

December 2024

Community Energy England's Response to the Law Commission's Review of the Co-operative and Community Benefit Societies Act 2014

Introduction to Community Energy England

1. [Community Energy England](#) (CEE) represents over 310 community energy and associated organisations across England involved in the delivery of community-based energy projects that range from the generation of renewable electricity and heat, to the energy efficiency retrofit of buildings, to helping households combat fuel poverty.
2. Our vision is of strong, well informed and capable communities, able to take advantage of their renewable energy resources and address their energy issues in a way that builds a more localised, democratic and sustainable energy system.
3. Community energy refers to the delivery of community led renewable energy, energy demand reduction and energy supply projects, whether wholly owned and/or controlled by communities or through partnership with commercial or public sector partners.
4. The overwhelming motivation of people and groups involved in community energy is to make a contribution to averting climate catastrophe, followed by a desire to bring community and social benefit. It is a values based movement very much focussed on cooperating to get things done.
5. We believe that these motivations should be shared by all working in the energy sector and on energy system transformation. This includes those regulating the organisations that will deliver and democratise the energy system transformation.
6. The government's Local Power Plan pledged to "deliver the biggest expansion of support for community-owned energy in history" [Ed Miliband]. "Community energy also reduces pressures on the transmission grid and the need for expensive investment, so community ownership will be critical." It will also be crucial to "saving families money and improving communities' energy security." [Michael Shanks] and "to help tackle fuel poverty, to unleash the dynamism and resources of local communities and to win the consent of local people." [Ed Miliband].
7. The current proposals will endanger the continued existence of many community energy cooperatives and CBSs as many of the activities for which they were set up are prevented by one or the other set of rules. It will certainly prevent the growth of the sector as the government envisages. The government is committed to doubling the size of the cooperative sector and a very significant proportion of that would be in the energy sector. Under these proposals that is unlikely to be achievable. We feel that the Law Commission's proposals should seek to support government policy aims where they are legal and laudable.

Questions

Consultation Question 1.

We provisionally propose that there should be a new statutory definition of a co-operative. Do you agree in principle (subject to the formulation of a suitable definition)? Paragraph 3.32

Yes, but not the definition(s) that the Law Commission suggests.

These new definitions would impose restrictions on community energy cooperatives and CBSs which would prevent them doing many of the activities for which they were established, possibly forcing them to demutualise and distribute assets, and would certainly stop them growing and evolving to meet changing needs and opportunities.

This would run counter to the current government's policy aims of "doubling the size of the cooperative economy" and putting people and communities at the heart of the energy transition by delivering "the biggest expansion of support for community-owned energy in history" and other aims set out in [6 above](#).

The current enforcement of the FCA guidance sees coops as mini plcs set up to benefit members through very material transactions and CBSs as effectively charities. This presents problems for a sector whose primary goal is to work cooperatively with partners and their community to tackle climate change and deliver social and community benefit. Current enforcement of rules is hampering their ability to do this and the new proposals will only make it worse and more difficult to raise capital to do this very capital intensive work. (See the [case study from BHESCo under our response to question 85](#)).

Proposals

Abolish the co-operative/CBS distinction, introduced in 1939 to prevent share pushing, (given that share pushing is now effectively prevented by regulation). The distinction is not made anywhere else in Europe. Co-ops UK also recommends a similar course of action.

Substitute a single new broader statutory definition of a mutual organisation that enshrines the spirit of the ICA Seven Principles and would help accommodate a greater range of participants, each deciding for themselves how best to operate. A more balanced view of compliance with the principles should be adopted - as occurs at Companies House - not the present FCA (and proposed Law Commission) approach of focussing on one aspect within the principles and ignoring the rest. No one principle - member trading - should be elevated above another and it should be accepted that not every detail of every principle must be met. The Seven Principles indicate with a broad brush a direction and an approach to doing business in a co-operative manner.

The Lawyer's Group of the main legal advisor firms to the mutual sector has proposed a single encompassing definition based on the ICA principles. This would be purpose-based and recognise that the cooperative sector is values and purpose driven. The latest version of this proposed definition that we have seen is in the box below.

We recommend its adoption.

Lawyers' Group proposal for a single definition to merge coop and CBS.

1) Basis for registration of a society

Explanation: The basis for registration should be explicitly purpose-based. Citizens should be able to specify the purpose with statutory parameters preventing an unlawful purpose.

a) Purpose

A Registered Society is a **corporate body**, with a membership of individuals and/or other corporate bodies, united by a **common purpose**, defined in the Registered Society's constitutional rules.

