

## Chapter 8

# Obligations & Process



## 8.1 Summary of obligations

**8.1** **I** This chapter outlines a society’s obligations under the Act and highlights the post-registration legal processes a society may use.

**8.1.1** **G** Once a society is registered it must:

- (1) continue to meet the conditions for registration;
- (2) have at least three members (or two members who are societies);
- (3) maintain a registered office in Great Britain or the Channel Islands, and tell us of any change to the registered office address;
- (4) maintain a register of members;
- (5) maintain accounts;
- (6) submit an annual return and accounts to us within seven months of their financial year end;
- (7) notify us of any change to the financial year-end date;
- (8) register any rule changes with us;
- (9) pay us an annual fee (see ■ RFCCBS 3.3.6).

### **Obligations on names**

**8.1.2** **G** A society must make sure it displays its registered name outside its registered office and in every other place where it carries out its business. The notice should be in a conspicuous position and clearly legible.

**8.1.3** **G** A society must also include its registered name in legible characters:

- (1) in all of its notices, advertisements and other official publications;
- (2) in all of its business correspondence;
- (3) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the society;
- (4) in all its other business documentation; and

(5) on all its websites, including any content about the society on another website if the society either provided it or authorised it.

**8.1.4** **G** Any charitable society whose registered name does not include the word ‘charity’ or ‘charitable’ must also state it is a charity on all of the above, and in all conveyances purporting to be executed by or on behalf of the society.

**Duties of directors**

**8.1.5** **G** The Act is generally silent on the duties of directors, but common law duties have been established over time. Here we provide a summary of some of those common law duties.

**8.1.6** **G** Directors, executives and employees are entrusted with control over the society’s assets and should not use those assets for their own benefit. The ultimate duty is to act in the best interests of the society – even if a director has been appointed by a particular member or elected by a particular group.

**8.1.7** **G** The society’s rules and the law must be used to deal with any conflict between the personal interests of a director and the society’s interests.

**8.1.8** **G** Directors should act prudently, lawfully and comply with the society’s rules. They should use their powers only for the purpose they were given.

**8.1.9** **G** Directors have a duty to bring to the role of director the skills that they have and the skills reasonably required to perform the role. This is determined by the definition of the role of director in the rules and governance arrangements of the society. It is important that the powers and duties of directors and executives are made clear in the society’s rules and governance arrangements.

**Disqualification of directors**

**8.1.10** **G** The Company Directors Disqualification Act 1986 (‘CDDA’) applies to society directors.

[Note: s22E, Company Director Disqualifications Act 1986]

**8.1.11** **G** The grounds for disqualification include:

- (1) persistent breaches of the Act’s requirements, e.g. by failing to submit annual returns to us;
- (2) being convicted an offence involving a society;
- (3) unfit behaviour involving the insolvency of a society; and
- (4) Fraud.

## 8.2 Summary of legal processes

### 8.2.1

**G** The next part of the guidance runs through legal processes which societies can use throughout their lifetime. We explain each process separately so you can read it on its own without having to refer to other sections.

- (1) change of registered office;
- (2) change of name;
- (3) change of financial year end;
- (4) rule amendments;
- (5) recording a charge;
- (6) transfers of engagement;
- (7) amalgamations;
- (8) conversion to a company;
- (9) conversion to a Scottish charitable incorporated organisation;
- (10) arrangements and reconstructions;
- (11) company voluntary arrangements;
- (12) administration;
- (13) winding up;
- (14) dissolution;
- (15) cancellation of registration.



## **8.3 Change of registered office**

- 8.3.1** **G** Societies are required to have a registered office address in Great Britain or the Channel Islands.
- 8.3.2** **G** Societies give us their registered office address when they register with us. Societies must tell us as soon as possible if their registered office address changes.
- 8.3.3** **G** We only post documents to the registered office address, including any legal documents, so it is vital that societies tell us about any changes.
- 8.3.4** **G** Use this form to notify us of a change of address.  
**[Note:**  
<http://www.fca.org.uk/your-fca/documents/forms/change-of-registered-office-forms> ]



## 8.4 Change of name

- 8.4.1 G A society's name will stay the same unless we register a change. To change its name, a society must pass a resolution at a general meeting with the appropriate notice. Charities registered in Scotland must also include confirmation from OSCR that it has given permission for the name change when they apply to us to register the change.
  
