

**Law Commission – Review of Co-operative and Community Benefit Societies Act 2014 –
Consultation Paper**

Response by Dr Alisdair MacPherson, Professor Donna McKenzie Skene and Dr Euan West

This response was prepared by Dr Alisdair MacPherson, Professor Donna McKenzie Skene and Dr Euan West. We are all members of the University of Aberdeen’s Centre for Scots Law.

General Comments:

It would have been desirable for the Scottish Law Commission to have been involved in this project, given the existence of Scottish elements and the applicability of legislation to Scotland as well as to England and Wales.

As a general observation, we think that it is valuable to raise awareness among stakeholders and the public more generally about what co-operative and community benefit societies are and what they do, as well as about how such entities differ from, e.g., community interest companies and charities. The reforms proposed are likely to have a positive impact, especially if they are suitably publicised.

Consultation Question 1.

We provisionally propose that there should be a new statutory definition of a cooperative. Do you agree in principle (subject to the formulation of a suitable definition)?

Yes, we agree in principle that there should be a new statutory definition of a co-operative for the sake of clarity and certainty for funders and the public. In particular, a new statutory definition would clarify what is distinctive about a co-operative.

Consultation Question 2.

We provisionally propose a definition of a co-operative with the following ingredients.

A co-operative is:

- (1) A society for carrying on any business;**
- (2) Mainly for the benefit of its members...**
- (3) ...through transactions with its members;**
- (4) Membership is voluntary;**
- (5) Membership is open to all;**
- (6) One vote per member.**

Do you agree with these elements? Are there any that you do not agree with?

In particular, do you think it accurate to describe the membership of any cooperative as “open to all”, and if so why?

We agree that the definition should include elements (1)–(4) but we are more doubtful as to whether elements (5) and (6) should be included as well. Arguably, element (5) is better viewed as a common feature of co-operatives rather than as part of the definition of a co-operative. The problem may be

partly one of phrasing. Perhaps, instead of defining a co-operative as being open to all, a co-operative would be better defined as being open to the intended constituency.

Element (6) of the proposed definition is overly restrictive. Perhaps it is possible to have some element of the definition which captures the democratic spirit of a co-operative without defining a co-operative in terms of one vote per member.

If elements (5) and (6) are to be included in a definition of a co-operative, perhaps if a body satisfied elements (1)-(4) but did not satisfy elements (5) and (6) as currently phrased, the registrar could have discretion to recognise that body as a co-operative and there could be a right to appeal from a decision that such a body was not a co-operative.

Consultation Question 3.

We provisionally propose that any new statutory definition of a co-operative should apply to all co-operatives and not only those registering after the introduction of the new definition. Do you agree?

We disagree that any new statutory definition of a co-operative should apply to all co-operatives. A new statutory definition ought to apply only to those registering after the introduction of the new definition. Retrospective legislation is generally undesirable; the expectations of those who have hitherto relied on the older regulatory regime ought to be protected. Applying a new definition of co-operative to entities hitherto recognised as such may lead to unnecessary inconvenience resulting from, e.g., changes that those entities may have to effect to voting structures.

If the approach proposed in the consultation paper is adopted (i.e. with retrospective effect), it may strengthen the case for excluding (5) and (6) from the definition noted above, as presumably all current co-operatives will comply with (1)-(4), even if they do not comply with the proposed criteria in (5) and (6).

If, as per our suggestion above, it is a matter of discretion as to whether the definition of a co-operative is met if (5) and/or (6) are not complied with, this should only apply to new registrations, with existing co-operatives not having to comply with these.

Consultation Question 4.

We provisionally propose a transition period of 18 months for existing cooperatives to comply with any new definition. Do you agree?

If contrary to our response to the previous question, this approach is taken, 18 months is a reasonable transition period.

Consultation Question 5.

We provisionally propose that there should be a new statutory definition of a community benefit society. Do you agree in principle (subject to the formulation of a suitable definition)?

Yes, as above.

Consultation Question 6.

We provisionally propose the following ingredients for a new statutory definition of a community benefit society.

A community benefit society is:

(1) A society for carrying on any business;

(2) For the sole benefit of the community;

(3) Membership is voluntary;

(4) Membership is open to all;

(5) One vote per member.

