

Worried About Liability? Here’s What Officers Need to Know Under the New Incorporated Societies Act

Posted on: January 27, 2026

Those familiar with the Companies Act 1993 will be aware that certain requirements must be met in order for a company to indemnify and effect insurance for its directors. Providing an indemnity and effecting insurance can cover legal costs and liability for directors in relation to civil claims as well as where unsuccessful criminal

proceedings are brought against them. A similar process is required for an incorporated society to provide an indemnity or effect insurance for its officers.

Under the Incorporated Societies Act 2022 (IS Act) officers are defined as:

A person who is a member of the committee or is occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society

Directors and officers owe similar duties to the entities they are appointed to. These include the duty to act in good faith and in the best interests of the company/society (as applicable); the duty to exercise their powers for a proper purpose; and the duty to act with reasonable care, diligence and skill. While some societies may refer to officers as “directors” and the committee may be called a “board”, it is important to recognise and appreciate the key differences between directors and officers. For the purposes of this article, a reference to a director refers to a director of a company while references to officers shall be to those of incorporated societies.

Directors are typically appointed by a company’s shareholders, whereas officers can be appointed to a role by vote of members or other means, or the person may be deemed to be an officer by virtue of their role (for example, a chief executive officer of a society is likely to be deemed an officer).

The IS Act introduces new mandatory requirements for society constitutions, including specific provisions relating to indemnities and insurance. Given that incorporated societies can be of substantial size, may be trading, and can carry real operational risk, anyone considering becoming an officer should ensure that:

- the requisite provisions are included within the society’s constitution;
- the society provides the officer with an indemnity; and
- the society has directors’ and officers’ insurance in place.

What kind of protection does an indemnity provide officers?

Where a society provides an indemnity to an officer, that indemnity may cover liabilities incurred by the officer in the course of carrying out their functions, as well as any associated costs.

For example, if a third party brings a legal claim against an officer arising from an act or omission while acting for the society, the officer may incur legal costs in defending the claim or be required to settle the claim. If the officer holds an indemnity from the society that extends to those circumstances, they may may be entitled to have the society meet those costs.

An indemnity provided to an officer must be expressly authorised by the society’s constitution. Care must also be taken to ensure that the scope of the indemnity complies with the requirements of the IS Act. In particular, a society cannot indemnify an officer for criminal liability, although such indemnity may be permitted if the officer is ultimately not found criminally liable. Further, officers cannot be indemnified for breaches to their duty to act in good faith and in the best interests of the society. Subject to these statutory limits, the society can choose the extent to which it indemnifies its officers.

What is Directors’ and Officers’ (D&O) insurance?

Companies and incorporated societies often take out directors’ and officers’ (D&O) insurance as an additional layer of protection. This can be an effective way to manage and spread risk, rather than only relying on an indemnity.

For an incorporated society, many of the same procedural requirements that apply to indemnities also apply to the effecting of insurance, including the need for express authorisation in the society’s constitution. A society may insure an officer against liability (other than criminal liability, unless the officer is cleared of any criminal wrongdoing) arising from any act or omission in their capacity as an officer, as well as for costs incurred in defending or settling a claim relating to that liability. The officers who vote in favour of authorising the insurance must also sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the society.

What does this mean?

When a society is considering whether to provide an indemnity or take out directors’ and officers’ insurance, the extent and purpose of the coverage should be carefully considered. The IS Act sets out a clear and specific process that must be followed when an incorporated society’s committee (or board) resolves to grant an indemnity or take out insurance, including obtaining the necessary approvals, signing a section 97 certificate, and ensuring the society’s constitution expressly permits it.

In summary

If you are considering becoming an officer of an incorporated society, it is worthwhile doing some due diligence first, including checking whether:

- the society’s constitution expressly authorises the indemnification of officers;
- the society’s constitution expressly authorises the society to effect insurance for its officers; and
- the society provides indemnities and/or directors’ and officers’ insurance for its officers.

Ensuring that the society has appropriate indemnity and insurance provisions in place, and understanding whether you will be indemnified or insured in your capacity as an officer, will help you assess whether you are comfortable taking on the role of an officer (having regard to the nature and risk profile of the society’s activities).

For a society, it is prudent to at least include powers in the constitution to provide indemnities and effect insurance, even if those protections are not currently required, so they are available if needed in the future.

This article was written in conjunction with Mitchell Cole, Summer Clerk 2025/2026