

CO-OP, SOCIETIES & MUTUALS BULLETIN

WINTER 2022

Welcome to the winter edition of Wrigleys' co-ops, societies and mutuals newsletter.

Welcome to the first ever Wrigleys newsletter for societies. We love societies and the role they have to play in creating a fairer and more socially-focused economy. As such, we are delighted to present this new initiative, which we hope you will find a useful way of keeping up-to-date on legal developments affecting societies. We are aiming to send out a newsletter a couple of times a year, with links to articles and news about society law and its development.

If you scroll down, you will find links to recent articles on our website about societies. It includes articles about everything from moorings co-operatives to working men's clubs, reflecting the wide range of society queries we deal with. Colleagues at Wrigleys have been working with societies for over 40 years and, as you will see, our experience covers the whole spectrum.

Please do forward this on to anyone you think might be interested. They can sign up to the newsletter [here](#).

We hope you enjoy the update and would welcome any feedback you have.

Wrigleys Societies Team

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Working men's clubs

Article published on 18 February 2022

Legal advice and assistance for working men's clubs.

Working men's clubs have been part of the fabric of their communities for many years. However, longstanding clubs may find that they now have out of date rules, or a structure which is no longer fit for purpose.

The club's management committee may be responsible for historical property without the protection of limited liability which comes with an incorporated structure. This may make it difficult to recruit new committee members and bring new people on board at the club. Or, the club may have declining membership and the remaining committee members are wondering what their options are.

Working men's clubs can take a variety of forms. They may be unincorporated associations, societies registered under the Friendly Societies Act 1974, or co-operative societies. Wrigleys can advise you on your club's current structure and help you to decide the structure which will be best suited to your club in future.

Wrigleys can also help with updating your rules. We have a set of rules which have been used for a number of working men's clubs, and which can be adapted to suit your requirements. This may form part of a wider change such as incorporating, changing your structure or it may be to update your current rules so they are fit for purpose.

We can also advise on your property arrangements. The property may be held in the names of committee members who are no longer involved with the club, the names of those holding the property may need to be updated, or the property may need to be transferred to a new legal structure.

In the worst-case scenario, we can assist with the legal requirements to wind up your club and advise on the distribution of assets in accordance with your rules or constitution.

The contribution of co-operative and mutual societies to the economy and public life

Article published on 21 December 2021

Reflecting on the Backbench Business Committee debate, 14 Dec: the contribution of co-operative and mutual societies to the economy and public life.

Anyone looking for impassioned and positive support of co-operative and mutual societies need look no further than the Backbench Committee debate held on Tuesday 14 December in Westminster Hall.

MPs from around the country and across the parties made the case for championing co-operatives, highlighting their resilience, the importance of their founding principles and the transformative role co-operatives could play in the UK's recovery from the pandemic and in the levelling-up strategy.

In his introduction to the debate, Mr Steve Baker MP said "Co-operatives can be harnessed as tools to expand opportunity, wealth, liberty, pride and aspiration more fairly in the UK, both geographically and socially. They are a powerful tool for funding and implementing the UK's new

net zero strategy.”

Further on in the debate, Sir Mark Hendrick MP agreed that “Co-operatives and mutuals contribute significantly to social integration, job creation, employment sustainability and the reduction of poverty, which makes them a serious player in the UK’s recovery from the pandemic.”

Individual MPs took the opportunity to celebrate the important work of co-operatives local to them and their community, from the rural farming co-operatives to the urban regeneration schemes.

The speakers reflected on the legislative and financial barriers prohibiting the growth of the co-operative movement in the UK and several potential solutions were put forward, including a UK equivalent to the Marcora Law in Italy, the creation of a Co-operative Development Agency and changes to lending rules to allow easier financing of co-operatives.

A brief prepared by the Co-operatives UK was also presented which makes a number of suggestions to the Government with the aim of increasing the number of co-operatives. The brief covers three themes: to have better tailored business support and enterprise finance for existing co-operatives, co-operative entrepreneurs and the conversion of existing businesses to become co-operatives; to have legislative and non-legislative action to provide a more enabling corporate framework, through law, regulation and processes; and to have tax support for investment in co-operatives and co-operative development.

Many of the speakers made it clear that they will continue to campaign for progress within the co-operative sector and to expect further debate and suggested reform.

Wrigleys have a long history of working with co-operative clients and many of the ambitions, themes and issues raised within this debate, were recognised and resonated within the team.