The common purpose of a Registered Society must be **other than the generation of profit or capital gain for distribution to members** and any profit distribution or capital gain for members must be consistent with the defined common purpose.

The common purpose of a Registered Society **may be (non-exclusively)**:

- a **collective purpose**, where the purpose is defined as mutual and/or co-operative ; **and/or**
- a **community purpose**, where the purpose is defined as for the **benefit of the general community, or a section** of the general community, **and/or**
- a **charitable purpose**, where the defined purpose is for the **public benefit**, which may be a charity.

Box 1

If the co-operative/CBS distinction remains, allow new and existing community energy organisations to register as member co-operatives if the new restrictions prevent or may prevent them from delivering their business model, such as supplying electricity locally to members.

Consultation Question 2.

We provisionally propose a definition of a co-operative with the following ingredients.

A co-operative is:

- (1) A society for carrying on any business;**
- (2) Mainly for the benefit of its members...**
- (3) ...through transactions with its members;**
- (4) Membership is voluntary;**
- (5) Membership is open to all;**
- (6) One vote per member.**

Do you agree with these elements? Are there any that you do not agree with?

The definition of a co-operative as proposed by the Law Commission will enshrine in statute wording which will make existing renewable energy co-operatives ineligible for re-registration as co-operatives. (see the example in [Box 2 below](#)).

We do not agree with the heavy emphasis in (3) on ‘transaction with its members’ interpreted as physical trade of goods or services. See section on [Transactions below](#).

Trading energy is made difficult by energy regulation in the UK. There are moves afoot to liberalise this as local trading will be necessary to increase balancing of supply and demand at the edge of the grid and realise the governments ambition of delivering energy bill savings at the same time as reducing pressure on the grid. (Without this the grid would have to be over-built at huge expense to be able to supply unmoderated demand and supply peaks.) The curious model proposed in 3.75 for Green Energy Cooperatives shows that the Law Commission does not understand the work of community energy co-operatives. See [below](#).

Once local trading is permitted most community energy organisations will want to do it. Because of the current difficulty in physically trading electricity, since the change of Registrar in 2015 most community energy organisations have been forced to register as CBSs. Trading to benefit members is forbidden to CBSs and they cannot convert back to co-operatives so they will either be thwarted or may even be forced to demutualise entirely.

Example: West Solent Solar Coop forced to de-register by ‘trading’ rule for co-operatives

The current FCA Registrar has already forced the de-registration of one established and well run renewable electricity co-operative which adhered to the international co-operative principles. This was on the basis it could not sell electricity directly to its members and therefore was not a co-operative. This society converted into a company but remains recognised by Companies House as a co-operative. As a result it is not able to grow and expand its existing energy business due to the expense of and restrictions on companies raising money and issuing shares to the community through regulated share offers.

Box 2

This is the costly fate that we anticipate will await other energy co-operatives if the Law Commission proposals are implemented. It costs several thousand pounds to convert to a co-operative company. And to argue with the Registrar whether the lawful activity which the society conducts satisfies the Registrar’s interpretation of what a co-operative society is could be in the high tens of thousands of pounds - money which will be lost from business growth and for community benefit. It will also be a fatal distraction from focussing on urgent climate action.

The consultation section 3.73 ‘**Case study - Green Energy Co-operatives**’ recognises that not being able to trade electricity directly with members presents problems and this is welcome. To overcome this it proposes various conditions in (3.74.) i.e. “First, members choose a green energy tariff. Second, for any surplus generated by the co-operative, if the co-operative pays a member dividend, that dividend is calculated as a proportion of each member’s energy consumption.”

There are a number of objections to this proposal.

1. It would penalise people who were tackling climate change and who had already reduced their consumption (by investing in energy efficiency and/or rooftop solar on their home, for instance) and might, perversely, incentivise and enable people to continue to consume more. Returns

from an organisation dedicated to the community good of reducing energy consumption and emissions should not incentivise investors to do differently. Indeed we do not believe that members will be prepared to continue to invest on this basis.

2. No renewable energy project produces electricity to match 100% of consumption. The supplier will still be drawing from other sources to ensure certainty of supply. A model that purports to cover 100% of a member's consumption is a purely financial arrangement without reference to what is actually produced.

