



Frequently Asked Questions: New Societies Act Transition

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About Transition

What is transition?

Answer: Transition means moving your society's bylaws and constitution onto the new electronic filing system.

Will our society be required to file online?

Answer: Yes, incorporation and other maintenance filings such as annual reports and changes to directors and registered office addresses will be filed online. However, some of the low volume, complex filings will remain as paper filings.

Who do I contact to get copies of my society's documents?

Answer: A transition package is available to help societies complete their transition.. The package consists of certified copies of the constitution, bylaws, and any amendments for a flat fee of \$40. Or if you prefer, you can order a certified copy of your constitution and bylaws and any amendments through the Registries' search department. The fee is \$35 plus .50 cents a page. For information on how to order a copy please contact the search department at 1-877-526-1526.

Is there a fee to transition?

Answer: There is no fee to transition.

I won't have internet access to complete online filings, what do I do?

Answer: You can either visit your public library, an internet café, or a Service BC location to complete your filings. Alternatively, you can hire a lawyer or other service provider to complete filings on your behalf.



I am concerned about filing online. How secure will that be?

Answer: Government standards provide the same level of security as internet banking. See the following information:

<http://www2.gov.bc.ca/gov/content/governments/services-for-government/information-technology/standards>

If I don't have a credit card, how will I pay for online filings?

Answer: Paying by pre-authorized debit is also an option.

Four Types of Societies with Special Rules

Are there any special rules that my society should be aware of as it prepares for transition?

Answer: Yes. There are 4 types of societies that need to be aware of special rules:

- 1. Societies with unalterable provisions.** If your society currently has an unalterable provision in its constitution, this provision will have to be included, word for word, into the set of bylaws that will be uploaded into the transition application. The bylaw provision must be marked as “previously unalterable” and cannot be amended until after your society has transitioned. Even after transition, there may be restrictions on changing previously unalterable provisions. Some societies [see section 18 of the Societies Regulation] require the prior consent of a government body or other funder to alter a previously unalterable provision. For example, societies that are receiving or have received money or other property from the British Columbia Housing Management Commission may not alter their previously unalterable provisions without the prior written consent of the Minister responsible for Housing. Any society with an unalterable provision imposed by a funder, even if not listed in section 18 of the Regulation, should seek the consent of the funder before amending that provision because an unauthorized alteration could impair funding arrangements.
- 2. Societies that wish to be member-funded societies.** If your society wishes to become a member-funded society on transition, it will have to pass a special resolution authorizing this choice of status **before** the transition application is filed. The member-funded society statement (which will be included in the society’s constitution automatically if member-funded status is chosen) is intended as a public notification of the nature of the society. Member-funded societies are subject to slightly less regulation than ordinary societies, but may be ineligible for public funding (for example, they will NOT be eligible for community gaming grants). A society that receives a significant amount of public funding cannot become a member-funded society [see section 191(2)(a) of the *Societies Act* and section 12 of the Societies Regulation]. As well, some societies are disqualified from becoming member-funded societies regardless of the amount of public donations or government funding they receive. For example, registered charities, designated recipients of provincial sales tax revenues, student societies and hospital societies cannot be member-funded societies [see section 191(2)(b)-(e) of the *Societies Act*]. Housing societies funded by the British Columbia Housing Management Commission, and some community living service providers and independent schools, are also prohibited from adopting member-funded status [see section 13 of the Societies Regulation]. **Please consult the legislation carefully before becoming a member-funded society and seek legal advice if in doubt.** Members of societies



considering adopting member-funded status, even if not covered by section 191(2) of the *Societies Act* or sections 12 or 13 of the Societies Regulation, should consider other factors such as their future ineligibility for community gaming grants.

- 3. Reporting societies.** If your society is a reporting society under the current Act, a prescribed set of reporting society provisions (RSPs) will have to be included, word for word, in the set of bylaws that will be uploaded into the transition application. The RSPs are available on Registries' website for this purpose. The RSPs cannot be amended until after your society has transitioned. A special resolution is required, but there are no other restrictions set out in the legislation. However, since some of the RSPs contain significant obligations (e.g. the requirement to have financial statements audited), societies with RSPs may wish to consult with funders and/or seek legal advice before changing or removing them. **Note:** Only about 1% of societies are "reporting societies". (A society is not reporting just because it files annual reports with Registries.) Registries staff can confirm whether your society is designated as a reporting society on the societies register.
- 4. Occupational title societies.** If your society is an occupational title society (OTS) under the current Act, the bylaws that are uploaded into the transition application must **not** include any alterations to the provisions that are required for OTS status [see sections 206, 207 and 243 of the *Societies Act*]. After transition, the OTS may amend these provisions, but only by special resolution and with the consent of the Registrar. The Registrar may cancel a society's OTS status if it files a transition application that includes alterations to these bylaw provisions or alters them later without consent.

