Law Commission
Reforming the law

Review of the Friendly Societies Acts 1974 and 1992

Summary of the Consultation Paper

This consultation

Who we are?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to government to reform the law.
What are we doing?	Conducting a public consultation on our provisional proposals to reform the law governing friendly societies.
What is it about?	The law relating to friendly societies, a type of organisation that provides insurance or other benefits to their members. They are owned and (mainly) funded by their members, and profits are reinvested among or for the benefit of the membership.
Why are we consulting?	We are seeking views on our provisional proposals and asking questions. Your views will be carefully considered when we decide on our final recommendations.
Who do we want to hear from?	We are keen to receive responses from as many stakeholders as possible. That includes friendly societies, members of friendly societies, those who provide services to friendly societies such as auditors or actuaries, and anyone who has an interest in the mutual sector.
What is the deadline?	This consultation runs until 11 June 2025. For further details of how to respond, and to access the full consultation paper, see https://lawcom.gov.uk/project/friendly-societies/.
What happens next?	After reviewing all responses, we will decide on our final recommendations for law reform, which we will publish in a report early in 2026.

This summary

This is a summary of our consultation paper reviewing legislation governing friendly societies: the Friendly Societies Act 1974 ("1974 Act") and the Friendly Societies Act 1992 ("1992 Act"). We do not summarise all consultation questions or provisional proposals in this document; there are details in the consultation paper not reflected here. This summary is intended to give an overview of the project and some of the key issues, questions, and provisional proposals.

Responding to our consultation

The consultation paper does not contain any final recommendations for reform of the law. Rather, it makes provisional proposals or asks questions to obtain additional information. For details of how to respond, and to access the full consultation paper, see https://lawcom.gov.uk/project/friendly-societies/.

We will analyse the responses we receive and consider what recommendations to make to the Government in our final report. It will then be for the Government to decide how to take them forward, and for Parliament to pass any new Acts needed to change the law.

What are friendly societies?

A friendly society is an organisation which provides insurance or other benefits to its members, funded mainly by its members. In providing schemes of mutual support, friendly societies can serve an important economic purpose, especially in terms of fostering corporate diversity, economic resilience, and financial inclusion.

Friendly societies and other mutual organisations represent a different business strategy and ethos compared to companies run for the financial benefit of their shareholders. This gives customers the benefit of greater choice in terms of the products and services they buy. In particular, friendly societies may offer insurance products to suit specific needs and can play an important role in delivering financial inclusion by offering lower-cost products or products to those who might not otherwise be able to access protection.

A proud history

Friendly societies are a type of mutual insurance entity with a long and illustrious history in the UK. They provide benefits to members and their families in times of hardship, as well as some forms of social support. Today, some friendly societies operate much like commercial insurers while others still enjoy lively and extensive membership involvement in social and community activities.

Friendly societies tend to appeal particularly to individuals who are interested in the mutual ethos (as opposed to a profit motive) or for whom traditional insurance or savings products are out of reach because of financial constraints or factors related to the calculation of insurance premiums (for example related to health or employment type).

Friendly societies also rightly pride themselves on their resilience, which is supported by their ability to take a long-term view of their business strategy. Since they do not need to pay dividends to external shareholders, they are able to prioritise the interests of members.

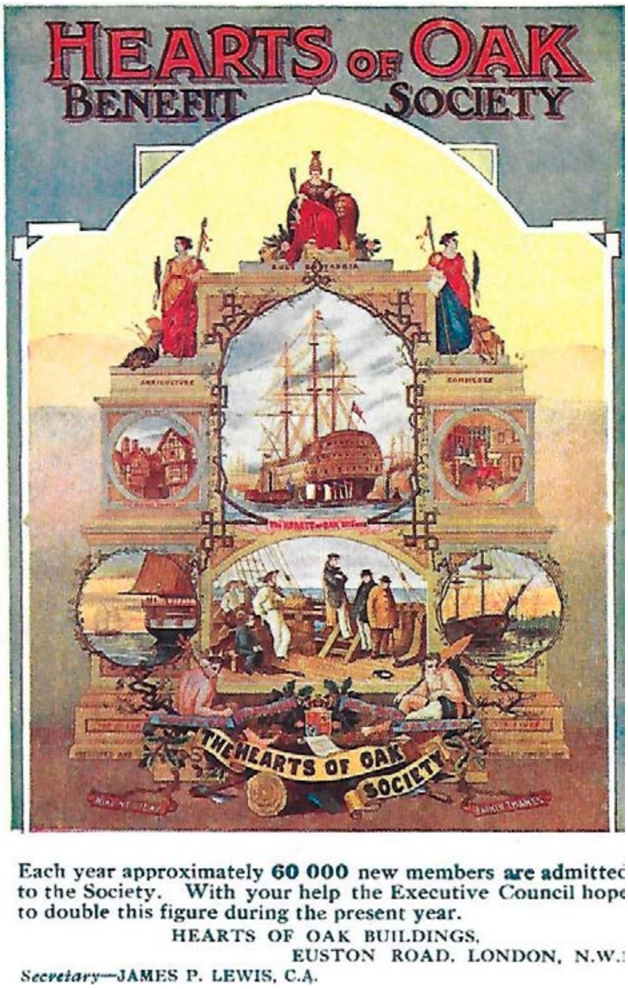

Photo by Reg Brown

Why is reform needed?

