

Chapter 8

Obligations & Process



8.8 Transfers of engagement

8.8.1 **G** A society can pass a special resolution to transfer its engagements to any other society or company that agrees to fulfil them. The decision to transfer engagements to another society or company must be made in accordance with the society’s rules. For instance, a community benefit society with an asset lock cannot transfer its engagements to an entity without a statutory asset lock. The resolution can also transfer all or part of the society’s property to the society or company receiving the engagements without any other legal process such as a conveyance. Transferring engagements does not prejudice any right of a creditor of either of the societies or companies involved.

8.8.2 **G** After a transfer has been made, the transferring society still exists. However, if it has transferred both its engagements and all its property, it usually applies to cancel its registration. The society can only be deregistered after it has filed a certificate under section 126 of the Act with us. This confirms that all the society’s property has been transferred to those entitled to it.

Special resolution

8.8.3 **G** The wording of the resolution must explain the position of the members of the transferring society and their stake in the society once transferred. Here is specimen wording for this:

‘This meeting of members of the [enter name of transferring society] hereby resolves to transfer the whole of the stock, property and other assets and all engagements of the society to the [enter name of accepting society/company] in consideration of the [enter name of accepting society/company] issuing to each member of the [enter name of transferring society] paid up shares equal to the amount standing to the credit of each member in the share ledgers of the [enter name of transferring society] on the date when the transfer of engagements becomes effective.’

8.8.4 **G** If the society has planned a date for the resolution to take effect, then the resolution must be registered on or before that date. The resolution should usually avoid naming that date because we cannot guarantee we can register it in time.

8.8.5 **G** The special resolution for transferring engagements between societies must be passed:

- (1) at a first general meeting by two-thirds of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution; and
- (2) at a second general meeting:
 - (a) by over half of the members who actually vote in person or by proxy at that meeting;
 - (b) held between fourteen days and one month from the first meeting.

8.8.6 G The special resolution for transferring engagements from a society to a company must be passed:

- (1) at a first general meeting by:
 - (a) three-fourths of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
- (2) at a second general meeting by over half of the members who actually vote in person or by proxy at that meeting.

8.8.7 G A declaration by the chair of either meeting that the resolution has been carried is conclusive evidence of that fact.

8.8.8 G Within 14 days from the date that the special resolution is confirmed at the second meeting, the society must send us a copy for registration. This copy must be signed by the second meeting chair and countersigned by the society secretary.

8.8.9 G The resolution only takes effect when we register it.

8.8.10 G The accepting society or company must also confirm that it undertakes to fulfil the engagements being transferred. The accepting society or company will need to pass a resolution to do that. The resolution should be made no later than the date that the confirming resolution is passed by the transferring society. Exactly how this is done depends on what is said in the rules of the accepting society or articles of the accepting company.

8.8.11 G If the rules of the accepting society or articles of the accepting company provide that its board has the power to accept engagements by passing a board resolution, then the resolution should be passed by its board. Some society rules may require that this be done by members at a members' meeting.

Registering the transfer

- 8.8.12** **G** To register a transfer of engagements we need:
- (1) two clean copies of the resolution containing only the wording of the resolution as approved by the members. Each copy must be headed with the name and registration number of the society, and signed by the society secretary and the chair of the second meeting that approved the resolution;
 - (2) two signed copies of a resolution of the accepting society's or company's board or general meeting (depending on which is responsible under its rules) confirming that it undertakes to fulfil the engagements;
 - (3) transfer form (available at <https://www.fca.org.uk/your-fca/documents/forms/transfer-of-engagements-form>) signed by the secretary of each society/company;
 - (4) a statutory declaration confirming that the resolutions were passed in line with legislative requirements and society rules.
- 8.8.13** **G** For any regulated housing association, or any society on the Scottish Charity Register, the relevant regulator's consent must also be provided for the transfer of engagements to proceed. If the application is complete and meets all applicable statutory requirements, we will register the special resolution and send a formal acknowledgement that it has been registered.
- 8.8.14** **G** We will also send a final form (a section 126 certificate) with the acknowledgement of registration. This must be completed and returned to us once all the engagements and property have been transferred to the accepting society or company. [**Note:** <https://www.fca.org.uk/your-fca/documents/forms/certificate-under-section-59-industrial-and-provident-societies-act-1965-form>]
- 8.8.15** **G** When we have received this, we will cancel the transferring society's registration and issue a certificate confirming this.