Do you agree with these elements? Are there any that you do not agree with?

In particular, do you think it accurate to describe the membership of any community benefit society as “open to all”, and if so why?

As with the definition of a co-operative, we are satisfied with most elements of the proposed definition of a community benefit society, but we have reservations about elements (4) and (5), again for the reasons given in answer to consultation question 2 (above).

Consultation Question 7.

We provisionally propose that any new statutory definition of a community benefit society should apply to all community benefit societies and not only those registering after the introduction of the new definition. Do you agree?

We do not think that a new statutory definition of a community benefit society should apply to community benefit societies registered before the introduction of a new definition. (See above our answer to consultation question 3.)

Consultation Question 8.

We provisionally propose a transition period of 18 months for existing community benefit societies to comply with any new definition. Do you agree?

If, contrary to our response to the previous question, this approach is taken, 18 months is a reasonable transition period (see above our answer to consultation question 4).

Consultation Question 9.

We provisionally propose that charitable community benefit societies should cease to be exempt charities, so that they will be required to register with the Charity Commission. Do you agree?

We agree. It would be beneficial to align the approach in England and Wales with that in Scotland. We are not aware of any issues created by this approach in Scotland.

Consultation Question 10.

Do you think that the lead regulator for charitable community benefit societies should be the Charity Commission or the FCA?

While we can understand the suggestion that the legal regulator ought to be the FCA, the Charity Commission may be the more appropriate regulator given that charitable status may be considered to involve a higher level of regulation.

Consultation Question 11.

We provisionally propose that the CCBS Act should be amended to state explicitly as follows.

(1) Society shares can be withdrawable or non-withdrawable, and transferable or non-transferable.

(2) It is for societies by their rules to determine which of their shares are withdrawable or non-withdrawable, and transferable or non-transferable.

Do you agree?

While the position appears to be clear already, the amendments proposed here would have the benefit of putting that position beyond doubt.

Consultation Question 12.

We provisionally propose that the CCBS Act should provide a definition of a withdrawable share. Do you agree?

Yes, this proposal would be beneficial if it provides clarity.

Consultation Question 13.

We provisionally propose the following ingredients of a definition of a withdrawable share.

(1) A withdrawable share can be cashed in, such that a society pays the value of the share, to the holder of the share, in return for the share being cancelled.

(2) A withdrawable share can be withdrawn at the option of the member or the society, depending on the society's rules.

Do you agree with each of these elements?

This appears to be a reasonable proposal.

Consultation Question 14.

We provisionally propose that the CCBS Act should set out the minimum conditions for withdrawing shares. Do you agree?

Yes, we agree.

Consultation Question 15.

We provisionally propose that the CCBS Act should provide that society rules can set extra conditions for withdrawing shares. Do you agree?

Yes, we agree.

Consultation Question 16.

We provisionally propose that the minimum conditions for withdrawing shares should be as follows.

A society should pay for withdrawable shares only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree?

Yes, we agree.

In particular, we think that a society considering requests for withdrawal should be able to pay a proportion of the sought withdrawals, rather than all or nothing, if that is what it can afford. Do you agree?

Yes, we agree in principle. However, some consideration should be given to what is meant here by proportionality. The meaning of this term should produce fairness amongst members seeking withdrawal.

Consultation Question 17.

We provisionally propose that the CCBS Act should provide a definition of a transferable share. Do you agree?

It can be questioned whether such a definition is necessary, given that the meaning of the term 'transferable' is clear.

Consultation Question 18.

We provisionally propose that a transferable share be defined as one that can be passed from one person to another such that the transferee holds the share in place of the transferor. Do you agree?

If a definition is to be given, the proposed wording seems satisfactory.

Consultation Question 19.

We provisionally conclude that the form of transfer should be left to the sector to determine rather than prescribed in legislation. Do you agree? If you do not agree, please detail what form you consider should be prescribed.

We can see merit in a default form, albeit that the modern approach is generally not to use default forms. The sector could perhaps develop a standard form, rather than it being prescribed.