The current law is in need of reform for two major reasons:

- It is outdated: the last major update was in 1992. Friendly society law has not kept pace with developments in related areas such as company law and financial services regulation.
- It is very complicated: it is very long, and some people say it is overly comprehensive in some ways, while being silent on some important topics. It has also been amended many times resulting in a patchwork of legislation that is not accessible.

Friendly societies require a modern and fit-for-purpose legal framework within which to operate, encouraging sustainable growth in the sector while maintaining stability, protecting consumers and supporting members.

There are many different types of societies currently governed by friendly society legislation, ranging from working men's clubs and specially authorised societies to large friendly societies with subsidiaries that provide insurance products to millions of people. The law should take the diversity of the sector into account.

We have reviewed a wide range of issues across both the 1974 Act and the 1992 Act. We have looked at the law applicable to different organisations including companies, building societies, co-operatives and community benefit societies, to consider what a modern legal framework for friendly societies could entail.

Consultees can refer to Chapter 13 of the consultation paper to see a list of all the consultation questions.

The current law

The law as it currently stands is complicated. Although the 1992 Act is the primary piece of legislation in this area, the 1974 Act remains relevant. There are friendly societies that are still registered under the 1974 Act. These are unincorporated friendly societies.

There are also other types of societies registered under the 1974 Act, such as benevolent societies, working men's clubs, and specially authorised societies, whose regulation is opaque and determined on a case-by-case basis.

No new societies can register under the 1974 Act: new friendly societies must register under the 1992 Act, and other types of societies can potentially register under the Co-operative and Community Benefit Societies Act 2014 if they meet the appropriate requirements. The 1974 Act is therefore "run-off" legislation.

Societies that are registered under the 1992 Act are incorporated, which means they have a distinct legal personality or body corporate. Incorporated friendly societies can hold property and sue or be sued in their own name. The same is not true of societies registered under the 1974 Act.

The 1974 and 1992 Acts apply UK wide. We can only make recommendations for England and Wales, but Government might decide, when considering recommendations from our final report, to extend our recommendations, for example to Scotland and Northern Ireland. We ask consultees to tell us about any specific issues arising specifically in Wales, Scotland, Northern Ireland, or the Channel Islands.

Societies registered under the 1974 Act

(Consultation question 3)

A key question we are asking in respect of the 1974 Act is whether to institute a transition period during which societies registered under that Act must re-register under the Co-operative and Community Benefit Societies Act 2014 or, where appropriate, incorporate under the 1992 Act, or convert to a company.

We are considering whether there is a justification for spending public resources updating the 1974 Act when there are other legislative frameworks that could provide a more modern and fit for purpose home for societies still registered under the 1974 Act.

It is also a way of simplifying the law: at present, the 1992 Act applies in part to all friendly societies (those registered under the 1974 Act as well as those registered under the 1992 Act), and in part only to incorporated friendly societies. It is not easy to determine which parts of the 1992 Act apply to a specific friendly society.

If there is support for the repeal of the 1974 Act, we are provisionally of the view that societies should be given a period of three years from when the law would come into effect to re-register. We ask whether the existing process for re-registration is satisfactory.

We ask a similar question about friendly societies providing **discretionary benefits** to members, and whether the 1992 Act is the appropriate legislative framework for these societies. (**Consultation question 14**).

Mutuals Public Register

(Consultation question 5)

The Financial Conduct Authority (FCA) is responsible for keeping a publicly accessible register that provides information on friendly societies, co-operatives, community benefit societies, credit unions and building societies.

At present, it is not easily apparent from the Mutuals Public Register who the committee of management of a friendly society is. We therefore ask consultees whether the officers of a friendly society or another type of registered society should be listed separately on the Mutuals Public Register and whether a period of 14 days is appropriate to allow for notification of the FCA.

Rules of a friendly society

Friendly societies must have rules that set out how they will deal with a variety of issues. At a minimum, their rules must address all the matters set out in Schedule 3 to the 1992 Act including the terms of admission of members, the terms on which benefits will be provided (or the way it will be determined), and the powers and duties of the committee of management.

Some modernisation is necessary in respect of the mandatory content covered by friendly societies' rules. This includes introducing new items and repealing items that have become out of date.

Outdated rules (Consultation questions 7 and 8)

- **Forfeiture:** Forfeiture in this context relates generally to forfeiture (and repayment) of benefits in circumstances where a member has knowingly made a false claim to benefits. It can also relate to forfeiture of membership and associated forfeiture of money paid to the friendly societies. We understand that forfeiture is not widely applicable anymore, and that its inclusion was largely due to the historic development of friendly societies. We propose that friendly societies could still choose to make provision for dealing with forfeiture in their rules, but they would not be required to do so.
- **Arbitration:** We also propose that friendly societies' rules need not provide specifically for arbitration. Friendly societies would still need to make provision for dispute resolution, but it would not need to be arbitration.

New rules (Consultation question 9)

- **Conflicts of interest:** We propose that friendly societies' rules should set out how a friendly society will deal with potential conflicts of interest. For example, committee members may be required to declare an interest in a proposed transaction or may not be permitted to participate in the decision-making process at general meetings for quorum or voting purposes.
- **Delegation of committee of management powers:** For the efficient management of the business of a friendly society, it may be necessary for the committee of management to delegate their powers to others. At present, the rules of a friendly society do not need to make provision for how this can be done. Currently, only the powers and duties of the committee of management must be addressed in the rules. It would promote openness to have a procedure in the rules of friendly societies that set out how this will take place.

