 1976.

All co–operatives will comply with the essential Co–operative principles of democratic control and the distribution (whether of surplus as a going concern or any residual assets remaining on dissolution) in accordance with transactions with the co–operative other than in exceptional circumstances.

Our concern is that members understand from the establishment of the co–operative or from joining it that it is governed by certain key rules and these "legitimate expectations" about the continuing status of the co–operative will determine the availability of assets on dissolution. The concept of "legitimate expectation" is already current in European Law and would underpin the concept that members forming or joining a co–operative would not usually be prevented from holding any individual rights over assets but those wishing to set up co-operatives operating under such a regime could do so with legal security.

This would be achieved by two provisions. One would ensure that the use of the words "common ownership" in the name or other description of a co-operative would be restricted to those with rules to preventing any distribution of assets on dissolution other than to other common ownership co-operatives, bodies promoting or assisting common ownership co-operatives or one or more charities. In each case the constitution of the recipient organisation would have to include a similar restriction. The rules of a "common ownership co-operative" would also lay down that it could not be converted into any other business structure unless an equivalent rule against distribution with the same level of entrenchment was to be found in the constitution of the new organisation. The rule against distributions would be stated by the co-operative's rules to be unalterable.

While common ownership co-operatives have an established legislative history and should enjoy recognition and the legal right to entrench their key rules, such organisations would be one of many types of co-operative registered under the Act. They have the features described above and the use of the words "common ownership" would be protected. However, the Act would stipulate that any co-operative was permitted to impose restrictions on distributions or on the amendment of any rules that it considered fundamental and that such provisions of its rules would be effective. Thus other societies could prohibit conversion to other business structures or could impose higher majorities than the Act generally required for conversion into a company, solvent dissolution or the amendment of particular rules. As Part XI indicates, the Act would lay down certain minimum majorities that would always be required for conversion and rule amendment. Particular societies could choose to use their own rules to build on that level of protection by requiring higher majorities or including rules that could not be changed at all.

This allows for the protection of the key values of the founders of a co-operative by the entrenchment of certain rules. It also acknowledges that while common ownership co-operatives are one special branch of the co-operative family, others may wish to include special features in their rules to limit the possibility of change from co-operative form or to highlight other features of their structure. For example, some co-operatives choose to operate as collectives so that all members can participate in all decisions and others trade only with members and thus achieve the tax advantages of mutual status. These methods of organisation could be achieved under the proposed Act by adopting appropriate rules.

2.4. Limited Liability

It should be possible to set up any co-operative as limited by shares or by guarantee or as an unlimited co–operative. The possibility of a co-operative limited by guarantee rather than by shares might permit the name of a partnership or of an unincorporated society to appear as a member rather than behind the trusteeship of an individual. This would not affect actual legal liability but would reflect the intentions of those establishing the co–operative.

The privilege of limited liability is a vital feature of the business structure required by co-operatives. At present all industrial and provident societies enjoy limited liability with a share capital. We favour a level playing field so that the limitation of liability by guarantee would be available to co-operatives and so that any group wishing to operate the co-operative as a separate corporate entity while retaining the unlimited liability of its members could do so. This might be helpful to certain professionals who wished to operate a co-operative but whose professional body prohibited operation with limited liability.

2.5. Incorporation Generally and Status of Existing I & P Societies

The Act would provide that a co-operative may be established if its purpose is to engage in any business or other economic, cultural or social activity in the interests of its members and to operate in accordance with Co-operative principles.

The co-operative would be established on compliance by the persons establishing it with the scheduled requirements and would be incorporated under the Act from the date of registration. A society currently registered under the IPSAs as a bona fide co-operative would automatically be established and incorporated under this Act (See section Part XIV as to Transitional Provisions). Existing societies would, however, be advised of the possibility of entrenching certain provisions of its rules or fixing certain majorities to change them and of the need to do this in respect of any distribution of surplus on solvent dissolution and the possibility of conversion if it intended to continue to use the words "common ownership" in its name or description.

2.6. Establishment and Incorporation

The Schedule dealing with the detail of requirements for the establishment and incorporation of co-operatives would contain the following matters.

2.6.1. Minimum Number of Members

The minimum number of members needed to form a co–operative should be two. The members could be either natural or legal persons. This retains the present UK system which permits co-operatives to form federals or secondary or tertiary societies and also permits primary co-operatives with businesses as members (as is common among agricultural and fisheries co-operatives). The fact that societies are corporate entities allows them to own subsidiary companies or societies.

Any two or more such persons (whether individuals or corporate bodies) could establish a co-operative under the Act by agreeing the purpose and powers of the co-operative and the other matters referred to in the sections below. A copy of the rules signed by two of the members establishing the co-operative would then be sent to the central office of the Registry of Friendly Societies together with the relevant form setting out which rule satisfies each of the requirements set out in the Schedule to the Act.

