

Law Commission Review of Co-operative Law

Anthony Collins Briefing Notes

[The Law Commission](#) has been invited by Treasury to review the legal framework governing co-operatives and community benefit societies.¹ It has been asked to consider whether the current statute law which governs these organisations is *fitting to their nature and needs*, and *whether the current form of regulation is proportionate*.

This is an important moment: although there is no guarantee that legislation will follow, a Law Commission review is a rare opportunity to bring to wider attention the need for legal reform. That is particularly the case for *co-operative law* (the law concerning co-operative and community benefit societies), in which the UK has fallen behind other jurisdictions even though cooperation has its origins here.

Many individuals and organisations may have something important to say, but may not realise this. Finding a framework for engaging people in fruitful debate about reform across such a wide and relatively niche subject matter is not straightforward. A consultation will be launched by the Law Commission later in 2024 to which all will have a chance to contribute.

The [All Party Parliamentary Group for Mutuals](#) has also announced that it will spearhead a campaign to co-ordinate a cross mutual sector response to the review.

We are producing this and subsequent briefing notes because Anthony Collins is keen to support the Law Commission itself, the APPG process and all those who may wish to contribute to the review. The briefing notes are intended to assist by

- helping to raise awareness of this Law Commission review
- providing some background information and describing the context for the review
- encouraging conversation about important areas that might be included.

These notes are not intended to put forward particular changes to the law; but they are intended to provoke discussion. There is an urgent need for new ideas to address the crises we face today, and it is important that this opportunity for change isn't missed.

If you would like to talk to us about anything in the briefing notes, or anything else that might help you in engaging with the review, please contact one of us.

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¹ Historically known as “industrial and provident societies”



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Briefing Note 1: Introduction

There can be a tendency today to regard co-operatives as just one of a number of different corporate forms, with some different legal features such as capital. Many people in the UK today know little about co-operative and community benefit societies, and such societies are economically of marginal significance except in certain sectors.

1. Corporate Bodies: role, function and maintenance

The ability to register a corporate body is a privilege because it allows the creation of a new legal person which has limited liability. The Co-operatives Act 2014² grants this privilege, as does the Companies Act 2006. What do we expect and need such laws to do, and what is the function of a review?

‘Corporate laws’ create opportunities and dangers: opportunities for trading (supplying goods and services), and dangers arising from the power of incorporation with limited liability. The general role and function of corporate laws are *to facilitate enterprise and trade through such corporate bodies but with appropriate checks and balances*. The overall system (companies, co-operatives etc.) needs to work well for their intended purpose, and it needs to be robust and credible. But corporate laws also need to contain controls and constraints, with sanctions to discourage and prevent abuse of the privilege of incorporation.

Corporate laws also need to be maintained, to keep them up to date in a constantly evolving context which includes changing technology, science, finance, business practice, social attitudes and human need. This involves reviewing their utility and effectiveness in such changed circumstances. But such a review must also consider the overall policy priorities of the day, and the part which corporate bodies play in such priorities. For example, the company law review prior to 2006 aimed to “have an up-to-date framework which promotes the competitiveness of UK companies and so contributes to national competitiveness and increased productivity.”³ Those were the top priorities of the time.

The two biggest policy issues today are the climate emergency and social inequality. The challenge is finding ways of living within planetary boundaries whilst ensuring access to life’s essentials.⁴ Business impacts on both of these and so the design of businesses and therefore of corporate laws, is important. Both of these crises are relevant to this review.

This introductory note will first provide some background information about co-operative and community benefit societies and their history and explain how they differ from companies.

² Its full title is the Co-operative and Community Benefit Societies Act 2014, and these two different types of member organisation will be explained further below.

³ The Company Law Review noted that the current framework of company law was essentially constructed on foundations put in place by the Victorians in the middle of the 19th century.

⁴ See Doughnut Economics, by [Kate Raworth](#) and the work of the [Doughnut Economics Action Lab](#)



2. Companies and societies

The introduction in 1844 of the power to incorporate an artificial legal person (a company) with limited liability and perpetual succession⁵ was a ground-breaking innovation.⁶ Through a simple registration process, an entrepreneur could incorporate a new company and raise capital from those with existing wealth without risking their other assets. Through other legal devices, money could also be borrowed from banks on the security of land assets. It is no exaggeration to describe the limited company as the engine of an emerging industrial economy; it could not run without capital and labour, and it was capital that had control.