Paragraph (3.76) of the Green Energy Co-operative case study says, "Simply to put green energy into the national grid" is "laudable". It continues, "If that was the only characteristic of the society, we think it aligns more closely with a community benefit society." We would point out that it is very rare for that to be the sole ambition of a co-operative energy society. It may be (and often is) the first step or building block for an organisation's future development, which may include such activities as energy saving/fuel poverty advice and remediation which often saves more carbon than the renewables but needs a source of funding which the renewables project can provide. This development will now be constrained or even prevented.

Members of societies cannot at present, or as proposed, derive any additional benefit from the successful operation of the CBS. So, a scheme to supply cheaper local energy to members (when that is made possible) would probably not be an activity compatible with being a CBS – that is the role of a co-op. However, although a co-operative can convert into being a CBS a CBS cannot convert into a co-operative. This should be enabled if the co-operative has an asset lock. A charity can convert into a community interest company and if the co-operative has an asset lock then the community capital will be protected.

The point has also been made to us by one member, a co-operative supplying district heating, that the Law Commission proposal for a green energy co-operative scheme is entirely focussed on electricity supply and ignores the capital intensive and complex requirements of a community energy business seeking to provide heat to customers.

Transactions

'Transaction' can be interpreted more broadly as an 'exchange by mutual consent'. This can include intangibles such as feelings. Someone with money may want to use it to feel they are making a difference, enabling others without money to do things. The cooperative definition should allow 'non-user members' to invest their money (usually at lower interest rates than they could get elsewhere) to create agency elsewhere. With cooperative investment there is the opportunity for the investors to become active participants, converting their financial agency into personal practical agency.

Proposal

Remove this constraining emphasis on 'transactions' insisted on in cooperatives and prohibited in CBSs by adopting the Lawyers' Group single definition. It is vital that the capital intensive community energy organisations can continue to operate as mutual societies. Regulated share offers would be prohibitively expensive and would rule out most activities and prevent the sector growing at all.

Question 2a.

In particular, do you think it accurate to describe the membership of any co-operative as “open to all”, and if so why? Paragraph 3.91, 179

Yes.

Consultation Question 3.

We provisionally propose that any new statutory definition of a co-operative should apply to all co-operatives and not only those registering after the introduction of the new definition. Do you agree? Paragraph 3.99

No.

Proposals

Do not make any reform retrospective as this would be too disruptive to the existing cooperative and CBS sector. The Coop/CBS distinction should be abandoned. (Under the current system CBSs should be allowed to convert to Coops if their business model requires it.)

This retrospective application of a rule change is unusual for good reason. When the Coop/CBS distinction was imposed in 1939 it was not made retrospective. Existing organisations were allowed to continue to operate in line with the pre-existing law.

Retrospection cuts across established legal principles of precedent. It is not generally done in other reforms.

The uncertainty on what changes would be made would make funding difficult and cause issues when entering into contracts such as joint ventures. If a retrospective approach is taken it could cost a society many thousands of pounds as it seeks to argue with a Registrar taking a very narrow approach, as at present, to the definitions of a co-operative and community benefit society.

It could also render existing contracts invalid or existing contracts could force an organisation in contravention of the new stricter definition to demutualise and distribute assets, which would damage confidence in the sector among all parties and cost large amounts of money to achieve nothing constructive.

Due to the difficulty of trading energy in the UK, since the change of Registrar in 2015, many community energy organisations have formed as CBSs which are prevented from trading to benefit their members but yet cannot convert to co-operative if they subsequently want to trade.

One of our members, Brighton Energy Coop, writes: *“Retrospectively imposing a change on renewable energy Coops/CBS that might require them to either radically alter how they operate or disband could not come at a worse time. For the first time in a decade we have a Government which actively wants to support Energy Coops in helping deliver against the Net Zero agenda, and there is supportive policy and potential funding to help significantly expand the size and impact of the community energy sector.*

Indeed, in Sussex, the Local Authorities are very keen to collaborate with and learn best practice from the well established and successful energy coops in the county. There would be no value in tying up the energy coops for an 18 month or longer period in changing their governance, fighting legal cases or

having to demutualise, when the clear and present imperative is for a rapid transition to a net zero economy.

This retrospective application of rule changes could also cause a massive loss of credibility in the sector, as our partner organisations could lose confidence in our longevity and reliability, particularly if we had to disband and sell off our assets. In the case of Brighton Energy, we have over 100 solar PV arrays at 70 different sites with up to 25 year leases and nearly £5M invested. Distributing these assets would be no mean feat and create a massive destruction of value.”