The rules would be checked by the Registry which would operate under the supervision of the Commissioner and apply the Guidelines developed by him or her in accordance with the Act. A time

limit would be imposed for a decision on whether or not the co-operative could be registered and reasons for a refusal to register the co-operative would have to be given. A service of advance approval of the rules would be offered and those forming co-operatives would be advised to use it to avoid rejection at the stage of registration.

2.6.2. The Rules

The Group considered that the Act should not use the Companies Act system of setting out full models of the rules that might be used by co-operatives. This would lead to excessive complexity if suitable rules were to be provided for all the various co-operative sectors and to excessive rigidity if it inhibited the development of new rules suitable for innovative applications of Co-operative principles. The Act would therefore follow the present Industrial and Provident Societies Act by listing the key matters to be dealt with in the rules.

The Commissioner should encourage the use of federal and promoting co-operative bodies to further the principle of co-operation among co-operatives. A modest fee reduction for the use of model rules provided by such bodies should apply on registration. However, the differential should be less than at present to discourage the use of inappropriate rules by groups setting up a co-operative and the overriding consideration is the reduction of the major difference which now exists between the cost of forming a company and the cost of registering a co-operative as an industrial and provident society.

The Act would lay down that the rules of a co-operative are binding on the co-operative, each of the members and on all persons claiming on account of a member or under the rules and that all such members and claimants (but no others) shall be taken to have notice of the rules. This ensures that the rules are fully legally enforceable by the parties to them as is the case under present legislation. It is this provision that gives them full legal force between the co-operative and its members. Similar provisions apply to companies, building societies and friendly societies.

A list of matters for which the rules must make provision equivalent to the present Schedule 1 of the Industrial and Provident Societies Act 1965 should be included. Appendix II of this document gives the Group's views on the content of such a list. This list does not necessarily require rules to deal with matters in a particular way but it does give a minimum threshold for matters to be considered and subjected to rules.

The list provided in the Appendix includes matters currently in the Industrial and Provident Societies Act 1965, the Building Societies Act 1986 and the Friendly Societies Act 1992. It is intended to provide an up to date list of concerns which deal with issues such as corporate governance and self dealing as well as the nature of a co-operative.

The regulatory approach advocated by the Group revolves around the role of the Commissioner in approving the rules and amendments to the rules of registered co-operatives on the basis of the Guidelines that he or she will issue in accordance with the Act. Given this focus on the rules and the use of a regulator operating on a modest scale with limited discretionary powers we favour the retention in the Act of a list of matters that have to be addressed in the rules of a society despite the plans announced in 1995 to use the Deregulation Act powers to remove this part of the Industrial and Provident Societies Act 1965. To ensure that societies using the Co-operatives Act are bona fide co-operatives without creating and expensive and intrusive regulator, it is important to focus on the rules of societies. A list of matters to be addressed within the rules gives some statutory indication of important issues when combined with the Schedule setting out the ICA Statement and the requirement that the Commissioner take account of that in the Guidelines that he or she drafts on the nature of a bona fide co-operative.

On certain issues the Group was against requiring a provision in the rules. For example, the range of share capital and the rights attaching to it might be better dealt with by the terms of issue so long as the rules of the co-operative, as approved by the Commissioner, ensure that those terms must conform to Co-operative principles. The protection of the class rights of holders of shares from alteration by changes to the rules by other members might be dealt with in the Act itself. The Schedule would only require a rule as to whether various classes of share were to be issued. It is excessively paternalistic to police the investment powers of co-operatives by requiring provisions of the rules on such matters.

There will be a provision that nothing in the Schedule of matters for which the rules must make provision shall be taken to authorise any provision that is inconsistent with the Act or an instrument made under it or to affect the operation of the Act in making any specific rule void.

2.6.3. Alteration of the Rules

This will be done by a resolution of the general meeting of a co-operative with a majority of not less than three–quarters of the votes cast. A higher figure may be stipulated in the rules and itself made difficult or impossible to change. This power to amend the rules is subject to the provisions of the Act where they lay down specific procedures or requirements for particular decisions or rule amendments (as in the case of conversions). The Act would lay down the detailed procedure for the registration of amendments and the date from which they would take effect. The requirement that amendments be registered by the Commissioner before they take effect is important in ensuring that co–operatives that have ceased to comply with the Act cannot continue to be registered.

2.6.4. Name of Co-operative

The name of a co-operative limited by shares or by guarantee would be required to have "limited" (or the Welsh equivalent if its registered office were in Wales) as the last words of its name.

