

## CO-OPERATION (AMENDMENT) ACT.

### Act No. 56, 1961.

**Elizabeth II, No. 56, 1961** An Act to make provisions with respect to the shareholdings of certain persons in, and the control of advertising by, permanent building societies; for these and other purposes to amend the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 11th December, 1961.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**Short title and citation.** 1. (1) This Act may be cited as the "Co-operation (Amendment) Act, 1961".

(2) The Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts and by this Act, may be cited as the Co-operation Act, 1923-1961.

**Consequential.** (3) The Co-operation (Rural Societies) Amendment Act, 1961, is amended by omitting subsection two of section one.

**Amendment of Act No. 1, 1924.** 2. The Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts, is amended—

**New sec. 17B.** (a) by inserting next after section 17A the following new section:—

**Mortgages by minors.** 17B. (1) Where a member of a building society under the age of twenty-one years executes a mortgage in favour of the society to secure the repayment of moneys lent by the society to such member, and such member—

(a) is married; or

(b)

- (b) being unmarried, is of the age of eighteen years or over at the time he executes the mortgage, No. 56, 1961

and the consent in writing of the co-operative building advisory committee to the execution of the mortgage by such member has been given before its execution, such member shall be subject to the same liabilities and obligations and have the same rights in respect of the mortgage, and any contract entered into by such member for the purchase of the land the subject of the mortgage, as if he had been of the full age of twenty-one years at the time of the execution of the mortgage and the contract.

(2) Any guarantee or surety given by any person in respect of any such mortgage or contract shall be as binding and effectual as if the person who executed the mortgage or contract was of the full age of twenty-one years at the time when the mortgage or contract, as the case may be, was executed and the guarantee or surety was given.

- (b) by inserting next after section 18A the following new sections : — New secs.  
18B-18G.

18B. (1) A permanent building society registered after the commencement of the Co-operation (Amendment) Act, 1961, shall not borrow any money, or receive any money on deposit, or otherwise carry on any business, unless there has been produced to the registrar evidence satisfying him that at least ten members of the society— Minimum  
subscription  
by founding  
members of  
permanent  
building  
societies.

- (a) have each been issued with shares in the society, the shares issued to each such member—

- (i) being of a nominal value of at least five hundred pounds, or such lesser sum as the Minister may, after considering a report obtained from the co-operative building advisory committee, determine in respect of a particular society or member;

(ii)

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- (ii) having been issued to such member in accordance with rules of the society containing provisions in relation to such shares in or to the effect of the provisions contained in paragraph (a) of subsection four of this section; and
- (iii) being solely owned by such member; and

- (b) have each paid to the society in cash for such shares the nominal value thereof,

and the registrar has issued to the society his certificate that the requisite evidence has been so produced.

(2) The ten persons referred to in subsection one of this section shall—

- (a) where the number of directors of the society elected at the formation meeting of the society did not exceed ten, include all of the directors of the society; or
- (b) where the number of directors of the society so elected exceeded ten, be any ten of the directors of the society.

(3) If at the expiration of two months from the date of registration of the society the requisite evidence has not been produced to the registrar under subsection one of this section the registrar may issue a certificate under the provisions of paragraph (i) of subsection three of section ninety-two of this Act.

(4) (a) The rules of the society shall contain provisions in or to the effect that shares referred to in subsection one of this section shall not be transferable without the consent in writing of the co-operative building advisory committee, or until the expiration of seven years from the date of allotment of the shares.

Nothing in any such rules shall prevent the transmission of any such shares by operation of law.

(b)

(b) The society shall not give effect to or recognise any transfer of such shares in contravention of any such rule. No. 56, 1961

(c) Until the expiration of the said period of seven years the society shall not, without the consent in writing of the co-operative building advisory committee, repay the sum subscribed for the shares or any part of that sum:

Provided that nothing in this paragraph shall prevent the repayment of any such sum or part within the said period of seven years if the society is in liquidation.

