



# 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.

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*Status: This is the original version (as it was originally enacted).*

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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.

### *Seals*

#### **50 Common seal**

- (1) Notwithstanding any enactment or rule of law, a registered society need not have a common seal.
- (2) A registered society which has a common seal must have its registered name engraved in legible characters on the seal.
- (3) A registered society which decides to have a common seal must not cause such a seal to be made unless its registered rules contain provision for the custody and use of that seal.
- (4) An officer of a registered society, or a person acting on behalf of a registered society, commits an offence if the officer or person uses or authorises the use of a seal purporting to be the society's common seal which does not have the society's registered name engraved in legible characters on it.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **51 Power of society to have official seal for use abroad**

- (1) This section applies 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 outside 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.
- (4) The official seal, when duly affixed to a document, has the same effect as the society's common seal.

**52 Authorisation of use of official seal**

- (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) must be given—
  - (a) in the case of a society whose registered office is in Scotland, by writing subscribed or authenticated in accordance with the Requirements of Writing (Scotland) Act 1995;
  - (b) in any other case, 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 continues—
  - (a) if a period is mentioned in the authorisation, during that period, or
  - (b) if no period is mentioned there, until notice of the revocation or determination of the agent's authority has been given to the person dealing with the agent.
- (4) The person affixing the official seal must 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.

*Execution of documents***53 Methods for execution of documents: England and Wales**

- (1) This section contains provisions about the execution of documents by a registered society under the law of England and Wales.
- (2) A registered society which has a common seal may execute a document by affixing its common seal to it.
- (3) A document—
  - (a) signed by 2 authorised signatories (see subsection (6)), and
  - (b) expressed (in whatever form of words) to be executed by a registered society, has the same effect as if it were executed under the society's common seal.
- (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—
  - (a) has effect, upon delivery, as a deed, and
  - (b) is presumed to be delivered upon its being executed by the society, unless a contrary intention is proved.
- (5) In favour of a purchaser—
  - (a) a document is treated as duly executed by a registered society if it purports to be signed by 2 authorised signatories, and
  - (b) where it makes it clear on its face that it is intended by the person or persons making it to be a deed, is treated as delivered upon its being executed.

“Purchaser” here 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.

- (6) For the purposes of this section, in relation to a society—

- (a) each of the members of the society's committee is an authorised signatory, and
- (b) the society's secretary is also an authorised signatory.

(7) Subsections (3) to (5) apply whether or not the society has a common seal.

#### **54 Method for execution of contracts under seal: England and Wales**

- (1) A contract which, if made between individuals, would be by law required—
  - (a) to be in writing, and
  - (b) to be under seal (if made according to the law of England and Wales),may be made, varied or discharged on behalf of a registered society in writing under its common seal.
- (2) This section does not affect the application of the Corporate Bodies' Contracts Act 1960.
- (3) This section does not apply to Scotland.

#### **55 Execution of documents: Scotland**

Under the law of Scotland, for the purposes of any enactment—

- (a) providing for a document to be executed by a registered society by affixing its common seal, or
- (b) referring (in whatever terms) to a document so executed,

a document signed or subscribed (or, in the case of an electronic document, authenticated) by or on behalf of the society in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 has effect as if so executed.

#### **56 Execution of documents: presumption of validity of officer's signature**

- (1) This section applies to a document—
  - (a) by which a contract is purportedly made, varied or discharged by or on behalf of a registered society, and
  - (b) which is purportedly signed by a person holding an office in the society.
- (2) The signature is presumed, unless the contrary is proved, to be the signature of a person holding that office at the time the signature was made.

#### *Other matters*

#### **57 Contracts, deeds and obligations made before registration of society**

- (1) A contract that 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 has 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) Accordingly, the contract is to be treated as—
  - (a) imposing on that person all the obligations it purports to impose on the society, and
  - (b) conferring on that person all the rights it purports to confer on the society.

(3) Subsections (1) and (2) apply—

- (a) to the making of a deed under the law of England and Wales, and
  - (b) to the undertaking of an obligation under the law of Scotland,
- as they apply to the making of a contract.

(4) In subsection (1)—

- (a) the reference to a registered society includes a Northern Ireland society, and
- (b) the reference to this Act includes the relevant Northern Ireland law.

“Northern Ireland society” and “the relevant Northern Ireland law” have the same meaning as in section 142.

## **58 Bills of exchange and promissory notes**

A bill of exchange or promissory note is treated as made, accepted or endorsed on behalf of a registered society if made, accepted or endorsed in the name of, or by or on behalf or account of, the society by a person acting under its authority.