

**ENFORCEMENT (CO-OPERATIVE AND COMMUNITY BENEFIT SOCIETIES ACT
2014) INSTRUMENT 2017**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on 24 February 2017.

Amendments to the Handbook

- C. The Glossary is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Enforcement (Co-operative and Community Benefit Societies Act 2014) Instrument 2017.

By order of the Board
23 February 2017

Annex A

Amendments to the Glossary

Insert the following new definition in the appropriate alphabetical position. The text is new and is not underlined.

registered society a society registered or deemed to be registered under the Co-operative and Community Benefit Societies Act 2014.

Delete the following definition. The text is not struck through.

industrial and provident society a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969.

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

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2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

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The Financial Services Act 2012 (Consumer Credit) Order 2013	Description	Handbook reference	Decision maker
...

...

<u>The Co-operative and Community Benefit Societies Act 2014</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Sections 6 and 8</u>	<u>where the FCA gives at least two months' notice of the proposed cancellation or suspension of the registration of a registered society</u>		<u>Executive procedures</u>
<u>Sections 6 to 8</u>	<u>where the FCA is proposing to cancel or suspend the registration of a registered society relying on condition C, D or E in section 5</u>		<u>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</u>
<u>Section 123</u>	<u>where the FCA is proposing to petition for the winding up of</u>		<u>RDC</u>

	<i>a registered society</i>		
<u>Section 132</u>	<u>where the FCA is proposing to prosecute a registered society</u>		<u>Executive procedures or RDC</u>

...

The Immigration Act 2014 (Bank Account Accounts) Regulations 2014	Description	Handbook reference	Decision maker
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Annex C

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

12 Prosecution of Criminal Offences

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12.1 The FCA's general approach

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12.1.7 Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979, ~~the Industrial and Provident Societies Act 1965 and the Friendly and Industrial and Provident Societies Act 1968~~ and the Co-operative and Community Benefit Societies Act 2014 may either be taken by the procedure described in *paragraph EG 12.1.5 above* or under *executive procedures*. The less serious the offence or its impact and the less complex the issues raised, the more likely that the *FCA* will take the decision to prosecute under *executive procedures*.

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19 Non-FSMA powers

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19.2 ~~Industrial and Provident Societies Act 1965 (IPSA65), Friendly and Industrial and Provident Societies Act 1968 (FIPSA68), Friendly Societies Act 1974 (FSA74), Friendly Societies Act 1992 (FSA92),~~ Co-operative and Community Benefit Societies Act 2014 (CCBSA14)

19.2.1 The *FCA* has certain functions in relation to what are described as “registrant-only” mutual societies including *registered societies* or *registered friendly societies*. These societies are not regulated or supervised under the *Act*. Instead, they are subject to the provisions of ~~IPSA65, FIPSA68, FSA74 and FSA92~~ and CCBSA14, which require them to register with the *FCA* and fulfil certain other obligations, such as the requirement to submit annual returns.

19.2.2 ~~IPSA65, FIPSA68, FSA74 and FSA92 provide the *FCA* with certain powers to ensure that registrant-only societies meet the requirements imposed on them. These include the power to:~~

- ~~cancel or suspend the society's registration (ss.16 and 17 IPSA65, s.91 FSA74);~~
- ~~dissolve the society (ss.95 and 95A FSA74);~~

- ~~appoint an accountant or actuary to inspect the society's books (s.47 IP~~SA~~65);~~
- ~~require the production of documents and provision of information for certain purposes (s.48 IP~~SA~~65, s.90 FSA74);~~
- ~~appoint inspectors and call special meetings (s.49 IP~~SA~~65, s.90 FSA74);~~
- ~~present petitions for winding up (s.56 IP~~SA~~65; ss.22 and 52 FSA92); and~~
- ~~prosecute failures to comply with requirements (s.61 IP~~SA~~65, s.18 FIP~~SA~~68 s.98 FSA74). [deleted]~~

19.2.3 The *FCA's* enforcement activities in respect of registrant-only societies focus on prosecuting societies that fail to submit annual returns. As registrant-only societies are not subject to the *rules* imposed by the *Act* and by the *FCA Handbook*, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded. The power to prosecute registrant-only societies who fail to meet this requirement is therefore an important tool and one which the *FCA* is committed to using in appropriate cases.

19.2.4 ~~The *FCA* considers a variety of factors when deciding whether to prosecute a society for failing to submit its annual return. The *FCA* is more likely to prosecute a society which has previously failed to submit returns, or which poses a greater risk to the *FCA's* statutory objectives, for example, because of the size of its financial resources or its number of members. [deleted]~~

19.2.5 The *FCA* may also use its power to petition for the society's winding up where it has prosecuted a society but the society continues to fail to submit the outstanding annual returns or defaults on submitting further returns.

19.2.6 The decision whether to initiate criminal and other proceedings under these *Acts* will be taken in accordance with the procedure described in *EG* 12.1.7. Under section ~~18 IP~~SA~~65~~ 9 CCBSA14, a society may appeal certain decisions of the *FCA* relating to the refusal, cancellation or suspension of a society's registration to the High Court or, in Scotland, the Court of Session. Refusals to register a branch or to register the amendment of a society's rules and cancellations or suspensions of a society's listing under the ~~Friendly Societies Act 1974~~ FSA74 are also appealable in certain circumstance to the High Court or the Court in Sessions. Distinguishing features of the procedure for giving statutory notices under the FSA92, including available rights of reference to the *Tribunal*, are set out in *DEPP* 2.5.18G.

19.2.7 Further information about the *FCA's* powers under ~~IP~~SA~~65 and FSA74~~ and CCBSA14 can be found on the *FCA's* website.¹⁵

¹⁵ <http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/courts/friendly-societies>