



**CO-OPERATIVES UK**

## Age limits in Industrial and Provident Societies

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“There are lots of co-operative enterprises that could benefit from the opportunities that engaging with young people brings.”



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## The Case for Young Members

### Involving Young People

Children are naturally co-operative. That is the simple conclusion, after years of research, reached by Professor Michael Tomasello, eminent development psychologist and author of *Why We Co-operate*. Drop a toy, he demonstrates, and a fourteen month old will pick it up for you without question.

So are co-operatives up and down the country full of young people?

Not yet. While there are some wonderful examples emerging of young co-operation, there are lots of co-operative enterprises that could benefit from the opportunities that engaging with young people brings.

The rule changes opening up to young people are a prompt and an opportunity to look more widely at involving young people. I see three reasons to consider making young people a conscious part of your membership strategy:

1. For most co-operatives, young people are already part of the community that you serve. It is their school uniforms purchased with a credit union loan, their laughter in the housing co-operative playground, their quiet pleasure when tucking into some fair-trade co-operative biscuits...
2. Young people are the most influential consumer group, bar none. It may be true that children nowadays are older, younger. But it is a timeless truth that adults want to be younger as they get older. Young people are technology pioneers and commercial early adopters and influence trends and fashion for all age groups.
3. You will be ahead of the game. There is a growing movement and body of work around young people's participation, but mainstream business has done absolutely nothing to engage with young people. You will find them portrayed in every advert, from Coca-Cola to Gap, but they have no voice in British business.

If you are successful, engaging young people as members will not just change how you communicate with members or get them involved, it will refresh your membership, brand and working culture - most new staff in retail consumer co-operatives, for example, join at a young age.

### The Health Warnings

How do you engage young people? There is one and only one simple litmus test for success – you have to mean it.

So here are the health warnings.

1. By all means experiment and start with what you are good at, but don't try to bring young people in to the same old, same old.

If having young members is new for you, you are going to have to try something different if you are to get different results. Think of it as play, until you learn what works. As the Co-operative Group has found, for example, young people enjoy creating multi-media – perhaps their voice can be heard through that or through partners like the local, co-operative Woodcraft Folk.

2. Think hard about whether this is for you. Is there a business case? Are members going to be supportive?

There is a great benefit in diversity, and a welcome recognition over recent years across the co-operative movement of the need to open out more. But are young people the most pressing constituency for you in terms of widening the mix of your members? If not, leave it for a year or two and tackle something on diversity that is higher on your priority list.

3. Don't spend money on people to tell you how to do this.

Instead find people in your co-operative who can listen. If an agricultural co-operative wants to bring in the next generation, because of the challenge of succession across the farming industry, it is young farmers themselves who will tell you what will work. If your society secretary is not a natural with young people, find someone on the staff team who is ... and the right champion on the Board - I remember meeting Audrey, elected chair of one of our independent consumer societies, whose day job was as a lollipop lady – she used the same skills of direction and charm in the board room as she did with kids on the street, to wonderful effect.

There are resources out there, of course that can help. When I have visited co-operatives, such as, recently, attending the Board of the East of England Society, I meet members who say that their day job is being a teacher. There may be co-operative schools or local woodcraft folk you can connect to, or learn from some of the support materials on young co-operators from the Co-operative College. There are guides from Save the Children, the National Children's Bureau, Young Scot and the Children's Commissioners across the UK.

## Young People's Co-operation

So, what do we know about young people and co-operation?

Of course, young people vary and are no less segmented or varied than any generation – what I present here is only a sketch.

From research with young people over the last five years, I see an underlying set of ideals among many young people that any co-operator would recognise - no less radical than the founding vision of the Rochdale Pioneers.

But their worldview is also one that is compromised and complicated by the world of commerce, which on the one hand promises above all that you can be happy if you have the right stuff, and on the other, presents the reality of an uncaring, intrusive tide of marketing that plays to and exacerbates your vulnerabilities.

Young people's models of participation are entirely new and entirely different to their parents. They look at other young people for influence. They work online. They are media literate and are cynical about what is presented to them.

Being happy matters but in many ways they are far less happy as a generation than their elders. They sign up to the core idea of consumer freedom and individuality, but in reality they are deeply tribal, in their tastes, clothes and behaviours.

The most co-operative action taken by young people in the market over the last five years is online file-sharing (music, video, images). It is mostly illegal, but then the laws are seen as stupid and until legal downloads came down in price, the whole system was seen to be unfair.

Young people believe that what they do can influence the world around them. Fewer than one in eight children say that they are interested in politics. But social issues do matter to them.<sup>1</sup> Nine out of ten children (92%) believe they can influence the decisions that affect their family and six out of ten (64%) think they can influence decisions that affect their school. Not surprisingly, their influence on local politics, as they see it, is less, with only one in three (33%) feeling influential on the local area.<sup>2</sup>

They know they have influence as trend setters. Jordan Jarrett-Bryan is a co-editor of LIVE magazine, a community youth magazine run out of Brixton in South London. The magazine talks to young people, offers them positive choices and connects them up to opportunities from media experience to mentoring. "The magazine is run, edited, written and designed solely by the young people of Lambeth" he explains. "Go to any corner of any inner-London council estate, pull up any angry young rascal and ask them what their priorities are and I promise you their response would be 'What am I gonna wear this weekend'... part of what puts the 'Great' into Great Britain is the phenomenal youth culture grown and constantly replenished."<sup>3</sup>

Some young people are campaigners, often turning the toolkit of branding and marketing around for the purposes of social change. One group of girls organised a 'girlcott' of one retailer, Abercrombie and Fitch, for stocking T-shirts printed with slogans like "Who needs a brain when you have these?" The T-shirts were quickly pulled from the stores.

1 Save the Children, *On the right track: what matters to young people in the UK?*, London, 2004

2 Christine Farmer, Office for National Statistics, *2003 Home Office Citizenship Survey: Top-level findings from the Children's and Young People's Survey*, <http://www.communities.gov.uk/documents/communities/pdf/452490> accessed 22 November 2007

3 <http://www.steal-life.com/features/34livemagazine.html>, accessed 27 November 2007

Mary, who is bright, tall, and fourteen when I met her in research with Professor Agnes Nairn for our book, *Consumer Kids* (2009, Constable), explained why some kids are activist, and some not. I interviewed her on msn, the instant messaging site, so please excuse the spelling:

“i really do think young people should have more of a voice. but more importantly, i think they should want a voice. i have loads of friends who don't give damn about politics, because they think it doesn't effect them, or feminism, because they dont think its an issue, but young people, on the whole, dont really think about these things enough to realise that they are an issue, or that they effect them in many ways. lots and lots of things concern me, but the three that concern me most would probably be sexism, especially in religion and middle eastern countries, global warming, and poverty and the completely unfair distribution of wealth. i think as an individual, i can make small differences, that do matter, but i dont think i can make big changes on my own.”

