

Covering Letter

Over the last years there has been a root and branch review of the Radical Routes Model Rules for housing cooperatives. The following document is the result of this work and of the first round of consultation.

Why a re-write

The existing RRFM96 model rules for housing co-operatives are simply not fit for purpose. Their weaknesses have been amply demonstrated to those working on various cooperatives in crisis. Nor do they adequately reflect changes in the law. The purpose of the re-write is to update the rules and also to seek to tighten up various aspects which are being abused, based on experience from dealing with particular situations encountered over the last few years. In particular, there is a focus on stopping situations where cooperatives are being 'carpet-bagged', that is, individuals are walking away with the property of the cooperative for personal gain.

Process

A 2011 summer gathering a workshop decided the following process:

- a copy to be mailed to all RR cooperatives to review and have input in time for the November gathering.
- Maybe a workshop on the proposed changes including the dispute resolution process at the November gathering if required.
- The results of this to be merged into a single document to be sent to Coops UK / Cobbetts solicitors to review to ensure compliance with the law. Funding for this will come from grant money already obtained and from Catalyst .
- Following this, the finalised rules shall be presented to a gathering for acceptance to replace the existing RRFM96 model rules.
- Submit the rewritten rules to the Mutuals section of the Financial Services Authority (or its successor) for final acceptance.

This will not require cooperatives registered using the RRFM96 rules to re-register under the new ones. It is also worth remembering that there are many cooperatives using the RR model rules who are not part of RR.

Changes to existing rules are highlighted and placed in italics. Rules are mostly in the left column, with commentary/guidance notes on the right.

Issues

There are many issues we need to consider. The rewrite has tried to strike a balance between preventing carpet-bagging and allowing co-operatives their autonomy to make decisions over their own fate . While it is impossible to prevent carpet-bagging in every situation, we have tried to make it much harder by closing a number of loop-holes.

It is worth remembering that the purposes of the rules are two-fold:

(a) to reflect the practice of how cooperatives govern themselves, and to provide guidance on issues that come up regularly;

(b) to be there when things go badly wrong, in which case the rules are the fall back position and need to be in place by that point.

Again, we have tried to strike a balance between these two situations and we ask people to bear in mind that in changing one part they may be creating issues elsewhere.

Advice from the FSA is that they are not particularly comfortable with a set of rules which allow much in the way of options to be selected from, though there can be some limited use of this (as we have done with whether the minimum age of membership should be 16 or 18).

We are also particularly keen to get any suggestions that allow us to simplify the rules and/or the language used.

Major Changes

- (i) Removal of references to housing associations & committees of management.
- (ii) Dispute resolution procedure has been overhauled, creating the ability to go to arbitration without necessity of mutual agreement.
- (iii) Beneficiaries and dissolution sections rewritten entirely.
- (iv) Governance changed to consensus-decision making in the first instance.
- (v) Powers of the general meeting are better defined and the issues which can only be decided by it set out.
- (vi) New sections dealing with probationary membership, non-residential occupation and expulsion.
- (vii) Limit the duration people can hold the post of Treasurer/Secretary
- (viii) Make keeping of minutes mandatory.

Register No:

Radical Routes Ltd

A national secondary co-operative

FULLY MUTUAL

RULES

OF

Registered under the Industrial and
Provident Societies Act 1965

MODEL: RRFM_{xx}

Published by

Radical Routes Ltd

Introduction to Changes

In 1996 Radical Routes adapted model rules for housing co-operatives created by the National Confederation of Housing. The new rules, known as RRFM96 have been adopted by all Radical Routes member

co-operatives. They are registered with the Financial Services Authority as model rules, which allows for cheaper registration by any fully mutual co-operative which seeks to use them.

However, we have recognised that in parts they are struggling to reflect what is happening in practice in small co-operatives of the kind that Radical Routes deals with. Nor do they adequately protect co-operatives from being attacked and their assets misused.

It is important to bear in mind two things. (a) The Rules are legally binding. They are a contract between the members of the co-operative and the co-operative itself. They have status in law and incorporate aspects required by law. (b) No co-operative follows the rules 100% of the time. However, the rules are there not for the good times, but when things do go bad. Many of the changes are based on practical experiences of the latter.

We hope we have struck a balance in reflecting standard practice when life in the co-operative is good and what needs to happen when relationships break down.

We also recognise that co-operatives should not simply see the rules as a hoop to jump through, but as part of their identity. Thus in places they have been redesigned to encourage active consideration of what they mean.

Radical Routes promotes non-hierarchy, consensus decision-making and management by general meeting. There is, as a result, an implicit wariness of larger co-operative structures and the difficulty of management that increased size brings about. This is not to say that these rules cannot be applied to bigger co-ops – they can, but they may be less than ideal, and it may be that a large housing co-operative finds the rules of another sponsoring body more appropriate.

International Co-operative Alliance

Statement on the Co-operative Identity

Definition

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.

Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1st Principle: Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights [one member, one vote] and co-operatives at other levels are also organised in a democratic manner.

3rd Principle: Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in

proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle: Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees, so they can contribute effectively to the development of the co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of co-operation.

6th Principle: Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

Guidance Notes: Statement on Co-operative Identity

1. The ICA Principles were adopted as the principles of the world-wide co-operative movement at a conference in Manchester in 1957. Co-operatives do not have a formal legal definition in law, but government organisations such as the Financial Services Authority recognise the principles as a key part of the definition of a bona fide co-operative, as can be seen in the notes to the registration documents and in the Corporation Tax manual.

They are placed at the start of the RR model rules to ensure that they are specifically included as a fundamental statement of our principles by which any co-operative registered under the rules has agreed to be governed.

RULES

NAME AND STATUS

1. (a) The name of the society shall be

_____ Housing Co-operative Limited

(referred to in these Rules as the Co-operative).

(b) The Co-operative shall be a bona fide co-operative within the meaning of section 1 (2) of the Industrial and Provident Societies Act 1965 and by virtue of its registration under that Act the liability of its members shall be limited to the extent of their shareholding .

Guidance Notes: Name and Status

1 (a) In law the co-operative is registered as a society established under the Industrial & Provident Societies Act 1965 [IPS 1965]¹, which sets out the basic framework for the existence of the society as a legal body. It is not necessary to register under this Act to be a housing co-operative, but it is preferable, because the Act allows various benefits and tax exemptions.

One consequence is that the society² is established a “body corporate” with limited liability (hence the Limited at the end of the name, as required by law – for discussion on relevance of this see under Rule 6). This means that the Society is capable of taking action in its own right – to own property in its own name, be sued in its own name, take court action in its own name and so on. It also means that the Society is responsible for its own debts and assets, rather than its members.

It is not a company and does not fall under Company Law, unless there are specific provisions which cause it to be treated as such.

1 (b) Bona fide co-operative. This has no legal definition of what this means, other than what the registering authority deems to be the acceptable. The FSA's guidance for applications to register a bona fide co-operative under the IPS 1965 Act points out that they consider it to be one that follows the ICA principles *and* the various provisions set out in the the Act. Thus, adopting established model rules is considered sufficient to be identified as a bona fide co-operative. Some of the clauses that are in the model rules are required under Schedule 1 of the IPS 1965 Act.

1 *To be renamed the Co-operative and Community Benefit Societies and Credit Unions Act 1965 once the Co-operative and Community Benefit Societies and Credit Unions Act 2010 is commenced. For the time being we retain the use of IPS as that is what most people are currently familiar with and the 2010 act has yet to fully commence.*

2 We use 'Society' to indicate that we are referring solely to a cooperative registered under the IPS1965 Act as other legal structures can also be cooperatives.

OBJECTS

2. The Objects of the Co-operative shall be as provided below. In carrying out these objects, the Co-operative shall work towards the elimination of discrimination based on race, ethnic origin, nationality, gender, disability, sexuality, age, class, appearance, religion, responsibility for dependants, unrelated criminal convictions, a person's HIV antibody status or any other matter which causes any person to be treated with injustice.

SAVE, where it is provided for in the Objects that the aims of the Co-operative are to provide benefits to members of a particular community which faces discrimination, the Co-operative shall not exclude members based on any other form of discrimination.

Guidance Notes: Objects

1. The Objects are very powerful as they set out the purposes and intentions of the society. It is important they reflect what is wanted of the society. Whilst it is possible to change the Objects, this can be challenged if the actions of the society stray too far from its founders' intentions³. There is an argument for making it impossible to change the Objects without the Society dissolving and reforming. **In these rules, this has been done by removing the ability to change the Society from being a housing co-operative to another type of Society.**

2. If a society wants to focus on a particular group of people/community who are subject to discrimination or injustices, then it needs to state that this is the case in its objects or it can fall foul of anti-discrimination law (eg. The Equality Act 2010). For instance, if the purpose of the society providing accommodation is to create a safe space for women, then that exclusivity needs to be stated.

3. The clause "work towards" allows acknowledgement of existing oppressions so permitting the creation of safe spaces as part of that wider process of moving towards a non-discriminatory world.

4. *The new clause is added in to allow for societies to focus on one particular community of individuals who are discriminated against. For example, it could be a queer housing cooperative, but it would not be allowed to discriminate on the basis of race, unless it was explicitly, say, a housing cooperative for queer people of colour.*

³ This is touched on in case-law in the *Datchet* case, in which changes to the rules were found to be invalid on the grounds that they went against the intentions of the founders of the society. However, while a useful precedent, it is not as solid a principle as perhaps is desirable.

- a. The provision, construction, conversion, improvement, or management, ~~on the Co-operative Principles,~~ of accommodation exclusively for letting to members of the Co-operative under the terms of a tenancy or lease, which:
- i. if a tenancy, shall be granted to them by the Co-operative and shall exclude all right for the members to assign the tenancy to any person other than the Co-operative (or a member of the Co-operative) and shall require the members to surrender or assign the tenancy to the Co-operative (or a member of the Co-operative) on their ceasing to be members, or
 - ii. if a lease, shall provide that each lessee, whether individual or joint, shall apply for membership of the co-operative and, if accepted, remain a member until they give up the lease; and that any lessee who ceases to be a member for any reason must, as soon as reasonably possible, assign the lease to the Co-operative [or a member of the Co-operative].

Guidance Notes: Objects cont.

3. The form of the objects provided here sets out the provision of housing for the members of the society and the management of any property acquired for this purpose.

4. Under 2(a), management of the property must be done in accordance with co-operative principles. It cannot be farmed out to a private company to make decisions, albeit contractors can be brought in to do work – i.e. there is nothing to stop the co-operative for paying a cleaner in this formulation.