Member-funded Societies

What is a member-funded society?

Answer: A member-funded society is a society that is primarily funded by its members to carry on activities for the benefit of its members. A member-funded society is a society that chooses to include the following statement in its constitution:

This society is a member-funded society. It is funded primarily by its members to carry on activities for the benefit of its members. On its liquidation or dissolution, this society may distribute its money and other property to its members.

A member-funded society is subject to less regulation under the new Act. For example, a member-funded society need only have one director, need not give the public access to its financial statements, and can distribute its assets to its members when it dissolves. Becoming a member-funded society is a choice that requires consideration and authorization by special resolution of the members, as it may affect a society's public profile and/or funding. (A society is not a member-funded society just because it is funded by membership dues.)



The Transition Guide says that a society cannot be a member-funded society if it receives approximately \$10,000 per year in public donations. Do gifts in kind count as part of the “public donation” calculation?

Answer: Yes. Unless a gift in kind donation is made by a voting member, director, senior manager or employee, or a spouse or relative of such person, it counts as a public donation and should be counted in the calculation of whether the society has taken in more than the prescribed amount of public donations.

The Transition Guide says that a society cannot be a member-funded society if it receives approximately \$10,000 per year in government funding. Does income received under a government contract count as part of the “government funding” calculation?

Answer: No. Income received under service contracts or other contracts need not be counted. “Government funding” only captures grants, interest free loans and similar funding – it does not cover fees that societies earn.

If a society becomes a member-funded society, will this affect its eligibility for government grants or other public funding?

Answer: Yes. Funding decisions are made by funding agencies themselves, so it is impossible to be definitive. However, the Ministry of Community, Sport and Cultural Development has indicated that it **will not** provide community gaming grants to societies that adopt member-funded status. Of course, a society that is a registered charity is not even eligible to become a member-funded society.

Do we have to become a member-funded society if we meet the definition of member-funded society?

Answer: No. A society makes the choice to become a member-funded society; the Act only sets out the qualifications to become a member-funded society, should the society wish to become one. Just because your society is funded by its members (e.g. by membership dues) does not mean it must become a member-funded society.

Our society qualifies to be a member-funded society, but our constitution currently contains an unalterable provision that requires our society’s assets to be distributed to a certain charity if our society is dissolved. If we want to retain this provision, can we still be a member-funded society?

Answer: Yes. Member-funded societies that are dissolving are free to distribute their remaining assets as they wish, so long as they do so in accordance with section 124(1) (after payment of debts) and 199 (as set out in their bylaws or, if there is no bylaw provision, by resolution). Member-funded societies are not subject to the additional restraints applicable to societies generally (i.e. the requirement to distribute only to registered charities or other asset-locked entities, as set out in section 124(2)). However, that does not mean that a member-funded society could not choose to require that its assets be distributed more restrictively – e.g., to a charity. Similarly, a member-funded society could have a bylaw stating that it must have 3 directors, even though the Act only requires one director for member-funded societies.



When can a society hold a meeting to pass a special resolution approving it becoming a member-funded society?

Answer: At any time. Societies may meet and pass a special resolution now to authorize a change to its bylaws or to resolve to become a member-funded society when the society transitions to the new Act. Every society will be required to choose to be a member-funded society – or not – on transition. After transition, a society can only adopt member-funded status with court approval. Therefore, a society that wishes to become a member-funded society must pass a special resolution authorizing that choice **before** it files its transition application in order to avoid the need to later obtain a court order approving the member-funded society designation.

Bylaws

If the bylaws of a society already align with the new Societies Act, does the society have to transition?

Answer: All pre-existing societies must transition. Transition relates to the entry of information into the new electronic database. It is not concerned with whether bylaws “comply” with the new Act, in the sense of whether they are consistent with its requirements. There are very few changes that would put a society’s bylaws offside the new Act and, in any event, if there is a conflict the new Act clarifies that an offside bylaw has no effect. Transition simply requires filing your existing bylaws and constitution in an electronic and consolidated format. That is, the society must update its original set of bylaws to reflect any special resolutions that made amendments to them over the years and, if the society has provisions in its constitution other than its name and purposes, it will have to move these provisions into its bylaws.