- 8.4.2 G If the resolution is passed, societies should complete our name change form and return to us. The name change does not become effective until we have registered it.  
[Note: <http://www.fca.org.uk/your-fca/documents/forms/change-of-name-form>]
  
- 8.4.3 G We explain our approach to names on ■ RFCCBS 3.8 and ■ RFCCBS App 1.
  
- 8.4.4 G The name a society wishes to register must be available. To see whether a name is available the society should check Companies House, the Charity Commission, OSCR and the Mutuals Public Register.  
[Note:<http://www.companieshouse.gov.uk/> , <http://www.charitycommission.gov.uk/>, <http://www.oscr.org.uk/>, <http://mutuals.fsa.gov.uk/>]
  
- 8.4.5 G Societies should also check if the name they want to use includes any words that require permission or approval for use. See RFCCBS App 1 for more information.
  
- 8.4.6 G Regulated housing associations must notify their regulator of any change to their name.
  
- 8.4.7 G We do not need to be notified of business names or changes to them. However if the society is applying to use a sensitive word that requires FCA approval under financial services legislation e.g. 'bank', then it must seek that approval.  
[Note: <https://www.fca.org.uk/firms/firm-details/sensitive-business-names>]
  
- 8.4.8 G Societies must comply with the requirements in Part 41 Companies Act 2006 about business names.



## **8.5 Change of financial year end date**

- 8.5.1** **G** When a new society is registered, it can choose its own financial year-end date. Societies can also change their financial year-end date. There are a few requirements:
- (1) The period the first financial year covers cannot be shorter than six months or longer than eighteen months.
  - (2) No financial year can be longer than eighteen months.
  - (3) The society cannot give us notification that it is extending its financial year if it has already extended its financial year any time within the last five years.
- 8.5.2** **G** Societies must notify us of a change to their financial year-end. We will check the notice to make sure it complies with the requirements above, and give the society confirmation that it can change its financial year-end.
- 8.5.3** **G** Societies can change their current or subsequent financial year end dates. However, they cannot change a previous year-end date retrospectively. For example, if a society's financial year ends on 31 March and it wants to extend it to 30 April, we must receive the notification of the year end extension before 31 March.

**8.6 Rule amendments**

- 8.6.1 **G** Societies must register rule amendments with us. A society can only start using the new rule when we have registered the rule amendment. We will confirm registration of rule amendments.
- 8.6.2 **G** Rule changes come into effect on the date we register them. We cannot register rule amendments retrospectively.
- 8.6.3 **G** Societies should send the rule changes to us using this form. Amendments can be complete or partial. Complete amendments mean a whole new set of rules is registered in place of the existing rules. Partial amendments change, add to, or delete some rules from the existing registered rules.  

[Note: <http://www.fca.org.uk/your-fca/documents/forms/amendment-of-rules-for-a-society-or-credit-union-form>]
- 8.6.4 **G** For a complete amendment, we need two copies of the new rule book each signed by three members and the secretary of the society.
- 8.6.5 **G** For a partial amendment of rules, we need two printed copies of the amendment of rules, each signed by three members and the secretary of the society, plus a printed copy of the existing set of rules marked to show what the amendments are and where they fit. It is best to word partial amendments as directions to a member, telling them exactly what they should do to make the necessary changes in their own copy of the rule book.
- 8.6.6 **G** The amendments should be arranged in the numerical order of the rules affected. Rules should only be re-numbered on a complete amendment of rules. If many amendments are proposed, or if the rule has already been amended many times, we generally recommend that societies use a complete amendment. This means rescinding the whole rule book and replacing it with a new one. This makes it easier for members to understand. Where the change is simple, an amendment of the part affected may be enough.
- 8.6.7 **G** Regulated housing associations in Scotland and Wales must include consent from either the Scottish Housing Regulator or Welsh Ministers respectively with their rule amendments (apart from a change of name or registered office address). Regulated housing associations in England must provide consent from the regulator along with the rule amendment if the rule amendment:



- (1) alters the objects of the society;
- (2) makes provision about the distribution of assets to members; or
- (3) enables the society to become, or cease to be, a subsidiary or associate of another body.

