

Lerryn Area Minibus Association (LAMA) Constitution Overview

History

- 1987 LAMA Ltd registered with Companies House (Company No: IP25759R: <https://find-and-update.company-information.service.gov.uk/company/IP25759R>) and with the Industrial and Provident Societies Act 1965 (Register No: 25759R), and with its rules being based on the National Advisory Unit for Community Transport Model C.T.O. (1).
- 1998 LAMA rules para 14 amendment to ease audit requirements registered with the Industrial and Provident Societies Act 1965 (Register No: 25759R).
- 2014 The Co-operative and Community Benefit Societies Act 2014 replaces the Industrial and Provident Society Act 1965 (<https://www.fca.org.uk/firms/registered-societies-introduction/co-operative-community-benefit-societies-act-2014>) and LAMA becomes a 'Pre-Commencement Society' (generally referred to as a 'Registered Society' - <https://www.fca.org.uk/firms/registered-societies-introduction>). The Financial Conduct Authority (FCA) becomes the registering authority for Registered Societies with responsibility for compliance (not regulation). LAMA's registration is transferred to the FCA's Mutuals Public Register (<https://mutuals.fca.org.uk/Search/Society/20730>).

References

- Aug 1987 Rules of Lerryn Area Minibus Association Ltd (<https://mutuals.fca.org.uk/Documents/Download/409994>).
- Nov 1998 Partial Amendment to Rules of Lerryn Area Minibus Association Ltd (<https://mutuals.fca.org.uk/Documents/Download/409996>).
- Aug 2000 Charity Commission guidance on the provision of facilities for recreation and other leisure-time occupation under the Recreational Charities Act 1958, Section 1 (<https://www.gov.uk/government/publications/the-recreational-charities-act-1958-rr4>).
- Sep 2013 Charity Commission guidance about charitable purposes (<https://www.gov.uk/government/publications/charitable-purposes/charitable-purposes>).
- Nov 2015 Financial Conduct Authority guidance on their registration function under the Co-operative and Community Benefit Societies Act 2014 and on the legal obligations and relevant legal processes for Registered Societies (<https://www.fca.org.uk/publication/finalised-guidance/fg15-12.pdf>).
- Mar 2018 Financial Conduct Authority guidance on changes to audit requirements for registered societies (<https://www.fca.org.uk/firms/registered-societies-introduction/changes-audit-requirements-registered-societies>).
- Jun 2021 Financial Conduct Authority Information Note Regarding Co-operatives and Community Benefit Societies and Societies registered under the Industrial and Provident Societies Act 1965 (<https://www.fca.org.uk/publication/finalised-guidance/industrial-provident-societies-guidance-note.pdf>).
- Nov 2021 Financial Conduct Authority guidance on the submission of annual returns and accounts by Mutual Societies (<https://www.fca.org.uk/firms/annual-returns-accounts-mutual-societies>).

Key Aspects Relating to Registered Societies

Mutual Societies

Mutual societies (often referenced simply as “societies”) are owned and democratically controlled by their members and usually aim to benefit members of the community. There are more than 10,000 mutual societies in the UK. These include:

- Building Societies.
- Friendly Societies.
- Credit Unions.
- Registered Societies (including co-operative and community benefit societies, formerly known as “industrial and provident societies”). LAMA is a registered society and was formerly an industrial and provident society.

Role of the Financial Control Authority (FCA)

The FCA is the registering authority for registered societies. This role is different and separate from their role as a regulator of financial services. They do not regulate societies. Societies are regulated by the Co-operative and Community Benefit Societies Act 2014. FCA’s role relates to a society’s compliance with the Act. They do not regulate the business, financial stability or conduct of societies. Instead, their role involves:

- Assessing applications from new societies for registration.
- Assessing and registering rule amendments, resolutions and other documents.
- Checking that societies are complying with the Act.
- Taking action against societies that do not comply with the Act.
- Deregistering societies.
- Keeping a public register of societies.

Effect of Registration

The main benefits of registering as a society under the Co-operative and Community Benefit Societies Act 2014 include:

• **Corporate Body Status:**

- The society is a legal person. It can act, hold property, sue and be sued in its own name.
- It has ‘perpetual succession’. This means a society continues to exist even if its membership changes, unless it stops being registered.

• **Limited Liability:**

- Members are only personally liable for the share capital they hold in the society and the amount of any share capital they have not yet paid for (LAMA’s rules require members to each purchase one share only at a nominal value of £1).
- Anyone can check that the society is a registered society under the Act and see any other information we receive from the society under the Act by searching the public register we keep.

- Members are not liable for any debts, contracts and other liabilities the society has taken on.
- The officers of the society can be prosecuted if they breach their duties under the Act.

• **Other Effects of Registration:**

- The rules of a society are binding between the society and its members.
- The society's board can make, change or end contracts on behalf of the society.
- The society can recover debts that members owe it in court (LAMA members are unlikely to incur any debts from being a member).
- If a member owes the society any money then the society can set the value of a member's shares against their debt (not really applicable as LAMA members each hold only one nominal value share).
- All the forms needed to submit applications under the mutual legislation are available online (<https://www.fca.org.uk/firms/mutual-societies-forms>).

Society Rules

Societies must have rules which include a broad list of specific items that are specified in the Co-operative and Community Benefit Societies Act 2014. LAMA's Rules were based on a model set of rules that were approved for use under the Industrial and Provident Societies Act 1965. The Co-operative and Community Benefit Societies Act 2014 consolidated previous industrial and provident society legislation, including the Industrial and Provident Societies Act 1965, and LAMA's Rules continue to remain valid.

Societies must register rule amendments with the FCA. A society can only start using the new rule when the FCA have registered and confirmed the rule amendment.