How do I know if my society’s constitution and bylaws are up to date?

Answer: If you are not sure what records are on file with Registries, please contact us at 1-877-526-1526.

What do we do with the extra provisions that we move into our bylaws?

Answer: They can be fitted into your bylaws with provisions having similar subject matter, or they can be inserted all together at the end of your bylaws. If any of the provisions were previously unalterable provisions, they must be identified as such. A statement such as the following could follow immediately after a particular bylaw: “This provision was previously unalterable.” Alternately, a statement such as the following could be inserted at the end of the bylaws. “Bylaws X and Z were previously unalterable provisions.”



The Transition Guide says that both the current Schedule B Bylaws and the Model Bylaws are available on the Registries website for use. Can you provide any direction on which set my society should use when it transitions?

Answer: The Model Bylaws are a complete rewrite of the existing Schedule B Bylaws. They are intended to provide a simple framework of basic procedural rules mainly for the convenience of new societies when they incorporate. They can be downloaded for use 'as is', or altered or amended so that they reflect the specific needs of a particular society. The Model Bylaws could also be uploaded as a part of a pre-existing society's transition application (if the society obtains a special resolution of its members approving the change from its existing bylaws). A society that would like to use the Model Bylaws as a starting point, but still wants to retain some of the Schedule B Bylaws (e.g., the restrictions on borrowing), could incorporate the older provisions into the set of bylaws that its members approve. Alternately, a society could simply transition with its current bylaws (which may be, or may be based on, Schedule B), and make any changes later on. A society does not need approval by special resolution in order to transition with its current bylaws.

Are the Model Bylaws suitable for my society?

Answer: The Model Bylaws are new, so should be reviewed carefully by any society that is considering using them as a template for their bylaws. Societies can choose to use whichever provisions of the Model Bylaws work for them. For example, the Model Bylaws contain a quorum rule (3 voting members or 10% of the voting members, whichever is greater), which may not be suitable for large societies, in particular. A society with many voting members may wish to replace this provision with one that better meets its needs or say nothing in its bylaws about quorum and rely on the Act's default (unless the bylaws provide for a higher number, 3 voting members constitute quorum).

The new Act allows societies to adopt higher thresholds (than that required for a "special resolution") in order to effect certain actions. Does this allow a society to adopt a higher threshold for some (but not all) bylaw amendments?

Answer: Yes. A society could pick the bylaws that it wishes to be subject to a higher voting threshold. For example, the bylaws of a society could require a unanimous vote to change the bylaw that sets out where the society's assets are to go on dissolution, while retaining the normal "special resolution" threshold (2/3) for other bylaw amendments. A society that wishes to do this must ensure that the higher threshold is itself clearly stated (as a number, % or formula, or unanimity) and that the bylaw or bylaws that the higher threshold applies to are clearly identified. It should be easy to figure out, just by reading the bylaws, exactly what kind of vote is required and when.

The name of the Act has changed from the Society Act to the Societies Act. Does this mean our society has to change the references in our bylaws to use the new Act's proper name?

Answer: No. This is not necessary from a legal standpoint. However, at some point, when your society is making other, more significant amendments to its bylaws, you may want to update the name of the Act as well.



Unalterable Provisions

At what point can a society hold a vote to alter a previously unalterable provision in its bylaws?

Answer: Unalterable provisions will, on transition of a society, become “previously unalterable provisions” (PUPs) and only then can they be altered by special resolution. PUPs cannot be amended or adjusted until after this time. That is, a society must complete transition before its members can resolve to change any PUPs it previously had in its constitution. To give an example, if a society files its transition application at noon on Dec. 3, 2016, it cannot hold a vote to alter or adjust a PUP until 12:01 on that date, and the Registries filing system will not accept a bylaw alteration application indicating a resolution passed at an earlier date or time. The two-step process (transition, then amendment) required for PUPs is intended to ensure that members have the opportunity to consider any amendments to these important, and previously ironclad, provisions by requiring that the vote occur after transition.

Our society has important unalterable provisions. What can we do to make sure that these provisions cannot be changed by a mere 2/3 vote?

