



Friendly Societies Act 1992

1992 CHAPTER 40

PART V

REGULATION OF FRIENDLY SOCIETIES' BUSINESS

Inspections etc.

65 Investigations on behalf of Commission.

- (1) If it appears to the Commission desirable to do so for the purpose of its supervisory functions in relation to a friendly society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the activities of the society, or any particular aspect of those activities.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the activities of any body corporate which is or has at any relevant time been a subsidiary of, or jointly controlled by, the society under investigation.
- (3) It shall be the duty of every person who is or has been an officer, employee and agent of a friendly society or other body which is under investigation—
 - (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
 - (b) to attend before those persons when required to do so;
 - (c) to answer any question which is put to him by those persons with respect to any friendly society or other body which is under investigation,and otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) A person who, without reasonable excuse—
 - (a) fails to produce any records, books or papers which it is his duty to produce under subsection (3)(a) above; or

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- (b) fails to comply with his duty under subsection (3)(b) or (c) above;
shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who is or has been an officer, employee or agent of a friendly society or other body and who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both; and
- (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (6) In this section—
- “agent”, in relation to a friendly society or other body whose activities are under investigation, includes its bankers, accountants, solicitors and auditors and the appropriate actuary;
- “the purposes of its supervisory functions”, in relation to the Commission, has the same meaning as in section 62 above.

Commencement Information

- II** S. 65 wholly in force; s. 65 not in force at Royal Assent see s. 126(2); s. 65 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, **Sch. 1**; s. 65 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), **Sch. 2**

66 Inspections and special meetings: general.

- (1) In the circumstances mentioned in subsection (2) below, the Commission may—
- (a) appoint one or more competent inspectors to investigate and report on the affairs of a friendly society; or
- (b) call a special meeting of a friendly society to consider its affairs; or
- (c) appoint (whether on the same or on different occasions) an inspector or inspectors and call a special meeting for those purposes;
- and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a subsidiary of or jointly controlled by the society concerned.
- (2) The powers conferred by subsection (1) above may be exercised either—
- (a) on the application of the requisite number of members of the society concerned; or
- (b) where the Commission is of the opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members;
- but paragraph (a) above shall not apply to a registered society with branches (regardless of the number of members) except with the consent of the central body of that society.
- (3) The powers conferred by subsection (1) above may be exercised so as to extend the investigation or consideration to the affairs of a body which is or has been a subsidiary of or jointly controlled by a friendly society either—
- (a) where an application referred to in subsection (2)(a) above so requests; or

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- (b) where the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the friendly society that the affairs of the subsidiary or other body should also be investigated or considered.
- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or a body jointly controlled by the society under investigation they may, with the consent of the Commission, extend their investigation to the affairs of the subsidiary or other body and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
- (a) in the case of a friendly society having more than 1,000 members, is 100; and
 - (b) in the case of any other friendly society, is one-tenth of the whole number of members of the society.
- (6) Where an application is made as mentioned in subsection (2) above—
- (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for making the application and are not actuated by malicious, frivolous, vexatious or scandalous motives;
 - (b) such notice of the application shall be given to the society concerned and, if the application extends to the affairs of a subsidiary of or body jointly controlled by that society, to that subsidiary or other body, as the Commission may direct;
 - (c) the Commission may require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
 - (d) as regards the expenses of or incidental to the investigation or meeting—
 - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 67(10) below;
 - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.
- (8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the subsidiary or jointly controlled body as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the power specified in section 67 below.
- (10) Where a special meeting is called under this section—
- (a) the Commission may—

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- (i) direct at what time and place the meeting is to be held and what matters are to be discussed and determined at the meeting; and
 - (ii) direct which members may attend and vote at the meeting, and may give such other directions as it thinks fit with respect to the call, holding and conduct of the meeting;
 - (b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman;
 - (c) the meeting shall have all the powers of a meeting called according to the rules of the society;
- and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the society.

- (11) In this section “the corresponding Companies Act limit”, in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the ^{M1}Companies Act 1985 or Article 424(4) of the ^{M2}Companies (Northern Ireland) Order 1986.

Commencement Information

- I2** S. 66 wholly in force; s. 66 not in force at Royal Assent see s. 126(2); s. 66 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 66 in force for all remaining purposes at 28.4.1993 by 1993/1186, art. 2(2), Sch. 2

Marginal Citations

- M1** 1985 c. 6.
M2 S.I. 1986/1032 (N.I. 6).

