

CO-OPERATIVES AND COMMUNITY BENEFIT SOCIETIES ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Capacity of society and power of committee to bind it

16. **Section 3** amends the 1965 Act in line with company law in order to make it easier for societies to enter into business transactions. It does this by inserting into the 1965 Act six new sections, numbered 7A to 7F.
17. Section 7A provides that the validity of an act performed by a society cannot be called into question on the basis that it is outside that society's rules. The section allows for members to restrain their society from performing an act which is beyond the rules, and preserves the liability of committee members if they do not observe any limitations on their powers under the rules unless the members agree to relief from such liability in a special resolution. (Section 7A(1) to (5) corresponds to section 35(1) to (4) of the Companies Act 1985; section 7A(6) corresponds to section 378(1) and (2) of that Act; and section 7A(7) is analogous to section 380(1) and (4)(a) of that Act).
18. Section 7B provides that, in favour of a person dealing with a society in good faith, the power of the society's committee to bind it is to be deemed not to be restricted by the society's rules. (Section 7B corresponds to section 35A of the Companies Act 1985).
19. Section 7C removes the burden from a party to a transaction with a society of having to enquire whether that transaction is permitted by the society's rules, or of having to enquire about any limitation on the powers of the committee to bind the society. (Section 7C corresponds to section 35B of the Companies Act 1985).
20. Section 7D disapplies sections 7A and 7B from societies which are charities, except in certain limited circumstances. Therefore, acts which are outside a charitable society's rules will continue to be void except in the specific circumstances outlined in this section. The aim is to ensure that the assets of societies which are charities are not used for a purpose for which they were not intended. (Section 7D corresponds to sections 65 and 96(1) of the Charities Act 1993 in relation to England and Wales, and to sections 112(1)(b) and (3) to (5) of the Companies Act 1989 in relation to Scotland).
21. Sections 7E and 7F make provision for the circumstance in which a society enters a transaction with a member of its own committee, or a person connected with a committee member or a company with whom a committee member is associated, *and* the committee, in connection with the transaction, acts beyond its powers. Such a transaction is voidable by the society. (Sections 7E and 7F correspond to sections 322A and 735(1)(a) of the Companies Act 1985).