More generally, it can be noted that in English law, the rules regarding transfer are more flexible than in Scotland, where registration is required to transfer ownership (and there is no concept of equitable ownership). It can be questioned whether a form would be necessary for this to happen and, if not, there needs to be a clear alternative to minimise uncertainty.

Consultation Question 20.

As for transferable shares, we provisionally propose that the CCBS Act should be amended to state as follows.

- (1) The consent of officers of a society is needed to transfer shares.**
- (2) Officers can in their discretion refuse a transfer of shares.**
- (3) Their discretion must be exercised consistently with their duties as officers.**
- (4) The rules of a society can set further conditions on the transfer of shares.**
- (5) The rules of a society must provide for the form of any transfer of shares.**

Do you agree with each proposition?

Some consideration should be given to the remedy or remedies available if a transfer is unreasonably refused. Perhaps rule (3) covers unreasonable behaviour but the availability of remedies for non-compliance with that rule should be considered.

Consultation Question 21.

We provisionally propose that the CCBS Act should state as follows.

- (1) A society can have different classes of membership with different rights.**
- (2) A society can issue different classes of shares with different rights.**
- (3) A society can issue shares to non-user investors.**

Do you agree?

Yes, subject to the points made above about whether the system should be 'one member one vote'.

Consultation Question 22.

We provisionally propose, in the context of changes to class rights of shares or members, that the CCBS Act should provide as follows.

(1) Class rights should only be changed if the change is approved by at least 75% of affected shareholders or members.

(2) Society rules could set a higher threshold.

(3) If shares are changed from non-withdrawable to withdrawable, that should require a solvency statement by the officers of the society, confirmed by an auditor.

Do you agree with each element?

Each element seems reasonable.

Consultation Question 23.

We think that there should be some protection for shareholders who still object to any change in their class rights. Which of the following protections do you think is suitable? You can select more than one, or indicate your preferred option.

(1) A complainant could petition the court to wind up a society on the basis that it would be just and equitable to do so.

(2) A complainant could petition the court on the basis that any change to class rights would be unfairly prejudicial.

(3) A society would have to buy out an objecting shareholder.

(4) Any change would not take effect against a shareholder who objects in writing.

If you think that there should be a different protection, please explain.

We agree that having alignment with company law here is desirable. It is appropriate to have different options to cater for different circumstances.

We consider, however, that option (3) should be a remedy for unfair prejudice, rather than a separate protection in its own right. In the absence of unfair prejudice, it should not be possible to compel a buyout of an objecting shareholder. The organisation may not be in a financial position to do so etc. Protection (4) would render decision-making and actions regarding changing class rights too difficult.

Consultation Question 24.

We provisionally propose that, when a society seeks to write down its shares, that should require a solvency statement by officers of the society, and a special resolution. Do you agree?

Yes.

We provisionally propose that the special resolution should require the approval of at least 75% of voters at a general meeting. Do you agree?

Yes.

Consultation Question 25.

We provisionally propose that there should be the following restrictions on interest rates paid by co-operatives on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree?

We agree that there should be restrictions on interest rates paid by co-operatives on investments, deposits and loans, but the vague nature of proposed restrictions (1) and (2) may give rise to disputes.

In particular, we think that a co-operative considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree?

Yes.

Consultation Question 26.

We provisionally propose that there should be the following restrictions on rates of interest paid by community benefit societies on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree?

As with our answer to question 25, we agree that there should be restrictions on interest rates paid by community benefit societies on investments, deposits and loans, but the vague nature of proposed restrictions (1) and (2) may give rise to disputes.

In particular, we think that a community benefit society considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree?

Yes.

Consultation Question 27.

Do you think that societies need a new type of share? If so, what would be its characteristics?

Based on the consultation paper, and in the absence of compelling evidence to the contrary, it seems doubtful that this is required.

Consultation Question 28.

We provisionally propose that an officer be defined in section 149 of the CCBS Act as including a director. Do you agree?

Yes, we agree that this definition would have the benefit of clarity. The terminology of ‘directors’ is perhaps inapt in this context, given that these entities are not companies, but we accept that the term directors may be used in practice and that this should therefore be reflected in the legislation.

Consultation Question 29.