The name and the fact that the co-operative is registered under the Act (and thus supervised by the Co-operatives Commissioner) would have to appear on all documents or stationery issued by the co-operative (business letters, invoices, receipts, notices, bills of exchange, letters of credit cheques etc.) and on a sign displayed at the registered office. In the case of any society registered with rules allowing it to operate as a common ownership co-operative, the words "common ownership" could also be shown.

A change of name would – as now – be by general meeting resolution and would take effect on registration by the central office. This would be automatic unless the Registry is of the view that the new name is undesirable. A similar process of vetting names will take place on the first registration of a co-operative. A change of name would continue to require only a simple majority.

It would be an offence for any legal body or person to use a name including the words "Co-operative" or "Common Ownership" or their derivatives, such as "Co-op", without being registered under the Act or obtaining the permission of the Co-operatives Commissioner. Such permission could be granted only in the case of a subsidiary of a co-operative or a body not organised as a co-operative but solely dealing with co-operatives (e.g. engaged in co-operative development). This would mean that people would remain free to use companies which were organised as co-operatives but to use the word as part of a company or business name they would have to register under the Act.

Offences would be created by the Act to deal with violations of the rules about the names of co-operatives.

2.6.5. Change of Registered Office

This should simply require registration as a fact at the Central Office. The Act should leave it to societies to choose the method of decision–making involved in bringing about the change.

2.7. Common Ownership Co-operatives

A co-operative established under section 2.3. which had rules preventing the distribution of any surplus to its members on its solvent dissolution but requiring such a surplus to be passed to a body with similar aims and a similar limitation on the distribution of any surplus, to a central body established to support Common Ownership enterprises, or to a charity would be entitled to refer to itself as a "common ownership" co-operative. Other co-operatives could use their rules to protect special features of their structure but would not be allowed to use the "common ownership" description unless they met the criteria outlined in section 2.3.

2.8. Incorporation as a Co-operative Society

All co-operatives registered under this Part would be required to operate in accordance with Co-operative Principles and would be registered and incorporated as co-operatives. It would be possible for the rules of co-operatives to provide for the distribution of any surplus on a solvent dissolution to the members but this would have to be done on a fair and reasonable basis that recognised the contribution of the members. Any distribution would be on the basis of particular rules of the co-operative which had, on registration of the rules or of a later amendment, been approved by the Commissioner (see Part XII).

2.9. Consequences of Incorporation

All co-operatives would be bodies corporate from noon on the date of the certificate of incorporation. They would thus enjoy perpetual succession, hold property of all kinds, sue and be sued. On registration all property held on trust for the co-operative would vest in it and all legal proceedings pending by or against the co-operative could be brought or continued in its registered name. In the case of a co-operative registered as limited by shares or by guarantee, registration would also confer the benefit of limited liability on its members.

In line with section 36C of the Companies Act 1985, a contract purporting to be made by or on behalf of the co-operative before its incorporation would be given effect as one made with the person purporting to act for the co-operative or as agent for it and that person would be personally liable on the contract unless there was an agreement to the contrary. In line with UK company law, the co-operative could never retrospectively adopt or ratify a contract made before it existed. The same rule would apply to a deed in England and Wales and an obligation under Scots Law.

2.10. Foreign Co-operatives

The Co-operatives Act, like the present Industrial and Provident Societies Act and Companies Acts, should extend to both England and Wales and to Scotland. It might, like the Friendly Societies Acts, also be applied to Northern Ireland. Provisions about registration would apply on the basis of separate registration in each jurisdiction (to establish domicile) with some process such as the recording of rules to operate between the home jurisdictions as it does now for industrial and provident societies between England and Wales and Scotland. Co-operatives would be free to change jurisdictions if they wished to do so.

Co-operatives, like other businesses, enjoy the right of freedom of establishment as between the member states of the European Union. this gives a co-operative registered in any such state the right to operate in the UK and confers a reciprocal right on UK co-operatives.

At present there is no process for the registration of information about industrial and provident societies (or the equivalent) from outside the "home" jurisdictions. The Act should include provisions similar to those to be found in sections 691-703 of the Companies Act 1985.

This would require any co-operative incorporated outside either the United Kingdom or Great Britain (depending on the extent of the Act) which established a place of business within the area covered by the Act to register its constitutional documents and a certified translation of them into English with the central registry, together with details of the co-operative's directors and officers and a person willing to accept service of proceedings on its behalf within the territory covered by the Act. Changes in that information would also have to be registered and all documents used for the co-operative's business in Britain would have to carry details of its name, registration and the fact of limited liability. There would be rules governing the name used by the overseas co-operative and imposing penalties for breach of these rules as well as specific provisions in respect of the Isle of Man and the Channel Islands.

