Co-operatives, Mutuals and Friendly Societies Bill
HL Bill 106 of 2022–23

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The House of Lords is scheduled to debate the Co-operatives, Mutuals and Friendly Societies Bill at second reading on 24 March 2023. The bill is a private member's bill sponsored by Lord Kennedy of Southwark, Labour's shadow chief whip and spokesperson on Cabinet Office matters in the House of Lords. The bill has passed the House of Commons, where it was sponsored by Sir Mark Hendrick (Labour MP for Preston).

The bill would permit ministers to submit draft regulations for parliamentary approval enabling cooperatives, mutual insurers and friendly societies to adopt legal restrictions to ensure their assets could only be used for specified purposes. The option for such bodies to implement statutory 'asset locks' is intended to help reduce financial incentives for them to demutualise. At present, these entities can adopt voluntary restrictions on the use of surplus funds, but these are non-statutory and may be overturned. Regulations made under the bill would be subject to the affirmative procedure, meaning both Houses of Parliament would need to consent before the regulations could become law.

The bill would in effect bring arrangements for cooperatives (in England, Scotland and Wales) and mutual insurers and friendly societies (UK-wide) into line with those in place for community benefit societies, a type of cooperative which conducts its business for the benefit of the community.[1]

[1] Ian Snaith, 'Cooperative and community benefit societies', Thomson Reuters Westlaw (£), 17 April 2015; and Cooperatives UK, 'The community shares handbook: Asset lock provisions', accessed 9 March 2023.

Existing legislation allows for community benefit societies to adopt statutory asset locks to ensure their assets cannot be used for the private benefit of members at a later date.[2] Community interest companies are affected by similar statutory asset lock provisions.[3]

The government supports the bill and HM Treasury supplied explanatory notes for the version of the bill introduced in the House of Commons. The bill was subject to three technical amendments at committee stage before later passing through its remaining stages with broad cross-party support.

1. Why has the bill been introduced?

Mutuals are organisations that are member-owned, democratically controlled and run for the benefit of their members, who can be customers, employees, residents or suppliers.[4] Many mutual enterprises operate as limited companies, whilst others operate as cooperative societies, community benefit societies, friendly societies, credit unions, building societies or community interest companies.[5]

Cooperatives UK, which describes itself as the voice of the UK's cooperative movement, estimates that 7,237 independent cooperative businesses operated across the UK in 2021.[6] These had almost 14 million members, over 250,000 employees and a combined turnover of £39.7bn in the same year.

The sector also includes financial mutuals such as mutual insurers and friendly societies.[7] These provide financial services products such as

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[2] Community Benefit Societies (Restriction on Use of Assets) Regulations 2006.

[3] Community Interest Company Regulations 2005.

[4] Explanatory notes, p 3; Cooperatives UK, 'What is a co-op?', accessed 9 March 2023; and House of Commons Library, 'Co-operatives, Mutuals and Friendly Societies Bill 2022–23', 6 February 2023.

[5] Department for Business, Innovation and Skills, 'A guide to mutual ownership models', 21 November 2011; and Financial Conduct Authority, 'Mutuals public register', accessed 9 March 2023.

[6] Cooperatives UK, 'Co-op economy report 2021', updated 14 January 2022, p 3.

[7] Explanatory notes, p 3.

insurance and are owned entirely by their policyholders, known as members. Profits earned by firms are retained or returned to members in the form of dividends or reduced future premiums. The Association of Financial Mutuals, the trade body for mutual and not-for-profit insurers, friendly societies and other financial mutuals across the UK, notes that mutual and not-for-profit insurers across the UK and Ireland hold over £200bn in assets.[8]

Cooperatives, mutual insurers and friendly societies may currently adopt voluntary restrictions on the distribution of their assets. But these may be overturned with the support of enough members. For example, the insurance mutual Liverpool Victoria (LV) considered demutualisation in 2021 as part of a proposed sale to private equity group Bain Capital.[9] The deal did not go through after the number of members voting in favour of the deal fell short of the three-quarters majority needed. LV has since joined the Association of Financial Mutuals.[10]

However, community benefit societies may choose to legally entrench restrictions on the use of their assets to ensure that surplus capital may only be used in line with the society's objectives. The government has noted that many community benefit societies have made use of this option to preserve the purpose of their society by 'locking in' funds for "focused usage".[11] The bill would extend this option to cooperatives, mutual insurers (such as LV) and friendly societies.

