



Co-operative and Community Benefit Societies Act 2014

2014 CHAPTER 14

PART 5

CHARGES OVER A SOCIETY'S ASSETS

CHAPTER 1

CHARGES: ENGLAND AND WALES

59 Charges on assets of English and Welsh societies

- (1) This section applies to an instrument executed by a registered society whose registered office is in England or Wales which creates or is evidence of a fixed or floating charge on assets of the society.
- (2) If an application for the recording of the charge is made in accordance with subsection (3), the instrument is not a bill of sale for the purposes of the Bills of Sale Acts 1878 and 1882 and is not invalidated by those Acts.
- (3) An application is made by delivering to the FCA (by post or otherwise), within the period of 21 days beginning with the date of execution of the instrument (subject to any extension under section 60)—
 - (a) a copy of the instrument, authenticated in the manner directed by the FCA,
 - (b) such additional particulars relating to the charge as may be required by the FCA, authenticated in the manner directed by the FCA, and
 - (c) the appropriate fee.
- (4) If an application is made in accordance with subsection (3), the FCA must—
 - (a) give the person who makes the application an acknowledgment of the application, bearing the FCA's seal,

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- (b) place the copy of the instrument included in the application, a note of any particulars included in it, and a copy of the acknowledgement on a file kept by the FCA in respect of the society, and
 - (c) make the file available for inspection during office hours by members of the public on payment of the appropriate fee.
- (5) “The appropriate fee” means the fee required by rules made in accordance with paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000.
- (6) This section does not apply to a debenture registered under section 14 of the Agricultural Credits Act 1928 (debenture of registered society creating floating charge over farming stock).

60 Section 59: power to extend time for making application or to rectify errors

- (1) This section applies where—
- (a) a registered society has executed an instrument to which section 59 applies, and
 - (b) it appears to the FCA (on the application of the society or any other person claiming the benefit of the instrument) that by reason of inadvertence or other sufficient cause—
 - (i) an application for recording the charge was not made within the period mentioned in section 59(3), or
 - (ii) any matters were omitted from, or mis-stated in, such an application.
- (2) The FCA may, on such terms as it considers appropriate, give a direction—
- (a) extending the period for making such an application, or
 - (b) requiring the omission or mis-statement to be rectified.

61 Notification of transactions relating to charges recorded under section 59

- (1) The FCA may, under section 143, make provision for—
- (a) the giving to the FCA of notice of any release, discharge or other transaction relating to a charge in respect of which an application under section 59 has been made;
 - (b) the inclusion in the file mentioned in that section of any such notice appearing to the FCA to relate to the charge.
- (2) Nothing in this section limits the generality of the power to give directions conferred by section 143.

CHAPTER 2

CHARGES: SCOTLAND

62 Floating charges created by Scottish societies

- (1) The relevant provisions (which relate to floating charges) apply to a registered society as they apply to an incorporated company, subject to the general and specific modifications mentioned below.

- (2) In this Chapter “the relevant provisions” means—
- (a) Chapter 1 of Part 18 of the Companies Act 1985 (“the 1985 Act”), and
 - (b) section 122(2) of the Insolvency Act 1986 (“the 1986 Act”).
- (3) The general modifications are—
- (a) a reference to a company or incorporated company is to be read as a registered society;
 - (b) a reference to the registrar or the registrar of companies is to be read as the FCA;
 - (c) a reference (however expressed) to—
 - (i) registration of a floating charge,
 - (ii) registration in accordance with Chapter 2 of Part 25 of the Companies Act 2006, or
 - (iii) delivery to, or receipt by, the registrar of particulars for registration,is to be read as delivery to the FCA of any document required by section 63(2) to be so delivered.
- (4) The specific modifications are—
- (a) in section 122(2) of the 1986 Act, a reference to the Court of Session is to be read as any sheriff court;
 - (b) section 462(5) of the 1985 Act is subject only to such provisions of that Act as apply (by virtue of section 123) to registered societies;
 - (c) section 466 of that Act has effect as if subsections (4) and (5) and the words “subsection (4) of” in subsection (6) were omitted.
- (5) Subsection (6) applies where any assets of a registered society are subject to—
- (a) a floating charge created under the relevant provisions as applied by this section, and
 - (b) an agricultural charge created under Part 2 of the Agricultural Credits (Scotland) Act 1929 (“the 1929 Act”).
- (6) Sections 463(1)(c) and 464(4)(b) of the 1985 Act have effect for the purpose of determining the relative ranking of those charges as if the agricultural charge were a floating charge created under the relevant provisions and registered under the 1985 Act at the same time as it was registered under Part 2 of the 1929 Act.
- (7) This Chapter does not apply in relation to a registered society whose registered office is in England or Wales.

