

Chapter 3

Society registration

3.4 Rules of the Society

3.4.1

G A society must have rules which include:

- (1) the society's name;
- (2) the objects of the society;
- (3) the place of the society's registered office to which all communications and notices to the society may be addressed;
- (4) the terms of admission of the members, including any society or company investing funds in the society under the provisions of the Act;
- (5) the method of holding meetings, the scale and right of voting, and the method of making, altering or rescinding rules;
- (6) the appointment and removal of a Committee of Management (by whatever name, e.g. a 'board') and of managers or other officers, and their respective powers and remuneration;
- (7) the maximum amount of interest in the shares of the society which may be held by any member otherwise than by virtue of Section 24 of the Act;
- (8) whether the society may contract loans or receive monies on deposit subject to the provisions of this Act from members or others, and if so under what conditions, under what security, and to what limits of amount;
- (9) whether any or all shares are transferable, and provision for the form of transfer and registration of shares, and for the consent of the committee to transfer or registration;
- (10) whether any or all shares are withdrawable, and provision for the method of withdrawal and for payment of the balance due on them on withdrawing from the society;
- (11) provision for the audit of accounts in accordance with Part 7 of the Act;
- (12) whether members may withdraw from the society and if so how, and provision for the claims of the representatives of deceased members and of the trustees of the property of bankrupt members (or, in Scotland, members whose estates have been sequestrated), and for the payment of nominees;

- (13) the way in which the society’s profits are to be applied;
- (14) if the society is to have a common seal, provision for its custody and use;
- (15) whether any part of the society’s funds may be invested, and if so by what authority and in what way.

3.4.2 G Societies can include additional rules providing those rules are not contrary to the Act.

Objects

3.4.3 G Societies must have an ‘objects’ rule. The ‘objects’ describe and identify the purpose for which the society has been set up. Objects rules can be broad, but not so vague that they are meaningless in practice. For example, an object for a community benefit society of ‘to benefit the community’ is insufficient.

Entrenchment/fundamental rules

3.4.4 G Societies can decide that specific rules are ‘fundamental’ – requiring a higher threshold for change. They can also seek to entrench rules to try and prevent those rules from amendment in the future. There is however no legislative mechanism to give effect to the entrenchment of rules.

3.4.5 G A society can still deem certain clauses to be fundamental, or put in higher thresholds for rule amendments to particular clauses, as long as such amendments are not contrary to the legislation. For instance, any attempts at entrenchment cannot change statutory thresholds (see ■ RFCCBS 3.4.15 onwards for further details).

3.4.6 G Before we register a rule amendment, we will check if that clause is fundamental or subject to a higher voting threshold and seek to give it that effect.

3.4.7 G We are limited in our ability to do this. The courts have decided that even fundamental clauses can be changed under certain circumstances, e.g. if all members unanimously approve the rule amendment.

Changes to statutory thresholds

3.4.8 G The Act gives societies the ability to:

- (1) transfer engagements to another society or a company;
- (2) convert to a company;
- (2) amalgamate with other societies or companies.

3.4.9 **G** For each of these processes, the legislation states the voting thresholds which have to be met.

3.4.10 **G** A society’s rules cannot change these statutory thresholds. If, for example, the legislation says a society may do X if X% of members vote in favour, then the rules of a society cannot change these requirements. So a society cannot set out in its rules ‘absolute minimums’ on numbers of members voting, or introduce additional voting thresholds.

3.4.11 **G** Similarly, if the legislation says a society can do something if certain criteria are met, then no rule can alter this.

Statutory asset locks

3.4.12 **G** Statutory asset locks put a legal restriction on how a society can use its assets. These asset locks are only available to community benefit societies other than regulated housing associations or charities. This is because regulated housing associations and charities already have separate statutory asset locks.

3.4.13 **G** If a society has a statutory asset lock, it cannot use or deal with its assets unless it is for the benefit of the community or for one of the purposes given in ■ RFCCBS 3.4.15 below.

3.4.14 **G** Co-operative societies can put a non-statutory asset lock in their rules, but it does not have the same effect as a statutory asset lock.

3.4.15 **G** If a community benefit society wants to put in place a statutory asset lock, their rules must include the following wording:

[**Note:** Regulation 2, Schedule 1, The Community Benefit Societies (Restriction on Use of Assets) Regulations 2006]

Restriction on use	
Pursuant to regulations made under section 1 of the Co-operatives and Community Benefit Societies Act 2003:	
(1)	All of the society’s assets are subject to a restriction on their use.
(2)	The society must not use or deal with its assets except—
(a)	where the use or dealing is, directly or indirectly, for a purpose that is for the benefit of the community;
(b)	to pay a member of the society the value of his withdrawable share capital or interest on such capital;
(c)	to make a payment pursuant to sections 36 (payments in respect of persons lacking capacity), 37 (nomination by members of entitlement to property in society on member’s death), 40 (death of a member: distribution of property not exceeding £5,000) of the

Restriction on use	
	Co-operative and Community Benefit Societies Act 2014;
(d)	to make a payment in accordance with the rules of the society to trustees of the property of bankrupt members or, in Scotland, members whose estate has been sequestrated;
(e)	where the society is to be dissolved or wound up, to pay its creditors; or
(f)	to transfer its assets to one or more of the following—
	(i) a prescribed community benefit society whose assets have been made subject to a restriction on use and which will apply that restriction to any assets so transferred;
	(ii) a community interest company;
	(iii) a registered social landlord which has a restriction on the use of its assets which is equivalent to a restriction on use and which will apply that restriction to any assets so transferred;
	(iv) a charity (including a community benefit society that is a charity); or
	(v) a body, established in Northern Ireland or a State other than the United Kingdom, that is equivalent to any of those persons.
(3)	Any expression used in this rule which is defined for the purposes of regulations made under section 1 of the 2003 Act shall have the meaning given by those regulations.

3.4.16

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Societies can include this wording in their rules at the time the society is registered, or the wording can be added at any point in the society's lifetime by special resolution. However once included, the wording cannot be removed. The asset lock will apply for the rest of the society's life.

[Note: Clause 4, *ibid.*]