**8.6.8** **G** For charities on the Scottish Charity Register rule amendments relating to the society's purpose must be accompanied with consent from OSCR.

[Note: <https://www.oscr.org.uk/>]

**8.6.9** **G** No rule amendment can bind a member to take, or subscribe for, more shares than they held at the date the amendment was registered, or increase their liability to give share or loan capital to the society unless the member gives written consent.

**8.6.10** **G** We will assess the rule amendments to determine whether they are contrary to the legislation. We will also check that the rule amendment was made after adequate procedures e.g. if the society's rules require a two-thirds vote in favour of a rule change, we will want to know whether that vote was achieved.



## 8.7 Recording a charge over a society's assets

- 8.7.1 **G** When a society wants to use some of its assets as security, usually for a loan, it does so by agreeing to a document that creates a 'charge' over those assets.
- 8.7.2 **G** Societies can record floating or fixed (except in Scotland) charges on assets of the society with us.
- 8.7.3 **G** The process of recording the charge with us can be carried out either by the society or by the lender who is given security over the society's assets. This is done using forms or other documents completed by the society.

### Recording the charge

- 8.7.4 **G** We need the following information to record a charge:
  - (1) a copy of the charge document certified as true with an original signature;
  - (2) a completed form:
    - (a) giving the society's registration number and full name, and details of the charge and the parties to it; and
    - (b) signed by the society secretary, a solicitor acting for the society, or another person interested in the charge (e.g. the lender) acting for the society.

[Note: <http://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]
- 8.7.5 **G** This information must be sent to us within 21 days (including the date it was signed) of the date of signing the charge document.
- 8.7.6 **G** We do not accept redacted copies of charges.
- 8.7.7 **G** We will confirm we have recorded the charge, and place a copy of it on the public register.

**Late registrations of charges**

**8.7.8** **G** If the application is:

- (1) late; or
- (2) incomplete because of omissions or errors,

'by reason of inadvertence or other sufficient cause', we have power to extend the period for recording, or to give a chance to correct the omission or error. [Note: s60 and 63 the Act]

**8.7.9** **G** To decide if we can extend the registration period we need to know the reasons for the late application. The form should explain why the application was submitted late. Writing 'it was submitted late' is not enough and we will ask for more detailed reasons. Even if the application is correct but has been submitted outside the 21 day limit, we will return it unless satisfactory reasons are given.

**Releasing, discharging and dealing with registered charges**

**8.7.10** **G** When a charge over society assets is released, discharged or subject to any other transaction, societies should complete this form to notify us so that we can include that information on the public register.

[Note: <http://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]

**8.7.11** **G** To release a charge we need to receive:

- (1) the appropriate form for the society, depending on whether it is registered in Scotland or England and Wales
  - (a) signed by the society secretary, confirming the date that the charge was released or wholly or partially satisfied; and
  - (b) containing the address or other identifying details of the property no longer charged if it is released or wholly satisfied; or, if the charge is only partially satisfied, the amount by which it is partially satisfied; and

[Note: <https://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]
- (2) a sworn statutory declaration by the society secretary and one committee member (or director) that the information entered on the form about the charge is true to the best of their knowledge, information and belief; and
- (3) copies of the original acknowledgement of the registration of the charge and the first page of the charge being released.