From our latest [State of the Sector report](#), I cite some figures that may give some insight into the complexity of unwinding even a small part of the community energy sector that may be outlawed from continuing to operate under new rules. The sector has secured £225m in investment since 2017. There are at least 583 community energy organisations across the UK with at least 69,500 members, the vast majority being investor members, some investing as little as £50. There are well in excess of a thousand community energy renewable energy projects across the UK ranging in size from single figure kWp rooftop solar arrays up to 29.4MW field solar array, all community owned. As an indication of the benefit that stands to be lost the sector saved householders at least £4.4million on their energy bills in 2023.

Consultation Question 4.

We provisionally propose a transition period of 18 months for existing co-operatives to comply with any new definition. Do you agree? Paragraph 3.100

No. Since we do not agree with the currently proposed definition (not the enforcement of the current rules by the Registrar) we do not agree with any time-frame for compliance.

We advocate the removal of the co-operative/CBS distinction as proposed by the Lawyers Group in [Box 1](#).

If this were enforced it would create huge amounts of work for the courts and the registrar which might take many years to complete, would disrupt entirely the growth of the sector and would be a fatal distraction from community energy’s urgent focus on combatting climate change.

Consultation Question 5.

We provisionally propose that there should be a new statutory definition of a community benefit society. Do you agree in principle (subject to the formulation of a suitable definition)? Paragraph 4.25, 180

No.

We propose the Law Commission adopt the single definition of co-operative organisations, as drafted by the Lawyers Group. See [Box 1 above](#).

The distinction between Cooperative and CBS only exists in the UK. We propose that if the rest of the world can manage without it so can we. The two categories are unhelpful and exclude activities that many energy co-operative organisations do or may want to pursue.

Due to the difficulty of trading energy in the UK the vast majority of new community energy organisations formed since 2015 have been forced to register as CBSs which are prevented from trading to benefit their members but yet cannot convert to co-operative if they subsequently want to trade.

Some of them may trade with their members but under the CBS rules the members cannot benefit, which would be a big part of the point of trading energy - to do it locally and more cheaply than the centralised, legacy energy system can manage. This localisation of the energy system is essential to its successful transition to net zero. Community energy is needed and intends to play an important role in this. Offering some benefit to investors will be an important way of attracting investment to the sector to enable growth.

Once energy trading is permitted it will become an important activity in the sector and many CBSs will want/need to do it. They are currently prevented by FCA interpretation and the proposed reforms will only make it worse by focussing attention on narrow permitted activities - especially if the definitions are made retrospective.

Consultation Question 6.

We provisionally propose the following ingredients for a new statutory definition of a community benefit society.

A community benefit society is:

- (1) A society for carrying on any business;**
- (2) For the sole benefit of the community;**
- (3) Membership is voluntary;**
- (4) Membership is open to all;**
- (5) One vote per member.**

Do you agree with these elements? Are there any that you do not agree with?

We agree with most ingredients above as agreeing with ICA principles although we advocate removing the distinction between co-operative and CBS. However, we take issue with (2).

The Law Commission's proposed definition is that a CBS must carry on a business 'for the sole benefit of the community'. 'Sole' is a new restriction but the purpose behind it and its likely impact is unclear. The Law Commission "provisionally agrees with the current approach of the FCA that the sole purpose of a Community Benefit Society 4 should be to benefit the community" and that funds raised by a CBS should not be applied for the benefit of private individuals and that benefits should not be contingent on membership. In other words, CBSs should not trade with their own members at a discount or give them any other form of preferential treatment.

Introducing the adjective 'sole' to the community benefit purpose of a CBS only adds ambiguity to this already unclear purpose as 'the community' is already ill defined. For example, is delivering fuel poverty alleviation to an individual in difficulties in the private rented sector a 'benefit to the community'? Or is it a private benefit to the individual in question or even to their landlord (who can then justify raising the rent on the improved property, as has happened in practice). In the case of a street based heating scheme there may not always be a poverty alleviation aspect but it might fall under a climate reduction benefit for the community which appears to be acceptable. However, the uncertainty is not helpful.

The FCA has also refused to accept that it is an acceptable activity for a CBS with solar panels on the roof of a supermarket to sell the electricity generated to the supermarket. According to the FCA this constituted a private benefit to that supermarket. This was regardless of whether the supermarket was a member of the CBS or not. However selling electricity to an electricity supply company is deemed by the FCA to be a permissible activity for a CBS. This is inconsistent.

Proposal

Abolish the distinction between co-operative and CBS.