We provisionally propose that officers of a society should be listed on the Mutuels Public Register. Do you agree?

Yes.

Consultation Question 30.

We provisionally propose that a society should notify the registrar of any changes concerning its officers within 14 days. Do you agree?

Yes, this would be consistent with the law’s treatment of companies.

Consultation Question 31.

We provisionally propose that a society’s register of members and officers, available for inspection, should include their name and a contact address. Do you agree?

Yes, we agree.

Consultation Question 32.

We provisionally propose that the contact address for members and officers might be an electronic address. Do you agree?

Yes.

Consultation Question 33.

We provisionally propose that any contact address for members and officers which is a postal address need not be the residential address. Do you agree?

Yes.

Consultation Question 34.

We provisionally propose that the residential address of an officer should be notified to the FCA. This would be confidential, but the FCA may use it to make contact with the officer. Do you agree?

Yes. We also consider that there should be an obligation to provide relevant information and any changes to it within a reasonable time (e.g. 14, 21 or 28 days). Here, consistency with company law may be desirable.

Informing the FCA of an officer's address may assist the FCA in addressing wrongdoing and misconduct.

Consultation Question 35.

We provisionally propose that duties owed by officers to their society should be addressed by the CCBS Act. Do you agree?

Yes.

Consultation Question 36.

We provisionally propose that the CCBS Act should adopt the director duties set out in the Companies Act 2006. Do you agree?

We agree that there should be an alignment of duties as between these statutes but there should be amended terminology under the CCBS Act. It also needs to be ensured that all of the duties are suitable for these entities and that no additional ones are required. Even if the duties set out in the CCBS Act are ultimately the same as those set out in the Companies Act 2006, it may be preferable to repeat those duties in the CCBS Act so that the applicability of the duties can be determined quickly, and without any need to cross-refer to the 2006 Act.

Consultation Question 37.

We provisionally propose that the CCBS Act should follow company law and state that the consequences of a breach of duty by an officer would be those provided by common law or equity. Do you agree?

Yes.

We do not propose the creation of any statutory derivative claim, such that a member can sue an officer in the name of the society. Do you agree?

We can see arguments on both sides. There would be value in alignment with company law, but it is possible that a statutory derivative claim would be unnecessary for these entities. A derivative claim may be more valuable if a model other than 'one member one vote' is available. Such a claim would allow the entity and its officers to be appropriately held to account.

Consultation Question 38.

We provisionally propose that there should be a right to appeal decisions by the registrar on whether a society meets the definition of a co-operative or community benefit society. Do you agree?

Yes.

Consultation Question 39.

Do you think that an appeal against a decision by the registrar should be heard by the court (as is currently the case) or by a tribunal?

A majority of the working group took the view that such an appeal should be heard by a tribunal, for the reasons given. However, one member of the group took the view that such matters as refusal of registration would be more appropriately heard by a court than by a tribunal. If such an approach were adopted, the relevant court should be one of the lower courts, e.g. the Sheriff Court in Scotland or County Court in England and Wales, in order to simplify the process and to minimise expense.

Consultation Question 40.

We provisionally propose that the power of the registrar to suspend a society's registration be repealed. Do you agree?

We agree that the power of the registrar to suspend a society's registration ought to be repealed. However, we suspect that there should be some alternative legal mechanism for addressing the same sort of problems which suspension was intended to address. If, for example, suspension is intended to address wrongdoing, there should perhaps be a measure in place other than suspension to deal with this. Suspension seems an inappropriate means of addressing wrongful behaviour. One legal mechanism for tackling wrongful behaviour may be the imposition of personal liability. There ought to be some sort of intermediate step prior to potential cancellation.

Consultation Question 41.

We provisionally propose that only after the notice period for cancellation has passed should the registrar be able to give directions to wind up the affairs of the society. Do you agree?

We agree. This would avoid the possible contradiction mentioned.

Consultation Question 42.

We provisionally propose that the notice period for cancellation be fixed at two months. Do you agree?

A two-month notice period for cancellation seems reasonable, subject to any evidence to the contrary. It may even be argued that a period of two months is overly long in the light of the other examples provided.

Consultation Question 43.