Annual accounts and reports equivalent to those required under the Act for home co-operatives would have to be provided to the central office by overseas co-operatives but there would be power to modify this requirement by regulations.

The purpose of these provisions is to ensure that equivalent information to that required of a co-operative registered under the Act is available to actual or potential creditors and investors dealing with an overseas co-operative established within this country.

The definition of such a co–operative for those registered outside the European Union would be an organisation that could have registered under the Act had it been domiciled in one of the UK jurisdictions and which was recognised as a co-operative in its home jurisdiction. A co-operative registered in another member state of the European Union would be entitled to register under the Act on the basis either that it was registered under the Co-operative Law of its home state or that it would qualify to register under the UK Co-operatives Act were it domiciled in one of the home jurisdictions.

Should the European Union Proposal for a Regulation on the statute for a European Co–operative Society become law, such societies would not be required to register under these provisions wherever they were registered.

2.11. Conversion of a Company into a Co-operative

This Part of the Act would provide the means whereby a company could convert itself into a co-operative. This would, as at present, require a special resolution and the prior approval by the Commissioner of the rules with which it was proposed to register the company as a co-operative. There would need to be provision for the reorganisation of the share capital of the company on its conversion if some members held amounts in excess of the limit imposed on the holdings of members of co-operatives. The Act would provide for the detailed documentation to be submitted as part of the process of the conversion. The company could convert itself into either a common ownership co-operative or any other kind of co-operative society. It could be an unlimited co-operative or one limited either by shares or by guarantee. The provisions would be similar to those applicable to the registration of a new co-operative with necessary adaptations to deal with the fact that a company was being converted. The rights of creditors and others with claims against the company would be preserved so as to operate against the new co-operative.

It is important that after the conversion of a company into a co–operative all information such as accounts and annual returns relating to the history of the company should be available from the Registry of Co-operatives and Mutuals. The provisions and administration of the Act should also ensure that there is continuity in the coverage of the accounts and other publicly available information for the periods before and after the conversion. At present problems can arise in this area as a result of time gaps between new and old dates for the filing of accounts and annual returns.

PART III – LEGAL CAPACITY AND POWERS OF CO-OPERATIVES

3.1. Introduction

This area is one of those most in need of reform. Co-operatives are businesses. Their need for full legal capacity to deal with others is equivalent to the needs of companies. With the exception of credit unions which we believe should continue to be governed by their own special legislation in addition to the Co-operatives Act, there is no need for provisions to limit the powers or capacity of co-operatives in the way that the Friendly Society Act limits the business that can be done by friendly societies or the Building Societies Act limits the powers and functions of building societies and provides for a limited and incremental extension of powers. Co-operatives, other than credit unions and the Co-operative Insurance Society Ltd., are not essentially financial institutions. To the extent that they are involved in activities regulated by the Banking Act, the Financial Services Act or the Insurance Companies Act, they should be regulated by that legislation or be subject to a special exemption. There is no case for tackling these issues by limiting their powers or objects. The key concern in relation to co-operatives is to ensure that they are conducted in accordance with co-operative principles. This does not affect their ability to enter into transactions with outsiders but is concerned with the internal arrangements within the co-operative itself.

It is by historical accident that industrial and provident societies remain subject to the full rigour of the ultra vires doctrine developed by the courts in the context of the Companies Acts. Societies have not even benefited from the limited relief that was available to companies under the European Communities Act 1972 before the more far reaching reforms introduced by the Companies Act 1989.

Since this is an area where the Law should provide a level playing field for co-operatives and companies, the Group suggest it is appropriate to follow the model of the UK Companies Act 1989. This follows the existing domestic models of the Building Societies Act and the Friendly Societies Acts as well as the Companies Act 1989 which mitigate the effects of the doctrine for practical purposes while retaining the obligation of officers and directors to follow the rules of the co-operative. This validates transactions with outsiders which fall foul of the rules while avoiding those between the co-operative and one of its directors or senior officers.

3.2. Capacity of Co-operatives and the Abolition of Ultra Vires Doctrine

By virtue of its incorporation, a co-operative would have full legal capacity subject only to the operation of the ultra vires doctrine on the basis of its objects rule and to problems arising from limitations on the capacity of its board or officers as agents. For this reason, it does not seem appropriate to insert provisions specifically empowering co-operatives to invest funds, hold land or to do other particular things. It is, however, necessary to deal with the ultra vires doctrine and problems arising from any limits on the objects or powers of a co-operative.

The Act would lay down that where a co-operative's rules state that the object of the co-operative is to carry on the business of "a general commercial co-operative", its object is to carry on any trade or business whatsoever and it has power to do anything incidental or conducive to carrying on any trade

or business. This is modelled on section 3A of the Companies Act 1985 and allows for a brief and standardised objects clause providing complete commercial freedom. This would not, however, be compulsory since a co-operative could devise its own objects rule to limit the businesses in which it may be involved and to confer only those powers needed to carry out that more limited object.