If the distinction remains remove 'sole' from (2)

Allow CBSs to convert to co-operatives if their business model necessitates it e.g. supplying electricity locally to members. The co-operative should have an entrenched asset lock to protect any community asset created in the CBS.

Question 6a.

In particular, do you think it accurate to describe the membership of any community benefit society as "open to all", and if so why? Paragraph 4.46

Yes

Consultation Question 7.

We provisionally propose that any new statutory definition of a community benefit society should apply to all community benefit societies and not only those registering after the introduction of the new definition. Do you agree? Paragraph 4.54

No. Again, retrospective imposition of this rule will compromise a lot of existing community energy CBSs who either have or want to pursue activities that run counter to the rules. This could force them to dissolve and disperse assets.

See more detail in our response to question 3.

Consultation Question 8.

We provisionally propose a transition period of 18 months for existing community benefit societies to comply with any new definition. Do you agree? Paragraph 4.55, 181

We do not agree a. with the rule change and b. with it being retrospective in any time-frame.

If this were enforced it would create huge amounts of work for the courts and the registrar which might take many years to complete, would disrupt entirely the growth of the sector and would be a fatal distraction from community energy's urgent focus on combatting climate change. The vast majority of community energy organisations formed since 2015 have been forced to be CBSs so the number of organisations forced to reassess their rules and activities would be huge.

Consultation Question 11.

We provisionally propose that the CCBS Act should be amended to state explicitly as follows.

- (1) Society shares can be withdrawable or non-withdrawable, and transferable or non-transferable.**
(2) It is for societies by their rules to determine which of their shares are withdrawable or non-withdrawable, and transferable or non-transferable.

Do you agree?

Paragraph 5.39

Yes

Consultation Question 21.

We provisionally propose that the CCBS Act should state as follows.

- (1) A society can have different classes of membership with different rights.**
(2) A society can issue different classes of shares with different rights.
(3) A society can issue shares to non-user investors.

Do you agree? Paragraph 5.120, 185

Yes. This broad remit would allow societies discretion in designing their membership and share offers and to raise capital from non-user members. As the consultation document states, “non-withdrawable transferable non-user investor shares with varied rates of return are already allowed.”

However, other constraints on the status of ‘non-user members’ will impact the ability of societies to raise capital. We dislike the ‘non-user member’ designation as being very based in the material transaction model which we reject. We prefer ‘investor members’ many of whom play active executive roles in the organisation.

Energy cooperatives commonly have a ratio of 80-20% of investor members against ‘user members’ (partly due to the need for large amounts of capital and to the difficulty of trading energy in the UK). If ‘non-user members’ are restricted to having only 25% of the voting rights of ‘user members’ then they are being deprived of any real agency and involvement in the direction of the organisation which they have been fundamental in creating and enabling to act. This seriously undermines the potential to transfer real practical agency back to those with money, through their involvement in cooperative endeavour. This is extremely counterproductive.

If there were a reduction in the voting rights of these members then they may be minded to withdraw their capital, or put off future investment by potential members, either of which scenarios would significantly hamper the operations or growth of the organisation and the sector.

See the impact this is having on Brighton and Hove Energy Services Co-operative (BHESCo) in [question 81 below](#).

Consultation Question 24.

We provisionally propose that, when a society seeks to write down its shares, that should require a solvency statement by officers of the society, and a special resolution. Do you agree?

Yes. This is a sensible and responsible precaution.

We provisionally propose that the special resolution should require the approval of at least 75% of voters at a general meeting. Do you agree? Paragraph 5.141

Consultation Question 25.

We provisionally propose that there should be the following restrictions on interest rates paid by co-operatives on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree? Paragraph 5.206 187

Yes. This has been the basis on which all community energy co-operatives or CBSs have been established. The definition of what is reasonable should be flexible and negotiated among the members of a cooperative by rational discussion and justification in each case, rather than dictated by a registrar who will not necessarily understand the conditions or the rationale of a sector.

What is needed to obtain necessary funding will also vary from case to case and time to time. Having consideration for the long-term viability and solvency of the organisation in deciding any interest payment should certainly be a duty of officers.

Question 25a.

In particular, we think that a co-operative considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree?

Yes. It is vital that cooperatives, especially energy co-operatives, should be able to flex interest rates to reflect market and weather conditions. It is better to be able to reflect those conditions by paying less (rather than nothing) as conditions dictate.

Proposal.

Organisations should have the flexibility to pay *more* on occasions to compensate for poor years when less has been or is likely to be paid, or to recognise some other change of circumstance which negatively affects investor returns. Co-operatives should not aim to exceed the rate originally offered but may seek to maintain it as an average across the term of the investment by flexing interest up as well as down.