We provisionally propose that the CCBS Act should require the registrar to give a society reasonable warning before issuing any notice of proposed cancellation. Do you agree?

Yes.

Consultation Question 44.

We provisionally propose that societies be given a statutory power to entrench their rules. Do you agree?

Yes. Consistency with companies in this regard is appropriate.

Consultation Question 45.

We provisionally propose that it should be for the rules of a society to decide the voting threshold needed to change an entrenched rule. Do you agree?

Yes.

Consultation Question 46.

We provisionally propose that a society's rules should be capable of being entrenched on registration or later by special resolution. Do you agree?

Yes, we agree that a society's rules should be capable of being entrenched on registration or later. However, arguably entrenchment by special resolution after registration should have a high threshold. Indeed, it could be argued that such a decision should be unanimous (as in the case of companies). On the other hand, that may be seen as too onerous. Perhaps instead a special resolution should have to be passed by all those members who vote, in order to ensure that a decision is not thwarted by those who are apathetic. Another alternative could be a supermajority corresponding to the supermajority required to amend the proposed entrenched rule.

Consultation Question 47.

We provisionally propose that the special resolution threshold which must be exceeded in order to entrench a rule should be the same as the threshold required for adopting an asset lock, that is:

(1) a first meeting where at least 75% of voters are in favour and at least 50% of members vote, followed by

(2) a second meeting where over half of voters are in favour (see section 113 of the CCBS Act).

Do you agree?

While we can understand the reasoning, there may be an argument for a stricter approach (see above). However, it may be reasonable to treat the power to entrench differently from entrenchment of the rule once that stage is reached.

Consultation Question 48.

We provisionally propose that a society should be able to set voting thresholds in its own rules which are stricter than those in the CCBS Act in the following circumstances.

(1) Ratifying action by members of the committee which would otherwise be beyond the capacity of the society.

(2) Amalgamating societies or transferring engagements to another society.

(3) Converting to, amalgamating with, or transferring engagements to a company.

(4) Approving an instrument of dissolution.

(5) Disapplying the duty to appoint auditors.

Do you agree?

We agree that a society should be able to set voting thresholds in its own rules which are stricter than those in the CCBS Act in the circumstances mentioned here. However, perhaps other circumstances could be mentioned too, e.g. entrenching.

It would also be wise to ensure that the provisions regarding potential amalgamation and conversion and transfer apply to all possible types of entity relevant in these contexts.

Consultation Question 49.

We provisionally propose that the restrictions on the use of the assets of a community benefit society, and the enforcement powers in that regard, as set out in the Asset Lock Regulations, be included in the CCBS Act as applicable to all community benefit societies. Do you agree?

Yes. We do not have any objection to retrospectivity in this context.

Consultation Question 50.

We provisionally propose that the CCBS Act should expressly allow for asset locked community benefit societies to pay interest on non-withdrawable shares.

Do you agree?

Yes.

Consultation Question 51.

We provisionally propose that it should be possible for a community benefit society with a statutory asset lock to become a charity. Do you agree?

Yes.

Consultation Question 52.

We provisionally propose that the asset lock provisions of the Co-operatives, Mutuals and Friendly Societies Act 2023, as far as they apply to co-operatives, should be consolidated into the CCBS Act. Do you agree?

Yes.

Consultation Question 53.

We provisionally propose that the Asset Lock Regulations which apply to community benefit societies should also apply to co-operatives which choose a statutory asset lock. Do you agree?

Yes.

Consultation Question 54.

We provisionally propose that section 115 of the CCBS Act should be amended so that, when a company converts to a society, it must appoint either three members, or two members if both are registered societies. Do you agree?

Yes.

Consultation Question 55.

We provisionally propose that the CCBS Act should provide expressly that partial transfers of engagements are possible, to companies or to other registered societies. Do you agree?

Yes.

Consultation Question 56.

We provisionally propose that, where a society converts to, amalgamates with, or transfers its engagements to a company, any transfer of the society's property should vest without conveyance. Do you agree?

Yes, but consideration should be given to where this information can be discovered by third parties. Presumably, even though there is vesting, title will require to be completed, as by registration in the Land Register or Land Register of Scotland. This is certainly the standard approach in Scots law.

