

Mutual Societies Application Form

Registering a new Industrial and Provident Society; or
Re-registering a Friendly Society as an Industrial and Provident Society; or
Converting a Company into an Industrial and Provident Society

Notes



Please take time to read these notes carefully. They will help you to fill in the form correctly.

These notes are for information only. They are not a full statement of legal obligations under the relevant legislation. The society may wish to seek legal advice on how to comply with the legislation.

If after reading these notes you need more help, please:

- check our website for more information on Mutual Societies:
www.fsa.gov.uk/Pages/Doing/small_firms/MSR/index.shtml;
- email mutual.societies@fsa.gov.uk; or
- call the Contact Centre on 0845 606 9966 (option 3).

Terms in this form

'FSA', 'us' and 'we' refer to the Financial Services Authority.

'You' refers to the person signing the form on behalf of the society.

'Working men's club' is a society registered under the Friendly Societies Act 1974 and set up for the statutory purposes of 'social intercourse, mutual helpfulness, mental and moral improvement and rational recreation'.

'Specially authorised society' is a society registered under the Friendly Societies Act 1974 and which is set up for any purpose which the Treasury has authorised as a purpose to which the provisions of the Friendly Societies Act 1974 ought to be extended (such as the 'promotion of lawful sports and games').

'Benevolent society' is a society registered under the Friendly Societies Act 1974 and which is set up for any benevolent or charitable purpose.

'Public trustee' – office established under the Public Trustee Act 1906 and empowered to act for the state as trustee.

'The 1965 Act' is the Industrial and Provident Societies Act 1965.

'The 1974 Act' is the Friendly Societies Act 1974.

Legislation and what to expect

Industrial and Provident Societies

Many different types of organisation may register as industrial and provident societies under the Industrial and Provident Societies Act 1965. However any such societies may also be subject to different additional legislation and entitled to different privileges, depending on the nature of their business. For example, clubs may be subject to licensing regulations, and housing associations subject to housing legislation.

This note is intended for guidance only and does not incorporate all the statutory requirements. It does not contain all the information that you might need.

So you should ensure the society is aware of and complies with any special legislation or regulations applying to its business. You can do this by contacting the relevant authorities or by obtaining legal advice.

Friendly Societies

A society can only re-register as an industrial and provident society if it is a working men's club, a benevolent society or a specially authorised society registered under the Friendly Societies Act 1974. The members of such a society would need to consent to their society applying for registration under the Industrial and Provident Societies Act 1965. Their consent must be obtained using the same procedure as that required for a proposal to amend the rules of the society (see Section 84A of the 1974 Act – inserted by paragraph 32 of Schedule 16 to the Friendly Societies Act 1992. The provisions of section 84A of the 1974 Act do not apply to other kinds of society registered under the 1974 Act.

Companies Act 1985

A company registered under the Companies Act 1985 may, by special resolution, as established in Section 53 of the Industrial and Provident Societies Act 1965, convert into a registered society.

Legislative Reform Order (Industrial & Provident Societies and Credit Unions) Order 2011

Part 2 paragraph 3 amends section 6 of the Industrial & Provident Societies Act 1965, by removing the limit on the value of non-withdrawable shares which can be held by a member. Part 2 paragraph 5 insert new sections 39A & B of the Industrial & Provident Societies Act 1965, which introduce flexibility for societies to choose their own year-ends.

What to expect

We will send you a formal acknowledgement after registration.

Financial costs of registration

Before applying to register an industrial and provident society, you will need to consider not only the initial start-up costs but also the potential costs of running a society. You should make sure that money is available to meet these commitments. It might be useful to consider costs under the following broad headings:

- registration fee for registration (see question 16);
- sponsoring body fee(s) (where appropriate) - see question 15; and
- annual running costs, accountant's fees, annual audit fee (where appropriate), and the periodic fee. See www.fsa.gov.uk/Pages/Doing/small_firms/MSR/returns/index.shtml.

Obligations of registration

Once registered, among other things, a society must:

- keep proper books of account and maintain satisfactory systems of control of its books, cash holdings and all receipts and payments;
- submit an annual return every year, by the due date, accompanied by a set of accounts;
- give notice of any change of its registered office;
- apply to the us to amend any of its rules or to change its name, as no amendment is valid until it has been registered by us;
- be run strictly in accordance with its registered rules; and
- inform us if it no longer wishes to be registered.

Details of registration

This section will help you to complete the form.

Full proposed name of society (front page)

You must give the full proposed name, please do not use abbreviations.

