Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2005 No. (N.I.)

NORTHERN IRELAND

The Industrial and Provident Societies (Northern Ireland) Order 2005

Made - - - - 2005
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Industrial and Provident Societies (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of one month from the day on which this Order is made.

(3) The remaining provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

(4) An order under this Article may contain such transitional provisions and savings as appear to the Department to be necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"the Department" means the Department of Enterprise, Trade and Investment;

"the principal Act" means the Industrial and Provident Societies Act (Northern Ireland) 1969 (c. 24);

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

Amendments to the principal Act

Societies which may be registered

3. In section 1(2) of the principal Act (conditions for registration of an industrial and provident society), for paragraph (b) there shall be substituted the following paragraph—

"(b) that the business of the society is being, or is intended to be, conducted for the benefit of the community.".

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.".

Purported contracts, deeds and obligations

5.—(1) After section 28 of the principal Act (contracts) there shall be inserted the following section—

"**Purported contracts, deeds and obligations**

28A.—(1) A contract which 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 shall have 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) A contract to which subsection (1) applies shall be treated—

(a) as imposing on that person all the obligations it purports to impose on the society; and

(b) as conferring on him all the rights it purports to confer on the society.

(3) Subsections (1) and (2) apply to the making of a deed as they apply to the making of a contract.".

(2) In section 102 of the principal Act (Great Britain societies), after subsection (4) there shall be inserted the following subsection—

"(4A) In section 28A(1)—

(a) the reference to a registered society includes a reference to a society registered under the law for the time being in force in Great Britain for purposes corresponding to those of this Act; and

(b) the reference to this Act includes a reference to that law.".

Execution of deeds and other documents

6.—(1) After section 28A of the principal Act (as inserted by Article 5 of this Order) there shall be inserted the following sections—

"**Common seal**

28B.—(1) Notwithstanding any statutory provision or rule of law, a registered society need not have a common seal.

(2) If a registered society has a common seal, the society shall have its registered name engraved on the seal in legible characters.

(3) If, after the coming into operation of subsection (1), a registered society decides to have a common seal, it shall not cause such a seal to be made unless the registered rules of the society contain provision for the custody and use of that seal.

(4) Section 71 shall not apply in respect of an offence committed by a registered society under section 70 where the offence consists of a failure to comply with subsection (2) or (3) of this section.

(5) Any officer of a registered society, or any other person acting on such a society's behalf, who uses or authorises the use of any seal purporting to be the common seal of the society which does not have the society's registered name engraved on it in legible characters shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.