Consultation Question 57.

We provisionally propose that section 112 (conversion of a society to a company) be amended to remove reference to a society's registration being void. Do you agree?

Yes.

Consultation Question 58.

Do you think that the registrar should advertise the cancellation of a society's registration or its dissolution in a local newspaper as well as in the Gazette?

Yes, the registrar should advertise the cancellation of a society's registration or its dissolution in a local newspaper. It is hoped that there will be increased awareness of such entities in future, especially if the proposed reforms are enacted, and so advertising the cancellation of registration or dissolution in a local newspaper would be appropriate. Communication of such information via a local newspaper makes particular sense in the case of community benefit societies, given their potential connection to a locality. At the same time, the diminution in readership of local newspapers might make some other means of communication (e.g. an online advertisement) suitable too.

Consultation Question 59.

We provisionally propose that the CCBS Act should enable HM Treasury by regulation to disapply duties under the CCBS Act temporarily for special reason (such as a pandemic). Do you agree?

Yes.

Consultation Question 60.

Do you think that the CCBS Act should empower the registrar to require electronic-only filing of documents?

Electronic filing of documents could be encouraged, as by charging lower fees. However, electronic filing should not be mandatory. These entities may involve persons who do not have access to suitable electronic devices and/or who live in remote areas where access to the internet is unreliable.

Consultation Question 61.

We provisionally propose repealing the need for signatures on a society's filed accounts. Do you agree?

Broadly yes. However, on the other hand, we can see some value in a particular person who has signed being responsible. It would encourage that person to undertake a final check of the documentation. If signatures are to continue to be required, perhaps they could be redacted in order to limit the risks of forgery.

Consultation Question 62.

Do you think that the registrar should have the power to impose a civil penalty in the form of a fine on a society which is late in filing their annual return (in line with equivalent penalties under company law)?

Yes, and we support the alignment with company law.

Consultation Question 63.

We provisionally propose as follows.

(1) The registrar should be able to direct a society to change its name after registration if the name has since become undesirable in the opinion of the registrar.

(2) There should be a right to appeal such a direction.

Do you agree?

We agree, although the registrar's power should be constrained to acting reasonably. Another possibility is that the registrar's opinion that a given society's name is undesirable ought to be in the "*reasonable* opinion" of the registrar.

In any event, we agree that there should be a right to appeal such a direction.

Consultation Question 64.

We provisionally propose that the Mutuels Public Register be identified explicitly in the CCBS Act as the sole register which the registrar of societies is to maintain. Do you agree?

Yes.

Consultation Question 65.

Do you think that the seal of the registrar of co-operative and community benefit societies be provided for under the CCBS Act?

Yes, if this is considered desirable.

Consultation Question 66.

We provisionally propose that the registrar should be able to use their available powers of intervention where the registrar believes that intervention is appropriate in the circumstances (rather than "only to the extent necessary to maintain confidence" in societies).

Do you agree?

Yes, but the registrar's powers should be exercisable only where the registrar *reasonably* believes that intervention is appropriate. We also think that an appeal should be available so that it is not necessary to rely on judicial review if there is a challenge.

Consultation Question 67.

We provisionally propose that the CCBS Act should provide the following regime for society audits.

(1) Any person appointed to audit the accounts should be a qualified auditor.

(2) A society should be able to opt out of the duty to audit accounts when the society is below a certain size.

(a) There should be a single threshold (above which a society cannot opt out of the requirement to audit).

(b) That threshold should be both that turnover is not in excess of £10.2m and assets are not in excess of £5.1m.

(c) That threshold should be capable of revision by statutory instrument.

(3) The registrar should continue to be able to insist upon an audit.

Do you agree?

Yes, the rules proposed here seem reasonable to us.

Consultation Question 68.

Do you think that co-operatives should be required by legislation to report on how their activities pursue their objectives?

Do you think that community benefit societies should be required by legislation to report on how their activities pursue their objectives?

We think that co-operatives should probably not be required by legislation to report on how their activities pursue their objectives but that there's potentially a stronger argument for community benefit societies being required to do so, partly because such societies have more of a public or community role than do co-operatives. At the same time, the duty should be a light one, lest certain organisations are over-burdened, particularly smaller ones.