A society's power to change its rules (Consultation question 12)

The process for changing the rules: A society must provide in its rules for how its rules can be changed. A society can generally change its rules if its members pass a special resolution at a general meeting.

Rule changes take effect when they are registered by the FCA or, under the 1992 Act, on the date specified by the relevant friendly society. The FCA registers rule changes that are not contrary to the 1974 Act or that conform with the 1992 Act, as the case may be.

Benefit terms in the rules: All friendly societies must provide in their rules for the terms on which benefits will be provided to their members. The rules must either specify the terms themselves or how the terms will be determined. For instance, a friendly society may provide for members' benefit terms in a Table of Benefits or in Schedules to their rules.

A friendly society may be able to change the terms on which benefits are provided to members by validly changing its rules, depending on whether there is a separate contract between the society and the member setting out the benefit terms.

Broadly, where there is no separate contract, the member will be bound by rule changes that affect their rights as policyholders under the rules. Where there is a separate contract (for example, a policy), whether the member will be bound depends on the contract. If the contract is subject to the rules of the friendly society, and the rules provide for rule changes, then the member will be bound by a valid rule change regarding benefit terms even if they did not vote in favour of the rule change.

We ask consultees whether reform is needed regarding a friendly society's power to change its rules (related to benefit terms or otherwise).

Communication with members

Members are the owners of a friendly society. Although they do not exercise day-to-day control over the activities of the friendly society, members should feel a sense of ownership in the strategy and business of the friendly society.

Electronic communication with members (Consultation question 16)

It is crucial that all friendly societies can communicate with members effectively. There are various instances in the legislation where friendly societies are required to notify their members of certain events (such as special general meetings) or relay certain information to their members (such as member statements in the event of a proposed transfer).

Some progress has been made towards facilitating modern means of communication for friendly societies that would like to make use of it: the law allows for electronic communication with members (via email or a website) under certain circumstances.

Nevertheless, friendly societies have said that they continue to face some difficulties in communicating with members efficiently. This is because members must either notify their friendly societies of their email addresses or agree to information being made available to them via a website.

Under company law for example, a shareholder must be asked to agree that the company may send or supply documents or information by means of a website. If they have been informed of the effect of a failure to respond and do not respond within 28 days, the company may proceed to communicate with the individual by means of a website.

We seek consultees' views on whether they would prefer an opt-in approach (the existing approach) or opt-out approach (the approach under company law) to electronic communication between friendly societies and their members.

Members who cannot be traced (Consultation question 17)

Friendly societies are sometimes unable to trace policyholders because people move or die, and the friendly society is not notified. Some friendly societies have outdated records as a function of historical development, and some individuals do not know that they are beneficiaries of policies.

The friendly society legislation does not make provision for what friendly societies should do when they are statutorily obliged to contact members, but members cannot be located or cannot be located except at exceptionally high costs.

Stakeholders have said the inability to trace some members, and the lack of a legislative mechanism to recognise the inability to trace members who have died, is particularly problematic when friendly societies are looking to take certain actions, including giving notice of meetings; transferring engagements; converting into a company; and exiting the market and distributing funds.

Where members are untraceable, it becomes more difficult for the regulators to satisfy their objectives, including the fair treatment of consumers. The importance of member affirmation in processes like transfer and conversion means that any difficulties in engaging with a cohort of members can cause significant delays and increased costs.

For example, when Liverpool Victoria (LV=) was preparing to make its application for conversion from a friendly society to a company limited by guarantee, it expended significant time and resources (£1.5 million) to reconnect with its "untraceable members". Even so, it was only able to trace and contact a very limited proportion of these members.

The current position in the 1992 Act is that when a friendly society must contact its members, the appropriate authority has a discretion to alter this requirement where an application has been made to it from members. We have considered whether the duty to contact members should be qualified in some way, for example by providing that friendly societies need only take "reasonable steps" to contact all members, or that they need only take specific steps set out in the legislation.

Meetings

Meetings can be a key forum for engagement between a friendly society's members and its committee of management and are therefore an important part of the governance of a friendly society. We make provisional proposals for reform of two aspects.

Notice periods (Consultation question 18)

Members must be given at least 14 days' notice of general meetings. A longer period may be required by the rules of a specific friendly society or registered branch. The calculation of the notice period may cause confusion when proxy voting is permitted since the notice period ends not on the date of the meeting, but on the final date for receipt of appointments of proxies to vote at the meeting.

We think this can be simplified to require 14 days' notice of meetings, regardless of whether proxy voting will be permitted, and the notice period should expire on the date that the meeting takes place. We think a clearer rule for all meetings would reduce the risk of resolutions being annulled on the basis that notice of meetings was not duly given to members.

Allowing proxy voting at meetings of delegates voting on special resolutions (Consultation question 19)

Some friendly societies do not operate on the basis of "one member, one vote" but instead make use of a delegated voting structure whereby members of branches vote for a delegate. The delegate will vote on a variety of matters on behalf of members.

Currently, proxy voting is not permitted in respect of a special resolution at a meeting of delegates, perhaps because it is contrary to what constituents had in mind when they voted for a specific delegate. However, it is not clear whether this is a good enough reason to maintain this distinction. We ask consultees whether proxy voting should be permitted at meetings of delegates in respect of voting on special resolutions.

Committee of management

Since friendly societies are run for the benefit of present and future generations of members, it is important that societies are prudently managed. To that end, every friendly society is required to have a directing body, the committee of management, which is entrusted with running the society in the interests of the membership.