Another empowered young citizen I have met is 17 year old Luziane Tcheque-Nouta, who lives a stone's throw from where I am now. She is one of the youngest elected politicians in the country, being a Deputy Young Mayor for Lewisham. The Young Mayor was started in 2004 by the old mayor, who wanted to give more of a voice to those who had not, being under 18, elected him. A genuine, carefully designed election takes places across all children aged 11- 18 in the borough, with ballot boxes in schools, the opportunity for postal votes. Those over 14 can stand for election. With a 43% turnout, higher than that for local elections, more people vote for the Young Mayor as a proportion than now vote for the post of Mayor itself.

Luziane was elected by children in Lewisham on a slate of improving the health and wellbeing of young people. As she sees it, young people were “not trusted” by GPs and health professionals, who simply did not know how to engage them. She has also campaigned for half-price gym sessions for under-18 year olds and sessions that offered the activities that they would prefer.

When I met her, she was addressing an audience of local councillors on what they could learn from young people. With tinted hair, and big round gold earrings, she wins them over, saying at the outset that “young people are prejudiced about adults and vice-versa.” She was not trying to take their jobs – “if you put young people in charge of everything, it would be chaos.” But, she argued, “every decision that affects young people should be opened up to give young people a say.” “If you invest in us” she continues “you will get more than you bargained for!”

The Young Mayor receives a budget of £25,000 to spend on services for young children, and sits on a project group overseeing services for young people with a budget of £250,000. The first Young Mayor put the money towards a cricket tournament and advice to young people on keeping safe on the streets. The second Young Mayor, Wilf Petherbridge, spent his allocation on a facility for young bands to practice and play.

By the time the third Young Mayor was elected, the model was already creating waves, not least with politicians keen to learn the lessons of how to re-engage young people that they saw as disillusioned with society and government. In 2007, Petherbridge was invited in to chair a meeting of the Cabinet itself in Number 10 Downing Street and, along with campaigner Oona King, helped to lead a damning review of youth services across England. The report was launched by music star Lily Allen, who said “I want to see a new start for teenagers in communities where they have nothing to do, nowhere to go and nowhere to call their own.”<sup>4</sup>

## Life Changing

The review endorsed the idea of giving votes to young people and called for a programme to roll out youth mayors, youth parliaments and youth manifestos everywhere.

While this sounds like a call for complex process, the truth is far more positive and no-one who has ever seen a children’s parliaments would mistake them for their adult counterparts.

On the Scottish islands of Uist and Barra, for example, children in late 2006 completed a giant mural, teeming with colour and life, to express their ideas and experiences. The children’s parliament approach has been described as ‘life changing’ for some of those who have participated.<sup>5</sup>

The co-operative movement is good at life changing. If you decide that it is for you, I can’t promise it will be easy or straightforward to do in a big way. But I do believe that you will discover that it is a great time to open out to young members and the people that benefit most will be not them, but the rest of us.

Ed Mayo is Secretary General of Co-operatives UK

*Consumer Kids*, written by Ed Mayo and Agnes Nairn, has been widely reviewed and was published in 2009 by Constable, and, in translation, in 2010 in Italy and South Korea.

4 Make Space Youth Review, *School Holiday Misery Looms For Millions Of Teenagers*, 11 July 2007, [http://www.makespace.org.uk/documents/MSYouthReview\\_press\\_release\\_11-7-07.doc](http://www.makespace.org.uk/documents/MSYouthReview_press_release_11-7-07.doc) accessed 3 December 2007

5 University of Glasgow, Faculty of Education, *Evaluation of the Children’s Parliament*, February 2007 <http://www.childrensparliament.org.uk/assets/cpevaluation.pdf>, accessed 14 May 2007

# Age limits for membership of co-operative and community benefit societies

## Warning

The imminent implementation of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2010, which is expected to become law in 2012, will have the effect of changing the rules of certain registered Industrial and Provident Societies. All registered societies should examine their rules to assess how the legislation will impact upon them, and whether they need to do anything about this.

## Introduction and purpose of this document

- 1.1 Currently, only persons over the age of 16 can be a member of a co-operative or community benefit society, and only persons over 18 can be a member of the committee or board, or hold any other formal office.
- 1.2 The minimum age for membership is about to change, potentially opening up membership of societies to persons of any age. The minimum age for holding office is also about to be reduced.
- 1.3 In September 2002 the Strategy Unit of the Cabinet Office published their report *Private Action, Public Benefit*. Section 5 focused on legal forms. When discussing Industrial and Provident Societies it came to the following conclusions:
 

*“The I&PS structure is a useful, but under-used and outdated, legal form. Only around 200 are registered each year, compared with around 6,000 charities, over 5,000 companies limited by guarantee (some of which will also be charities), and well over 200,000 companies limited by shares. I&PS legislation has not kept pace with changes to company law. A fundamental overhaul of the structure of the legal form is long overdue.”*
- 1.4 In the context of the Companies Act 2006, shares for minors or children are usually held by nominees - e.g. a parent or guardian. However, this would seldom be the case in IPSs, especially where the share is a ‘token’ amount of £1.00 or under. A young person admitted to membership would still enjoy all the rights of a member.

- 1.5 Until the Companies Act 2006 was introduced, a minor / person under the age of 16 could be appointed as a Director of a company. The 2006 Act effectively stated that any Directors under the age of 16 ceased to exist. The legislative reform for IPSs is designed to be reflective of what is allowed for companies. Companies can admit members or shareholders at any age.
- 1.6 Arguably, the difficulty with referencing companies and IPSs in the same context is that the company model does not have at its core the principle of one member, one vote (unless the company in question is formed as a co-operative). Enshrined democracy & protection of members' rights are integral to the IPS legal form.