Consultation Question 26.

We provisionally propose that there should be the following restrictions on rates of interest paid by community benefit societies on investments, deposits and loans.

(1) Any interest rate should be no more than is needed to obtain necessary funding.

(2) Any interest rate should be no more than a reasonable rate.

(3) Interest on investments and deposits should be paid only to the extent that the officers of the society think that the society can also pay its debts at that time and as they fall due over the following year.

Do you agree?

Yes. This has been the basis on which all community energy co-operatives or CBSs have been established. The definition of what is reasonable should be flexible and negotiated among the members of a cooperative by rational discussion and justification in each case, rather than dictated by a registrar who will not necessarily understand the conditions or the rationale of a sector.

What is needed to obtain necessary funding will also vary from case to case and time to time. Having consideration for the long-term viability and solvency of the organisation in deciding any interest payment should certainly be a duty of officers.

Questions 26a.

In particular, we think that a community benefit society considering interest payments should be able to pay a lesser rate, rather than all or nothing, if that is what it can afford. Do you agree? Paragraph 5.214

Yes. It is vital that CBSs, especially energy CBSs, should be able to flex interest rates to reflect market and weather conditions. It is better to be able to reflect those conditions by paying less (rather than nothing) as conditions dictate.

See response to question 25a.

Consultation Question 27.

Do you think that societies need a new type of share? If so, what would be its characteristics? Paragraph 5.240

We agree with the Law Commission's proposal to clarify that "non-withdrawable transferable non-user investor shares with varied rates of return are already allowed". That provides the flexibility that the community energy sector needs.

Consultation Question 28.

We provisionally propose that an officer be defined in section 149 of the CCBS Act as including a director. Do you agree? Paragraph 6.8

Yes

Consultation Question 29.

We provisionally propose that officers of a society should be listed on the Mutuels Public Register. Do you agree? Paragraph 6.15 188

Yes. Transparency is to be welcomed.

Consultation Question 30.

We provisionally propose that a society should notify the registrar of any changes concerning its officers within 14 days. Do you agree? Paragraph 6.16

No. Extremely onerous and short time-frames for compliance can place a dangerous burden on societies that are run by volunteer officers. Penalties should exist to encourage good practice in compliance but should not be punitive.

Proposal

Multiple options for directors to be notified of compliance deadlines should be offered eg email, letter, SMS text.

Consultation Question 31.

We provisionally propose that a society's register of members and officers, available for inspection, should include their name and a contact address. Do you agree? Paragraph 6.30

Yes, with qualification. See question 33.

Consultation Question 32.

We provisionally propose that the contact address for members and officers might be an electronic address. Do you agree? Paragraph 6.31

Yes, this would be acceptable and would provide some protection.

Consultation Question 33.

We provisionally propose that any contact address for members and officers which is a postal address need not be the residential address. Do you agree? Paragraph 6.32

Yes. The option to list an address other than a home address is important to protect individuals.

Proposal

It should be possible to change this at short notice. Sometimes community energy schemes can attract the opprobrium of some, often active and occasionally negative local residents and campaigners.

Consultation Question 34.

We provisionally propose that the residential address of an officer should be notified to the FCA. This would be confidential, but the FCA may use it to make contact with the officer. Do you agree? Paragraph 6.33 189

Yes

with the qualification that it reads 'notified to the Registrar of the regulator' in the event that, as we recommend, that person is located in the Department for Business and Trade rather than at the FCA.

Consultation Question 81.

How would reform affect you? Please provide a general answer here. When answering other questions, please tell us, where possible, how that specific reform might affect you. Paragraph 9.2, 200

Community Energy England represents hundreds of community energy organisations in England who are passionate about combatting climate change and delivering energy and climate justice and social and community benefit through cooperative action.

We aim to describe some of the impacts on the sector but also on the government's climate and energy policies of which the sector is an essential part.

The Law Commission's proposal to 'modernise' definitions of co-operatives and CBSs will severely damage a vibrant sector whose ability to grow again, with the help of a more enlightened and engaged government, is essential to achieving net zero and to delivering benefit to and buy-in from communities in the urgent energy transformation.

A leading community energy co-op director has said, "These reforms pose a fundamental threat to community energy. Some of the sector's most vibrant organisations will be extinguished."