Especially when carrying on regulated activities, friendly societies operate within a complex commercial and regulatory environment. Professional committees of management with appropriate experience have therefore become the norm. As part of the Senior Managers and Certification Regime, the "fitness and propriety" of the committee members of regulated friendly societies is regularly assessed.

Duties of the committee of management (Consultation questions 21 and 22)

Committees of management have statutory duties which include:

1. Preparing individual accounts.
2. Electing officers such as the CEO and Secretary
3. Preparing the annual report.

In addition to their statutory duties, the members of a friendly society's committee of management ("committee members") are subject to duties under the common law, which are:

1. Obey the law and comply with the friendly society's rules.
2. Use their powers for the purposes for which they were conferred.
3. Act in good faith in the best interests of society and act fairly between different classes of membership.
4. Exercise independent judgement.
5. Exercise reasonable skill, care and diligence.
6. Avoid conflicts of interest.
7. Do not misapply society assets or make a secret profit.
8. Maintain confidentiality.

These common law duties were codified (put in legislation) for directors of companies. We think there might be value in adding these common law duties to the friendly society legislation. We think the wording used for directors' duties in the Companies Act 2006 could be used, but we realise that there might be duties specific to friendly societies that should be included, such as the duty to act in good faith in the best interests of society and act fairly between different classes of membership.

We ask whether committee members should be subject to the same general duties as directors of a company, and whether there are specific duties which should be different for committee members.

Payment for loss of office or upon retirement (Consultation question 25)

The 1992 Act makes provision for how friendly societies should conduct themselves in their dealings with committee members. Generally, a special resolution must be passed by members before a (non-contractual) payment can be made to a committee member as compensation for loss of office or in connection with their retirement.

Since a friendly society's assets exist to serve current and future generations of members, requiring disclosure and affirmation before the society's assets can be used to pay departing committee members seems to be a sensible safeguard. It is also not unique to friendly societies. Companies must take similar steps before payments are made to departing officers unless certain exemptions apply. Nevertheless, we acknowledge that friendly societies may face significant cost and administrative burdens in the process of facilitating and procuring member affirmation.

We ask consultees whether they consider the present disclosure and affirmation requirement to be appropriate.

Eligibility to be a committee member (Consultation question 26)

To be a member of a friendly society's committee of management, a person must be elected in accordance with the rules of the society. Any person may be elected, whether or not they are a member of the friendly society, subject to certain age constraints.

A person under 18 may not vote or be elected to be a committee member. A person over 70 may not be elected to be a committee member unless certain conditions are met.

A friendly society's rules may stipulate that members must retire from its committee at a prescribed age ("the compulsory retirement age"). If a society's rules do set out a compulsory retirement age, any person who has attained the prescribed age will be ineligible to be a committee member.

The legislation also refers to "the normal retirement age", which means 70 years of age or such lesser age as the rules of the society may prescribe as the normal retirement age for committee members. A person who has attained the normal retirement age will be ineligible to be elected to a committee unless they have been approved as eligible by resolution of the committee.

There are no comparable restrictions placed on directors of company: any person may be a director if they are 16 or older. There is no upper age limit and no additional criteria for election of persons above a certain age. There has been a recent proposal to remove all references to the normal or compulsory retirement age for directors of building societies.

In light of the approach taken towards age restrictions in comparable contexts, and the application of fitness and propriety tests to regulated friendly societies as part of the Senior Managers and Certification Regime, we ask consultees for their views on age-based eligibility criteria for individuals who would like to be committee members.

We are of the view that any proposal in this regard would not affect friendly societies' ability to make additional rules on eligibility in their rules.

What should the officers and the committee of management be called? (Consultation question 27)

The legislation refers to a society or branch's "committee of management" and its "officers". In relation to incorporated friendly societies, "officer" means a committee member, the chief executive, and the secretary. In relation to registered societies, "officer" includes any trustee, treasurer, secretary, or member of the commitment of management of a society or branch, or any person appointed by the society or branch to sue and be sued on its own behalf.

Friendly societies commonly refer to their committees of management as "boards of directors" or "boards of management". They also tend to refer to their committee members as "directors".

We provisionally propose that the legislation should be updated to refer to a "board of directors" and "director" rather than "committee of management" and "committee member". We think this should be applicable to friendly societies under the 1974 and 1992 Acts, but not to registered societies under the 1974 Act (that is, societies other than friendly societies).

Audits and accounts

The financial year of friendly societies (Consultation questions 28 and 29)

Under the current legislation, all friendly societies must have a financial year end of 31 December. They must also send two copies of their accounts and auditor's report on the accounts to the FCA (and to the Prudential Regulation Authority ("PRA") if they are PRA-authorised) by 30 June or 14 days before the annual general meeting (whichever is earlier). A single year-end reporting date aids in the supervision of these firms. The regulator can compare firm performance in the same period with relative ease.

Numerous friendly societies have told us that the fixed year end and return deadline results in organisations competing for actuarial, accounting and audit resource at the same time, from a limited pool of appropriately qualified and registered auditors and actuaries. Moreover, big accounting firms are generally unwilling to take on friendly societies whose comparatively small business is not lucrative enough to be attractive. Taken together, this invariably results in a lack of competition and increased costs for friendly societies.

While we think the single statutory year-end date serves a useful purpose from a regulatory perspective, it appears to be having unintended and disproportionate effects on friendly societies in practice. We therefore provisionally propose that friendly societies should be permitted to amend their financial year-end date, giving notice to the FCA as registrar. We ask consultees if they agree.