A full transcript of the debate can be found here: <https://hansard.parliament.uk/commons/2021-12-14/debates/99C173B7-8598-417E-A868-28B2913B9AD8/Co-OperativesAndMutualSocieties>

Co-operative Societies and TCFDs

Article published on 13 December 2021

Reflecting on the Backbench Business Committee debate, 14 Dec: the contribution of co-operative and mutual societies to the economy and public life.

It has been a month since COP26 concluded in Glasgow and organisations have now had the opportunity to digest what was discussed. As COP26 highlighted, environmental, social, and governance (**ESG**) factors are increasingly important and needs to be a strategic priority for businesses, with an increased demand from stakeholders wanting to see an ESG strategy in place before they decide to do business with you.

Financial Stability Board’s Taskforce for Climate Related Financial Disclosures (**TCFD**) are an important part of every ESG strategy, helping businesses to improve their own understanding of their long-term climate-related risks and opportunities.

What are the TCFD recommendations

The TCFD published a final [report](#) in 2017 that set out overarching recommendations in four thematic areas. Namely:

- Governance

- Strategy
- Risk Management
- Metrics and targets

Vision for TCFD reporting

The TCFD final report clearly aims to encourage wide reporting, not limited to any one sector or legal structure. The Report provides “*adoptable recommendations on climate related financial disclosures that are applicable to organisations across sectors and jurisdictions*”.

Indeed, the UK Government appears to agree that the end-goal is for TCFD reporting across sectors. The UK Taskforce has developed a [Roadmap](#) towards mandatory TCFD-aligned disclosures across non-financial and financial sectors of the UK economy over the coming years.

Supplemental guidance is available for non-financial sectors with the highest likelihood of climate-related financial impacts. These include Real Estate Management and Development; Beverages; Agriculture; Packaged Foods and Meats; Paper and Forest Products; Automobiles and Components.

Introduction of mandatory reporting

In keeping with the FSB’s priority on large asset organisations, the Roadmap presents a coordinated strategy for seven categories of organisation: listed commercial companies; UK-registered companies; banks and building societies; insurance companies; asset managers; life insurers and FCA-regulated pension schemes; and occupational pension schemes.

The first group to see any changes are listed public companies with the introduction in December 2020 of a new rule from the FCA obliging in-scope firms to disclose, on a comply or explain basis, against the recommendations of the TCFD.

Following these new measures for listed companies, it is anticipated that new [rules](#) will be introduced for large private companies with over 500 employees and £500 million in turnover in April 2022.

Position of co-operatives

The reporting requirements and associated timescales for co-operative societies have not yet been confirmed. However, co-ops have been part of the wider discussions with government about TCFD disclosures.

The Co-operative Group were included on the [list of respondents](#) to the government consultation on improving governance and reporting by occupational pension schemes, which considered TCFD reporting. The Co-operative Group were quoted as being “supportive of measures”.

In the run up to COP26, Co-operatives UK held co-operatives up as ethical and environmental organisations. In a joint declaration on behalf of the sector, [co-operative business called on the UK government to make end-to-end carbon footprint reporting mandatory for all large business](#).

Whilst reporting on TCFD looks to remain voluntary for co-operative societies for the time being, with such support for climate-related reporting at a national level, local co-operatives may wish to begin considering how they would report on TCFD in future. You may find that if you contract with an organisation which has TCFD reporting obligations that they may ask you if you have a climate change policy.

For practical advice on what your organisation’s next steps maybe, please contact [Claire Taylor](#).

Moor than just a house

Article published on 8 September 2021

Ever wanted to live on a boat? – The community led housing (CLH) movement continues to grow, and we look at ways in which CLH might take to the water.

The community led housing (CLH) movement continues to grow as a response to the UK's ongoing housing crisis. Anyone can become involved in a CLH project, and this has seen the development of numerous housing projects across the UK that enable a diverse range of people to take action and manage projects that build good quality affordable homes.

CLH encourages community participation, giving people control of their living situation. Group members own, manage or maintain the homes in the way they find most appropriate. There are various CLH structures available to facilitate this, including co-housing, community land trusts, community self-build, development trusts, housing co-operatives and self-help housing. These structures ensure each new development benefits the local community, a specific group of people, or both. With CLH projects springing up across the UK, a huge number of people stand to potentially benefit from this innovative way of living.

Although CLH traditionally involves bricks and mortar, the development of moorings co-ops provides an alternative option for those preferring to live on water. A mooring is a place where boats are moored and places such as London have seen a recent boom in people choosing to live on boats and barges, as a different way to enter the housing market.

