



Co-operative and Community Benefit Societies Act 2014

2014 CHAPTER 14

PART 4

A SOCIETY'S CAPACITY AND RELATED MATTERS

Capacity of society and power of committee to bind it

43 Capacity of a society and relationship with its rules

- (1) The validity of an act done by a registered society may 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 would, but for subsection (1), be beyond the society's capacity.
- (3) But proceedings may not be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.
- (4) It remains the duty of the members of a registered society's committee to observe any limitations on their powers flowing from the society's registered rules.
- (5) Action by the members of the committee which would, but for subsection (1), be beyond the society's capacity may be ratified by the society only by a special resolution.
- (6) A special resolution ratifying such action does not affect any liability incurred by a member of the committee or any other person; relief from any such liability must be agreed to separately by special resolution.
- (7) In the case of a charitable registered society whose registered office is in England or Wales, ratification under subsection (5) is ineffective without the prior written consent of the Charity Commission for England and Wales.

Status: This is the original version (as it was originally enacted).

- (8) Section 44 contains provisions about special resolutions under this section.
- (9) This section is subject to—
 - (a) section 47 (application to charitable societies);
 - (b) section 48 (transactions with members of the committee and connected persons in excess of powers).

44 Special resolutions under section 43

- (1) This section supplements section 43.
- (2) A resolution is a “special resolution” if—
 - (a) it is passed at a general meeting by at least 75% of the eligible members who vote, and
 - (b) at least 21 days’ notice of the meeting, specifying the intention to propose the resolution, is given in accordance with the society’s rules.
- (3) In subsection (2)—
 - (a) “eligible member” means a member who is entitled to vote;
 - (b) references to voting are to voting in person or, where the society’s rules allow proxies, by proxy.
- (4) A copy of a special resolution, signed by the chair of the meeting at which the resolution was passed and countersigned by the society’s secretary, must be sent to the FCA and registered by it.
- (5) The resolution does not take effect until a copy of it has been registered.

45 Power of committee to bind society

- (1) In favour of a person dealing with a registered society in good faith, the power of the committee to bind the society (or to authorise others to do so) is treated as free of any limitation under the society’s registered rules.
- (2) For this purpose—
 - (a) a person “deals with” a society if the person is a party to any transaction or other act to which the society is a party,
 - (b) a person is not regarded as acting in bad faith by reason only of knowing that an act is beyond the powers of the committee under the society’s registered rules, and
 - (c) a person is presumed to have acted in good faith unless the contrary is proved.
- (3) The references above 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) does 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.

- (5) But proceedings may not be brought in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the society.
- (6) Subsection (1) does not affect any liability incurred by a member of the committee, or any other person, by reason of the committee's exceeding its powers.
- (7) This section is subject to—
 - (a) section 47 (application to charitable societies);
 - (b) section 48 (transactions with members of the committee and connected persons in excess of powers).

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

A party to a transaction with a registered society is not bound to enquire as to—

- (a) whether the transaction is permitted by the society's registered rules, or
- (b) any limitation on the powers of the committee to bind the society or authorise others to do so.

47 Application of sections 43 and 45 to charitable societies

- (1) Sections 43 and 45 (capacity of society not limited by its rules and power of committee to bind society) apply to an act of a charitable registered society only in favour of—
 - (a) a person who—
 - (i) gives full consideration in money or money's worth in relation to the act, and
 - (ii) does not know that the act is not permitted by the society's registered rules or is beyond the powers of the committee (as the case may be), or
 - (b) a person who does not know at the time the act is done that the society is a charity.
- (2) However, where a charitable registered society purports to transfer or grant an interest in property, the fact that—
 - (a) the act was not permitted by the society's registered rules, or (as the case may be)
 - (b) the committee in connection with the act exceeded any limitation on its powers under those rules,does not affect the title of a person who subsequently acquires the property (or any interest in it) for full consideration without actual notice of any such circumstances affecting the validity of the society's act.
- (3) In any proceedings arising out of subsection (1) a person who alleges—
 - (a) that a person knew that an act was not permitted by the society's registered rules or was beyond the powers of the committee, or
 - (b) that a person knew that the society was a charity,has the burden of proving the allegation.

48 Transactions with committee members etc in excess of powers

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

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- (i) a member of the society's committee, or
 - (ii) a person connected with such a member, and
 - (b) in connection with the transaction, the society's committee exceeds any limitation on its powers under the society's registered rules.
- (2) The transaction is voidable at the instance of the society.
- (3) Whether or not it is avoided, a party to the transaction who is within subsection (1)(a)(i) or (ii), and any member of the committee who authorised the transaction, is liable—
- (a) to account to the society for any gain 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 the above provisions excludes the operation of any other enactment 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 ceases to be voidable if—
- (a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible,
 - (b) the society is indemnified for any loss or damage resulting from the transaction,
 - (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 is not liable under subsection (3) if the person shows that at the time the transaction was entered into the person did not know that the committee was exceeding its powers.
- (7) This section does not affect the operation of section 45 (power of committee to bind the society) in relation to any party to the transaction not within subsection (1)(a)(i) or (ii) above.
- (8) But if the transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the appropriate court may, on the application of that person or the society, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.
- (9) In the case of a charitable registered society whose registered office is in England or Wales, any ratification of the transaction is ineffective without the prior written consent of the Charity Commission for England and Wales.

49 Section 48: definitions

- (1) This section supplements section 48.
- (2) "The appropriate court", in relation to a registered society, means the court having jurisdiction to wind up the society under the provisions of the Insolvency Act 1986 as applied by section 123.
- (3) "Transaction" includes any act.

- (4) The reference in section 48(1) 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.

- (5) Sections 252 to 255 of the Companies Act 2006 apply for the purposes of references to a person's being "connected" with a committee member—
 - (a) as if any reference to a director of a company were to a member of a committee of a registered society, and
 - (b) subject to such other adaptations and modifications as may be specified by regulations made by the Treasury under this section.