For those friendly societies who choose to alter their year-end dates by making provision for this in their rules and notifying the FCA, more (or fewer) than 12 months may elapse between reports. We provisionally propose to replicate the safeguard that exists in the building society context, such that a friendly society would not be able to change to its year-end date if the change would cause its current financial year to extend beyond 18 months.

Support for the provisional proposal to allow friendly societies to alter their financial year end would also require that the current compulsory deadline for filing reports and accounts by 30 June (six months after the existing financial year end) be amended to so that it would be six months after the accounting reference date.

Regulators' ability to dictate the form of submissions (Consultation question 30)

Friendly societies can submit paper or electronic copies of their accounts. It has been suggested that as part of modernising the legislation, it would be useful and appropriate to reconsider whether this choice of form still makes sense.

At present, regulators cannot dictate the form of submissions. In other words, they cannot require forms to be submitted electronically. We ask whether the regulators should be empowered to require electronic-only filing of documents.

Simplifying audit (Consultation questions 31 and 32)

We think that the audit regime under the 1992 Act could be simplified, for example through a simpler process for small friendly societies that do not undertake regulated activities. Comparatively, the tiered approach for companies and charities shows that, whilst audits are important, there are circumstances where the size of the entity might justify something less than a full audit.

Thresholds for other types of legal entities that can determine audit requirements

Small companies satisfy two of the following criteria:	A turnover of not more than £10.2 million	A balance sheet total of not more than £5.1 million	Not more than 50 employees
Micro companies satisfy two of the following criteria:	A turnover of not more than £632,000	A balance sheet total of not more than £316,000	Not more than 10 employees
Large charities satisfy the following criteria:	Gross income exceeds £1 million in a financial year regardless of asset value	Gross income exceeds £250,000 and by the end of the year its assets are worth more than £3.26 million	

Small and micro companies do not have the same audit requirements as large companies (companies that fall above the thresholds set out in the table above). Similarly, large charities do not have the same audit requirements as small charities (those charities that fall below the thresholds set out in the table above).

We ask consultees about their views on relevant thresholds under the 1974 and 1992 Acts and we provisionally propose that, for friendly societies who are not authorised for regulated activities, the following audit rules should apply.

1. Any person appointed to audit the accounts should be a qualified auditor.
2. An incorporated friendly society not undertaking any regulated activities should be able to opt out of the duty to audit accounts when it is below a certain size.
3. That threshold should be capable of revision by statutory instrument.
4. The members or registering authority should be able to insist on an audit.

Appointment of auditors (Consultation question 33)

We do not intend for our proposals to affect any duty outside of the 1992 Act or 1974 Act that would require a friendly society (or other registered society) to appoint an auditor or auditors. We specifically do not make any provisional proposals in respect of the requirement that friendly societies carrying on insurance business must appoint qualified auditors. However, in light of feedback that the appointment of auditors by members at the annual general meeting amounts to a rubberstamping exercise, we ask whether the committee of management should be permitted to appoint qualified auditors. We also ask whether the committee should be permitted to determine auditors' remunerations.

Friendly societies that are public interest entities (Consultation questions 38 and 39)

Many friendly societies are "public interest entities" ("PIEs") which are businesses that are regarded as being of significant public importance or focus, usually because of the nature of their business or the impact they have on the economy. Many friendly societies fall into this category simply because they fall within the relevant definition of an insurer. They have had to comply with the audit requirements for public interest entities, which some friendly societies have described as being disproportionate.

It is within our terms of reference to consider disproportionate regulation and the restriction in auditing requirements for friendly societies as PIEs. However, in the course of the project, the Department for Business and Trade announced that they will be reforming elements of the PIEs regime more generally in the Draft Audit Reform and Corporate Governance Bill.

To align the efforts of this project with the Government's work on the Draft Audit Reform Bill, we have sought to record the effects that the existing PIE audit regime has on friendly societies. We invite consultees' views on the costs associated with PIE audits, the proportionality of any burdens associated with PIE audits, and any steps that could be taken to reduce them.

Demutualisation

(Consultation questions 40 and 41)

Demutualisation is a process by which a member-owned organisation such as a friendly society gives up its mutual status, and instead focuses primarily on generating a profit for external investors. Some people think that friendly societies should have mechanisms in place that protect against demutualisation.

We ask questions to better understand the implications that protection mechanisms of any kind would have for the sector. The solution envisaged under the Co-operatives, Mutuals and Friendly Societies Act 2023 was a form of asset locking. Asset locking refers to legal tools that ensure an organisation's assets may not be used except for prescribed purposes. This may limit the ability of organisations to make distributions, pay interest, or trade property for a price below its market value and/or outside the ordinary course of business.

There are significant challenges associated with designing a statutory asset lock that would work within the existing complex regulatory framework and taxation regime for friendly societies. We do not make any provisional proposals but invite consultees' views on the potential benefits and disadvantages of asset locking for friendly societies.

Amalgamation

Two or more friendly societies may form a single new friendly society, or branches of the same friendly society may amalgamate.

We have been told that amalgamation does not occur frequently today but that it is potentially an important mechanism that can allow small friendly societies to remain commercially viable. Some stakeholders have remarked that they expect amalgamation to become more important in the next ten years. Smaller friendly societies facing increasing overhead costs may wish to join together to benefit from economies of scale.

