

A

B I L L

[AS AMENDED IN STANDING COMMITTEE C]

TO

Enable the law relating to co-operatives and community benefit societies registered under the Industrial and Provident Societies Act 1965 to be amended so as to bring it into conformity with certain aspects of the law relating to companies; to permit a registered society whose business is conducted for the benefit of the community to provide that its assets are dedicated permanently for that purpose; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Community benefit societies: power to restrict use of assets

(1) The Treasury may by regulations make provision for enabling any community benefit society, or any community benefit society of a prescribed kind, to ensure that—

- (a) assets of the society of a prescribed kind, 5
- (b) assets of the society specified by it in accordance with the regulations, or
- (c) all of the society's assets,

cannot be used or dealt with except in a case mentioned in subsection (2).

(2) The cases are— 10

- (a) where the use or dealing is, directly or indirectly, for a purpose that is for the benefit of the community and is of a prescribed kind or, if no kinds of purpose are prescribed under this paragraph, for any purpose that is for the benefit of the community; or
- (b) where the circumstances are such as may be prescribed. 15

(3) Where under the regulations a society has ensured as mentioned in subsection (1) as respects any of its assets, the assets concerned are “dedicated assets” for the purposes of this section.

- (4) Regulations under this section may, in particular –
- (a) provide for the procedure by which a society may ensure as mentioned in subsection (1);
 - (b) provide for such of a society’s rules as are of a prescribed kind to be unalterable, or for them to be alterable only in prescribed circumstances or in circumstances specified in rules of a prescribed kind; 5
 - (c) provide that, in any circumstances prescribed under subsection (2)(b), dedicated assets must be dealt with in a prescribed way;
 - (d) make provision for ensuring that any society, company or other person to whom any dedicated assets are transferred in prescribed circumstances cannot use or deal with those assets except in a case mentioned in subsection (2); 10
 - (e) provide for members of a society who lose property rights as a result of the society’s ensuring as mentioned in subsection (1) to be compensated for that loss (whether by payment of a prescribed amount or of an amount determined in a prescribed way or otherwise), subject to such exceptions as may be prescribed; 15
 - (f) provide for the enforcement of provisions designed to ensure as mentioned in subsection (1);
 - (g) make provision for the carrying out of investigations by persons appointed by a prescribed person; 20
 - (h) confer power on a prescribed person to require persons of a prescribed description to provide him with information in order to enable him to perform his functions under the regulations;
 - (i) provide for restrictions on the use and disclosure of information obtained by any person in the performance of any function under the regulations. 25
- (5) Regulations under this section may –
- (a) impose criminal liability;
 - (b) confer functions on a prescribed person; 30
 - (c) confer jurisdiction on any court;
 - (d) authorise a prescribed person to make rules binding on persons of a prescribed description and make provision as to the making, publication and enforcement of such rules;
 - (e) provide for a prescribed person to charge fees sufficient to meet the costs of carrying out any of his functions under the regulations; 35
 - (f) modify, exclude or apply (with or without modifications) any enactment or rule of law;
 - (g) contain such incidental, consequential and supplemental provision as the Treasury consider appropriate; 40
 - (h) make different provision for different cases.
- (6) The power to make regulations under this section is exercisable by statutory instrument.
- (7) No regulations may be made under this section unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House. 45
- (8) In this section –
- “community benefit society” means a society registered (or deemed to be registered) under the 1965 Act which fulfils the condition in section 1(2)(b) of that 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; and

“prescribed” means prescribed by regulations under this section.

5

2 Status of charitable societies to appear on correspondence etc

After section 5 of the 1965 Act insert –

“5A Status of charitable societies to appear on correspondence etc

- (1) Where a registered society is a charity and its registered name does not include the word “charity” or the word “charitable”, the society must state the fact that it is a charity in legible characters –
 - (a) in all notices, advertisements and other official publications of the society;
 - (b) in all business letters of the society;
 - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the society; and
 - (d) in all bills, invoices, receipts and letters of credit of the society.
- (2) Where a society’s registered name includes the words “elusen” or the word “elusennol”, subsection (1) of this section shall not apply in relation to any document which is wholly in Welsh.
- (3) The statement required by subsection (1) of this section shall be in English, except that, in the case of a document which is otherwise wholly in Welsh, the statement may be in Welsh if it consists of or includes the word “elusen” or the word “elusennol”.
- (4) Section 62 of this Act does not apply in respect of an offence committed by a registered society under section 61 of this Act where the offence consists of a failure to comply with this section.
- (5) Any officer of a registered society, or any other person acting on such a society’s behalf, who –
 - (a) issues or authorises the issue of any document such as is mentioned in subsection (1)(a), (b) or (d) of this section; or
 - (b) signs or authorises to be signed on behalf of the society any document such as is mentioned in subsection (1)(c) of this section,
 in which a statement required by subsection (1) is not made in accordance with this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In the case of a conviction by virtue of paragraph (b) of subsection (5) of this section, the officer or other person shall further be personally liable to the holder of any such document as is referred to in that paragraph for the amount specified in the document unless that amount is duly paid by the society.
- (7) In this section “charity” –