The provisions in the following sections would protect those dealing with a co-operative that entered transactions outside this narrower object while allowing the members (or, more precisely, the co-operative itself) to hold directors and senior officers to account for a failure to keep to the objects set out in the rules.

The Act would state that the validity of acts done by a co-operative could not be called into question on the ground of lack of capacity by reason of anything in its rules. However, the right of a member to bring proceedings in advance to restrain an act in excess of the capacity of the co-operative would be preserved other than for an act to be done in pursuit of a legal obligation arising from a previous act of the co-operative.

The Act would also provide that it remained the duty of the directors and officers of the co-operative to observe any limitations on their powers flowing from the rules of the co-operative and that any such action could only be ratified by special resolution - with a separate special resolution required to relieve the directors or officials in question from their liability for breach of the rules. This provision would be modelled on section 35 of the Companies Act 1985 in order to provide a level playing field for both co-operatives and companies.

3.3. Persons Dealing with Co-operatives

The following provisions would also provide protection for those dealing in good faith with a co-operative from defects in or limits on the authority conferred on the board as agents if the problem arose from the co-operative's rules.

The Act would provide that, in favour of a person dealing with a co-operative in good faith, the power of the board of directors (or the general meeting of a co-operative established as a collective) to bind the co-operative or authorise others to do so is deemed to be free of any limitations under the co-operative's constitution. Like section 35A of the Companies Act 1985 on which this provision is modelled, the concepts of "good faith" and "dealing with" the co-operative would be defined widely while the co-operative's constitution would include not only its rules but resolutions of the general meeting and agreements between members and the company or among members. This would confer protection on those dealing with co-operatives equivalent to that conferred on those dealing with a company.

The provision would, however, go on to preserve the liabilities of directors and officials of the co-operative for exceeding their powers and the right of a member to seek to restrain an act in terms similar to those applicable in the case of ultra vires acts. In addition the act would provide that certain transactions between directors or officers or their associates and the co-operative would be denied the protection enjoyed by transactions with outsiders.

In addition the Act would remove the doctrine of constructive notice which might saddle outsiders with fictional knowledge of the contents of the co-operative's rules by providing that no party to a transaction with a co-operative would be bound to enquire as to whether it is permitted by the co-operative's rules or as to any limitation on the powers of the board or the general meeting of the co-operative to bind the co-operative or to authorise others to do so.

This provision would mirror the relevant sections of the Companies Act 1985 and thus again restore

an even playing field between co-operatives and companies. This would prevent any difficulties with bankers or other parties who might doubt the status of certain transactions entered into by co-operatives because of the absence of such protective provisions.

3.4. The Formalities for Co-operatives' Contracts and the Execution of Documents

The Act would deal with the formalities involved in executing documents and making contracts either in the body of the Act or in a separate schedule. On these questions, the guiding principle is, once again, that as a business a co-operative should be in no different position from a company in this respect. For this reason, sections 36 to 41 of the Companies Act 1985 provide a suitable model for the provisions of the Co-operatives Act.

These provisions would lay down that under the law of England and Wales a contract could be made by a co-operative by writing or under its seal or by a person acting on its behalf under its express or implied authority. Particular formalities would only be required where the law would impose such an obligation on an individual (e.g. contracts dealing with land or ships or guaranteeing debts). Similarly, the execution of documents by co-operatives under the law of England and Wales could either be done by the use of the seal or by a document with the signature of a director and the secretary or two directors and expressed to be executed by the co-operative. A document expressed on its face as intended to be a deed operates as a deed whether sealed or not. Equivalent provisions applicable under the law of Scotland and modelled on sections 36B of the Companies Act 1985 would be included.

Provisions allowing co-operatives to empower agents to execute deeds and otherwise act for them abroad and to have a seal for use abroad would be included.

The issue of pre-incorporation contracts was dealt with in Part II.

PART IV – MEMBERSHIP

4.1. Introduction

This Part deals with the position of the individual member, their admission, the qualifications required for membership and the circumstances in which membership will terminate. Part VII deals with the governance of co-operatives including the division of functions between the board and the members' meeting and the operation of the principle of democratic control. As member based organisation this is an important matter for co-operatives. However, the range of different economic sectors in which they operate and the consequent variety of relationships between societies and their members makes it undesirable to lay down detailed and specific provisions in legislation. That is a matter for the rules. The fact that registered co-operatives could also be secondary or tertiary societies or representative, promotional or federal bodies reinforces that point.