You should check whether the name you propose to use as a registered society is both available and acceptable. You should therefore also read the following information note www.fsa.gov.uk/pubs/forms/MS_change_name_notes.pdf. We would not permit a society converting from a company to be registered with a name containing the word 'company'.

When considering a society's name we will want to be satisfied that, among other things, it will not confuse those dealing with the society, nor, by the choice of name, make undue claims as to the pre-eminence of the society.

1 What are you applying to do?

Register a new industrial and provident society

A society qualifies for registration as an industrial and provident society if:

- It is a society for carrying on any industry, business or trade; and it is either:
 - (i) a bona fide co-operative; or
 - (ii) if its business will be run for the benefit of the community (that is, people other than its own members), and there are special reasons why it should be registered as an industrial and provident society rather than as a company under the Companies Act 1985.

Every industrial and provident society must also satisfy the following conditions:

- It must have at least **three** members, unless it consists of **two** registered societies.
- The rules of the society must include all the matters required by Schedule 1 of the 1965 Act (these are set out in the application form – question 6).
- The proposed name of the society must not be undesirable. As a general rule any proposed name must not be either identical to, or extremely similar to, any existing society, charity or company name. There are also certain words (for example, with a royal connection) for which you may need special permission. We are happy to give comments on whether a proposed name may be suitable or available, before receiving a formal application for registration. But we cannot reserve a name before registration, or guarantee that it will still be available at registration. Please see our information note www.fsa.gov.uk/pubs/forms/MS_change_name_notes.pdf for more details which includes details on checking Companies House to ensure the name is available.
- A society can do a simple check by looking at the local telephone directory or 'Yellow Pages' to see if there are any organisations listed with the same or similar names.

Two of the main benefits or privileges of registration as an industrial and provident society are:

- **Limited liability** – this means the personal liability of a society's members is limited to the amount of their unpaid share capital.
- **Corporate body status**, with perpetual succession – unless steps are taken to terminate its registration under the 1965 Act, it will continue to exist even if its membership changes. Also, the society can act, sue and be sued, and own property, land and other assets in its own name without the need for trustees.

It is outside the scope of these notes to provide a complete list of all the other effects and privileges of registration, but the following are important:

- The rules are a binding contract between a society and all its members.
- Contracts on behalf of the society can be made, varied or discharged in the same manner as between private individuals.
- Debts due to the society from members are recoverable through a court of law. The society has a lien on a member's share for any debt due by the member and may set off any sum credited on the shares in or towards payment of the debt.
- Although the society enjoys the benefits of limited liability, the officers of the society are liable for prosecution if they are in breach of their duties.

For benefit of community societies:

- If the society's objects are charitable in law, as a registered industrial and provident society it is an 'exempt charity' and may not also register with the Charity Commission. However an exempt charity is subject to the legal rules generally applicable to charities and to certain provisions of the Charities Act 1993. For more information, societies based in **England and Wales** should contact the Charity Commission.
- An exempt charity may be able to claim certain tax exemptions. Societies should contact the Inland Revenue.

Re-register a friendly society as an industrial and provident society

General guidance

The procedure set out below applies only to working men's clubs, benevolent societies and specially authorised societies registered under the Friendly Societies Act 1974.

Members of working men's clubs, benevolent societies and specially authorised societies may consent to their society applying for registration under the Industrial and Provident Societies Act 1965.

On re-registration of the society under the 1965 Act, any appointments of trustees of the society under the Friendly Societies Act 1974 shall cease because societies registered under the 1965 Act do not need to have trustees.

All officers of the society, other than its trustees, shall upon its re-registration under the 1965 Act become officers of the industrial and provident society, holding corresponding offices in that society.

Before you apply for re-registration you should take the following steps:

Members' consent to the proposal to apply for registration

The society must arrange for the proposal to register as an industrial and provident society to be put to the society's members for their consent in the same manner as the society would to amend its registered rules. An officer of the society should then make a statutory declaration before a solicitor, a commissioner for oaths, a notary public or a justice of the peace that the procedure laid down in the rules has been followed. The declaration can be found in Appendix 2.

Drawing up of rules under the 1965 Act

- Sponsoring bodies – Many societies applying for registration under the 1965 Act do so through a sponsoring body. Each sponsoring body provides model rules suitable for the type of society which it represents. Details of sponsoring bodies are available from the Contact Centre (see front page of this note for contact number).
- If a society does not wish to go through one of the sponsoring bodies or there is no relevant body, the first step towards registration, before putting the proposal or the proposed new rules to members, is to check with Mutual Societies Registration at the FSA that the society may, in principle, be registered as an industrial and provident society.
- If the proposal to register as an industrial and provident society is agreed by the members, then a copy of the proposed new rules should be put to the members for their approval.