18c. (1) The registrar may in respect of any permanent building society whether registered before or after the commencement of the Co-operation (Amendment) Act, 1961, serve a notice on the society under this section. Permanent building societies directors' shares.

(2) A notice under this section shall state, or contain a statement to the effect, that, unless within such period (being not less than two months) after the service of the notice as is specified therein there has been produced to the registrar evidence to his satisfaction that the directors of the society, or where there are more than ten such directors, at least ten of them—

(a) are, before the expiration of such period, the holders of shares in the society, the shares held by each such director—

(i) being of a nominal value of at least five hundred pounds, or such lesser sum as the Minister may, after considering a report obtained from the co-operative building advisory committee, determine in respect of a particular society or director;

(ii) having been issued to such director in accordance with rules of the society containing provisions in relation to such shares in or to the effect

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effect of the provisions contained in paragraph (a) of subsection four of section 18B of this Act; and

(iii) being solely owned by such director; and

(b) have each paid to the society in cash for such shares the nominal value thereof,

the registrar proposes to seek the Minister's approval to do all or any of the following things, that is to say:—

(c) to give to the society a direction that the society shall not—

(i) issue any shares, lend or borrow any money, or receive any money on deposit; or

(ii) issue or cause to be issued any advertisement; or

(d) in accordance with the provisions of paragraph (j) of subsection three of section ninety-two of this Act, to issue a certificate for the winding-up of the society.

(3) If at the expiration of the period specified in the notice, or within such further time as the registrar may allow, the registrar has not received evidence to his satisfaction as aforesaid he may, with the Minister's approval, at any time thereafter—

(a) give to the society a direction that while the direction is in force, the society shall not—

(i) issue any shares, lend or borrow any money, or receive any money on deposit; or

(ii) issue or cause to be issued any advertisement; or

(b) in accordance with the provisions of paragraph (j) of subsection three of section ninety-two of this Act, issue a certificate for the winding-up of the society.

A

A certificate referred to in paragraph (b) of this No. 56, 1961 subsection may be issued whether or not a direction referred to in paragraph (a) of this subsection has been given.

The Minister's approval under this subsection shall not, where the society makes a request referred to in subsection four of this section and appears before the co-operative building advisory committee, be given until he has obtained and considered the report, referred to in the said subsection four, of the said committee.

(4) If a society on which a notice under subsection two of this section has been served so requests within one month after service of the notice, it shall be given the opportunity of being heard by the co-operative building advisory committee on the questions of whether or not the direction referred to in paragraph (a) of subsection three of this section should be given or the certificate referred to in paragraph (b) of that subsection should be issued, and such committee shall, after hearing the society, report to the Minister on such questions.

18D. A building society registered after the commencement of the Co-operation (Amendment) Act, 1961, shall not issue or cause to be issued any advertisement until the co-operative building advisory committee has given to the society permission in writing to do so.

Commencement of advertising by a new building society. cf. 8 & 9 Eliz. 2, c. 64, s. 5 (1).

18E. (1) If with respect to any building society the registrar considers it expedient so to do in the interests of persons who may become members of, or invest in, or deposit money with, the building society, he may, with the approval of the Minister, by notice served on the society, give a direction—

Power to control advertising by a building society. cf. *Ibid.*, s. 7.

(a) prohibiting the issue by the society of advertisements of all descriptions; or

(b)

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- (b) prohibiting the issue by the society of advertisements of any description specified in the direction; or
- (c) prohibiting the issue by the society of any advertisements which are, or are substantially, repetitions of an advertisement which has been issued and which is specified in the direction; or
- (d) requiring the society to take all practicable steps to withdraw any advertisement, or any description of advertisement, which is specified in the direction and is displayed in any place,

or a direction as to any two or more of the matters referred to in paragraph (a), (b), (c) or (d) of this subsection.

The Minister's approval under this subsection shall not, where the society has made representations pursuant to subsection three of this section with respect to the proposal of the registrar set out in the notice served on the society under that subsection, be given until he has obtained and considered the report of the co-operative building advisory committee with respect to such proposal.