5. 2(a) also states all accommodation is solely for the use of members of the Society. Under the Income and Corporation Tax Act 1988, housing co-operatives do not have to pay corporation tax on rental income provided that rent solely comes from members. Start renting to non-members and the society will have to pay tax.

It is also the key clause outlining the mutuality of the co-operative. Non-members have no right to a say in the running of the co-operative.

6. If a society so wishes it can modify these objects to *include* others, for example providing housing within a particular city or locality.

7. Rules 2(a)(i) & (ii) create the ability to have both tenants and lessees. A tenant is defined as someone who occupies land from a landlord. The landlord is the society, an important point to note for those facing housing benefit issues when there is an attempt to cancel someone's HB because they are a member of the co-operative that owns the property that they live in. This has been successfully challenged in the past.

Tenancy normally refers to the property being used as an individual's place of residence. Where occupancy is for purposes other than residency, say using a piece of land owned by the society or renting a building as workshop, then it is referred to in these rules as a lease.

7. Under these rules lessees must become members of the society.

- b. The provision and improvement, ~~on the Co-operative Principles,~~ of land, buildings, amenities, or services for the benefit of the members, either exclusively or in conjunction with other persons.
- c. The provision of accommodation management services to members of the Co-operative ~~and to the occupants of accommodation that,~~ *where the accommodation* is the subject of a management agreement under which the Co-operative is acting as managing agent for a landlord body.
- d. *All management, provision and improvement, or other matters under these objectives shall take place in line with the Co-operative Principles.*

Guidance Notes: Objects cont.

7. Para. 2(b) allows the society to do stuff that others can benefit from, though its own members must also be able to share in the same benefits as well. For example, turning part of your property into a resource centre or a bike workshop is fine as long as the members of the co-operative have access to it.

8. Para. 2(c). A co-operative society does not necessarily have to own the property that its members are living in. This Rule creates the ability for the society to rent property in its name and use it to house its members. *A change has been made to reflect the principle that residents of the Society should be members.*

9. An important thing to note is that, in a fully mutual co-operative, everything comes from membership. Tenancy is a benefit of membership – so loss of tenancy does not automatically mean the loss of membership, but loss of membership is expulsion from tenancy. This is a key point in how the rules are structured – primacy to membership is given, rather than tenancy. The same is true of a workers' co-operative, where remunerated employment is a benefit of membership.

10. (d) has been added in to allow removing of awkward phrasing from earlier clauses.

POWERS

3. The co-operative shall have the power to do all things
 - a. necessary or expedient for the fulfilment of its objects; and
 - b. for the support and development of bodies which are
 - i. concerned with the provision and management of co-operative accommodation; or
 - ii. with the promotion of co-operatives; or
 - iii. which have objects supported by the Co-operative.

~~If the Co-operative is or becomes a registered Housing Association under section 5 of the Housing Associations Act 1985, its powers under this rule shall be limited so as to conform to the requirements of the said Act.~~

1. This Rule sets out the ability for the society to do what it needs to do in other ways to satisfy the objects for which it was created. It grants the society somewhat wider powers beyond simply housing its members, allowing it to undertake other activities, though these are constrained to be:

- (a) promotion of co-operatives;
- (b) objects supported by the Co-operative.

(b) is important in so much as it allows the society to say that it likes another project that is in line with its objects. What it cannot do is run those projects itself – it can only support them, whether financially, or through allowing the project to use part of its assets.

2. Part (iii) does not limit the co-operative to solely supporting organisations (co-operatives or otherwise) with similar objects, though it may appear to say this on first reading. The general meeting still has the power to make donations or otherwise support other issues which are not necessarily covered in formal objects of the society.

3. Much of the RRFM96 rules are taken straight out of the old housing federation rules which were for a different purpose and have not been fully adapted. There are issues with being a housing association – for instance being caught up in tenancy and HMO legislation that smaller housing cooperatives would wish to avoid in order to be financially sustainable and to have autonomy over its governance. This includes having to register with the Tenant Services Authority. Furthermore the clause on housing associations does not appear to be applicable to the day to day needs and life of co-operatives that use these particular rules. For these reasons we suggest removing the crossed out section.

If the co-operative grows in size, becoming a housing association may be a natural step to take; or it might be more in line with our principles to split the cooperative.

Guidance Notes: Powers

TRADING

4. The Co-operative shall not trade for profit.

REGISTERED OFFICE

5. The registered office of the Co-operative shall be at

The office may be changed by resolution of a general meeting. Notice of any change shall be sent to the Authority within fourteen days of such change. ~~or within such other time as may be required by the Treasury Regulations and in the manner and the form thereby prescribed.~~

Guidance Notes: Trading

1. There are situations where a society will make a profit. For Industrial & Provident Societies this is considered as surplus and has to be redistributed in certain ways, as decided at the Annual General Meeting. These ways are:

- (a) the society owning its own property, i.e. using its income to pay off its mortgage, the increase in value counting as profit.
- (b) setting it aside as reserves or for funding particular projects; or
- (c) donating it to another organisation (not necessarily another cooperative) whose aims are in line with the society (see under principles).

Any surplus cannot be given to members as a reward for being a member, etc.

Guidance Notes: Registered Office

1. The registered office is quite important for several reasons:

- (a) it is the society's official address and place of business, and the address to which the registering authority, etc. will send formal documents.
- (b) IPS 1965 Act requires
 - (i) the name of the society to be fixed to the building.
 - (ii) that this is where various documents relating to the society such as its books, membership register and latest balance sheet are stored and/or displayed.

The FSA have a specific form⁴ for changing the registered office of a society so it does not have to be done in the same way as other amendments to the rules, but note, it does require a General Meeting to approve it, something also set down in the IPS 1965 Act.

2. Treasury Regulations are now obsolete, so can be removed.

⁴ http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/Societies/index.shtml

SHARE CAPITAL

6.
 - a. The share capital of the Co-operative shall consist of shares of the nominal value of £1 each issued to members of the Co-operative upon admission to membership.
 - b. Shares shall be neither withdrawable nor transferable, shall carry no right to interest, dividend or bonus, and shall be forfeited and cancelled upon cessation of membership from whatever cause and the amount paid up thereon shall become the property of the Co-operative.

Guidance Notes: Share Capital

1. This seemingly formal approach is a legacy of how British law approaches membership of a body corporate, which is principally done through having a share in the organisation. This requires the organisation to be able to issue shares. When it comes to disputes this is potentially very important. Paying the £1.00 is a condition of membership.
2. It is this structure that gives the society 'limited liability'. That is, the members are only liable for the debts of the co-operative up to what is their share, which in this case is the nominal value of £1.00. It is similar to a company in that, where a company goes bankrupt, the creditors cannot go after the shareholders to get their money back, though any capital put in by the shareholders is lost to the creditors. If the reason for bankruptcy can be shown to be unlawful then they can go after those individuals they hold liable through their actions (e.g. directors), but being a member is not sufficient.
3. In the form of a fully mutual society these shares are nominal in that they do not confer any benefit other than membership of the society.
4. The £1.00 share is not returned once a member leaves, but is simply recorded as being part of the capital of the society.

MEMBERSHIP

7. a. The members of the Co-operative shall be (subject to Section 9: Cessation of Membership):
- i. ~~those persons signing the application for registration of the Co-operative; and~~
 - ii. ~~those persons whose names are entered in the register of members.~~
- i. *where no register of members has been created, those persons signing the application to register the Co-operative;*
 - ii. *where a register of members has been created, those individuals whose names have been entered into the register.*
- b. The register of members shall include the address of each member; it shall be the responsibility of the member to advise the Co-operative of any change. Any requirement in the Act or in the Rules of the Co-operative that a notice be served on the member shall be satisfied if notice has been delivered to the address given in the register.
- c. Only persons aged 18/16* or over are eligible to become members.

** delete as applicable*

Guidance Notes: Membership

1. This is one of the most important sections. A fully mutual co-operative is all about its membership so what defines membership is often very significant in resolving disputes.

When someone becomes a member they are entering into a contract with the society, in that they are agreeing to abide by the rules of the society, in particular, the ones set out here. Failure to abide by the rules can amount to sufficient reason for withdrawal of membership (and thus, expulsion), provided due process is followed.

2. Rule 7(a): every society must by law have a register of its members, which should also note joining and leaving dates. Having one's name in the register is one of the conditions of being a member of the society and will be an issue where there is a dispute over membership.

3. *Rule 7(a)(i) & (ii): these have been changed to undo an ambiguity in the original formulation, and to make clearer the distinction between the two situations.*

4. Rule 7(a) does not create a de facto membership simply by being named in the register of names; it is simply fulfilling a legal requirement. However, if there is a dispute over membership, it is important, but will also play out against other criteria; in particular, acceptance as a member by general meeting. That is, even if someone is not recorded in the register, it does not necessarily invalidate their claim to be a member.

4. Rule 7(b): the Register of addresses is important if there is any dispute as to whether someone was adequately informed of a meeting where a decision was made which they are disputing. That is, improper service could invalidate the decision. This does not rule out notification by email, if the secondary rules of the society allow for that.

5. Rule 7(b): for housed members the address is the property owned/controlled by the society where they are residing; for members yet to be housed, it is their current home.

6. Rule 7(c): The purpose of this restriction is to do with the fully mutual nature of the society. It does not stop people under the age of 18 (16) from living there⁵, just clarifies that they will have no say in the governance of the society. This is because in this model of co-operatives, all members are effectively directors and taking on the responsibility of a director is restricted to adults only (hence the choice of the age of 18). In the case of minors living in the house, their residency comes linked to the membership of their parent/guardian.

The law is in the process of being changed⁶ to allow members to be as young as 16, with full ability to participate in the governance of the society – unless the rules explicitly restrict the minimum age to 18. In many situations a child is considered anyone below the age of 18. However, between the ages of 16 and 18, legal responsibility and abilities are in a state of flux. There are issues around this to do with families and the parent (guardian)-child relationship, whether this would allow effective carpet-bagging of a co-operative by a family and the fact that children cannot enter into contracts.

On the other hand, incorporating the 16 year old into the life of the co-operative is a good thing and this could not be an anti-carpetbagging measure in itself, especially given other measures being put in place.

Another question for coops thinking about the lower age limit: what happens when someone who has been living in the coop as part of a family turns sixteen – do they automatically become a member. How does the Principle of 'voluntary membership' work here? What are the power dynamics that come with this? It is

5 Provided there is a parental/guardian relationship in place with at least one member.

6 See the The Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2010, which as yet has to be enacted.

suggested that this is something for the secondary rules to deal with.

Note, the law, when it is brought in will read

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 this 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.

- d. All tenants of the Co-operative must be members and all members must be tenants or prospective tenants of the Co-operative.