Answer: The new Act allows a society to adopt a higher voting threshold for special resolutions to amend some or all of its bylaws. A society could use this power to adopt a very high resolution threshold, such as unanimity, to alter a previously unalterable provision (PUP) that the society considers to be fundamental to its operations. To authorize a higher voting threshold than the default 2/3 threshold for special resolution under the new Act, the society’s bylaws must express the higher threshold by specifically requiring a certain fraction or percentage or number of votes, requiring a unanimous vote or setting out a formula for calculating the higher threshold. Societies must transition before their members can resolve to change a PUP, including a resolution to put in a higher threshold. A society that wishes to ensure that a PUP cannot be altered by a lower threshold may therefore want to vote to approve the higher threshold as soon as possible after the society transitions. For example, it would be possible to transition in the morning and then hold a meeting to alter the bylaws later the same day to make a PUP alterable only by a unanimous vote.



Funding

If a pre-existing society transitions as required by the new Societies Act, will that affect the society's qualifications for a community gaming grant from the Ministry of Community, Sport and Cultural Development?

Answer: Basic transition requires that a society move provisions other than its name and purposes from the constitution to the bylaws, marking any previously unalterable provisions as such and, if applicable, inserting the reporting society provisions into the bylaws. If a society does this, and makes no other changes to its bylaws on transition, then no, transitioning alone will not affect a society's ability to qualify for a community gaming grant. However, please be aware that if a society chooses to become a member-funded society upon transition, the society will not be eligible for community gaming grants after transition. As well, other amendments to the society's bylaws that are made on transition may affect eligibility if they do not comply with community gaming grant guidelines.

How does being a member-funded society impact a society's eligibility for gambling event licences?

Answer: A member-funded society will still be eligible to hold charitable gambling events, but the kinds of gambling event licences it can apply for will be more limited.

A member-funded society may remain eligible for a Class A or B gambling event licence, with one difference. A member-funded society must apply as a community fundraising group and donate funds generated with a Class A or B licence to an eligible third party whose services provide a direct community benefit within B.C. This is because member-funded societies are not operated primarily for charitable purposes and, as a result, do not meet the eligibility criteria to use gambling funds for their own programs or services.

Becoming member-funded will not affect a society's eligibility for a Class D gambling event licence.

Those interested in obtaining more information on gambling event licences may contact the Gaming Policy and Enforcement Branch at 250-387-5311, or at 1-800-663-7667, or at Gaming.Branch@gov.bc.ca.

Do societies receiving community gaming grants need pre-approval from the Ministry of Community, Sport and Cultural Development to amend their bylaws on or after transition, or to adopt member-funded society status?

Answer: The Ministry of Community, Sport and Cultural Development does not review or approve a society's bylaws either during or after transition. Societies that amend their bylaws on or after transition will remain eligible for a community gaming grant, as long as they continue to comply with the community gaming grant guidelines:

<https://www.gaming.gov.bc.ca/grants/docs/guide-cgg.pdf>

The rules are different for societies that adopt member-funded status – a society that chooses to become a member-funded society upon transition will not be eligible for community gaming grants.



If a pre-existing society transitions as required by the new Societies Act, would the society be offside Canada Revenue Agency’s charitable registration or designation requirements?

Answer: Basic transition requires that a society move provisions other than its name and purposes from the constitution to the bylaws, marking any previously unalterable provisions as such and, if applicable, inserting the reporting society provisions into the bylaws. If a society does this, and makes no other changes to its bylaws on transition, then the answer is no.

Societies wanting to make changes to their bylaws on or after transition should visit: <http://www.cra-arc.gc.ca/chrts-gvng/menu-eng.html> and view ‘Change my charity’s information’ to update the Charities Directorate on the changes.

Directors

The new Act sets out qualifications for directors (and senior managers), including that they have not been recently convicted of a criminal offence involving fraud. Does this mean that the society must obtain a criminal record check for each director?

Answer: No. The requirement that directors (and senior managers) meet certain basic qualifications is a standard one, and has applied to other corporations for many years. Ensuring that qualifications are met is an obligation of the would-be director, not of the society. A director who is not qualified or ceases to be qualified under either the Act or the society’s bylaws must promptly resign. An individual who acts as a director and who is not qualified under the Act commits an offence.

What distinguishes a senior manager from a director?