(2) Directions under this section may be varied or revoked at any time by a subsequent direction under this section.

(3) Not less than one week before giving a direction under this section (other than a direction revoking a previous direction) with respect to any building society, the registrar shall serve on the society a notice in writing stating that he proposes to seek the Minister's approval to issue a direction pursuant to subsection one of this section. The society may within a period of one week after the date on which the society is served with the notice make representations to the co-operative building

building advisory committee with respect to any such proposal and the committee shall report thereon to the Minister. No. 56, 1961

(4) A society shall not issue any shares, or lend or borrow any money, or receive any money on deposit during the period after the service upon it of a notice under subsection three of this section and before the society is notified by the registrar that the proposal has been dealt with by the Minister.

18F. In this Division, "advertisement" means an advertisement in any medium inviting business or making known the activities of a building society, and includes a circular or handbill inviting business or making known the activities of a building society. Interpretation.  
cf. 8 & 9  
Eliz. 2, c. 64,  
s. 73 (1).

- 18G. Any building society which contravenes—
- (a) any of the provisions of paragraph (b) or (c) of subsection four of section 18B of this Act; or
  - (b) any direction given to it under paragraph (a) of subsection three of section 18C of this Act; or
  - (c) the provisions of section 18D of this Act; or
  - (d) any direction given to it under subsection one of section 18E of this Act, or the provisions of subsection four of that section,

Penalty for offences under sections 18B, 18C, 18D and 18E.

shall be guilty of an offence, and every director and the secretary or manager of the society shall be guilty of the like offence unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

Any society or person guilty of an offence under this section shall be liable to a penalty not exceeding two hundred pounds.

(c)



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 Sec. 40.  
 (Name.)

- (c) by inserting next after subsection eight of section forty the following new subsection : —

(9) Notwithstanding any other provision of this section a society shall not be registered by a name which in the opinion of the registrar is undesirable and a change of name of a society shall not be registered if in the opinion of the registrar the name as changed is undesirable.

Sec. 44A.  
 (Any  
 company  
 may apply  
 to be  
 registered.)

- (d) (i) by omitting from subsection one of section 44A the figures "1899" and by inserting in lieu thereof the figures and words "1936, as amended by subsequent Acts";
- (ii) by inserting at the end of subsection two of the same section the words "and for the purposes of such application the reference in the said subsection eight to the Companies Act, 1899, shall be read and construed as a reference to the Companies Act, 1936, as amended by subsequent Acts";

Sec. 48.  
 (Funds of  
 limited  
 society.)

- (e) (i) by omitting subsections one, two and three of section forty-eight and by inserting in lieu thereof the following subsections : —

(1) Every permanent building society, or terminating building society which accepts deposits of money, issues bonds or issues ordinary shares (not being ordinary shares issued to a member solely to enable him to comply with the requirements of the rules of the society relating to the shares in the society required to be held by a director) or credit union, shall from the surplus arising in any year from the business of the society transfer five per centum of the difference between—

- (a) the surplus arising in any year from the business of the society; and

(b)

- (b) such sum as is approved under the rules No. 56, 1961 of the society for payment in that year as dividends on borrowers' shares,

to a fund, in this section called the "reserve fund", until such time as the reserve fund is equal to seven and one-half per centum of the net assets of the society.

(2) (a) The reserve fund shall not be used except for the following purposes :—

- (i) the investing of any part of the reserve fund in investments authorised by subsection one of section sixty-eight of this Act other than investments by deposit in a society;
- (ii) the purchase of the shares of any member of the society, or the repayment of the amount paid up on the shares of any member of the society, or the payment of any amount upon the withdrawal of the shares of any member of a building society;
- (iii) the repayment of money deposited with the society or the redemption of any bonds issued by the society.

(b) Where the reserve fund is used for any of the purposes referred to in subparagraph (ii) or (iii) of paragraph (a) of this subsection the society shall not approve of any further loans to its members until the society has from moneys received by it recouped the reserve fund to the extent that the reserve fund was used for such purposes.