In an IPS the members usually have the following key powers:

- To elect and dismiss the board of directors or management committee;
  - To appoint and dismiss the auditors
  - To alter the Rules of the Society by special resolution;
  - To approve a transfer of engagements, amalgamation or conversion.
- 1.7 The legislative change ensures that young people can be members and enjoy the voting rights and privileges enjoyed by 'full' members. Yet they cannot sit on the board of directors. This would seem to indicate that part of the legislative reform considers the decision making power of a co-operative resides, ultimately, with the board, which is far from the case. The members delegate the power to manage the co-operative to the board.
  - 1.8 Societies frequently engage with young people. Democratic involvement can be a useful step in developing a sense of responsibility and there is no modern justification for age limits to be in place when it should be left to individual societies to introduce age limits as they so wish.
  - 1.9 So whilst these are welcome changes, and the result of successful campaigning to give societies the freedom to make their own choice and create the opportunity to enhance the business of societies and to broaden their appeal through the participation of younger people, they do present certain questions and also raise issues which societies now need to think carefully about.
  - 1.10 What precisely is going to happen when the law changes, and when will it happen? What do other membership organisations do? How does the law treat young people of different ages? What should societies do about this? What happens if they do nothing?

- 1.11 There are additional factors to be considered such as, but certainly not limited to, the use of data, how children might comprehend their rights and responsibilities, marketing member benefits to young people,<sup>6</sup> if child protection policies will need to be in place and the difficulty in issuing anything which could be construed as a ‘financial promotion’ to a minor. As a further complication, it is generally accepted that the way the law treats children and young people in the England and Wales is, at best, confused and certainly confusing. Full adult competence used to be 21 but was changed to 18 by statute in 1969, although many things are permitted at the age of 16 and the age of criminal responsibility is ten. Additionally, and ensuring there is an additional layer of complexity, the majority of legislation and guidance concerning children and young people is designed to protect, not empower, young people.
- 1.12 Interestingly, and as a way of illustrating the point mentioned above, in a recent survey<sup>7</sup> of young people in the UK, over 50% of those surveyed thought that they could only be sued when they reached the age of 18: in the UK, a person can be sued at any age. If a minor is sued, the action can be started in the usual way by serving the documents on the minor, albeit the case is defended on the minor’s behalf by an adult. In keeping with the contradictory nature of UK law in this area, a child or young person (under 18) cannot be sued for breach of contract because, in most circumstances, they cannot enter into a contract which is enforceable in a court. Nearly a quarter of respondents also thought they could not be charged with a crime until the age of 16. As noted, the age of criminal responsibility is ten.
- 1.13 This note has been prepared by Cobbetts LLP and Co-operatives UK to help to answer these questions. Some recommendations are made below, by way of guidance. However, the overall conclusion is that each society must look at its own Rules, and decide what it wants to do; there is certainly no single answer which is right for all societies. However, in order to make a well-informed decision, it needs further information, which this note is intended to provide.
- 1.14 This note is intended to provide information. It does not constitute legal advice to societies, which must make their own decision about what to do. Neither Cobbetts LLP nor Co-operatives UK accepts responsibility for any action any society takes or fails to take whether in reliance on this note or otherwise.

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6 New Advertising Codes compiled by the Advertising Standards Authority came into effect on 1 September and contain several new rules that are designed to afford further protections for children. See, for example, the <http://asa.org.uk/Resource-Centre/Hot-Topics/Children-and-advertising.aspx>

7 Research undertaken with launch of *What Age Can I? 2010* publication by The Children’s Legal Centre Limited Registered Charity Number 281222

## The change to the law

- 2.1 Currently, under the legislation for societies<sup>8</sup> a person under 18 but over 16<sup>9</sup> can become a member of a society, subject to the society's rules. Subject to the society's rules, a person between 16 and 18 can enjoy all the rights of membership, execute relevant documents and give any valid receipts required by the rules.
- 2.2 The statutory instrument (legislative reform order), expected to become law on 1st August 2012 (or soon after) will change this. The change simply removes any reference to being over 16 from the legislation. When this becomes law, there will no longer be any legal lower age limit on becoming a member of a society.<sup>10</sup> Additionally, the minimum age for holding office will be reduced from 18 to 16. As amended, section 16 will read as follows:

*A person under the age of eighteen may be a member of a registered society unless provision to the contrary is made by the society's registered rules and may, subject to those rules and to the provisions of the Act,*

- *(a) enjoy all the rights of a member; and*
- *(b) if between the ages of sixteen and eighteen, execute all instruments and give all receipts necessary to be executed or given under those rules,*

*but a person under the age of sixteen shall not be a member of the committee, trustee, manager or treasurer of the society.*

- 2.3 This change to the law will affect different societies in different ways. Where a society's rules state that no person under the age of 16 may become a member, then the change in the law will not over-ride the rules, and nothing will change: the minimum age set out in the rules will remain in place. Where, however, the rules are silent about minimum age, or refer to the minimum allowed by statute, then the likely effect of the change in the law will be to change the rules of the society, abolishing the current minimum age for membership.<sup>11</sup>

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8 Section 20 Industrial and Provident Societies Act 1965 which states: "A person under the age of eighteen but above the age of sixteen may be a member of a registered society unless provision to the contrary is made by the society's registered rules and may, subject to those rules and to the provisions of the Act, enjoy all the rights of a member and execute all instruments and give all receipts necessary to be executed or given under those rules, but shall not be a member of the committee, trustee, manager or treasurer of the society."

9 I.E. from the date of their sixteenth birthday

10 Paragraph 8 of the draft SI The Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2010 which can be viewed at [http://www.hm-treasury.gov.uk/d/legislativereformorder\\_ipscu\\_080310.pdf](http://www.hm-treasury.gov.uk/d/legislativereformorder_ipscu_080310.pdf)

11 It will be necessary to check the precise wording of the rules in each case to be clear about the likely effect of the change in the law.

- 2.4 Broadly, the effect of the change to the minimum age for holding office will be the same. Where the rules are silent about the minimum age for holding office, or refer to the minimum allowed by statute, then the likely effect of the change in the law<sup>12</sup> will be to change the rules of the society, reducing the minimum age from 18 to 16.

This change to the law will not affect Northern Ireland.

- 2.5 Because of the potential for significant rule changes to take place through the change in the law rather than steps being taken by individual societies, the statutory instrument provides that the changes will not become effective in relation to individual societies until seven days following the first general meeting of the society after the order comes into force.

- 2.6 What that means in practice is that a society which wishes to retain a higher age limit for membership (or 18 for holding office) can change its rules to make provision for this, but it needs to do so at the first members meeting taking place after the Legislative Reform Order (LRO) has been implemented.<sup>13</sup> If it fails to do so, then the change in the law will apply to the society from seven days after the date of its first members meeting after 1st August 2011.