As a result, this part of the Act sets a framework for the rules of societies which would be able to lay down their own provisions subject to being approved by the Commissioner on registration as a bona fide co-operative. This would ensure respect for the principle of voluntary and open membership without discrimination embodied in the ICA Principles.

We considered the issue of the legal remedies open to members who are dissatisfied with the way their co-operative is being run. The Industrial and Provident Societies Acts permit a petition by a member for the winding up of a solvent co-operative on the grounds that this is just and equitable. Unlike the Companies Acts they do not provide any power for the courts to make other orders on the grounds

that the co-operative has been run in a manner that is unfairly prejudicial to the interests of some or all of its members.

After some debate we concluded that since the wider discretionary remedy is almost invariably used to achieve a buy out of a minority of the members "locked into" small companies when the others are no longer adhering to the arrangements originally made, the remedy was not needed in the co-operative context. The fact that a system of one member one vote will prevail in most primary societies and that the nature of a co-operative share is essentially different from that of an equity share in a non-co-operative company, convinced us that the retention of the existing "just and equitable" winding up remedy was sufficient to deal with the small number of cases in which litigation might be necessary to deal with serious disputes between members with substantial economic consequences. A wider remedy based on a concept such as "unfair prejudice" might be open to abuse.

We deal with disputes on matters governed by the co-operative's rules by means of arbitration, mediation or conciliation under Part XI. We would expect such mechanisms to be adequate to deal with all but the most unusual and serious disputes within co-operatives.

4.2. General

The Act would provide that on the registration of the co-operative those persons who had signed the application to register it would become members. Others would be admitted to membership in accordance with the provisions of the rules. The Commissioner, as part of the function of vetting the rules, would ensure that the Co-operative principle of open membership was not violated. This would prevent a class of existing members from profiting from transactions with others in the same economic relationship to the co-operative who were not permitted to become members. This would be subject only to rules allowing necessary temporary casual dealings (such as the use of temps by worker co-operatives) and appropriate probationary periods or other precautions in the selection of members where such safeguards were necessary. Similarly, the rules would not permit members who did not have the connection with the co-operative that formed the basis of its existence (e.g. non-employees in workers' co-ops, non-tenants in housing co-operatives) other than in appropriate cases such as community co-operatives deliberately set up to encompass employees, users and representatives of the local community.

Joint membership would be allowed unless prohibited by the rules. The present rule that a natural person of 16 or more may be a full member of a co-operative unless the rules lay down a higher age limit would continue - as would the prohibition on persons under 18 holding office in a co-operative. Both age limits might be waived by the Commissioner. This would apply e.g. in the case of a co-operative consisting wholly or mainly of persons under the age of eighteen and with the purpose of providing education and experience in running a small scale business in the form of a co-operative.

The Act would provide for a corporate body to be a member of a co-operative unless the co-operative's rules prohibited this. A corporate body that was a member of a co-operative would, by instrument in writing, appoint a person or persons to represent it in respect of its membership as would a co-operative that was itself a member of another body corporate. That person would be entitled to exercise all the rights of the corporate member to attend and vote at meetings. This would be a fall back provision which could be varied by the rules of the co-operative of which another corporate body was a member. Federals and associations of co-operatives would be subject to this provision and their rules would therefore set out the procedure for representation of member organisations.

The Act would also provide for the acknowledgement on the register of members that a natural person's membership was in the capacity of trustee for a partnership or an unincorporated association and the rules of the co-operative could provide for the transfer of shares from one nominee of such

bodies to another on the production of evidence of a decision to that effect by the partnership or the unincorporated association. In such a case an individual would be permitted both to be a member in his or her own right and to be the nominee of an organisation whether incorporated or unincorporated. The Act might require members to notify the co-operative when shares moved from being held in the name of the beneficial owner to being held otherwise or vice versa. The co-operative would then be obliged to insert that information in the register of members. This would assist in the prevention of fraud.

4.3. Rights and Liabilities of Members

All directors of a co-operative which carried on business for more than a month after the number of members is below two would be guilty of an offence if they knew that this has happened. In addition they would be personally liable for debts incurred after the first month.

The entry of a person's name in the register of members of the co-operative will be prima facie evidence of their status as a member. It is that status that will entitle members to the rights conferred on them by the Act or the rules of the co-operative. Members will not be personally liable to creditors of the co-operative but will be liable to the co-operative (a) to the extent of any amount unpaid on shares issued to them; (b) to the extent of the amount they have guaranteed if the co-operative is limited by guarantee and (c) for any outstanding periodic fee or subscription or any other amount due from them under the co-operative's rules or (d) on any other legally binding obligation that they have separately entered into.

The rules of a co-operative would be permitted to require members to have certain dealings with the co-operative for a certain period and to enter into a contract for that purpose. This might require the member to sell products to the co-operative, obtain goods or services through the co-operative and to pay damages for a failure to comply with such obligations.

Any amount due from a member to the co-operative could be offset against amounts due to the member from the co-operative by way of shares, interest, dividends, deposits or otherwise and any shares subject to set off would be cancelled. The member would be entitled to a written statement of the amounts due to and from the member and the extent of the set off. The rules of a co-operative could allow for the imposition of fines on members but would be required to set out the member's right to be heard before such a fine was imposed.

All amounts due from a member to the co-operative would be recoverable by proceedings in the County Court in England and Wales or the Sheriff's court in Scotland.

4.4. Just and Equitable Winding Up

The Act would permit a member to petition for the winding up of a solvent co-operative on the ground that this was just and equitable. This continues the present remedy which applies through the application to industrial and provident societies of all the Insolvency Act resolutions and orders by section 55 of the IPSA 1965. The remedy is available in any situation in which the court concludes that the circumstances warrant such drastic action. They include situations in which the substratum or purpose of the co-operative has disappeared, cases in which extreme fraud or dishonesty in the formation and running of a society can be established and a wider range of circumstances in which a member or members demonstrate both that the co-operative is no longer being run in accordance with the understanding that existed between the members when it was established and that this is the only way in which the complaining members can receive fair treatment. We know of no situation in which this Companies Act remedy has in fact been used in connection with a society but we are convinced of the desirability of retaining it as a "long stop" remedy. It would apply when the regulatory role of

the Commissioner in ensuring that co-operatives continue to conform with co-operative principles and the normal dispute resolution procedures set up by the rules of a society fail.

We do not favour the inclusion in a Co-operatives Act of a wider discretionary remedy along the lines of the "unfair prejudice" remedy applicable to companies. This is inappropriate as its main function is to allow for minorities to be bought out when they would otherwise be locked into the business as owners of unmarketable shares which receive no return by way of dividend and have insufficient voting rights to affect policy or ensure that their holder retains involvement in management. In co-operatives, the key concern is the continuation of the business as a bona fide co-operative - a matter dealt with by the provisions for the Commissioner to regulate the registration of co-operatives. Shares are not held in the expectation of substantial dividends on capital and do not attract additional votes in primary co-operatives which operate on the basis of one member one vote. This renders the buy out remedy unnecessary.

4.5. Termination of Membership

The Act would provide for the termination of a person's membership on expulsion in accordance with the rules, death, dissolution of a corporate body, or the rescission of membership on the basis that it was obtained by fraud or misrepresentation. It would be open to the rules of a co-operative to lay down other grounds for the termination of membership such as the member's bankruptcy or the termination of a particular contract between the member and the co-operative such as an employment contract in a workers' co-operative or the tenancy of a housing co-operative member or the supply or marketing contract attached to membership of an agricultural co-operative.

In the case of co-operatives limited by shares, the transfer of the whole of the member's share capital to another person, the forfeiture of all the member's shares under the co-operative's rules, the withdrawal of all the member's shares or any other situation eliminating the member's share holding would terminate membership.

On the death of a member, the Act would provide that, subject to the rules, shares could pass on the nomination of a member (as is now compulsory under the IPSA). This would allow members to nominate a person to receive their shares or other investments and to override the member's will or the rules of intestacy by this means in respect of that property. This is a convenient right for members but as it imposes costs on co-operatives, we believe that each co-operative should be entitled to decide whether its members are to have this right under its rules. If this change were made, transitional provisions would have to deal with existing nominations made before the date on which a society changed its rules to prevent nomination. Subject to these provisions and the reform of the current limits on nominations, these provisions of the Act could be modelled on sections 23 and 24 of IPSA.

In the absence of nomination, the general legal rules applicable to small estates would apply to permit payment or transfer of shares without probate or letters of administration. This would be modelled on section 25 of IPSA and Schedule 7 of Building Societies Act 1986. If they were inapplicable the general law of probate would apply. The Act would contain provisions to protect co-operatives which acted in good faith by transferring shares in these circumstances along the lines of section 27 of IPSA.

In the case of members suffering from mental illness it is hard to see why co-operatives need special provisions. The general law applicable to the property of such persons could apply. If special provisions are necessary section 26 of IPSA could be updated and used as a model.

PART V – RULES

5.1. Introduction

As indicated earlier, we propose to retain the current IPSA system of a Schedule laying down matters to be dealt with in the rules rather than moving to the use of Tables of full model rules in the statute or a statutory instrument. This limits the amount of substantive detail about the content of rules that would be set out in the Act. Details of the matters to be dealt with in the Schedule are to be found in Appendix II, as compliance with the list would be a condition of registration. The Group wish to encourage the use of model rules provided by sponsoring co-operative bodies but has decided against the inclusion of references to the system in the legislation.