67 Inspections: supplementary provision.

- (1) In this section—

“the body under investigation” means—

- (i) the friendly society whose affairs are the subject of the investigation, or
- (ii) the friendly society, and each subsidiary of or body jointly controlled by the society, whose affairs are so subject,

as the case may be;

“the inspectors” means the person appointed by the Commission under section 66 above to conduct the investigation;

“the investigation” means the investigation under section 66 above which the inspectors have been appointed to hold;

and references to officers, employees or agents include past, as well as present, officers, employees or agents; and “agents”, in relation to a friendly society or any subsidiary of or body jointly controlled by an incorporated friendly society, includes its bankers, accountants, solicitors and auditors and the appropriate actuary.

- (2) When the inspectors have been appointed, it is the duty of all officers, employees and agents of the body under investigation—
- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
 - (b) to attend before the inspectors when required to do so; and

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- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) If the inspectors consider that a person other than an officer, employee or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.
- (4) The inspectors may examine on oath the officers, employees and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.
- (5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.
- (6) If an officer, employee or agent of the body under investigation or any such person as is mentioned in subsection (3) above—
- (a) refuses to produce any document or material which it is his duty under this section to produce; or
 - (b) refuses to attend before the inspectors when required to do so; or
 - (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,
- the inspectors may certify the refusal in writing to the High Court; and the court may thereupon enquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.
- (7) The inspectors may, and if so directed by the Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.
- (8) The Commission may, if it thinks fit—
- (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
 - (b) furnish a copy of any such report on request and on payment of the prescribed fee to—
 - (i) any member of the body whose affairs are or were the subject of the investigation;
 - (ii) the auditors of that body;
 - (iii) any person whose conduct is referred to in the report;
 - (iv) any other person whose financial interests appear to the Commission to be affected by matters dealt with in the report, whether as creditor or otherwise; and
 - (c) cause the report to be printed and published.
- (9) A copy of a report of inspectors appointed under section 66 above to hold an investigation under that section, certified by the Commission to be a true copy, is

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admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.

(10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 66(6)(d) above as provided in the following paragraph, that is to say—

- (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
- (b) by any body whose affairs were the subject of the investigation, to such extent (if any) as the Commission may direct;
- (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

(11) In the application of this section to a friendly society whose registered office is in Scotland or Northern Ireland, any reference to the High Court shall be read as a reference to the Court of Session or, as the case may be, to the High Court in Northern Ireland.

Commencement Information

I3 S. 67 wholly in force; s. 67 not in force at Royal Assent see s. 126(2); s. 67 in force for certain purposes at 13.1.1993 by S.I. 1993/16, art. 2, Sch. 1; s. 67 in force for all remaining purposes at 28.4.1993 by S.I. 1993/1186, art. 2(2), Sch. 2

VALID FROM 01/09/1994

[67A ^{F1} Information for members.

Schedule 13C to this Act shall have effect for requiring friendly societies to which section 37(2) or (3) above applies to furnish members with the information there mentioned.]

Textual Amendments

F1 S. 67A inserted (1.9.1994) by S.I. 1994/1984 reg. 21(1)

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[^{F2}67B Statutory notice.

- (1) Subject to subsection (7) below, unless the requirements of subsection (2) below are fulfilled no friendly society to which section 37(2) above applies shall enter into a contract the effecting of which constitutes—
 - (a) the carrying on of long term business in the United Kingdom; or
 - (b) the provision there of long term insurance.
- (2) The requirements of this subsection are that—
 - (a) the society sends by post to the other party to the contract, at or before the time when it is entered into, a statutory notice in relation to that contract; or
 - (b) a representative of the society gives such notice to that party at that time.
- (3) Where a statutory notice is sent to the other party to the proposed contract before the time when it is entered into, the society shall, not later than 14 days after the contract has become binding, inform the party in writing that it has done so.
- (4) For the purposes of this section a statutory notice is a notice which—
 - (a) contains such matters (and no others) and is in such form as may be prescribed by regulations made under section 2(2) of the European Communities Act 1972 ^{M3} and complies with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be so prescribed for securing that the notice is easily legible; and
 - (b) has annexed to it a form of notice of cancellation of such description as may be so prescribed for use under section 67C below.
- (5) The Commission may, on the application of a friendly society, alter the requirements in relation to the notice referred to in subsection (4)(a) above so as to adapt those requirements to the circumstances of that society or to any particular kind of contract proposed to be entered into by that society.
- (6) Any society which contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale but, without prejudice to section 67C(2) below, no contract shall be invalidated by reason of the fact that the society has contravened this section in relation to that contract.
- (7) Subsection (1) above does not apply to—
 - (a) a contract the effecting of which by the society constitutes the carrying on of investment business (within the meaning of the Financial Services Act 1986 ^{M4});
 - (b) a contract the effecting of which by the society constitutes the carrying on of industrial assurance business;
 - (c) a contract the other party to which is habitually resident in a member State other than the United Kingdom;
 - (d) a contract the other party to which is not an individual;
 - (e) a contract of term assurance effected for a period of six months or less; or
 - (f) a contract of reinsurance.

