

*Draft of 7th August 2013*

*Draft Regulations laid before Parliament under section 7 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**CO-OPERATIVE SOCIETIES**

**COMMUNITY BENEFIT SOCIETIES**

**The Co-operative and Community Benefit Societies  
(Investigations) Regulations 2013**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - [] April 2014

In accordance with section 4(8) of the Co-operative and Community Benefit Societies and Credit Unions Act 2010<sup>(a)</sup> the Treasury have consulted such persons as appear to them to be appropriate.

A draft of these Regulations has been laid before Parliament in accordance with section 7 of that Act and approved by a resolution of each House of Parliament.

The Treasury, in exercise of the powers conferred by sections 4(1), (2)(a), (3) and (7), 6 and 7 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010, make the following Regulations:

**Citation, commencement and interpretation**

— These Regulations may be cited as the Co-operative and Community Benefit Societies (Investigations) Regulations 2013 and come into force on [] April 2014.

In these Regulations and in the provisions of the Companies Act 1985<sup>(b)</sup> applied by regulation 2, “registered society” means a society registered under the 1965 Act<sup>(c)</sup>.

In these Regulations, “the 1965 Act” means the Industrial and Provident Societies Act 1965.

**Application of Part 14 of the Companies Act 1985 and subordinate legislation**

— The provisions of Part 14 of the Companies Act 1985<sup>(d)</sup> set out in the Table in paragraph (3) apply to registered societies with—

the general modifications set out in paragraph (2);

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**a** ( ) 2010 c.7.  
**b** ( ) 1985 c.6.  
**c** ( ) 1965 c.12.  
**d** ( ) 1985 c.6.

any other modification specified in the Table in paragraph (3); and

[any other necessary modification.]

Unless [the context otherwise requires or] different provision is made in paragraph (3), in the provisions of Part 14 of the Companies Act 1985 applied by paragraph (3)—

a reference to a committee is to be read as a reference to a committee within the meaning of section 74(1) of the 1965 Act;

a reference to a company is to be read as a reference to a registered society;

a reference to an officer of a company is to be read as a reference to an officer (within the meaning of section 74(1) of the 1965 Act <sup>(a)</sup>) of a registered society;

a reference to the Secretary of State is to be read as a reference to the Financial Conduct Authority;

a reference to a subsidiary is to be read as a reference to a subsidiary within the meaning of section 15 of the Friendly and Industrial and Provident Societies Act 1968<sup>(b)</sup>.

The provisions applying to registered societies, and the modifications, are as follows.

**Table of applied provisions of the Part 14 of the Companies Act 1985**

<i>Applied provision of the Companies Act 1985</i>	<i>Modification</i>
Section 432 <sup>(c)</sup> (other company investigations)	In subsection (2) for “The Secretary of State may make such an appointment if it appears to him” substitute “The Financial Conduct Authority may appoint one or more competent inspectors to investigate the affairs of a registered society if it appears to it”.  In subsection (3) omit “Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and”.  Omit subsection (4).
Section 433 <sup>(d)</sup> (inspectors’ powers during investigation)	In subsection (1) omit “431 or” and “or holding company, or a subsidiary of its holding company or a holding company of its subsidiary,”.
Section 434 <sup>(e)</sup> (production of documents and evidence to inspectors)	In subsection (1) omit “431 or”.  In subsection (5) for “any of sections 431 to 433” substitute “section 432 or 433”.
Section 436 <sup>(f)</sup> (obstruction of inspectors treated as contempt of court)	
Section 437 <sup>(g)</sup> (inspectors’ reports)	In subsection (1A) omit “431 or”.  Omit subsection (2A).

**a** ( ) The definition of “officer” was amended by paragraph 11 of Schedule 1 to the Friendly and Industrial and Provident Societies Act 1968 (c.55) and is prospectively amended by section 2 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

**b** ( ) 1968 c.55.

**c** ( ) Section 432 was amended by section 55 of the Companies Act 1989 (c.40) and section 1035 of the Companies Act 2006 (c.46).

**d** ( ) Section 433 was amended by Schedules 13 and 17 to the Financial Services Act 1986 (c.60).

**e** ( ) Section 434 was amended by section 56 of the Companies Act 1989, Schedule 3 to the Youth Justice and Criminal Evidence Act 1999 (c.23), section 1038 of the Companies Act 2006 and S.I. 2009/1941.

**f** ( ) Section 436 was amended by section 56 of the Companies Act 1989.

**g** ( ) Section 437 was amended by Schedule 13 to the Financial Services Act 1986, section 57 of the Companies Act 1989, section 1035 of, and Schedule 16 to, the Companies Act 2006 and S.I. 2009/1941.

	<p>In subsection (3)(b), “prescribed” means prescribed by order or by regulations of the Secretary of State.</p> <p>In subsection (3)(b) omit sub-paragraph (iv).</p>
Section 439 <sup>(a)</sup> (expenses of investigating a company’s affairs)	<p>In subsection (1), for “an investigation under any of the powers conferred by this Part” substitute “an investigation under, or exercise of any other powers conferred by, this Part”.</p> <p>For subsection (4) substitute—</p> <p>“(4) A registered society dealt with by an inspector’s report is liable except in so far as the Financial Conduct Authority otherwise directs.”.</p> <p>After subsection (4) insert—</p> <p>“(4A) The Financial Conduct Authority may, if it considers it just, direct that a registered society is liable for all or any part of the expenses incurred by the Authority or a person authorised by the Authority under section 447, 448 or 453A.”.</p> <p>In subsection (6) for “subsections (4) and (5)” substitute “subsection (4)”.</p> <p>In subsection (8) for “subsections (4) and (5)” substitute “subsection (4)”.</p> <p>Omit subsections (5), (9) and (10).</p>
Section 441 <sup>(b)</sup> (inspectors’ report to be evidence)	
Section 446A <sup>(c)</sup> (general powers to give directions)	In subsection (2) omit “431,” and “or 442(1)”.
Section 446B (direction to terminate investigation)	In subsection (2), omit “or 442(3)”.
Section 446C (resignation and revocation of appointment)	
Section 446D (appointment of replacement inspectors)	
Section 446E (obtaining information from former inspectors etc.)	
Section 447 <sup>(d)</sup> (power to require documents and	

**a** () Section 439 was amended by section 59 of the Companies Act 1989 and section 1176 of, and Schedule 16 to, the Companies Act 2006.

**b** () Section 441 was amended by section 61 of the Companies Act 1989, Schedules 6 and 9 to the Insolvency Act 1985 (c.65), Schedule 13 to the Insolvency Act 1986 (c.45) and S.I. 2009/1941.

**c** () Sections 446A to 446E were inserted by section 1035 of the Companies Act 2006.

**d** () Section 447 was substituted by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27) and amended by section 1038 of the Companies Act 2006.

information)	
Section 447A <sup>(a)</sup> (information provided: evidence)	
Section 448 <sup>(b)</sup> (entry and search of premises)	
Section 448A <sup>(c)</sup> (protection in relation to certain disclosures: information provided to Secretary of State)	
Section 449 <sup>(d)</sup> (provision for security of information obtained)	In subsection (6A)(b)(ii) omit “or Northern Ireland”.  In subsection (3), the reference to the Secretary of State is to be read as a reference to the Secretary of State, and not as a reference to the Financial Conduct Authority.
Section 450 <sup>(e)</sup> (punishment for destroying, mutilating etc. company documents)	Omit subsection (1A).  In subsection (3)(b)(ii) omit “or Northern Ireland”.
Section 451 <sup>(f)</sup> (punishment for furnishing false information)	In subsection (2)(b)(ii) omit “or Northern Ireland”.
Section 451A <sup>(g)</sup> (disclosure of information by Secretary of State or inspector)	Omit subsection (5).
Section 452 <sup>(h)</sup> (privileged information)	In subsection (1) for “431” substitute “432”.  In subsection (1A) omit “, 443 or 446”.  In subsection (1B) omit “431,”.  In subsection (4) omit paragraph (a).
Section 453A <sup>(i)</sup> (power to enter and remain on premises)	In subsection (7) omit “431,” and “or 442”.
Section 453B <sup>(j)</sup> (power to enter and remain on premises: procedural)	
Section 453C <sup>(k)</sup> (failure to comply with certain requirements)	
Section 453D <sup>(l)</sup> (offences by bodies corporate)	

- a** () Section 447A was inserted by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by S.I. 2009/1941.
- b** () Section 448 was substituted by section 64 of the Companies Act 1989 and amended by sections 1124 of and Schedules 3 and 16 to the Companies Act 2006.
- c** () Section 448A was inserted by section 22 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by S.I. 2009/1941.
- d** () Section 449 was substituted by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by Schedules 3 and 16 to the Companies Act 2006.
- e** () Section 450 was amended by section 66 of the Companies Act 1989, Schedules 3 and 16 to the Companies Act 2006 and S.I. 2001/3649.
- f** () Section 451 was substituted by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by Schedules 3 and 16 to the Companies Act 2006.
- g** () Section 451A was inserted by Schedule 13 to the Financial Services Act 1986, substituted by section 68 of the Companies Act 1989 and amended by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004, section 1037 of the Companies Act 2006 and S.I. 2001/3649.
- h** () Section 452 was amended by section 69 of the Companies Act 1989, Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and section 1037 of the Companies Act 2006.
- i** () Section 453A was inserted by section 23 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, and amended by Schedules 3 and 16 to the Companies Act 2006.
- j** () Section 453B was inserted by section 23 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.
- k** () Section 453C was inserted by section 24 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.
- l** () Section 453D was inserted by S.I. 2008/948.

Schedule 15C <sup>(a)</sup> (specified persons to whom disclosure can be made for the purposes of section 449)	<p>In paragraph 1, the reference to the Secretary of State is to be read as a reference to the Secretary of State, and not as a reference to the Financial Conduct Authority.</p> <p>After paragraph 10 insert—</p> <p>“11. The Charity Commission.</p> <p>12. The Office of the Scottish Charity Regulator.</p> <p>13. The Homes and Communities Agency.</p> <p>14. The Scottish Housing Regulator.</p> <p>15. The Welsh Assembly Government.”.</p>
Schedule 15D <sup>(b)</sup> (disclosures for the purposes of section 449)	

The Companies Act 1985 (Power to Enter and Remain on Premises: Procedural) Regulations 2005<sup>(c)</sup> apply to registered societies with the general modifications set out in paragraph (2).

### Condition for exercise of powers in regulation 2

In deciding whether and how to exercise the powers conferred by regulation 2, the Financial Conduct Authority 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 registered societies.

### Amendment to the Industrial and Provident Societies Act 1965

Section 48 of the 1965 Act<sup>(d)</sup> (production of documents and provision of information for certain purposes) is repealed.

### Consequential amendment to section 17 of the Credit Unions Act 1979

For section 17 of the Credit Unions Act 1979<sup>(e)</sup> (powers to require information) substitute—

#### Power of FCA to obtain information for certain purposes

**17.**—(1) The FCA may by notice in writing require a credit union or an officer or former officer of a credit union—

- (a) to produce to the FCA such books, accounts and other documents relating to the credit union’s business, and
- (b) to provide the FCA with such other information relating to that business,

as the FCA considers necessary for the exercise of a relevant power.

(2) A “relevant power” is any power which the FCA has by virtue of section 16(1)(c)(ii), 16(6) or 56.

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- a** () Schedule 15C was inserted by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by Schedule 18 to the Financial Services Act 2012 (c.21).
  - b** () Schedule 15D was inserted by Schedule 2 to the Companies (Audit, Investigations and Community Enterprise) Act 2004 and amended by Schedules 4 and 12 to the Pensions Act 2004 (c.35), Schedule 8 to the Charities Act 2006 (c.50), Schedule 21 to the Legal Services Act 2007 (c.29), Schedule 18 to the Financial Services Act 2012 and S.I. 2006/1644, 2008/948, 2008/1277, 2009/1941, 2010/22, 2011/245 and 2011/1043.
  - c** () S.I. 2005/684.
  - d** () 1965 c.12. Section 48 was amended by Schedule 37 to the Criminal Justice Act 2003 (c.) and S.I. 2001/2617.
  - e** () 1979 c. 34. Section 17 was amended by S.I. 2001/2617, 2002/1501 and 2013/496.

- (3) The notice must be served on the credit union or other person.
- (4) The notice may contain a requirement that any information provided in accordance with the notice is to be verified by a statutory declaration.
- (5) A credit union or other person who fails to comply with a notice under this section commits an offence.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale or imprisonment for a term not exceeding 3 months (or both).

**Section 17: recovery of FCA’s costs**

**17A.**—(1) This section applies where the FCA has exercised its powers under section 17 in relation to a credit union.

(2) The FCA may, if it considers it just to do so, direct that the expenses incurred by it in exercising the powers (or any part of those expenses) are to be met—

- (a) out of the credit union’s funds, or
- (b) by the credit union’s officers or former officers (or any of them).

(3) Any sum which the credit union or other person is required by a direction to pay is a debt due from the credit union or person to the FCA.

**Section 17: power of PRA**

**17B.** The PRA may, in connection with the exercise of its functions under this Act, exercise in relation to a credit union the powers of the FCA under section 17 to require documents and information, and section 17A applies accordingly.□.

**Consequential amendment to the Company Directors Disqualification Act 1986**

In section 22E(4)(c)(ii) of the Company Directors Disqualification Act 1986<sup>(a)</sup> (application of Act to societies registered under the Industrial and Provident Societies Act 1965) for “section 48 of the 1965 Act” substitute “Part 14 of the Companies Act 1985 as applied by the Co-operative and Community Benefit Societies (Investigations) Regulations 2013”.

*Name*

*Name*

[date] Two of the Lords Commissioners of Her Majesty’s Treasury

**EXPLANATORY NOTE**

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**a** () 1986 c.46. Section 22E was inserted [*or is prospectively inserted*] by section 3 of the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

*(This note is not part of the Regulations)*

These Regulations repeal section 48 of the Industrial and Provident Societies Act 1965 (c.12) 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.

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 there may have been an intention to defraud creditors or the society has been conducted 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 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).