(i) No individual who is not intended to be housed by the Co-operative or does not intend to take up residency in a property controlled or managed by the Co-operative shall be considered a bona fide member

*(ii) All unhoused members shall be required to reapply for membership if they have not been housed by the Co-operative within two years after being **accepted as a member** (or such period as may be set down by general meeting, save that such time may not be indefinite).*

Guidance Notes: Membership cont.

6. While the other clauses are merely conditions on membership, Rule 7(d) is the clause that actually defines what membership is.

7. There is a strong argument that in most cases a judge will consider this the primary benchmark defining whether someone is a member of a housing co-operative under these rules, regardless of whether the other conditions (e.g. paying £1, entry into the Register of Members, etc) have been met or not.

Withdrawal of membership means that the person is no longer able to be a tenant – tantamount to eviction.⁷

8. Not all prospective tenants need to be members, but there is a requirement that once they become a tenant then they must become a member.

9. A clause has been put in at (d)(i) to allow challenging of paper members, where paper membership is being abused to facilitate the carpet-bagging or abuse of the cooperative process. A similar one has been added in (d)(ii).

These are small points, but they allow for challenges to be made where paper members are being used to control the housing cooperative in a fraudulent manner, albeit it is recognised that they are weak. In the situation where no members are housed, or there are extenuating circumstances, its does not prevent each unhoused member from having their membership continued – it simply has to be done formally rather than being automatically rolled over.

A subclause in (d)(ii) allows the society to change the two year period in their secondary rules, but not so that it can be effectively removed (an anti-abuse measure in relation to paper-members).

⁷ cf. Mexfield Housing Co-operative ruling.

- e. A member shall hold only one share in the Co-operative. Shares shall not be held jointly.
- f. *Acceptance, rejection or removal of membership can be decided only by a general meeting.*

Guidance Notes: Membership cont.

9. Rule 7(e). This provision is important where there are joint tenancies. For example, where part of a society's property is for the use of a couple, it can be issued as a joint tenancy; however, both individuals must become members of the society and be approved as such. It is not possible for one person to move in and become a member and have their partner live with them without them being approved for membership and taking on the responsibilities that come with it.

Where a housing co-operative is providing joint tenancies, it is strongly recommended that they have secondary rules in place for dealing with what happens when the partners to the tenancy have issues in their relationship. This will be very much dependent on the objects of the society, its business model and the physical layout of the residences.

10. Rule 7(f) has been added to recognise the importance of membership in the role of the society and its governance and to stop abuse of process, whereby membership decisions are hived off to a subgroup. It does not prevent the joining process overseen by a subgroup, merely ensures that final decision as to membership rests with the society as a whole (see also the Rule on Expulsion).

8. Any application for membership shall be considered under the procedure laid down from time to time by general meeting. If an application is approved, the Co-operative will issue the applicant with one share upon payment of £1.

Guidance Notes: Membership

11. Rule 8: where a member is not yet a tenant then the clause about the £1 share becomes more important as the key thing which identifies membership. Not entering the membership into the Register of Members is an error by the society officer responsible for this – not being entered will not deprive a prospective tenant of their membership if they have been given a share.

12. In accepting the share, the prospective tenant is agreeing to become a member and seeking to be housed by the society. One cannot become a member of the society for the sake of membership itself.

13. Guidelines for the application process are delegated to be set out by a General Meeting and therefore become part of the Secondary Rules of the society.

X. Probationary Members

The society may accept individuals as tenants for a probationary period subject to the following provisions:

(a) Probationary members are not members of the Co-operative, but are individuals who are in the process of becoming members. They may or may not be provided housing by the Co-operative as part of the probationary period.

(b) The probationary member can be resident in a property controlled by the Co-operative for a period of time after which they must either surrender their tenancy or be accepted as a full member of the Co-operative at the next general meeting, subject to the following:

- (i) The period of tenancy permitted under probationary membership shall be a fixed period not exceeding one year, as set out from time to time by the General Meeting, and provided there is no discrimination between different applicants. This set period of residential probation can be extended provided
 1. there is mutual agreement between the parties;
 2. the total period of residency does not exceed one year.
- (ii) Where probationary membership has been granted in the absence of an agreed probationary membership period, the length of residency before a decision on membership shall not exceed six months.

(c) The probationary member agrees to abide by other conditions set out by the Co-operative regarding probationary membership and any joining procedure.

(d) The Co-operative may set down from time to time other conditions on the process of transferring from probationary

membership to full membership, and may choose, at a general meeting, to waive conditions that have not been fulfilled.

(e) Fulfilment of the conditions set down under (d) shall not prevent the Co-operative from refusing full membership on the basis of other considerations not set out during the process.

Notes: Probationary Membership

1. It has been noted in legal advice that probationary membership creates problems given the existing rules. The purpose of this addition is to codify existing practice within some co-operatives once a prospective member has taken up residency.

2. Paragraph (a) defines the probationary member – it is important to note that they are not actual members, though they may enjoy some of the benefits of membership. There is no requirement for a society to have a probationary period – this section is only for where it is in use.

3. Paragraph (b) is to stop abuse of the probationary process, as has happened in cases where a clique controls membership for its own purposes. Extension of a probationary period is limited and must take place by mutual agreement to help prevent undue pressure being put on individuals by extending their probationary period indefinitely. If issues blocking accession to full membership cannot be resolved after an entire year, there is probably a more fundamental problem. Co-ops' probationary periods are commonly between 3 and 6 months.

4. Paragraphs (c) and (d) allow the society to set up a probationary process which will form part of the secondary rules, but maintain its ability to make decisions. It is recommended that each society has clear policies on the probationary process, in

particular for those probationary members who are already tenants. It has been written to allow flexibility by both sides (for instance if the probationary member has to be away for a significant period of time). The limit of one year is to stop abuse of the process by putting off a membership decision indefinitely.

5. Paragraph (e) allows the society to say no to someone's membership if they simply do not want to live with them.

6.A formal decision by a General Meeting to refuse someone full membership effectively ends probationary membership and with it any benefits of tenancy that go with it, subject to any policies the co-operative might have in place (e.g. a month's grace to vacate in order to allow the person to find alternative accommodation). It is not a requirement that the coop has to wait until the end of the probationary period before making a decision on whether or not a person can become a full member.

X. Non-Residential Occupation

(a) The Co-operative may enter into contracts, subject to the Co-operative's objects on housing, with individuals, organisations or bodies corporate on the basis of a licence to occupy part of the property of the Co-operative, provided that it does not constitute the offering of a tenancy, or the taking up of a residency by the individual.

(b) Any licence or lease granted under this section must preclude the licensee or lessee from taking up residency or granting it to another. No licensee or lessee may sub-licence or sublease the property of the Co-operative without the express permission of the Co-operative. A breach of this clause may be deemed sufficient grounds for termination of the licence or lease.

(c) Subject to (i) to (iv) below, the General Meeting is empowered to decide from time to time the right that licensees and lessees have to participate in decision making by the Co-operative, including voting rights.

(i) No more than one individual can represent a given licence to occupy. Where a member of the Co-operative is acting as a representative of a licensee or lessee they shall not acquire any extra decision-making powers (including those of extra voting rights).

(ii) No more than one quarter of those with decision-making powers at any General Meeting are licensees or lessees or their representatives. For the avoidance of doubt, any member who is also a representative shall a) be considered a representative for the purposes of quoracy, and b) have only one vote.

(iii) The licensee or lessee does not have a right to vote on any issue relating to its own licence, the

tenancy of any full or probationary member, the dissolution of the Co-operative or any sale or purchase of the Co-operative's property.

(iv) Licensees or lessees who are invited or required to attend general meetings shall not count towards quoracy.

Notes

1. The purpose of this section is to codify existing relationships not based around tenancy and of particular relevance to cooperatives where ownership of land is an important part of their structure – that is, where renting out part of their property constitutes part of their business model (income stream) or their function (provision of community resources).

2. Clause (c)(ii) is to protect residents from being overwhelmed by lessees and to ensure that governance of the society remains primarily about housing or its defined objects. The figure of $\frac{1}{4}$ has been chosen to reflect other conditions on quoracy and to prevent lessees blocking decisions on the basis of any quoracy clauses in the secondary rules.

3. Exclusions in (c)(iii) & (iv) have been made to safeguard the interests of the society as a whole.

4. Relevant here is the corporation tax threshold on non-housing income. However, there is nothing to stop the society from paying relevant tax, etc. if the extra income it gains works out as is more valuable. However, care needs to be taken that in extending the model to non-housing income, which is permitted, that this does not become the main function of the society, as this would defeat the objects of the society.

9. Cessation of Membership

(a) A member shall cease to be a member if:

- (i) they die; or
- (ii) they resign either by writing to the Secretary or in person by *at* a general meeting; or
- (iii) they are expelled from membership by a general meeting.
- (iv) they are prospective tenants and have either:
 - 1. notified the Co-operative that they no longer require accommodation, or
 - 2. failed to respond in writing within 28 days to a written request, sent to their address in the register of members, to confirm that they still require accommodation.
 - 3. entered into a long leasehold agreement with the landlord of the property managed by, but not owned by, *a landlord other than* the Co-operative.
- (v) *They purchased a property which they intend to use as their residence.*

Guidance Notes: Cessation of Membership

1. Paragraph 9(a)(iii) is dealt with in more detail in the next section.

2. This Rule has been restructured to deal with concerns with the clauses as encountered by Radical Routes cooperatives. For instance, where a member has left to travel for a period of more than six months. The change gives more discretion to the society to make decisions as to whether someone is still to be considered a member.

Care has been taken to ensure that powers remain with the general meeting

3. Paragraph 9(a)(iv)(3) seems to have been badly drafted or drafted with a different purpose in mind. It has been modified so that paper members who have no desire of being housed and have indicated this by entering into a contract with another landlord or purchased their own property automatically lose their membership.

4. (a)(v): this is to explicitly include a tenant and member of the society who has purchased a property they intend to use as their residence. It does not exclude those who may already live in property they own, but plan to sell to take up residency through the society, or if someone owns property (or a share of such), which is leased to others. The society's secondary rules may exclude people from taking up membership if they own another property where they could otherwise live.

(b) At the discretion of a General Meeting of the Co-operative, membership can be considered to have ceased if:

- (i) they *member* ceases to occupy the accommodation provided or managed by the Co-operative for a period of six months;
- (ii) their *member's* tenancy or lease is terminated. They shall cease to be members 28 days later, unless by that time they have either entered into a new tenancy or lease with the Co-operative or have been accepted as a prospective tenant. *The Co-operative may not remove tenancy solely for the purpose of creating a de facto expulsion.*

(c) The service requirements of General Meetings shall serve as adequate notice to the individual affected. The Secretary or an appropriate member appointed by the society shall notify in writing the individual that their membership has been withdrawn within seven days of the General Meeting. Once notified, the individual has fourteen days in which to lodge an appeal with the Co-operative, which must be considered by a General Meeting.