10

15

20

25

30

35

40

- (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).” 5

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 10

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. 15
- (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. 20
- (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. 30
- (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 notice, specifying the intention to propose the resolution, has been duly given according to those rules. 35
- (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. 40

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, 45

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; 5
 - (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. 10
- (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. 15
- (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. 20
- (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. 25

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. 30

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 40
 - (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. 45
- (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. 5
- (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 10
- (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. 15
- (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; 20
- (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). 25
- 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 30
- (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. 35
- (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 40
- (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. 45

- (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 5
 - (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. 10
- (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. 15
- (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. 20
- 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. 30
- (2) In section 7E(1) of this Act “company” has the same meaning as in the Companies Act 1985.
- (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. 40
- (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; 45

- (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.” 5
- 4 Purported contracts, deeds and obligations**
- (1) After section 29 of the 1965 Act insert –
- “29A Purported contracts, deeds and obligations**
- (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 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. 10
- (2) Accordingly, the contract is to be treated –
- (a) as imposing on that person all the obligations it purports to impose on the society; and 15
- (b) as conferring on him all the rights it purports to confer on the society.
- (3) Subsections (1) and (2) of this section apply –
- (a) to the making of a deed under the law of England and Wales, and 20
- (b) to the undertaking of an obligation under the law of Scotland, as they apply to the making of a contract.”
- (2) In section 76 of the 1965 Act, after subsection (2) insert –
- “(2A) In section 29A(1) of this Act – 25
- (a) the reference to a registered society includes a reference to a society registered under the law for the time being in force in Northern Ireland for purposes corresponding to those of this Act; and
- (b) the reference to this Act includes a reference to that law.” 30
- 5 Execution of deeds and other documents**
- (1) After section 29A of the 1965 Act (which is inserted by section 4) insert –
- “29B Common seal**
- (1) Notwithstanding any enactment or rule of law, a registered society need not have a common seal. 35
- (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 force of subsection (1) of this section, 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. 40

- (4) Section 62 of this Act does not apply in respect of an offence committed by a registered society under section 61 of this Act 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. 5
- (6) In this section "enactment" includes an enactment comprised in— 10
- (a) an Act of the Scottish Parliament;
 - (b) subordinate legislation, whether made under an Act or an Act of the Scottish Parliament.

29C Methods for execution of documents: England and Wales

- (1) The following provisions have effect with respect to the execution of documents by a registered society under the law of England and Wales. 15
- (2) A registered society may, if it has a common seal, execute a document by affixing that seal to it.
- (3) A document—
- (a) signed by a member of the committee of a registered society and the secretary of the society, or by two members of that committee, and 20
 - (b) expressed (in whatever form of words) to be executed by the society,
- has the same effect as if it were executed under the common seal of the society. 25
- (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 has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed. 30
- (5) In favour of a purchaser a document shall be deemed to have been duly executed by a registered society if it purports to be signed by a member of the committee of the society and the secretary of the society, or by two members of the committee, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed. 35
- (6) Subsections (3) to (5) of this section apply whether or not the society has a common seal; and, in subsection (5) of this section, "purchaser" 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. 40

29D Execution of documents: Scotland

- (1) 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 45
 - (b) referring (in whatever terms) to a document so executed,

a document signed or subscribed by or on behalf of the society in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 shall have effect as if so executed.

- (2) In this section “enactment” includes an enactment comprised in—
- (a) an Act of the Scottish Parliament; 5
 - (b) subordinate legislation, whether made under an Act or an Act of the Scottish Parliament.

29E 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 10
 - (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 elsewhere than in the United Kingdom. 15
- (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.

