
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations repeal section 48 of the Industrial and Provident Societies Act 1965 (c.12) (“1965 Act”) which gave the Financial Conduct Authority (“FCA”) power to require a co-operative or community benefit society (“society”) to produce documents and provide it with information. In place of section 48, the Regulations provide the FCA with certain of the powers of the Secretary of State under Part 14 of Companies Act 1985 (c.6) (“the 1985 Act”) and apply related provisions of Part 14 with modifications. Section 48 and these Regulations also apply to credit unions which are registered under the 1965 Act, see sections 1 and 31(3) of the Credit Unions Act 1979 (c.34).

Regulation 3 provides that in deciding whether and how to exercise the powers conferred by these Regulations the FCA must adopt an approach which is based on the principle that those powers should be exercised only to the extent necessary to maintain confidence in societies.

The FCA’s new powers include the power to appoint an inspector to investigate the affairs of a society in the circumstances set out in section 432(2) of the 1985 Act, for example where it appears to the FCA that the society may have been conducted with an intention to defraud creditors or for unlawful purposes. The Regulations also apply section 432(1) of the 1985 Act so as to require the FCA to appoint an inspector if the court orders the affairs of a society to be investigated. The Regulations apply sections 446A and 446B of the 1985 Act to give the FCA power to give directions to inspectors, and sections 446C to 446E of the 1985 Act (resignation, removal and replacement of inspectors and obtaining information from former inspectors) to inspections of societies.

Section 447 of the 1985 Act is applied so as to give the FCA or an authorised investigator power to require a society to produce documents and provide information. The Regulations also apply section 448 of the 1985 Act, which gives the FCA or an authorised person power to apply to a magistrate for a warrant of entry to premises of a society on the grounds set out in section 448(2), and section 453A of the 1985 Act which gives an inspector or an investigator authorised under section 447 power to require entry to premises (but does not authorise forcible entry). Section 449 of, and Schedules 15C and 15D to, the 1985 Act (relating to the disclosure of information obtained under sections 447 and 453A) are applied in relation to societies, and in addition to the bodies listed in Schedule 15C disclosure can also be made to the Charity Commission, the Office of the Scottish Charity Regulator, the Homes and Communities Agency, the Scottish Housing Regulator and the Welsh Assembly Government.

Section 439 of the 1985 Act (expenses of investigating a company’s affairs) is applied so that the expenses of investigation of a society are payable in the first instance by the FCA but recoverable from the society investigated.

The sanctions and offences in Part 14 of the 1985 Act are also applied, including those in section 436 (obstruction of inspectors treated as contempt of court), section 450 (punishment for destroying company documents) and section 451 (punishment for providing false information).

Regulations 5 to 7 contain amendments in consequence of the repeal of section 48 of the 1965 Act.

An impact assessment has not been produced for this instrument as no significant impact on the costs of business or the voluntary sector is foreseen.