Once the forms and rules have been received and found to be acceptable, an acknowledgement of registration will be sent to the society. Registration of the society under the 1965 Act causes the registration of the society under the Friendly Societies Act 1974 to cease and without need for further action by the society, the society's registration under the 1974 Act will be cancelled.

Transfer of all property and documents

Within 90 days from the day on which a society registered under the Friendly Societies Act 1974 is re-registered under the 1965 Act:

- the former trustees of the society must deliver any property of the registered society that they hold, as well as any documents relating to the property, rights and liabilities of the registered society or its financial affairs, to the registered office of the industrial and provident society; and
- if the public trustee holds property in trust for the society, they shall deliver the property they hold and any documents relating to it to the registered office.

However, the trustees of a registered society or the public trustee shall not be relieved from any liability from acts or omissions before the re-registration [Section 84A(5) of the 1974 Act].

Annual returns

Societies will be required to submit only one annual return covering the year during which re-registration takes place. This will be the return for an industrial and provident society. If the re-registration takes place at the end of the financial year, the annual return required will be the one that would have been required in any case under the 1974 Act. Returns under the 1965 Act will be required for subsequent years.

Appendix 2

1 An officer of the society must sign and date below

We require all signatures on the form to be original signatures and these signatures must be dated.

Convert a registered company into a registered industrial and provident society

Appendix 3

1 Details of Company

You must use full registered names; please do not use abbreviations.

2 Date of general meeting at which the special resolution was passed

No extra guidance

3 You must attach three copies of the special resolution

These must be clean copies containing only the wording of the special resolution as approved by the members. Each copy of the special resolution must be headed with the name and registration number of the company and each copy must be signed by both the Secretary of the company and by the Chairman of the meeting at which the special resolution was approved.

4 Details of the three members of the company that will be appointed with the Secretary to sign the rules of the society

The 3 members stated here should sign and date (in addition to the secretary) the 2 copies of the rules of the society attached to the application (see question 5).

5 If we ask for any rules to be altered, how will they be dealt with?

No extra guidance

6 You must confirm that the nominal value of withdrawable shares held by any member other than a registered society does not exceed £20,000.

There is no maximum limit as to the value of non-withdrawable shares that may be held by a member in an Industrial & Provident Society.

7 Do its articles of association require the company to affix and attest the seal of the company?

No extra guidance

8 A director of the company must sign and date below

We require all signatures on the form to be original signatures.

9 The Secretary or another director of the company must sign and date below

We require all signatures on the form to be original signatures.

End of appendix 3 notes. The following notes are for question two onwards on the form.

2 Details of the society that is currently registered under the Friendly Societies Act 1974

Name of current society (if re-registering)

You must use the full registered name; please do not use abbreviations.

Register number of society

The register number is the number the society was given when it was registered. If you are not sure what this is please search on the Mutuels Register at <http://mutuals.fsa.gov.uk> using the name of your society.

3 Contact details for communications about this application

Please ensure you include the postcode and a contact number and an email address. This will make it easier for us to contact you if we require further information.

4 Does the society have any timing factors that it would like us to consider?

The time taken to determine each application is significantly affected by the quality of the application submitted and whether it is complete.

Our service standard for mutual societies is to register 90% of valid applications within 15 working days. Since we receive a large number of applications each year and need to examine each carefully, please ensure any application is submitted in good time to resolve any problems that may arise, particularly if you have a preferred registration date in mind.

5 You must attach the following:

Two printed copies of the proposed society's rules, both of which are signed at the end by three members and by the Secretary of the society.

The responsibility lies with each society to ensure that its own rules cover all that is required by law for the activities it proposes to carry on and you should seek legal advice if necessary. In addition the rules should reflect the society's character and the way it wishes to organise itself. So for example bona fide co-operative societies are controlled by their members and so their rules should reflect the intentions and wishes of the members.

It is also the responsibility of each society to ensure its rules are prudent, fair, clear and well drafted. By this we mean that the rules and sub-sections are suitably and sequentially numbered and that any internal cross referencing to other rules or sub-sections is correct. The language used should be modern, clear, and capable of being understood by all members.

