

Published by
Jordan Publishing Limited
21 St Thomas Street
Bristol BS1 6JS

© Co-operatives UK Ltd 2014

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of any transaction, any particular method of litigation or any kind of compensation claim are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 78473 0 130

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by Hobbs the Printers Limited, Totton, Hampshire SO40 3WX

CONTENTS

List of Contributors	vii
Preface	ix
Foreword	xiii
Table of Cases	xxix
Table of Statutes	xxxv
Table of Statutory Instruments	xlvii
List of Abbreviations	li
Chapter 1	
Co-operative and Community Benefit Societies in their Legal Context	1
1.1. Introduction	1
The range of choice	1
Some key issues for co-operatives and community benefit business organisations	2
1.2. Available legal structures	3
Unincorporated business structures	3
Sole trader	3
Unregistered general partnership	4
Unincorporated friendly society	7
Co-operative and community benefit societies compared	8
Incorporated business structures	8
Registered company	8
CIC	11
Limited liability partnerships (LLPs)	12
Limited partnerships (LPs)	14
Incorporated friendly society	15
Building society	16
Co-operative and community benefit societies compared	16
Structures not mainly used for businesses	17
Unincorporated association	17
Trust	18
Charitable incorporated organisation (CIO)	21
Co-operative and community benefit societies compared	23
1.3. Protecting purpose	23
Charitable status	23
Trusts	26
Asset locks	26

	Entrenchment in constitution	27
	What is ‘entrenchment’?	27
	Entrenchment in companies	27
	Entrenchment in co-operative and community benefit societies	28
	Limited business capacity	28
	Restriction by the law establishing structure	29
	Corporate capacity generally	29
	FCA role for co-operative and community benefit societies	30
1.4.	Co-operative and community benefit society legislation in 2014	30
	Sources of law	30
	Commencement dates	32
	Territorial extent	32
Chapter 2		
Legislative History and Modern Societies		
2.1.	Legislative History	33
	The 1852 Act	33
	The 1862 Act	34
	The 1876 consolidation	35
	The 1893 consolidation	36
	Bona fide co-operatives and community benefit societies	37
	The 1965 consolidation to Credit Unions Act 1979	38
	1980 to 2000: A period of modest change	40
	Early twenty-first century reforms: Private members’ bills and secondary legislation	42
	2012 to 2014: The FCA and the 2014 consolidation and reforms	45
2.2.	Industrial and provident societies today	46
	Overall numbers	46
	What societies do: The main categories	47
	Consumer co-operative societies	47
	Worker co-operatives	47
	Housing associations, housing co-operatives and community land trusts	48
	Clubs	48
	Agricultural societies	49
	Football supporters trusts	49
	Community-owned village shops and enterprises	49
	Energy co-operatives and societies	50
	Rugby Football Union	50
	Credit unions	50
2.3.	The range of Model Rules referred to in this book	51
Chapter 3		
Registration		
3.1.	The Financial Conduct Authority	53

3.2.	The role of the FCA and the PRA since 2013	54
	The functions of the FCA	54
	The functions of the PRA	57
	The FCA's approach to mutual societies	58
3.3.	Meaning of 'registered society' and conditions for registration	59
	Meaning of registered society	59
	Conditions for registration for all societies	60
3.4.	Bona fide co-operative or community benefit society	62
	Bona fide co-operative	62
	Community benefit societies	65
3.5.	Rules and name	68
	Rules	68
	Name	70
3.6.	Application to register	72
3.7.	Fees	74
3.8.	Effect of registration and acknowledgment	77
3.9.	Recording rules	78
3.10.	Conversion from a company	79
3.11.	Conversion from a friendly society	80
3.12.	Societies registered under earlier Acts	82

