



Co-operatives and Community Benefit Societies Act 2003 (repealed)

2003 CHAPTER 15

3 Capacity of society and power of committee to bind it

After section 7 of the 1965 Act insert—

“Capacity of society and power of committee to bind it

7A Capacity of society not limited by its rules

- (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) of this section 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 remains 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) of this section 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; relief from any such liability must be agreed to separately by special resolution.
- (5) The operation of this section is restricted by section 7D of this Act (application to charitable societies); and section 7E of this Act (transactions with members of the committee and connected persons in excess of powers) has effect notwithstanding this section.

Status: Point in time view as at 01/04/2004. This version of this provision has been superseded.

Changes to legislation: Co-operatives and Community Benefit Societies Act 2003 (repealed), Section 3 is up to date with all changes known to be in force on or before 06 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) In this section “special resolution” means a resolution passed by not less than 75% 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 Authority and registered by it; and until that copy is so registered the special resolution shall not take effect.

7B 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 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 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) of this section 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; 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) Nor does subsection (1) affect any liability incurred by a member of the committee, or any other person, by reason of the committee’s exceeding its powers.
- (6) The operation of this section is restricted by section 7D of this Act (application to charitable societies); and section 7E of this Act (transactions with members of the committee and connected persons in excess of powers) has effect notwithstanding this section.

7C 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 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.

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7D Application of sections 7A and 7B to charitable societies

- (1) Sections 7A and 7B of this Act (capacity of society not limited by its rules and power of committee to bind society) do not apply to the acts of a registered society which is a charity except in favour of a person who—
 - (a) gives full consideration in money or money's worth in relation to the act in question; and
 - (b) does not know that the act is not permitted by the society's registered rules or, as the case may be, is beyond the powers of the committee, or who does not know at the time the act is done that the society is a charity.
- (2) However, where such a society purports to transfer or grant an interest in property, the fact that the act was not permitted by the society's registered rules or, as the case may be, that 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) of this section the burden of proving—
 - (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,lies on the person making that allegation.
- (4) Where a registered society is a charity with its registered office situated in England or Wales, the ratification of an act under section 7A(3) of this Act, or the ratification of a transaction to which section 7E of this Act applies, is ineffective without the prior written consent of the Charity Commissioners for England and Wales.
- (5) In this section "charity"—
 - (a) in relation to a society whose registered office is situated in England or Wales, has the same meaning as in the Charities Act 1993;
 - (b) in relation to a society whose registered office is situated in Scotland, means a body established for charitable purposes only (that expression having the same meaning as in the Income Tax Acts);
 - (c) in relation to a society whose registered office is situated in one of the Channel Islands, means a society established for charitable purposes only ("charitable purposes" having the meaning given by the law of the Island in question).

7E Transactions with committee members and other persons in excess of powers

- (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,

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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 is 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) of this section, and any member of the committee who authorised the transaction, is 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 the above provisions shall be construed as excluding 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; 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 is not liable under subsection (3) of this section 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 does not affect the operation of section 7B of this Act 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 that section 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.

7F Definitions relating to section 7E

- (1) In section 7E of this Act "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 7E(1) of this Act "company" has the same meaning as in the Companies Act 1985.

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- (3) Section 346(2) to (8) of the Companies Act 1985 shall apply for the purposes of references in section 7E(1) of this Act to a person's being "connected" with a committee member or to a committee member'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 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.
- (4) Any regulations made under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In section 7E(4) of this Act "enactment" includes an enactment comprised in—
- (a) an Act of the Scottish Parliament;
 - (b) subordinate legislation, whether made under an Act or an Act of the Scottish Parliament.
- (6) In section 7E(8) of this Act "the 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 55 of this Act."

Commencement Information

II S. 3 in force at 1.4.2004 by S.I. 2003/2678, art. 2(1)

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