

Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

**The Industrial and Provident Societies
(Northern Ireland) Order 2005**

*Made - - - - 2005
Coming into operation in accordance with Article 1(2)
and (3)*

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Industrial and Provident Societies (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of one month from the day on which this Order is made.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

(4) An order under this Article may contain such transitional provisions and savings as appear to the Department to be necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department of Enterprise, Trade and Investment;

“the principal Act” means the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

Amendments to the principal Act

Societies which may be registered

3. In section 1(2) of the principal Act (conditions for registration of an industrial and provident society), for paragraph (b) there shall be substituted the following paragraph—

“(b) that the business of the society is being, or is intended to be, conducted for the benefit of the community.”.

Capacity of society and power of committee to bind it

4. After section 7 of the principal Act (carrying on of banking by societies) there shall be inserted the following—

“Capacity of society and power of committee to bind it

Capacity of society not limited by its rules

7A.—(1) The validity of an act done by a registered society shall not be called into question on the ground of lack of capacity by reason of anything in the society’s registered rules.

(2) A member of a registered society may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the society's capacity, but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.

(3) It shall remain the duty of the members of the committee of a registered society to observe any limitations on their powers flowing from the society's registered rules; and action by the members of the committee which but for subsection (1) would be beyond the society's capacity may only be ratified by the society by special resolution.

(4) A resolution ratifying such action shall not affect any liability incurred by a member of the committee or any other person, and relief from any such liability may only be agreed to separately by special resolution.

(5) Section 7D shall have effect notwithstanding this section.

(6) In this section “special resolution” means a resolution passed by not less than three-fourths of such members of the society as (being entitled to do so) vote in person, or by proxy where the society's rules allow proxies, at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution, has been duly given according to those rules.

(7) A copy of every special resolution for the purposes of this section signed by the chairman of the meeting at which the resolution was passed and countersigned by the secretary of the society shall be sent to the registrar and registered by him; and until that copy is so registered the special resolution shall not take effect.

Power of committee to bind society

7B.—(1) In favour of a person dealing with a registered society in good faith, the power of the committee to bind the society, or authorise others to do so, shall be deemed to be free of any limitation under the society's registered rules.

(2) For this purpose—

- (a) a person “deals with” a society if he is a party to any transaction or other act to which the society is a party;
- (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the committee under the society's registered rules; and
- (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

(3) The references in section 7A and this section to limitations on the powers of the committee under the society's registered rules include limitations deriving—

- (a) from a resolution of the society in general meeting or a meeting of any class of members; or
- (b) from any agreement between the members of the society or of any class of members.

(4) Subsection (1) shall not affect any right of a member of the society to bring proceedings to restrain the doing of an act which is beyond the powers of the committee; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.

(5) Subsection (1) shall not affect any liability incurred by a member of the committee, or any other person, by reason of the committee's exceeding its powers.

(6) Section 7D shall have effect notwithstanding this section.

No duty to enquire as to capacity of society or authority of committee

7C. A party to a transaction with a registered society shall not be bound to enquire as to whether it is permitted by the society's registered rules or as to any limitation on the powers of the committee to bind the society or authorise others to do so.

Transactions with committee members and other persons in excess of powers

7D.—(1) This section applies where a registered society enters into a transaction to which the parties include—

- (a) a member of the committee of the society, or
- (b) a person connected with such a member or a company with whom such a member is associated,

and the committee of the society, in connection with the transaction, exceeds any limitation on its powers under the society's registered rules.

(2) The transaction shall be voidable at the instance of the society.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b), and any member of the committee who authorised the transaction, shall be liable—

- (a) to account to the society for any gain which he has made directly or indirectly by the transaction; and
- (b) to indemnify the society for any loss or damage resulting from the transaction.

(4) Nothing in this section shall be construed as excluding the operation of any other statutory provision or rule of law by virtue of which the transaction may be called in question or any liability to the society may arise.

(5) The transaction shall cease to be voidable if—

- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible; or
- (b) the society is indemnified for any loss or damage resulting from the transaction; or
- (c) rights acquired bona fide for value and without actual notice of the committee's exceeding its powers by a person who is not party to the transaction would be affected by the avoidance; or
- (d) the transaction is ratified by the society in general meeting in such a way as the case may require.

(6) A person other than a member of the committee shall not be liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the committee was exceeding its powers.

(7) This section shall not affect the operation of section 7B in relation to any party to the transaction not within subsection (1)(a) or (b) of this section.