Our role is to register rules that are registrable under the 1965 Act and to reject those that are not. It is not our role to advise whether a rule is in a society's best interests. That is for the society's members and its professional advisers to decide.

The same people must sign both the rulebooks and the application form, and the signatures must be originals – not photocopies.

We would prefer the rule books to be bound and preferably, no larger than A4 size, with a margin on each page at least two centimetres wide so that we can file the rules on the society's public record file.

6 You must complete the following table indicating for the proposed society the appropriate rule number(s) in the column provided

You must complete the table indicating the rule number(s) in the society's rules that provide(s) for each of the matters set out in the table. Enter the rule number(s) in the column.

7 Date of society's financial year end

The Legislative Reform Order (Industrial & Provident Societies and Credit Unions) Order 2011 introduces flexibility for societies to choose their own year-ends, subject to certain conditions:

- i. A newly registered society must have an accounting year of at least 6 months.
- ii. No society's accounting year may extend beyond 18 months.

If the society does not choose a financial year end, its financial year end will automatically end on the last day of the month in which the anniversary of its registration falls.

8 Is membership of the new society required to obtain the benefits / facilities offered by it?

No extra guidance

9 Type of industrial and provident society

A bona fide co-operative society

Such societies are formed primarily to benefit their own members, who will participate in the business of the society.

To satisfy us that it will be a bona fide co-operative, a society will normally have to fulfil the following conditions, the first four of which also reflect the International Co-operative Alliance's Statement on the Co-operative Identity:

- Community of interest - There should be a common economic, social or cultural need or interest among all members of the co-operative.
- Conduct of business - The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business. Participation may vary according to the nature of the business and may consist of:
 - buying from or selling to the society;
 - using the services or amenities provided by it; or
 - supplying services to carry out its business.
- Control - Control of the society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of 'one member, one vote' should apply. Officers of the society should generally be elected by the members who may also vote to remove them from office.
- Interest on share and loan capital - Where part of the business capital is the common property of the co-operative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business. Section 1(3) of the 1965 Act states that a society may not be a bona fide co-operative if it carries on business with the object of making profits mainly for paying interest, dividends or bonuses on money invested with or lent to it, or to any other person.
- Profits - If the rules of the society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading society or an agricultural marketing society, profits might be distributed among members as a

dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available.

- Restriction on membership - There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances, which do not offend co-operative principles. For example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site.
- Applicants should note that in stating the reasons for registration it is not acceptable merely to quote 'the objects rule'. We expect you to show which of the rules demonstrate that the society will be a bona-fide co-operative.

We may cancel a society's registration if at any time it appears that the society no longer complies with the conditions of registration.

Benefit of the Community

Conditions - structure and purposes

We will normally expect a society to fulfil these conditions:

- Conduct of business - The business must be run primarily for the benefit of people who are not members of the society, and must also be in the interests of the community at large. It will usually be charitable or philanthropic in character.
- Interest on share and loan capital - It is unusual for a benefit of the community society to issue more than nominal share capital (for example, one £1 share per member). Where it does issue more than nominal share capital or where members make loans to the society, or both, any interest paid must not be more than a reasonable rate necessary to obtain and retain enough capital to run the business.
- Profits and assets - The society's rules must not allow either profits or the society's assets to be distributed to the members. Profits must generally be used to further the objects of the society by being ploughed back into the business. Where profits are used in part for another purpose, that purpose should be similar to the main object of the society, for example for philanthropic or charitable purposes. The rules must specify the beneficiary or beneficiaries, if any.
- Where the rules of the society allow assets to be sold, the proceeds of the sale should be used to further the society's business activities only.
- Dissolution - The society's rules must not allow its assets to be distributed to its members on dissolution. The rules should state that on dissolution the assets should be transferred, for example, to some other body with similar objects. If no such body exists, the rules should state that the assets must then be used for similar charitable or philanthropic purposes.

Benefit of the community societies

10 Explain fully below how the activities of the society will benefit the community.

Please specify fully below:

- a.) The community that the Society will benefit
- b.) What activities the society will undertake to benefit that community and please include an explanation of how the society's surplus will be applied
- c.) How the activities of the society will benefit the community

The form asks you to give details of the activities the society will undertake and to explain how these activities will benefit the community. The information you provide here will help us to decide if there are special reasons why the society should be registered under the Industrial and Provident Societies Act 1965 and not as a company under the Companies Acts. This is important,

because a key difference between the regulation of companies and industrial and provident societies is that societies for the benefit of the community registered under the Industrial & Provident Societies Act enjoy exemptions from statutes designed to protect persons who provide finance to a business.