A moorings co-op involves a co-operative entity purchasing, or taking a lease over, a mooring, probably funded through a mixture of member loan stock and a commercial mortgage. The co-op then gives licences to its members to moor their vessels at a berth on the moorings. In most instances, the boats will be owned by individual members, but the co-op could also theoretically own the boats.

These types of co-ops therefore function like a housing co-operative but on water. They are likely to be “fully mutual” in the sense that you cannot be a member of the co-op unless you benefit from a licence to moor a boat (and are therefore a “tenant”). You cannot become a tenant unless you are a member of the co-op. This provides protection for the co-op and its members because if a member chooses to move on, any replacement has to be accepted into membership (and receive a new licence) to benefit from the berth of the member leaving the co-op.

There are several key considerations when setting up a moorings co-op, including financial viability, identifying a site, raising funds and determining how the co-op will be governed and the rights members enjoy. There are also complex tax considerations, such as whether a moorings would constitute residential property for Stamp Duty Land Tax purposes and if a member has investor loan stock and disposes of it when they leave membership, will they benefit from primary resident relief from Capital Gains Tax in respect of any gain made on their loan stock? Further information is available here:

<https://www.gov.uk/government/publications/private-residence-relief-hs283-self-assessment-helpsheet/hs283-private-residence-relief-2020>

Wrigleys can advise on setting up a moorings co-op. We offer a free 20 minute no obligation consultation to all (potential) CLH projects and can provide model documents for registration. We also work alongside Co-operatives UK, who act as a sponsor of model rules of housing co-operatives, to help you develop your co-op and receive ongoing support once you are registered as a member of Co-operatives UK.

Trusted advice on setting up a community benefit society

CBSs are a popular form for community-led housing projects because they ensure land and other community assets are held for the benefit of the community. This page explores the background and benefits to using a CBS to deliver your community-led housing project.

A background to community benefit societies

Wrigleys Solicitors LLP have been advising on the use of CBSs for many years and are experts in this (somewhat niche) area of law. We have our own model rules for both charitable and non-charitable CBSs.

Community benefit societies have been around for a long time, although the terminology is still relatively new. They were previously known as industrial and provident societies, but changes in 2010 required industrial and provident societies to be registered as either co-operative or community benefit societies.

The key features of community benefit societies are:

- They are formed primarily to benefit their society; they therefore reflect commitment to the wider community with profits being ploughed back into their business (for the benefit of the community) rather than being distributed to members.
- They must exist for the purposes of carrying on an industry, business or trade.
- They may or may not have a statutory asset lock, which limits what they can do with their assets.
- If they do not have a statutory asset lock they may seek charitable tax status from HMRC. Charitable community benefit societies are currently exempt from registration with the Charity Commission, although this is expected to change at some point in the future.

There are four principal advantages to being a community benefit society:

- Firstly, the issue of withdrawable shares by community benefit societies benefit from exemptions to regulated activity and financial promotion prohibitions under the Financial Services and Market Act 2000. In short, this means that societies may issue withdrawable shares to the public without needing to comply with the restrictions on financial promotions (such restrictions make public share offers very expensive for companies to undertake).
- Secondly, community benefit societies benefit from legislative provisions which mean that re-organisations, particularly mergers between societies, are relatively easy to do.
- Thirdly, the statutory asset lock and the ability to obtain exempt charitable status with HMRC means the community benefit society can be an attractive form of structure to funders.
- Finally, many people are drawn to the idea of societies, because they offer a democratic structure, where membership is drawn from the community and each member has one vote, regardless of how many shares they own in the society.

Process for registering as a community benefit society

In order to register as a community benefit society, you must submit a set of rules and application form to the Financial Conduct Authority, together with the appropriate fee. Using model rules reduces this fee, which is payable on a sliding scale from £40 (using model rules with no

amendments) to £950 (using model rules with ten or more amendments, or using bespoke rules). If you are using model rules, the sponsor of those rules must sign the application form.

Wrigleys' model rules for community benefit societies

Wrigleys has its own set of model rules: the Wrigleys Community Interest Society model rules. These are designed for societies with or without an asset lock, which may undertake a community shares issue at some point in the future.

Societies which want to seek charitable status would be able to use the Charity Law Association model rules. We are able to act as sponsor to any organisation which wishes to use these rules to register a charitable community benefit society.

Uses of Community Benefit Societies

Article published on 24 July 2017

Practical examples of societies we have recently registered, to give an idea of the range of projects which societies can be used for.

This follows our earlier article ([Why Become a Community Benefit Society?](#)), where we discussed some of the benefits of using a community benefit society for your social enterprise.