29F Effect of use of official seal

The official seal of a registered society when duly affixed to a document has the same effect as the society’s common seal. 20

29G 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. 25
- (2) An authorisation for the purposes of subsection (1) of this section must be given—
- (a) in the case of a society with its registered office in Scotland, by writing subscribed in accordance with the Requirements of Writing (Scotland) Act 1995; and 30
 - (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 35
 - (b) if no period is there mentioned, until notice of the revocation or determination of the agent’s authority has been given to the person dealing with him.
- (4) The person affixing the official seal shall 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.” 40
- (2) In section 3 of the 1965 Act (registration to effect incorporation of society), omit “a common seal and with”.

- (3) In subsection (6) of section 5 of the 1965 Act (registered name of society) omit “engraven in legible characters on its seal and”.
- (4) In subsection (7) of that section –
 (a) omit paragraph (a); and
 (b) in paragraph (b) for “that name” substitute “the society’s registered name”. 5
- (5) Omit section 36 of the 1965 Act (provision about the execution of documents by societies in Scotland which has been superseded and repealed there but which remains in force elsewhere).
- (6) In section 76(2) of the 1965 Act (provisions which apply to Northern Ireland societies that have recorded their rules with the Financial Services Authority), for “26 to” substitute “26 to 29, 29B to 29D,”. 10
- (7) For paragraph 13 of Schedule 1 to the 1965 Act substitute –
 “13 If the society is to have a common seal, provision for its custody and use.” 15
- (8) In section 91 of the Land Registration Act 2002 (c. 9) (formalities in relation to electronic dispositions) after subsection (9) insert –
 “(9A) If subsection (3) of section 29C of the Industrial and Provident Societies Act 1965 (execution of documents) applies to a document because of subsection (4) above, subsection (5) of that section (presumption of due execution) shall have effect in relation to the document with the substitution of “authenticated” for “signed”.” 20
- (9) The Schedule to this Act (which contains repeals made as a result of this section) shall have effect.
- 6 Interpretation** 25
 In this Act “the 1965 Act” means the Industrial and Provident Societies Act 1965 (c. 12).
- 7 Commencement**
 (1) The preceding provisions of this Act shall come into force on such day as the Treasury may by order appoint, and different days may be so appointed for different purposes. 30
 (2) An order under this section shall be made by statutory instrument and may contain such transitional provisions as appear to the Treasury to be necessary or expedient.
- 8 Channel Islands** 35
 (1) Her Majesty may by Order in Council direct that any provision of this Act or any instrument made under or by virtue of it shall extend, with such modifications (if any) as may be specified in the Order, to any of the Channel Islands.
 (2) An Order in Council under this section may contain such transitional, incidental or supplementary provision as appears to Her Majesty to be necessary or expedient. 40

9 Short title and extent

- (1) This Act may be cited as the Co-operatives and Community Benefit Societies Act 2003 and this Act and the Industrial and Provident Societies Acts 1965 to 2002 may be cited together as the Industrial and Provident Societies Acts 1965 to 2003.
- (2) Section 5(8) extends to England and Wales only.
- (3) This Act does not extend to Northern Ireland.

SCHEDULE

Section 5(9)

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Industrial and Provident Societies Act 1965 (c. 12)	In section 3, the words “a common seal and with”. In section 5, in subsection (6) the words “engraven in legible characters on its seal and”, and subsection (7)(a). Section 36.

5

Co-operatives and Community Benefit Societies Bill

A

B I L L

[AS AMENDED IN STANDING COMMITTEE C]

To enable the law relating to co-operatives and community benefit societies registered under the Industrial and Provident Societies Act 1965 to be amended so as to bring it into conformity with certain aspects of the law relating to companies; to permit a registered society whose business is conducted for the benefit of the community to provide that its assets are dedicated permanently for that purpose; and for connected purposes.

*Presented by Mr Mark Todd
supported by
Mr John McWilliam, Dr Vincent Cable,
Mr Simon Thomas, Linda Gilroy,
Ms Meg Munn, David Taylor,
Mr Adrian Bailey, Mr Andrew Love,
Mr Tom Watson, Mr Gareth Thomas and
Mr Dennis Turner*

*Ordered, by The House of Commons,
to be Printed, 18th March 2003.*

© Parliamentary copyright House of Commons 2003
*Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St. Clements House, 2-16 Colegate, Norwich, NR3 1BQ*

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON: THE STATIONERY OFFICE
Printed in the United Kingdom by
The Stationery Office Limited
£x.xx net