For example, s85 of the Financial Services and Markets Act 2000 prohibits transferable securities being offered to the public in the United Kingdom unless an approved prospectus has been made available. However, if certain conditions are met, this prohibition does not apply to community benefit societies registered under the Industrial and Provident Societies Act.

Our assessment of the application will take into account whether the strength of the benefit which will be delivered to the community through the society's activities outweighs the reduction in the regulatory protection that will be available to those who subscribe capital to the society.

We will be encouraging societies for the benefit of the community to publish a voluntary annual statement of their activities setting out how they have fulfilled their objectives. The purpose of the report is to promote public confidence in the society. The report is not a statutory requirement, so we do not prescribe its form and content. However, we intend to provide a space for it in annual return forms and societies that wish to do so can include it in their accounts.

Completing this question on the form:

10 a.) Specify which community, communities or groups of people the society will benefit, this also includes communities or corporations from abroad.

10 b.) Describe the activities the society will undertake to successfully benefit the community you specified within 10 a.). Please also tell us how the society's surplus will be applied. This is because we need to be satisfied that the society is not carrying out its community activity to make profits for investors.

10 c.) Describe fully how the community will benefit from the activities the society will be undertaking.

11 How will the society fund the activities of the society?

No extra guidance

12 Will the society have charitable objects?

If you answer this question 'yes' you will need to complete Appendix 1.

The full names (including any previous or alternative names), address, occupation, date of birth and signature of every person who is, or it is known will be, a trustee, should be provided on the form. The 'charity trustees' of a charity registered under the Industrial and Provident Societies Act 1965 are the persons having the general control and management of the administration of the charity (s97(1) of the Charities Act 1993). These will normally be the society's committee of management, its chief executive and secretary.

We will check the information provided in this form against various databases to confirm that those named actually exist and are not disqualified from acting as charity trustees. If you have moved home in recent months the address you give may not match those on the databases we use to verify the information supplied in this form. If this is likely to affect you, please attach evidence of your current address such as a copy of a utility bill or some other formal correspondence and also provide details of previous addresses.

Certain people are disqualified from acting as charity trustees. S72 of the Charities Act 1993 and ss35-37 of the Criminal Justice and Court Services Act 2000 set these out.

In England and Wales, the Charity Commission publishes guidance on the function of a trustee and the penalties and consequences of acting whilst disqualified. Prospective trustees are recommended to read CC3 'The Essential Trustee: What you need to know', which may be obtained from the Charity Commission. You can contact the Charity Commission by telephone on 0870 333 0123 or guidance is available from www.charity-commission.gov.uk.

We do not need to be notified when trustees cease to hold office. However, new appointments should be advised to us using this appendix. The appendix will not be placed on the society's public record file.

13 Provide details of any close links which the society or any member of its committee has had, has, or intends to have, with any other society, charity, company or entity.

If there are no close links to report write 'None' in the box provided. Do not just leave the box blank.

14 Have you used model rules provided by a sponsoring body?

Most societies applying for registration under the 1965 Act do so through one of the sponsoring bodies that have agreed model rules with us. Each of these bodies provides one or more models for the types of societies they promote. Using model rules limits the chance of mistakes, reduces the fee payable to us and can shorten the time taken between application and registration.

Model rules are obtainable directly from the sponsoring bodies, not from us. Details of sponsoring bodies are available from the FSA's Contact Centre (see front page of these Notes for their contact number).

Applications using model rules must be submitted through, and endorsed by, the relevant sponsoring body, if you wish to pay a reduced fee.

Registration fee**15 You must tick the relevant box below to confirm the fee submitted with your application**

The application fee is an integral part of your application. If you do not send a cheque for the appropriate fee in full with the completed form, we will not process your application.

Please pay by cheque. Payment is not refundable, so please be certain you want to go ahead with the application before you submit it.

Adding information into a model set of rules such as a name, an address, or any text or number that is added into a model rule within a space specifically provided for such text or number, will not be regarded as an amendment to a model set of rules and so should be discounted in calculating the number of amendments made to a model set of rules for registration fee calculation purposes.

However, if the society is registered under the Friendly Societies Act 1974 and is applying to re-register as an industrial and provident society then no fee is payable.

Member and Secretary details**16 You must arrange for three members and the Secretary of the society to complete the table below**

Please give full names, do not use abbreviations.

We require all signatures on the form to be original signatures.

Date of application**17 Date the application was submitted**

No extra guidance