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- (ii) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection :—

(8) In this section—

“Bond” does not include any instrument which makes any property liable, whether specifically or otherwise, to any person as security for money raised on loan or received on deposit.

“Net assets” means the total assets of a society, less the sum of—

(a) the total loans owing by the society and in respect of which the society has given any security; and

(b) the total amount of borrowers' share capital.

“Surplus” means the surplus after making proper allowance for depreciation in value of the property of the society and for contingent liability for loss.

Sec. 52.  
(Purchase  
of shares.)

- (f) (i) by omitting from section fifty-two the words “out of its reserve fund”;
- (ii) by inserting at the end of the same section the following new paragraph :—

Nothing in this section shall prevent a society from purchasing the shares of a deceased member of the society.

Sec. 54.  
(Repayment  
of shares.)

- (g) (i) by inserting in subsection one of section fifty-four after the word “society” where firstly occurring the words “, other than a building society whose rules provide for withdrawal of shares,”;

(ii)

(ii) by inserting at the end of the same section the No. 56, 1961 following new subsection :—

(3) (a) Where a member has been expelled from a society in accordance with the rules of the society the society shall repay to the member the amount paid up on the shares held by him at the date of his expulsion, less any amount owing by the member to the society at the date of his expulsion under the rules of the society or any contract or otherwise.

(b) Where the balance sheet of the society last issued before the date of expulsion of any member of the society disclosed a loss or deficiency there shall be deducted from the capital to be repaid to the member an amount that bears to the amount of such loss or deficiency the same proportion as the number of shares held by such member bore to the total number of shares held by all members of the society as at the date of the expulsion of such member.

(c) Payment of any amount due to a member pursuant to this subsection shall be made at such time as may be determined by the board of the society but not later than twelve months after the date of expulsion. The shares in respect of which the capital has been so repaid shall be cancelled.

(h) by inserting at the end of section fifty-eight the following new subsection :—

Sec. 58.  
(Death of member.)

(10) Upon the commencement of the Co-operation (Amendment) Act, 1961, this section shall cease to have effect except in respect of the transfer of the share or interest of a member of a society to—

(a) a nominee of that member nominated in accordance with the provisions of this section before such commencement; or

(b)

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(b) such person as a nominee of that member, nominated as aforesaid, may specify under paragraph (c) of subsection one of this section.

**Sec. 59.**  
(Death of  
intestate.)

(i) (i) by omitting from subsection one of section fifty-nine the words "one hundred pounds" and by inserting in lieu thereof the words "two hundred pounds";

(ii) by inserting in the same subsection after the word "money" where secondly occurring the words "or transfer such shares";

(iii) by inserting in the same subsection after the word "money" where thirdly occurring the words "or shares";

(iv) by inserting next after the same subsection the following new subsection :—

(1A) If any member or person so entitled dies testate the board may upon such evidence as it deems sufficient pay the money or transfer the shares to the person appearing to the board to be entitled thereto under the will of the deceased member or person.

(v) by omitting from subsection two of the same section the words "one hundred pounds" and by inserting in lieu thereof the words "two hundred pounds";

(vi) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

(4) The provisions of this section are subject to section one hundred and twenty-two of the Stamp Duties Act, 1920, as amended by subsequent Acts.

(vii)

(vii) by inserting in subsection five of the same section after the word "payment" the words "or transfer";

(viii) by inserting at the end of the same section the following new subsection :—

(6) No payment or transfer pursuant to this section shall be made after evidence has been produced to the society that letters of administration of the estate, or probate of the will, of the deceased member have or has been granted.

(j) (i) by omitting subsections two and three of section sixty-six;

Sec. 66.  
(Loans  
and  
deposits.)