Guidance Notes: Cessation of Membership cont.

6. When an individual becomes a member they are, in law, entering into a contract with the society and their ability to derive benefit from the society, e.g. tenancy, is dependent on them abiding by the Rules – both Primary and Secondary - of the society, and the decisions of general meetings. Not abiding by the rules/decisions can be considered a breach of contract and thus grounds for expulsion.

7. Paragraph 9(b)(ii): The purpose of this paragraph is to deal with situations where a co-op has to do work on a part of its property that means that a tenanted member loses their residence. *It has a safeguarding clause put in to stop back-door evictions. This clause has the additional safeguard in so much as it is at the society's discretion.*

8. *Paragraph 9(c) has been introduced to ensure good practice where someone has been removed from membership without going through the process of expulsion (see below).*

10. **Expulsion**

(x) A member can only be expelled once dispute resolution processes as laid down by the Co-operative have been exhausted in-so-far as possible.

(x) This process may be waived if the member is alleged to have engaged in behaviour that amounts to verbal or physical assault, abuse, harassment, theft or damage in relation to another member or their partners or friends, such that they have caused any member to consider that they feel unsafe as a resident of the Co-operative. Such behaviour shall be considered to be a gross misconduct.

(x) Where a gross misconduct has been alleged, it shall be treated with expedience. To this end a meeting of no fewer than one quarter (or other ratio as may be set down from time to time by general meeting) of all members may be convened by any member to consider the temporary exclusion of the relevant individual(s) from the Co-operative's property until resolution or expulsion is enacted.

PROVIDED that:

- a. at least half of the Co-operative members give their consent before action is taken;
- b. a general meeting must take place with seven days' notice and no later than fourteen days after the temporary exclusion to resolve the issue in whatever manner the general meeting deems appropriate, whether
 - i. upholding the temporary expulsion pending resolution, the procedure for which must be set out with notification to all members including the person concerned; or
 - ii. expulsion of the person concerned.

Notes

1. This section has been made stand-alone and developed to ensure that alternative dispute procedures are followed as set out elsewhere in these rules (see below and which should be covered in Secondary Rules), before the extreme solution of expulsion is taken as an option. This is to prevent expulsion being used, except as a matter of last resort.

2. Clause 10 (x) deals with the exception to this - where there is an abusive member and their effect is immediate. Currently there is little way to exclude them under the Primary Rules, in which case they would have strong argument to legally maintain their right to stay until all the procedures have been exhausted. This results in a situation where those on the receiving end are more likely to move out. A number of cooperatives have suffered because of abusive members, where other members didn't feel there were sufficient powers to deal with them. The result is a downward spiral for the cooperative.

3. Paragraph (x): the figure of one quarter of membership has been reached through considering the most practical way given the vagaries of life of an active co-operative, in order to achieve a result where a decision can be made, but it has checks built in to stop abuse. Power is given to the general meeting to create a Secondary Rule to override this figure of one quarter if necessary – depending on the needs and situation of the cooperative.

4. Note, there is a distinction between gross misconduct, which can lead to immediate exclusion, and behaviour detrimental to the Co-operative, which does not have the same immediate consequence.

(a) *In situations other than gross misconduct, a* member may be expelled by a resolution carried by the votes of three-quarters of the members present and voting at a Special General Meeting of the Co-operative of which notice has been duly given, provided that a complaint, in writing, of conduct detrimental to the interests of the Co-operative has been sent to them by order of the Co-operative not *fewer* than 28 days before the meeting. Such complaint shall contain particulars of the conduct complained of *in question* and shall call upon the member to answer the complaint and attend the meeting. At the meeting the members shall consider the evidence in support of the complaint and such evidence as the member may wish to place before them. If, on due notice, the member fails to attend the meeting, the meeting may proceed in their absence.

~~(b) No person who has been expelled from membership shall be readmitted except by a resolution carried by the votes of at least three-quarters of the members present and voting at a Special General Meeting of which due notice has been given.~~

(b) *Any person who has been expelled may be re-admitted provided they go through the joining process required by the Co-operative, or other criteria as may be set down by the general meeting from time to time.*

Notes

5. Expulsion is a serious option to take and the basis of it may lie in very contentious issues. It could be possible that the life of the society is at stake. Thus, given the potential contentiousness, these are the clauses that are there for the 'bad times', when relationships are starting to break down. In this situation consensus-decision making is not guaranteed to work. With this in mind, the focus on voting as a form of resolution is kept. Furthermore, consensus cannot be reached if a member won't vote for their own expulsion – since as a member, they do have the right to vote on their own continuing membership.

6. What this section does not address is what happens in a three person co-operative where two members want to expel the third member. These expulsion clauses work for coops with four or more members. With three people, you have the issue that by expelling one person, you are going below the prescribed three people needed to function as a bona fide co-operative.

7. (b) takes account of the principle of autonomy, that the coop should have the right to choose how this happens, but also that expulsion from membership is a serious thing for a coop and re-admittance should not be taken lightly.

11. **In the event of the death of a member**

a. A member may, in accordance with the Act, nominate a person or persons to whom any of their property held by the Co-operative, other than share capital, shall be transferred at their death.

b. Upon a claim being made to any property held by the Co-operative by the personal representatives of a deceased member or the trustees in bankruptcy or a bankrupt member; the Co-operative shall pay or transfer any property to which the representative or trustee has become entitled.

Guidance Notes

1. The purpose of this Rule is to allow any loans or assets that have been given to the society by a member to be returned to their estate. It does not allow anyone to replace them as members or enjoy the benefits of membership simply for being an heir; for instance, the offspring of a member cannot claim tenancy/membership simply for being their child.

When these rules have been formally revised this section should be moved to follow on from Cessation of Membership. For the moment it is being kept here for the purposes of allowing new proposed sections to flow and keep the numbering.

GENERAL MEETINGS

12. (a0) Governance of the Co-operative shall take place by General Meeting only. There shall be no power under these Rules to establish a committee of management. A general meeting shall have the power to appoint, replace and remove individuals, members or groups of members delegated to exercise certain powers on behalf of the Co-operative.

a. General meetings of the Co-operative may ~~may~~ *should* be attended by any *all* members; and all members present shall be entitled to speak, *participate in decision-making* and, *where needed*, vote.

(a1) Each member shall personally be given at least seven clear days' notice of the time and place of each general meeting and of the issues upon which decisions are to be taken. *Notification will be deemed to have taken place if it was done through:*

(i) *email or telephone call from another member of the Co-operative, including time and place of the meeting and the issues to be raised.*

(ii) *circulation of minutes of the previous General Meeting in which the date of the next meeting and any relevant issues to be discussed were noted.*

(iii) *an agenda, including time, date and place, being displayed on an official noticeboard seven days in advance.*

(iv) *a letter*

Except when all the members, and lessees with voting rights, of the Co-operative are present and there is unanimous agreement among them, in which case they are empowered to constitute a general meeting at that point in time or at a specified time and place. This can include live participation via telephone and/or internet.

Notes

1. Paragraph (a0) takes provisions from Rule 16. It also reflects a decision, argued for under Rule 17, that a fully mutual co-operative should be governed by all members on a direct basis through the process of a general meeting and not through delegation to a smaller group of individuals (board/committee of management).

2. Paragraph (a) has been altered to maximize participation in the governance of the society and place a greater emphasis on consensus decision-making.

3. Paragraph (a1) has been extended in order to reflect current working practices within co-operatives.

4. 'Governance' means how the society will make decisions on issues that directly affect its own status and structure as a legal entity. This is distinct from the day-to-day running of the society, though the two do naturally inform each other. Thus, 'governance' means dealing with issues such as membership rather than choosing the colour of the paint for the kitchen. Another way of looking at it, is that governance is about the enacting of the Primary Rules of the society. A power of secondary rules is to widen the power of governance, though they cannot reduce that power further than is provided for in these primary rules or in the IPS Act 1965.

~~(a2) The Secretary shall call a general meeting as required by A General Meeting shall be called by the Secretary in accordance with the Co-operative's rules or policies or decisions or at the written request of , or by not less than three members or one-tenth of the members of the Co-operative, whichever is the greater; who may proceed to call the meeting if the Secretary does not do so within fourteen days of receipt of the request.~~

(a3) If no meeting has occurred within a three month period any member shall be empowered to call such a meeting.

(b) Special General Meetings of the Co-operative shall be conducted in the same manner as general meetings, except that they shall require twenty-eight clear days' notice to be given.

~~(c) Each general meeting shall elect a chairperson whose function will be to conduct the business of the meeting in an orderly manner. The chairperson shall not have a casting vote; he or she shall have one vote as with any other member.~~

Notes cont.

3. We have deleted paragraph (c) so as to bring this rule in line with the change to the decision-making section (Rule 14) below.

4. Paragraph (a2) has been rewritten to de-emphasise the power of the Secretary in calling general meetings. It basically requires the Secretary to follow the Rules (whether primary or secondary) of the society. However, if there is an issue that a group of at least three members feel needs urgent decision-making, then they are empowered to organise that meeting themselves.

5. In the situation where a cooperative is highly dysfunctional and no meetings are happening, then there is a power under paragraph (a3) for any member to call a general meeting after a three month period. Given the importance of general meetings, it is important that this can happen and the cooperative does not drift into the control of a few people who cannot be held accountable.

5. See also under Rule 15 where Annual General Meetings can set the frequency of General Meetings.

6. Paragraph (b) defines a Special General Meeting, the main difference being that it requires 28 days notice. SGMs are not common practice within this form of society, but it is an important tool to have when dealing with major issues and if there is dysfunctionality and/or a large number of members.

13.

QUORUM & DECISION MAKING POWERS

- a. *The members of the Co-operative may establish meetings to discuss the day to day running of the co-operative, either as provided for by decisions at General Meetings, or on an ad hoc basis where necessary. These meetings will have a decision-making power, provided:*
- i. *notice of the decisions is circulated;*
 - ii. *there is power for the decisions to be revisited or recalled and they do not contravene existing decisions as set down by General Meeting;*
 - iii. *where there is no such process established under (ii), any objection will require the decision-making to revert to a General Meeting (e.g. to be ratified at a general meeting);*
 - iv. *no such ad hoc group or meeting shall make a binding decision on any issue provided for in clause (d) below.*
- b. (b1) No business shall be transacted at any general meeting unless one-third of the Co-operative's members or 25 3 of them, whichever is the fewer-**greater**, are present to start the meeting,
- EXCEPT where membership of the Co-operative has fallen to fewer than the required three individuals, in which case the remaining members may use the power of a General Meeting to*
- i. *co-opt individuals as full members with all the rights and responsibilities entailed; or*
 - ii. *issue an instrument of dissolution (Rule X)*

For the avoidance of doubt, this includes, but is not limited to, a prohibition on making any amendments to these Rules and the sale of significant assets.