## 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.



## 8.9 Amalgamations

**8.9.1** **G** Two or more societies may amalgamate and become one society. A society and a company may amalgamate to become one company. The amalgamation can, but need not, involve the dissolution of one or more of the societies or companies first or a division of funds among members where allowed. On the amalgamation, the property of each society or company vests in the new amalgamated entity without needing any form of conveyance or ownership transfer other than the special resolution that carried out the amalgamation.

**8.9.2** **G** The amalgamation does not prejudice any right of a creditor of any of the societies or companies so they have the same claim against the new amalgamated entity as they had against the amalgamating societies or companies.

**8.9.3** **G** The amalgamation of two societies or a society and a company results in the new body stepping into the shoes of those that chose to amalgamate, once the amalgamation resolutions of all the societies become effective on registration. If a society amalgamates with a company then the registration of the society becomes void and must be cancelled.

**8.9.4** **G** The decision to amalgamate with another entity must be made according to with the society's rules. For example, a community benefit society with an asset lock cannot amalgamate to become an entity without a statutory asset lock.

### Special resolution

**8.9.5** **G** Amalgamation requires each of the amalgamating societies to pass a special resolution. The special resolution for amalgamating 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.

- 8.9.6** **G** The special resolution for amalgamating with 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) 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;
  - (2) at a second general meeting by over half of the members who actually vote in person or by proxy at that meeting.

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

**8.9.8** **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. The copy must be signed by the chair of the second meeting and countersigned by the society secretary.

**8.9.9** **G** The resolution only takes effect when we register it.

**Registration of amalgamation**

- 8.9.10** **G** To register the amalgamation 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/company, and signed by the society/company secretary and the chair of the second meeting that approved the resolution;
  - (2) forms signed by the secretary of each society/company;
 

[Note: <https://www.fca.org.uk/your-fca/documents/forms/transfer-of-engagements-form>]
  - (3) a statutory declaration confirming that the resolutions were passed in line with legislative requirements and society rules;
  - (4) any regulated housing association, or society on the Scottish Charity Register, must also provide consent from the relevant regulator for the amalgamation to proceed.

**8.9.11** **G** If the application is complete and correct, we will register the special resolution and send a formal acknowledgement of its registration.

**8.9.12** **G** We will also register the new society, sending a certificate of registration of a new society.





## 8.10 Conversion to a company

**8.10.1** G Societies can pass a resolution to convert into a company. Societies can convert into companies limited by shares or companies limited by guarantee. Currently, the legislation does not allow societies to convert to a Charitable Incorporated Organisation; but a society can convert to a Scottish charitable incorporated organisation (see ■ RFCCBS 8.11.2).

**8.10.2** G If a society converts itself into a company it will no longer be registered under the Act.

**8.10.3** G The decision to convert to a company must be made according to the society's rules. For example, a community benefit society with an asset lock cannot convert to a company without a statutory asset lock.

### Special resolution

**8.10.4** G The wording of the resolution will depend on the society's circumstances e.g. the value of its share capital. The wording of the resolution should include the following points:

- (1) the society will be converted into a company incorporated under the Companies Act 2006 limited by shares/guarantee
- (2) the name of the company;
- (3) the registered office of the company [England/Wales/Scotland];
- (4) the objects for which the company is established;
- (5) the liability of members;
- (6) the share capital (if any) of the company;
- (7) that the memorandum and articles attached to the resolution, signed for identification by the chair of the meeting, will be the memorandum and articles of association of the company.

**8.10.5** G The special resolution must be passed:

- (1) at a first general meeting by:

- (a) 75% 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 (to be held at least 14 days, and no more than one month, from the day of the first meeting) by over half of the members who actually vote in person or by proxy at that meeting.

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

**8.10.7** 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. The copy must be signed by the chair of the second meeting and countersigned by the society secretary.

**Registration of the conversion**

**8.10.8** G Before applying to us to register the special resolution, societies need to contact Companies House to apply for a company to be set up on conversion from a society. It is important that societies tell Companies House not to register the company until we have agreed a date with them. Societies cannot convert into an existing company.