2. What would the bill do and what happened in the House of Commons?

The bill's single substantive clause would enable HM Treasury to make

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[8] Association of Financial Mutuals, 'Homepage', accessed 9 March 2023.

[9] BBC News, 'LV members reject sale to private equity firm Bain Capital', 10 December 2021; and Ian Smith, 'Insurer LV fails to win member backing for Bain takeover', Financial Times (£), 10 December 2021.

[10] Association of Financial Mutuals, 'LV joins the Association of Financial Mutuals', March 2023.

[11] Explanatory notes, p 3.

regulations, subject to parliamentary consent, allowing some mutual entities to ensure that some or all of their assets could only be used or dealt with in line with their objectives or certain prescribed circumstances. The regulations would define which mutual entities had this option and the procedure by which a mutual could adopt an asset lock. They would also be able to impose criminal liability and create criminal offences punishable with imprisonment for no longer than seven years. The bill's remaining clause would provide for the act's short title.

The bill's second reading in the House of Commons took place on 28 October 2022.[12] Opening the debate, Sir Mark Hendrick noted that the bill had been the product of discussions with ministers and Treasury officials. He added that he understood the government would soon instruct the Law Commission to conduct a wider review of legislation affecting cooperatives and mutual entities.

Turning to the substance of his bill, Sir Mark explained that it was "about giving mutuals the option to maintain mutual capital for the purpose it was intended". He continued by outlining the "fundamental distinction" between the rights of members of a mutual society and members of an investor-owned company. Members of a company, or shareholders, he explained, had a right to both a pro rata share of dividends and a pro rata share of the underlying value of the company. He added that members of a mutual society, by contrast, did not have any expectation of any entitlement to a share in the increased value of their society. Sir Mark noted that the amount by which the net asset value of a society exceeded the capital provided by members had no specific owner. It was therefore a "legacy asset, held by the society for future generations, and enables it to provide for, and invest in, its future". However, he cautioned that such capital surpluses were "tempting" potential windfalls for investor-shareholders.

Sir Mark then observed that in the case of cooperatives, mutual insurers and friendly societies, there was "currently no statutory mechanism for ensuring that surpluses, which previous generations never intended to be a private

[12] HC Hansard, 28 October 2022, cols 504–30.

reward for anybody, remain committed to that wider public purpose". He argued that legislation was needed to allow mutuals the option to "preserve their legacy for the purposes for which they were intended".

Speaking on behalf of the Labour Party, Tulip Siddiq noted the bill enjoyed cross-party support. Ms Siddiq described demutualisation as a "real and present threat" to mutuals and said her party believed that further legislation was needed to "secure the future of the sector, for example by giving cooperatives more freedom to issue perpetual capital to fund investment". However, she welcomed the bill as an "important step forward" and pledged her party's "full support" for the measure.

Speaking for the government, Andrew Griffith confirmed that ministers supported the bill "because we believe in, understand and recognise the contribution that the mutual model makes to society and financial inclusion […] and the diversity that it provides for the financial services sector". He noted that whilst many mutual entities had adopted voluntary charitable assignment clauses into their rules, the bill would "support mutuals to make these locks harder to unpick in the future so that a mutual's funds continue to be used for their social purpose" should members choose to use the asset lock.

The bill was considered in a public bill committee on 30 November 2022.[13] The committee accepted three technical amendments Sir Mark Hendrick tabled to address an inconsistency in the legal text and amend the bill's long title to better reflect its provisions.[14]

Third reading then took place on 24 February 2023.[15] Speaking for the government, Mr Griffith reiterated that the bill would "empower mutuals to continue the legacy left by previous generations of members to deliver in

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[13] House of Commons Public Bill Committee, 'Co-operatives, Mutuals and Friendly Societies Bill', 30 November 2022, session 2022–23, 1st sitting, cols 1–14.

[14] House of Commons, 'Co-operatives, Mutuals and Friendly Societies Bill: Committee stage decisions', 30 November 2022.

[15] HC Hansard, 24 February 2023, cols 412–27.

service of their members and wider society" and had the government's support. He confirmed the government would soon bring forward legislation to amend the Building Societies Act 1986 and that it was having "active discussions" with the Law Commission about reviewing the legislative framework governing cooperative, community benefit and friendly societies.

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