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(8) In sections 67C and 67D below “statutory notice” has the same meaning as in this section.]

Textual Amendments

F2 S. 67B inserted (1.9.1994) by S.I. 1994/1984 reg. 22

Marginal Citations

M3 1972 c.68.

M4 1986 c.60.

VALID FROM 01/09/1994

[^{F3}67C Right to withdraw from transaction.

- (1) A person who has received a statutory notice in relation to a contract may, before the expiration of the fourteenth day after that on which he is informed in writing that the contract has become binding, serve a notice of cancellation on the friendly society.
- (2) A person to whom a friendly society to which section 37(2) above applies ought to have, but has not, sent a statutory notice in relation to a contract may serve a notice of cancellation on the society; but if the society sends him a statutory notice in relation to the contract before he has served a notice of cancellation under this subsection, then without prejudice to his right to serve a notice of cancellation under subsection (1) above, his right to do so under this subsection shall cease.
- (3) A notice of cancellation may, but need not, be in the form annexed to the statutory notice and shall have effect if, however expressed, it indicates the intention of the person serving it to withdraw from the transaction in relation to which the statutory notice was or ought to have been sent.
- (4) Where a person serves a notice of cancellation, then—
 - (a) if at the time when the notice is served the contract has been entered into, the notice shall operate so as to rescind the contract;
 - (b) in any other case, the service of the notice shall operate as a withdrawal of any offer to enter into the contract which is contained in, or implied by, any proposal made to the society by the person serving the notice of cancellation and as notice to the society that any such offer is withdrawn.
- (5) Where a notice of cancellation operates to rescind a contract or as the withdrawal of an offer to enter into a contract—
 - (a) any sum which the person serving the notice has paid in connection with the contract (whether by way of premium or otherwise and whether to the society or to a person who is the agent of the society for the purpose of receiving that sum) shall be recoverable from the society by the person serving the notice;
 - (b) any sum which the society has paid under the contract shall be recoverable by him from the person serving the notice.
- (6) Any sum recoverable under subsection (5) above shall be recoverable in any court of competent jurisdiction.]

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Textual Amendments

F3 S. 67C inserted (1.9.1994) by S.I. 1994/1984 reg. 23

VALID FROM 01/09/1994

[^{F4}67D Service of notice of cancellation.

- (1) For the purposes of section 67C above a notice of cancellation—
 - (a) shall be deemed to be served on the society if it is sent by post addressed to any person specified in the statutory notice as a person to whom a notice of cancellation may be sent, and is addressed to that person at an address so specified; and
 - (b) where paragraph (a) above applies, shall be deemed to be served on the society at the time when it is posted.
- (2) Subsection (1) above shall have effect without prejudice to the service of a notice of cancellation (whether by post or otherwise) in any way in which the notice could be served apart from that subsection, whether the notice is served on the society or on a person who is the agent of the society for the purpose of receiving such a notice.
- (3) A notice of cancellation which is sent by post to a person at his proper address, otherwise than in accordance with subsection (1) above, shall be deemed to be served on him at the time when it is posted.
- (4) So much of section 7 of the Interpretation Act 1978 as relates to the time when service is deemed to have been effected shall not apply to a notice of cancellation.]

Textual Amendments

F4 S. 67D inserted (1.9.1994) by S.I. 1994/1984 reg. 24

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