**8.10.9** G When we have received the application we will contact Companies House to agree a conversion date.

**8.10.10** G To register a conversion we will need:

- (1) three copies of the special resolution. 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) a copy of the proposed memorandum and articles for the company;
- (3) confirmation that the society has applied to Companies House to register a company and has told them that the application is coming from a converting society;
- (4) conversion form signed by the secretary;  
[Note: <http://www.fca.org.uk/your-fca/documents/forms/application-for-the-conversion-of-a-society-into-a-company-form>]
- (5) a statutory declaration confirming that the resolution was passed in line with legislative requirements and society rules;

(6) for any regulated housing association, or society on the Scottish Charity Register, consent from the relevant regulator must also be provided for the conversion to proceed.

**8.10.11** **G** If the application is complete and correct, we will send a formal acknowledgement of registration of the special resolution. Following that, we will send confirmation of the cancellation of the society.

**8.10.12** **G** Companies House will send us information relating to the company registration.



**8.11 Conversion to a Scottish charitable incorporated organisation**

**8.11.1** G A society can convert into a Scottish charitable incorporated organisation (SCIO). When it has converted to an SCIO then it will no longer be registered under the Act.

**Resolutions**

**8.11.2** G The society can convert by passing the following resolutions:

- (1) a resolution that it be converted into an SCIO; and
- (2) a resolution adopting the proposed constitution of the SCIO.

**8.11.3** G The resolution that the society be converted to an SCIO needs to be either a special resolution or a unanimous written resolution. The unanimous written resolution must be signed on behalf of all the members of the society who would be entitled to vote on a special resolution.

**8.11.4** G To be a special resolution the resolution must be passed:

- (1) at a first general meeting by:
  - (a) 75% 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 (to be held at least 14 days, and no more than one month, from the day of the first meeting): by over half of the members who actually vote in person or by proxy at that meeting.

**Registration of the conversion**

**8.11.5** G The resolutions must be passed and sent to the OSCR along with an application form.  
[Note: <http://www.oscr.org.uk/>]

**8.11.6** G OSCR will consult us before agreeing the application for conversion.

**8.11.7** **G** If OSCR decide to accept the application to convert then they will agree a date with us to process the conversion. OSCR will then register the SCIO and provide us with copies of the resolutions and confirmation of registration as an SCIO.

**8.11.8** **G** When we receive the resolutions and confirmation of registration as an SCIO we will cancel the registration of the society. We will confirm to OSCR that we have done this, and OSCR will then update the Scottish Charity Register to show that the SCIO has been formed as a result of a conversion from a society.

**8.12 Arrangements and reconstructions**

- 8.12.1** G The procedures in Part 26 of the Companies Act 2006, which deal with arrangements and reconstructions of companies, can be used by some societies. They allow societies to use provisions for compromises or arrangements with their members or creditors, or particular classes of them. The Part 26 procedure cannot be used by a regulated housing association.

[**Note:** The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 SI 2014/229 applies Part 26 with some modifications]
- 8.12.2** G References in Part 26 to company directors mean society committee members or directors, and references to company articles are read as references to society rules.
- 8.12.3** G The procedure involves court orders to convene meetings of relevant classes of creditors and members to vote on the proposed Scheme after the information required by Part 26 has been circulated to them. If the Scheme is approved at those meetings by appropriate majorities, it is only binding after a further court order.
- 8.12.4** G When applied to society members, the reference to a 'majority of 75% in value' of members or a class of members in Part 26 is read as simply '75% of members' (i.e. one-member-one-vote). The value of their stake is not taken into account. However, for creditors, a majority by value is required in the case of a society, as it is for a company.

[**Note:** s889 Companies Act 2006 (as modified by SI 2014/229)]
- 8.12.5** G Before a court can make an order to sanction an arrangement or compromise involving the reconstruction of a society, or its amalgamation with another society or a company, we must state that we are satisfied that it is not contrary to the Act.
- 8.12.6** G Our interest is in whether the nature of the society as a co-operative society or community benefit society has been prejudiced by the proposed compromise or arrangement. For this reason, **it is important to involve us**

from the very beginning of the process of considering the use of Part 26 for a society.

