



The Law Commission
and
The Scottish Law Commission

(LAW COM. No. 59)

(SCOT. LAW. COM. No. 35)

FRIENDLY SOCIETIES BILL

REPORT ON THE CONSOLIDATION OF THE
FRIENDLY SOCIETIES ACTS 1896 TO 1971 AND
CERTAIN OTHER ENACTMENTS RELATING TO THE
SOCIETIES TO WHICH THOSE ACTS APPLY

*Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
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THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

FRIENDLY SOCIETIES BILL

**REPORT ON THE CONSOLIDATION OF THE FRIENDLY SOCIETIES
ACTS 1896 TO 1971 AND CERTAIN OTHER ENACTMENTS
RELATING TO THE SOCIETIES TO WHICH THOSE ACTS
APPLY**

*To the Right Honourable the Lord Elwyn-Jones,
Lord High Chancellor of Great Britain, and*

*the Right Honourable Ronald King Murray, Q.C. M.P.,
Her Majesty's Advocate.*

The Friendly Societies Bill which is the subject of this Report seeks to consolidate the Friendly Societies Acts 1896 to 1971 and certain other enactments relating to the societies to which those Acts apply. In order to produce a satisfactory consolidation it is necessary to make two recommendations which are set out in the Appendix to this Report. The matter with which the second recommendation deals is not the concern of the Scottish Law Commission and accordingly the first recommendation is made by both Commissions and the second by the Law Commission. The amendment proposed in the first recommendation, but not that proposed in the second, could have been authorised under the Consolidation of Enactments (Procedure) Act 1949.

The Chief Registrar of Friendly Societies has been consulted and agrees with both recommendations. The Insular Authorities in the Isle of Man and each of the Channel Islands have been consulted in connection with the second recommendation and have given their agreement to it.

SAMUEL COOKE,
Chairman of the Law Commission.

J. O. M. HUNTER,
Chairman of the Scottish Law Commission.

22 May 1974.

APPENDIX

RECOMMENDATIONS

1. Section 68(1) of the Friendly Societies Act 1896 provides that every dispute between—

- (a) a member or person claiming through a member or under the rules of a registered society or branch, and the society or branch or an officer thereof; or
- (b) any person aggrieved who has ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch, or an officer thereof; or
- (c) any registered branch of any society or branch, and the society or branch of which it is a branch; or
- (d) an officer of a registered branch and the society or branch of which that registered branch is a branch; or
- (e) any two or more registered branches of any society or branch, or any officers thereof,

shall be decided in manner directed by the rules of the society or branch.

Section 68(6) provides that where the rules contain no direction as to disputes or where no decision is made on a dispute within forty days after application to the society or branch for a reference under its rules, "the member or person aggrieved" may apply to the county court or a magistrates' court for the determination of the dispute by the court. In Scotland the application is made to the sheriff. Every friendly society registered on or after 15 August 1850 has been required to include in its rules provision as to the manner in which disputes shall be settled, and although the requirement does not apply to a branch all branch rules do in practice contain such provision. Section 68(6) is therefore now of practical importance only where there is delay in settling a dispute in accordance with the rules.

The reference in section 68(6) to "the" member or person aggrieved suggests that subsection (6) looks back to subsection (1) and, accordingly, that the words refer only to the person mentioned in paragraphs (a) and (b) above. The fact that subsection (6) mentions only two of the five categories of parties to the dispute (other than the society or branch or an officer thereof) mentioned in subsection (1) raises doubts as to the rights under subsection (6) of the other three categories. If the narrow construction were adopted it would mean that where no decision is made on a dispute within forty days, the applicant who falls within these categories would have no means of expediting matters. Clearly, subsection (6) should be the counterpart to subsection (1) and confer the same rights on all the parties mentioned in subsection (1).

We therefore recommend that any doubt as to the effect of section 68(6) should be removed and that in re-enacting the subsection it should be made to apply to all the persons referred to in section 68(1). Effect is given to this recommendation in clause 79(1) and (3) of the Bill.