(8) But where a transaction is voidable by virtue of this section and valid by virtue of section 7B in favour of such a person, the court may, on the application of that person or of the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

Definitions relating to section 7D

7E.—(1) In section 7D “transaction” includes any act; and the reference in subsection (1) of that section to limitations under the society's registered rules includes limitations deriving—

- (a) from a resolution of the society in general meeting or a meeting of any class of members; or
- (b) from any agreement between the members of the society or of any class of members.

(2) In section 7D(1) “company” has the same meaning as in the [Companies \(Northern Ireland\) Order 1986 \(NI 6\)](#).

(3) Article 354(2) to (8) of that Order (connected persons) shall apply for the purposes of references in section 7D(1) to a person's being “connected” with a member of the committee or to a member of the committee's being “associated with” a company, but shall so apply—

- (a) as if any reference to a director of a company were a reference to a member of the committee of a registered society; and
- (b) subject to such other adaptations and modifications as may be prescribed.

(4) In section 7D(8) “the court”, in relation to a registered society, means the court having jurisdiction to wind up the society under the provisions of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) as applied by section 64.”.

Purported contracts, deeds and obligations

5.—(1) After section 28 of the principal Act (contracts) there shall be inserted the following section—

“Purported contracts, deeds and obligations

28A.—(1) A contract which purports to be made by or on behalf of a registered society at a time when the society has not been registered under this Act shall have effect, subject to any agreement to the contrary, as one made with the person purporting to act for the society or as agent for it.

(2) A contract to which subsection (1) applies shall be treated—

- (a) as imposing on that person all the obligations it purports to impose on the society; and
- (b) as conferring on him all the rights it purports to confer on the society.

(3) Subsections (1) and (2) apply to the making of a deed as they apply to the making of a contract.”.

(2) In section 102 of the principal Act (Great Britain societies), after subsection (4) there shall be inserted the following subsection—

“(4A) In section 28A(1)—

- (a) the reference to a registered society includes a reference to a society registered under the law for the time being in force in Great Britain for purposes corresponding to those of this Act; and
- (b) the reference to this Act includes a reference to that law.”.

Execution of deeds and other documents

6.—(1) After section 28A of the principal Act (as inserted by Article 5 of this Order) there shall be inserted the following sections—

“Common seal

28B.—(1) Notwithstanding any statutory provision or rule of law, a registered society need not have a common seal.

(2) If a registered society has a common seal, the society shall have its registered name engraved on the seal in legible characters.

(3) If, after the coming into operation of subsection (1), a registered society decides to have a common seal, it shall not cause such a seal to be made unless the registered rules of the society contain provision for the custody and use of that seal.

(4) Section 71 shall not apply in respect of an offence committed by a registered society under section 70 where the offence consists of a failure to comply with subsection (2) or (3) of this section.

(5) Any officer of a registered society, or any other person acting on such a society's behalf, who uses or authorises the use of any seal purporting to be the common seal of the society which does not have the society's registered name engraved on it in legible characters shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Execution of documents

28C.—(1) The following provisions shall have effect with respect to the execution of documents by a registered society.

(2) A registered society may, if it has a common seal, execute a document by affixing that seal to it.

(3) A document—

(a) signed by a member of the committee of a registered society and the secretary of the society, or by two members of that committee, and

(b) expressed (in whatever form of words) to be executed by the society,

shall have the same effect as if it were executed under the common seal of the society.

(4) A document executed by a registered society which makes it clear on its face that it is intended by the person or persons making it to be a deed shall have effect, upon delivery, as a deed, and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

(5) In favour of a purchaser a document shall be deemed to have been duly executed by a registered society if it purports to be signed by a member of the committee of the society and the secretary of the society, or by two members of the committee, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

(6) Subsections (3) to (5) shall apply whether or not the society has a common seal, and, in subsection (5), “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.

Power of society to have official seal for use abroad

28D.—(1) This section shall apply to a registered society if—

(a) it has a common seal; and

(b) its objects require or comprise the transaction of business in foreign countries.

(2) The society may, if authorised by its registered rules, have an official seal for use in any territory, district, or place elsewhere than in the United Kingdom.

(3) An “official seal” is a facsimile of the society's common seal with the addition on its face of the name of every territory, district or place where it is to be used.

Effect of use of official seal

28E. The official seal of a registered society when duly affixed to a document shall have the same effect as the society's common seal.

Authorisation of use of official seal

28F.—(1) If a registered society has an official seal, it may authorise any person appointed for the purpose as respects any territory, district or place appearing on the face of that seal to affix it to any deed or other document to which the society is party there.

(2) An authorisation for the purposes of subsection (1) shall be given by writing under the society's common seal.