Consultation Question 69.

Do you think that the CCBS Act should allow a society's financial year to end up to seven days earlier or later than the previous year (as with company law)?

Yes.

Consultation Question 70.

We provisionally propose that section 81 of the CCBS Act be repealed (to remove the duty to display a balance sheet at a society's registered office). Do you agree?

Yes.

Consultation Question 71.

We provisionally propose that, subject to its rules, a society should additionally be able to execute a document by one authorised signatory attested by a witness. Do you agree?

Yes, we agree. This would seem to align the position more closely with that in Scotland under the Requirements of Writing (Scotland) Act 1995.

Consultation Question 72.

We provisionally propose that, subject to its rules, a society should be able to appoint, by deed, an attorney to execute documents on its behalf. Do you agree?

Yes.

Consultation Question 73.

We provisionally propose that “cooperative”, “co-op” and “coop” should be included alongside “co-operative” on the list of sensitive (protected) business names. Do you agree?

Yes, for the sake of clarity.

Consultation Question 74.

We provisionally propose that the requirement to display a society’s registered name outside every place where it carries on business be repealed. Do you agree?

Yes, this is not so useful in modern times, but we still see the value of requiring a society to display its registered name outside its registered office.

Consultation Question 75.

We provisionally propose that, subject to the rules of a society, the CCBS Act should expressly allow meetings to be virtual or hybrid. Do you agree?

Yes.

Consultation Question 76.

We provisionally propose that, when a society notifies the FCA of an amendment to the society’s rules, the society need send only one copy of the amendment if this is sent by electronic means. Do you agree?

Yes.

Consultation Question 77.

Do you think that the CCBS Act should explicitly provide that society rules may provide for an indivisible reserve?

Yes.

Consultation Question 78.

Do you think that there is a need to reform the law relating to co-operative banks?

If so, what reforms do you think are needed?

Do any of the proposed changes to the CCBS Act have particular consequences for co-operative banks that we need to consider?

We are not in a position to comment on these issues.

Consultation Question 79.

Do you think that there is a need to reform the law relating to credit unions? If so, what reforms do you think are needed?

Do any of the proposed changes to the CCBS Act have particular consequences for credit unions that we need to consider?

We are not in a position to comment on these issues.

Consultation Question 80.

As regards the topics set out in Chapter 8, we have provisionally concluded against reform. Do you think that any of those topics needs revisiting, and if so why?

We generally agree that there should not be reform, but there may be value in, for example, prescribing a minimum number of officers, even if that minimum number is one.

With regard to the listing of charges on the Mutuels Public Register, we agree that floating charges should require to be registered, for publicity purposes, in order to be fully effective. This includes for Scottish entities, which is the case under the current law as per ss 62-64 of the 2014 Act. More broadly, there is value in having various forms of security registered in the same place, as there is for companies. It should be noted that for security in Scotland generally, some publicity step is required in order to create the security, i.e. before registration in the companies register or equivalent (but the floating charge is an exception to this).

Consultation Question 81.

How would reform affect you? Please provide a general answer here. When answering other questions, please tell us, where possible, how that specific reform might affect you.

N/A.

Consultation Question 82.

Are there any factors unique to Scotland which you think we should know about?

See the points made in our answers above.

Consultation Question 83.

Are there any factors unique to the Channel Islands which you think we should know about?

We are not in a position to comment on this.

Consultation Question 84.

Are there any other ways in which the CCBS Act might be improved to support the formation and development of new societies?

We are not in a position to comment on this.

Consultation Question 85.

Does the CCBS Act raise barriers to growth and innovation, such that there are other reforms which are needed to support growth and innovation for societies?

We are not in a position to comment on this.

Consultation Question 86.

Does the CCBS Act cause societies to incur unnecessary costs and burdens, such that there are other reforms which are needed to reduce those burdens and support the more efficient operation of societies?

We are not in a position to comment on this.

Consultation Question 87.

Are there any other reforms to the CCBS Act needed to support an effective registrar?

We are not in a position to comment on this.