Answer: A director is an individual elected or appointed to the position according to the bylaws of the society. Once elected or appointed, the director’s name and contact information must be recorded in the directors’ register that the society is required to keep at its registered office. A director may be removed by special resolution of the members or other method set out in the society’s bylaws. A director’s term of office is from one annual general meeting until the end of the next annual general meeting, unless the bylaws set out a different term. Directors may not be remunerated for acting as directors unless the society’s bylaws allow this (this rule does not come into effect until November 28, 2018 to allow existing societies to make adjustments to their bylaws, if necessary). Unless the bylaws provide otherwise, the directors of a society may appoint senior managers to exercise the directors’ authority to manage the activities and internal affairs of the society as a whole or in respect of a principal unit of the society.

The membership of a society could prohibit the appointment of senior managers. Senior managers take on the duties that are delegated to them by the directors, but the directors remain responsible to the society and may remove the senior managers. A director may be a senior manager, unless the society’s bylaws provide otherwise (and so long as the society is not offside the new *Societies Act* rule that requires that the majority of the board of directors not be comprised of individuals that are remunerated by the society as employees or contractors).



A society (other than a member-funded society) must include, in its financial statements, disclosure of the amount of “remuneration” paid by it to its directors (as well as to its highest paid employees/contractors who make \$ 75 000 or more). Does “remuneration” include benefits such as pension contributions and healthcare premiums?

Answer: Yes, generally. The term “remuneration” is not defined in the Act but, based on its ordinary meaning, it will generally include any amount paid which personally benefits the individual (including such things as salary, fees, bonuses, car or housing allowances, gifts, honoraria). As such, payments by a society as contributions to an individual’s pension plan, or as premiums for an individual’s medical, dental or other benefits, are also remuneration. If a society is unsure whether certain payment or benefit arrangements are remuneration, it may wish to seek legal advice and/or make it clear in its disclosure what has or has not been included.

Meetings

How often do we need to hold an annual general meeting under the new Act?

Answer: Only once a year. This is quite different from the current Act, which requires a yearly annual general meeting to be held within 15 months of the previous annual general meeting. Under the new Act, the 15 month rule is gone. An annual general meeting could be held in January of 2017, and then not again until December of 2018 – resulting in a gap between meetings of almost 2 years. This change is intended to provide greater flexibility for societies. Of course, having annual general meetings spaced widely apart is probably not appropriate for most societies given the need to report out to members and make collective decisions.

The new Act requires that notice of a general meeting be “sent” to every member. Is there any way that we can provide notice without having to actually send it to each member?

Answer: Member democracy in societies requires effective notification of the date, time and location of a general meeting, as well as the text of any special resolutions to be considered at the meeting. The Act requires that notice be sent at least 14 days before the meeting (unless the bylaws provide for a lesser number of at least 7 days), but allows the bylaws to determine how sending can occur – e.g. the bylaws could provide for email transmittal to members who have email addresses and provide that the notice is available for pick-up at the society’s registered office for members that do not have email addresses.

Putting a notice up on a bulletin board, or in a weekly church service program, would not by itself fulfill the requirement to “send” notice, as there is no way to be sure that all members would receive the notice. However, these methods could certainly be used in addition to a manner of sending set out in the bylaws (such as email or pick-up) to ensure members are aware of the meeting. (As well, if a society has 250 or more members, publication on a website or in a newspaper can be used, so long as the society has also provided email notice of the meeting to every member who has provided an email address to the society.) If the bylaws do not specify a method for sending members notice of a meeting, then the notice would have to be mailed through the post, delivered to the member or, if the member has specified an email address or fax number for this purpose, emailed or faxed to the member’s email address or fax



number. Of course, the society and a member are always free to agree to some other means of sending on an individual basis.

Extraprovincial Societies

I represent an extraprovincial society that carries on some of its operations in BC. What do I have to do to transition the society to the new *Societies Act*?

Answer: Unlike societies that are incorporated here, there is no formal transition process for extraprovincial societies under the new Act. Extraprovincial non-share corporations (as they will now be called) that carry on activities in BC must register with the Registrar within 60 days of commencing activities in the province. If your ENSC is currently carrying on operations in BC but is not currently registered, you have 2 years -- until November 28, 2018 -- to register the ENSC. If your ENSC is already registered under the current *Society Act*, your registration will be automatically carried forward [see section 247 of the *Societies Act*]. Similarly, the attorney, if any, for a currently registered ENSC will be automatically carried forward. However, new attorney qualifications will apply [see section 170 (2) of the *Societies Act*]. If the existing attorney is not qualified, the ENSC has until May 28, 2017 or the date by which its annual report is due, whichever is later, to retain a qualified person as its attorney [see section 248 of the *Societies Act*].