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# **Law Commission review of the Co- operative and Community Benefit Societies Act 2014**

Response from ICAS

# Law Commission

## Review of the Co-operative and Community Benefit Societies Act 2014

### Introduction

ICAS welcomes the opportunity to submit a limited response to the Law Commission's consultation paper *Review of the Co-operative and Community Benefit Societies Act 2014* which was published in September 2024.

In our response we focus on certain aspects of the proposals relating to the co-operative and community benefit societies (societies) with charitable status and on the proposals relating to changes in the audit requirements placed on societies.

We submitted an online response to the Law Commission and set out our responses to selected consultation questions below.

### Consultation paper questions

#### Question 9

We provisionally propose that charitable community benefit societies should cease to be exempt charities, so that they will be required to register with the Charity Commission for England and Wales. Do you agree?

- **Agree**
- Disagree
- Other

Please give reasons and explain how the reform might affect you.

### Response

We agree with the Law Commission's provisional conclusion that charitable community benefit societies should cease to be exempt for the reasons summarised in paragraph 4.80 of the consultation paper.

The loss of exempt status makes further sense given the proposed simplification of the audit threshold for societies registered under the Co-operative and Community Benefit Societies Act 2014 (the 2014 Act), which on its own would mean a substantial increase in the audit threshold for charitable community benefit societies.

Without the loss of exempt status, charitable community benefit societies based in England and Wales could be subject to a less onerous audit threshold than other charities, depending on whether they are subject to audit from another regulatory source.

With this review's proposed simplification of audit requirements under the 2014 Act and the loss of exempt status, charitable community benefit societies would be caught by the applicable charity law audit thresholds which exist in the three UK charity law jurisdictions, as these would become lower than the 2014 Act audit threshold. Notwithstanding the debate around whether charity law audit thresholds should be raised, it makes sense for all organisations with charitable status based or operating in a particular UK charity law jurisdiction or jurisdictions to be subject to the same external scrutiny requirements.

As a professional accountancy body, our members provide audit and other independent scrutiny services to societies, including charitable community benefit societies. They also provide independent examination services to charities.

The removal of exempt status would provide greater clarity as to the external scrutiny requirements of charitable community benefit societies and improve compliance, which we believe is in the public interest.

#### **Question 10**

Do you think that the lead regulator for charitable community benefit societies should be the Charity Commission or the Financial Conduct Authority (FCA)?

- Charity Commission
- **FCA**
- Other

Please give reasons and explain how the reform might affect you.

#### **Response**

We agree with the Law Commission's rationale for concluding that the lead regulator for charitable community benefit societies should be the FCA. This will ensure that all community benefit societies are regulated consistently in relation to the 2014 Act, under which they were founded.

For clarity, we believe that the relevant UK charity regulator or regulators should be responsible for the regulation of charitable community benefit societies in relation to their charitable status.

We are a membership body and will not be directly impacted by the outcome of this aspect of the consultation. However, we believe that our members who are involved with charitable community benefit societies would welcome both certainty and clarity on which body will be the lead regulator and its associated responsibilities. We also believe that certainty and clarity on this point is in the public interest.

#### **Question 67**

We provisionally propose that the CCBS Act should provide the following regime for society audits.

(1) Any person appointed to audit the accounts should be a qualified auditor.

(2) A society should be able to opt out of the duty to audit accounts when the society is below a certain size.

(a) There should be a single threshold (above which a society cannot opt out of the requirement to audit).

(b) That threshold should be both that turnover is not in excess of £10.2m and assets are not in excess of £5.1m.

(c) That threshold should be capable of revision by statutory instrument.

(3) The registrar should continue to be able to insist upon an audit.

Do you agree?

- Agree
- Disagree
- **Other**

Please give reasons and explain how the reform might affect you.

#### **Response**

We are in broad agreement with the proposals. In particular, we agree that any person appointed to audit the accounts of a society should be a qualified auditor. Only an auditor registered to undertake audit work can undertake an audit in accordance with UK auditing standards set by the Financial Reporting Council (FRC), known as International Standards on Auditing (ISAs)(UK). This is a welcome simplification and modernisation which will aid understanding of the external scrutiny requirements placed on societies.

The proposals would mean the external scrutiny regime for societies more closely reflects the approach taken under the Companies Act 2006 which is well understood among businesspeople and accountancy professionals. However, structural differences remain.

We note that while the external scrutiny requirements have been simplified, there is no proposal to increase the main size criteria for audit. We understand that proposing an increase in the size criteria may not be within the remit of the Law Commission. However, inflation has had an impact since these were last reviewed, and the Department for Business and Trade has already announced that the turnover and balance sheet requirements of the company law audit qualifying conditions are to be increased by approximately 50% via regulations to be laid next year.

The Law Commission proposals do not address the structure of the audit threshold. The size criteria in the 2014 Act relate to the assets held at the end of the previous financial year and the turnover for the previous year. In contrast, the Companies Act 2006 audit exemption threshold applies the size criteria to the latest financial year. A year's grace is given to companies breaching the size criteria so that they are not brought within the audit regime for a one-off breach. We recommend that consideration is given as to whether closer alignment with the structure of the Companies Act audit threshold would be a worthwhile reform. This could aid better understanding of the audit threshold for societies among accountancy and other professionals familiar with the Companies Act approach.

Both companies and societies have to elect for audit exemption. Where charity law applies to the audit of a charity, no formal election is needed. The different approaches to audit exemption under company law and charity law have led to an interpretation of the law by UK charity regulators that it is possible for a charitable company to elect for audit exemption under company law and then receive an audit under charity law. ICAS has taken the stance that it is good practice for entities to be audited under all applicable legislation and we do not support the UK charity regulators' interpretation. We therefore advise firms registered with us to undertake audit work to audit charitable companies under both company law and the relevant charity law. The simplification of the audit threshold under the 2014 Act and the lower size criteria in the 2014 Act compared to the Companies Act 2006, following next year's increase, could give rise to a similar situation for charitable community benefit societies. We would therefore recommend that the 2014 Act includes an amendment which prohibits charitable community benefit societies from electing for audit exemption if they are receiving an audit for any other reason, for example due to another legal requirement.

Charitable community benefit societies below the relevant charity law audit threshold(s) are currently subject to an independent examination depending on the particular body or bodies of charity law which apply to them. For charitable community benefit societies in Scotland and Northern Ireland, the simplification of the 2014 Act audit threshold will make it easier for them to determine the appropriate external scrutiny requirements, including whether an independent examination under charity law is required. Charitable community benefit societies based in England and Wales which are no longer exempt charities will need to understand that an independent examination under charity law may be needed if they are below the charity law audit threshold.

We are a membership body and will not be directly impacted by the outcome of this aspect of the consultation. However, we welcome the proposed simplification and modernisation of the audit threshold, subject to our comments above. This should aid compliance with the external scrutiny requirements placed on societies, which would be in the public interest. Our members who are involved with societies would benefit, like other stakeholders, from the external scrutiny requirements being simpler to apply, leading to better compliance.



CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH  
+44 (0) 131 347 0100  
[connect@icas.com](mailto:connect@icas.com)  
[icas.com](http://icas.com)

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