2. Section 103 of the Friendly Societies Act 1896 provides that that Act shall apply to the Isle of Man as if it were part of England subject to certain variations specified in the section. Section 104 makes a similar provision in relation to the Channel Islands and section 108 provides that the Act shall extend to the whole of the British Islands. Neither the Friendly Societies Act 1908 nor the Friendly Societies Act 1924 expressly provides that the Act shall extend to the Isle of Man or the Channel Islands but apart from one section of the Act of 1908 all the provisions of these Acts effect verbal amendments of the Act of 1896, and these include an amendment of section 103. Four other Acts which fall within the collective title, the Friendly Societies Acts 1896 to 1971, were passed in 1929, 1948, 1955 and 1958. Each of these Acts contains a provision extending the Act in question to the Isle of Man and the Channel Islands. Section 8 of the Societies (Miscellaneous Provisions) Act 1940, which authorises any registered friendly society to set up a fund for the purchase on behalf of its members of certain government securities, extends to the Channel Islands and the Isle of Man by virtue of section 12(2) of that Act. The Finance Act 1966 which, by section 29(9) and Part II of Schedule 8, amended the Friendly Societies Acts provides, in section 53(6), that that Act, in so far as it amends the enactments relating to friendly societies, shall extend to the Channel Islands and the Isle of Man.

When the Friendly and Industrial and Provident Societies Act 1968 was enacted a different provision was made in relation to the Islands. Section 22 of that Act empowers Her Majesty by Order in Council to provide that all or any of the provisions of that Act shall extend to any of the Channel Islands or that all or any of the said provisions, in so far as those provisions relate to societies registered under the Act of 1896, shall extend to the Isle of Man with, in either case, such exceptions, adaptations and modifications, if any, as may be specified in the Order. Orders in Council have been made under that section in relation both to the Channel Islands and the Isle of Man. The precedent of section 22 was followed in section 15(4) of the Friendly Societies Act 1971, but the power conferred by section 15(4) to extend that Act to any of the Channel Islands or the Isle of Man has not been exercised.

The provisions of the Acts of 1968 and 1971 mentioned above reflect the changed practice. It is no longer customary to insert in an Act of Parliament a provision extending the Act to any of the Islands with specified modifications or with such modifications as may be specified by Order in Council. Instead, if the subject matter of the Act makes it appropriate, the Act contains a provision similar in effect to section 22 of the Act of 1968 and section 15(4) of the Act of 1971.

It will be seen that, as respects their extent, the enactments which it is proposed to consolidate fall into three groups. The majority extend to the Islands with modifications specified in section 103 or 104 of the Act of 1896. Many of these modifications are now out of date. The Act of 1968 extends to the Islands by virtue of Orders in Council which may be varied or revoked by subsequent Orders. The Act of 1971 does not extend to any of the Islands but may be extended to any or all of them if Orders in Council

for that purpose are made. It is impossible to consolidate the enactments relating to friendly societies and preserve these differences even if that were desirable. Some friendly societies whose registered offices are situated in England or Wales have branches in one or more of the Channel Islands and there are several friendly societies registered under the Act of 1896 in the Isle of Man.

The Insular Authorities in the Isle of Man and each of the Channel Islands have been consulted. The Isle of Man authorities have agreed that in the interest of effecting the consolidation all the provisions of the Bill should extend to the Isle of Man with such modifications and adaptations as may be specified in an Order in Council. A similar agreement relating to the Channel Islands has been given by the authorities in Jersey and Guernsey. The advantage of allowing the necessary modifications and adaptations to be made by Order in Council is that they can be kept up to date to accord with any changes in the law in force in the Islands.

The Law Commission therefore recommends that the Bill should extend to the Isle of Man and the Channel Islands and that in its application to those Islands the Bill should have effect subject to such modifications and adaptations as Her Majesty may by Order in Council specify. The Law Commission also recommends that any such Order should be capable of being amended or revoked by a subsequent Order. Effect is given to this recommendation in clauses 112, 113 and 117(3) of the Bill.

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