

**ENFORCEMENT (FINANCIAL SERVICES ACT 2012 (MUTUAL SOCIETIES) ORDER 2018) INSTRUMENT 2018**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers:
- (1) section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000; and
  - (2) section 6 (Guidance) of the Financial Services Act 2012 (Mutual Societies) Order 2018.

**Commencement**

- B. This instrument comes into force on 27 July 2018.

**Amendments to the Handbook**

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

**Amendments to material outside the Handbook**

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

**Citation**

- E. This instrument may be cited as the Enforcement (Financial Services Act 2012 (Mutual Societies) Order 2018) Instrument 2018.

By order of the Board  
26 July 2018

## Annex A

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted 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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<u>Co-operative and Community Benefit Societies Act (Northern Ireland) 1969</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Sections 15 and 16</u>	where the <i>FCA</i> gives at least two <i>months'</i> notice of the proposed cancellation or suspension of the registration of a <i>registered society</i>		<i>Executive procedures</i>
<u>Sections 15 and 16</u>	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on section 15 (1)(c)(ii)		<i>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</i>
<u>Section 65</u>	where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i>		<i>RDC</i>

<u>Section 75</u>	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<u>Executive procedures or RDC</u>
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<b>Section of the Credit Unions Act 1979</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
20	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>credit union</i> or to petition for the winding up of a <i>credit union</i>		<i>RDC</i>

<b>Articles of the Credit Unions (Northern Ireland) Order 1985</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
<u>Articles 60 and 61</u>	where the <i>FCA</i> gives at least two <i>months'</i> notice of the proposed cancellation or suspension of the registration of a <i>Northern Ireland credit union</i>		<u>Executive procedures</u>
<u>Articles 60(1); and 61(1) and 63</u>	where the <i>FCA</i> is proposing to consent to the Registrar of Credit Unions for Northern Ireland cancelling or suspending cancel or suspend the registration of a <i>Northern Ireland credit union</i> relying on section 60(1)(c)(ii); or petitioning for the winding up of a <i>Northern Ireland credit union</i>		<u>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</u>
<u>Article 63</u>	where the <i>FCA</i> is proposing to petition for		<u>RDC</u>

	<u>the winding up of a Northern Ireland credit union</u>		
<u>Article 76</u>	<u>where the FCA is proposing to prosecute a Northern Ireland credit union</u>		<u>Executive procedures or RDC</u>

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## Annex B

### Amendments to the Enforcement Guide (EG)

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

#### 19 Non-FSMA powers

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#### 19.2 **Friendly Societies Act 1974 (FSA74), Friendly Societies Act 1992 (FSA92), Co-operative and Community Benefit Societies Act 2014 (CCBSA14) and Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (CCBSA(NI)69)**

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 FSA74, FSA92, ~~and CCBSA14,~~ and CCBSA(NI)69 which require them to register with the *FCA* and fulfil certain other obligations, such as the requirement to submit annual returns.

19.2.1A The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the *FCA*. The *FCA* will be therefore registering Northern Ireland’s industrial and provident or co-operative and *community benefit societies* respectively under the CCBSA(NI)69 as modified by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.

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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 9 CCBSA14~~ these Acts, 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 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 ~~FSA74 and CCBSA14~~ these Acts can be found on the *FCA*’s website.<sup>46</sup>

[Note: <https://www.fca.org.uk/firms/mutual-societies>]

<sup>16</sup>~~<http://www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/courts/friendly-societies>~~

### 19.3 **Credit Unions Act 1979 (CUA79) and Credit Unions (Northern Ireland) Order 1985 (CU(NI)O85)**

19.3.1 ~~The Credit Unions Act CUA79 and CU(NI)O85 enables~~ enable certain societies in Great Britain and Northern Ireland to be registered under ~~IPSA65~~ CCBSA14 and CU(NI)O85 respectively. ~~and makes CUA79 and CU(NI)O85 also make~~ provisions in respect of these societies. ~~It~~ They gives give the *FCA* certain powers in addition to the powers that it has under the *Act* in respect of those credit unions which are *authorised persons*. The *FCA*'s powers under ~~the Credit Unions Act CUA79, CCBSA14 and CU(NI)O85~~ include the power to:

- (1) require the production of books, accounts and other documents in the exercise of certain functions ~~(section 17)~~;
- (2) appoint an investigator or to call a special meeting of the credit union ~~(section 18)~~;
- (3) cancel the registration of the credit union ~~(section 20)~~; and
- (4) petition the High Court to wind up the credit union in particular circumstances ~~(section 20)~~.

19.3.1A The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the FCA. The FCA will be therefore registering Northern Ireland's credit unions under the CU(NI)O85 as modified by the Credit Unions and Co-operative and Community benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.

19.3.2 The *FCA* will use these powers in a manner consistent with its approach to using the same powers under the *Act*. Where the *FCA* decides to cancel or suspend a credit union's registration ~~under section 20(1) of the Credit Unions Act~~, the credit union may appeal that decision to the High Court or, in Scotland, the Court of Session.

19.3.3 ~~The Credit Unions Act CUA79 under CCBSA14 and CU(NI)O85 also extends~~ extend to credit unions some criminal offences ~~under IPSA65~~. The *FCA* will act in accordance with *EG 12* when prosecuting these offences.

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