Objects

Societies must have an 'objects' rule. The 'objects' describe and identify the purpose for which the society has been set up. Objects rules can be broad, but not so vague that they are meaningless in practice.

Name

A society's name must stay the same unless the FCA register a change. The last word in the name of every society must be 'limited' unless the FCA are satisfied that the society's objects are wholly charitable or benevolent. The use of the word "Association" requires LAMA to be run on a non-profit basis with rules preventing profit distribution to its members.

Community Benefit Society

Although LAMA is a Pre-Commencement or Registered Society, were it to be registered now, it would be a "Community Benefit Society" and it would need to satisfy the FCA that its "industry, business or trade" was being conducted for the benefit of the community. However, the society does not need to be wholly charitable or benevolent, unless it chooses to be. Registration as a community benefit society does not allow for an alternative secondary purpose that does not benefit the community. Additionally:

- **Membership.** All community benefit societies must have members who hold shares in the society. Societies should be run democratically on the basis of one-member-one-vote.
- **Application of Profits.** Any profit made by a community benefit society must be used for the benefit of the community.
- **Use of Assets.** Community benefit societies must only use their assets to benefit the community.

Shares

Registered Societies are limited by shares. All societies must have share capital. LAMA's total share capital is of nominal value only. LAMA raises its capital from fund-raising, donations and grant applications. LAMA's shares are neither withdrawable nor transferable, meaning that members have no right to withdraw and receive in return the value of their share and members cannot transfer their share to another person. If someone ceases to be a member of LAMA, their share is forfeited and cancelled.

Accounting and Audit Requirements

Every society must keep proper books of account giving a true and fair view of the state of the society's affairs and explaining its transactions. Societies are also required to maintain satisfactory systems of control of their books, cash holdings and receipts, and payments.

Societies must submit their annual return and accounts to the FCA within seven months of the society's financial year-end (LAMA's year end is 31st December); this may be done online via the FCA's Mutual Society Portal (<https://www.fca.org.uk/firms/online-mutual-society-portal>). Every society's annual return is available for public inspection on the FCA Mutuals Public Register (<https://www.fca.org.uk/firms/mutuals-public-register>).

Every society is required to appoint one or more qualified auditors to audit its accounts and balance sheets for each year of account. However, some societies may disapply this requirement if the value of their assets in the previous year was below £5.1m, their turnover was below £10.2m and their membership votes at a general meeting to disapply the requirement. LAMA's rules allow for it to take advantage of this. To disapply the requirement to appoint a qualified auditor, LAMA members must pass a resolution at a general meeting. The resolution will pass if less than 20% of the votes cast are against it and less than 10% of all members entitled to vote cast a vote against it.

- If this resolution is not passed, the society must have a full professional audit.
- If this resolution is passed, it only operates for one year of account. Consequently, a society must pass a resolution in each year of account it wants to opt out of the full audit requirement. So, as LAMA's financial year-end is 31 December, it must pass the disapplication resolution before 31 December.
 - If a society chooses not to have a full audit from a qualified auditor they must, if their turnover was over £90,000 in the preceding year of account, appoint a qualified auditor to prepare a report on the accounts and balance sheet. The report must state whether, in the opinion of the qualified auditor making the report:
 - The accounts to which the report relates and the balance sheet are in agreement with the books of account kept by the society.
 - On the basis of the information contained in the books of account, the statutory account complies with the requirements of the Act.
 - The financial criteria allowing the production of a report instead of a full audit have been met.
 - A society can appoint two or more lay auditors instead of a qualified auditor if, in its preceding year of account, it had turnover of less than £5000, assets of less than £5000 and fewer than 500 members. Unfortunately, the value of LAMA's minibus will likely always exceed this threshold and so this relaxation is not available to LAMA.
 - If the membership vote for unaudited accounts, the society's income/expenditure ledger shall be scrutinised by the secretary and committee members only and signed, as a true record, by the secretary and two committee members or any other number as may be

required by legislation. An income/expenditure report will be prepared to present to the society's members at each Annual General Meeting.

Obligations

Once a society is registered it must:

- Have at least three members.
- Inform the FCA of any change to the registered office address.
- Maintain a register of members.
- Maintain accounts, submit annual returns and inform the FCA of financial year-end changes.
- Register any rule changes with the FCA.
- Display its registered name conspicuously and legibly:
 - Outside its registered office and in every other place where it carries out its business.
 - In all of its notices, advertisements and other official publications.
 - In all of its business correspondence, bills, orders and other business documentation.
 - On all its websites.

Duties of Directors

Directors should act prudently, lawfully and comply with the society's rules. They should use their powers only for the purpose they were given. Directors have a duty to bring to the role of director the skills that they have and the skills reasonably required to perform the role.

The Company Directors Disqualification Act 1986 applies to society directors. This means that directors can be disqualified, either by court order or by binding legal undertaking, from serving as a director of, or otherwise managing, a society, company or other corporate body. The grounds for disqualification include persistent breaches of the Act's requirements (eg, by failing to submit annual returns to the FCA, being convicted of an offence involving a society, unfit behaviour involving the insolvency of a society and fraud.

Legal Processes

Special processes exist for societies to change their constitutions, including: recording a charge, transfers of engagement, amalgamations, conversion to a company, arrangements and reconstructions, company voluntary arrangements, administration, winding up, dissolution and cancellation of registration.

These processes will likely require a special resolution with particular quorum and voting requirements. They will also need to be in accordance with each society's rules. Any changes will need to be registered with the FCA which will likely require specific declarations. These processes are explained in detail in the FCA's guidance on their registration function under the Co-operative and Community Benefit Societies Act 2014 and on the legal obligations and relevant legal processes for Registered Societies document.