(3) As between the society and a person dealing with such an agent, the agent's authority shall continue—

- (a) if a period is mentioned in the authorisation, during that period; or
 - (b) if no period is there mentioned, until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.
- (4) The person affixing the official seal shall certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed.”.
- (2) In section 3 of the principal Act (registration to effect incorporation of society) there shall be omitted the words “a common seal and with”.
- (3) In subsection (6) of section 5 of the principal Act (name of society) there shall be omitted the words “engraved in legible characters on its seal and”.
- (4) In subsection (7) of that section—
- (a) paragraph (a) shall be omitted; and
 - (b) in paragraph (b) for the words “that name” there shall be substituted the words “the society's registered name”.
- (5) In section 102(4) of the principal Act (provisions which apply to Great Britain societies that have recorded their rules with the registrar), after “25 to 28” there shall be inserted “, 28B, 28C”.
- (6) For paragraph 13 of Schedule 1 to the principal Act there shall be substituted the following paragraph—

“13. If the society is to have a common seal, provision for its custody and use.”.

Conversion into, or transfer of engagements to, a company

7. In section 61 of the principal Act (conversion into, or transfer of engagements to, a company), for subsection (3) (resolution to be passed by not less than three-fourths of the members voting in person or, where the rules allow, by proxy) there shall be substituted the following subsections—

- “(3) In this section “special resolution” means a resolution—
- (a) which is passed at a general meeting of which notice, specifying the intention to propose the resolution, has been duly given according to the rules of the society (“the rules”);
 - (b) which is passed by not less than three-fourths of such of the qualifying members of the society as may have voted in person or, where the rules allow proxies, by proxy;
 - (c) on which not less than half of the qualifying members of the society voted either in person or, where the rules allow proxies, by proxy; and
 - (d) which is confirmed by a majority of such of the qualifying members of the society as may have voted in person or, where the rules allow proxies, by proxy at a subsequent general meeting of which notice has been duly given held not less than 14 days nor more than one month from the day of the meeting at which the resolution was passed in accordance with paragraphs (a) to (c),

and references to the qualifying members of a society are references to the members of the society who are for the time being entitled under the society's rules to vote.

(3A) At any such meeting, a declaration by the chairman that—

- (a) all reasonably practicable steps have been taken to ascertain the number of qualifying members of the society; and
- (b) the resolution has been carried,

shall be deemed conclusive evidence of those facts.

(3B) Subsections (4) and (5) of section 59 shall have effect for the purposes of this section as they have effect for the purposes of that section but as if in subsection (5) of that section for the reference to subsection (2)(b) of that section there were substituted a reference to subsection (3)(d) of this section.”.

Miscellaneous

Application of Company Directors Disqualification Order to registered societies

8. After Article 25 of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#) (application of Order to incorporated friendly societies) there shall be inserted the following Article—

“Application of Order to registered societies

25A.—(1) This Order applies to societies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24) (“registered societies”) as it applies to companies.

(2) In its application to registered societies, this Order shall have effect as follows—

- (a) references in this Order to a company, or to a director or an officer of a company shall include, respectively, references to a registered society or to a member of the committee of management or officer, within the meaning of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24), of a registered society;
- (b) in Article 5(1) “striking off of a company” shall include the cancellation of the registration of a registered society under that Act;
- (c) in Articles 6(1) and 8(1) “the companies legislation” shall include that Act;
- (d) in Article 11(2) “investigative material” shall include a report made under section 43A, 56 or 58(1) of that Act and information, books, accounts or other documents obtained under section 57 of that Act;
- (e) references to the registrar shall have effect as references to the registrar as defined in section 101(1) of that Act;
- (f) references to a shadow director shall be omitted.

(3) In the application of Schedule 1 to the members of the committee of management of a registered society, references to provisions of the Insolvency Order or the Companies Order include references to the corresponding provisions of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).”.

Community benefit societies: power to restrict use of assets

9.—(1) The Department may by regulations make provision for enabling any community benefit society, or any community benefit society of a prescribed kind, to ensure that—

- (a) assets of the society of a prescribed kind,
- (b) assets of the society specified by it in accordance with the regulations, or
- (c) all of the society's assets,

cannot be used or dealt with except in a case mentioned in paragraph (2).