An example of the consequences can be seen in the case study of West Solent Solar Cooperative given in [Box 2 above](#). Other impacts are described to illustrate impacts in responses to questions above about the definitions of co-operatives and CBSs.

These reforms are not compatible with the government's plans for the cooperative and community energy sector and for Clean Power by 2030 and Net Zero by 2050.

Restricting energy co-operatives as proposed by the Law Commission will damage the government's growth mission both for the mutual sector and for community energy and its mission to decarbonise the power system by 2030 while sharing ownership and benefits more widely.

The current government seeks to maximise economic growth and "double the size of the co-operative economy". It has pledged to "deliver the biggest expansion of support for community-owned energy in history" [Ed Miliband] offering up to £400m a year in low interest loans to communities to develop and build community-owned energy projects.

"Community energy also reduces pressures on the transmission grid and the need for expensive investment, so community ownership will be critical." It will also be crucial to "saving families money and improving communities' energy security." [Michael Shanks] and "to help tackle fuel poverty, to unleash the dynamism and resources of local communities and to win the consent of local people." [Ed Miliband].

The government understands the power and potential of supporting people and communities to take an active role in the net zero transition and has heeded the Climate Change Committee's warning that "if the people of the UK are not engaged in this challenge - the UK will not deliver Net Zero by 2050." In much of the rest of Europe (and beyond) the co-operative energy sector is a growing and vibrant part of the energy transition. In much of the UK it has stagnated over the last decade through previous government indifference and the over-prescriptive approach by the regulator.

The scale of growth required by the government targets of 8GW of municipal and community energy by 2030 will not be achievable if the sector is restricted to operating mainly under the CBS rules as these reforms envisage.

This would not only deny the community energy sector a historic chance to grow but it would have a catastrophic impact on the energy transformation to net zero which must have people at its heart if it is to succeed.

The Law Commissions reforms must be 'proportionate' to the societal challenges that co-ops are uniquely well placed to address. The greatest of these is climate change, which also requires the biggest changes to the way we do everything, particularly use, generate and save energy. To be 'effective' they must accommodate and encourage future growth and adaptation to changing conditions.

The government must empower the co-operative energy sector in any reform of co-operative regulation.

Thankfully the consultation notes "It is for Government to decide whether to accept our recommendations."

In the light of our points above we hope that the Law Commission will adapt its recommendation to ensure the community energy sector can thrive, grow and spread.

What are the potential future impacts of the proposed reforms?

The existing interpretation of the co-operative regulations prevent community energy organisations that want to function as businesses directed co-operatively by their members from registering as member co-operatives due to the difficulty of trading energy in the UK. Many of our most dynamic organisations are just such organisations - not investment vehicles for those "seeking a return on an investment" (3.75). Yet, since 2015, these dynamic businesses have not been able to register as member co-operatives and have been forced to become CBSs.

The many uncertainties and the various limits placed on CBSs will prevent CBSs operating in the energy sector from taking full advantage of future developments that will be necessary for the sector to grow such as energy trading with members. Yet CBSs cannot convert to Coops. If members cannot benefit under CBSs rules it will be very difficult to attract new investors.

This will thwart government ambition to "deliver the biggest expansion of support for community-owned energy in history". It will also prevent existing CBSs engaging in local trading to meet the government's goals such as: "reducing pressures on the transmission grid and the need for expensive investment," by flexibly balancing local supply and demand; "saving families money and improving communities' energy security", and "tackling fuel poverty" by supplying cheaper, clean power to local residents. All these projects "unleash the dynamism and resources of local communities and [help] to win the consent of local people" without which, as the Climate Change Committee warns, we will not achieve net zero.

Making the reforms retrospective will damage existing co-operatives and CBSs, making many unviable and putting them in contravention of their previous share offers.

If the activities of a CBS are not allowed under the new definition it will be liable to be dissolved and its assets distributed.

It could remove investor, lenders and contract counterparty certainty and damage confidence in the sector, thus further hampering its ability to grow. This is particularly the case with new energy infrastructure where arrangements are necessarily very long term. There are already reports from members of potential infrastructure partners raising concerns.

Consultation Question 84.

Are there any other ways in which the CCBS Act might be improved to support the formation and development of new societies? Paragraph 9.5

The community energy sector is caught between two definitions, neither of which, currently or under the proposals, fit what we do or what we will need to do to attract investors and grow.

All these problems, and those related to the FCA's enforcement of the current distinction between co-operatives and CBSs, would disappear if we aligned with the rest of the co-operative world and adopted the Lawyers' Group proposal to remove the distinction with one broad definition as set out in [Box 1](#).