Amalgamation under the 1992 Act involves various steps including providing information to members (a "member statement"), voting by special resolution in each society and, in the case of amalgamation under the 1992 Act, the establishment of a new incorporated friendly society, and the oversight and consent of the regulator(s) throughout.

Reform of the amalgamation process (Consultation questions 42 and 43)

Stakeholders have said that the legislative process for amalgamation could be simplified by providing for less stringent regulatory oversight in circumstances where the actuaries of the societies proposing to participate in the amalgamation support the transaction. Actuaries monitor and advise management on the risks that firms ought to be aware of (that is, anything that may impact a firm's ability to fulfil its promises to its customers).

We provisionally think that where two or more societies are proposing to amalgamate with the support of the relevant actuaries, a simplified statement could be sent to members ahead of voting on the special resolution, for example, explaining the reason for the proposed amalgamation, providing a summary overview of the actuarial reports, and notifying members that the actuarial reports have been independently reviewed.

This suggestion would only be applicable to friendly societies that undertake regulated activities and have actuaries. We invite consultees' views as to whether simplification is required for other friendly societies, who, if they are not undertaking regulated activities, would not have actuaries who can provide a view on the proposed amalgamation.

Conversion

A company is a legal vehicle used to carry on business (for profit or otherwise). Companies are incorporated, which means they have separate legal personality from their shareholders and it is possible to sue the company itself.

A friendly society's membership may choose to convert the friendly society into a company so that the organisation can benefit from the regime applicable to companies. The potential benefits of converting into a company include a less restrictive legislative regime and the ability to access external capital through shareholders and the capital markets.

Conversion under the 1974 Act requires a registered society looking to convert into a company to pass a special resolution, which must be signed by the chair and the secretary and sent to the FCA to be registered.

Conversion under the 1992 Act requires a friendly society to take various steps including providing certain information to members, passing a special resolution, and seeking the confirmation of the regulator(s). Once confirmation is received, the company can be registered.

We consider whether reform is needed in respect of the process for conversion of a friendly society into a company.

Reform of the conversion process (Consultation questions 44, 45, and 46)

Stakeholders have suggested that several improvements could be made to the conversion process under the 1992 Act.

First, the requirements regarding the contents of the member statement (sent to members ahead of voting) should be made clear. At present, it is confusing to friendly societies that there is information available regarding the contents of member statements in cases of amalgamation and transfer but not conversion.

Second, friendly societies should not be permitted to broaden their purposes or objects by converting into companies. A friendly society may not, using the procedure for conversion set out in the friendly society legislation, become a company with objects that are broader than the objects it had as a friendly society. This is already the position in the law and would require a change only if consultees were of the view that friendly societies should be able to widen their purposes upon conversion.

Third, clarifying the legal consequences of conversion:

1. Conversion means that a society changes its legal structure but remains the same legal entity.
2. Conversion does not involve a deemed disposal of assets and resale to the newly created company.

We ask consultees for their views on these specific aspects of conversion.

Transfers of business engagements

A transfer of business engagements offers a way of transferring books of insurance business from one entity to another. This is an unusual procedure because it represents the sale of members' contracts, without having to obtain the individual consent of each member. A similar process is available for insurance companies for "portfolio transfers", with the main distinction being that the regulators can approve a transfer by a friendly society, while the courts must approve a transfer by an insurance company. It is generally regarded as a complicated and expensive process. This is especially challenging when a very small or financially distressed friendly society needs to transfer its business to another insurer or friendly society. There is a strong interest from the sector in a simpler and more efficient process.

Due to the complexity of the process and the diversity in the sizes of friendly societies, we think it is unlikely that a one-size-fits-all approach would be suitable. We therefore discuss various options in the consultation paper of how the transfer process could be improved.

Part 8 transfers under the 1992 Act

Part 8 of the 1992 Act makes provision for the transfer of business engagements where the transferor (the transferring entity) is a friendly society. Where the transferor is not a friendly society, Part 7 of FSMA applies.

The infographic on the next page sets out in brief how the process for a transfer under Part 8 works, the steps that must be taken, and the parties involved.

> "An efficient and cost-effective process for transfers of engagements is important for growth in the sector. These considerations must be balanced against appropriate protection for members and policyholders. A proportionate and pragmatic approach is necessary."

Transfers of business engagements under Part 8 of the 1992 Act

Transferor friendly society

Committee of management considers whether to recommend a transfer of engagements to members.

Sends member statement to members eligible to vote on the proposed transfer.

Members must pass special resolutions on the terms of the proposed transfer.

Records agreed terms in an instrument of transfer of engagements.

Transferee

Transferee can be a friendly society or another entity (such as a company).

If the transferee is a friendly society, it sends a member statement to members (unless the regulator(s) consent to the society proceeding by resolution of its committee of management, rather than by special resolution of the membership).

If a special resolution is required, members of the transferee friendly society vote on the terms of the proposed transfer.

↓

Transferor applies for confirmation by the regulator(s) and publishes notice of its application in the relevant Gazette.

↓

Regulator(s) confirm the transfer unless one or more preclusion grounds apply.

↓

Transferor and transferee apply to the FCA for a registration certificate specifying the transfer date.

↓

On the transfer date, the transferor's property, rights, and liabilities become those of the transferee.

Simplifying the transfer process

Preclusion grounds (Consultation question 48)

The appropriate authority (the FCA or PRA) must confirm the transfer, unless they are precluded from doing so on the basis of a number "preclusion grounds" set out in the legislation.

