
DRAFT STATUTORY INSTRUMENTS

2005 No.

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

Amendments to the principal Act

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.”