**8.12.7**

**G**

The society must deliver a copy of any order made under these provisions within seven days of it being made. It should be accompanied by a copy of the society's rules, if they have been amended by the order.



## 8.13 Company voluntary arrangements

- 8.13.1 **G** Company voluntary arrangements (CVAs) are used by insolvent companies to address their financial difficulties through compromises or other arrangements proposed by an appointed insolvency practitioner and agreed between the company and its creditors. The agreement may propose that the company pays its creditors over a fixed period. CVAs are available to societies as they are to companies, except for regulated housing associations.
- 8.13.2 **G** References to the Registrar of Companies should be read as a reference to the FCA, in our role as registering authority. [**Note:** Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.]
- 8.13.3 **G** The power and role of the qualified insolvency practitioner appointed as a nominee under a voluntary arrangement, and the procedures they must follow are governed by the Insolvency Act 1986 as applied by the Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.
- 8.13.4 **G** Societies may wish to take appropriate professional advice if considering the use of this procedure.





**8.14 Administration**

- 8.14.1** G Administration is a procedure which allows a company to reorganise or to realise its assets (whether solvent or insolvent) under the protection of a statutory moratorium. A statutory moratorium means that creditors cannot take action to enforce any claim they have against the company during the administration process. Administration is available to societies in a similar way to companies. It is not available to regulated housing associations.
- 8.14.2** G For societies in England and Wales, any charges registered after 6 April 2014 will be subject to administration procedures rather than administrative receivership. If there are conditions for receivership under the charge and the lender chooses to exercise their power then an administrator can be appointed.
- 8.14.3** G The power, role and procedures followed by the qualified insolvency practitioner appointed as an administrator are defined by the Insolvency Act 1986 as applied by The Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.
- 8.14.4** G Societies may wish to take appropriate professional advice if they are considering using this procedure.

**8.15 Winding up**

- 8.15.1** **G** Winding up, or 'liquidation', is a process by which an entity's assets are used to pay off its debts, usually with any remaining money distributed in accordance with the society's rules. The winding up provisions of the Insolvency Act 1986 apply to societies. A society can be wound up by a:

  - (1) Members' voluntary winding up by members' resolution if it is solvent; or
  - (2) creditors' voluntary winding up by members' resolution with creditor involvement if it is insolvent; or
  - (3) court winding up order at the petition of the society itself, a creditor, or member.
  
- 8.15.2** **G** These procedures are governed by Part IV of the Insolvency Act 1986 as applied and modified by the Act.
  
- 8.15.3** **G** A special resolution is needed to pass a winding up resolution. The special resolution must meet the requirements in the Companies Act 2006. It is not a special resolution as defined in the Act. **[Note: s84 Insolvency Act 1986]**
  
- 8.15.4** **G** A special resolution under the Companies Act 2006 requires:

  - (1) only one meeting, called with 14 days' notice;
  - (2) the text of the resolution and intention to propose to appear in the notice;
  - (3) a majority of not less than 75%.

**[Note: ss283 & 307 Companies Act 2006]**
  
- 8.15.5** **G** We play the same role for societies that Companies House does for companies. The society must send us the resolution within 15 days of it being passed. The liquidator must give us notice of their appointment within 14 days of being appointed.
  
- 8.15.6** **G** If a society is wound up by the court then the society must immediately send us a copy of the court order. **[Note: s130 Insolvency Act 1986]**

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- 8.15.7** **G** A liquidator must send us periodic progress reports if winding up is not completed within one year of the process starting. These reports are of the kind submitted to Companies House in a winding up. **[Note: s192 Insolvency Act 1986]**
  - 8.15.8** **G** At the end of the winding up process, once the liquidator has submitted a section 126 certificate to us, the society will be dissolved and its registration will be cancelled.
  - 8.15.9** **G** There are additional requirements for regulated housing associations. A society on the Scottish Charity Register must seek the consent of OSCR.