For instance, under the first preclusion ground ("the successor factor"), a transfer will not be confirmed where there appears to be a "substantial risk" that the proposed recipient of the transfer ("the successor") will not be able lawfully to carry out the engagements to be transferred to it.

This preclusion ground has been particularly problematic where policyholders have moved abroad, such that the regulator is empowered to consider the successor's ability to discharge its obligations under those policies in the relevant foreign jurisdictions. We think it is important that this preclusion ground is interpreted proportionately to avoid inhibiting transfers that do not pose a material risk to policyholders. We ask consultees how the substantial risk criterion could be modified.

Standardising voting requirements and potential exemptions by the regulators (Consultation questions 50 and 51)

Whether a recipient friendly society needs to pass a special resolution depends in part on whether or not the transferring entity is a friendly society. We ask consultees whether a friendly society should be able to agree to receive engagements, even where the transferring entity is not a friendly society, via a resolution of its committee of management rather than by special resolution of its members, subject to the consent of the regulators (the FCA and the PRA).

Alignment with Part 7 of FSMA

We further consider the potential advantages and disadvantages of introducing greater alignment between the transfer process under Part 8 of the 1992 Act and the process under Part 7 of FSMA, which is available to insurers excluding friendly societies. We have been told that although the process under FSMA may not necessarily be faster or cheaper than the process under the 1992 Act, the former provides certain benefits, including contemporary case law and guidance.

There has not been any consensus on whether it would in fact be beneficial to friendly societies to introduce greater alignment with the transfer process under Part 7 of FSMA. There seems to be general agreement that it would be beneficial to retain the key features of the Part 8 process under the 1992 Act, namely that the regulators are the decision-makers (as opposed to the courts) and that the regulators have some discretion to tailor the process according to the needs of the parties.

Improvements to Part 8 transfers (Consultation questions 52 and 53)

We consider how the existing process for transfers under Part 8 of the 1992 could be improved. Options include, for example, introducing a simpler process for "small" friendly societies, if a satisfactory definition of a "small" friendly society could be agreed. We are aware that not all stakeholders think a size-based distinction is appropriate, in which case we also invite views on the circumstances in which a simplified process should be available, if not based on size.

Other suggestions have been for additional guidance from the regulators, and agreeing a timeframe for transfers with the regulators.

Transfer at the direction of the regulators (Consultation question 54)

We consider the circumstances in which the regulators could use the power under section 90 of the 1992 Act to compel a transfer of engagements from a friendly society to another entity.

There is some uncertainty as to whether the recipient society must be a friendly society: we take the view that the recipient does not need to be a friendly society.

The section 90 power is not used in practice, but it could theoretically provide the relevant regulator with a means of pursuing their statutory objectives. The difficulty is that the regulator cannot force another entity to take on a book of insurance. Uncertainties regarding the scope of the power seem to undermine its usefulness in practice and some stakeholders have said the power should be revoked.

We ask consultees' whether such a power should be retained, and if so, what the scope of the power of the regulators should be to direct a transfer of a friendly society's engagements, and under what circumstances such a power should be exercisable.

Access to external capital

(Consultation question 55)

Friendly societies can only raise funds through money received from members or from loans. This means their options are limited when they require funding to develop their business, especially since regulations impose restrictions on how their surplus capital can be used.

Some friendly societies have thus asked that the law should provide a new way of raising funds, for example through the issuing of a special type of share, which would allow them to raise money from outside investors, subject to limitations on how much control investors would have over the friendly society.

The Mutuals' Deferred Shares Act 2015 ("2015 Act") was enacted to empower HM Treasury to lay regulations that would set up the technical details of issuing mutual deferred shares ("MDS"). No regulations have been made following a consultation whereafter HM Treasury concluded that it could not design a regulatory framework that would satisfy the requirements identified by industry representatives, who said that deferred shares would only be issued if:

1. capital raised through the issuance of deferred shares qualified as tier one capital; and
2. issuing deferred shares would not alter the tax treatment of the issuing mutual.

The tax treatment of friendly societies, as mutual entities, is affected by the mutuality principle, on the understanding that one does not make a profit from trading with oneself. The mutuality principle broadly provides that only the individuals who contribute to a mutual organisation's common fund are entitled to participate in any surplus. There does not need to be an exact relationship between the liability to contribute and the entitlement to participate – for instance, individuals who join the organisation may share in profits generated at an earlier time – only a reasonable relationship is required.

Tax policy is not within our remit, but we highlight the challenges associated with taxation, the application of the mutuality principle and raising external capital. These issues form a significant part of the challenges associated with the creation of a new mechanism that would facilitate access to external capital.

We explore what means of raising capital is available to other mutual organisations such as

- Building societies
- Co-operatives

For comparison, we briefly explain in the consultation paper the mechanisms that enable other mutual entities such as building societies and co-operatives to raise external capital without foregoing their mutual trading status entirely (although they are subject to corporation tax in respect of their non-mutual trading profits).

We also consider solutions from abroad: for example, in Australia, eligible mutual entities can issue equity capital (mutual capital instruments or "MCI") without risking their mutual structure or status. The Treasury Laws Amendment (Mutual Reforms) Act 2019 amended existing tax legislation to clarify that issuing MCI does not cause a qualifying mutual entity to lose its mutual trading status for (income) tax purposes.