The advantages arising from the industrial revolution were not to everyone's benefit. Those moving from an agricultural background to the new industrial towns and cities in search of work, accommodation, food and the other necessities for everyday living were in the most vulnerable position. Cooperation emerged in the early 1800s as a movement enabling those otherwise unable to buy uncontaminated food at a fair price.⁷ In 1844 a group of pioneers in Rochdale established the first co-operative: a collective endeavour through which they could meet their own needs. Legislation followed in 1852 to enable societies to be registered as an alternative to companies.⁸

However, the limited company and trading for private benefit became the dominant corporate and trading format; and so began the development of company law, contract law and other branches of commercial law which are the basis of much business conducted today. **Company law** is the basis for most corporate trading in the UK and it enables those involved in enterprise to raise capital, establish new businesses, and trade. Registered companies are now in their millions.⁹

Co-operative law, focussed on treating everyone fairly and not providing special rewards to any single person or group, emerged as an alternative business approach for those being failed by mainstream business (the market). Societies enabled customers, workers and producers collectively to meet their own social, economic and cultural needs, without speculation or prospect of windfall gains, for the wider benefit of all. The number of societies is small compared with companies.¹⁰

3. The purpose of enterprise

Before looking at the different types of corporate bodies and their particular purposes, it is helpful to consider where the impetus for enterprise and trade comes from. There are two main sources:

- meeting human need. People must be fed, housed, clothed, and have many other needs which can be met by trading activity

⁵ Unlike human persons, the life of a corporate body is not time-limited

⁶ Joint Stock Companies Act 1844

⁷ Other branches of mutuality met other needs: building societies, friendly societies and mutual insurers

⁸ Industrial and Provident Societies Act 1852. "Co-operative" did not appear in the title of legislation until 2010

⁹ There were [4.6 million companies on the effective register](#) in March 2023 and [2.1 million actively trading](#)

¹⁰ There were [8,412 societies registered under the 2014 Act](#) in March 2023



- accumulating wealth. Enterprise enables an individual to improve their personal prosperity.

To be sustainable, any organisation or business seeking just to meet human need by trading must cover its own costs and outgoings, including building reserves for unforeseen future events. Survival requires *any* business to be profitable (income exceeding expenditure) on an annual basis.

If a business also aims to produce a personal reward for its owners, it needs to include a profit margin in its selling price and it is generally said that such business is driven by the 'profit motive'. Both types of business need to be *profitable*; but the latter type of business must generate a profit margin above and beyond what the business needs merely to survive, enabling the profit to be paid to the owners as a reward.

The latter type of business trades for the **private benefit** of the owners; that is to say, its business purpose is to generate a profit through its chosen trading activities, and those profits belong to the owners. The former type also "carry on business" in the sense that they have income and expenditure, but they do not carry on their activities for the purpose of generating a profit to be paid out to anyone as a reward. In many if not most cases¹¹, the purpose is to benefit anyone in need of what is provided – it is for **common good**.¹² It has become normal to refer to such organisations as "not for profit", but that is misleading and inappropriate because all types of business must be *profitable*. The real distinction is between what the businesses are for, their **purpose**: the common good, or private benefit.

Quite separately from such trading organisations, human need is also met by charities which depend on donations rather than earned income. **Charitable purpose** is defined in statute¹³, and benefits from tax advantages for donors and charities themselves. Public services established by statute and funded by the state also meet human needs. These operate on the basis of a **public purpose**, though increasingly such services are commissioned by the state from private benefit enterprises.

4. The Nature of Co-operatives

Companies and co-operatives are different in nature, established as legal forms for different reasons and intended to serve different purposes. Companies evolved for a primarily economic purpose, enabling business promoters, entrepreneurs and investors to compete for capital, labour and market-share for their **private benefit**. Co-operatives emerged for a mainly social purpose for people being failed by the market, enabling them to collectively meet their own needs through their own particular type of organisation. The purpose was to meet the needs of them all, not any particular, private interest. The fact that the trade was for the members does not make it a private purpose: the trade of any business is for its customers. With open membership and a commitment to fairness (the essence of the co-operative values and principles) co-operatives are clearly not for a private purpose.

¹¹ Clubs and societies (sports and social clubs) are included in this, though where their membership is not open to the public, there is a sense in which they are for private benefit, even if not profit maximising.

¹² We recognise that the "common good" is not a phrase regularly used in this context, but it is intended to articulate a clear distinction from private benefit.

¹³ Section 2, Charities Act 2011



In 1939, due to abuse of the legislation, the criteria for registering new societies were tightened up requiring the registrar to be satisfied that any new society was either a bona fide co-operative or for the benefit of the community.¹⁴ This introduced the word “co-operative” into the legislation and established the two types of society we have today. They share many features in common, but whereas a co-operative society is allowed to distribute profits to members in proportion to their trade with the society (though not as a reward for capital), members of a community benefit society may receive no direct benefit.

It is clear that community benefit societies exist for a non-private or public purpose, and they play a significant role today in social housing, externalised leisure services, and community ownership (shops, pubs, and renewable energy). Co-operatives are more mixed. Some, including the large retail societies, community co-operatives and some worker co-operatives expressly provide that any surplus capital value on a solvent winding up goes to another co-operative and not the members individually.¹⁵ Other worker, agricultural or producer co-operatives may not include this provision, and it can be argued that they have a private purpose. However, choosing to organise their business as a co-operative and following co-operative values and principles¹⁶ still has a public benefit.¹⁷ In practice the element of private purpose is limited as the surplus capital value in these cases generally represents the fruits of members’ own labours, though the public/private distinction is less clear in these cases.