(ii) by omitting from subsection eight of the same section the words "A society shall not raise money on loan so that it has on loan at any time an aggregate amount exceeding one hundred pounds unless a higher aggregate amount has been approved by special resolution of the society" and by inserting in lieu thereof the words "A society shall not raise money on loan so that it has on loan at any time an aggregate amount exceeding one thousand pounds unless the rules of the society specifically authorise the raising of money on loan to an aggregate amount in excess of one thousand pounds and specify the higher aggregate amount that may be raised on loan by the society";

(iii) by omitting from the same subsection the figures "1899," and by inserting in lieu thereof the figures and words "1936, as amended by subsequent Acts";

(k) (i) by inserting in subsection (3A) of section sixty-eight after the word "society" where firstly occurring the words "if authorised by its rules";

Sec. 68.  
(Invest-  
ment.)

(ii)

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- (ii) by omitting from the same subsection the words "No purchase of any such shares shall be made unless the purchase is specially authorised by a special resolution of the society.";

Sec. 83.  
(Alteration  
of rules.)

- (1) (i) by omitting subsection two of section eighty-three and by inserting in lieu thereof the following subsection :—

(2) The society shall within the prescribed time and in the prescribed manner apply to the registrar to have the alteration registered.

- (ii) by omitting subsection three of the same section;

Sec. 92.  
(Winding-  
up.)

- (m) by inserting next after paragraph (h) of subsection three of section ninety-two the following new paragraphs :—

(i) that the society has failed within two months of the date of its registration to produce to the registrar the evidence referred to in subsection one of section 18B of this Act;

(j) that the society has failed within the period specified in any notice served on it under subsection two of section 18C of this Act to produce to the registrar the evidence referred to in that subsection.

Second  
Schedule.

- (n) (i) by omitting from the Second Schedule the words "Northumberland Permanent Building, Investment, Land, and Loan Society.";

(ii) by omitting from the same Schedule the words "Equitable Permanent Benefit Building, Land, and Savings Institute." and by inserting in lieu thereof the words "Equitable Permanent Building Society.";

(iii)

(iii) by omitting from the same Schedule the words No. 56, 1961  
 "St. Joseph's Investment and Building Society."  
 and by inserting in lieu thereof the words  
 "Lisgar Investment and Building Society.";

(o) by inserting in the Third Schedule after the figures Third  
 "18" the figures and letters "18E, 18F, 18G". Schedule.

3. (1) This section shall apply to—

- (a) every agreement which was entered into before the commencement of this Act, between a building society duly registered under the Co-operation, Community Settlement, and Credit Act, 1923, as amended by subsequent Acts, and the Treasurer, and which is in force at such commencement, whereby in consideration of the execution by the Treasurer pursuant to the Government Guarantees Act, 1934-1948, of a guarantee in favour of the bank society or body of persons mentioned in the agreement (which bank society or body of persons is in this section referred to as "the lender") the building society undertakes to observe the covenants, stipulations and conditions specified in the agreement; and
- (b) every agreement, being an equitable mortgage, which was entered into before the commencement of this Act between a building society duly registered as aforesaid and the Rural Bank of New South Wales (in this section referred to as "the lender") whereby in consideration of loans made by the said bank to the building society, the building society undertakes to observe the covenants, stipulations and conditions specified in the agreement.

For the purposes of paragraph (a) of this subsection "body of persons" includes the Government Insurance Office of New South Wales.

(2) Where any agreement referred to in subsection one of this section contains a covenant to the effect that the society that is a party to the agreement will not in any case out of money borrowed by it from the lender advance to any one member of the society any greater amount than the



**No. 56, 1961** amount specified in such agreement or in a notice in writing by the Treasurer to the society as the maximum amount which at the date of the advance is permitted to be advanced to any one member, nothing in that covenant shall preclude the society from advancing out of money borrowed by it from the lender to any one member of the society an amount which when reduced by the value of the share capital of the member or the sum of one hundred and sixty pounds, whichever is the less, does not exceed the sum of three thousand two hundred and fifty pounds.

(3) Notwithstanding the rules of any society which is a party to an agreement to which this section applies, such society may—

- (a) make an advance to any member of the society up to the maximum amount which it is permitted to advance to such member under such agreement as varied by subsection two of this section; and
  - (b) issue shares to any member of the society of such value as will enable the member to obtain from the society an advance up to such maximum amount.
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