(2) The cases are—

- (a) where the use or dealing is, directly or indirectly, for a purpose that is for the benefit of the community and is of a prescribed kind or, if no kinds of purpose are prescribed under this sub-paragraph, for any purpose that is for the benefit of the community; or
 - (b) where the circumstances are such as may be prescribed.
- (3) Where under the regulations a society has ensured as mentioned in paragraph (1) as respects any of its assets, the assets concerned shall be “dedicated assets” for the purposes of this Article.
- (4) Regulations under this Article may, in particular—
- (a) provide for the procedure by which a society may ensure as mentioned in paragraph (1);
 - (b) provide for such of a society's registered rules as are of a prescribed kind to be unalterable, or for them to be alterable only in prescribed circumstances or in circumstances specified in rules of a prescribed kind;
 - (c) provide that, in any circumstances prescribed under paragraph (2)(b), dedicated assets shall be dealt with in a prescribed way;
 - (d) make provision for ensuring that any society, company or other person to whom any dedicated assets are transferred in prescribed circumstances cannot use or deal with those assets except in a case mentioned in paragraph (2);
 - (e) provide for members of a society who lose property rights as a result of the society's ensuring as mentioned in paragraph (1) to be compensated for that loss (whether by payment of a prescribed amount or of an amount determined in a prescribed way or otherwise), subject to such exceptions as may be prescribed;
 - (f) provide for the enforcement of provisions designed to ensure as mentioned in paragraph (1);
 - (g) make provision for the carrying out of investigations by persons appointed by a prescribed person;
 - (h) confer power on a prescribed person to require persons of a prescribed description to provide him with information in order to enable or assist him to perform any of his functions under the regulations;
 - (i) provide for restrictions on the use and disclosure of information obtained by any person in the performance of any function under the regulations.
- (5) Regulations under this Article may—
- (a) impose criminal liability;
 - (b) confer functions on a prescribed person;
 - (c) confer jurisdiction on any court;
 - (d) authorise a prescribed person to make rules, binding on persons of a prescribed description, for the purpose of enabling or assisting him to perform any of his functions under the regulations;
 - (e) make provision as to the making, publication and enforcement of such rules;
 - (f) provide for a prescribed person to charge fees sufficient to meet the costs of performing any of his functions under the regulations;
 - (g) modify, exclude or apply (with or without modifications) any statutory provision or rule of law;
 - (h) contain such incidental, consequential and supplemental provision as the Department considers appropriate.
- (6) Regulations under this Article may not create any new criminal offence punishable with imprisonment for more than seven years.

(7) No regulations may be made under this Article unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(8) In this Article—

“community benefit society” means a society registered (or deemed to be registered) under the principal Act which fulfils the condition in section 1(2)(b) of that Act;

“prescribed” means prescribed by regulations under this Article;

“registered rules” has the same meaning as in the principal Act.

Power to modify statutory provisions relating to industrial and provident societies

10.—(1) If, on any modification of the statutory provisions in force in Northern Ireland relating to companies, it appears to the Department to be expedient to modify the relevant statutory provisions for the purpose of assimilating the law relating to companies and the law relating to industrial and provident societies, the Department may, by order, make such modifications of the relevant statutory provisions as it thinks appropriate for that purpose.

(2) The “relevant statutory provisions” are the provisions of the Industrial and Provident Societies Acts (Northern Ireland) 1969 and 1976 as for the time being in force except the following provisions of the principal Act—

- (a) section 1 (societies which may be registered);
- (b) section 9(1) (amendments of registered rules);
- (c) sections 15 to 17 (cancellation, suspension or refusal of registration of society or rules);
- (d) sections 22 to 26 (nominations, provision for intestacy, payment in respect of mentally incapable persons and validity of payments);
- (e) sections 59 to 63 (amalgamation, transfer of engagements and conversions);
- (f) section 64(b) (dissolution of registered society by instrument);
- (g) section 65 (power of registrar to petition for winding up);
- (h) section 67 (instrument of dissolution); and
- (i) section 68 (restriction on dissolution or cancellation of registration of society).

(3) The power conferred by paragraph (1) includes power to modify the relevant statutory provisions so as to—

- (a) confer power to make orders, regulations, rules or other subordinate legislation;
- (b) create criminal offences; or
- (c) provide for the charging of fees but not any charge in the nature of taxation.

(4) An order under this Article may—

- (a) make consequential amendments of or repeals in the provisions listed in paragraph (2); or
- (b) make such transitional or saving provisions as appears to the Department to be necessary or expedient.

(5) No order shall be made under this Article unless a draft of it has been laid before and approved by a resolution of the Assembly.

(6) In this Article “modification” includes any additions and, as regards modifications of the statutory provisions relating to companies, any modification effected by any statutory provision coming into operation after the making of this Order.

Repeals

11. The statutory provisions specified in the Schedule are hereby repealed to the extent specified in the second column of that Schedule.

A.K Galloway
Clerk of the Privy Council

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 314

SCHEDULE

Article 11

REPEALS

Short Title	Extent of repeal
The Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).	In section 3, the words “a common seal and with”. In section 5(6), the words “engraven in legible characters on its seal and”. Section 5(7)(a).
The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986 (NI 9).	In Part I of Schedule 1, the entry relating to section 1(2) of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the law relating to industrial and provident societies.