



## BRIEFING PAPER

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# Co-operative and Community Benefit Societies (Environmentally Sustainable Investment) Bill 2019-2020

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## Summary

*The Co-operative and Community Benefit Societies (Environmentally Sustainable Investment) Bill 2019-20* (also known as “the Green Share Bill”) is a Private Members’ Bill sponsored by Anna McMorrin MP.

Ms McMorrin came third in the Private Members’ Bills Ballot on 9 January 2020.

The Bill would allow co-operatives and community benefit societies to gain powers to raise finance by issuing redeemable ‘green’ shares to external investors. Any capital raised would have to be invested in an environmentally sustainable manner.

The Bill seeks to include safeguards to prevent the issuing of these shares leading to the undermining of the society’s conversion into a commercial company. It would also specify arrangements about the distribution of capital in the event of winding up, again to protect the mutual ethos.

The Bill would apply to England, Wales and Scotland.

# 1. Background

## The Bill

*The Co-operative and Community Benefit Societies (Environmentally Sustainable Investment) Bill 2019-20* (also known as “the Green Share Bill”) was introduced by Anna McMorrin MP following the Private Members' Bills Ballot on 9 January 2020.

First reading took place on 5 February 2020 and the Bill's second reading is due on 11 September 2020.

The Bill would allow co-operatives and community benefit societies ('co-ops') to gain powers to raise finance by issuing shares. This new finance would have to be invested in environmentally sustainable projects.

The Bill seeks to include safeguards to prevent the any such share issue leading to the co-op's conversion into a commercial company. It would also specify arrangements about the distribution of capital in the event of winding up, again to protect the mutual purpose.

The Bill would apply to England, Wales and Scotland.

[Anna McMorrin set out the rationale](#) for the Bill:

My Green Share Bill is an opportunity to use investment for the common good. To effect real change from the ground up, not only for the benefit of our communities, but to help tackle the single most important issue our planet faces for our future generations.

The climate catastrophe is the greatest challenge of our generation. We've seen this evolve from theory to reality and now we need to make laws to enable our communities to rise to the challenge. This bill does just that as well as bringing secure green jobs and growth across the country including to those areas which have seen huge job losses.

This really is a win-win for people, communities and investors, providing secure, green jobs and skills and creating a better, more sustainable living environment for all.

## Co-operatives and community benefit societies

Co-ops are a form of business that are owned and run by members. The decision-making process in these businesses follows democratic principles. [According to the Financial Conduct Authority](#) (FCA), they are an “autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”. Community benefit societies are established mainly for the benefit of the community rather than for members.

Co-ops in the UK operate under [a number of ownership and governance models](#) and legal forms. These vary according to purposes and priorities, and include such structures as worker co-operatives, multi-stakeholder co-operatives, community benefit societies and community interest companies.

## Contribution to the UK economy

Co-ops have existed in their modern form since 1844, when cotton mill workers in Rochdale formed the Rochdale Equitable Pioneers Society to access goods at lower prices.<sup>1</sup>

Co-operatives UK, a member organisation for co-ops, published [a report](#) setting out the scale of the sector in 2019. There were over 7,200 co-ops operating in the UK. They ranged in size from large retailers such as The Co-op, to credit unions, farmer associations and community pubs. The report also found:

- Fewer co-ops are doing more business, with overall turnover of the UK's co-operative sector up to £37.7 billion - an increase of £400m on the previous year
- A slight decline in the total number of co-ops, dropping by 51 to 7,215
- The co-operative model remains resilient, with almost three out of four co-op start-ups (72%) still flourishing after the difficult first five years of existence compared to 43% of companies
- The UK's 7,215 independent co-ops employ 233,733 people and have 13.7 million members who own and have a say in how the nation's co-ops operate
- The top three most co-operative places are in the Scottish Isles, and the most co-operative region is the north east.

## Co-operatives and sustainable development

[Commentators have suggested](#) that the ethos of the co-operative movement – with its focus on localism and wider social benefit – chimes well with wider principles of sustainable development, including an emphasis on environmental sustainability.

The Committee on Climate Change has also emphasised the importance of providing an “attractive investment environment” for green investment in achieving net zero greenhouse gas emissions. In its 2019 report [Net Zero – The UK's contribution to stopping global warming](#), the Committee noted:

Government success in providing clear and stable mechanisms that attract sufficient volumes of low-cost capital will be key to the overall success in reaching a net-zero [greenhouse gas] target [...] (p180)

The Committee found that the UK was “well-placed” to lead internationally on developing products to finance low-carbon investment. (p237)

## The current legislative framework

[The Co-operative and Community Benefit Societies Act 2014](#) repealed and replaced previous legislation in this area.

