

Guidance for Association Committees - Winding up, Transfer of Assets & New Memberships and Shareholding.

The Committee should propose that all the business and assets of the current Association are transferred to the new Coop Society/Company and that all the existing members of the Association are invited to make an application to become shareholders in the new Coop Society or members of the new Company so that use of their current plot(s) can continue uninterrupted. Following the transfer, the existing Association will be dissolved at the appropriate time.

There is a specific process to be followed and is achieved in the following way:

1. Current members of the Association vote, either at AGM or EGM, to agree that the assets (and any liabilities not settled) of the Association should be transferred to the new Coop or Company, and after the transfer the Association should be dissolved. *They also vote to agree a change in the current constitution to allow the transfer to happen where there is no such provision or process for winding up or transfer of assets.* (See 6. Below)
2. The Coop/Company will be formed with (ADD NUMBER) first signatories / directors and these will be either part or the whole of the first Management Committee. All shareholders / members of the new Coop/Company may stand for election to the Management Committee at the first and subsequent AGMs.
3. Each member of the current Association effectively -
 - a. gives the power to two officers of the current committee to sign the Business Transfer Agreement on their behalf (by way of a power of attorney); and
 - b. makes an application to the Coop/Company to become a shareholder/member. (See 7. And 8. below)
4. The initial Management Committee/Directors of the Coop/Company resolve to:
 - c. approve new Rules for the Coop or Articles of Association for the Company, which reflect the Association's business as an Allotment Association as far as possible.
 - d. approve the applications for shareholding /membership of each of the Association members.
5. The Association and Coop/Company enter into an agreement to transfer the assets (and any remaining liabilities) of the Association to the Coop/Company in a manner prescribed in law.
6. Some Associations have constitutions that make specific mention of how to wind up and what happens to remaining assets; some do not.

For example, St Clement's & District Association Constitution contains the following: -

3.10. The Association may be dissolved at any time by a vote carried by at least three quarters of the members present and voting at a specially convened meeting (or AGM). Upon dissolution, any liabilities of the Association must be paid and assets remaining will be given (transferred) to such organisation(s) having similar objectives to the Association as the members decide on. In no circumstances shall the members receive any share of the remaining assets.

For the purposes of completing the transfer of assets (and any liabilities not settled), Associations can rely on wording such as this or similar, if it already exists. Where there is nothing in the current Constitution, members should first vote to approve the necessary amendment that enables the remaining business of winding up the Association.

7. Transfer of Assets.

The likely elements or items held as assets will include cash or other financial holdings/investments; tools and other horticultural equipment; seeds, fertilisers and other items bought and stored for re-sale to members. In some cases, buildings or structures like polytunnels owned by the Association may also represent 'asset value' and may be added.

Don't forget where cash is held in Bank /Building Society Accounts and with any other holdings/investments, there will a separate process of closing old accounts and opening new ones in the name of the Coop or Company. Check if any charges might be made by the holding organisation; if so, this sum should be subtracted from the total transfer amount/value.

For the purposes of 'valuing' each asset type the following should apply :-

Cash – face value less any account charges.

Investments - current market value less any account charges

Tools & equipment - purchase cost less annual depreciation. Assume 5 year life for heavy-use items; so reduce value by one fifth for each year since purchase. Items older than 5 years have no book/transfer value.

Seeds, fertilisers etc - Suggest using the cost of purchase rather than potential added value at sale, as any 'profit' should be shown in the accounts for the year of sale.

Communal/trading sheds, polytunnels - treat as equipment but assume 10 year life.

(NOTE - Replacement costs are not relevant in terms of asset value in the accounts; this is where building up a specific equipment capital reserve would be relevant.)

Any of the above that apply, together with their given value, should appear on the Asset Transfer Agreement moving them from the current Association to the new Coop / Company Accounts.

If a Coop/Company recognised any of the non-cash categories, then Net Assets would be cash + assets at net book value (however calculated), less any liabilities eg unpaid bills.

8. New Memberships - Companies.

With the new Company set up and the transfer completed, irrespective of the time of year and whether plot fees have already been paid, the committee must then invite applications from plot holders for membership of the Company. They must be sent the following documents for signing and return - failure to do so within X weeks of dispatch (give a definite date), will mean their membership is not confirmed and they will lose their plot(s) and forfeit the balance of fees paid.

- a. A form accepting membership of the new Company and agreeing to abide by its Articles and rules, and the provisions of any Lease and Rules issued by OCC.
- b. Either a separate form, or a sub-section of a. confirming that membership of the Company is declined, and accepting that this means surrender of the plot(s) held and no refund of fees paid.
- c. A copy of the new Plot Holder Agreement, to be signed and returned.

You should also notify members where they can see/inspect a copy of the Company's Articles & Memorandum of Association and the full Lease & Rules from OCC - either on a website or by contacting a committee member.

9. New Memberships – Coop

If a new Cooperative Society has been set up and the transfer has completed, the process is similar to that above in 8. but differs in key respects because Coops must issue Shares and plot holders can only become members and retain their plot(s) by becoming Shareholders, paying the additional cost of at least 1 Share.

In this case the following process and documents will be required.

Irrespective of the time of year and whether plot fees have already been paid, plot holders must be sent the following for signing/return and payment.

- a. A form applying for membership of the new Coop and agreeing to purchase (at least) one Share at the price notified - give details of payment methods and deadline for completion. The same form can include that membership means agreeing to abide by its Rules, and the provisions of any Lease and Rules issued by OCC.
- b. Either a separate form, or a sub-section of a. confirming that membership/Shareholding of the Coop is declined, and accepting that this means surrender of the plot(s) held and no refund of fees paid.
- c. A copy of the new Plot Holder Agreement, to be signed and returned.

You should also notify members where they can see/inspect a copy of the Coop's Rules and the full Lease & Rules from OCC - either on a website or by contacting a committee member.

(NOTE – The legal position is clear; a new Coop Society has to issue shares, that are non-transferable and non-refundable, at a single price to be declared on formation. Coop Rules allow for different classes of membership, but anyone wishing to be a member and continue (or start) as a plot holder, must purchase one share.)

A company limited by guarantee does not issue shares and there is no cost to membership per se.

Annual plot fees and any other fees or costs recoverable by a Coop from its membership are separate and additional.

[The following papers and legal documents to be attached:

1. Notes explaining the process required – as per sections above
2. Transfer Agreement between the Association and the Coop/Company. The Transfer Agreement is a formal document transferring the assets (and any liabilities) of the Association to the Coop/Company.
3. The Motions to be voted on at the AGM/AGM.
4. Form or Forms to be returned to Committee by specific date either applying for or declining Membership of the Company/Membership & Share in the Coop. In the latter case, payment details should be included.
5. The new Plot Holder Agreement between individual and new Company/Coop – for signing and return
6. Proxy Voting form for use when AGM/EGM attendance is not possible - to be signed and returned by a date no fewer than 5 days before the date of the meeting.

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