

Chapter 8

Obligations & Process

8.16 Dissolution

8.16.1 **G** Dissolution is where the assets and property of the society are redistributed and the society's registration is brought to an end. Societies can be dissolved either by:

- (1) an instrument of dissolution; or
- (2) at the end of an insolvency procedure – such as winding up or administration.

Instrument of dissolution

8.16.2 **G** Societies can dissolve by an instrument of dissolution. The instrument needs to be drafted and then approved by either:

- (1) three-quarters of all the society's members signing the instrument to show their consent to it; or
- (2) for a dormant society, passing the instrument by a special resolution at society meetings.

8.16.3 **G** The instrument must set out:

- (1) the society's assets and liabilities in detail;
- (2) the number of members and the nature of their interests in the society;
- (3) any creditors' claims, and the provision to be made for their payment;
- (4) the intended appropriation or division of the society's funds and property (unless the instrument states that this is to be left to the award of the FCA or PRA).

8.16.4 **G** The dissolution should be carried out according to the society's rules. For example, some rules forbid funds being distributed to members. In the case of a community benefit society with a statutory asset lock, the society can only distribute any surplus in accordance with that asset lock.

8.16.5 **G** Any changes to an instrument have to be approved in the same way as the original instrument.

- 8.16.6** **G** We have provided a form for societies to use. Societies must also send us a statutory declaration and the final annual return and accounts, completed up to the date of the instrument of dissolution. Any regulated housing associations, or societies on the Scottish Charity Register, must also provide consent from the relevant regulator.
[Note: <https://www.fca.org.uk/publication/forms/mutuals-instrument-dissolution-cuip-form.doc>]
- 8.16.7** **G** We will register the instrument of dissolution when we have this information. The instrument is then binding on members and cannot be changed.
- 8.16.8** **G** We advertise a notice of the dissolution in the London or Edinburgh Gazette as well as in a newspaper which is local to the society. [Note: <https://www.thegazette.co.uk/>]
- 8.16.9** **G** Interested people have up to three months after the advertisement in the Gazette appears to challenge the dissolution. Any society member, creditor, or anyone with an interest in the society’s funds can challenge the decision.
- 8.16.10** **G** Challenges to the resolution need to be made in the courts. In England and Wales this is the County Court and in Scotland the Sheriff Court. Anyone issuing proceedings must tell us within seven days of the proceedings starting and before the expiry of the three month deadline.
- 8.16.11** **G** If the challenge is successful, the dissolution will be set aside and the society’s registration will continue. So it is important that societies do not distribute assets until the three month window for challenge is over.
- 8.16.12** **G** The society can distribute its assets after three months. They must be distributed in the way the instrument specifies.
- 8.16.13** **G** When this is done the society should send us a section 126 certificate confirming that all property vested in the society has been conveyed or transferred to those entitled to receive it. A society cannot be dissolved until we have received this certificate.
[Note: <https://www.fca.org.uk/publication/forms/section-126-certificate.docx>]
- 8.16.14** **G** Any society that thinks it will have difficulty following this procedure may want to get professional advice. The advice might be that the society should go into voluntary liquidation.
- 8.16.15** **G** Alternatively, a society with no liabilities or with minimal assets (less than £1,000) could ask us to cancel its registration.

Dissolution after winding up

- 8.16.16 G Societies can be dissolved after winding up. The winding up procedures in the Insolvency Act 1986 apply to societies, and references to the 'registrar of companies' are references to the FCA.

- 8.16.17 G The rights of members and the destination of any surplus are decided in accordance with the society's rules. Those provisions will be followed by any court called upon to deal with the issue. In the absence of any such provision, it is likely that a court will decide that any surplus should be paid to the members according to their entitlements, which is likely to be based on their rights and interests in the society.

- 8.16.18 G In a voluntary winding up, the liquidator will file a final account and return. In a winding up by the court, the liquidator will file a notice of holding a final meeting. This triggers the start of a three month time period. A section 126 certificate confirming that all property vested in the society has been conveyed or transferred to those entitled to receive it must be filed to complete the dissolution.

- 8.16.19 G If the certificate is filed within the three month time period, then the dissolution takes effect at the end of the three months. If the certificate is filed after the three month period, the dissolution takes effect at that point.

- 8.16.20 G Unlike Companies House, we have no power to restore the registration of a society after it has been dissolved.

Dissolution after administration

- 8.16.21 G Societies can go through administration, which could result in a rescued, solvent society. If the society cannot be rescued through administration then the process of winding up under the Insolvency Act 1986 can follow.

- 8.16.22 G If an administrator thinks that the society has no property to distribute to creditors they will send us a notice to tell us.

- 8.16.23 G We will register that notice. At the point of registration of that notice, the administration ends and the society is dissolved three months later (unless a court orders an extension). Where the society is being dissolved on notice from an administrator the dissolution is not dependent on a relevant notice under section 126 of the Act.

[Note: Schedule B1, para. 84, Insolvency Act 1986 as applied by s125 CCBSA 2014 and SI 2014/229.]

Member liability

- 8.16.24 G Society members have limited liability for the society's debts. They will normally lose the value of their shares if the society is wound up. Any additional liability they have to contribute towards payments to creditors is limited to the amount they may owe on their shares.

-
- 8.16.25** **G** Shares are usually fully paid up when they are issued and so no further payment will be required by members. However, the liability of members to contribute to paying creditors lasts for one year after their membership ends.
- 8.16.26** **G** So anyone who held withdrawable shares and gave notice to withdraw their shares less than a year before winding up began may still have to contribute as part of the winding up process.
- 8.16.27** **G** This liability is only triggered if the total amounts paid by current members for unpaid shares is not enough to pay the society's debts.