The Act extends to England, Wales and Scotland. Under the Act, co-ops must be registered with the Financial Conduct Authority (FCA), which:

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<sup>1</sup> Communities and Local Government Committee, [Mutual and co-operative approaches to delivering local services](#), 21 November 2012, para 11-12.

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- assesses applications for registration
- enforces the Act
- deregisters those not complying
- maintains a public register of co-ops.

## 2. The Bill

Typically, co-ops rely on their members' capital for funding their operations in the form of withdrawable shares bought by members and through retained earnings. If a member wishes to cash in their share, [the co-op will repay the money invested](#) (unless it is having financial difficulties), and subject to a notice period and other restrictions.

[Co-operatives UK stated](#) that the "biggest practical limitation of fixed-term withdrawable share capital is the £100,000 maximum individual shareholding limit", which "may present an issue for the largest societies seeking institutional investment."

The purpose of limiting shares to £100,000, is to "[prevent a member having undue financial influence, or for the society to be overly dependent on a small number of members.](#)"

### Redeemable green shares

The Bill would give co-ops the ability to raise new sources of finance by issuing redeemable 'green' shares. This new finance would have to be invested in environmentally sustainable investment, such as for the retrofitting of existing housing association homes or the expansion of renewable energy co-operatives.

[Redeemable shares are a type of share that can be bought back by the business.](#) The buyback date can either be fixed when the shares are issued or it can be subject to the discretion of the business.

[According to Co-operatives UK](#), such redeemable shares could be "particularly useful for larger societies raising significant equity investment from individual and institutional non-user investor members." It went on that they "provide a straightforward and clear exit route for shareholders, just as withdrawal does, but would be fully under the control of the society."

### Safeguards

The Bill seeks to include safeguards to prevent any such share issue from undermining the co-operative ethos and from increasing the risk of demutualisation, through amendments to the *Co-operative and Community Benefit Societies Act 2014*.

These safeguards include:

- Limiting voting rights to one vote, regardless of the value or number of shares held
- Limiting the rights of investors to the assets of the society in the event of its liquidation
- Limiting the ability of investors to vote for demutualisation
- Enabling societies to remove their right to vote for its conversion into a company (under proposed new section 114A).

The Bill also enables the Treasury to lay regulations that seek to prevent the scheme from being exploited for tax avoidance and fraud reasons. This includes giving the Treasury the option of delivering one or more

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pilot schemes “to provide assurance that the introduction of green shares will not have unintended consequences”.

Most of the detailed rules about the functioning of the scheme would be delivered through secondary legislation.

These safeguards appear to seek to address some of the issues raised when [Co-operatives UK consulted](#) on the creation of redeemable shares in 2018. It stated that there were “challenges and risks that would need to be dealt with”. It said that “proper controls” would be needed to prevent this investment from creating uncertainty in capital planning and from increasing the risk of demutualisation.

**More information about the provisions of the Bill is available in the [Explanatory Notes](#).**



### 3. Commentary

Co-operatives UK published [a position paper on the Bill](#) in June 2020. While they welcome the Bill as “a rare opportunity to give co-operative and community benefit societies...a first class legal framework”, they argue that it “must be amended in key ways to be of practical value. In current form it would be impractical and counterproductive”.

They recommended that Members should support the Bill but amend it in Committee – and noted that they and others have already drafted relevant legislative text that would help them to do so.

In broad terms, Co-operatives UK argue that:

- limiting the provisions to **external** capital investments would seem to limit opportunities for societies to make environmentally sustainable investments overall by both excluding similar arrangements for existing members and requiring complex certification processes;
- societies should also be given the option to make decisions about repayment, rather than only giving that freedom to investors, “which would be compatible with co-operative and community purposes, while also providing complete certainty in capital planning for the society”;
- the option to hold non-distributable capital surpluses should be widened to societies that do not choose external investments of the type provided for in the Bill (and so would not benefit from the proposed asset lock); and
- societies that do not (or are unable to) seek external capital investment should also be given the option of adopting restrictions to prevent conversion into a company.

## 4. Previous parliamentary debate on redeemable shares

Lord Naseby sponsored a Private Member's Bill in 2015, the [Mutuals' Redeemable and Deferred Shares Bill](#), which became the [Mutuals' Deferred Shares Act 2015](#). Initially, as indicated by the Bill title, Lord Naseby had intended for the Act to enable co-ops to issue redeemable shares.