63 Filing of information relating to charges created by virtue of section 62

- (1) This section applies in relation to a floating charge created by a registered society under the relevant provisions as applied by section 62.
- (2) The following must be delivered to the FCA (by post or otherwise) within the period of 21 days beginning with the day of execution of the instrument creating the charge (or within any extended period allowed under subsection (6))—
- (a) a copy of the instrument, authenticated in the manner directed by the FCA,
 - (b) a note, authenticated in the manner directed by the FCA, of such particulars relating to the charge as may be required by the FCA, and
 - (c) the appropriate fee.

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- (3) If subsection (2) is not complied with, the charge is void against any person other than the society.
- (4) Where a person delivers to the FCA a document within subsection (2)(a) or (b) together with the appropriate fee, the FCA must—
- (a) give the person an acknowledgement, bearing the FCA's seal, that states the date and time of delivery,
 - (b) place the document and a copy of the acknowledgement on a file kept by the FCA in respect of the society, and
 - (c) make the file available for inspection during office hours by members of the public on payment of the appropriate fee.
- (5) Subsection (6) applies if it appears to the FCA (on the application of the society or any other person claiming the benefit of the instrument) that by reason of inadvertence or other sufficient cause—
- (a) a duly authenticated copy of the instrument was not delivered to the FCA within the period of 21 days mentioned in subsection (2), or
 - (b) any matters were omitted from, or mis-stated in, the note under subsection (2)(b).
- (6) The FCA may, on such terms as it considers appropriate, give a direction—
- (a) extending the period, or
 - (b) requiring the omission or mis-statement to be rectified.
- (7) “The appropriate fee” means the fee required by rules made by the FCA (in accordance with paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000).

64 Notification of charges etc: Scotland

- (1) The FCA may, under section 143, make provision for—
- (a) the giving to the FCA of notice of any release, discharge or other transaction relating to a charge created by an instrument a copy of which has been delivered to the FCA in pursuance of section 63;
 - (b) the giving to the FCA of notice of any security granted by a registered society over any of its assets otherwise than under the relevant provisions as applied by section 62;
 - (c) the inclusion in the file mentioned in section 63 of any notice within paragraph (a) or (b) of this subsection.

Nothing in this subsection limits the generality of the power to give directions conferred by section 143.

- (2) The Court of Session may by Act of Sederunt make rules prescribing the nature of the documents with which, in relation to a charge of a kind mentioned in subsection (1)(a), the creditor may require to be provided for identifying the assets affected by the charge and establishing the society's title to them.

CHAPTER 3

RECEIVER OR MANAGER OF SOCIETY'S PROPERTY

65 English and Welsh societies: restriction on appointment of administrative receiver

- (1) The holder of a qualifying floating charge in respect of the property of a relevant society whose registered office is situated in England and Wales may not appoint an administrative receiver of the society.
- (2) This section applies to a floating charge which is created by a relevant society on or after 6th April 2014 and is either—
 - (a) a charge in respect of which an application under section 59 has been made; or
 - (b) a charge created by a debenture registered under section 9 of the Agricultural Credits Act 1928 as applied by section 14 of that Act.
- (3) This section applies in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).
- (4) In this section—

“administrative receiver”, in relation to a relevant society, means—

 - (a) a receiver or manager of the whole (or substantially the whole) of the society's property appointed by or on behalf of the holder of a floating charge, or by such a charge and one or more other securities, or
 - (b) a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the society's property;

“holder of a qualifying floating charge in respect of the property of a relevant society” has the meaning given in paragraph 14 of Schedule B1 to the Insolvency Act 1986 as applied in relation to a relevant society by an order under section 118;

“relevant society” means a registered society which is not—

 - (a) a private registered provider of social housing; or
 - (b) registered as a social landlord under Part 1 of the Housing Act 1996 or under Part 2 of the Housing (Scotland) Act 2010.

66 Duty to account etc of receiver or manager of a society's property

- (1) This section applies to a receiver or manager of a registered society's property who has been appointed under the powers contained in any instrument.
- (2) The receiver or manager must—
 - (a) within one month from the date of appointment, notify the FCA of the appointment;
 - (b) within one month (or such longer period as the FCA may allow) after the end of each relevant period, deliver to the FCA a return showing receipts and payments in that relevant period;
 - (c) within one month after ceasing to act as receiver or manager, deliver to the FCA a return showing—
 - (i) receipts and payments in the final period, and

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(ii) the total amount of payments and receipts in all preceding relevant periods.

References here to receipts and payments are to receipts and payments of the receiver or manager.

- (3) For the purposes of subsection (2) the relevant periods are—
- (a) the period of 6 months beginning with the date of appointment, and
 - (b) each subsequent period of 6 months for which the person is receiver or manager.
- (4) If the society is a PRA-authorised person—
- (a) the receiver or manager must send to the PRA a copy of any notification or return sent under subsection (2) to the FCA;
 - (b) the FCA must consult the PRA before allowing a period of more than one month under subsection (2)(b).