Problems for new societies setting up since 2015 are [described above](#). These problems will only get worse under the proposed reforms, especially if they are made retrospective.

Consultation Question 85.

Does the CCBS Act raise barriers to growth and innovation, such that there are other reforms which are needed to support growth and innovation for societies? Paragraph 9.6

What are the impacts of the proposed reforms on community energy organisations?

We welcome the proposal to continue the relatively light touch regulation for co-operatives and CBSs, leaving control to members. However, regulation of energy co-operatives is anomalous and will seriously hamper the growth of the sector. The reforms must resolve this. It is helpful to have a modernisation and clarification of the law. However this aspect of the proposals will have negative effects that will greatly outweigh any benefit. Additionally the proposed retrospective nature of the changes are a cause for concern and will impact some existing funding arrangements and longer term contracts.

The proposals will:

1. stifle growth in community energy if organisations cannot set up as co-operatives and trade as a business.
2. reduce the ability of the sector to innovate and evolve, if the definition of what a co-operative (and CBS) can do is further restricted and continues to insist on some form of direct or indirect trading. This is particularly the case in the energy sector which is going through a process of radical technological and social change, in addition to the considerable changes being brought about by digitalisation and "energy sharing".
3. need to be legislated by Parliament and this can take many years, creating long-term uncertainty and instability for projects and investors.

All this is the exact opposite of what is required to significantly increase the renewable energy sector to meet the Government's net zero targets.

Impact of current FCA rulings around 'non-user members' on BHESCo

An example of the likely outcome of the Law Commission's proposals from the current experience of one of our members Brighton and Hove Energy Services Co-operative (BHESCO) with the FCA's ruling on 'non-user investor members' :

"BHESCO has been pushing back on the FCA restricting the voting power of our investor members. They are looking for BHESCO to limit the voting power of existing investors such that they cannot collectively out-vote our user members. They suggest we apportion 75% of any vote to user members and 25% to investor members . Our investor members share the mutual purpose of our organisation and, as a condition of investment, agree to be bound by our co-operative principles as set out in our rules. They have chosen to invest their money into projects which are providing clean, affordable energy for schools who do not themselves have the funds to install and manage renewable assets. Understandably, our investors are concerned about the dilution of their voting rights when compared with those of user members and BHESCO is faced with the possibility of investors withdrawing their financial support. BHESCO has an investor to user member ratio of over 6:1. Restricting the voting power of these sorts of investors will severely restrict BHESCO's (and other co-operatives') ability to raise essential capital for future similar projects.

We have a mixture of third sector, educational, commercial and individual members. Our board and membership is adamant about remaining a co-operative society as that is the structure best suited to our members' mutual aims, our values and our commercial viability. The FCA has given us three options: change our rules and convert to a CBS, convert to a limited company, dissolve the organisation. Failing that, they would seek to cancel our registration."

Consultation Question 86.

Does the CCBS Act cause societies to incur unnecessary costs and burdens, such that there are other reforms which are needed to reduce those burdens and support the more efficient operation of societies? Paragraph 9.7, 201

If societies are forced by the Act or the reforms to convert to CBS or company or to demutualise and distribute assets this is very costly and destructive. It costs several thousand pounds to convert to a co-operative company. And to argue with the Registrar whether the lawful activity which it conducts satisfies the Registrar's interpretation of what a co-operative society is, could be in the high tens of thousands of pounds - money which will be lost from business growth and for community benefit.

In the case of West Solent Solar Co-operative the organisation has not been able to realise its ambitious plans as a company due to the high cost of issuing regulated share offers. So huge potential would be wasted.

Proposal

Adopt the [Lawyers' Group solution](#) of removing the co-operative/CBS distinction with a broader definition that reflects the ICA principles.

Consultation Question 87.

Are there any other reforms to the CCBS Act needed to support an effective registrar? Paragraph 9.8

Proposal

Require the Registrar to adopt an approach to the discharge of its functions which is based on good regulatory practice - that is an approach having regard to: a. the likely impact on those who may be affected by the discharge of those functions b. whether it advances or has a deleterious effect on Government policy c. the outcome of consultations with societies, with organisations representing societies and others with relevant experience.

Allow discretion within permissive bounds to future Registrars to enable the sector to propose innovations and adapt to changing circumstances in accordance with Government policy.

Locate the Registrar within the Department for Business and Trade rather than the FCA. There is greater understanding of the cooperative business sector in that department than is shown by the FCA regulator.