During the second reading debate he explained that he had dropped the redeemable share provisions as he had been unable to demonstrate that the provisions would be in line with wider financial regulation laws:

The Bill refers to two classes of shares—deferred shares and redeemable shares. One of the key hurdles that I and my team have had to jump was to persuade the regulator that both those vehicles meet the requirements of Solvency II and would therefore be eligible for tier 1 capital, which is absolutely vital for development capital. We have been successful with the deferred shares element, but have not yet persuaded all parties that it is possible for redeemable shares as well. I therefore had to make a decision on whether to go ahead now with just the deferred element of the Bill, which goes a long way to help mutual insurers and friendly societies, or whether to persevere to try to persuade the authorities about redeemable shares. I decided, in the face of having only five months left of this Parliament, to drop the redeemable element.<sup>2</sup>

Lord Newby, for the then Government, said that it was “unpersuaded about the merit of a redeemable share instrument as these societies already have a means of issuing redeemable shares.” He went on that the Government “do not see a clear need and demand for such an instrument”.<sup>3</sup>

Gareth Thomas MP sponsored a Backbench Business debate on co-ops in June 2019. During the debate, Mr Thomas highlighted the difficulties that co-ops faced in accessing finance. He called for legislation to permit co-ops to issue shares. He stated that such reforms had been successfully delivered in Australia, Canada and some European Union countries:

Big corporations can access large investment through debt funding or, crucially, can create capital by selling shares. Co-operatives and mutuals cannot at the moment do the latter without demutualising. Clearly we need to protect this unique governance model but also allow mutuals to issue permanent investment shares— that is to say, create indivisible reserves— which cannot be distributed to members even beyond the lifetime of the mutual. The European Union states offer this already in their mutual and co-operative legal set-ups, and a further five EU states have it in a slightly different form, yet in the UK we do not offer this route to raising significant finance for co-ops and mutuals.

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<sup>2</sup> HL Deb 24 Oct 2014 [c917](#)

<sup>3</sup> HL Deb 24 Oct 2014 [c923](#)

Such a form of co-op and mutual share capital would offer stronger protection against demutualisation and therefore maintain and enhance corporate diversity. Above all else it would allow co-ops and mutuals to compete in the marketplace with other big businesses without one hand tied behind their back. In the UK building societies have a version of this already, called core capital deferred shares, which allows them to access capital markets without risking their mutual nature, but other financial mutuals and co-ops in the UK do not have anything like that.

Outside the EU, Desjardins in Quebec has raised more than \$4 billion through this route, and Australia passed legislation on 5 April this year allowing its co-ops and mutuals to issue share capital while protecting their co-operative and mutual nature. If the Australians can do it, if most of Europe can do it, and if British building societies have it already, why should not British co-operatives and other mutuals also be allowed to raise finance in this way?

I recognise that the Minister and his officials have looked at this once already in the light of Lord Naseby's successful Bill in the other place, and indeed my own and mutuals' representations, but I hope he might be persuaded, particularly given that similar legislation is now on the statute book in Australia, to bring key experts in this area together with officials again to try to find a resolution to the problems that have stopped this method of raising finance being allowed in the UK. The Co-operative Group, other retail co-op societies, Co-operatives UK, friendly insurers and the Building Societies Association all support progress on this issue, and I urge the Minister, who has been sympathetic to co-operatives and mutuals in the past, to be willing to take a fresh look at this.

Responding for the Government, the Economic Secretary to the Treasury, John Glen MP, noted the then Government's support for co-ops. He set out the work it had done to support the sector and indicated the Government's willingness to consider further changes:

This Government has a strong track record of support for co-operatives. We passed the Co-operative and Community Benefit Societies Act 2014 to reduce legal complexity for co-operative and community benefit societies. My hon. Friend the Member for Wycombe spoke about the apparent inadequacy of that legislation, but we have introduced a range of legislative measures in addition to the consolidation Bill since 2014, including making it easier to register digitally as a co-operative.

We have also reduced red tape by equalising the audit treatment between small co-operatives and small companies. I am pleased that the Financial Conduct Authority, which runs the UK mutuals register, recently made several practical changes to support mutuals, including simplifying the forms, creating an online portal and removing the fees to access documents. Members also raised the challenges that co-operatives face when raising capital. We recognise that that can be an issue, which is why in 2014 we increased the amount of share capital that an individual member can put into a co-operative society from £20,000 to £100,000, and I am happy to consider further proposals. We have looked at some proposals before, but I am happy to re-examine them.<sup>4</sup>

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<sup>4</sup> HC Deb 27 June 2019 [c864](#)

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