- **Community Land Trusts**

We have registered a number of Community Land Trusts using our model rules. The society is a popular form for a CLT, because it ensures land and other community assets are held for the benefit of the community in the long term and permits groups to raise capital by doing a community share issue. Societies are also compatible with the statutory requirements which CLTs must meet, e.g. they must provide a benefit to a local community, the profits must be used to benefit that community, and individuals who live or work in the CLT's area of operation must have the opportunity to become members of the society.

- **Renewable Energy**

We have registered a number of societies which exist to develop, own and manage facilities for the generation of renewable energy. Using the society structure means the local community are able to invest in the projects, have a say over how they are developed and benefit from profits generated, with them being reinvested in local community projects.

- **Heritage societies**

We have registered a number of charitable community benefit societies where the main aim is to preserve and protect heritage assets for the benefit of the community in the long term. Again, the society form appealed to those groups, because of the ability to do a community share issue. Using a charitable society mean that grant funders were willing to invest in the projects.

- **Community pubs**

A number of pubs have been taken over by community benefit societies, which run the pubs for the benefit of the community in the long term. Using this format means they can undertake a community share issue and attract grant funding, whilst being owned and controlled by the local community, who have a meaningful say over how the pub is used.

- **Regeneration of local areas**

We have registered a number of local societies which exist for the purposes of regenerating local areas. Such societies might carry out activities including the acquisition and development of residential or commercial property, the leasing out of these properties to local users and

the hosting of cultural activities in the area. Using a society means these organisations are rooted in their local area, with membership drawn from the local community. This tangible community support helps ensure the success of the society in the long term. If the societies are non-charitable, it would be possible to permit the directors to be paid for their work.

- **Care and support services**

In some cases, local councils have devolved their care and support services into independent organisations, and have used the community benefit society form as a legal structure. The reason would be to make it clear that the organisation exists for the benefit of the community, rather than for private profit, whilst permitting employees, users and other interested parties to be a member of, and have a say in, the running of the organisation.

- **Housing associations**

The majority of housing associations are established as community benefit societies. Although this is often for historical reasons, the statutory provisions which enable transfers of engagement between societies and amalgamations are a significant advantage for housing associations, in a sector in which mergers and group restructures are very common.

- **Social investment vehicles**

Some social investment vehicles are set up as societies, because of the ability to raise community finance. Such societies must also carry out other activities, in order to meet the statutory requirement for societies to carry out an industry, business or trade. For example, they might offer training or carry out research on social investment.

Housing co-operatives: new reliefs from Annual Tax on Enveloped Dwellings and Stamp Duty Land Tax

Article published on 5 August 2020

HMRC has announced two new tax reliefs for housing co-operatives.

This is welcome news that should allow many co-ops to realise considerable savings in both start-up costs and ongoing expenses.

Annual Tax on Enveloped Dwellings (ATED) is a yearly charge levied on residential property in the UK where such property is valued at over £500,000 and held by a company (including corporate bodies such as co-operatives), a partnership with any company members, or a collective investment scheme. A 15% flat rate of Stamp Duty Land Tax (SDLT) is also charged at the point of acquisition when entities of this type purchase residential property in England and Northern Ireland with a value of over £500,000.

Both ATED and the 15% SDLT rate were introduced to act as a disincentive to individuals purchasing residential property through corporate vehicles for the purposes of avoiding tax. Unfortunately, the way in which the relevant legislative provisions are drafted has resulted in many community-led housing groups also being inadvertently caught by these anti-avoidance measures.

Co-ops have been particularly adversely affected due to the nature of the properties they acquire. Consequently, Wrigleys communicated these concerns to the Treasury to have these provisions revised and [encouraged community led housing groups to do the same](#), and we are delighted that these efforts have been successful.

The relief from the ATED charge will apply retrospectively from 1 April 2020, meaning that qualifying co-ops will be able to claim a refund for the 2020-2021 chargeable period as well as claiming relief for subsequent chargeable periods.

The SDLT relief will apply to acquisitions with an effective date (usually the date of completion) on or after the Autumn Budget Day 2020.

To be eligible for the reliefs a housing co-operative will need to:

- 1) be registered by the Financial Conduct Authority under the Co-operative and Community Benefit Societies Act 2014;
- 2) fall within the definition of a co-operative housing association provided in the Housing Associations Act 1985; and
- 3) have rules which prevent members from transferring their membership or share capital.

It appears, therefore, that cohousing companies set up on a co-operative basis under the Companies Act 2006 will be ineligible for the reliefs, so this may be an important consideration for new groups considering their community-led housing structure.

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