Chapter 4

	The Rules of the Society	83
4.1.	Introduction	83
4.2.	Legal effect of rules	83
4.3.	Community benefit societies with restricted assets	86
	The restrictions	87
	The scope of the restrictions	88
	Permitted dealing with assets	88
	The benefit of the community – where the use or dealing is, directly or indirectly, for a purpose that is for the benefit of the community	88
	Share capital	89
	Member's death or incapacity	91
	Bankrupt members and creditors on winding up	92
	Transfers to other asset locked bodies	92
	Asset-lock enforcement by the FCA	92
4.4.	Content of the rules	94
	The society's external relations and powers	94
	Membership	94
	Decision-making and the organs of the society	95
	Shares and accounts	95
4.5.	Copies of rules	96
4.6.	Changing the rules	96
	Amendments permitted	97
	Statutory limitations	97
	Limitations developed by the courts	98
	Registration of amendments	101

Chapter 5

Membership	103
5.1. The nature of membership	103
5.2. Who may be a member?	104
Members under 18	105
Corporate bodies	105
Unincorporated associations and unregistered general partnerships	106
Joint membership	107
5.3. Admission to membership	108
5.4. Termination of membership	108
Expulsion	109
Automatic termination	111
Death or dissolution	112
Voluntary withdrawal	112
5.4. Keeping a register of members	113
5.5. The Model Rules	114
Consumer co-operatives: 12th Edition Model Rules (amended 2012) sponsored by Co-operatives UK	114
Admission to membership	114
Expulsion	114
Automatic termination	114
Worker co-operatives: Co-operatives UK Worker Co-operative Model	115
Admission to membership	115
Expulsion	115
Automatic termination	115
Society for the benefit of the community – sponsored by Co-operatives UK	115
Admission to membership	115
Expulsion	116
National Housing Federation – Model Rules 2011 (version 2)	116
Admission to membership	116
Expulsion	116
Automatic termination	117
Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	117
Admission to membership	117
Expulsion	117
Automatic termination	118
Social Clubs – Model Rules for a Working Men’s Club – sponsored by Clubs and Institutes Union	118
Admission to membership	118
Expulsion	118
Automatic termination	118

Chapter 6	
Meetings	121
6.1. Introduction	121
What is a meeting?	121
Unanimous Informal agreement of members	122
Importance of society rules and effect of non-compliance	122
Ballots and referenda of members	123
Proxies and postal votes	124
Delegate systems, ‘serial’ meetings and direct ballots of members	124
6.2. Provisions of the Act as to meetings	125
CCBSA 2014: General provisions	125
CCBSA 2014: Particular meeting provisions	126
CCBSA 2014 reorganisations	126
Winding up under company procedures	126
CVAs, administration procedure, and schemes of arrangement	127
Ratification and relief from director liability	127
FCA power to call meeting	127
Obligatory AGM for accounts and auditor?	128
6.3. Rules as to meetings: Some general points	128
The need for diversity	128
Some common provisions	129
Notice	130
Quorum	131
The chair	131
Procedure	131
Voting	132
Adjournment	132
6.4. The Model Rules	132
Consumer Co-operatives – Co-operatives UK 12th Edition Model Rules (amended 2012)	132
Worker co-operatives model rules – Co-operatives UK	133
Society for the benefit of the community – Co-operatives UK	134
National Housing Federation – Model Rules 2011 (version 2)	136
Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	137
Social Clubs – Model Rules for a Working Men’s Club – sponsored by Clubs and Institutes Union	138
Chapter 7	
Directors and Officials	139
7.1. The role of a society’s committee or board	139
7.2. Legal base and division of powers	142
Legal base	142