Subject to this last point, the single biggest difference from companies is that whereas the surplus capital value of a company belongs to the shareholders in proportion to their shareholding, this asset does not belong to the members of a society (this includes building and friendly as well as co-operative societies). Rather, they hold it on trust for the wider community and future generations and it is a form of “disinterested ownership”. It is reasonable to argue that generally co-operatives are for the **common good**.¹⁸

Cooperation and mutuality provided a significant alternative trading, ownership and governance format from the early 1800s to the mid-1900s, but the growth of large investor-owned businesses and other post-war social changes made them appear less relevant. The financial crisis of 2007/8 and continues to change with the increasing challenge of climate change and social inequality. Designing enterprise for the common good has become a priority.

5. The Needs of Co-operative and Community Benefit Societies

Given the nature of societies described above, some of their needs start to become apparent.

- It is important that societies continue to provide an alternative option to companies and that they continue to meet the different needs. It is important that there is a diversity of

¹⁴ Prevention of Fraud (Investments) Act 1939, to prevent registration of societies from being abused.

¹⁵ Common ownership societies, or those with “disinterested distribution provisions”

¹⁶ The [Cooperative Identity Statement](#) of the International Cooperative Alliance (ICA)

¹⁷ It is questionable whether they should be called co-operatives if not committed to the values and principles.

¹⁸ <https://www.anthonycollins.com/insights/download/co-operation-for-the-common-good/>



corporate forms available in the UK, to meet the needs of different sectors and interests and to bring resilience against shocks to particular types of organisation.

Some might argue that community interest companies (CICs) and charitable incorporated organisations (CIOs) provide an alternative option to societies, but this is open to challenge.

- For societies to be a viable alternative option means that the utility and effectiveness of the legislation should be comparable to company law except where needed to suit their different nature.¹⁹

Because of its importance to the UK economy, company law benefits from significant legislative attention where co-operative law does not. There has never been a comprehensive review of co-operative law and it is long overdue.

- As companies and societies serve different purposes, neither should pose a threat to the other.

Demutualisation by conversion into a company poses a constant threat to co-operatives and their reserves. These have been set aside for the benefit of future generations; reserves which have been accumulated for a particular purpose need to be protected against distribution contrary to that purpose. There is no generic protection of such reserves in UK law.²⁰

- For societies to be a viable and successful option, it is important that their purpose and identity are clearly captured in legislation, and appropriately monitored and protected and not abused. UK co-operative law does not define co-operatives, and identity is in the hands of the registrar. Many jurisdictions provide a definition, sometimes incorporating the ICA definition or some variation of it.²¹ The building of a co-operative economy requires a clear and robust identity.

The corporate mechanisms for trade based on social rather than economic purpose should be a focus of policymakers' attention as a matter of urgency.

- UK co-operative law needs to keep pace with developments in co-operative law in other countries. It is a global movement, whose apex body calls for a supportive legal framework for cooperation in national laws.²² The UK lags behind others in relation to a number of areas including indivisible reserves and identity. This puts the UK at a disadvantage.

¹⁹ Membership and democratic control are at the heart of this and need careful treatment in legislation.

²⁰ The recent narrowly defeated attempt to demutualise LV= highlights the continuing risk

²¹ See also the [ICA's Legal Framework Analysis](#), where the [UK study identifies this as an issue to address](#)

²² International Labour Organisation resolution 193 calls for Governments to provide a supportive policy and legal framework consistent with the nature and function of co-operatives. The International Cooperative Alliance continues to promote that message including through its [Blueprint for a Cooperative Decade](#)



6. Areas to explore further

Against this background, specific attention should be given to the following areas where changes to co-operative law may be appropriate.

- There are sectors where the nature of what is being provided is in tension with the concept of the profit motive. Health and social care and other human services are examples of this. They are also areas of significant concern as to the future of public service provision.
- There are sectors where both investor ownership and state provision have been tried and found wanting. Utilities (water, electricity, gas, telecommunications) are all examples of this.
- Co-operative housing faces challenges for owners wishing to move.
- The development of digital technology is the most disruptive development for business in modern times. The internet is an inherently collaborative concept, but today's largest corporations have successfully captured its utility for private benefit.
- The registration of co-operative banks is currently not possible using co-operative law. The UK lags behind other jurisdictions here, affecting the availability of capital to smaller businesses.
- The funding of public services has been drastically cut over the last two decades, particularly leaving local government with insufficient funds to ensure that citizens have access to the goods and services they need. Councils and community organisations recognise that the future involves collaboration between public bodies, citizens, local businesses and local faith and other voluntary institutions through community wealth building²³ and in developing a local co-operative economy.²⁴
- Innovation is generally perceived as the domain of risk investment and therefore tends to be driven by the ability to attract capital. Innovation can equally be driven by cooperation, with problem solving addressed by a search for collaborative solutions; these will be missed by focussing just on ideas likely to generate economic returns.

Further briefing notes will follow on these and other topics.

Anthony Collins
12th February 2024

²³ See in particular the work of [CLES](#)

²⁴ The [Greater Manchester Co-operative Commission](#) called for the review of co-operative law