Notes: Quorum & Decision Making Powers

1. Paragraph (a) is introduced to reflect existing practice. Ideally, societies will have secondary rules setting this out, for example, a subgroup not being able to spent more than say £500 on a project without first getting approval from the whole cooperative, or for decisions to be made via email. It also allows the society to delegate powers of decision-making to subgroups if it so wishes, and set out the conditions on which quoracy and other decision making issues can be considered valid. There are safeguards to stop this freedom being abused, but the aim is to err on the side of flexibility rather than bureaucracy – General Meetings carrying quite a lot of bureaucratic requirements are part of what gives them their decision-making force.

2. Paragraph (b): the clause about 25 members is a legacy from the housing association origins of the rules. A coop where 25 members are fewer than 1/3 of memberships means a coop with more than 75 members – far bigger than these rules are designed to deal with. *The part about start the meeting has been deleted to remove any implication that business can be conducted by a meeting not quorate by the end.*

3. Added is a provision to ensure that key decisions affecting the entire society and its members are not decided by a small core of members. The purpose is to invalidate decisions where cooperatives have been reduced to one or two members who are carpet-bagging it, restricting their decision-making powers to bringing in new members or dissolving the society.

4. The issue regarding a society with two or fewer members is a vital one to prevent misuse of the society and it being carpetbagged. While it is not a panacea to the issues that arise, it seeks to curb some of the abuses that have taken place in the

past, as well as deficiency in the legislation which does not make provision for this situation. Technically, once a cooperative has fallen below 3 then the only rights they have are those to bring in new members or wind-up the society.

(b2/c) If no quorum is present within half an hour of the time appointed for the meeting, the meeting shall stand adjourned. It shall be reconvened on the same day in the next week at the same time and place, or such other time and place, as shall be agreed at the meeting and notified to the members; and if at the reconvened meeting a quorum is not present within half an hour of the time appointed for the meeting the members present shall be a quorum, *provided no fewer than three members are present.*

(b3) *If after four weeks it has not been possible to call a general meeting in which at least three members are present then decision-making powers shall be as if the Co-operative has fewer than three members and shall be restricted to the issues set out in clause (b2/c).*

(d) *The following issues are exempted from (a) and must only be considered at a general meeting, subject to the powers to call a special general meeting and to previous clauses on quoracy:*

- 1. any issue of membership, including admittance and expulsion;*
- 2. exclusion (as outlined in Rule X)*
- 3. ratification of dispute resolution;*
- 4. modification to property which would impact on the residency of a member;*
- 5. sale and purchase of land/property;*
- 6. delegation of powers to direct investment;*
- 7. election or recall of officer positions;*
- 8. the binding of the Co-operative by contracts or loans;*
- 9. any other issue which a general meeting from time to time may agree should be reserved to it.*
- 10. any secondary rules or policies of the Co-operative*

In each of these matters, a decision in relation to them they can only be considered to have passed if no fewer than three members have consented to it.

Notes on Quorum cont.

4. Paragraph 2 (b2/c) is the standard clause for dealing with a situation whereby quoracy cannot be met. There is added in a new clause to prevent the measure being abused – that is no general meeting can proceed with fewer than three members; this should be considered in line with Paragraph (a), which removed some of the need for every decision to be made at a general meeting, and Paragraph (d) which ensures decisions of particular substance are reserved exclusively for general meetings.

5. Paragraph (b3) is to overcome situations where the ability to make decisions is being frustrated by one individual – by bringing in a new member if necessary. There is a good legal reason for this, as a three member cooperative (housing rather than workers) cannot be considered as functional if it is being disrupted by one of its members and thus it is caught in the limbo of not practically being able to fulfil its requirements as a co-operative under the Act. The only way around this is to bring in a new member. This is a balancing act as the single individual may actually be trying to stop an unlawful decision, but we'd submit that adoption of tactics of frustration is not actually the appropriate solution for cooperatives.

6. Paragraph (d) has been inserted as some issues cannot avoid general meeting given their nature and need to be specifically dealt with in this way given their seriousness and (potential) implications for the society (legally and financially). There is scope for the society to add in other issues as it sees fit (e.g. ones that are definitely going to be contentious or relate to major capital expenditure) – this should be put in the secondary rules.

While dissolution can be discussed at a general meeting, the decision should be referred to a special general meeting.

NEED TO GO THROUGH POINTS 1-9 AND CHECK THERE IS NO CONFLICT WITH ANY AMENDMENTS IN THE FINAL VERSION OF THESE REVISED RULES.

DECISION-MAKING PROCESSES VOTING

14. a. The decision-making process in the Co-operative in any meeting constituted under Rules 12 (General Meetings) & 13 (Quorum & Decision Making Powers), shall primarily be carried out using consensus decision-making, following an appropriate method as set out by a previous decision at a General Meeting, or as chosen by the members present.
- (i) Any decision reached by consensus shall be considered to have been passed as if by vote.
- (ii) Any consensus decision-making process shall include the selection of a facilitator who shall for all other purposes have the power of a chair.
- b. Any general meeting may revert to the use of voting in order to decide an issue, provided the motion to go to voting is supported by no fewer than one third of those present, or two members, whichever is the greater. Where a motion to go to vote is carried, a chairperson shall be selected to ensure an orderly process of voting takes place. Any vote relating to matters governed by or change of these Rules, shall be held over until the next general meeting to allow members not in attendance to be present, or to provide a proxy vote in writing.
- c. When a vote takes place, every member present in person at a general meeting shall have one vote. Except where otherwise specified in these Rules, resolutions shall be decided upon by a majority vote of members present and voting. Votes shall be taken openly, unless, before a motion is put to the vote, a secret ballot is demanded by not less fewer than one tenth sixth of the members present. Voting shall be conducted under the direction of the chairperson in accordance with any procedures agreed by the Co-operative. A motion on which voting is tied shall be deemed to have fallen.

c(i). A general meeting shall take into account submissions from a member who cannot make the meeting, but such submissions shall not count towards quoracy unless they specifically address an agenda item that has been circulated in advance.

d. Where the Co-operative has only three members and Rule 13 (d) (Quoracy) imposes a unanimous decision upon the Co-operative, then the dispute resolution rules may be invoked.

Notes

1. Paragraph (a) is to recognise the position of consensus decision making as a tool within co-operatives. It leaves it open to the society to chose which particular form it desires, something that should be incorporated into the Secondary Rules, and to modify it on the day of the meeting if that is deemed useful.

2. Paragraph (b) sets out the conditions under which a decision-making process can switch from consensus to voting. The conditions under which this can happen should be covered in the secondary rules of the society. Note, the law is pretty vague on consensus-decision making, and the IPS 1965 Act explicitly discusses voting, so it cannot simply be removed. This is why in (a) it is recognised that the process of active consensus is tantamount to vote where the majority (depending on how that is defined in the CDM process) carry the day.

3. In (b) we have also tried to recognise the importance of any issue that seeks to alter the Rules or the matters governed by them, so that any move to a vote needs to go to the next meeting so that all members of the society can have their say if necessary.

4. Paragraph (c) is the standard clause of one member, one vote; and allows for situations in which secret ballots might be necessary (e.g. significant inter-personal disputes). The value of one tenth is a legacy one; for many smaller cooperatives it simply will not be relevant, but it is useful to keep in for those societies which might have grown. Have reduced it to 1/6 to make it more

realistic for the smaller cooperative model these rules are being redesigned to take into account.

5. Paragraph (d) attempts to deal with the specific but tricky situation where a society of three members is unable to come to a decision on an issue of substance. It seeks to acknowledge that such differences easily become fractious disputes that force the society to become dysfunctional, so that this is probably the best time to seek outside help to head it off developing into a more serious decision.

ANNUAL GENERAL MEETING

15. The Annual General Meeting shall be held within three *six* months of the close of the financial year of the Co-operative. This meeting shall be called in the same manner as any Special General Meeting. It shall:
- a. consider the frequency of general meetings during the coming year. *In the absence of any decision otherwise, general meetings shall take place monthly, subject to any resolution of a general meeting as to time and place.*
 - b. consider an annual report on the business of the Co-operative during the previous financial year;
 - c. receive the accounts and balance sheet for the previous financial year;
 - d. appoint an auditor if necessary according to Rule 36;
 - e. ~~until such time as a Committee is elected following a resolution under Rule 17, shall~~
 - i. elect a Treasurer under the members' direction.
 - ii. elect a Secretary under the members' direction.

~~MANAGEMENT BY GENERAL MEETING~~

16. ~~Until such time as a Committee is elected following a resolution under Rule 17:~~
- a. ~~the management of the Co-operative shall be undertaken by general meetings (at least one in every three months).~~
 - b. ~~a general meeting shall constitute the committee of management and have power to make decisions in accordance with the Rules of the Co-operative.~~
 - c. ~~A general meeting shall have the power to appoint, replace, and remove individuals, members, or groups~~

~~of members delegated to exercise certain powers on behalf of the Co-operative.~~

Guidance Notes: Annual General Meetings.

1. AGMs are required by law and bar (a) have to do the things set out. It is not specified when they must happen, but they have to be in time to carry out (b) and (c) and thus the submission of the annual return (must be with the FSA within seven months of the end of the financial year).

1a. Change from 3 to 6 months is to reflect current practice while leaving at least one month to fill out the necessary forms and submit them to the Authority.

2. It is useful to note the power to set the frequency of general meetings through the year. Monthly is set on the grounds of good practice, though any general meeting retains the power to set the time and place for the next meeting. It is good practice for the Secondary rules to have measures relating to the time and place of general meetings as this helps with meeting the requirements of notification, etc – for example, that the meeting shall happen on the 1st Monday of every month.

3. Paragraphs (b) & (c) are vital – the annual return cannot be signed off if this is not done. If the annual return is not submitted then the society is liable for fines or de-registration. It may also have legal implications for individuals.

4. Paragraph (e): a Secretary is required by law. Treasurers are not, but it is good practice to have them. See also Rule 30. *The part on Committee is removed per deletion of other Rules relating to committees.*

Notes: Management by General Meeting

1. This has been deleted in line with its incorporation into Rule 12 and the acknowledgement that governance of the corporative should be by general meeting and not delegated to a committee of management – see under Rule 17.