	Division of powers: board and general meeting	143
7.3.	Appointment, election and removal of directors	145
	CCBSA 2014 and society rules	145
7.4.	General duties of directors and officials	146
	Legal basis of duties	146
	Duty to obey the law and comply with society rules	147
	Duty to use powers only for the purposes for which they were conferred	147
	Duty to act in the society's best interests	148
	Duty to exercise independent judgement	150
	Duty of care, skill and diligence	150
	Conflicts of interest	153
	Misuse of the society's information or property and secret profits	155
	Confidentiality	157
	Enforcing the duties	157
7.5.	Fraudulent and wrongful trading	160
	Application to co-operative and community benefit societies	160
	Fraudulent trading	160
	Wrongful trading	161
7.6.	Disqualification of directors	163
	Grounds for disqualification	163
	Effects of disqualification	165
7.7.	Corporate governance best practice: The Co-operatives UK codes	166
7.8.	The Model Rules	170
	Consumer Co-operatives – Co-operatives UK 12th Edition Model Rules	170
	Worker co-operatives: Co-operatives UK Worker Co-operative Model Rules	172
	Society for the benefit of the community – sponsored by Co-operatives UK	174
	National Housing Federation – Model Rules 2011 (version 2)	174
	Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	174
	Social Clubs – Model Rules for a Working Men's Club – sponsored by Clubs and Institutes Union	175
Chapter 8		
Capital and Surplus Distribution		
8.1.	Nature of capital	177
8.2.	Share capital	178
	Types of share	179
	Withdrawable shares	179
	Transferable shares	182
	Investor shares in co-operatives	182

	Maximum limit on shareholding	183
	Joint shareholdings	183
	Minimum limit	184
	Forfeiture or cancellation of shares	184
	Lien over shares and set off	184
8.3.	Individual shareholders	185
	Third party debt orders	185
	Forgeries	186
	Limited liability	186
	Nomination	187
	Nature of nominations	187
	Form of nominations	187
	Signature	187
	Custody of nomination	187
	Register of nominations	187
	Restrictions on nominees	188
	Limitation on effect of nomination	188
	Disposal of nominated amount	188
	Nominees under sixteen	188
	Revocation and variation	189
	Rules	189
	Payments on death	189
	Joint membership in England	190
	Joint membership in Scotland	191
	Payment on mental incapacity or bankruptcy	191
	The decision to pay	192
	Receipt	192
	Bankruptcy	192
8.4.	Loan capital	192
	Power to borrow	192
	Bonds and other debt instruments	194
	Security for debt capital and the registration of charges	195
	Registration or ‘recording’ of charges	195
	Floating charges in England	197
	Floating charges in Scotland	198
	Rights of lenders and holders of debt security	198
8.5.	Deposit taking	199
8.6.	Surplus distribution	199
	Co-operatives	199
	Community benefit societies	200
8.7.	Financial services regulation and industrial and provident society capital	201
	The general framework	201
	Scope	201
	The regulatory regime in outline	201
	Regulation of societies raising capital	202
	Deposit taking	202
	Prospectus requirements	203

	Financial promotion	205
	Dealing in and arranging investments	206
	Collective investment vehicles (UCITS)	206
8.8.	Money laundering	207
8.9.	The Model Rules	207
	Consumer Co-operatives Co-operatives UK 12th Edition Model Rules (amended 2012)	207
	Worker co-operatives: Co-operatives UK Worker Co-operative Model Rules	208
	Society for the benefit of the community – sponsored by Co-operatives UK	209
	National Housing Federation – Model Rules 2011 (version 2)	210
	Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	210
	Social Clubs – Model Rules for a Working Men’s Club – sponsored by Clubs and Institutes Union	211
	Some examples of innovative approaches to capital	211
	Renewable Energy Societies (Baywind Version 2)	211
	Renewable energy societies: Sharenergy	212
	Community ownership Plunkett Version 2	212
 Chapter 9		
Accounts, Audit and FCA Powers		215
9.1.	Accounts	215
	Outline	215
	The general requirements	216
	Group accounts and subsidiaries	217
	Defining a subsidiary	217
	The group accounts requirement	219
	The content of the group accounts	220
	Publication and availability of accounts	221
	Inspection of accounts	223
	Corporate governance and financial information	224
	Accounting and audit offences under CCBSA 2014	225
9.2.	Audit	226
	Rationale and outline	226
	Opting out of an audit	227
	The financial criteria	228
	Excluded societies	228
	The decision	229
	Appointment and removal of an auditor	230
	The audit	232
	Accountant’s report under s 85 CCBSA 2014	233
9.3.	The FCA’s powers under company law	234
	Legal basis of powers	234
	Appointment and direction of inspectors	235