The other matters dealt with here include the legal effect of a co-operative's rules, the provision of copies of the rules to members and others and the procedure for amending the rules.

On the amendment of the rules, we wish to see a statutory requirement for a special resolution with a minimum three–quarters majority. A co-operative's rules could provide for a higher majority. Special issues such as conversions, transfers of engagements and major asset transactions would be dealt with elsewhere in the Act and would require special procedures including, for conversion into or transfers to a non-co-operative company, prior approval by the Commissioner. For other amendments, registration would only be permitted if the rules remained consistent with Co-operative principles and the amendments would take effect only on registration. In practice co-operatives would seek prior clearance.

The Group suggest that the charge levied at present on the registration of amendments be abolished except for a change of name. This would bring the system into line with the practice at Companies House and would avoid discouraging necessary amendments. The lost revenue could be recouped through annual charges levied on the submission of accounts and the annual return.

5.2. Effect of Rules

The Act would contain a provision similar to that found in the present section 14 of IPSA and of the Companies Act 1985 and the equivalent provisions in the Schedules of the Building Societies Act 1986 and the Friendly Societies Act 1992. This would provide that the rules have the effect of a contract by deed between the co-operative and each member, the co-operative and each director, senior officer or secretary and between each member and each other member. Such persons would be deemed to have knowledge of the content of the rules with a specific provision that no other person was to be regarded as having such knowledge (see FSA 1992 Sched 3 & BSA 1986 Sched 2).

The Act would also lay down that the formal document issued by the Registry on the registration of the rules and of later amendments would be conclusive proof of the registration and therefore of the effectiveness of the rules or the amendment referred to in the document.

5.3. Copies of Rules

The Act would require every co-operative to issue a copy of its rules free of charge to any member and at a charge of not more than £1 inclusive of post and packaging to any other person. A full set of rules would also be available for inspection by the public at the Registry.

The Act could require any co-operative that amends its rules to supply the Registry and any person to whom the rules are provided with a copy of the rules with the amendments fully integrated into the

text rather than a copy of the original and all later amendments. This would increase printing costs but would make rules more accessible and easily understood by members.

It would continue to be an offence to provide a false copy of the rules.

5.4. Content of Rules

The Act would require the rules of all co-operatives to deal with the matters specified in Appendix I. It could spell out the power of a co-operative to have other lawful provisions in its rules so long as they were consistent with the Act and with Co-operative principles. It would stipulate that rules could give a co-operative the power to impose fines on members for breach of the rules.

The present provision of section 12 of IPSA allowing the registration of rules permitting advances to members in the case of horticultural, agricultural and forestry producers' societies with that object would not appear in this Part. The current limitation imposed on the right of societies to lend to their own members is hard to justify. In so far as they are involved in lending, co-operatives should be subject to the general law like any other legal person. Credit Unions would have their own special legislative regime - applicable to them in addition to and, in places, instead of, this Act. Where transactions might affect the co-operative's constitutional standing as a co-operative (e.g. an apparent loan was used to provide an excessive return on capital) the Common Law obligations of the directors to act in good faith and in pursuit of the objects of the co-operative together with the regulatory role of the Commissioner should provide adequate protection. There is no need for a special restriction on loans to members.

5.5. Alteration of Rules

The Act would provide for the amendment of the rules of a co-operative by a special resolution of a members' meeting passed by a three–quarters majority of those voting or such larger majority specified in the rules of a particular co-operative. Such an amendment would only be effective on registration and would only be registered if the Commissioner were satisfied that it did not breach Co-operative principles.

The Act would acknowledge the right of a co-operative to use its rules to make certain particular rules unalterable. This would be obligatory in the case of a Common Ownership Co-operative in respect of the prohibition on the distribution of assets to members on solvent dissolution or winding up. In the case of other co-operatives, the rule about the distribution of such a surplus would be subject to approval by the Commissioner and, if there was no such rule, actual distribution would have to be carried out under a Scheme approved by the Commissioner. This would ensure distribution on an equitable basis as close as possible to the full application of the co-operative principle of participation by distribution on the basis of patronage in recent years.

The Act would give power for provision by statutory instrument for amendment by resolution of the board in strictly limited circumstances such as a change in the share holding limit (as at present) and subject for its continued effect on approval at the next annual general meeting of the co-operative. In all such cases the amendment would have to be registered to be effective so that the public and those dealing with the co-operative could discover the true content of its rules.

The provision of section 14(2) of IPSA preventing an amendment which increases the liability of a member to contribute to the share or loan capital of the co-operative or the amount of their guarantee, unless the member affected has agreed to it in writing, would be retained.