MANAGEMENT BY COMMITTEE

17. ...[delete]

18. ...[delete]

19. ...[delete]

20. ...[delete]

21. ...[delete]

22. ...[delete]

23. ...[delete]

c.

...[delete]

24. ...[delete]

25. ...[delete]

26. ...[delete]

27. ...[delete]

28. ...[delete]

Notes: Management by Committee

1. A legacy of the origins of the RRFM96 model rules is the ability to establish a committee of management to govern the society. Such a committee would have to have between 7 and 15 members only and outside an AGM would be difficult to recall. We submit that this is an inappropriate form of governance for the types of societies we are considering as it hurts the mutual nature of the Society.

It is only really useful for larger cooperatives, where getting all the members into one place for a general meeting has become impractical – for example, a housing association. If it ever did come to this then the practical and better approach is to actually overhaul the rules and adopt new ones (or even the old RRFM96 ones) more suited to the change in circumstances. I would submit that rules that are too generic are often not helpful in the long run.

To this end we have deleted Rule 17, giving such powers, and all the other rules that were contingent on it (Rules 18 to 29).

OFFICERS

29. The Co-operative's officers shall be the Secretary and Treasurer; and such others as may be appointed from time to time. The officers shall discharge their powers and responsibilities in accordance with these Rules and with such regulations, standing orders, policies, and procedures as may be established by the Co-operative consistently with these Rules.
- a. The Secretary shall ensure that meetings are properly called and minutes kept, that the register of members and officers is maintained, that the use of the seal is recorded, *any policy document or record of Secondary rules are updated*, and that the appropriate returns are made to the Registrar of Friendly Societies *appropriate authority*.
 - b. The Treasurer shall manage the financial affairs of the Co-operative and ensure that adequate records are kept.
 - c. *The Secretary and Treasurer shall not be the same person. No one individual shall occupy either position for more than two/three* years consecutively.*

Notes: Officers

1. The law requires the appointment of a Secretary, though not a Treasurer, albeit it is good practice to have the latter as well. Other officer positions can be created by society if it so wishes, and they can be vested in whatever powers they need.
2. Paragraph (a) sets out the duties of the Secretary. While they do not have to carry them out, they are required to ensure that they are being done and as such carry legal liability for these duties. Note, while the IPS 1965 does not specifically require minutes to be kept, this clause does. *Introduced is a clause relating to Secondary Rules/Policy Document to ensure good practice is met; new members need to have access to a record of what has been decided and, though not as powerful as Primary Rules, Secondary Rules do have legal standing.*
3. *Paragraph (c) has been introduced to ensure that skills are transferred between members in the society as part of good governance. While it may be convenient to invest particular officer posts in one person because of their skills-set, it is really not a good thing to do over the long term, as it can lead to abuse of power (its been pinpointed as a sign of a coop being carpetbagged), or, if that person leaves, a vital gap that others are unable to fill. If this is not possible, then the society has a deeper problem that needs resolving.*

* delete as appropriate

PAYMENTS TO OFFICERS AND COMMITTEE

30. The Co-operative shall not remunerate any member of the Co-operative, ~~or any member of any Committee established by the Co-operative~~, in respect of service as a member of any such Committee or as an officer or member. This Rule shall not prevent the reimbursement of expenses properly incurred by any person on behalf of the Co-operative.

For the avoidance of doubt,

- a. *Members of the Co-operative may be contracted to carry out non-governance maintenance;*
- b. *any secretarial, treasury or other designated officer work carried out by a member of the co-operative may not be remunerated.*

Notes: Payments to Officers

1. References to Committee of management deleted, as above.

2. This paragraph allows people doing work on behalf of the society to be get their expenses paid. It however, forbids the society paying any member to do their work on behalf of the society – for instance, you could not pay one of your members to act as Treasurer or Secretary. It stops transfers of money to a member for any reason that amounts to a personal gain at a cost to the society.

3. ‘Properly’ means that it has to be for expenses you have incurred on behalf of the co-operative, e.g. purchasing tools for the co-operative, that you would not have otherwise incurred. See also Rule 34 which generalises this.

4. This rule would not stop you outsourcing some of the functions to another – for example, sending your accounts to Catalyst, or hiring a caretaker. You cannot outsource key things, such as maintenance of the books or secretarial functions the IPS Act 1965 requires.

5. It also allows for a member of the Society who is neither the Treasurer or Secretary to be paid for administrative and/or physical work. It would be very useful for the Secondary Rules to have a policy or procedures for paying expenses or contracting other work to people who are members.

BORROWING POWERS

31. a. The Co-operative shall have power to borrow money, including the issue of loan stock, for the purposes of the Co-operative provided that, at the time of borrowing, the sum of the amount remaining undischarged of monies borrowed and the amount of the proposed borrowing shall not exceed £10 million and that for this purpose:
- i. the amount remaining undischarged of any index-linked monies previously borrowed by the Co-operative or on any deep discounted security shall be deemed to be the amount required to repay such borrowing in full if such borrowing became repayable at the time of the proposed borrowing, and
 - ii. the amount of any proposed borrowing intended to be index-linked or on any deep discounted security shall be deemed to be the proceeds of such proposed borrowing receivable by the Co-operative at the time of the proposed borrowing.
- b. In the case of any loan, the Co-operative shall not pay interest at a rate exceeding that necessary to obtain and retain sufficient capital to carry out the Co-operative's objects.
- c. The Co-operative shall have the power to determine from time to time the terms and conditions upon which money is borrowed or loan stock issued and to vary such terms and conditions subject to the provisions of this Rule.
- d. The Co-operative shall have the power to mortgage or charge any of its property, to issue debentures and other securities, and to charge any or all of its assets as security for money borrowed.

- e. The Co-operative shall not receive money on deposit.
- f. The Co-operative may receive ~~from any source~~⁸ donations towards the work of the Co-operative.
- g. The Co-operative shall have the power to guarantee a loan to any corporate society registered under the Act, or any company registered under the Companies Acts, whose rules are drawn on the co-operative principles and include clauses preventing the distribution of increased equity value of their land, buildings or equipment to their individual members, past or present, either upon the withdrawal of members from a membership, or arising from the sale or transfer of property by the society or company upon dissolution or otherwise and such other principles as a general meeting shall approve from time to time.

If necessary, the Co-operative shall have the power to mortgage or charge any of its property to secure such a guarantee.

INVESTMENT

32. a. The funds of the Co-operative may, to the extent permitted by the law for the time being in force, be invested:
- i. in any manner expressly authorised by the Act;
 - ii. in any investments covered by Parts I, II and III of the First Schedule to the Trustee Investments Act 1961 or in stocks and shares or debentures of any body corporate but subject in the case of any investments under Rules 1 and 3 of Part III or of any body incorporated overseas to the taking of advice in

⁸ Suggested that this is deleted on the grounds of simplicity. Otherwise sounds like there might be sources we cannot accept from (bar illegal ones)

accordance with the provisions of section 6 of the Trustee Investments Act 1961;

- iii. in shares or on security of any Industrial and Provident Society;
- iv. in any freehold, feuhold, or leasehold property whatever in the United Kingdom;

but shall not be invested otherwise.

- b. The Co-operative may, to the extent permitted by the law for the time being in force, delegate in writing to a suitable person the exercise of the management or investment of the property for the time being forming part of the property of the Co-operative. A suitable person shall be a person whom the Co-operative reasonably believes to be qualified by ability and experience in the matters delegated, and who is an authorised or exempted person for the purposes of Part I of the Financial Services Act 1986 as amended or re-enacted from time to time.
- c. The Co-operative may appoint any member or members to vote on its behalf at meetings of any other body corporate in which the Co-operative has invested any part of its funds.
- d. For the avoidance of doubt the society shall not engage in any activity by virtue of any of these Rules that would require a permission from the Financial Services Authority to carry on that activity without first having applied for and obtained such a permission.

Guidance Notes

2. The Government is very twitchy about any society that looks like it might be doing something that may be considered banking or with finance. These are very heavily regulated areas. These Rules allow some involvement with debt and investments, so loanstock can be issued and received, but a lot of other stuff is prohibited.

3. Loanstock is permitted as it is classified as a specific investment type. It is worth noting that there is an exemption under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001/544, which means that IPS societies that issue/receive loanstock do not lose the right to be exempted from audits (see below for more detail on this) which it would otherwise appear to do under the Financial Services and Marketing Act.

4. part (d) has been inserted on request of the FSA.

5. It was discussed at one of the workshops as to whether the power to invest in stocks and shares should be removed. Thoughts were that this should be left to the secondary rules of the society, as there were reasons both for and against – for example if the coop wanted to invest in shares of BAe Systems to allow its members to carry out protests at AGMs, and also that such a limit would be an infringement on the autonomy of coops (esp. those not part of the RR network).

PAYMENTS TO MEMBERS

33. No portion of the income or the property of the Co-operative shall be transferred either directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Co-operative except insofar as the tenancy or lease may provide upon surrender to the Co-operative for payments to be made to the member, *of no more than one month's rent in addition to any monies outstanding*.

SURPLUSES

34. a. The Co-operative may apply any surpluses towards carrying out the objects of the Co-operative.
- b. A general meeting may set aside any part of the surpluses arising in any year to be donated or loaned for any purposes determined by the members in general meeting, provided such purposes are in accordance with the objects of the Co-operative.
- c. Any surpluses not applied or set aside shall be carried forward.

Guidance Notes: Payments to Membership

1. This rule is key to the nature of the co-operative model that these rules establish and is a generalisation of Rule 36. This is also the closest that the rules get to an asset lock.
2. The members of the cooperative cannot be given money from the 'profits' of the cooperative simply for being members. They can get expenses, or a payment if they lose their tenancy, but that is it. The profit they derive from membership of the society is simply the right to residency.
3. It does not stop members from being paid for doing particular work for the society, as long as it is not work they would have done as an officer of the society (see Rule 36).
4. There is a clause to protect people who might lose their living space for some reason (e.g. emergency repairs), and they can be given some money as a result – presumably to cover the inconvenience and to help them find a new place to live if they end up leaving the society. This has to be covered in the tenancy agreement and is not an automatic right. The tenancy agreements and/or Secondary Rules of a society should consider this situation. *A clause has been added in to stop ridiculous severance payments.*

Notes: Surpluses.