	Investigation under s 447 of the Companies Act 1985	237
	Powers to enter and remain on premises	239
9.4.	The FCA's powers under CCBSA	240
	Inspection of documents and accounts	240
	Accountant's inspection of books	241
	Inspection of society's affairs and special meetings	241
	Requiring an audit	242
Chapter 10		
Disputes and Proceedings		
10.1.	Internal disputes: Arbitration	243
	Disputes between a society and its members	243
	The parties	243
	The disputes to which the Act applies	244
	Who decides?	245
	Settlement under the rules	246
	Arbitration and mediation in the Model Rules	246
	Consumer co-operatives: 12th Edition Model Rules (amended 2012) sponsored by Co-operatives UK	246
	Worker co-operatives: Co-operatives UK Worker Co-operative Model	246
	Society for the benefit of the community – sponsored by Co-operatives UK	247
	National Housing Federation – Model Rules 2011 (version 2)	247
	Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	247
	Social Clubs – Model Rules for a Working Men's Club – sponsored by Clubs and Institutes Union (CIU)	247
	Conduct of arbitration	248
	Settlement in the courts	249
	Statement of case	250
	Disputes between members	250
10.2.	External disputes	251
	Criminal offences by the society – general rules	251
	Offences under CCBSA 2014	251
	Punishing fraud or misappropriation	254
	Institution of proceedings	254
	Civil actions	255
10.3.	Security and accounting by officers	255
Chapter 11		
A Society's Contracts and Investments		
11.1.	Introduction	257
11.2.	Pre-incorporation contracts	257
	Contracts made before 20 October 2003	258
	Contracts made on or after 20 October 2003	259

11.3.	Contractual formalities	261
	The position in England and Wales	261
	The position in Scotland	263
11.4.	Objects, powers and the society's capacity	264
	Summary of key issues	264
	Drafting the objects rule and the society's powers	264
	Capacity at common law	266
	Statutory protection from lack of capacity: the general rules	269
	Statutory protection from lack of capacity: charitable societies	271
11.5.	The powers of agents of the society	273
	Common law agency rules	273
	Ratification by the society of an agent's unauthorised act	274
	Statutory protection and apparent authority: protecting outsiders	275
	Statutory protection: charitable societies	278
	Transactions between a society and its own directors or connected persons	278
	The provision	279
	Remedies	279
	Remedies and 'innocent' parties	280
	Who is covered: director/committee members, connected parties and associated companies	281
	Directors' duties not to breach society rules: a summary	283
11.6.	Special statutory rules about loans and investments by societies	284
	Proxy voting by societies	284
	Advances to members	285
	Discharge of mortgages	285
11.7.	The Model Rules	286
	Consumer Co-operatives CUK 12th Edition Model Rules (amended 2012)	286
	Worker co-operatives: Co-operatives UK Worker Co-operative Model Rules	287
	Society for the benefit of the community – sponsored by Co-operatives UK	287
	National Housing Federation – Model Rules 2011 (version 2)	287
	Agricultural Co-operative (IPS) – Agency Model Rules sponsored by Co-operatives UK & Scottish Agricultural Organisation Society	288
	Social Clubs – Model Rules for a Working Men's Club – sponsored by Clubs and Institutes Union	288
Chapter 12		
The Transformation and Dissolution of Societies: Solvent and Insolvent		291
12.1.	Introduction	291
12.2.	Resolutions and procedures	292
	CCBSA special resolutions	292

	Companies Act 2006 special resolution	294
	Winding-up petitions	295
12.3.	Amalgamation or transfer of engagements between societies	296
	Amalgamations	296
	Procedure	296
	Wording of the resolution	298
	Forms	299
	Effective date of amalgamation	299
	Accounts and annual returns	299
	Rights of creditors	300
	Transfer of engagements	300
	Procedure	300
	Wording of resolution by the transferor society	304
	Forms	305
	Effective date of transfer	305
	Accounts and annual returns	305
	Rights of creditors	305
	Certificate of transfer	305
12.4.	Conversion of a society into a company, amalgamation with/ transfer of engagements into a company	305
	Procedure	305
	Forms	306
	Rights of creditors	307
12.5.	Solvent dissolution	307
	Instrument of dissolution	307
	Members' voluntary winding up	309
12.6.	Distribution of surplus on dissolution	312
	The general law	312
	The Model Rules	315
	12th Edition Co-operatives UK Model Rules (2012) – Consumer Co-operative ('CUK Consumer Model')	315
	Worker Co-operatives- Co-operatives UK Worker Co-operative Model Rules 2011 v.1	316
	Co-operatives UK Society for the Benefit of the Community Model Rules 2011 v1 ('CUK Bencom Model')	317
	National Housing Federation Model Rules 2011 Version 2	317
	Co-operatives UK and Scottish Agricultural Organisation Society Agricultural Co-operative – Agency Model Rules 2013 v1	317
	Working Men's Club and Institute Union Ltd Model Rules (consulted 2014)	318
12.7.	Cancellation or suspension of registration	318
	Grounds for cancellation of registration	318
	Condition A: Society requests cancellation	318
	Condition B: Registration by fraud or mistake, too few members, or 'ceasing to exist'	318

	Condition C: Illegal purpose or wilful violation of CCBSA 2014	320
	Condition D: Failure to meet co-operative or community benefit registration requirement	320
	Condition E: Agricultural, horticultural and forestry lending societies no longer qualifying as such	321
	Procedure: General	321
	Condition D: Special procedures	322
	Effect of cancellation of registration	323
	Suspension of registration	324
12.8.	Insolvent societies	325
	Available procedures: The history	325
	Receivership and administration procedure	326
	Key adaptations of administration provisions for societies	328
	Creditors' voluntary arrangements and schemes of arrangement	330
	Liquidation and dissolution	331
Chapter 13		
Credit Unions		333
13.1.	Legislation and regulation	333
	Credit union legislation	333
	The legislation listed	333
	Primary legislation	333
	Secondary legislation	334
	European legislation	335
	Registration under CCBSA 2014 and Part 4A FSMA permission	335
	Version 1 and version 2 credit unions	336
	Liberalisation of credit union law	336
13.2.	Registration as a credit union	337
	Use of name	337
	Basic requirements for registration	337
13.3.	The definitive features of credit unions	339
	Objects	339
	The common bond	339
	No subsidiaries	341
13.4.	Credit union rules	341
	Content of rules and examples from Model Rules	341
	The effect and status of credit union rules	346
13.5.	Membership	346
	Minimum number of members	346
	Minimum age for membership	346
	Common bond membership requirement	346
	Corporate members	347
13.6.	Credit union governance and the approved person and systems and control regimes	348
	Credit union meetings and voting	348

	Credit union committee or board: appointment, removal powers and regulatory issues	349
	Credit union accounts, audit, and reporting	351
13.7.	Shares and deposits	351
	Maximum limit on share accounts and junior saver deposits	351
	Value of shares	351
	Withdrawal and attachment of shares	352
	Deposits	353
	Classes of credit union share	353
	Non-deferred shares	353
	Deferred shares	354
	Interest-bearing shares	355
13.8.	Borrowing by credit unions	355
13.9.	Loans, land, other investments and other services	356
	Loans: the general rules	356
	Loan limits	357
	Land and other investments	358
	Ancillary services	358
13.10.	Profits: computation and application	359
13.11.	Insurance, guarantee funds and the Financial Services Compensation Scheme	360
13.12.	Anti-Money Laundering (AML) Rules	361
13.13.	Powers of the FCA and PRA	362
13.14.	Transformation and dissolution of credit unions	363
	Transfers of engagements, amalgamations and conversions involving credit unions	363
	Winding up, cancellation of registration, and dissolution of credit unions	363
	Surplus assets after solvent dissolution	364
Appendix		
Useful Contacts		365
	Government Bodies	365
	General Federal and Promotional Bodies	366
	Sectoral Bodies	367
Index		373