We identify eight challenges that would need to be considered when designing a mechanism through which friendly societies could access external capital. They are:

1. taxation and the application of the mutuality principle
2. prudential regulation
3. the costs involved in raising external capital through the issuance of a type of mutual share
4. conceptual coherence and the effect on the key characteristics of a friendly society
5. the appropriate scale (and whether the intention is to raise funds from institutional or retail investors)
6. the attractiveness of a mutual investment product to investors
7. the effect on with-profits members
8. the effect on other mutuals

We do not make any provisional proposals. We ask consultees to tell us of the interest they might have in accessing external capital, and if, they are a friendly society, to which uses it might be put.

Business limitations

Friendly societies that provide contractual insurance benefits to their members operate in a highly regulated environment. They can only provide insurance if they are properly authorised to do so under the appropriate legislation. Other friendly societies, for example those providing only discretionary benefits to their members, might operate in a less regulated environment.

However, all friendly societies are subject to general restrictions on what activities they can engage in: they are limited to the purposes set out in their memorandum and / or rules. And the current legislation limits what these purposes might be. Therefore, the most important limitation is that friendly societies can only undertake certain types of business. If they are not expressly permitted by legislation to do something, they cannot do it. This is different from companies, which can do anything unless the law specifically prohibits it.

In addition to this general limitation, there are also many specific limitations imposed on friendly societies. We make several provisional proposals for reform where we think these limitations are overly strict.

- **Group insurance** (Consultation question 56): We provisionally think that removing limitations imposed on group business, which have not been revisited since 1993, could give incorporated friendly societies greater freedom to offer benefits to consumers, thereby improving competition in the sector. This would not affect the supervisory powers of the FCA and PRA.
- **Reinsurance** (Consultation question 57): We provisionally propose that incorporated friendly societies should be permitted to write reinsurance business without the condition that it must be limited to transactions with other friendly societies.
- **Investment powers** (Consultation question 58): We provisionally propose that incorporated friendly societies should be permitted to invest their funds in any manner authorised by their rules.
- **Secured loans to members** (Consultation question 59): We provisionally propose that incorporated friendly societies should be permitted to set their own terms for secured loans to members, subject to all other legal and regulatory rules, retaining the condition that the amount loaned to a member may only be up to half of the value the member’s life policy.

- **Loans to members out of a separate fund** (Consultation question 60): The amounts that members may contribute to the loan fund that an incorporated friendly society can create to make loans to members, and the sums that may be loaned, have not increased since 1992. We ask whether this mechanism for making loans should be retained and, if so, whether the contribution and loan amounts should be increased.
- **Power of the regulators to intervene in the activities of a subsidiary** (Consultation question 61): Incorporated friendly societies may form or control subsidiary companies, which do not have the same restrictions placed on their business activities. We ask consultees for their views on when the regulator(s) should be able to intervene in the business activities of a subsidiary.
- **Islamic insurance (*Takaful*)** (Consultation question 62): *Takaful* products enable individuals to protect themselves and others against defined risks in a manner that is compliant with Islamic law. We ask consultees if they agree that it is possible to accommodate takaful products within the mutual framework of a friendly society and that the existing legislation does not appear to pose any specific challenges to Islamic finance.

Exit from the market

It might be necessary for friendly societies to bring their business to an end for a variety of reasons. These may include insolvency risk, governance issues, or business model unsustainability (such as the inability secure capital or reinsurance).

In the insurance sector, a firm exits the market when it ceases to write new insurance business and has its FSMA permissions to write such business revoked by the PRA.

The existing legislation makes provision for several ways of exiting the market.

	1992 Act	1974 Act
Voluntary winding up	Yes	No
Dissolution by consent	Yes	Yes
Dissolution or termination by event	No	Yes
Winding up by the court	Yes	Yes
Compulsory liquidation on the basis of insolvency	Yes	No
Dissolution by the award of the regulator	No	Yes

Solvent exit (Consultation question 63)

The legislation provides several options under the 1974 Act and 1992 Act for societies who wish to bring their activities to an end, for example through dissolution by consent or, for an incorporated friendly society, through the voluntary winding up of the society. We provisionally think that the existing mechanisms are sufficient to facilitate solvent exit from the market, especially since friendly societies can also bring an end to their business activities through transfers of business engagements.

Insolvent exit (Consultation question 64)

A friendly society may need to make use of insolvent exit procedures if it is unable to meet its debts as they fall due. The mechanisms for solvent exit can be used (namely dissolution by consent or voluntary winding up), or it may need to be compulsorily liquidated. Compulsory liquidation means that the friendly society is wound up by the court.

1974 Act

We ask consultees whether creditors of societies registered under the 1974 Act should have a right to petition the court to wind up an insolvent society, and further whether members should be able to petition the court for a winding up of the society.

These would be measures in addition to the existing power of the FCA (or PRA, if they undertake regulated activities) to petition the court for a winding up order if it appears to them that it is in the interest of members or the public to do so.

1992 Act

Friendly societies undertaking regulated activities operate in a complex regulatory environment. We ask whether these friendly societies should be treated similarly to commercial insurers when it comes to insolvency proceedings. We consider in particular whether mechanisms that are available to commercial insurers facing insolvency would be of any value to similarly situated friendly societies.

Administration

Administration is a procedure used to restructure a company's debts under the protection of a statutory moratorium, preventing its creditors from hindering rescue efforts by enforcing their claims. Overwhelmingly, it is used to save and transfer the business as a going concern. Presently, it is not available to friendly societies. We ask whether administration should be available to friendly societies.

Other issues

Consultees are invited to let us know if there are further areas for reform that we have not covered in the consultation paper.

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