1. Societies of this kind do not have profits. Rather any money left over at the end of the year which is not being set aside for a given purpose, etc. needs to be declared and given away, otherwise nothing happens to it – it stays in the bank account. It is formally defined in Rule 41(e): Interpretation
2. Paragraphs (a) & (b) do allow the society to give it away, though this is constrained by the objects of the society – another reason for getting the objects right. If the objects are too narrow then it may impact on the legitimacy of any donation. Otherwise, the rule is quite flexible in what it allows.
3. Carried forward simply means kept on the accounts of the society.

AUDIT AND ANNUAL RETURNS

35. a. ~~Subject to any statutory exemptions or regulations as may be in force, the Co-operative shall, in accordance with sections 4 and 8 of the Friendly and Industrial and Provident Societies Act 1968, appoint in each year one or more auditors to whom the accounts of the Co-operative for that year shall be submitted for audit as required by the said Act and shall have all such rights in relation to notice of an audience at general meetings, access to books and the supply of information, and otherwise as are provided by the said Act. Every such auditor shall be appointed by the Co-operative at a general meeting and, in the case of any auditor so appointed who is a qualified auditor under section 7 of the said Act, the provisions of sections 5 and 6 thereof apply to the reappointment, removal or replacement of the said auditor.~~

a. *Subject to (a1) below, the Co-operative shall appoint in each financial year an auditor qualified under section 7 of the Friendly and Industrial and Provident Societies act 1968 to audit the co-operatives accounts and balance sheets for the year.*

a1 The Co-operative shall, subject to (a2), be exempt from the obligation to appoint a qualified auditor if during the previous financial year it met such criteria regarding low levels of income and/or expenditure or other factors as to qualify it for statutory exemption from the need to appoint qualified auditors.

a2 Each year the members of the Co-operative shall in a general meeting decide whether to apply the audit exemption. Such a resolution shall deem to have passed if ~~less~~ fewer than twenty percent of the total number of votes cast are against the resolution.

b. Every year,

- (i) not later than the date provided by the Act; or
 - (ii) where the return is made up to the date allowed by the Registrar *Authority*, not later than three months after such date
- the Secretary shall send the Registrar of Friendly Societies *Authority*, in the form prescribed *by the Authority*, the Co-operative's

annual return relating to its affairs for the period required by the Act, together with auditors' reports and/or balance sheets as required by the Act or other relevant statutes.

Notes: Audit & Annual Returns

1. All societies have to submit accounts, even though they may not yet have a property to house their members, rented or owned, and thus have to pay the annual fee to the FSA.

2. Under the Section 4A of the Friendly and Industrial & Provident Societies Act 1968, all small, straight-forward societies will have an automatic right to exemption to getting the accounts audited. There are exemptions to this, for example, if you start getting too big, you have subsidiaries, if some of the business engaged in is focused on financial dealings. *However, this exemption should not be considered as automatic, as it can be an important check on possible financial mismanagement. To this end, and because the wording was simpler, we have changed (a) to the form used in the Sumac rules.*

3. Loanstock is exempted from this, so issuing and receiving it does not cause this exemption to be lost (see above).

4. Annual Returns are required by law, so accounts of the society still have to be made up. They are part of what allows a society to show that it is still a bona fide co-operative and thus remain registered as such by the FSA. Not submitting annual returns is an offence under the IPS 1965 Act, in particular for the Secretary, but potentially for any other relevant member. The Authority will also prosecute and fine if they are not submitted.

5. Not submitting Annual Returns within seven months of the end of the financial year will also incur the society a fine. These rules do not create a provision for the society to fine any officer whose duty this is, but ends up incurring a fine unnecessarily, but it is within the legislation.

6. Accounts can be made up by the society themselves, but larger societies should seek help in relation to this.

7. It would be worth putting in the guidance notes more about what the Annual Return requires of a society.

MINUTES, RECORDS AND SEAL

36. a. Sufficient records shall be maintained and left at the registered office for the purposes of the Co-operative and to comply with the provisions of the Act. *This shall include minutes of all decisions which have been made by general meeting, special general meeting or annual general meeting or any meeting provided for under Rule 13(a). These records shall be available to all members of the Co-operative. It is the duty of the Secretary to ensure that all decisions are properly recorded and retrievable by other members. The minutes of any decision made shall include the time and place, those members present, the type of meeting (general meeting, AGM, SGM, ad hoc) and the wording of any decision reached.*

a1. The Co-operative shall maintain a record, whether the responsibility of the Secretary or another member appointed to the task, of all policy decisions that affect all members of the Co-operative that have been made by appropriately constituted general meeting.

This document shall be made freely available to all members and shall constitute the Secondary Rules of the society with legal standing in respect of any issue not addressed directly by legislation or these Rules. The Secondary Rules or any decision of a general meeting are subordinate to these Rules.

b. The Co-operative shall ~~may~~ have a seal kept in the custody ~~of the Secretary and~~ *to be* used only by the authority of the Co-operative. Sealing shall be attested by the signatures of the Secretary and two members of the Co-operative.

Notes: Minutes, Records & Seal

1. Paragraph (a): clause added in to reflect current practice and also to ensure good governance. It is important that decisions are properly recorded and not simply kept in the memories of those people who happened to be at the meeting in which the decision was made. Decisions made at general meetings form part of the Secondary Rules (even though they may not be formally codified in a document as such), and thus have a legal standing.

It also allows members who were not present to know what has been decided and how they are bound by them, as decisions are contractual bindings as part of the duties that go with the privilege of membership. The part about the secretary being bound to record them is important as it needs to be enforced and this creates a liability if they are not doing it. For many disputes, it is these minutes that are fundamental to setting out what took place and what is the basis of the differences between parties.

2. Paragraph (a1) has been introduced to mandate the creation and maintenance of a Policy Document / Secondary Rules. Also put in is a clause to set out its powers explicitly – they are otherwise implicit. These Rules are known as the Primary Rules. See also previous discussions. Secondary Rules are important to the good governance of the society as it allows new members to know what decisions have been made which affect them. Abiding by Secondary Rules is a part of the contract between an individual and the society as a whole when membership is taken up – so ignoring them can be grounds for expulsion.

3. Paragraph (b) modified to take account of the fact that legislation has removed the requirement for a society to have a physical seal to stamp its official documents.

DISPUTES

37. a. ~~Provided that any internal disputes procedure established by the Co-operative has been exhausted, any dispute concerning matters governed by these Rules between a member; or any person aggrieved who has not for more than six months ceased to be a member; and the Co-operative or an officer thereof, may at the request of either party be submitted to an arbitrator appointed by mutual agreement of both parties whose decision shall be binding and conclusive, and application for the enforcement thereof may be made by either party to the County Court.~~
- b. ~~The costs of arbitration shall be born as the arbitrator directs, and the complaining party shall before arbitration deposit with the Co-operative's solicitor the sum of £50 which shall be refunded provided that the complaining party complies with the decision reached by the arbitrator.~~

Notes: Disputes:

1. This Rule empowers the Secondary Rules of the society to create a dispute resolution policy. This is something all societies should put in place early on, as dispute resolution is very difficult to establish once disputes arise. Internal dispute resolution will ideally include references to the process of identifying complaints, the appointment of mediators, time-lines and the conditions in which dispute resolution is deemed to have failed.

The major purpose is to avoid situations that can be dealt with quickly and informally from escalating to serious ones which are threatening the stability of the relationship between a member of the society and the society itself, or even the stability of the society itself. By stability what we mean is something that, if not resolved, will potentially cause the society to become dysfunctional.

2. If the internal dispute resolution policy has failed then the parties can appeal to arbitration, which is governed by The Arbitration Act 1996. Arbitration is like a mini-court and arbitrators have wide ranging powers; their judgement is also legally binding and it can deal with issues such as membership, etc.

3. The problem with the current rules is that if there is no mutual agreement then there can be no arbitration. The re-write of this rule is to enhance the ability to invoke arbitration rather than court, because arbitrators can be appointed who will understand co-operative law and issues much better than most judges; and it is a much less expensive option, more in line with co-operative principles.

The Arbitration Act 1996 has a lot to say about this and confers considerable power on the arbitration process; given the size of the issues that it can cover, hence the need for care in specifying the process in the rewritten form. There are a number of implicit checks in place to prevent abuse of this clause.

4. An arbitrator can, if necessary, order costs for spurious arbitration and dispute resolution processes to be followed.

a. Any dispute between members which arises on a personal matter between two parties should be dealt with by the internal dispute resolution procedures of the Co-operative; if the dispute resolution process does not succeed then the matter shall go to a general meeting to decide upon appropriate remedy or further action.

b. Where

(i) a dispute concerns matters governed by these Rules;
AND

(ii) is between

I. a member or individual who has ceased being a member no less than six months previously; and

II. the Co-operative, or a member of the Co-operative

and provided the internal dispute resolution process has not succeeded in resolving the dispute, either party has the right to seek arbitration, whether or not the other party agrees to arbitration or not. Any arbitration process shall be subject to the Arbitration Act 1996 or any successor legislation, with any decision arising out of the arbitration being legally binding and enforceable, subject to the conditions set out in (c) and (d).

Arbitration shall include the following powers:

(iii) to deal with any of the issues set out in Rule 13(d) including membership; and

(iv) in the event of serious dysfunctionality, which has caused the Co-operative to cease functioning as a bona fide Co-operative and is irresolvable through other means, to direct and enact the dissolution of the society and the re-distribution of assets, subject to any other Rule herein.

c. Where the parties to a dispute under (b) can come to an agreement between them on any issue of substance or of process, that agreement will have precedent over any terms set

out in this section or the Secondary Rules, subject to recording and ratification by the Co-operative.

d. Where there is no agreement to go to arbitration, or any agreement under (c) does not cover all provisions that are needed, the following apply:

(i) Where no method of arbitration has been agreed upon, or the right to go to arbitration has been invoked without agreement, then the method of arbitration shall be, in the first instance, through a three person tribunal, with each party nominating one individual to represent their interests, and these two arbitrators approaching Radical Routes Ltd, Cooperatives UK or another appropriate body to nominate a chairperson for the tribunal.

(ii) If the other party to the dispute does not nominate an arbitrator to represent their issues within 28 days of being notified, the complainant can approach Radical Routes Ltd, Cooperatives UK or other appropriate organisation involved in dispute resolution, arbitration or representing the interests of the co-operative movement to appoint an independent arbitrator. The arbitrator is free to choose to move to a tribunal format if appropriate

(iii) In the case of no mutual agreement to go to arbitration, the party invoking this Rule is required to pay a deposit of two weeks' rent to the arbitrator, the matter of which shall be dealt with in any judgement and which may be used to cover costs or provided to the other party if it is judged the claim was spurious.