**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.

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- 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.



## 8.17 Cancellation

### Effects of cancellation

- 8.17.1 G A society's registration cannot be restored when it has been cancelled. There is no process of 're-registration'. Cancellation is a final, irreversible act.
  
- 8.17.2 G The Act states that if a society's registration is cancelled or suspended, it loses all the privileges of registration when the relevant notice is published in the London or Edinburgh Gazette.  
[Note: <https://www.thegazette.co.uk/>]
  
- 8.17.3 G From the date of this publication, the society is no longer a corporate body. This means:
  - (1) it can no longer sue or be sued in its registered name;
  - (2) it can no longer hold property;
  - (3) members will no longer be entitled to limited liability for debts created by a continuing, unregistered and unincorporated, society on their behalf.
  
- 8.17.4 G In this case, the law on unregistered partnerships or unincorporated associations can decide how members are liable.
  
- 8.17.5 G Any liabilities generated by the society before registration is cancelled will not be affected by cancellation. This means creditors can take legal action against remaining members of the now unregistered society to recoup these debts.
  
- 8.17.6 G The society's rules decide what rights members have to get their capital returned and how any surplus will be distributed after the society has paid its debts. These rules should also be taken into account if a society is wound up or dissolved.
  
- 8.17.7 G The courts have suggested that cancellation, other than on the ground that the society no longer exists at all or that it existed for an illegal purpose, may simply end registration and its privileges. This may leave the



unregistered society as an unincorporated association, governed by its rules under contract law.

[Note: Boyle v Collins [2004] EWHC 271]

**8.17.8** **G** After registration has been cancelled, we cannot get involved in the process of distributing the society's property. We cannot advise on property distribution or on the rights or liabilities of members at any stage.

**8.17.9** **G** There is no equivalent to Part 31 of the Companies Act 2006, which allows a company to be restored the Register after it has been struck off by the Registrar of Companies.

**8.17.10** **G** Any application by the same individuals to set up a society will be treated as an application to register a new society. Any new registration must be under a different name to the previous society, and the society will receive a new registration number.

**Requesting to cancel**

**8.17.11** **G** We can cancel a society's registration on a number of grounds. We explain our powers to cancel a society's registration on RFCCBS 9.6. Here we deal with cancellation at the request of the society.

**8.17.12** **G** We have to be satisfied that it is appropriate to cancel the society's registration. We will generally only do this if it:

- (1) has ceased to carry on any business;
- (2) has limited (e.g. less than £1000) assets or liabilities; and
- (3) is not insolvent.

**8.17.13** **G** We take this approach to protect members and creditors, and to prevent societies using cancellation to avoid insolvency procedures.

**8.17.14** **G** Societies need to complete a request to cancel form. The form asks for justifications for the cancellation. The information provided must satisfy us that it is appropriate to cancel the society's registration. We also:

- (1) ask for confirmation of how the decision to cancel the society's registration was reached. Generally, we would expect the decision to have been made by members at a general meeting. If this is not the case we will need to know why;
- (2) check whether all outstanding fees owed to us have been paid;

[Note: <http://www.fca.org.uk/your-fca/documents/forms/request-to-cancel-forms>]

- 8.17.15 **G** If the society's request follows a transfer of engagements to another society or a company, we can only cancel the society's registration after it sends us a 'relevant certificate' as defined in section 126 of the Act confirming that its property has all been transferred to those entitled to it.
- 8.17.16 **G** After we cancel a society's registration on this ground, we send out a formal acknowledgement. We place advertisements in the London or Edinburgh Gazette and in a local newspaper in the area in which the society's registered office was situated.  
[Note: <https://www.thegazette.co.uk/>]
- 8.17.17 **G** There is no appeal to the courts against our decision to cancel a society's registration on this ground.