- 2.7 Every society should check its rules. Do they make provision for a minimum age for membership and holding office? If so, is the minimum age specified in the rules, or do the rules refer to the minimum age provided by legislation? Unless a specific minimum age is specified, then it is likely that the change in the law will effectively change the rules with effect from seven days after the date of its first annual members meeting after the LRO has been implemented.

Societies should check their rules as a matter of urgency.

- 2.8 The removal of a minimum age for membership may be of considerable significance to the society. Does it want to have young people as members? Is it appropriate? What are the legal implications? Should very young people have a vote? Should the minimum age for holding office be reduced to 16?

These and other important questions will now be considered in the rest of this note.

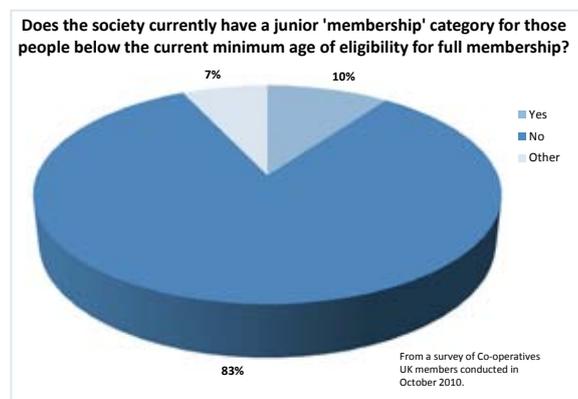
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12 It will be necessary to check the precise wording of the rules in each case to be clear about the likely effect of the change in the law.

13 At the time of preparing the note, 1st April 2011 is still a provisional date which may slip a month or two depending upon the new Parliamentary time-table which is still to be fixed.

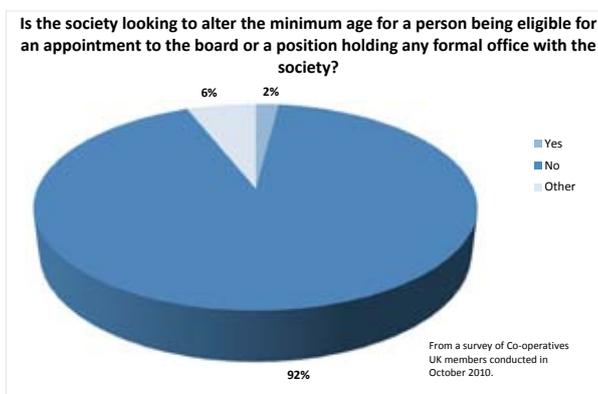
## Should societies have a minimum age for members?

- 3.1 There is no single answer to this question. The removal of a prescriptive statutory minimum age is welcome; it removes an unnecessary restriction and reflects a general trend to allow people and organisations to make their own decisions about what is appropriate for them; in particular, in today's society which increasingly recognises the importance of children and young people having a voice when previous generations did not think this was appropriate,<sup>14</sup> for the first time it makes it possible for societies to be places where children and young people can be treated in the same way as adults.



- 3.2 That said, however, it does not follow that every society should allow people of any age to become members. It is important for each society to consider the issue in the light of its own business, and the context in which it operates. The following questions arise:

- 3.3 Is it appropriate to have no minimum age, or would it be better to replace the previous minimum age of 16 with something lower? Is there a minimum age at which, realistically, young people can have an appropriate relationship with the society?



- 3.4 If there is to be a lower minimum age for membership of the society, should there be a different (higher) minimum age for voting in society elections and voting on members' resolutions?
- 3.5 Are there other issues raised by having young people as members, such as how to manage members meetings in the light of child protection requirements?
- 3.6 These are practical questions, as well as being questions of principle. To the extent that they are practical questions, it is helpful to look at how other mutual or membership-based organisations approach them. For many of these organisations (e.g. building societies and NHS Foundation Trusts) there has never been a statutory lower age limit, and they have therefore been working with the issues for some time.

<sup>14</sup> See for example the Co-operative's campaign for the voting age in elections to be reduced to 16 - <http://www.co-operative.coop/ethicsinaction/takeaction/Votes-at-16/>

- 3.7 However, before looking at how other organisations approach this, it is relevant to see how the law treats children and young people in terms of minimum age. Whether or not societies wish to follow the law’s approach elsewhere, some aspects of the current legal parameters do have a bearing on the practical questions.

### How does the law in England and Wales<sup>15</sup> treat children and young people?

- 4.1 It would have been helpful to be able to say that there is some kind of logic or pattern informing how the law treats children and young people in the England and Wales. Unfortunately the reality is that it is a real muddle – a hotchpotch of different views and approaches, dating from different times, with some apparent contradictions and inconsistencies.
- 4.2 A summary of the legal age thresholds is set out in Appendix 1, which sets out the legal rights obligations and restrictions at each age. Appendix 2 gives the relevant age in each particular area listed alphabetically, and a link to a source for this.
- 4.3 The following broad observations can be made.
- With some exceptions, the law seems to treat 18 as the age for full adult responsibility.
  - For many purposes, 16 is the age at which a person becomes “allowed” to do lots of things on which society thinks there should be some age restriction.
  - Going downwards in age from 16, the next big milestone is ten – not much happens in-between. In other words, in England and Wales, for whatever reason, it seems that we generally treat 16 as the minimum age for many things.
- 4.4 The big exception to this is criminal responsibility – the law treats ten as the age for criminal responsibility. Within Europe, this is low (and the subject of some concern). For present purposes however, this is significant because:
- it is such a contrast with the choice of 16 for many other purposes;
  - it suggests that the contemporary view is that ten is the age at which society expects a young person to take responsibility for their own actions, and to know right from wrong. On that basis, there is an argument that ten is an age at which the voice of young people should be heard – in some contexts.

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<sup>15</sup> This note seeks to draw lessons from the way the law treats young people in England and Wales, rather than to provide an exhaustive analysis.

- 4.5 In a medical context, when deciding whether a child is mature enough to make decisions people often talk about whether a child is ‘Gillick competent’<sup>16</sup> or whether they meet the ‘Fraser guidelines’. Gillick competency and Fraser guidelines refer to a legal case which looked specifically at whether medical staff should be able to give advice or treatment to under 16-year-olds without parental consent. The general tests have been adopted and used in a wider context in order to assess whether a child is mature enough to make decisions based on their own judgment and to understand the implications of those decisions.
- 4.6 Perhaps the most significant age limit set by the law for present purposes is the age at which a person has civil rights and liabilities (to sue and be sued). This is now 18; under the old common (judge-made) law, it used to be 21, but this was changed by Parliament in 1969.
- 4.7 This is important because in the present context, a legal right such as a claim for payment and other contractual rights cannot generally be enforced in the law courts against a person under 18. This is why under-18s cannot sign contracts for mobile phones, or have credit cards.
- 4.8 How is all this relevant to membership of co-operative and community benefit societies? There are probably three main areas of relevance, holding substantial share capital, entitlement to member benefits, and voting.

### Holding share capital

- 5.1 The first point to note is that because 18 is the age at which a contract can be enforced against a person, even the current minimum age of 16 for societies might seem to be problematic. However the current legislation minimises such problems by specifically stating that a person between 16 and 18 may “enjoy all the rights of a member and execute all instruments and give all receipts necessary to be executed or given under the rules”.<sup>17</sup>
- 5.2 The main question concerns the impact of removing the current minimum age of 16, and whether this is likely to be problematic if there is no minimum age.
- 5.3 It is not uncommon for societies to provide that members are only required to subscribe for a minimum £1 share. In such cases, there is no substantial problem. It is not so straightforward where members are able or required under the rules to acquire substantial share capital. In such cases, it will be important for the society dealing with a young person to be able to receive funds, and obtain a valid receipt on repayment.

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16 *Gillick v West Norfolk & Wisbeach Area Health Authority* [1985] UKHL 7 - “...whether or not a child is capable of giving the necessary consent will depend on the child’s maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent.”

17 See footnote 8 above for the full text of section 20 IPSA

- 5.4 The amended legislation retains 16 as the minimum age for giving a valid receipt. This means that if a society allows members younger than that, there could be problems of enforceability in societies where young people might have significant financial dealings with their society. These are issues currently faced by financial institutions (banks, building societies, etc... ) and so this issue will be considered further below.

### Member benefits

- 6.1 Societies need to consider to what extent the benefits they offer to members are appropriate for young people. For example, where a society (such as the Co-operative) enables members to have a membership card which they can use at the point of sale to accumulate a right of dividend, issues may arise from the way such a scheme could be used by young people.
- 6.2 This is an issue which can only be considered in the context of each society, its business and the sector within which it is operating. There is nothing inherently objectionable or unlawful about permitting young people to receive member benefits; it is just that each society needs to give thought to the full implications of such benefits being received by young people.

### Voting and other participation in the society's affairs

- 7.1 Voting is the headline activity, but in reality the whole question of participation in the society's affairs needs to be considered here. The rules of a society comprise the contract between its members as to how they agree to conduct themselves in relation to the society's affairs. This includes attending and speaking at meetings, voting in elections or on members' resolutions, and seeking election to a representative position.
- 7.2 In terms of voting, subject to the FSA's views, it should be possible to set a minimum so that the youngest members may not be able to vote until a particular age is reached. It is clearly arguable whether this is appropriate, but since different views can obviously be taken, the possibility needs to be provided.
- 7.3 In relation to co-operatives societies, it is important to bear in mind the principle that membership is open and voluntary. Enabling membership from birth would seem to be incompatible with voluntary membership, as it would require somebody else to make the application for membership. It is difficult to see how membership can be voluntary unless a young person is able to make the application on their own behalf. Furthermore, the principle of one member one vote would appear to be undermined if very young people can be members, as it would suggest that an older person has been involved in their obtaining membership.

- 7.4 In relation to attending and speaking at meetings, different issues arise. Not only might meetings intended for adults be of less interest or not so easily understood by young people, but child protection issues also need to be considered. It may be appropriate to make alternative provision for young people to attend meetings (a meeting can be validly constituted with people in different rooms).<sup>18</sup>
- 7.5 In terms of seeking election to a representative position, the reduction of the minimum age from 18 to 16 for serving on the committee or board itself raises issues. It might be argued by some that 16 or 17 year olds do not have the maturity or experience to hold a position of such responsibility. Clearly the law disagrees (the reduction in age for societies brings them in line with companies where 16 is the minimum age for being a director).
- 7.6 A number of points can be made:
- care should be taken about making broad statements about the capability of people of this age;
  - if a society has younger members, it seems appropriate that they should be represented by somebody who is “young”;
  - it is likely that a minority of those holding office will be of such an age, and therefore the governance risk to a society is somewhat reduced. Some provision to limit the number of young people holding office might be an appropriate measure to consider.
- 7.7 Child protection is also an issue which needs to be borne in mind. This has to be considered in each context, and specific advice obtained.

### Other membership organisations

- 8.1 When researching this project, we have looked at how other membership based organisations approach the issue: Friendly Societies, Building Societies, Credit Unions, NHS Foundation Trusts, and Supporters Trusts.<sup>19</sup>
- 8.2 Several broad conclusions can be drawn from this information.
- 8.3 Organisations which are providers of financial services (Friendly Societies, Building Societies and Credit Unions) are constrained by the law governing financial services. Where membership is permitted below 18, young people do not effectively have any membership rights.
- 8.4 There is no formal mechanism for the representation of young people in the democratic arrangements of such organisations.
- 8.5 There is greater freedom for NHS Foundation Trusts, though only those whose services are focussed on children and young people tend to enable any meaningful membership participation.

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18 *Byng v London Life Association Ltd and another*[1989] BCLC 400

19 See <http://s.coop/uru>

- 8.6 Supporters Trusts are normally incorporated as Community Benefit Societies and are therefore subject to the existing law for societies. However, in some cases they are already seeking to involve young people in a membership capacity without making them full members.

## Recommendations

- 9.1 Because of the wide range of business activities covered by co-operative and community benefit societies, and the varying levels and mechanisms for member engagement in their affairs, it is very difficult to make blanket recommendations. The principle must be that each society should consider the issue for itself, taking into account the nature of its own trade and the sector(s) it operates in, the relationship it has with its members, and the types of member benefits it offers.
- 9.2 Having said that, it may be helpful to recommend a series of general principles, which might guide societies in approaching the question of young people and membership. In individual cases, the principles may not be appropriate, but generally they are likely to be. The following principles are therefore offered in that spirit.
- 9.3 Membership of a co-operative or community benefit society is a mechanism for participation in the affairs of the society. There is a case for arguing that a minimum age for membership should be retained, and that allowing membership below the age of ten is inappropriate in that context, as it suggests membership is either not voluntary, or is nominal only. The age of ten is suggested as that is the age for criminal responsibility in the UK (being able to tell right from wrong). Such a low age for criminal responsibility is controversial in itself. Societies may feel that it is too low for membership, and prefer a slightly higher age, perhaps linking to the transition from primary to secondary education (effectively 11), or maybe higher still.
- 9.4 If a young person is able to become a member, it seems logical that they should be able to participate – at least to some extent – in the society’s democratic processes. The core membership features of information, voice and representation can all be addressed, but it may be appropriate for young people to be treated as a separate constituency, possibly with separate meetings and separate representation.
- 9.5 Where membership involves the possibility of a substantial holding of shares or other transactions of more than nominal value, it will be necessary to ensure that such transactions involving persons under 18 can be appropriately accommodated within financial regulation. Even under the amended legislation, only a person over 16 can give a valid receipt.

- 9.6 Finally, it is appropriate to observe that the change in the law presents an opportunity for all societies to review their approach to membership. How should they engage with people – including younger people, older people and families – in today’s world? The rules of most societies were written at a time when attitudes were different, and when the predominant methods of communication were different. The new freedom about to be introduced by this change in the law could be a catalyst for societies to think imaginatively about how, as co-operative and community benefit societies, they should be seeking to meet the challenges of today’s world.

# Appendix 1

## Minimum Age Requirements

### Chronological Order

From birth, an individual:

- can have a bank or building society account in his or her own name
- can have premium bonds in his or her own name (but someone over 16 must buy the premium bonds)
- can have a passport (but one parent must sign the application form)

At 5 years old, an individual:

- must attend school or home education
- can watch a U or PG rated film

At 7 years old, an individual:

- can draw money from Post Office or savings account

At 10 years old, an individual:

- can be held criminally responsible

At 12 years old, an individual:

- can see a 12A film unaccompanied

At 13 years old, an individual:

- can get a job (but may only work for a certain number of hours)

At 14 years old, an individual:

- is responsible for wearing his or her own seatbelt

At 15 years old, an individual:

- can see a 15 certificate film

At 16 years old, an individual:

- can get married with the consent of one parent
- can have heterosexual sex
- can have homosexual sex
- can leave school after the official leaving date

- can joined the armed forces with parental consent (but may not serve in a war zone)
- can work full time
- can claim social security benefits
- can get licence to drive a moped
- can sell scrap metal
- can join a Trade Union
- can buy a pet
- can choose his or her own doctor
- can buy premium bonds
- can drink beer, cider, porter or perry with a meal in a restaurant
- can play the National Lottery
- can sell National Lottery tickets
- can change his or her name

At 17 years old, an individual:

- can obtain a licence to drive vehicles (except certain heavy goods vehicles)
- can be sent to prison
- can serve in a warzone
- can be a street trader
- can fly a plane
- can give blood

At 18 years old, an individual:

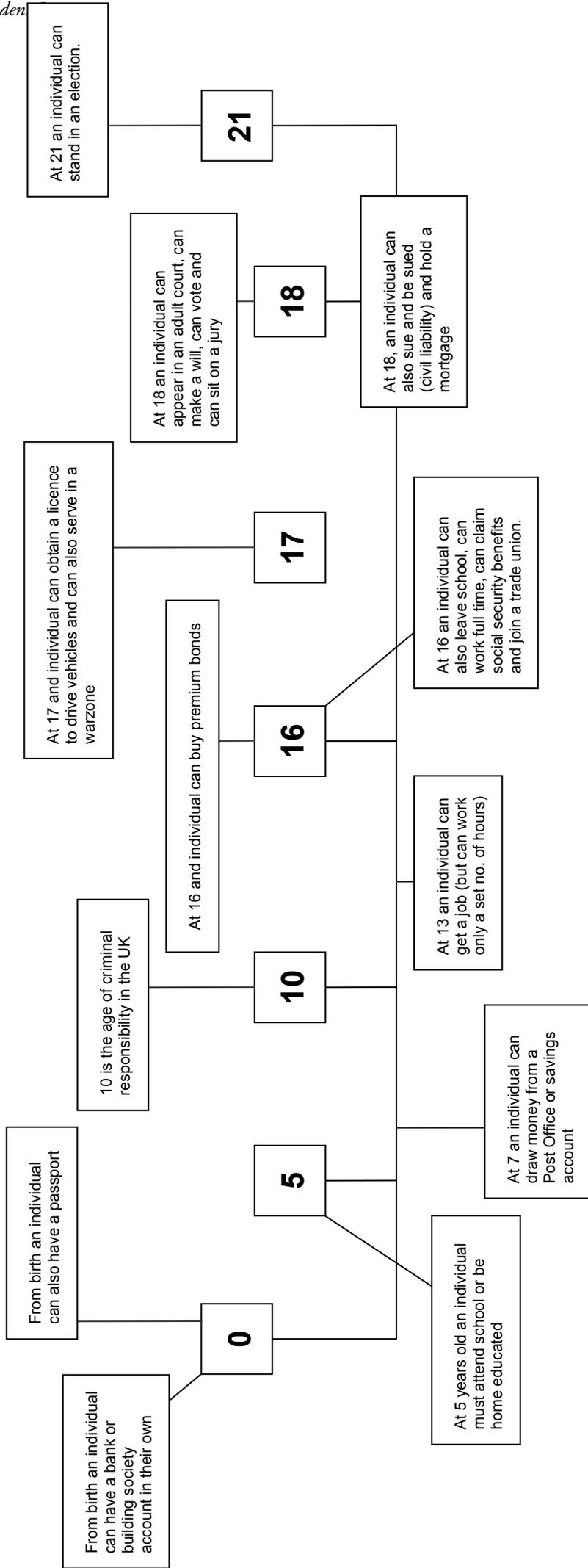
- can buy alcohol
- can drink alcohol in a pub
- can buy tobacco / cigarettes
- can appear before an adult court
- can make a will
- can buy an air rifle
- can act as an executor of a will

- can bet
- can get married without the consent of either parent
- can buy a lighter refill
- can sit on a jury
- can vote
- leave home without parental or guardian's consent
- can buy fireworks
- can sue and be sued (civil liability)
- can see an 18 certificate film
- can hold a mortgage
- can buy land / houses
- can go abroad to perform professionally
- can get a tattoo

At 21 years old, an individual:

- can drive any mechanically propelled vehicle (providing he or she passes the relevant tests)
- can stand in an election
- can adopt a child
- can hold a licence to sell alcohol

# Minimum Age Requirements



## Appendix 2

### Minimum Age Requirements

#### Alphabetical Order

Issue	Minimum Age	Source
Adoption of a child	21	<a href="http://www.direct.gov.uk">http://www.direct.gov.uk</a>
Air rifles – to purchase air weapons or fire-works	18	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Alcohol – to buy and drink alcohol in a pub	18	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Alcohol – to drink beer, cider, porter or perry with a meal in a restaurant	16 (Please note that there must be an adult present to buy it)	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Child Protection	Protects under 18s	<a href="http://www.isa-gov.org.uk/">http://www.isa-gov.org.uk/</a> <a href="http://www.isa-gov.org.uk/Default.aspx?page=2">http://www.isa-gov.org.uk/Default.aspx?page=2</a> <a href="http://www.isa-gov.org.uk/PDF/283896_ISA_A4_FactSheetNo3.pdf">http://www.isa-gov.org.uk/PDF/283896_ISA_A4_FactSheetNo3.pdf</a>
Cigarettes – to buy tobacco/ cigarettes	18	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Civil liability – to sue and be sued	18	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Criminal responsibility	10	<a href="http://www.parliament.uk/commons/lib/research/briefings/snha-03001.pdf">http://www.parliament.uk/commons/lib/research/briefings/snha-03001.pdf</a>
Director – to be appointed as a director of a company	16 A person under 16 may be appointed in certain circumstances.	<a href="http://www.completeformations.co.uk">http://www.completeformations.co.uk</a> <a href="#">Companies Act 2006, s.157</a>

Issue	Minimum Age	Source
Driving	<p>For cars the minimum age is 17.</p> <p>Persons aged 16 may drive if they receive higher rate Disability Living Allowance.</p> <p>The full list of minimum ages for different categories of vehicles can be found at the link to the right.</p>	<a href="http://www.direct.gov.uk/en/Motoring/DriverLicensing/WhatCanYouDrive-AndYourObligations/DG_4022547">http://www.direct.gov.uk/en/Motoring/DriverLicensing/WhatCanYouDrive-AndYourObligations/DG_4022547</a>
Eligibility to stand in an election	21	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Eligibility to vote in UK parliamentary elections	18 and over	<a href="http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Politicalpartiesandelections/DG_073240">http://www.direct.gov.uk/en/Governmentcitizensandrights/UKgovernment/Politicalpartiesandelections/DG_073240</a>
Firearms – to buy firearms	18	<a href="http://www.southyorks.police.uk">http://www.southyorks.police.uk</a>
Marriage Civil Partnership	<p>The minimum legal age is 16.</p> <p>Written consent of parents or legal guardians may be required for individuals under 18.</p>	<a href="http://www.direct.gov.uk/en/Governmentcitizensandrights/Registeringlifeevents/Marriagesandcivilpartnerships/DG_175717">http://www.direct.gov.uk/en/Governmentcitizensandrights/Registeringlifeevents/Marriagesandcivilpartnerships/DG_175717</a>
Medical – to choose own doctor and consent to own medical treatment	16	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
Military – to join the Regular Army	<p>Soldier – 16 to 33 (Cannot serve in a warzone aged 16)</p> <p>Officer – 17 to 28</p> <p>Parental or guardian's consent required if under 18 years.</p>	<a href="http://www.armyjobs.mod.uk/howdoijoin/canijoin/Pages/EntryRequirements.aspx">http://www.armyjobs.mod.uk/howdoijoin/canijoin/Pages/EntryRequirements.aspx</a>

Issue	Minimum Age	Source
Military – to join the Territorial Army	Soldier – 17 to 43 Officer – 17 to 33 Parental or guardian's consent required if under 18 years.	<a href="http://www.armyjobs.mod.uk/howdoijoin/canijoin/Pages/EntryRequirements.aspx">http://www.armyjobs.mod.uk/howdoijoin/canijoin/Pages/EntryRequirements.aspx</a>
Name – to change your name	16	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>
National Lottery – to play the National Lottery and sell National Lottery tickets	16	<a href="http://www.surveycc.gov.uk">http://www.surveycc.gov.uk</a>
Prison – to be imprisoned	17	<a href="http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L">http://www.cheshire.police.uk/modules.php?module=faq&amp;action=showmain&amp;faqIndex=L</a>

## Appendix 3

### Capacity to enter into contracts

Individuals may enter into contracts when they attain the age of legal majority. This is 21 at common law, but was reduced to 18 by the Family Law Reform Act 1969, section 1.

At common law, minors are deemed to be of immature intelligence and discretion and any contracts into which they enter are generally voidable at the instance of the child. The contractual capacity of minors was also heavily restricted by the Infants' Relief Act 1874, which rendered many contracts to which minors were parties absolutely void. The Minors Contracts Act 1987 reduced the contractual incapacity of minors and they may now enter into contracts in certain circumstances.

Contracts for necessities and contracts of service or apprenticeship, if clearly for the benefit of the minor, will be binding and enforceable.

### Age limits in the financial and banking sectors

From birth, an individual may:

1. hold an account in his or her name with a bank or a building society; and
2. hold premium bonds in his or her name.

Many institutions offer a range of junior savings options. (Please see, for example, the entry relating to the Cheshire Building Society below). Usually, adults will make deposits into or withdrawals from the account until the child reaches a certain age. In the case of the AIB Junior Saver Account, the instructions for the account may be changed to allow the child to make withdrawals when the child reaches the age of 7. (See <http://www.aib.ie/personal/savings/AIB-Junior-Saver>)

Institution / Account	Minimum Age	Source
Barclays Bank / Personal Bank Account	18 or over	<a href="https://www.barclaysbankaccountapply.co.uk/">https://www.barclaysbankaccountapply.co.uk/</a>
Cheshire Building Society / Children's Fixed Rate Bond (Cheshire Building Society offers a range of junior savings options)	Aged 14 and under	<a href="http://www.thecheshire.co.uk/investment-saving-account/fixed-rate-bonds/index.asp">http://www.thecheshire.co.uk/investment-saving-account/fixed-rate-bonds/index.asp</a>

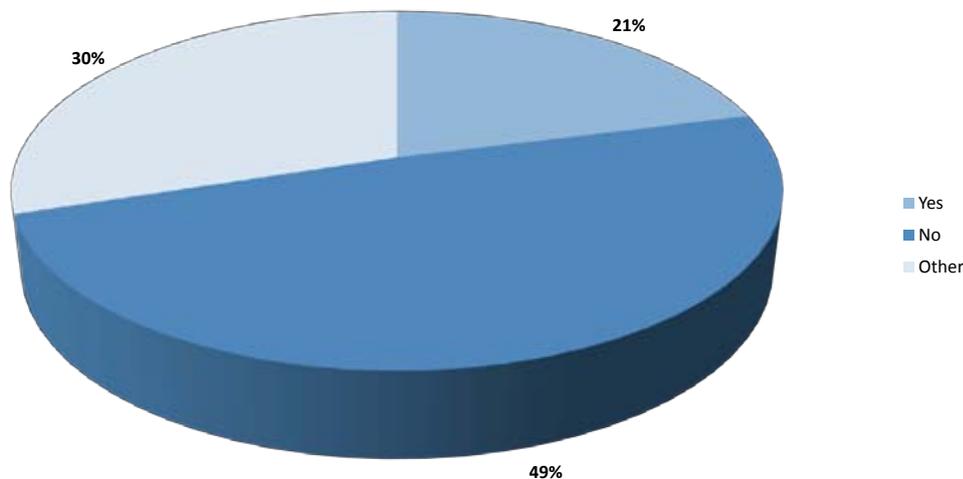
Institution / Account	Minimum Age	Source
Nationwide Investing Members – holders of Flex Accounts or Savings Accounts Borrowing Members – anyone with a mortgage	Not all accounts confer membership. Not all memberships confer voting rights. Only members aged 18 or over may vote.	<a href="http://www.nationwide.co.uk/about_nationwide/membership_matters/membership.htm">http://www.nationwide.co.uk/about_nationwide/membership_matters/membership.htm</a>
Nat West / Current Plus Account	18 or over	<a href="http://www.natwest.com/personal/current-accounts/g1/regular-current-account/apply.ashx">http://www.natwest.com/personal/current-accounts/g1/regular-current-account/apply.ashx</a>

### Child Protection Considerations

The Safeguarding Vulnerable Groups Act 2006 defines the scope of the Vetting and Barring Scheme (“VBS”).

From 26 July 2010, people who begin to work with children (anyone under 18) or vulnerable adults, or who move to a new position, whether paid or voluntary, will be able to apply to register with the Independent Safeguarding Authority (“ISA”). From November 2010, these individuals will be legally obliged to register before they start work.

**If the society currently permits members between the ages of 16 and 18, are there any existing special arrangements at meetings, for example have child protection policies been implemented or are there CRB checks for those working with young people?**



Employees or volunteers already working with children or vulnerable adults will be phased into the scheme over a five year period and will be required to register between 1 April 2011 and 31 July 2015.

To register with the ISA, individuals must apply to the Criminal Records Bureau using one of their registered bodies. They will be able to apply for both a CRB check and ISA-registration on the same form.

The VBS designates certain activities involving children or vulnerable adults as regulated activities. Regulated activities include paid or voluntary work with children or vulnerable adults, for example:

- any activity of a specified nature, such as teaching, supervision and transport, which involves contact with children or vulnerable adults within certain periods;
- any activity allowing contact with children or vulnerable adults that is in a specified place, for example a school or a care home, frequently or intensively; or
- any activity that involves people in certain defined positions of responsibility, such as school governors, trustees of certain charities and social workers.

## Definitions of Children

The legislation concerning definitions of children and young people is – in keeping with contemporary pieces of the legislative framework - equally complex and in many cases contradictory. Under most legislation a child is defined as a person under the age of 18 years of age. For some specific purposes, a child is defined as a person under the age of 16, or under school leaving age. Young people under the school leaving age are referred to in legal terms as children.

It would be advisable for all societies, where relevant, to have the policies and procedures in place related to the safeguarding of children and young people, where appropriate. As noted above, many societies will already have provisions for members between the ages of 16 and 18 and so it could be good practice to have procedures in-situ whether the society chooses to alter the rules to allow under 16s into membership or not.

Although having a procedure in place will never guarantee against being found negligent if harm ever came to a child or young person, but being able to show that appropriate procedures were in place and adhered to would help as evidence that a society had complied with its duty of care. In a recent member survey undertaken by Co-operatives UK, nearly 80% of respondents stated they had no procedures in place for working with young people. In many instances this was as the policy would not be applicable but we would advise all societies to look over this particular procedural issue. Co-operatives UK will be able to signpost / supply a framework or template for child protection policies.

## Data Protection Law

The Data Protection Act 1998 states that personal data must be processed fairly and lawfully and that one or more specified conditions must be met. S2, p.2 states that the data subject must give consent to the processing of their data, which will be difficult to qualify in the context of a child or young person.

The Act does not refer to children or young people but the Information Commissioner has produced a Good Practice Note<sup>20</sup> detailing how information collected from children and young people should be processed which also addresses how it considers consent can be obtained.

A lot of the guidance applies specifically to internet guidelines but this is probably pertinent given the way young people use social media (and our recommendations). Research undertaken in conjunction with the publication of the Good Practice Note produced by the ICO found that over 25% of 8-12 year olds who use the internet have profiles on social networking sites, albeit these sites have a minimum user age of 13.

One of the key findings of the guidance regarding information collected from and about children and young people is that assessing understanding, rather than simply determining age, is the key to ensuring that personal data is collected in a manner in keeping with this guidance.

## Co-operatives UK

Co-operatives UK works to promote, develop and unite co-operative enterprises. It has a unique role as a trade association for co-operatives and its campaigns for co-operation, such as Co-operatives Fortnight, bring together all those with a passion and interest in co-operative action.

Any organisation supportive of co-operation and mutuality can join and there are many opportunities online for individuals to connect to the latest co-operative news, innovations and campaigns. All members benefit from specialist services and the chance to network with other co-operatives.

For any enquiries relating to this report, please contact Helen Barber ([helen.barber@uk.coop](mailto:helen.barber@uk.coop), 0161 246 2954) or Gerard Devlin ([gerard.devlin@uk.coop](mailto:gerard.devlin@uk.coop), 0161 246 2982).

[www.uk.coop](http://www.uk.coop)

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20 [http://www.ico.gov.uk/upload/documents/library/data\\_protection/practical\\_application/data\\_protection\\_good\\_practice\\_note\\_access\\_to\\_exam\\_results.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/practical_application/data_protection_good_practice_note_access_to_exam_results.pdf)

The imminent implementation of the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2010, which is expected to become law in 2012, will have the effect of changing the rules of certain registered Industrial and Provident Societies. *Age limits in Industrial and Provident Societies* investigates how these changes may affect societies.



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Published 2011