(iv) Any arbitrator or arbitral tribunal has power to award costs and expenses as they consider just and equitable in line with their judgement. These will be enforceable as a debt whether against an individual party to the dispute or against the Co-operative as directed.

AMENDMENT OF RULES

38. a. *Subject to (b)*, any Rule herein may be rescinded or amended or a new Rule made by resolution of three-quarters of the members present and voting at a Special General Meeting, providing that all members of the Co-operative have been supplied with copies of the proposed amendment at least seven days before the meeting at which it is to be determined, *and no fewer than three members have agreed to the change*. No amendment of these Rules is valid until registered by the Registrar of Friendly Societies *Authority*.

b. No rule change is permitted under any circumstances that:

(i) deletes any provision from this Rule;

(ii) permits or facilitates de-mutualisation of the society; or otherwise allows members to deprive the Co-operative of its capital or assets for their own gain;

(iii) deletes or otherwise changes sections 2(a) to 2(d) of these rules.

Notes: Amendments of Rules

1. This is an important Rule. It allows for any other rule to be changed to whatever the society wants. Its purpose is to ensure that the society has the autonomy to govern its affairs as its situation changes. The consequence is that it denies any possibility of imposing an asset lock on the society to prevent carpetbagging or demutualizing. There is an apparent check in

that no rule change is valid until the FSA signs it off by registering it.

2. The difficulty is maintaining a balance between stopping future abuse while preserving the autonomy of the society to manage its affairs. The argument presented here is that the rules should not permit demutualization at all, and that the objects for which the society was created to carry out and all the energy and work which has gone into maintaining it should also be respected. This is also reflected in a piece of case-law known as the Datchet case, where there is a judgement that in disputes the courts should be mindful of the intentions of the founders of the society and the purposes for which it was established.

The proper way to deal with a major change to the society's objectives is to actually dissolve it and give the asset to a new society that reflects the purposes of the original society. It should not be the case that having control of the assets of a society gives *carte blanche* to use those assets for whatever the members of the moment desire. Assets acquired for the purposes of housing should not be converted to set up a workers' co-operative, etc. If a society's objectives are solely to provide housing in York, then they should not be used to support a move to Spain. Control of a society's assets is not the same principle as having ownership of them; the rewrite of the rules here is about incorporating to a degree the role of the society as being beyond the immediate desires of the membership in a point of time.

3. The clause that no fewer than three members must agree is an anti-carpetbagging measure.

4. b(iii) – 'the purpose here is to ensure that the housing co-operative remains a housing co-operative, first and foremost. This is to protect the integrity of the enterprise. It does not prevent other clauses being added into the Objects, which can be changed subsequently if needed (e.g. a restriction to a locality or a particular group of people), but it does mean that the Society must remain a bona fide housing co-operative.

TRANSFER OF ENGAGEMENTS: DISSOLUTION

39. *Transfer of Engagements*

- a. A general meeting may agree to accept a transfer of engagements from any Industrial and Provident Society having objects consistent with those of the Co-operative.
- b. A Special General Meeting may agree by a resolution supported by *at least* three-quarters of the members present and voting to transfer the Co-operative's engagements to any Industrial and Provident Society whose objects include providing accommodation.

Notes: Transfer of Engagements

1. Transfer of Engagements is a legal term for moving the assets of the society around.
2. These paragraphs allow only those transfers (whether receiving or giving away) between societies registered under the IPS1965 Act AND which have similar objectives.
3. Paragraph (a) merely allows the society to be the recipient of the assets of another society provided the objects are substantively in alignment with each other. *It has been suggested that the part about having objects consistent with those of the Co-operative is deleted, something the implications of which may have to be considered – it is suggested that this paragraph is solely about mergers rather than accepting the assets of a society that is dissolving, so therefore there needs to be a compatibility of the objects; this is not necessarily a limiting factor as two societies can create a de facto merger by both dissolving and transferring their assets to a new society.*
4. Paragraph (b) is about merging with another society. It allows the society to transfer its assets to another society provided the objects are roughly doing the same thing – ie fully mutual housing, etc, though one has to be mindful of other restrictions such as fixing it to one location. It depends very much on how the objects are written.
5. *This section has been split up to highlight the difference between transfer of engagements and dissolution.*

40A. Dissolution

a. The Co-operative may be dissolved by the consent of three-quarters of the members by their signatures to an instrument of dissolution *agreed to in a Special General Meeting*, or by winding up in the manner provided for in the Act, *provided not fewer than three members consent to it, subject to (c).*

b. Any surpluses remaining after settlement of the Co-operative's debts and liabilities should be donated *or transferred to a beneficiary as set out in Rule 43 or, alternatively,* to any Industrial and Provident Society whose objects include providing accommodation. *No member of the society shall benefit financially from the dissolution of the society.*

c. Where the number of members of the society falls below three, the remaining members shall have the right to dissolve the society through an instrument of dissolution, albeit they are not able to alter any other rules including any named beneficiaries or custodians.

d. Where a member, or individual who has ceased to be a member for less than a period of a year, believes it is just and equitable they may:

(i) petition the courts to have the society wound up on the grounds it is no longer a bona fide co-operative and is not capable of being restored as such; or

(ii) seek that the courts appoint an arbitrator to investigate the merits of dissolution.

This may include an application for the naming of appropriate beneficiaries or custodians where none such are named or continue to exist.

Notes: Dissolution

1. Paragraph (a) is the power to issue an instrument of dissolution to formally wind up the society. It merely requires three-quarters of the members to sign a document. *It has been amended to require a special general meeting in the amended clause to pass the dissolution in the first place – though this does not stop those who were not present adding their signatures to the instrument of dissolution afterwards. The three member clause has been added to stop abuse, though it is effectively covered by the three-quarters rule in any case. The requirement for an SGM is put in to allow the remaining ¼ members a chance to argue against it; an SGM is needed given the drastic nature of dissolving a society.*

2. Reference to Rule 43 refers to named beneficiaries.

3. Paragraph (c) deals with the situation where a society has fallen below three members to dissolve the society without having to go to the courts, as is currently the situation.

4. Paragraph (d) is to allow a member or former member to petition the courts to get a society wound up. This is to deal with the situation where a society has become dysfunctional and one party has ended up with unlawful control of the assets to the detriment of the remaining members. The use of courts and arbitration is to act as a safeguard to prevent abuse of this measure – petitioning to have the society wound up does not mean that it will be granted and it will give other parties a chance to argue against it. Anyone taking a spurious claim is likely to have costs awarded against them so it is not something that can be done lightly.

43. Beneficiaries

a. Unless an instrument of dissolution created under 40A(a) names other beneficiaries, in the event of the Co-operative, dissolving, being wound-up, ceasing to function or falling dormant, the beneficiaries of the assets of the Co-operative, in descending order of right to the assets, shall be:

(i) _____

(ii) _____

(iii) _____

No beneficiary may be an individual. Beneficiaries may be other organisations whose principles are in line with those of the Co-operative.

b. In the event of the named beneficiary no longer existing or declining to take up their role as beneficiary, then Radical Routes Ltd, Co-operatives UK or any other appropriate federation of housing co-operatives may be considered a relevant person under section 60(1)(d) of the Act, and thus may apply to the courts to be named as custodian of the assets of the Co-operative.

c. Beneficiaries and/or custodians shall be empowered to donate the assets and monies of the Co-operative to another co-operative acting in line with the Co-operative's objectives; or to sell its assets and property for the purpose of providing financial assistance to other industrial and provident societies on the basis of loans or grants. Custodians may not use the assets in a way that permits financial benefits to accrue to themselves, their members or agents and servants, excepting that they may deduct expenses occurred in carrying out their role as custodian.

d. The dissolution or otherwise of the Co-operative shall not prevent any beneficiary or custodian from enforcing

these Rules or pursuing any individual for the return of assets they have wrongly acquired from the Co-operative for personal gain.

Notes

1. The purpose of adding in this section is to deal with a major problem with the model rules, that is without named parties there is no power of intervention when carpet-bagging has already taken place in the existing rules or legislation.

2. It also reflects that when it comes to dissolution, the society may actually be quite dysfunctional and reaching agreement may be impossible. Thus it is important to have beneficiaries / custodians named in advance.

3. Under (a), if there is an orderly dissolution (as provided for by Rule 40A(a)) the society can change the named beneficiaries to reflect the moment. However, the named beneficiaries, if they believe this has been abused, will have the power to challenge this in the courts. In this we have sought to balance autonomy and stopping abuse by recognising the sort of situation in which a society is likely to dissolve or implode. If it is dissolving because it has decided that is the most appropriate course of action, then its hands are left free to decide what it wants. If it is imploding or simply ceasing to function, or being carpet-bagged, only then will the majority of provisions in this Rule kick in.

There is nothing to prevent Radical Routes, etc. being named directly as a beneficiary.

4. Where the beneficiary is a registered entity, its registration number should be included so as to allow for any future change of address to be followed up, or its status confirmed with the appropriate authority.

5. In (b), the court is needed to appoint custodianship – this is because there is no mechanism for this in the IPS 1965 Act, other than to allow under sec.60(1)(d) of the Act for any 'person' to make a claim as permitted by the society's rules. Having to go to court will also act as a check for RR, Coops UK, etc to stop abuse of this power.

INTERPRETATION

40. In these Rules, unless the subject matter or context are inconsistent therewith:

- a. words importing the singular or plural shall include the plural or singular respectively;
- b. “the Act” refers to the Industrial and Provident Societies Acts 1965 to 1978, or any Act or Acts amending or in substitution for them for the time being in force;
- c. “the Co-operative Principles” refers to the most up-to-date principles adopted by the International Co-operative Alliance;
- d. “tenant” shall mean any person other than a body corporate who holds, either individually or jointly, a tenancy or lease entitling them to occupy residential property owned by the Co-operative;
- e. “surpluses” shall mean any money remaining after the Co-operative’s current expenditure and obligations have been provided for and adequate allowance has been made for the Co-operative’s reasonably foreseeable future requirements;
- f. “clear days” in relation to the period of notice means the period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.
- g. ~~any reference to the Chief Registrar, Registrar, Central Office, Assistant Registrar for Scotland or the Registry of Friendly Societies includes reference to the Financial Services Authority (also known as ‘the FSA’), which is the statutory successor carrying on the relevant functions of each of them. Any Reference to “the Authority” shall refer to the Financial Services Authority, the Chief Registrar,~~

Registrar, Central Office, Assistant Register for Scotland or the Registrar of Friendly Societies or any statutory successor of them.

Notes:

1. *Change to (g) is to future-proof it.*

Signatures

1. _____

Name:

2. _____

Name:

3. _____

Name:

Secretary:

Name: