

Quarterly Consultation

No 38

Consultation Paper
CP22/26

December 2022

How to respond

The Financial Conduct Authority invites comments on this Consultation Paper. Comments should reach us by 9 January 2023 for Chapters 2, 3, 4, 5, 6, 7 and 8.

Comments may be sent by electronic submission using the form on the FCA's website at (www.fca.org.uk/cp22-26-response-form).

Alternatively, please send comments in writing to:

Chapter 2: Naila Hussain, Handbook and Fees Policy	Telephone: 020 7066 4006
Chapter 3: John Wu, Trading Policy	Telephone: 020 7066 8720
Chapter 4: Olukemi Yusuph/Richard Jones, Mutuals Team	Telephone: 020 7066 9132/0041
Chapter 5: Hillary Neale, Prudential Policy	Telephone: 020 7066 4856
Chapter 6: Vanessa Mead, Law and Policy	Telephone: 020 7066 1496
Chapter 7: Priti Kaur, Risk and Policy	Telephone: 020 7066 3301
Chapter 8: Jason Pope, Consumer Duty Policy	Telephone: 020 7066 2074

If you are responding in writing to several chapters please send your comments to Lisa Ocerro in the Handbook Team, who will pass your responses on as appropriate.

All responses should be sent to:

Financial Conduct Authority
12 Endeavour Square, London E20 1JN

Email: cp22-26@fca.org.uk



Moving around this document

Use your browser's bookmarks and tools to navigate.

To **search** on a PC use Ctrl+F or Command+F on MACs.

Sign up for our weekly news and publications alerts

See all our latest press releases, consultations and speeches.



Contents

1	Overview	4
2	Changes to the Training and Competence sourcebook	5
3	Amendment to the derivatives trading obligation: removal of USD LIBOR derivative products to reflect USD interest rate benchmark reform	9
4	Amendments to the Guide on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014	15
5	Changes to MIFIDPRU to provide clarification, and to SYSC, COND, MIFIDPRU, IPRU-INV and SUP to remedy errors	18
6	Changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022	29
7	Amendments to the product governance rules for general insurance and pure protection products distributed overseas	31
8	Clarificatory amendments to the Consumer Duty	35
Annex 1	Abbreviations used in this paper	41
Appendix 1	List of questions	
Appendix 2	Changes to the Training and Competence sourcebook	
Appendix 3	Amendment to the derivatives trading obligation: removal of USD LIBOR derivative products to reflect USD interest rate benchmark reform	
Appendix 4	Amendments to the Guide on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014	
Appendix 5	Changes to MIFIDPRU to provide clarification, and to SYSC, COND, MIFIDPRU, IPRU-INV and SUP to remedy errors	
Appendix 6	Changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022	
Appendix 7	Amendments to the product governance rules for general insurance and pure protection products distributed overseas	
Appendix 8	Clarificatory amendments to the Consumer Duty	

1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	To make changes to the TC sourcebook	5 weeks
3	To make changes to the derivatives trading obligation (DTO): removal of USD LIBOR derivative products from the scope of the DTO	5 weeks
4	To move the Finalised Guidance (FG) on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 from its position as a static document on the website into the FCA Handbook	5 weeks
5	To make changes to the Glossary of definitions, SYSC, COND, MIFIDPRU, IPRU-INV and SUP	5 weeks
6	To make consequential changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022	5 weeks
7	To make changes to the PROD rules to disapply certain requirements where products are available for distribution to customers resident outside the UK (where the state in which the risk is situated is outside the UK)	5 weeks
8	To make changes to the Consumer Duty rules to deliver the policy on which we consulted	5 weeks

2 Changes to the Training and Competence sourcebook

Introduction

- 2.1** Our training and competence (TC) regime supports consumers by making sure relevant people working in financial services are approximately qualified and competent for their role. The regime includes detailed requirements for individuals carrying on certain retail activities and qualification requirements which are set out in the TC sourcebook. The qualifications are provided by accredited bodies, listed in our Glossary of definitions. When there are proposed changes to our accredited bodies list or TC sourcebook, we have an obligation to consult on those changes.
- 2.2** We propose the following changes:
- an update to the Glossary definition of accredited body to reflect that The London Institute of Banking and Finance (LIBF) will cease to be recognised as an accredited body
 - an update to the Glossary definition of accredited body to include The London Institute of Banking and Finance Limited (LIBF Limited) as an accredited body
 - updates to the qualifications table in TC App 4.1
 - a correction to an administrative error in the TC sourcebook
- 2.3** This chapter will be of interest to firms and individuals who are subject to our TC requirements. The text of the proposed amendments and the statutory powers under which they will be made are set out in the relevant appendix.

Summary of proposals

Amendments to the Glossary of definitions

- 2.4** LIBF is listed as an accredited body in the Glossary of definitions. We received notification from LIBF that it is transferring its activities as a provider of independent verification under TC 2.1.27R to the newly created LIBF Limited. Following the transfer, the delivery and administration of Professional Standing and Continuing Professional Development will be carried out by LIBF Limited for the purposes of the TC sourcebook.
- 2.5** An application for LIBF Limited to become an FCA accredited body has been received and assessed. We therefore propose in this consultation to amend the Glossary term accredited body to reflect that:
- LIBF will cease to be recognised as an accredited body
 - LIBF Limited will be added to the definition as an accredited body

2.6 Both changes will come into effect from the instrument in-force date, if made.

2.7 In addition, as LIBF will be transferring its activities, as a qualification provider, to LIBF Limited, we propose to amend the appropriate qualification table to clarify that:

- LIBF will remain the relevant qualification provider until our proposals are made final and the transfer affected
- LIBF Limited will become the relevant qualification provider if our proposals are approved

Q2.1: Do you have any comments on the proposed amendments to the Glossary of definitions?

Q2.2: Do you have any comments on the proposed changes to the qualification table in TC App 4.1.1?

Technical amendments

2.8 We have identified that when previous amendments (see [PS17/11](#)) were made to TC App 4.1, the rule reference for the qualifications table in Part 2 was omitted. We now propose to add rule reference 'TC App 4.1.1DE' to Part 2 of the qualifications table. The table in TC App 4.1.1DE will remain an Evidential Provision, as intended. No other amendments – apart from those aforementioned – are proposed to the qualification table. The proposed changes are included in Annex B of the associated legal instrument (see Appendix 2).

Q2.3: Do you have any comments on our proposed changes to correct the drafting error in the TC sourcebook?

Cost benefit analysis

2.9 Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules unless, in accordance with section 138L(3) of FSMA, we believe that there will be no increase in costs or that the increase will be of minimal significance.

2.10 We expect firms to incur no, or minimal, additional costs as a result of these proposals. The proposals in this consultation keep the list of appropriate qualifications in the TC sourcebook, and the Glossary definition for accredited bodies, up to date. As such, we have not conducted a CBA as per the exemption under FSMA.

Impact on mutual societies

2.11 Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We do not believe this will be the case.

Compatibility statement

- 2.12** Section 1B of FSMA requires us, when discharging our general functions, as far as is reasonably possible, to act in a way that is compatible with our strategic objective and advance one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective.
- 2.13** We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, having regard to the matters set out in 1C(2) FSMA and the regulatory principles in section 3B.
- 2.14** In preparing the proposals as set out in this consultation, we have considered our objective to promote effective competition in the interests of consumers. It is our opinion that adding to the appropriate qualifications lists in the TC sourcebook and the Glossary definition for Accredited Bodies potentially increases competition, as this increases the number of qualifications available and keeps the list of accredited bodies up to date.

Equality and diversity

- 2.15** We have considered the equality and diversity issues that may arise from the proposed amendments in this chapter. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 2.16** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

3 Amendment to the derivatives trading obligation: removal of USD LIBOR derivative products to reflect USD interest rate benchmark reform

Introduction

- 3.1** Under the UK Markets in Financial Instruments Regulation (UK MiFIR), onshored Regulation (EU) No 600/2014, the derivatives trading obligation (DTO) requires certain financial and non-financial counterparties to conclude transactions in standardised and liquid over-the-counter (OTC) derivatives only on regulated trading venues.
- 3.2** It was established as a response to the 2009 G20 commitment following the global financial crisis. Moving the trading of standardised and liquid OTC derivatives to trading venues supports transparency and mitigates systemic risk.
- 3.3** In more recent years, in response to cases of attempted manipulation of interbank offered rates (IBOR) and subsequent global efforts to ensure an orderly transition away from such legacy benchmark rates to new and more robust risk-free rates (RFR), the market in derivative products has evolved. An increasing volume of the derivatives market in certain currencies now takes place in swaps referencing RFRs. Conversely, the market for swaps referencing the various IBOR benchmarks is significantly declining, especially those that are being discontinued as part of the transition.
- 3.4** The transition has impacted the derivatives in scope of the DTO. The original scope included products which referenced benchmark rates that are being discontinued or may continue on an unrepresentative basis and become subject to use restrictions under UK Benchmarks Regulation (UK BMR), onshored Benchmark Regulation (EU) 2016/1011.
- 3.5** As a result, in October 2021, we updated the DTO by amending its scope in Policy Statement (PS) 21/13. We removed from the DTO derivatives referencing GBP London interbank offered rate (LIBOR) and replaced them with overnight indexed swaps (OIS) referencing the sterling overnight index average (SONIA).
- 3.6** We undertook these policy developments in close coordination with the Bank of England (Bank), who made equivalent changes to legacy and RFR benchmarks in relation to the derivatives clearing obligation (DCO).
- 3.7** The transition to RFRs has continued and derivative products denominated in USD LIBOR have undergone a similar shift to the one observed in swaps referencing to GBP LIBOR. It is scheduled that the most widely used USD LIBOR benchmarks will stop being published by June 2023.

3.8 On 9 May 2022, the Commodity Futures Trading Commission (CFTC) published a consultation in which it proposed amendments to the US swap clearing requirement. The CFTC's proposal includes the addition of:

- secured overnight financing rate (SOFR) OIS with a maturity range of 7 days to 50 years, to enter into force 30 days after the publication of the final rule
- the removal of contracts referencing USD LIBOR from the clearing requirement, to enter into force 1 July 2023

3.9 Following the CFTC announcement, the Bank proposed on 9 June 2022, and subsequently adopted on 24 August 2022:

- the introduction a DCO for OIS that reference SOFR, from 31 October 2022
- the removal of USD LIBOR products from the DCO, from 24 April 2023

3.10 The date of the removal of USD LIBOR products from the DCO is aligned with the date at which central counterparties (CCP) will start to contractually convert these contracts and remove them from their list of contracts eligible for clearing.

Table 1: timeline of events relating to derivative products referencing USD benchmarks

01 May 2022	<ul style="list-style-type: none"> • CFTC introduces US swap clearing requirement on OIS referencing SOFR
31 October 2022	<ul style="list-style-type: none"> • Bank introduces DCO on OIS referencing SOFR
24 April 2023	<ul style="list-style-type: none"> • CCPs to commence removal of contracts referencing USD LIBOR as eligible for clearing • Bank removes contracts referencing USD LIBOR from DCO • Proposal: FCA removes contracts referencing USD LIBOR from DTO
01 July 2023	<ul style="list-style-type: none"> • Most widely used USD LIBOR benchmarks to cease publishing • CFTC removes contracts referencing USD LIBOR from US swap clearing requirement

Summary of proposals

3.11 The exclusion of all USD LIBOR products from the DCO has important consequences for the DTO. Article 32 of UK MiFIR sets out the procedure for determining which classes of derivatives are subject to the DTO. Among a number of other conditions, it requires that the relevant derivatives are subject to the DCO.

3.12 In our view, retaining a DTO in absence of a corresponding DCO for the same class of derivatives is against the intention of UK MiFIR as it has a number of negative consequences including that:

- there would be no risk-based justification for such a requirement
- requiring such compliance with the DTO could incentivise participants to stop trading products subject to the DTO

3.13 Being subject to the DCO is a pre-condition for inclusion in the DTO in the first place. In the specific case of USD LIBOR, in absence of any action, the DTO would apply to classes of derivatives for which the underlying benchmark will be discontinued, that

won't be cleared by any CCP and that will stop being traded from April 2023 onwards. Those are all important factors driving our approach to amending the DTO.

Removal of USD LIBOR derivatives from the scope of the DTO

3.14 The DTO currently includes, for derivative products denominated in USD, fixed-to-float single currency interest rate swaps with the following product specifications.

Specification	Variables
Trade start type	Spot (T+2), IMM (next two IMM dates)
Tenor	2, 3, 4, 5, 6, 7, 10, 12, 15, 20, 30Y
Floating leg reference index	USD LIBOR 3M, USD LIBOR 6M

3.15 In line with the changes proposed by the Bank, we propose to remove from the scope of the DTO all derivative products referencing USD LIBOR.

3.16 We also propose to align the timelines for making our changes with those of the Bank's DCO. Namely, the removal of the relevant products would enter into force from 24 April 2023. We consider the impact of the proposed changes would ensure the least amount of disruption to the relevant products.

3.17 We intend to consider inclusion of SOFR OIS derivatives separately from this consultation in due course.

Inclusion of SOFR derivatives into the scope of the DTO

3.18 We don't propose including SOFR OIS in the DTO at present. Our approach is informed by that fact that we are currently not aware of any submission to the CFTC from swap execution facilities (SEF) or designated contract markets (DCM) for any SOFR derivative products to be classified as being made available to trade (MAT).

3.19 SEFs and DCMs are derivative trading venues that operate, when offering trading in the relevant contracts, under the regulatory oversight of the CFTC. They may apply for derivative products to be classified as MAT which, if accepted by the CFTC, makes that derivative product mandatory to only trade on a SEF, a DCM or on foreign swap trading facilities that are subject to comparable, comprehensive supervision and regulation on a consolidated basis.

3.20 We are therefore mindful that the largest market and jurisdiction for the trading of derivative products denominated in USD have not yet determined the appropriate scope of products for inclusion into a trading mandate.

3.21 When it is appropriate to introduce a trading mandate, we intend to coordinate with the CFTC on this matter.

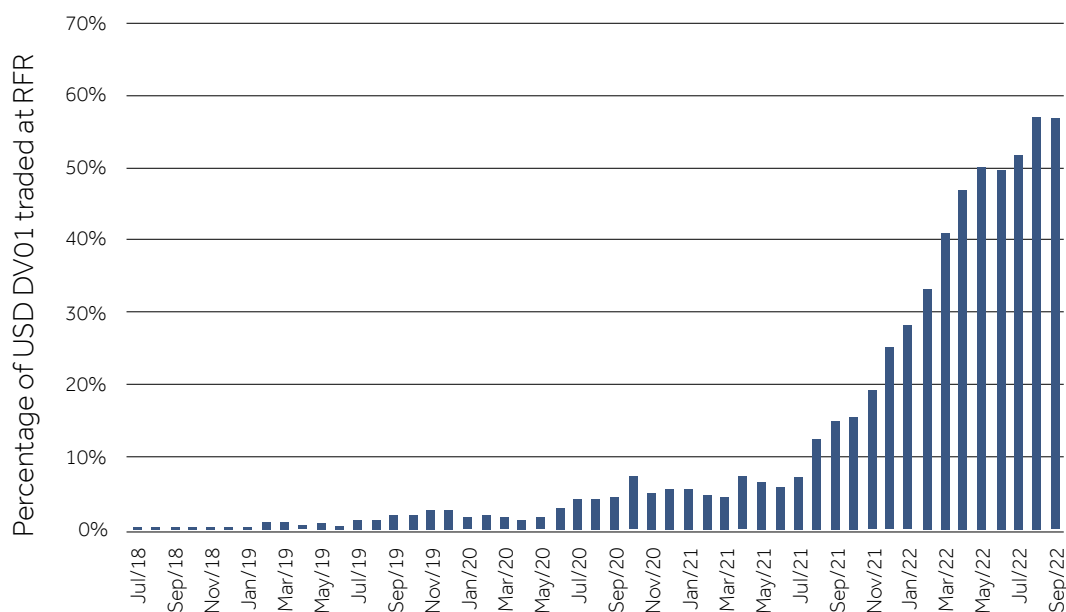
3.22 There are also set procedures laid out for us to follow in its determination. In addition to being subject to the DCO, Article 32(2) of UK MiFIR sets out criteria that derivative products must meet for them to be considered within scope of the DTO:

- Venue test: the product must be admitted to trading or traded on at least one relevant trading venue.
- Liquidity test: there must be sufficient third-party buying and selling interest in the class of derivatives so that it is considered sufficiently liquid to trade only on the relevant trading venues. Articles 32(3) and 32(6) of UK MiFIR and UK RTS 4 list a set of criteria and provide further detail respectively for determining whether a class of derivatives or a relevant subset thereof is sufficiently liquid.

3.23 We will need to analyse the appropriate OIS products that reference SOFR that we should incorporate into the scope of the DTO.

3.24 We are following developments in the market for SOFR products. Since mid-2021, and from single digit percentage take up, there has been a significant increase in the adoption of SOFR, in proportion against USD LIBOR. This can be observed in Figure 1 below. Since May 2022, we have seen SOFR remain the predominant reference rate being used for USD products.

Figure 1: percentage of USD DV01 traded at RFR.



Source: ISDA-Clarus.

3.25 Further, according to the Bank’s trade repository data, trades in SOFR OIS products represented 65% of the market (~\$940bn notional) in January 2022, relative to a 35% share for USD LIBOR contracts (~\$500bn notional).

3.26 As we will be undertaking this work in due course, we invite responses from stakeholders to highlight areas of interest in considering the SOFR products to be brought into scope of the DTO.

Q3.1: Do you agree with our proposal to remove all derivative products referencing USD LIBOR from the DTO? If not, please explain why.

- Q3.2:** Do you agree that the removal of USD LIBOR products from the DTO should take place on 24 April 2023? If not, please indicate what we should consider when selecting an alternate date.
- Q3.3:** Do you have any comments regarding which and when SOFR products should be brought within the scope of the DTO?

Cost benefit analysis

- 3.27** Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft technical standards. Section 138L(3) of FSMA provides that Section 138I(2)(a) does not apply where we consider that there will be no increase in costs, or the increases will be of minimal significance.
- 3.28** Having assessed the changes proposed in this chapter, whereby we propose to remove an obligation to transact on a trading venue on a class of instruments that will be discontinued, we consider that there would be no increase in costs to impacted firms. Therefore, the exemption is applicable. No CBA is required for the proposals in this chapter.

Impact on mutual societies

- 3.29** Further to section 138S, section 138K of FSMA requires us to state whether, in our opinion, our proposed technical standards have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We do not expect the proposals in this chapter to have a significantly different impact on mutual societies.

Compatibility statement

- 3.30** When consulting on new rules, we are required by section 138I(2) of FSMA further to section 138S to explain why we believe that making the proposed technical standards is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 3.31** We are satisfied that the proposed amendments are consistent and compatible with our objectives and regulatory principles. The amendments advance our operational objectives of protecting financial markets. They do so by ensuring that the most liquid derivatives are traded in a manner which supports market integrity and financial stability. This enhances transparency and operational efficiency. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

- 3.32** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 3.33** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

4 Amendments to the Guide on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014

Introduction

- 4.1** Our registration function under the Co-operative and Community Benefit Societies Act 2014 (the Act) is distinct from our functions as a regulator of financial services. Our statutory objectives under the Financial Services and Markets Act 2000 (FSMA) are disengaged for the purposes of this function.
- 4.2** Under the Financial Services Act 2012 (Mutual Societies) Order 2013, we must maintain arrangements designed to enable us to determine whether persons are complying with requirements imposed on them by or under the legislation relating to mutual societies.
- 4.3** In November 2015, we published [FG15/12](#) following [extensive consultation](#) with stakeholders. The guidance explains our policy and our approach to our role as a registering authority for societies under the Co-operative and Community Benefit Societies Act 2014. This document was published in a single file in 'portable document format' (PDF) and was not designed to be updated.
- 4.4** We are now consulting on our intention to move FG15/12 from its static PDF format on our website to the FCA Handbook to make it more accessible and capable of future update.

Summary of proposals

- 4.5** **Lift and shift of FG15/12:** We intend to move FG15/12 from its static position into the FCA Handbook. Within the Handbook, FG15/12 will sit as a new distinct 'Guide', which users can directly navigate and link to. To do this, we have had to reformat it into the Handbook style of presentation but have not made any other changes to the structure of the guidance or the text except to make the minor changes outlined in paragraph 4.6, 4.7 and 4.8 below.
- 4.6** **Removal of 'Finalised guidance 15/12' from front page:** This correctly reflects the move from a static document into a Handbook document.
- 4.7** **Removal of 'November 2015' from front page:** This also correctly reflects the move from a static document into a Handbook document.
- 4.8** **Addition of 'Amendments to the Glossary of definitions'.**

- 4.9** Moving from static PDF to Handbook style will make the guidance more accessible as it will enable users to:
- use an intuitive table of contents to navigate content at different levels
 - use timeline options to view the Handbook in the past, present and future
 - use quick and advanced search facilities to find content based on given criteria
 - navigate content via internal integrated links
 - view supporting information for content
 - reach related content (outside of the Handbook) through external links
 - use direct links to sections of the guidance for easier navigation and sharing
- 4.10** Moving FG15/12 to the Handbook means the guidance can be updated in the future as it is no longer 'finalised'. Any changes made will be subject to consultation as usual.
- 4.11** Currently, to update our guidance under the Act, we would issue a new document hosted in a different location (different website link) to the existing FG15/12 for each update. By moving to the Handbook, the link to the guidance will remain the same irrespective of any future updates.

Q4.1: Do you have any comments on our proposal to move the Finalised Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 from its position as a static PDF document on the website into the FCA Handbook as a Guide?

Cost benefit analysis

- 4.12** As mentioned earlier, our statutory objectives under FSMA are disengaged for the purposes of the registration function. Therefore, we are not required to publish a cost benefit analysis.

Impact on mutual societies

- 4.13** As our statutory objectives under FSMA are disengaged for the purposes of the registration function, we are not required to prepare a statement on the impact on mutual societies.

Compatibility statement

- 4.14** As our statutory objectives under FSMA are disengaged for the purposes of the registration function, we are not required to prepare a compatibility statement.

Equality and diversity

- 4.15** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 4.16** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

5 Changes to MIFIDPRU to provide clarification, and to SYSC, COND, MIFIDPRU, IPRU-INV and SUP to remedy errors

Introduction

- 5.1** The Investment Firms Prudential Regime (IFPR) came into force on 1 January 2022. This created a new prudential sourcebook, MIFIDPRU, that applies to all MiFID investment firms. It also meant changes to other parts of the Financial Conduct Authority (FCA) Handbook which included the Glossary of definitions, Senior Management Arrangements, Systems and Controls (SYSC), Threshold Conditions (COND), the Interim Prudential sourcebook for Investment Businesses (IPRU-INV) and the Supervision manual (SUP).
- 5.2** We propose to make some amendments to MIFIDPRU to provide further clarification on the new requirements. We also propose to amend the Glossary of definitions, SYSC, COND, IPRU-INV and SUP to rectify some errors that have been identified, and to provide further clarification.
- 5.3** We consulted on the rules to introduce the IFPR in Consultation Paper (CP) [20/24](#), [CP21/7](#) and [CP21/26](#). The final rules were published in Policy Statement (PS) [21/17](#).

Summary of proposals

Glossary of definitions

- 5.4** We propose to amend the Glossary definition 'qualifying holding'. Before the introduction of the IFPR, the definition of a qualifying holding when used in relation to the General Prudential sourcebook (GENPRU) or the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) was that set out in GENPRU 2.2.203R (Qualifying holdings). When the IFPR was introduced, that part of the definition of a qualifying holding, Chapter 2 of GENPRU, and the whole of BIPRU were deleted.
- 5.5** Our proposal will reinstate the relevant part of 'qualifying holding' and amend it so that it can be used in MIFIDPRU as intended by MIFIDPRU 3.3.15R on the treatment of qualifying holdings outside of the financial sector.
- 5.6** We propose to amend the Glossary definition of 'non-core liquid asset' to include short-term non-sterling deposits at a UK credit institution (see also our proposals under MIFIDPRU 7.7 – ICARA process: assessing and monitoring the adequacy of liquid assets).
- 5.7** We propose to amend the Glossary definition of 'own funds wind-down trigger'. This is to make it consistent with our proposals to clarify the interaction between the alternative requirement for the fixed overheads requirement (FOR) under the

transitional provisions (TP) in MIFIDPRU TP 2, and the own funds wind-down trigger. (See under MIFIDPRU TP 2 – Own funds requirements: transitional provisions).

- 5.8** We propose to amend point (2) of the Glossary definition of 'consolidated situation', by removing the reference to MIFIDPRU 8 (disclosure) and adding reference to MIFIDPRU 6 (liquidity). This is because under MIFIDPRU 8.1.7R the disclosure requirements only apply on an individual firm basis, whereas under MIFIDPRU 2.5.11R and MIFIDPRU 6.1.1R, the liquidity requirements also apply on the basis of the consolidated situation.
- 5.9** Our proposal will correct an oversight that arose due to the sequencing of the relevant areas over different policy documents for the IFPR and will bring the Glossary definition in line with the relevant rules.

SYSC 19G – MIFIDPRU remuneration code

- 5.10** We propose to amend SYSC 19G.6.4R and SYSC 19G.6.30R so that they refer to a material risk taker (MRT) rather than an individual. This is to clarify who specifically those provisions refer to when a firm that is not small and non-interconnected (non-SNI firm) is considering paying variable remuneration.

SYSC 24 – Senior managers and certification regime: Allocation of prescribed responsibilities

- 5.11** We propose to amend the table in SYSC 24.2 so that it no longer cross-refers to the reverse stress testing requirements set out in SYSC 20, as this has been deleted. The table will now refer to the requirements set out in MIFIDPRU 7.5. These set out the requirements under the internal capital adequacy and risk assessment (ICARA) process for capital and liquidity planning, stress testing, wind-down planning and recovery planning.

COND – The threshold conditions

- 5.12** We propose to amend COND 2.7.10G to remove the reference to the reverse stress testing requirements set out in SYSC 20 as this has been deleted.

Q5.1: Do you agree with the amendments we propose to make to the Glossary of definitions, SYSC 19G, SYSC 24.2 and COND? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 1.2 – SNI MIFIDPRU investment firm

- 5.13** We propose to amend MIFIDPRU 1.2.10R which sets out the conditions an investment firm must assess on a combined basis when part of a group to determine whether or not it is a small and non-interconnected (SNI) firm. The amendment will clarify that the metric for assets under management (AUM) only needs to be considered by an investment firm if it also manages assets. We also propose the same clarification for the client orders handled (COH) metric. We also propose to include an example to illustrate this, by adding a new paragraph to MIFIDPRU 1.2.11G.

- 5.14** This amendment will clarify that it is not the intention of the current rules that an investment firm without any AUM (or COH) would be caught as a non-SNI firm simply by virtue of the threshold for AUM (or COH) being triggered by other investment firms in the same group that do have AUM (or COH), and where that AUM (or COH) exceeds the threshold on a combined basis.

MIFIDPRU 2.5 – Prudential consolidation

- 5.15** We propose to add to MIFIDPRU 2.5.25R a new point (2)(c) for a group calculating its fixed overheads requirement (FOR) on a consolidated basis. Where the consolidated annual financial statements of a group include entities that are not also part of the investment firm group, the group will be able to use the method set out in MIFIDPRU 2.5.25R(2)(b).
- 5.16** This will mean that these investment firm groups will not end up with a FOR on a consolidated basis larger than intended.
- 5.17** We propose to add guidance after MIFIDPRU 2.5.29R for calculating consolidated K-factor requirement for assets under management (K-AUM), K-factor requirement for client orders handled (K-COH) and K-factor requirement for daily trading flow (K-DTF) requirements. MIFIDPRU 2.5.29R(4) allows a consolidation group to exclude AUM, COH or daily trading flow (DTF) that are due to make transactions or arrangements solely between 2 or more entities within the consolidation group.
- 5.18** The added guidance will clarify that this provision does not apply to transactions or arrangements that involve counterparties or clients that are external to the investment firm group. This is consistent with the intention of the current rule to which it relates, which is prudent and means the own funds requirements remain appropriate for the harm that could be caused. We also propose an example to illustrate this point.

MIFIDPRU 2.6 – The group capital test

- 5.19** We propose to amend MIFIDPRU 2.6.11R, which sets out the entities that may submit MIF006 – Group capital test (GCT) reporting. This will allow an investment firm group to designate a MIFIDPRU investment firm (that is not a parent undertaking) to submit MIF006 on behalf of GCT parent undertakings in the group. The MIFIDPRU investment firm and the parent undertaking must be part of the same investment firm group.
- 5.20** This proposal provides further choice and could help to reduce the administrative burden for some investment firm groups in submitting this return.
- 5.21** We also propose to amend MIFIDPRU 9.4.5G to reflect this.

Notification under MIFIDPRU 2.4.20R of membership of an investment firm group and/or a financial conglomerate

- 5.22** We propose to correct the instructions in the form as shown in MIFIDPRU 2 Annex 8R so that it accurately reflects which sections need to be completed.
- 5.23** In question 2, if a firm selects option (c), it is then directed to complete questions 4B, 7B and 8. It should be told to complete questions 4B, 7A and 8.

5.24 Also, in question 2, if a firm selects option (f), it is directed to complete questions 14 to 16. It only needs to complete questions 14 and 15.

5.25 This will bring the form in the Handbook in line with the form in Connect. It does not result in any changes to the form in Connect.

Q5.2: Do you agree with our proposed amendments to MIFIDPRU 1.2, MIFIDPRU 2.5, MIFIDPRU 2.6 and to the notification under MIFIDPRU 2.4.20R? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 3.3.16R – Common equity tier 1 instruments of partnerships and 3.3.17R – Common equity tier 1 instruments of limited liability partnerships

5.26 We propose to amend MIFIDPRU 3.3.16R(2) and MIFIDPRU 3.3.17R(2) to expressly allow a reduction of common equity tier 1 (CET1) own funds instruments where the FCA has given permission in line with MIFIDPRU 3.6.2R or where permission is deemed to have been given in line with MIFIDPRU 3.6.3R and MIFIDPRU 3.6.4R.

5.27 This amendment will make it clear that the capital contributed by partners in a partnership or by members in a limited liability partnership can be reduced under the same conditions as can the CET1 in joint stock companies that issue own funds instruments, such as shares.

MIFIDPRU 3.6.2R – Reduction of own funds instruments

5.28 We propose to amend the first paragraph of MIFIDPRU 3.6.2R, which requires that firms must seek permission from us before reducing their own funds instruments. They do this by completing the application form in MIFIDPRU 3 Annex 4R and submitting it through Connect.

5.29 The only exception is where the conditions set out in MIFIDPRU 3.6.3R and MIFIDPRU 3.6.4R are met. In this case, a firm must complete the notification form in MIFIDPRU 3 Annex 5R and submit it through Connect at least 20 business days before the proposed reduction is due to take place. We simply clarify that it is not required to apply for permission to use the application form in MIFIDPRU 3 Annex 4R.

5.30 The proposed change is to remove any potential confusion about which form should be used in each circumstance.

Q5.3: Do you agree with our proposed amendments to Chapter 3 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 4.7.21R – Investment advice of an ongoing nature

5.31 The current wording of MIFIDPRU 4.7.21R(1)(b) has the phrase 'recurring investment advice' in italics. This suggests 'recurring investment advice' is a defined term and

therefore will be in the Glossary of definitions. This was an error as the defined term is 'investment advice'. So, we propose to remove the italics from the word 'recurring'. The wording will otherwise remain unchanged.

MIFIDPRU 4.10.21R – Measuring the value of orders for COH

- 5.32** We propose to amend the last sentence of MIFIDPRU 4.10.21R(6) so that it refers to a 'conversion rate'. This will correct a spelling mistake in that sentence.

MIFIDPRU 4.14 – K-TCD requirement

- 5.33** We propose to add a new point (5) to MIFIDPRU 4.14.18R on the calculation of a net potential future exposure for each netting set. There will be no change to the formula which will remain as:

$$PFE_{net} = \left(\frac{RC_{net}}{RC_{gross}} \right) * PFE_{gross}$$

- 5.34** Point (5) will set out what firms should do where the value of RC_{gross} is 0. In this case, the result of RC_{net}/RC_{gross} will be '1' where the netting set consists of a single derivative contract and '0' where the netting set contains more than one derivative contract.
- 5.35** This will avoid the possibility of a mathematically undefined result if otherwise dividing by 0. As the purpose of a netting set is to recognise the potential benefit in risk reduction that may occur from netting between relevant contracts, we propose a difference in treatment should a netting set consist of only a single derivatives contract.
- 5.36** We also propose to add a new guidance provision at MIFIDPRU 4.14.18AG to remind firms that any residual risk of potential harm from using this approach should still be considered as part of its ICARA process. Firms should also be consistent in the way they allocate transactions to netting sets.
- 5.37** This will remind firms of their existing obligations under MIFIDPRU 7 and help to reduce volatility in the calculation of net potential future exposure where a firm could otherwise seek to keep changing its allocation of contracts to netting sets simply for the purpose of calculating the K-factor requirement for trading counterparty default (K-TCD).

Q5.4: Do you agree with our proposed amendments to Chapter 4 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 6 – Basic liquid assets requirement

- 5.38** We propose to amend MIFIDPRU 6.3.4R(1) to confirm that the liquid assets listed there may be treated as 'core liquid assets' as intended.

- 5.39** We propose to amend MIFIDPRU 6.3.4R(2) to explain that the proportion of assets that are in a currency that is not pound sterling that can be held to meet the basic liquid asset requirement (BLAR) cannot be more than the proportion of fixed overheads or guarantees to clients that the firm has in that same currency.
- 5.40** A worked example is also provided in MIFIDPRU 6.3.4AG.
- 5.41** This is to clarify how to apply the original intent of the policy on the extent to which a firm may count core liquid assets in a non-sterling currency towards meeting its BLAR. This will reduce the likelihood of there being a mismatch in any individual currency between the amount of the requirement and the value of liquid assets held against it.

Q5.5: Do you agree with our proposed amendments to Chapter 6 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 7.7 – ICARA process: assessing and monitoring the adequacy of liquid assets

- 5.42** We propose to amend MIFIDPRU 7.7.8R(1) to confirm that short-term non-sterling deposits at a UK bank can be treated as non-core liquid assets.
- 5.43** This remedies an oversight in the original drafting of the rules which meant that only short-term non-sterling deposits at a bank that was not in the UK could be treated as non-core liquid assets. This expands the list of non-core liquid assets for firms.
- 5.44** To accompany the above, we also propose to update the table in MIFIDPRU 7.7.12G to include short-term non-sterling deposits at a UK bank in the list of liquid assets with a haircut of 0%.

Q5.6: Do you agree with our proposed amendments to Chapter 7 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

MIFIDPRU 9 Annex 2G – Guidance notes on data items in MIFIDPRU 9 Annex 1R

MIF001 – Adequate financial resources (own funds)

- 5.45** We propose to amend the guidance on how to complete field 3A – Common Equity Tier 1 capital. We propose to delete the final sentence that requires this field to always be completed with a positive number. The form in RegData has already been amended to allow firms to input a negative number here where this is an adequate reflection of their position. This amendment updates the guidance on what is allowed.
- 5.46** We propose to amend the guidance on how to complete field 17A – Adjusted K-DTF (cash trades) coefficient, where used. This is to update the numbers used in the example as we think that this better reflects the data a firm will want to input here.

- 5.47** We propose to make a similar amendment to the guidance on how to complete field 19A – Adjusted K-DTF (derivatives trades) coefficient, where used.
- 5.48** We propose to amend the guidance on how to complete field 26A – Own funds threshold requirement. The amendment is to make it clear to firms that the ICARA process should be ongoing and that firms should enter its most recent assessment of its own funds threshold requirement (OFTR).
- 5.49** This was always the intention of the guidance and we think that this makes that intention clearer for firms.

MIF002 – Adequate financial resources (liquid assets)

- 5.50** We propose to amend the guidance on how to complete field 7A – Liquid assets threshold requirement. The amendment is to make it clear to firms that the ICARA process should be ongoing and that firms should enter its most recent assessment of its liquid assets threshold requirement.
- 5.51** This was always the intention of the guidance and we think that this makes that intention clearer for firms.

MIF007 – ICARA Questionnaire

- 5.52** We propose to amend the guidance on how to complete field 7A – Common Equity Tier 1 capital by deleting the final sentence. This required firms to always complete this field with a positive number. The form in RegData has already been amended to allow firms to input a negative number here where this is an adequate reflection of their position. This amendment updates the guidance on what is allowed.

Q5.7: Do you agree with our proposed amendments to Chapter 9 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

***MIFIDPRU TP 2 – Own funds requirements: transitional provisions
Disapplication of permanent minimum capital requirement transitional provisions because of changes to a firm's permissions***

- 5.53** We propose to amend MIFIDPRU TP 2.19R to make it clear that transitional arrangements in MIFIDPRU TP 2.18R also no longer apply where a firm varies its permissions or has changes to any limitations or requirements that mean that its permanent minimum capital requirement (PMR) has increased.
- 5.54** This amendment is needed as TP 2 was written before the requirements for depositaries were finalised and it is possible that a former 'matched principal' firm (to whom TP 2.18R applies) might also seek to vary its permission to become a depositary.

Interaction between alternative own funds requirements under MIFIDPRU TP 2, own funds wind-down trigger and own funds threshold requirement

- 5.55** We propose to add a new rule and guidance in the transitional provisions in MIFIDPRU TP 2. These proposals serve 2 purposes.
- 5.56** First is to clarify that where a firm has replaced its FOR with an alternative requirement under TP 2, the firm may use the alternative requirement for its FOR when calculating its own funds wind-down trigger. (Unless the FCA has specified another amount in a requirement applied to the firm). This means that firms who meet the alternative FOR are not in breach of their wind-down trigger and do not need to notify us of such. We also propose that where a firm makes use of an alternative own funds requirement under MIFIDPRU TP 2.20R(2), it may use this alternative amount as its own funds wind-down trigger, if lower than its FOR.
- 5.57** Second is to clarify that a firm whose 'biting' minimum own funds requirement is one of the alternative requirements from TP 2 (ie, an alternative PMR, FOR or K-factor requirement (KFR) or an alternative own funds requirement under MIFIDPRU TP 2.20R(2)) may use that alternative requirement when calculating its OFTR – unless it has specified a higher level for its OFTR as part of its ICARA process.
- 5.58** This means that if a firm has assessed through its ICARA process that it does not need to hold additional own funds to meet the overall financial adequacy rule (OFAR), then the firm is not in breach of its OFTR if it meets its requirements under TP 2 and does not need to notify us as such.
- 5.59** These clarifications are necessary as we have received notifications from firms under MIFIDPRU 7.6.11R that they are in breach of their requirements, when in fact they are applying the provisions in TP 2 as intended.
- 5.60** We also propose to make an amendment to MIFIDPRU 7.6 – ICARA process: assessing monitoring the adequacy of own funds. We propose to add a new point (6) to MIFIDPRU 7.6.4G to signpost where the transitional provisions contain rules and guidance on the interaction between a firm's OFTR and the alternative requirement for its FOR, KFR or PMR, or an alternative own funds requirement under MIFIDPRU TP 2.20R(2).
- 5.61** This addition will remind firms of the provisions in TP 2 that explain the interaction of the OFTR and the alternative requirements in TP 2.

Q5.8: Do you agree with our proposed amendments to TP 2 in MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

IPRU-INV 3 Financial resources for Securities and Futures Firms which are not MiFID investment firms

- 5.62** We propose to amend the table in IPRU-INV 3-61(2)R to clarify how firms should calculate their financial resources and their financial resources requirement. The way that it is currently written is potentially confusing for firms, as not all the relevant items that are listed in IPRU-INV 3-62 to IPRU-INV 3-182 are mentioned.

- 5.63** We propose to amend IPRU-INV 3-62(1)R to clarify the full set of rules within section 3-62 that are relevant to how firms should calculate their tangible net worth.
- 5.64** We propose to add a new point (9) to IPRU-INV 3-62 to further clarify how a partnership should calculate its tangible net worth, consistent with our proposed clarification for the table in IPRU-INV 3-61(2)R.

Q5.9: Do you agree with our proposed amendments to Chapter 3 of IPRU-INV? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

SUP 16.12 – Integrated regulatory reporting

- 5.65** We propose to amend SUP 16.12 for firms that are in regulated activity group (RAG) 4. These amendments are necessary because in the process of updating SUP 16.12, when the IFPR was introduced, the reporting requirements relating to FSA038 on volumes and types of business were inadvertently removed.
- 5.66** We propose to amend the table in SUP 16.12.15R that sets out the reporting requirements for firms that are in RAG 4. This will reinstate the requirement for MIFIDPRU firms in that group to submit FSA038.
- 5.67** We propose to amend the table in SUP 16.12.16R that sets out the frequency of reporting for firms that are in RAG 4. This will reinstate the requirement for firms in that group to submit FSA038 every 6 months. There is effectively no change for firms in RAG 4 that are in IPRU-INV.
- 5.68** We propose to amend the table in SUP 16.12.17R that sets out how long firms that are in RAG 4 have in which to submit the reporting they have been scheduled. This will reinstate that the provision firms in that group have 30 business days to submit FSA038. There is effectively no change for firms in RAG 4 that are in IPRU-INV.

SUP 16 Annex 25G – Guidance notes for data items in SUP 16 Annex 24R

FSA033 – Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)

- 5.69** We propose to add guidance on how to complete fields 1B and 2B (Tangible net worth). This is to account for excess LLP members' drawings.
- 5.70** We also propose to update the guidance on how to complete field 10B (Total liquidity adjustment).
- 5.71** These amendments better reflect the clarifications we propose to make to IPRU-INV 3-61(2)R and IPRU-INV 3.62(1)R (see above).

Q5.10: Do you agree with our proposed amendments to Chapter 16 of SUP? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

Materiality

- 5.72** This section explains why we consider that the proposed changes to our rules and guidance made under Part 9C of the Financial Services and Markets Act 2000 (FSMA) are not material under section 143 of FSMA. It does not apply to those rules that have been made under our general FSMA rule-making power which include the proposed amendments to IPRU(INV) 3 and related reporting changes in SUP 16 Annex 24R and SUP 16 Annex 25G.
- 5.73** In our opinion, the proposed changes to our existing rules within this chapter are not material under sections:
- 143G(1) of FSMA – because we consider that they do not affect standards set by an international body or the relative standing of the UK as a place for internationally active investment firms to be based or to carry on activities; and are not relevant to the carbon target in section 1 of the Climate Change Act 2008
 - 143I(3) and (5) of FSMA – because they do not affect relevant equivalence decisions
- 5.74** More generally, we do not consider that they materially change any risks to consumers, the market or the UK financial system arising from FCA investment firms.
- 5.75** Our proposed changes are intended to clarify the interpretation of, and to correct errors in relation to, existing rules and guidance for FCA investment firms and, where applicable, UK parent entities of investment firm groups that are subject to prudential consolidation under MIFIDPRU 2.5. We do not consider that they will impose substantive new obligations on firms or parent entities and therefore we do not expect them to increase the operational burden.
- 5.76** When we made the original rules in PS21/17, we considered the application of our duties under Part 9C of FSMA at that time and explained how we considered that our rules discharged those duties. We consider that the minor amendments to rules and guidance that we are proposing in this chapter would not materially change our approach to monitoring and supervising the relevant underlying risks, and that the clarifications being proposed would facilitate the implementation of the existing obligations by the relevant firms or parent entities.

Cost benefit analysis

- 5.77** Sections 1381(2)(a) of the FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA states that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance.
- 5.78** We consulted on the costs and benefits of the IFPR in CP21/26. We do not believe that our proposed changes and clarifications will alter the costs and benefits of the IFPR for firms. The cost benefit analysis in CP21/26 remains unchanged and applies to this consultation.

Impact on mutual societies

- 5.79** Section 138K(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.
- 5.80** We are satisfied that the proposals in this chapter would not have a significantly different impact on mutual societies compared with other authorised persons.

Compatibility statement

- 5.81** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 5.82** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection by clarifying how firms calculate an appropriate amount of own funds and liquid assets to hold based on their potential to cause harm. They promote effective competition in the interests of consumers by increasing the proportionality of some of the requirements. They promote market integrity by enabling firms to provide us with better quality data. We are satisfied that any burdens or restrictions are proportionate to the expected benefit.

Equality and diversity

- 5.83** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation, and gender reassignment).
- 5.84** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

6 Changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022

Introduction

- 6.1** This chapter proposes minor amendments to the Enforcement Guide (EG) to reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 (Regulations). These Regulations amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs).
- 6.2** The FCA is responsible for monitoring and enforcing compliance with the MLRs, not only by authorised firms who are within the MLRs' scope, but also by cryptoasset businesses and Annex 1 financial institutions. Annex 1 financial institutions are businesses that perform activities, such as financial leasing, commercial lending and safe custody services.

Summary of proposals

- 6.3** The MLRs provide the FCA with existing powers to gather information, investigate and impose directions on cryptoasset businesses. The Regulations extend those powers so that they apply to Annex 1 financial institutions as they do to cryptoasset businesses. In particular, the Regulations provide the FCA with the power to:
- require an Annex 1 financial institution to provide the FCA with such information as the FCA directs
 - appoint a skilled person, or require a skilled person to be appointed, to provide the FCA with a report on a matter relating to the exercise of the FCA's functions under the MLRs in relation to an Annex 1 financial institution
 - impose a direction on an Annex 1 financial institution to remedy or prevent a failure to comply with a requirement under the MLRs or to prevent the Annex 1 financial institution from being used for money laundering, terrorist financing or proliferation financing
- 6.4** We propose to make minor amendments to EG 19.14 to reflect the FCA's power to impose a direction on an Annex 1 financial institution under regulation 74C of the MLRs.
- 6.5** We propose to make minor amendments to EG 19.15 to reflect that the FCA will apply its existing approach to imposing a direction on cryptoasset businesses to Annex 1 financial institutions.

Q6.1: Do you have any comments on the proposed amendments to EG 19.14 and EG 19.15?

Cost benefit analysis

- 6.6** Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that Section 138I(2)(a) does not apply where we consider that there will be no increase in costs or that any increase will be of minimal significance.
- 6.7** The proposal set out in this Quarterly Consultation Paper does not impose additional obligations on firms. It does not relate to rule changes or guidance on rules. Since the requirements under section 138I are not applicable, we are not required to carry out a cost benefit analysis. In any event, we do not expect that the proposal to amend EG 19.14 and EG 19.15 will lead to any increase in costs, or the cost increase will be of minimal significance.

Impact on mutual societies

- 6.8** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies compared to other authorised persons. The FCA does not expect the proposals in this paper to have a significant different impact on mutual societies.

Compatibility statement

- 6.9** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 6.10** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

- 6.11** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 6.12** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

7 Amendments to the product governance rules for general insurance and pure protection products distributed overseas

Introduction

- 7.1** We enhanced our rules for product governance in the insurance sector as part of the insurance pricing rules in Policy Statement (PS) 21/5 (published in May 2021) and PS21/11 (published in August 2021). These rules came into force on 1 October 2021 and apply to manufacturers and distributors of all general insurance and pure protection products (except where these products will be exclusively for contracts of large risks or reinsurance contracts). The rules are in Chapter 4 of the Product Intervention and Product Governance sourcebook (PROD).
- 7.2** Under these rules, manufacturers must have product approval processes that identify whether their products provide fair value to consumers and will continue to do so for a reasonably foreseeable period. As part of this assessment, they must consider the impact of distribution arrangements on the value of the product. The rules require manufacturers to obtain specified information from distributors, including commissions, fees, and charges in order to assess whether their products are providing fair value.
- 7.3** Firms were given a transitional period to comply with these requirements for non-investment insurance products that were already available for marketing or distribution. This transitional period applied from the date these rules came into effect until 30 September 2022. Firms also needed to apply PROD 4 required processes to legacy non-investment insurance products and had the same transitional period in which to do this.

Why we are proposing changes

- 7.4** Since we introduced these rules, we have considered further the specific product governance processes and assessments required of UK firms in relation to the overseas distribution of products manufactured in the UK. We have heard from firms and industry representatives that manufacturers have experienced difficulties with overseas firms, who may not be subject to our regulation, and who are reluctant to provide information when requested by UK manufacturers and distributors. Without this information from distributors, the resulting value assessment will be incomplete and potentially inaccurate, as well as leaving manufacturers unable to comply with our rules or facing increased compliance costs. We are also aware that in many overseas markets there are regulations controlling matters such as pricing and the costs of distribution. These are more appropriately determined by authorities in those markets. We want to ensure that the product governance arrangements provide appropriate protection for these consumers and are both reasonable and proportionate in relation to products which are distributed overseas.

- 7.5** We wrote to general insurance and pure protection firms on 29 July 2022, setting out our expectations around fair value assessments and noting the challenges manufacturers had in obtaining information from overseas distributors. We made them aware that we will be looking at further interventions using the range of our regulatory tools as appropriate, where firms are not able to/cannot comply with our requirements. We issued a communication on our website on 23 September 2022 for manufacturers that sell products through overseas distributors for overseas customers.
- 7.6** Details can be found here: [Interim measures - PROD rules](#).

Summary of proposals

- 7.7** We are proposing changes to the PROD rules which apply to the manufacture and distribution of non-investment insurance products that are distributed to customers based outside of the UK (including legacy non-investment insurance products). The proposed changes are different depending on whether the product is exclusively for overseas distribution, or whether it is a product intended for both the UK and overseas markets.
- 7.8** Where a firm manufactures or distributes a general insurance or pure protection product which is intended to be distributed exclusively to customers outside the UK (that is, where they are habitually resident outside the UK and, if applicable, the state in which the risk is situated is outside the UK), we propose to disapply generally the rules introduced in [PS21/5](#) for PROD 4.2 and 4.3. To do this, we are proposing to introduce a new defined term of 'overseas non-investment insurance product'. However, the changes we have proposed include the condition that if such a product is sold to a UK customer the full set of PROD 4 rules will apply.
- 7.9** Where a product is manufactured to be distributed both within the UK and overseas, the rules introduced in [PS21/5](#) will continue to apply in full with respect to the manufacture and distribution of the product, except that firms will only be required to obtain and assess information in relation to the UK distribution channels when determining fair value.
- 7.10** Existing products will continue to be subject to the full PROD rules where there are contracts in force with UK customers. This also includes existing legacy products.
- 7.11** The proposed changes will require firms to have product approval or distribution arrangements that meet the requirements of PROD 4.2 and PROD 4.3 as they stood on 30 September 2021 (and any future changes that are applied to the products outlined above). We have previously communicated our expectations of these rules (together with obligations under wider FCA requirements) including that firms must ensure products are designed to meet the needs, objectives, interests and characteristics of the target market. Firms will also need to continue meeting wider obligations under FCA rules in relation to remuneration not conflicting with the with the customer's best interests' rule.
- 7.12** We consider that our proposed approach for products that are available for overseas distribution requires firms to have arrangements that provide an appropriate degree of consumer protections whilst also ensuring an appropriate and proportionate regulatory framework for firms whose products are distributed outside the UK.

Q7.1: Do you agree with our proposed changes to PROD 4?

Cost benefit analysis

- 7.13** Section 138I(2)(a) of Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Our analysis is set out below. However, section 138L of FSMA states that we do not need to provide a CBA where we consider that there will be no increase in costs.

Costs to firms

- 7.14** The intention of the changes we are proposing is to remove some of the regulatory burden for firms manufacturing insurance products for non-UK customers. We anticipate that no longer being required to follow the detailed rules concerning assessing fair value – in particular, no longer being required to obtain information from overseas distributors – will reduce ongoing compliance costs for these firms.
- 7.15** The proposed rules differentiate between products exclusively for overseas customers and those for both UK and overseas customers. We anticipate that some firms may choose to split their products in this way, resulting in some one-off costs associated with things like reviewing product wordings and reprinting documents. However, we understand most firms already differentiate between UK and non-UK products, so we do not consider these costs are likely to be of more than minimal significance.

Benefits to firms

- 7.16** As stated above, our intention is to benefit firms by reducing compliance costs. When we proposed the additional product governance requirements in [Consultation Paper 20/19](#), we estimated ongoing costs of £30,000 to £80,000 per firm, dependent on firm size. These estimates were based on the assumption that firms were already complying with the broader requirements under PROD 4 and other parts of the Handbook. Trade associations have subsequently suggested to us that there could be ongoing costs averaging between £84,000 to £104,000 per firm. Based on these, we estimate our proposed changes will reduce firms' costs by £30,000 to £104,000 per firm. The typical amount is likely to be at the lower end of this estimate because firms which offer products to both UK and non-UK customers will still be required to comply with all of the PROD rules for their UK products. The maximum cost saving is only likely to be achieved by firms with no UK customers, or firms who chose to split their products into UK and non-UK products. However, we consider that all firms utilising the proposed changes will benefit from some cost reductions.

Costs and benefits to customers

- 7.17** We do not consider there are likely to be more than minimal costs to customers from these changes. The challenges firms have faced in complying with the PROD rules mean that customers in overseas jurisdictions are unlikely to receive the same benefits that we estimated for customers in the UK.
- 7.18** Where costs for firms are reduced, this may make it easier for them to offer products into overseas markets. This could have the benefit of increasing competition and reducing prices for customers in those markets. We do not consider it reasonably

practical to estimate this benefit as it depends on firms' dynamic responses to changing regulation which cannot be accurately forecasted. However, firms and trade associations have pointed to instances of products being withdrawn due to firms' inability to fully comply with the PROD rules. We expect such issues to reduce following the implementation of the proposed changes.

Impact on mutual societies

- 7.19** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies compared to other authorised persons. The FCA does not expect the proposals in this paper to have a significant different impact on mutual societies.

Compatibility statement

- 7.20** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 7.21** We are satisfied that the proposed amendments in this chapter are compatible with our objectives and regulatory principles. The proposals are intended to enhance market integrity by providing a proportionate regime in relation to products which are subject to regulation by overseas jurisdictions. The proposals are compatible with our competition objective as they are intended to provide a more level playing field between firms distributing overseas through UK-based intermediaries and those utilising overseas distributors who are not subject to our rules.

Equality and diversity

- 7.22** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 7.23** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

8 Clarificatory amendments to the Consumer Duty

Introduction

- 8.1** In July 2022, we published the Policy Statement (PS) 22/9 and made the final rules for the Consumer Duty (the Duty). In our subsequent work and discussions with firms, we have identified areas where certain rules require clarification. These include some rules that do not fully give effect to the final policy on which we consulted.
- 8.2** In this chapter, we propose changes to the rules to address these issues, ensure they apply correctly and avoid possible misunderstandings.
- 8.3** The proposals will be of interest to firms involved in distribution chains for products and services that reach retail customers. They may also be of interest to retail customers who buy products or services from these firms.

Summary of proposals

Application of the Duty to firms approving or communicating financial promotions

- 8.4** In the consultation on the Duty, Consultation Paper (CP) 21/36, we said 'Authorised firms approving financial promotions on behalf of unauthorised third parties would be subject to the Consumer Duty. They would need to consider, in particular, the Consumer Principle, cross-cutting rules and consumer understanding outcome'.
- 8.5** To deliver this, we consider that the overall application provisions for the Duty require amendments, as they are currently unclear how they apply where a firm is only approving or communicating a financial promotion.
- 8.6** We are proposing to amend the application provisions to make clear that the following parts of the Duty apply to firms in these circumstances:
- Principle 12
 - the cross-cutting rules
 - the consumer understanding outcome
 - rules on monitoring and governance
 - supporting provisions (such as those relating to reasonableness and redress)
- 8.7** If a firm is carrying out other business which falls within our 'retail market business' Glossary definition and has a material influence in respect of other outcomes under the Duty, it will also be subject to other relevant parts of the Duty.

8.8 We are also proposing some consequential changes to other rules and guidance. These changes aim to ensure that application provisions throughout the Consumer Duty rules are read consistently with the overarching scope of the Duty. For example, the proposed consequential changes clarify the application of the consumer understanding and consumer support outcomes.

Q8.1: Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms approving or communicating financial promotions?

Application of the Duty to firms in the temporary marketing permissions regime

8.9 The temporary marketing permissions regime (TMPR) allows European Economic Area (EEA) fund managers to continue selling funds into the UK, now that the UK is no longer a member of the EU single market.

8.10 We consulted on applying the Duty to firms within the TMPR where they are communicating or approving UK financial promotions to retail customers. In light of the proposed amendments to the application provisions around financial promotions set out above, we are proposing some minor amendments to ensure these aspects of the Duty apply to firms in the TMPR as well.

Q8.2: Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms in the TMPR?

Application of the Duty to occupational pension schemes

8.11 In PS22/9, we confirmed that Financial Conduct Authority (FCA) authorised firms creating a product or operating pension schemes for occupational pension scheme trustees would need to comply with the Duty if they can determine or materially influence retail customer outcomes. Limb (2)(g) of the 'retail customer' Glossary definition is used to achieve this.

8.12 Where a firm carries out activities in relation to an occupational pension scheme, this classifies as a retail customer any person who is not a client of the firm but who is or would be a beneficiary in relation to investments held in that occupational pension scheme.

8.13 We recognise that there is some scope for misinterpretation of this in relation to defined benefit (DB) occupational pension schemes. This arises because scheme members are beneficiaries of the scheme and not directly of the investments held in the scheme.

8.14 We are consulting on amending this part of the definition to be clear that retail customers include any person who is not a client of the firm but who is, or would be, a beneficiary of an occupational pension scheme (rather than a beneficiary in relation to the investments held in the scheme).

8.15 In practice, we do not expect there to be many instances where FCA authorised firms have a material influence on retail customer outcomes in relation to DB occupational pension schemes. It is possible, however: for example, a firm might provide services to DB trustees that have a material influence on consumer understanding or consumer support. We do not think it is appropriate to rule out application of the Duty in this context. The test should be whether a firm can determine or materially influence retail customer outcomes, rather than a blanket exclusion for DB occupational pension schemes.

Q8.3: Do you have any comments on our proposed amendment of the 'retail customer' Glossary definition in relation to occupational pension schemes?

The 'closed product' definition

8.16 Firms have until 31 July 2024 to implement the Duty for closed products and services (that is, for products and services with existing customers but which are no longer open for sale or renewal). Under our definition, a product cannot be classed as closed if it is still being distributed. However, the defined Glossary term 'distribute' is broad in scope. It could potentially be interpreted to mean that no product or service in which an account is still held, or an ongoing relationship exists, can be classed as closed. Clearly, this is not our intention.

8.17 We propose to remove the use of the defined 'distribute' term in the 'closed product' definition. This will avoid potential misunderstanding as the defined Glossary term 'distribute' goes further than the ordinary understanding of the word 'distribute' which, in this context, only captures the marketing or selling of products to retail customers. Products and services should be regarded as closed where they are not being marketed or sold to new customers, or available for renewal by existing customers.

8.18 We have also become aware that the 'closed product' definition should be amended so that it is clear on how it applies to occupational pension schemes. The current wording – which refers to existing contracts with retail customers – might arguably imply, incorrectly, that no occupational pension scheme could be classed as closed. This arises because members of occupational pensions derive their rights from being beneficiaries under a trust, rather than as a matter of contract. We are consulting on changes to the definition to address this. The proposed wording better reflects the structure of occupational pension schemes. Where new members cannot join a scheme, it would be classed as closed.

Q8.4: Do you have any comments on our proposal to clarify the 'closed product' Glossary definition in relation to the Consumer Duty?

Application of the Duty to non-retail financial instruments

8.19 The Duty is focused on retail market business. Therefore, there is an exclusion for certain activities linked to financial instruments designed for wholesale investors (i.e. for non-retail financial instruments). Where this exclusion applies, firms do not need to consider whether their activities determine or materially influence retail customer outcomes as they are already out of scope of the Duty.

8.20 This exclusion is intended to be used in relation to purely wholesale activities. However, the current wording might be interpreted as also excluding certain retail activity. It might be read as excluding firms in a distribution chain selling investment funds to retail customers, where the minimum investment is £50,000. For example, an adviser of high net worth retail customers may think advice is out of scope of the Duty where it relates to a fund with a minimum investment above £50,000. Similarly, a firm creating a fund for another firm to sell to retail customers – such as an asset manager working with a pension provider or an investment platform to design and manage funds for retail customers – may look to use the exclusion.

8.21 Based on our engagement with stakeholders, we think this situation would be most likely to arise in the area of investment funds. We are therefore proposing an amendment to the relevant part of the exclusion, so that it is not available in relation to investment funds. We did not intend for this exclusion to cover instances where firms are designing and distributing funds for retail customers. Firms in a retail distribution chain should consider if they can determine, or have a material influence over, retail customer outcomes.

Q8.5: Do you have any comments on our proposal to amend the exclusion for activities linked to ‘non-retail financial instruments’?

Q8.6: Should we consider any other restrictions to this exclusion in addition to the restriction for investment funds?

Application of the Duty where an exemption applies in a sectoral sourcebook

8.22 We confirmed in PS22/9 that the Duty does not apply to activities where an exclusion exists in our sectoral rules. For example, the Mortgages and Home Finance Conduct of Business sourcebook (MCOB) rules do not apply to regulated mortgage contracts provided to ‘large business customers’, and the Duty follows this same application. We introduced a rule (PRIN 3.2.8R) to make this clear.

8.23 Some stakeholders have said that this rule could be read as meaning that the Duty only applies where sectoral sourcebooks include specific rules for an activity. This is not our intention. We are therefore consulting on a new rule and guidance to make clear that the Duty follows the scope of existing sectoral rules.

Q8.7: Do you have any comments on our proposal to clarify the application of the Duty where an exemption applies in a sectoral sourcebook?

Cost benefit analysis

- 8.24** Section 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. If, in our opinion, the costs or benefits cannot be reasonably estimated, or it is not reasonably practicable to produce an estimate, then, under section 138I(8), we must include a statement of our opinion and an explanation of what we see as likely costs and benefits arising from the proposed policy.
- 8.25** It remains the case, as set out in [CP21/36](#), that it is not practicable for us to quantify many of the impacts of the Duty. This is because of the inherent nature of the Duty, which is broad, high-level, and designed to prevent future harm from occurring. The potential impact also varies significantly between sectors and firms.
- 8.26** However, as the proposals in this chapter address instances where the rules do not apply the Duty in the way intended, the CBA in [CP21/36](#) remains relevant. See, in particular, Tables 1a and 1b of Annex 2 of the CP, for our assessment of the costs that would be incurred by firms subject to the Duty. Where a firm had decided that it was not subject to the Duty under the rules introduced in [PS22/9](#), but would become subject to the Duty under the proposals in this chapter, the costs set out in the [CP21/36](#) CBA would be incurred. It would not be possible for us to estimate the number of firms in this situation.
- 8.27** While it has not been possible to reasonably estimate the benefits due to the broad and pre-emptive nature of the Duty, the CBA also sets out the benefits we expect to see. The benefits we expect to see for consumers include reduced need to seek compensation or redress, reduced probability of individuals experiencing harm, and enhanced customer confidence and participation in financial markets. We also see advantages for most firms, with the higher, clearer standard of the Consumer Duty creating a level playing field on which firms can compete and innovate in pursuit of good consumer outcomes. The proposed changes on which we are consulting will help add clarity to what is expected and of whom. This will be reinforced by our activities which will enable us to more quickly identify and address poor practices that impact consumer outcomes.

Impact on mutual societies

- 8.28** Section 138K(2) of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed changes in this chapter do not have a significantly different impact on mutual societies compared to other authorised persons.

Compatibility statement

- 8.29** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 8.30** We are satisfied that the proposed amendments in this chapter are compatible with our objectives and regulatory principles. These proposals are primarily intended to advance our consumer protection and competition objectives. The higher, clearer standards required by the Consumer Duty will help to ensure appropriate levels of consumer protection. The Consumer Duty will also create a fairer and more consumer-focused playing field on which firms can compete and innovate in pursuit of good consumer outcomes.

Equality and diversity

- 8.31** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 8.32** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

Annex 1

Abbreviations used in this paper

Abbreviation	Description
AUM	Assets under management
BANK	Bank of England
BIPRU	The Prudential sourcebook for Banks, Building Societies and Investment Firms
BLAR	Basic liquid asset requirement
CBA	Cost benefit analysis
CCP	Central counterparty
CET1	Common equity tier 1
CFTC	Commodity Futures Trading Commission
COH	Client orders handled
COND	Threshold conditions
CP	Consultation Paper
DB occupational pension scheme	Defined benefit occupational pension scheme
DCO	Derivatives clearing obligation
DTF	Daily trading flow
EEA	European Economic Area
EG	Enforcement Guide
FCA	Financial Conduct Authority
FG15/12	Finalised guidance 15/12 - Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014
FOR	Fixed overheads requirement
FS Act 2021	Financial Services Act 2021

Abbreviation	Description
FSMA	Financial Services and Markets Act 2000
FVA	Fair value assessment
GCT	Group capital test
GENPRU	General Prudential sourcebook
GIPP	General insurance pricing practices
IBOR	Interbank offered rate
ICARA	Internal capital adequacy and risk assessment
IDD	Insurance distribution directive
IFPR	Investment Firm Prudential Regime
IPRU(INV)	Interim Prudential sourcebook for Investment Firms
K-AUM	K-factor requirement for assets under management
K-COH	K-factor requirement for client orders handled
K-DTF	K-factor requirement for daily trading flow
KFR	K-factor requirement
K-TCD	K-factor requirement for trading counterparty default
LIBF	London Institute of Banking and Finance
LIBF Limited	London Institute of Banking and Finance Limited
LIBOR	London interbank offered rate
LMA	Lloyd's Market Association
MAT	Made available to trade
MIFIDPRU	Prudential sourcebook for MiFID Investment Firms
MLR	Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
MRT	Material risk taker
OFAR	Overall financial adequacy rule

Abbreviation	Description
OFR	Overseas Funds Regime
OFTR	Own funds threshold requirement
OIS	Overnight indexed swap
OTC	Over-the-counter
PMR	Permanent minimum capital requirement
PROD	Product Intervention and Product Governance sourcebook
PS	Policy Statement
RAG	Regulated activity group
Regulations	The Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022
RFR	Risk-free rate
SEF	Swap execution facility
SNI	Small and non-interconnected investment firm
SOFR	Secured overnight financing rate
SONIA	Sterling overnight index average
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
TC	Training and Competency
The Act	Co-operative and Community Benefit Societies Act 2014
TMPR	Temporary marketing permissions regime
TP	Transitional provisions
UCITS	Undertakings for Collective Investment in Transferable Securities
UK BMR	UK Benchmarks Regulation, onshored Benchmark Regulation (EU) 2016/1011
UK MiFIR	UK Markets in Financial Instruments Regulation, onshored Regulation (EU) No 600/2014

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 7948 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN



Sign up for our **news and publications alerts**

Appendix 1

List of questions

- Q2.1:** Do you have any comments on the proposed amendments to the Glossary of definitions?
- Q2.2:** Do you have any comments on the proposed changes to the qualification table in TC App 4.1.1?
- Q2.3:** Do you have any comments on our proposed changes to correct the drafting error in the TC sourcebook?
- Q3.1:** Do you agree with our proposal to remove all derivative products referencing USD LIBOR from the DTO? If not, please explain why.
- Q3.2:** Do you agree that the removal of USD LIBOR products from the DTO should take place on 24 April 2023? If not, please indicate what we should consider when selecting an alternate date.
- Q3.3:** Do you have any comments regarding which and when SOFR products should be brought within the scope of the DTO?
- Q4.1:** Do you have any comments on our proposal to move the Finalised Guidance on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014 from its position as a static PDF document on the website into the FCA Handbook as a Guide?
- Q5.1:** Do you agree with the amendments we propose to make to the Glossary of definitions, SYSC 19G, SYSC 24.2 and COND? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.2:** Do you agree with our proposed amendments to MIFIDPRU 1.2, MIFIDPRU 2.5, MIFIDPRU 2.6 and to the notification under MIFIDPRU 2.4.20R? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.

- Q5.3:** Do you agree with our proposed amendments to Chapter 3 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.4:** Do you agree with our proposed amendments to Chapter 4 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.5:** Do you agree with our proposed amendments to Chapter 6 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.6:** Do you agree with our proposed amendments to Chapter 7 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.7:** Do you agree with our proposed amendments to Chapter 9 of MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.8:** Do you agree with our proposed amendments to TP 2 in MIFIDPRU? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.9:** Do you agree with our proposed amendments to Chapter 3 of IPRU-INV? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q5.10:** Do you agree with our proposed amendments to Chapter 16 of SUP? If you do not agree, please explain clearly which you disagree with and why. Please also specify any changes you think could be made to achieve the aim of the amendment.
- Q6.1:** Do you have any comments on the proposed amendments to EG 19.14 and EG 19.15?
- Q7.1:** Do you agree with our proposed changes to PROD 4?

- Q8.1:** Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms approving or communicating financial promotions?
- Q8.2:** Do you have any comments on our proposed changes to confirm the application of the Consumer Duty in relation to firms in the TMPR?
- Q8.3:** Do you have any comments on our proposed amendment of the 'retail customer' Glossary definition in relation to occupational pension schemes?
- Q8.4:** Do you have any comments on our proposal to clarify the 'closed product' Glossary definition in relation to the Consumer Duty?
- Q8.5:** Do you have any comments on our proposal to amend the exclusion for activities linked to 'non-retail financial instruments'?
- Q8.6:** Should we consider any other restrictions to this exclusion in addition to the restriction for investment funds?
- Q8.7:** Do you have any comments on our proposal to clarify the application of the Duty where an exemption applies in a sectoral sourcebook?

Appendix 2

Changes to the Training and Competence sourcebook

**TRAINING AND COMPETENCE SOURCEBOOK (AMENDMENT No 11)
INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions of the Act:
- (1) section 137A (The FCA’s general rule-making power);
 - (2) section 137T (General supplementary powers); and
 - (3) section 138C (Evidential provisions).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Training and Competence sourcebook (TC) is amended in accordance with Annex B to this instrument.

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Training and Competence sourcebook (Amendment No 11) Instrument 2023.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

- accredited body* any of the following bodies recognised by the *FCA* for the purpose of providing the independent verification required under *TC 2.1.27R*
- ...
- (f) The London Institute of Banking & Finance (accredited body until [Editor's note: FCA 2023/XX in force date to be inserted]);
- (ff) The London Institute of Banking & Finance Limited;
- ...

Annex B

Amendments to Training and Competence sourcebook (TC)

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

App **Appropriate Qualification tables**

App 4.1 **Appropriate Qualification tables**

...

Extent to which the qualification meets the qualification requirement in relation to non-RDR activities

App G ...
4.1.1C

App E Part 2: Appropriate Qualifications Tables
4.1.1D ...

Qualification provider	Qualification	Activity Number(s)	Key
...			
The Institute of Banking in Ireland (Formerly the Chartered Institute of Bankers in Ireland)	Fellow or Associate	15, 16, 17, 18, 19	4
	Professional Certificate in International Investment Fund Services	15, 16, 17	6
<u>The London Institute of Banking & Finance Limited</u>	Diploma for Financial Advisers (post 2010 examination standards)	4 and 6	a
<u>Post [Editor's note: FCA 2023/XX in force date to be inserted]</u>	...		
<u>Pre [Editor's note: FCA 2023/XX in force date to be</u>			

<p><u>inserted] the qualifications were provided by The London Institute of Banking & Finance (formerly the ifs University College and the ifs School of Finance/Chartered Institute of Bankers)</u></p>			
<p>...</p>			

Appendix 3

Amendment to the derivatives trading obligation: removal of USD LIBOR derivative products to reflect USD interest rate benchmark reform

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS REGULATIONS) (DERIVATIVES TRADING OBLIGATION) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) Article 32(1) of the Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and
 - (2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137T FSMA (General supplementary powers);
 - (b) section 138P (Technical Standards);
 - (c) section 138Q (Standard instruments); and
 - (d) section 138S (Application of Chapters 1 and 2).
- B. The powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Modification

- E. Commission Delegated Regulation (EU) 2017/2417 of 17 November 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018, is amended in accordance with the Annex to the instrument.

Commencement

- F. This instrument comes into force on *[date]*.

Citation

- G. This instrument may be cited as Technical Standards (Markets in Financial Instrument Regulations) (Derivatives Trading Obligation) Instrument 2023.

By order of the Board
[*date*]

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

Annex

Commission Delegated (EU) 2017/2417 of 1 November 2017 supplementing Regulation (EU) 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the trading obligation for certain derivatives.

...

ANNEX

Derivatives subject to the trading obligation

...

~~Table 2 Fixed-to-float interest rate swaps denominated in USD~~

Fixed-to-Float single currency interest rate swaps—USD LIBOR 3M		
Settlement currency	USD	USD
Trade start type	Spot (T+2)	IMM (next two IMM dates)
Optionality	No	No
Tenor	2,3,4,5, 6,7,10,12,15,20, 30Y	2,3,4,5,6,7,10,1 2,15,20,30Y
Notional type	Constant Notional	Constant Notional
Fixed leg		
Payment frequency	Annual or semi- annual	Annual or semi- annual
Day count convention	30/360 or Actual/360	30/360 or Actual/360
Floating leg		

Reference index	USD LIBOR 3M	USD LIBOR 3M
Reset frequency	Quarterly	Quarterly
Day count convention	Actual/360	Actual/360

Fixed-to-Float single currency interest rate swaps — USD LIBOR 6M		
Settlement currency	USD	USD
Trade start type	Spot (T+2)	IMM (next two IMM dates)
Optionality	No	No
Tenor	2,3,4,5, 6,7,10,12,15,20, 30Y	2,3,4,5,6,7,10,1 2,15,20,30Y
Notional type	Constant Notional	Constant Notional
Fixed leg		
Payment frequency	Annual or semi- annual	Annual or semi- annual
Day count convention	30/360 or Actual/360	30/360 or Actual/360
Floating leg		
Reference index	USD LIBOR 6M	USD LIBOR 6M
Reset frequency	Quarterly or semi-annual	Quarterly or semi-annual
Day count convention	Actual/360	Actual/360

[deleted]

...

Appendix 4

Amendments to the Guide on the FCA's registration function under the Co-operative and Community Benefit Societies Act 2014

**FCA REGISTRATION FUNCTION UNDER THE CO-OPERATIVE AND
COMMUNITY BENEFIT SOCIETIES ACT 2014 GUIDE INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of its powers under section 139A (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.

New regulatory/registry guide

- D. The Financial Conduct Authority makes the ‘FCA Registration Function under the Co-Operative and Community Benefit Societies Act 2014 Guide’ to form a Regulatory/Registry Guide in accordance with Annex B to this instrument. The Regulatory/Registry Guide does not form part of the Handbook.

Notes

- E. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the FCA Registration Function under the Co-Operative and Community Benefit Societies Act 2014 Guide Instrument 2022.
- G. The guide in Annex B to this instrument may be cited as the FCA Registration Function under the Co-Operative and Community Benefit Societies Act 2014 Guide (RFCCBS).

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

RFCCBS the FCA Registration Function under the Co-operative and Community Benefit Societies Act 2014 Guide.

Annex B

Amendments to FCA Registration Function under the Co-operative and Community Benefit Societies Act 2014 Guide (RFCCBS)

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

- 1 Executive summary**
- 1.1 Executive summary**
- 1.1.1 G This guidance explains our policy and our approach to our role as a registering authority for societies under the Co-operative and Community Benefit Societies Act 2014. It also explains the legal obligations and relevant legal processes for societies.
- 1.1.2 G We want this guidance to help societies and their advisers by making our approach clear and transparent. We hope it will answer many of your questions about our approach to our registration function.
- 1.1.3 G As the registering authority for societies, the FCA and our predecessors published a series of information notes to help societies. All this guidance is now brought together in this document, which is also the result of extensive consultation with stakeholders.
- 1.1.4 G This is ‘general guidance’. This means that it explains our policy and suggests some ways to comply with it. It also clearly explains the current rights and responsibilities of societies under the Act. It is aimed at a wide audience, including society officers and members. It is not a substitute for legal advice.
- 1.1.5 G *RFCCBS* 1 and 2 provide an introduction and explain our role as the registering authority under the Co-operative and Community Benefit Societies Act 2014. The FCA’s role as registering authority is different and separate from our role as a financial services regulator. Companies House is the registering authority for companies and we are the registering authority for societies.
- 1.1.6 G *RFCCBS* 3 sets out the registration requirements for societies. A society which plans to carry on an industry, business or trade can register under the Act either as a co-operative society or a community benefit society. Registration gives a business its own corporate identity and limited liability status.
- 1.1.7 G When a society applies to us to register, we will look at the information in its application form and check its proposed rules. The Act sets out the minimum content for these rules and we give this information in *RFCCBS* 3.4 of this guidance.

- 1.1.8 G In *RFCCBS* 4 and 5 respectively, we explain our approach to defining a bona fide co-operative society and a community benefit society. These terms are not defined by the Act.
- 1.1.9 G *RFCCBS* 6 gives information on capital. All societies are limited by shares. Most societies issue shares in the form of withdrawable share capital. These shares are issued at risk and cannot increase in value and may go down in value. There is a legal limit on the total of withdrawable shares which an individual member who is not another society may hold in a single society.
- 1.1.10 G Withdrawable shares which are non-transferable shares are not ‘controlled investments’ or ‘specified investments’ under the Financial Services and Markets Act 2000. The issue of non-transferable shares by a society registered under the Act is not therefore subject to either our financial promotions or conduct of business rules.
- 1.1.11 G Members generally acquire shares in a society in order to capitalise a co-operative business or to further the aims of a community benefit society. The terms and conditions and the rewards linked to the holding of shares, such as the rate of interest (where this is payable), can be an indicator of compliance with the conditions for registration. *RFCCBS* 6.1.21 onwards provide examples of indicators of compliance and non-compliance with these conditions.
- 1.1.12 G *RFCCBS* 7 explains that the Act requires societies to keep proper books of account. These are:
- (1) a revenue account dealing with the affairs of the society as a whole; or
 - (2) separate revenue accounts dealing with different businesses of the society, if it has different businesses.
- 1.1.13 G Along with any balance sheet, these accounts must give a true and fair view of the society’s income and expenditure and of its affairs at the date of the balance sheet. Societies must send us their annual return and accounts within 7 months of the end of the society’s financial year.
- 1.1.14 G In *RFCCBS* 8 we summarise a society’s obligations and the processes a society must follow under the Act, including the obligations to continue to meet the conditions for its registration, to register any alteration of its rules with us before implementing it, and to maintain and submit accounts and an annual return.
- 1.1.15 G Directors of societies must always act prudently and legally in accordance with the society’s rules and in its interests. The Company Directors Disqualification Act 1986 applies to the directors of societies. *RFCCBS* 8.1.10 onwards provides further details.

- 1.1.16 G This guidance also gives information about areas including changing your society's name, recording any charges, and changing the date of the society's financial year end.
- 1.1.17 G Societies can be brand new businesses or created by converting from another kind of corporate body. In turn, societies themselves can also convert into another kind of corporate body, such as a company. We explain the procedures for conversions in the section, starting at *RFCCBS* 3.6.
- 1.1.18 G A number of different factors can mean we have to remove a society from the register. These can include a transfer of engagements to, or amalgamation with, another society or company, conversion to a company, administration, winding up, and dissolution. We give more information on these processes from *RFCCBS* 8.8 onwards.
- 1.1.19 G *RFCCBS* 9 gives details of the powers we can use if we have concerns that a society is not complying with its obligations under the Act. We can:
- (1) require the society to give us information and documents;
 - (2) require the society to get its accounts audited by a qualified auditor;
 - (3) appoint an inspector;
 - (4) suspend or cancel a society's registration; and
 - (5) prosecute for certain events.
- 1.1.20 G *RFCCBS* 10 explains our role if societies have disputes and the rights of a society's members.

-1.2 Overview

- 1.2.1 G We are the registering authority under the Co-operative and Community Benefit Societies Act 2014. Our role as registering authority is different and separate from our role as a financial services regulator. Companies House is the registering authority for companies and we are the registering authority for societies.
- 1.2.2 G This document is general guidance. General guidance sets out one way, but not the only way, of meeting legal requirements. This document is not legal advice and societies should seek their own legal advice.
- 1.2.3 G Words such as 'generally', 'usually' and 'ordinarily' are used deliberately. We know that there may be circumstances when a society is justified in departing from the approaches we describe in this guidance. If a society follows a different approach then it should be clear about why it is doing so and, if appropriate, get legal advice beforehand.
- 1.2.4 G Where we are explaining our policy view on something we use words such as 'in our view'.

- 1.2.5 G If we use words like ‘must’ and ‘shall’ we are discussing legal requirements which societies must meet. These requirements on societies come either from the Co-operative and Community Benefit Societies Act 2014, or from us using powers the Act has given us.
- 1.2.6 G This guidance does not include details of the specific sections within the Co-operative and Community Benefit Societies Act 2014 unless we quote it directly. We also include references to other society legislation if it is relevant. We do not provide guidance on any issues that are outside our role as registering authority. So, for example, we do not give advice on charity or insolvency law.
- 1.2.7 G This guidance applies to all societies registered (or deemed to be registered) under the Co-operative and Community Benefit Societies Act 2014. On 1 August 2014 the Co-operative and Community Benefit Societies Act 2014 consolidated and replaced previous Industrial and Provident Societies Acts, including the Industrial and Provident Societies Act 1965. So industrial and provident societies registered, or treated as registered, under the Industrial and Provident Societies Act 1965 are now deemed as registered under the Co-operative and Community Benefit Societies Act 2014. This guidance applies to all of those societies.

-1.3 Glossary

Term	Definition
Board (or ‘Board of Directors’)	The ‘committee of management’ as per s14 of the Co-operative and Community Benefit Societies Act 2014. This being the main governing body with ultimate responsibility for the society
Committee	The committee of management, otherwise known as the ‘Board of Directors’
Exempt charity	A charity which is a community benefit society and which is therefore currently exempt from registration with the Charity Commission
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
OSCR	Office of the Scottish Charity Regulator
Pre-commencement society	A society registered (or deemed registered) before 1 August 2014, previously referred to as an industrial and provident society

Registered society	All societies registered (or deemed registered) under the Co-operative and Community Benefit Societies Act 2014 including pre-commencement societies
Regulated housing association	In England and Wales, a ‘registered provider’ regulated by the Homes and Communities Agency; in Scotland, a ‘registered social landlord’ regulated by the Scottish Housing Regulator; in Wales, a ‘registered social landlord’ regulated by the Welsh Ministers
SCIO	Scottish charitable incorporated organisation
Society	All societies registered (or deemed registered) under the Co-operative and Community Benefit Societies Act 2014 including pre-commencement societies
Statutory Asset Lock	The asset lock under The Community Benefit Societies (Restriction on Use of Assets) Regulations 2006
The Act	Co-operative and Community Benefit Societies Act 2014

1 Introduction

This chapter gives an introduction to this guidance.

1.1 Overview

- 1.1.1 G The Financial Conduct Authority (FCA) is the registering authority for ‘registered societies’ under the Co-operative and Community Benefit Societies Act 2014 (the Act). Registered societies are:
- (1) co-operative societies;
 - (2) community benefit societies;
 - (3) pre-commencement societies (societies previously known as ‘industrial and provident societies’). In this document we refer to all registered societies simply as ‘societies’.
- 1.1.2 G This guidance explains:
- (1) how we approach our role as registering authority;
 - (2) our policy;

- (3) certain processes under the Act;
- (4) how we apply society law in our role as registering authority.

1.1.3 G This guidance may help people:

- (1) setting up a society;
- (2) on the board of a society;
- (3) advising a society.

1.1.4 G Members of societies may also find this guidance useful.

2 Our Role

This chapter gives information about our role as the registering authority for societies under the Act, including what we can and cannot do and our role in keeping public records.

2.1 What we do

2.1.1 G We are the registering authority for societies. This role is different and separate from our role as a regulator of financial services. We do not regulate these societies. Societies are regulated by the Act. Our role relates to a society's compliance with the Act. We do not regulate the business, financial stability or conduct of societies. Our role involves:

- (1) assessing applications from new societies for registration;
- (2) assessing and registering rule amendments, resolutions and other documents;
- (3) checking that societies are complying with the Act;
- (4) taking action against societies that do not comply with the Act;
- (5) deregistering societies;
- (6) keeping a public register of societies.

2.1.2 G We must maintain arrangements that are designed to enable us to determine whether a society is complying with the Act. These arrangements may change over time, but currently include requiring societies to tell us how they are complying with the Act when they submit annual returns and rule amendments.

[**Note:** see 1 Schedule 1, paragraph 5, The Financial Services Act 2012 (Mutual Societies) Order 2013]

2.1.3 G When a society applies to us for registration we assess whether it meets one of the conditions for registration. If a society applies to register as a co-

operative society then the condition it must meet is that it is a bona fide co-operative society. If a society applies to register as a community benefit society then the condition it must meet is that it is conducting its business for the benefit of the community. We look at these conditions in more detail in *RFCCBS* 3 and 4.

2.2 What we do not do

- 2.2.1 G We do not give advice on how to set up or run a society.
- 2.2.2 G We do not give feedback on a society's governance arrangements. We are only interested in whether it is meeting the legal requirements for registration.
- 2.2.3 G We are barred from getting involved in disputes between members and their society.

2.3 Public records service

- 2.3.1 G People can search our register (available at <https://mutuals.fsa.gov.uk/>) of societies, and buy copies of documents such as new registration applications, certificates, and rules.

3 Society registration

This chapter covers the effect of registration, registration requirements, details of the application process and our approach to society names.

3.1 Effect of registration

- 3.1.1 G The main benefits of registering as a society under the Act include:
 - (1) Corporate body status
 - (a) The society is a legal person. It can act, hold property, sue and be sued in its own name.
 - (b) It has 'perpetual succession'. This means a society continues to exist even if its membership changes, unless it stops being registered.
 - (2) Limited liability
 - (a) Members are only personally liable for the share capital they hold in the society and the amount of any share capital they have not yet paid for.
 - (b) Anyone can check that the society is a registered society under the Act and see any other information we receive from the society under the Act by searching the public register we keep.

- (c) Members are not liable for any debts, contracts and other liabilities the society has taken on.
 - (d) The officers of the society can be prosecuted if they breach their duties under the Act.
- (3) Other effects of registration
- (a) The rules of a society are binding between the society and its members.
 - (b) The society's board can make, change or end contracts on behalf of the society.
 - (c) The society can recover debts that members owe it in court.
 - (d) If a member owes the society any money then the society can set the value of a member's shares against their debt.

3.2 Summary of requirements

3.2.1 G The Act states that we can register a society as follows:

'A society for carrying on any industry, business or trade (including dealings of any kind with land) may be registered under this Act as—

- (a) a co-operative society, or
- (b) a community benefit society.'

[**Note:** see s2, the act]

- 3.2.2 G We explain our approach to defining co-operative societies and community benefit societies in *RFCCBS* 3 and 4 respectively.
- 3.2.3 G The requirement to carry on an 'industry, business or trade' generally means that a society that exists primarily to hold shares in other organisations (other than in its own subsidiary) and does not carry out any activity of its own is unlikely to be able to be registered.
- 3.2.4 G Every society must also:
- (1) have at least three members unless it consists of two registered societies;
 - (2) have a proposed name that is not undesirable (see *RFCCBS* 3.8);
 - (3) have its registered office in Great Britain or the Channel Islands;
 - (4) have rules that include the required provisions and which are not contrary to the Act (see *RFCCBS* 3.4).
- 3.2.5 G Please see below for further details on names and rules.

3.3 Process

Application

- 3.3.1 G To register a society, an applicant can email this application form along with one electronic copy of the signed rules to mutual.societies@fca.org.uk. Paper copies can also be submitted. When submitting paper copies, applicants need to include two signed copies of the rules.

[Note: <https://www.fca.org.uk/your-fca/documents/forms/registering-a-new-industrial-and-provident-society-forms>]

Model Rules

- 3.3.2 G Societies can use model rules rather than having to draft their own. Some organisations, called ‘sponsoring bodies’, have already produced their own model rules and will sponsor applications. A list of sponsoring bodies can be found here.

[Note: <https://www.fsa.org.uk/firms/model-rules-sponsoring-bodies>]

- 3.3.3 G Generally speaking, it will take us less time to assess an application using model rules because we have already determined that the rules in general are not contrary to the legislation. This reduces the cost of registration because our assessment can focus on the applicant’s specific business in the context of the model rules.

Costs

- 3.3.4 G Applicants need to pay a fee before we can assess their application. This fee is reduced if applicants use a set of rules we have already approved as a model. We charge more for registration depending on the number of amendments that are made to a model set of rules.

[Note: <https://www.handbook.fca.org.uk/handbook/FEES/App/1/3.html>]

- 3.3.5 G We charge more for multiple changes because it takes us more time to assess the rules. However, we do not view simply filling in a gap in a model and choosing from a series of options in a model as a change. By change we mean when the words within a single rule are changed. So multiple changes within a single rule will count as one change. We also do not count deletions or cosmetic alterations – such as renumbering – as changes.

- 3.3.6 G Once registered a society must pay a fee to us in each year following its year of registration. This fee is called the periodic fee. It covers all communications with us, including any applications to change rules and to submit annual returns.

Timing

3.3.7 G We aim to assess at least 90% of complete applications within 15 working days. If an application form is incomplete, e.g. missing signatures, this will inevitably cause delays as we will need to send it back to the applicant.

3.3.8 G If you have a specific deadline to meet, please ensure you submit your complete application in good time.

Confirmation

3.3.9 G When a society is registered, it will appear on the Mutuels Public Register. We also send a certificate bearing our seal and confirming registration to the society. This sealed certificate is conclusive proof of registration.

[Note: <http://mutuals.fsa.gov.uk>]

3.4 Rules of the Society

3.4.1 G A society must have rules which include:

- (1) the society's name;
- (2) the objects of the society;
- (3) the place of the society's registered office to which all communications and notices to the society may be addressed;
- (4) the terms of admission of the members, including any society or company investing funds in the society under the provisions of the Act;
- (5) the method of holding meetings, the scale and right of voting, and the method of making, altering or rescinding rules;
- (6) the appointment and removal of a Committee of Management (by whatever name, e.g. a 'board') and of managers or other officers, and their respective powers and remuneration;
- (7) the maximum amount of interest in the shares of the society which may be held by any member otherwise than by virtue of Section 24 of the Act;
- (8) whether the society may contract loans or receive monies on deposit subject to the provisions of this Act from members or others, and if so under what conditions, under what security, and to what limits of amount;
- (9) whether any or all shares are transferable, and provision for the form of transfer and registration of shares, and for the consent of the committee to transfer or registration;

- (10) whether any or all shares are withdrawable, and provision for the method of withdrawal and for payment of the balance due on them on withdrawing from the society;
- (11) provision for the audit of accounts in accordance with Part 7 of the Act;
- (12) whether members may withdraw from the society and if so how, and provision for the claims of the representatives of deceased members and of the trustees of the property of bankrupt members (or, in Scotland, members whose estates have been sequestrated), and for the payment of nominees;
- (13) the way in which the society's profits are to be applied;
- (14) if the society is to have a common seal, provision for its custody and use;
- (15) whether any part of the society's funds may be invested, and if so by what authority and in what way.

3.4.2 G Societies can include additional rules providing those rules are not contrary to the Act.

Objects

3.4.3 G Societies must have an 'objects' rule. The 'objects' describe and identify the purpose for which the society has been set up. Objects rules can be broad, but not so vague that they are meaningless in practice. For example, an object for a community benefit society of 'to benefit the community' is insufficient.

Entrenchment/fundamental rules

3.4.4 G Societies can decide that specific rules are 'fundamental' – requiring a higher threshold for change. They can also seek to entrench rules to try and prevent those rules from amendment in the future. There is however no legislative mechanism to give effect to the entrenchment of rules.

3.4.5 G A society can still deem certain clauses to be fundamental, or put in higher thresholds for rule amendments to particular clauses, as long as such amendments are not contrary to the legislation. For instance, any attempts at entrenchment cannot change statutory thresholds (see *RFCCBS* 3.4.15 onwards for further details).

3.4.6 G Before we register a rule amendment, we will check if that clause is fundamental or subject to a higher voting threshold and seek to give it that effect.

3.4.7 G We are limited in our ability to do this. The courts have decided that even fundamental clauses can be changed under certain circumstances, e.g. if all members unanimously approve the rule amendment.

Changes to statutory thresholds

- 3.4.8 G The Act gives societies the ability to:
- (1) transfer engagements to another society or a company;
 - (2) convert to a company;
 - (3) amalgamate with other societies or companies.
- 3.4.9 G For each of these processes, the legislation states the voting thresholds which have to be met.
- 3.4.10 G A society's rules cannot change these statutory thresholds. If, for example, the legislation says a society may do X if X% of members vote in favour, then the rules of a society cannot change these requirements. So a society cannot set out in its rules 'absolute minimums' on numbers of members voting, or introduce additional voting thresholds.
- 3.4.11 G Similarly, if the legislation says a society can do something if certain criteria are met, then no rule can alter this.

Statutory asset locks

- 3.4.12 G Statutory asset locks put a legal restriction on how a society can use its assets. These asset locks are only available to community benefit societies other than regulated housing associations or charities. This is because regulated housing associations and charities already have separate statutory asset locks.
- 3.4.13 G If a society has a statutory asset lock, it cannot use or deal with its assets unless it is for the benefit of the community or for one of the purposes given in *RFCCBS* 3.4.15 below.
- 3.4.14 G Co-operative societies can put a non-statutory asset lock in their rules, but it does not have the same effect as a statutory asset lock.
- 3.4.15 G If a community benefit society wants to put in place a statutory asset lock, their rules must include the following wording:

[Note: Regulation 2, Schedule 1, The Community Benefit Societies (Restriction on Use of Assets) Regulations 2006]

Restriction on use

Pursuant to regulations made under section 1 of the Co-operatives and Community Benefit Societies Act 2003:

- (1) All of the society's assets are subject to a restriction on their use.
- (2) The society must not use or deal with its assets except—

- (a) where the use or dealing is, directly or indirectly, for a purpose that is for the benefit of the community;
 - (b) to pay a member of the society the value of his withdrawable share capital or interest on such capital;
 - (c) to make a payment pursuant to sections 36 (payments in respect of persons lacking capacity), 37 (nomination by members of entitlement to property in society on member's death), 40 (death of a member: distribution of property not exceeding £5,000) of the Co-operative and Community Benefit Societies Act 2014;
 - (d) to make a payment in accordance with the rules of the society to trustees of the property of bankrupt members or, in Scotland, members whose estate has been sequestrated;
 - (e) where the society is to be dissolved or wound up, to pay its creditors; or
 - (f) to transfer its assets to one or more of the following—
 - (i) a prescribed community benefit society whose assets have been made subject to a restriction on use and which will apply that restriction to any assets so transferred;
 - (ii) a community interest company;
 - (iii) a registered social landlord which has a restriction on the use of its assets which is equivalent to a restriction on use and which will apply that restriction to any assets so transferred;
 - (iv) a charity (including a community benefit society that is a charity); or
 - (v) a body, established in Northern Ireland or a State other than the United Kingdom, that is equivalent to any of those persons.
- (3) Any expression used in this rule which is defined for the purposes of regulations made under section 1 of the 2003 Act shall have the meaning given by those regulations.

3.4.16 G Societies can include this wording in their rules at the time the society is registered, or the wording can be added at any point in the society's lifetime by special resolution. However once included, the wording cannot be removed. The asset lock will apply for the rest of the society's life.

[Note: Clause 4, *ibid.*]

3.5 Conversion from a friendly society

- 3.5.1 G Societies registered under the Friendly Societies Act 1974 as working men’s clubs, benevolent societies and specially authorised societies can convert to become co-operative societies or community benefit societies. Societies registered under the Friendly Societies Act 1974 as friendly societies cannot convert.
- [Note: s84A Friendly Societies Act 1974]
- 3.5.2 G The effect of conversion is that the society becomes either a co-operative society or a community benefit society under the Act and so an incorporated legal entity. Its registration under the Friendly Societies Act 1974 is cancelled.
- 3.5.3 G When a society is registered under the Act, all the property held immediately before that registration by any person in trust for the society or its branches becomes the property of the new society.
- 3.5.4 G The new society continues to be entitled to all rights, and is subject to all liabilities, of the society previously registered under the Friendly Societies Act 1974.
- 3.5.5 G Within 90 days of the society being registered, the trustees must deliver the society’s property and documents relating to the affairs of the society to the society’s registered office.

Conversion application process

- 3.5.6 G The proposal to register under the Act must be voted on by members of the society in the same manner and by the same procedure as would be applied for rule changes.
- 3.5.7 G A new registration form must be completed to convert a society under the Act. The applicant should choose the ‘converting from a friendly society’ option.
- [Note: <http://www.fca.org.uk/your-fca/documents/forms/registering-a-new-industrial-and-provident-society-forms>]
- 3.5.8 G The secretary and three members must sign two copies of the rules for the new society, and include them with the application.
- 3.5.9 G The society must decide whether to apply to be a co-operative society or a community benefit society. *RFCCBS* 4 and 5 of this document will help the society decide whether to apply to be a co-operative society or a community benefit society. As general guidance:
- (1) **Working men’s clubs** which benefit members, require membership to make use of facilities, or which would distribute money to members on dissolution, could register as co-operative societies.

- (2) **Benevolent societies** that do not require people to be members in order to get benefits, and which do not distribute money to members on dissolution, may be able to register as community benefit societies. However, benevolent societies which only provide benefits to members are more likely to meet the criteria for registering as a co-operative society.
- (3) **Specially authorised societies** are generally more likely to already meet the criteria for registering a co-operative society.

3.5.10 G There is no fee for converting to a society because the society is already paying a periodic fee to us (see *RFCCBS* 3.3.6 for more information).

3.6 Conversion from a company

3.6.1 G A company can convert to become a society. Converting from a community interest company is dealt with separately below.

3.6.2 G The company must pass a special resolution. The resolution should:

- (1) be accompanied by a copy of the rules the society will have;
- (2) appoint three members of the company to sign the rules;
- (3) decide if those signatories are authorised to accept any proposals from us to alter the rules or if only a general meeting of the company can accept them;
- (4) deal with the position of members who hold shares in the company of a nominal value that exceeds that statutory limit on shareholding in a society. Where the nominal value of the company shares held by any member is in excess of the statutory maximum shareholding in a society, the resolution can provide for the conversions of the excess shares into transferable loan stock in the society. The interest rate and repayment terms should be set by the resolution.

3.6.3 G If we are satisfied with the resolution and rules, we will issue an acknowledgement of registration and a certificate confirming the rules have been registered.

3.6.4 G We will send a copy of the resolution and our registration certificate to Companies House. When Companies House has registered this resolution and certificate, the conversion will formally take effect.

3.6.5 G At this point, the company's registration as a company becomes void and Companies House will cancel it.

3.7 Conversion from a community interest company

3.7.1 G A community interest company can convert into a community benefit society with a restriction on the use of assets (statutory asset lock).

- 3.7.2 G The community interest company needs to pass a special resolution. The resolution should:
- (1) be accompanied by a copy of the rules the society will have;
 - (2) appoint members of the company to sign the rules;
 - (3) decide if those signatories are authorised to accept any proposals from us to alter the rules, or if only a general meeting of the company can accept them;
 - (4) deal with the position of members who hold shares in the company of a nominal value that exceeds that statutory limit on shareholding in a society. Where the nominal value of the company shares held by any member is in excess of the statutory maximum shareholding in a society, the resolution can provide for the conversion of the excess shares into transferable loan stock in the society. The interest rate and repayment terms should be set by the resolution.
- 3.7.3 G The company must send a copy of the resolution and rules to Companies House.
- 3.7.4 G Companies House will then forward each of the documents to the Office of the Regulator of Community Interest Companies (CIC Regulator).
- 3.7.5 G The CIC Regulator must then decide if the company can cease being a community interest company, and give the company notice of that decision.
- 3.7.6 G The company then needs to send us a copy of the new rules and resolution together with a copy of the CIC Regulator's decision.
- 3.7.7 G When we have registered the society, we will issue an acknowledgement of registration and a certificate confirming that the rules in the resolution have been registered.
- 3.7.8 G We will then send a copy of the resolution, our acknowledgment and certificate of registration and a copy of the CIC Regulator's decision to Companies House.
- 3.7.9 G The conversion takes effect when Companies House registers the resolution and certificate of registration. At this point, the company's registration under the Companies Act 2006 becomes void and Companies House will cancel it.

3.8 Names

- 3.8.1 G The Act provides that a society can register with any name unless we believe that name is 'undesirable'.
- 3.8.2 G We generally consider a name to be undesirable if:

- (1) it is the same as that used by another legal entity, charity, or society, unless:
 - (a) the proposed society is intended to be part of the same group as an existing ‘same as’ entity and that entity consents to the society using the proposed name;
 - (b) the application to register includes a letter from the existing entity confirming that it consents to the registration of the proposed name and that it will form part of the same group;
 - (2) it is too similar to that used by another legal entity, charity or society. A name may be too similar if: the difference is only a few characters, signs, symbols or punctuation, or if it looks and sounds the same;
 - (3) its use would constitute an offence or is offensive;
 - (4) it is misleading;
 - (5) it gives an incorrect impression of its legal form, for instance, if the name contains the word ‘company’;
 - (6) it is likely to wrongly give the impression that the society is connected with the government or any other public or local authority;
 - (7) it includes a word requiring permission as at *RFCCBS* App 1 of this guidance and does not have this permission;
 - (8) it includes the name, brand or trademark of another organisation without their permission.
- 3.8.3 G We will generally also consider a name undesirable if it includes a word or expression in *RFCCBS* App 1, unless the relevant body has confirmed in writing that it does not object to its use.
- 3.8.4 G If a society’s name includes an acronym then we will ask for the expanded version of that acronym and will assess that expanded version against the indicators set out above (with the exception of the indicators looking at availability).
- 3.8.5 G Where a name includes words in a foreign language we expect to receive a translation of those words. We will assess that translated version against the indicators set out above (with the exception of the indicators looking at availability).
- ‘Limited’
- 3.8.6 G The last word in the name of every society must be ‘limited’ (or ‘cyfyngedig’ if its registered office is in Wales) unless we are satisfied that the society’s objects are wholly charitable or benevolent.

- 3.8.7 G If we approve the removal of ‘limited’ and later believe that the society (whether in consequence of a rule change or otherwise) is not being conducted wholly for charitable or benevolent objects then we can direct the society to add the word ‘limited’ to its name.

Business or ‘trading’ names

- 3.8.8 G A society, like other legal entities, can use a business name that is different from its registered name. Our role under the Act is limited to the registered name of a society, i.e. – the name given in the society’s rules. We have no role in relation to business names unless we are listed as the public authority with responsibility for approving the use of a sensitive word e.g. ‘bank’, in which case approval must be obtained. For further information on sensitive business names please refer to our website.

[Note: <https://www.the-fca.org.uk/sensitive-names>]

- 3.8.9 G Legal requirements on business names set out in Part 41 of the Companies Act 2006 apply to ‘any person carrying on business in the United Kingdom’, and so apply to societies. For example, societies must get permission to use a sensitive word within their business name, and cannot trade under a name containing an inappropriate indication of legal form (e.g. ‘limited’). For further information please refer to the information on business names on the Companies House14 website.

[Note: <https://www.gov.uk/government/publications/incorporation-and-names>]

- 3.8.10 G Even if a society trades under a different business name, its registered name must still appear in full outside its premises and in business documents such as letters, invoices, receipts, websites etc. Further details on the requirements for displaying registered names is at *RFCCBS* 8.1.2 to 8.1.4 of this guidance.

4 Defining a co-operative society

This chapter explains our approach to applying the test set out in the Act for registration of a society as a bona fide co-operative society. We give further guidance on subsidiaries at the end of this chapter.

4.1 Our approach

- 4.1.1 G The Act provides that we can only register a society as a co-operative society where, amongst other things, it is shown to our satisfaction that it is a ‘bona fide co-operative society’.
- 4.1.2 G The phrase ‘bona fide co-operative society’ is not defined in the Act, though section 2(3) of the Act states that:

“co-operative society” does not include a society that carries on, or intends to carry on, business with the object of making profits mainly for the payment

of interest, dividends or bonuses on money invested or deposited with, or lent to, the society or any other person.

- 4.1.3 G We explain below how we apply section 2(3) and the factors we consider when deciding if a society is a bona fide co-operative society.

4.2 Existing mainly to pay profits

- 4.2.1 G Section 2(3) does not stop co-operative societies from paying interest or dividends on money invested, deposited with, or lent to the society or any other person. However, if these activities are the main purpose or ‘object’ of the society’s actual or intended business, then it does not meet the definition of a co-operative society and we cannot register it.
- 4.2.2 G Compliance with the conditions for registration is an ongoing requirement for registered societies and we are under a duty to maintain arrangements designed to enable us to determine whether a society is complying with the Act. The submission of an application for the registration of a society is the first point at which we must be satisfied that the society falls within the definition of a co-operative society, taking into account section 2(3). Our assessment is based on reading the proposed rules and the information provided in the application form.
- 4.2.3 G There may also be other times where we need to assess if the co-operative society meets the definition, taking into account section 2(3). These include, for example, when a co-operative society applies to register a change to its rules, or publishes information suggesting its main object is to make profits to pay interest on shares. In these cases, we will assess all the information available to us in determining whether a co-operative society is capable of registration (or whether its registration should be suspended or cancelled) by virtue of section 2(3).
- 4.2.4 G If a co-operative society is already trading, then we may analyse the society’s accounts to help us decide if the co-operative society exists mainly for the payment of interest, dividends or bonuses on money invested or deposited with, or lent to the society. This analysis could involve looking at:
- (1) the amounts of surplus distributed to members in proportion to their participation in the co-operative;
 - (2) the level of interest or bonuses paid on money invested, or deposited with, or lent to the society, against:
 - (a) amounts distributed to members as dividends in proportion to their participation in the co-operative;
 - (b) the levels of interest, dividends or bonuses paid by comparable, investor-owned businesses;
 - (3) the nature of the relationship between members and the society, including whether it is an association of persons united mainly for the

purpose of meeting their common economic, social and cultural needs and aspirations by, for instance, accessing goods, services or employment, or if it is actually an association of capital with the main purpose of generating financial returns.

- 4.2.5 G We decide if a co-operative society falls within section 2(3) on a case by case basis, and would usually have discussions with the society to decide this.

4.3 Defining ‘bona fide co-operative society’

- 4.3.1 G The condition for registration of a co-operative society is that the society is a bona fide co-operative society. The Act sets out in s2(3) (see above) what is not included as a ‘bona fide co-operative society’, but does not go on to say what is included as a bona fide co-operative society. We generally consider something to be a bona fide co-operative society where it is an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.

- 4.3.2 G We think this description sufficiently sets out the minimum features of a bona fide co-operative society. It is also used by the International Labour Organisation (ILO) in Recommendation 193, and in the International Co-operative Alliance (ICA) Statement of Co-operative Identity.

[Note:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILI_code:R193 and <https://www.ica.coop/en/whats-co-op/co-operative-identity-values-principles>]

- 4.3.3 G Reflecting the ICA Statement of Co-operative Identity, we consider it an indicator that the condition for registration is met where the society puts the values below into practice through the principles quoted below.

Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1. Voluntary and open membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic member control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men

and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3. Member economic participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, training and information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Co-operation among co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

- 4.3.4 G There is a limit to the extent we can verify and validate the presence of the indicators set out above. We generally expect to be able to verify and validate whether principles 1 to 4 (quoted above) have been met through the rules and governance arrangements of a co-operative society, along with the society's statements of intent about how it will operate.
- 4.3.5 G We do not necessarily expect to be able to verify or validate principles 5 to 7 as indicators that the condition for registration is met; however evidence of compliance with those principles would be treated as a positive indicator.
- 4.3.6 G In applying the guidance above we take into account the diverse nature of co-operative enterprise, in particular through considering the guidance in light of the associative characteristics of the co-operative society. For instance, we

know that the relationship between members (as co-owners and users of the co-operative) and their co-operative is different in a consumer co-operative from a worker co-operative or a producer co-operative. Likewise the relationship between members and their society may differ between primary co-operatives (where members are individuals), secondary co-operatives (where members are primary co-operatives), and tertiary co-operatives (where members are secondary co-operatives). Similarly a co-operative made up of a single group of stakeholders will have different relationships from a co-operative with multiple stakeholder groups as members.

- 4.3.7 G This guidance is not exhaustive. We recognise the flexibility in the principles which are themselves intended as guidelines. There may well be other indicators that a society is a bona fide co-operative society.

4.4 Subsidiaries

- 4.4.1 G If a society is a subsidiary of a parent that is a co-operative society, it must still meet the conditions for registration. When deciding whether a co-operative society which is a subsidiary meets the condition for registration we take into account the nature of the parent-subsidary relationship. For instance, it may be that the purpose of the subsidiary is to meet the common economic, social and cultural needs and aspirations of its parent and another society (including the members of those societies) within that legal group. In this context the fact that membership is limited to those two societies does not necessarily give rise to any issues – including in terms of open membership or autonomy.
- 4.4.2 G If a society is a subsidiary of a parent that is not a co-operative society, the society must still meet the conditions for registration. The society may find it difficult to meet the condition for registration where its members (including the parent) exist to fulfil only economic need.
- 4.4.3 G The rules of a society that is a subsidiary must still comply with the Act. In particular, society rules must not breach statutory thresholds, regardless of the parent-subsidary relationship. For instance, a parent cannot have more than one vote on conversion of the society. *RFCCBS* 3.4.10 of this guidance sets out further details on this subject.
- 4.4.4 G If a co-operative society will be the parent of another entity (whether that entity is a society or not), we still expect the parent society to comply fully with the conditions for registration. The way it controls its subsidiary must not compromise the parent's ability to meet the conditions for registration.

5 Defining a community benefit society

This chapter sets out our approach in deciding whether a society satisfies us that its business is being, or is intended to be, conducted for the benefit of the community.

A community benefit society must be carrying on an ‘industry, business or trade’. That business industry or trade must be ‘being, or intended to be, conducted for the benefit of the community’. This is the condition for registration.

The Act does not define the words ‘community benefit’. Below we explain our approach to applying these words. At the end of this chapter we provide further guidance on subsidiaries.

5.1 Our approach

Purpose of a community benefit society

- 5.1.1 G The purpose of a community benefit society is to benefit ‘the community’. The community can be said to be the community at large. Societies can specify a defined community, such as a locality. In serving the needs of any defined community the society should not inhibit the benefit to the community at large.
- 5.1.2 G A community benefit society can be wholly charitable or benevolent, but it does not have to be, as long as it is conducting its business for the benefit of the community.
- 5.1.3 G The condition for registration does not say community benefit societies must ‘primarily’ or ‘mainly’ benefit the community. Our view is that the condition for registration does not allow for an alternative secondary purpose that does not benefit the community. So the conduct of a community benefit society’s business must be entirely for the benefit of the community.
- 5.1.4 G A community benefit society which wants to enter into joint ventures or other commercial arrangements should consider how this would benefit the community, particularly if the partner organisation does not exist to benefit the community.
- 5.1.5 G Unlike a co-operative society, a community benefit society should not exist to provide benefits contingent upon membership. We therefore do not generally regard co-operatives as meeting the condition for registration as a community benefit society.

Membership

- 5.1.6 G All societies must have members who hold shares in the society. The nature of the relationship between a society and its members will vary from society to society. We generally do not consider a society that delivers benefits contingent upon membership to be meeting the condition for registration.
- 5.1.7 G It is not usually appropriate for a community benefit society to give any particular group of members greater rights or benefits, because the society must be conducting its business for the benefit of the community. So, for example, we would expect to see community benefit societies run democratically on the basis of one-member-one-vote.

- 5.1.8 G A community benefit society deviating from this principle would need to be able to satisfy us that the arrangement helps it fulfil its purpose of benefiting the community.

Application of profits

- 5.1.9 G Any profit made by a community benefit society must be used for the benefit of the community. This may include ploughing the money back into the business so that the society can continue to benefit the community. If profits are not ploughed back into the business they must still be used for the benefit of the community, including for philanthropic or charitable activity.
- 5.1.10 G Community benefit societies cannot distribute profits to people on the basis that they are members of the society. If profits are distributed, then this can only be to further the society's purpose of benefitting the community.
- 5.1.11 G We do not consider the payment of interest on shares in accordance with *RFCCBS* 6.1.21 to be a distribution of profits: it is a cost of capital. However where it appears that payment of interest on shares is the primary purpose of a community benefit society, we may refuse to register the society or may take steps to cancel its registration.

Use of assets

- 5.1.12 G Community benefit societies must only use their assets to benefit the community. If the society is allowed to sell its assets then the proceeds of any sale must be used for the benefit of the community.
- 5.1.13 G On solvent dissolution, or conversion or amalgamation to a company, a community benefit society should not allow distribution of assets to members, as to do so would not further the society's purpose of benefiting the community. Instead, the society could use its assets for the benefit of the community by, for example, transferring them to a similar organisation with similar objects.
- 5.1.14 G Community benefit societies can adopt a statutory asset lock. There is more information about this in *RFCCBS* 3.4.12.

5.2 Subsidiaries

- 5.2.1 G Where a community benefit society is a subsidiary (whether of a parent that is a community benefit society or not) the subsidiary's business must be conducted for the benefit of the community.
- 5.2.2 G The rules of a society which is a subsidiary must still comply with the Act. In particular, society rules must not contravene statutory thresholds, irrespective of the parent-subsidary relationship. For instance, a parent cannot have more than one vote on conversion of the society. *RFCCBS* 3.4.10 of this guidance sets out further details on this subject.

- 5.2.3 G Where a community benefit society is to be a parent of another entity (whether that entity is a community benefit society or not), we expect the parent society to still be conducting its business for the benefit of the community, both in its own right and through its subsidiary. To avoid compromising the parent's ability to conduct its business for the benefit of the community the subsidiary must also be conducting its business for the benefit of the community in line with the parent's objects.
- 5.2.4 G A community benefit society must be able to demonstrate that the decision to become a parent, or a subsidiary, furthers its objects.

6 Capital

This chapter provides information and guidance on societies' use of capital. Societies use many forms of capital, but we only cover shares and loans here, as they are some of the most commonly used ways to raise capital. The way a society finances its activities can be an indicator of whether it is complying with its condition for registration.

6.1 Shares

- 6.1.1 G Societies are limited by shares. All societies must have share capital.
- 6.1.2 G We believe that how a society uses share capital can show if it is complying with the conditions for registration (i.e. that it is a bona fide co-operative or that the society is conducting its business for the benefit of the community).
- 6.1.3 G In our view there are some unique features of society shares:
- (1) their number can fluctuate significantly;
 - (2) they remain at par value (unless written down);
 - (3) they do not automatically give the shareholder a share in the underlying value of the society;
 - (4) they cannot be held by the issuing society itself;
 - (5) they do not carry votes in proportion to the amount of shares held.
- 6.1.4 G It is important to keep these unique features in mind when reading the rest of this chapter.
- 6.1.5 G For society shares, legislation requires that the rules specify:
- (1) whether shares are withdrawable or not and
 - (2) whether shares are transferable or not

Withdrawable shares

- 6.1.6 G Societies may, and generally do, issue withdrawable shares.

- 6.1.7 G Society rules have to state if shares are withdrawable. If they are, the rules must state how they can be withdrawn, and how any residual balance will be paid to a member leaving the society.
- 6.1.8 G Society rules must also state the maximum interest in the shares of the society someone may have. This can include stating the statutory limit (currently £100,000 for people other than societies).
- 6.1.9 G The Act does not define withdrawable shares. The process of withdrawal should be laid down in the society's rules. Most society rules give the board power to suspend all share withdrawals. Others impose long notice periods for withdrawing shares. Some societies only allow shares to be withdrawn at fixed times or after a certain period of holding the shares.
- 6.1.10 G Our view is that it is an indicator that a society is meeting its condition for registration if it only allows the withdrawal of shares if:
- (1) it has trading surpluses that match or exceed the value of shares involved; and
 - (2) the directors believe the society can afford to pay its debts, taking into account:
 - (a) all of its liabilities (including whether it will be able to pay its debts at the date of withdrawal and, for a year after that, any contingent or prospective liabilities); and
 - (b) the society's situation at the date of the transaction.
- 6.1.11 G In our view it is an indicator that a society is complying with its condition for registration if:
- (1) the society's board has power to suspend withdrawals of share capital;
 - (2) the society's directors monitor withdrawals and, if the society's financial position becomes uncertain, can suspend members' ability to withdraw shares; and
 - (3) the directors have agreed whether there should be an annual limit on how many shares can be withdrawn, or a limit to the amount of profits which can be distributed.

Transferable shares

- 6.1.12 G The Act allows societies to have 'transferable shares' and states that society rules must:
- (1) state if any or all of the society shares are transferable;
 - (2) provide for the form of transfer;

- (3) provide for registration of the shares; and
- (4) require consent of the board to transfer or registration.

- 6.1.13 G In our view, a market in society shares allowing capital gains for members is normally inconsistent with registration as a society. This is because it may encourage the society's members and officials to operate the business to achieve capital gains rather than to serve either the members or the community through operating its business. Society rules are required by the Act to make every share transfer, other than on the death or bankruptcy of a member, subject to board consent as well as registration.
- 6.1.14 G If issuing transferable shares, societies may wish to take legal advice as to whether the issue falls within the Financial Services and Markets Act 2000 (FSMA).

Forfeiture and cancellation of shares

- 6.1.15 G Society rules can also cover forfeiture and cancellation of shares in certain circumstances:
- (1) arrears in paying instalments due on a purchase of shares may lead to the forfeiture and cancellation of the shares;
 - (2) if a nominal shareholding is a condition of membership, society rules may provide for the forfeiture and cancellation of shares when a member leaves;
 - (3) shares may also be forfeited and cancelled to remove members who no longer have any active relationship with the society from the register of members. Societies will want to make reasonable attempts to contact or locate the member before removing them from the register.
- 6.1.16 G Societies may want rules to cater for where shares are forfeited and the former member subsequently contacts the society to claim any share capital.

Rule amendments

- 6.1.17 G An amendment of a society's rules registered after a person becomes a member is not binding on a member if and so far as the amendment:
- (1) requires the member to take or subscribe for more shares than the number held by the member at the date of registration of the amendment;
 - (2) requires the member to pay upon the shares held by the member at that date any sum exceeding the amount unpaid upon them at that date; or

- (3) in any other way increases the liability of that member to contribute to the share or loan capital of the society.

6.1.18 G This applies unless the member has consented in writing.

Share offers

6.1.19 G In general, the share capital of a society should not be more than the level needed to support its activities. If the society can fund its activities from reserves then it ought not to need to issue additional shares. However, if a society does need to raise capital to pursue its purpose, it may wish to seek additional share capital from its members.

6.1.20 G Societies are not subject to certain requirements under the Financial Services and Markets Act 2000 (FSMA), in particular for withdrawable non-transferable shares. Societies should take appropriate advice before inviting members and prospective members to acquire shares.

Share interest

6.1.21 G Societies can pay interest on shares.

6.1.22 G Generally speaking, interest on shares should only be paid where the society can afford to do so, having taken into account other liabilities and any contribution to the society's reserves. Share interest should not be used as a means of profit or surplus distribution or as a substitute for dividends.

6.1.23 G The way a society uses interest on shares can be an indicator of whether it is complying with its condition for registration because:

- (1) in the case of a bona fide co-operative society:
 - (a) the society cannot exist mainly to pay interest on money invested; and
 - (b) in accordance with Principle 3 (see *RFCCBS* 4.3.3), it would be an indicator that a society is a bona-fide co-operative where the distribution of surplus to members is in the form of a dividend based on a member's participation in the co-operative, rather than through payment of interest on shares;
- (2) in the case of a society conducting its business for the benefit of the community the society's funds must be used to further the community benefit.

6.1.24 G The factors below are indicators of where a society is likely to be complying with the conditions for registration:

- (1) societies are primarily inviting people to become members of the society, along with any accompanying request for capital (additional

to the minimum required for membership) from the prospective member;

- (2) the maximum rate of interest paid on shares is declared in advance of the period for which it is intended to be paid, whether in its rules or elsewhere;
- (3) the declared maximum rate of interest is the lowest rate sufficient to obtain the necessary funds from members who are committed to furthering the society's objects;
- (4) in the event the society cannot afford to pay the declared maximum rate of interest, interest payments are reduced, or no interest is paid at all, without compensation in subsequent years;
- (5) societies can justify a decision to pay interest at a particular rate, and be able to demonstrate the basis for that decision.

6.1.25 G The factors below are indicators of where a society is likely to be failing to comply with the conditions for registration:

- (1) the society seeks to attract capital mainly by focusing on potential return on investment;
- (2) the declared maximum rate of interest is in excess of the lowest rate sufficient to obtain the necessary funds from members who are committing to further the society's objects;
- (3) a rate of interest greater than the declared maximum rate is paid to members where a society is more profitable than expected;
- (4) greater profits in one year are used to compensate members for reduced or no interest payments in previous less profitable years.

6.1.26 G We will consider these factors on a case by case basis. What is appropriate for one society may not be appropriate for another.

6.1.27 G There are some instances where these factors are not appropriate, specifically in the case of non-user investor shares in co-operative societies, and shares in agricultural co-operatives. In these instances other indicators will suggest whether societies comply with the bona fide co-operative society condition for registration. Non-user investor shares are dealt with from *RFCCBS* 6.1.30 below. For agricultural co-operatives, requirements in the rules around the use of share capital linked to members' participation in the business suggest compliance with the legislation.

Co-operative societies

6.1.28 G The indicators outlined above on share interest are relevant for co-operative societies in relation to the capital subscribed by members over and above that subscribed as a condition for membership.

- 6.1.29 G The amount of interest paid on capital subscribed as a condition for membership should be limited, if any at all.
- 6.1.30 G Generally co-operative societies offer membership to people who can use their services (whether as workers, producers or consumers). However, a co-operative society may sometimes need to raise capital from people who cannot or do not use the society's services. We describe these members as 'non-user investor members' – people who have only an investment relationship with the society.
- 6.1.31 G While offering membership to non-user investor members gives a co-operative society access to capital, it also brings risks to its ability to comply with its condition for registration. The way capital is accessed must not compromise the society's compliance with the condition for registration. The following factors are indicators that the society is complying with its condition for registration as a bona fide co-operative society:
- (1) The rules of a society which wants to raise capital from non-user investor members expressly provide for non-user investor shares, and the terms attached to these shares are clearly stated.
 - (2) The voting rights of non-user investor shareholders are restricted by the rules of the society. The society's rules prevent this category of shareholders voting on a motion to convert the co-operative to a company. Societies can, however, include a power to elect one or more non-user investor share representatives to the board.
 - (3) Ultimate control of the society remains with members other than non-user investor members at all times. Non-user investor members do not together have voting rights that when combined would result in user-members losing control of the society.

Community benefit societies

- 6.1.32 G Share terms, whether in community benefit society rules or a separate document, must be consistent with the society's purpose of community benefit.
- 6.1.33 G We consider the following factors as indicators that the society is complying with its condition for registration:
- (1) any surplus is used to benefit the community by reinvestment in the business, or by application to some external but related community benefit;
 - (2) any retained reserves are committed to community benefit;
 - (3) the society's rules prohibit any distribution of assets to members unless sold at market value to those members;

- (4) the society only pays interest set at the lowest rate sufficient to obtain the necessary funds from members committed to furthering the society's objects;
- (5) on dissolution, society assets are either:
- (a) transferred to one or more other bodies with similar objects; or
 - (b) used for similar charitable or benevolent purposes.
- 6.1.34 G The assets of a community benefit society may be subject to a statutory restriction on use (statutory asset lock), see *RFCCBS* 3.4.12 for further information.
- 6.1.35 G Community benefit societies that are exempt charities in England and Wales, and all societies that are charities in Scotland, are subject to particular restrictions on the rates of interest payable to members in addition to those set out above. The Charity Commission for England and Wales, and the Office of the Scottish Charity Regulator (OSCR) for Scotland take the following view:

A power of a community benefit society to pay interest on shares is not incompatible with charitable status, provided that the following features are required by the society's rules:

1. The interest rate is set at a level which is not in itself a motivation to buy shares and which the charity trustees can justify as being in the interests of the charity by reference to available commercial rates for borrowing.
2. The cost is part of the society's revenue expenses and met before the surplus is determined.
3. The rates are declared in advance of the period for which they will become payable, just as for a bank or building society account, and never retrospectively.
4. There is a power to suspend interest payments in the interests of the society.
5. There is a power of the society to withhold repayment of the shares, either temporarily or indefinitely and to write the value down below the nominal £1.
6. The shareholding does not confer any rights to the underlying assets of the society.
7. In the event of a solvent dissolution, shareholders can not be paid more than the nominal value of their shares.

[Note: <https://www.gov.uk/government/publications/exempt-charities-cc23>]

6.2 Loans

- 6.2.1 G The rights given to loan-stock holders or other lenders should not undermine the society's compliance with the conditions for registration. The main areas of concern are the constitutional and financial rights which an instrument may confer to the holders of such instrument.

Constitutional rights

- 6.2.2 G A holder of loan stock is one of the society's creditors, and so will not normally have any constitutional rights in the society. However, sometimes the loan stock or another instrument for lending gives the creditor the right to appoint a member of the society's board. This appointment can start at the point the loan is made or in specific circumstances, such as the society running into financial difficulties. This is likely to be acceptable so long as the society complies with its condition for registration by, for instance, not compromising member control of the society.

Financial rights

- 6.2.3 G Loan securities are private contractual arrangements between the society and the holder of the security. There is nothing to prevent a society from issuing loan securities in accordance with its own rules.
- 6.2.4 G The rate of interest offered is a commercial matter.
- 6.2.5 G If a society uses loans or similar methods to distribute profits this is an indicator that the society is not meeting its condition for registration.

Conversion of loan stock

- 6.2.6 G Loan stock or other debt securities might be issued on the basis that they can be converted into shares in the society at a later stage. The society should consider the factors we have outlined above when it decides what rights it attaches to these shares on conversion.

7 Accounting and audit requirements

The Act sets out accounting, auditing and reporting requirements for a society's financial accounts. We explain these requirements in this chapter.

7.1 Accounting requirements

- 7.1.1 G Every society must keep proper books of account giving a true and fair view of the state of the society's affairs and explaining its transactions. Societies are also required to maintain satisfactory systems of control of their books, cash holdings and receipts, and payments.
- 7.1.2 G Accounts must be produced to at least the minimum standards required by the legislation and the society's own rules. This means either a revenue account dealing with the affairs of the society as a whole, or two or more revenue accounts covering the whole year that deal separately with different businesses of the society. These, together with any balance

sheet, must give a true and fair view of the society's income and expenditure and of its affairs at the date of the balance sheet.

- 7.1.3 G The principles in the applicable Financial Reporting Standards published by the Financial Reporting Council (available at <https://www.frc.org.uk/>) generally apply to societies (but see also 'Group Accounts' at 7.10). Some societies are affiliated to sponsoring bodies or are regulated by other organisations which may have more demanding accounting requirements. Societies in this position should comply with these additional standards, as long as they do not conflict with or fail to meet the requirements of the Act.

Publication and display

- 7.1.4 G Every society must display its latest balance sheet in a clearly visible position at its registered office.
- 7.1.5 G In addition, a society must give a copy of its latest annual return, including the accounts and auditor's report (where required), free of charge to any member or other person interested in its funds who asks for it. With the member's agreement, that can be done through the society's website.
- 7.1.6 G As a general rule, every published revenue account or balance sheet must be signed by the secretary and two members of the society's committee and be audited or include a report on the accounts. We deal with this in more detail under 'Audit requirements' at *RFCCBS 7.2*.
- 7.1.7 G A society can publish an unaudited interim revenue account or balance sheet as long as it is published with the latest audited year-end revenue account or balance sheet and is marked clearly and prominently with the words 'UNAUDITED REVENUE ACCOUNT' or, as the case may be, 'UNAUDITED BALANCE SHEET'.
- 7.1.8 G A society must send us their annual return and accounts within seven months of the society's financial year-end. Annual return forms can be found here. We make the society's annual return available for public inspection on the Mutuels Public Register (<http://mutuals.fsa.gov.uk/>).

[Note: <http://www.fca.org.uk/your-fca/documents/forms/annual-return-ar30-industrial-and-provident-societies-act-1965-forms>]

Group accounts

- 7.1.9 G A society with one or more subsidiaries at the end of its year of account must produce audited group accounts for that year. They must give a true and fair view of the income, expenditure and state of affairs of the society and its subsidiaries. Societies must submit the group accounts to us with the auditor's report in their Annual Returns.

- 7.1.10 G The group information (for the society and its subsidiaries) can be presented alongside the society figures in one set of accounts or separately in a further set of accounts.
- 7.1.11 G If a society that has to submit group accounts does not include that information in its Annual Return, we will send the documents back to be completed fully.
- 7.1.12 G If a parent society is a wholly owned subsidiary of another corporate body then it is exempt from the group accounts requirement.
- 7.1.13 G Group accounts do not have to include a specific subsidiary if we approve the parent society board's opinion that this:
- (1) is impracticable, or would be of no real value to the society's members, given the insignificant amounts involved; or
 - (2) would involve expense or delay out of proportion to the value to those members; or
 - (3) would give a result that would be misleading, or harmful to the business of the society or any of its subsidiaries; or
 - (4) is inappropriate because the business of the society and that of the subsidiary are so different that they cannot reasonably be treated as a single undertaking.
- 7.1.14 G The parent society needs to contact us setting out its opinion as to which reason(s) applies.
- 7.1.15 G If at least one of these reasons covers all the subsidiaries, then no group accounts have to be filed at all. If we grant an exemption, the parent company does not have to apply to us again and can use it for those subsidiaries in following years, as long as the auditors certify their agreement that the board's opinion and the reasons for it are the same throughout these later years.
- 7.1.16 G The Financial Reporting Council has published The Financial Reporting Standard, which applies in the UK and Republic of Ireland (FRS102). FRS102 does not override the provisions of the Act. So societies should comply with the FRS requirements unless they are contrary to the Act.

7.2 Audit requirements

- 7.2.1 G The starting point is that every society is required to appoint one or more qualified auditors to audit its accounts and balance sheets for each year of account.
- 7.2.2 G Societies can then either be exempt from some of the requirements or 'disapply' them. We deal with exemption and disapplication below from *RFCCBS 7.2.8* and *RFCCBS 7.2.12* respectively. If a society has

disapplied the audit requirement it may still have to appoint a qualified auditor to produce a report on its accounts. We deal with this at *RFCCBS* 7.2.21.

The audit

- 7.2.3 G The auditors must report to the society on whether the year's revenue account and balance sheet, and any other accounts they examine, give a true and fair view of the society's affairs, otherwise comply with the legislation, and are in agreement with the books of account for the year. Auditors also give their opinion on whether proper books of account and control systems have been maintained.
- 7.2.4 G In preparing their report, the auditors can carry out any necessary investigation, see the society's books and other documents at any time, and demand information and explanations from the society's officers. They can also attend and speak at the society's general meetings and must get the same communications which members get about the meeting.

The auditor

- 7.2.5 G The term 'qualified auditor' means someone eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006. They must be a member of a recognised supervisory body (such as the Institute of Chartered Accountants in England and Wales and the Association of Chartered Certified Accountants) and eligible for appointment under the rules of that body.
- 7.2.6 G The auditor must not be an employee or officer of the society or its holding or subsidiary society. They also cannot be an employee, employer or partner of a society employee or officer. They must not be prohibited under the Companies Act 2006 from being auditor of a subsidiary company of the parent society. This is to ensure their independence.
- 7.2.7 G Auditors are appointed and removed by the members' meeting. However, no annual resolution is needed to reappoint the same auditor from one year to the next. Removing or replacing the existing auditor requires a resolution. 28 days' notice of this resolution must be given to the members and the auditor. The auditor can make verbal and written representations to the meeting considering the resolution.

Small Society Exemption

- 7.2.8 G A society can appoint two or more lay auditors instead of a qualified auditor if, in its preceding year of account, it had:
- (1) turnover of less than £5000; and
 - (2) assets of less than £5000; and

(3) fewer than 500 members.

7.2.9 G However, if the society’s rules only permit a full professional audit, the society will need to register a rule amendment with us before they can use the small society exemption.

7.2.10 G The following societies can never use the small society ‘lay audit’ exemption:

- (1) regulated housing associations;
- (2) a subsidiary of another society;
- (3) a society with one or more subsidiaries (whether companies or societies);
- (4) a society that has to prepare accounts under the Insurance Accounts Directive (Miscellaneous Insurance Undertakings) Regulations 1993.

7.2.11 G Anyone can be a lay auditor, as long as they are not an officer or employee of a society or a partner, employee or employer of any society officer or employee.

Disapplication of the qualified auditor requirement

7.2.12 G If a society does not qualify for the small society exemption, it may be able to ‘disapply’ the requirement to appoint a qualified auditor if the following conditions are met.

7.2.13 G These conditions are that the society is:

- (1) not in a category required to have a full audit (see *RFCCBS* 7.2.26);
- (2) not required by its rules to have a full audit;
- (3) below certain financial thresholds; and
- (4) a society whose members pass a resolution by the required majority to disapply the audit requirement.

Financial Thresholds

7.2.14 G The thresholds referred to above are:

Non-Charity	Charity
--------------------	----------------

(1)	value of aggregated assets at the end of the previous year of account was less than £2.8m; and	(1)	value of aggregated assets at the end of the previous year of account was less than £2.8m; and
(2)	turnover for the previous year was less than £5.6m	(2)	turnover for the previous year was less than £250,000.

Disapplication Resolution

- 7.2.15 G A general meeting must pass a resolution to disapply the requirement to appoint a qualified auditor. It will pass if:
- (1) less than 20% of the votes cast are against the resolution; and
 - (2) less than 10% of all members entitled to vote cast a vote against it.
- 7.2.16 G If this resolution is not passed, the society must have a full professional audit.
- 7.2.17 G The resolution only operates for one year of account. So a society must pass a resolution in each year of account it wants to opt out of the full audit requirement. For instance, if a society's financial year-end is 31 December, it must pass the disapplication resolution before 31 December.

Society rules on accounts and audit

- 7.2.18 G If a society currently requires a professional auditor to audit its accounts and wants to disapply this requirement or use the small society exemption then a rule change may be needed. For example, a rule that states '...and the audit will be carried out by a registered auditor' ties the society to the appointment of a registered auditor. If the current rules only permit a full professional audit, then a rule amendment must first be passed and registered with us.
- 7.2.19 G The small society exemption and disapplication provisions do not override society rules. The society will still need to amend its audit rule to use the relaxed auditing requirements. A rule change to state, for example:

'... and an audit, where necessary in law, or where the membership requires, will be carried out by a registered auditor or two or more lay auditors, where the condition for appointing lay auditors prevail'

would allow the society to take advantage of the relaxed auditing requirements.

- 7.2.20 G We assess rule changes on a case by case basis. Generally however, we will not register a rule change unless it allows for circumstances where an audit may be required either by law or by the members. For example, we would not register 'the accounts will be examined by an independent

accountant'. We encourage societies to either use the example given above or to follow the wording below:

'The members shall vote annually, as allowed by section 84 of the Co-operative and Community Benefit Societies Act 2014, at the Annual General Meeting, to have, when necessary in law or where the membership requires:

- (1) an audit carried out by a qualified auditor
- (2) an audit carried out by two or more lay auditors
- (3) a report by a qualified auditor
- (4) or unaudited accounts, where the conditions for such exist.

If a full audit or a report is required, a person who is a qualified auditor under section 91 of the Co-operative and Community Benefit Societies Act 2014 shall be appointed. The qualified or lay auditors, if so appointed, shall not be officers or servants of the society and nor shall they be partners of, or in the employment of, or employ, an officer or servant of the society. Lay auditors shall be chosen by the Committee of Management from the general membership and/or others.

If the membership vote for unaudited accounts, the society's income/expenditure ledger shall be scrutinised by the secretary and committee members only and signed, as a true record, by the secretary and two committee members or any other number as may be required by legislation. An income/expenditure report will be prepared to present to the society's members at each Annual General Meeting'.

The Report

- 7.2.21 G If a society chooses not to have a full audit from a qualified auditor they must, if their turnover was over £90,000 in the preceding year of account, appoint a qualified auditor to prepare a report on the accounts and balance sheet. Regulated housing associations in England and Wales must appoint a qualified auditor to prepare a report on the account and balance sheet whatever their turnover.
- 7.2.22 G The report on the accounts and balance sheet is less onerous than a full audit. The report must state whether, in the opinion of the qualified auditor making the report:
- (1) the revenue account or accounts, the other accounts (if any) to which the report relates, and the balance sheet are in agreement with the books of account kept by the society;
 - (2) on the basis of the information contained in the books of account, the statutory account complies with the requirements of the Act; and

- (3) the financial criteria allowing the production of a report instead of a full audit have been met.

- 7.2.23 G The qualified auditor preparing the report has the same kinds of powers as an auditor. These include carrying out any necessary investigation, seeing the society's books and other documents at any time, and being able to demand information and explanations from the society's officers. They are also entitled to attend and speak at society general meetings and get the same communications about the meeting as members. The auditor should sign their report.
- 7.2.24 G Where the relevant conditions are met, and the society produces unaudited accounts, the revenue account and balance sheet must still be signed by the secretary and two committee members of the society acting on behalf of the society's committee.

Societies needing full professional audit

- 7.2.25 G A society with a turnover of more than £5.6m (£250,000 if charitable) or total assets of more than £2.8m in the preceding year of account must always have a full professional audit.
- 7.2.26 G Any society that is one of the following, or was at any time during the accounting period, cannot disapply the audit requirement
- (1) a Scottish regulated housing association;
 - (2) a subsidiary of another society;
 - (3) a society with one or more subsidiaries (whether those subsidiaries are companies or societies);
 - (4) a society that holds a deposit or has done so at any time since the end of the preceding year of account (unless the deposit was withdrawable share capital).

8 Obligations & Process

This chapter outlines a society's obligations under the Act and highlights the post-registration legal processes a society may use.

8.1 Summary of obligations

- 8.1.1 G Once a society is registered it must:
- (1) continue to meet the conditions for registration;
 - (2) have at least three members (or two members who are societies);
 - (3) maintain a registered office in Great Britain or the Channel Islands, and tell us of any change to the registered office address;

- (4) maintain a register of members;
- (5) maintain accounts;
- (6) submit an annual return and accounts to us within seven months of their financial year end;
- (7) notify us of any change to the financial year-end date;
- (8) register any rule changes with us;
- (9) pay us an annual fee (see *RFCCBS* 3.3.6).

Obligations on names

- 8.1.2 G A society must make sure it displays its registered name outside its registered office and in every other place where it carries out its business. The notice should be in a conspicuous position and clearly legible.
- 8.1.3 G A society must also include its registered name in legible characters:
- (1) in all of its notices, advertisements and other official publications;
 - (2) in all of its business correspondence;
 - (3) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods, purporting to be signed by or on behalf of the society;
 - (4) in all its other business documentation; and
 - (5) on all its websites, including any content about the society on another website if the society either provided it or authorised it.
- 8.1.4 G Any charitable society whose registered name does not include the word ‘charity’ or ‘charitable’ must also state it is a charity on all of the above, and in all conveyances purporting to be executed by or on behalf of the society.

Duties of directors

- 8.1.5 G The Act is generally silent on the duties of directors, but common law duties have been established over time. Here we provide a summary of some of those common law duties.
- 8.1.6 G Directors, executives and employees are entrusted with control over the society’s assets and should not use those assets for their own benefit. The ultimate duty is to act in the best interests of the society – even if a director has been appointed by a particular member or elected by a particular group.

- 8.1.7 G The society's rules and the law must be used to deal with any conflict between the personal interests of a director and the society's interests.
- 8.1.8 G Directors should act prudently, lawfully and comply with the society's rules. They should use their powers only for the purpose they were given.
- 8.1.9 G Directors have a duty to bring to the role of director the skills that they have and the skills reasonably required to perform the role. This is determined by the definition of the role of director in the rules and governance arrangements of the society. It is important that the powers and duties of directors and executives are made clear in the society's rules and governance arrangements.

Disqualification of directors

- 8.1.10 G The Company Directors Disqualification Act 1986 ('CDDA') applies to society directors.

[**Note:** s22E, Company Director Disqualifications Act 1986]

- 8.1.11 G The grounds for disqualification include:
- (1) persistent breaches of the Act's requirements, e.g. by failing to submit annual returns to us;
 - (2) being convicted an offence involving a society;
 - (3) unfit behaviour involving the insolvency of a society; and
 - (4) Fraud.

8.2 Summary of legal processes

- 8.2.1 G The next part of the guidance runs through legal processes which societies can use throughout their lifetime. We explain each process separately so you can read it on its own without having to refer to other sections.
- (1) change of registered office;
 - (2) change of name;
 - (3) change of financial year end;
 - (4) rule amendments;
 - (5) recording a charge;
 - (6) transfers of engagement;
 - (7) amalgamations;
 - (8) conversion to a company;

- (9) conversion to a Scottish charitable incorporated organisation;
- (10) arrangements and reconstructions;
- (11) company voluntary arrangements;
- (12) administration;
- (13) winding up;
- (14) dissolution;
- (15) cancellation of registration.

8.3 Change of registered office

- 8.3.1 G Societies are required to have a registered office address in Great Britain or the Channel Islands.
- 8.3.2 G Societies give us their registered office address when they register with us. Societies must tell us as soon as possible if their registered office address changes.
- 8.3.3 G We only post documents to the registered office address, including any legal documents, so it is vital that societies tell us about any changes.
- 8.3.4 G Use this form to notify us of a change of address.

[Note: <http://www.fca.org.uk/your-fca/documents/forms/change-of-registered-office-forms>]

8.4 Change of name

- 8.4.1 G A society's name will stay the same unless we register a change. To change its name, a society must pass a resolution at a general meeting with the appropriate notice. Charities registered in Scotland must also include confirmation from OSCR that it has given permission for the name change when they apply to us to register the change.
- 8.4.2 G If the resolution is passed, societies should complete our name change form and return to us. The name change does not become effective until we have registered it.

[Note: <http://www.fca.org.uk/your-fca/documents/forms/change-of-name-form>]

- 8.4.3 G We explain our approach to names on *RFCCBS* 3.8 and *RFCCBS* App 1.
- 8.4.4 G The name a society wishes to register must be available. To see whether a name is available the society should check Companies House, the Charity Commission, OSCR and the Mutuals Public Register.

[Note: <http://www.companieshouse.gov.uk/>,
<http://www.charitycommission.gov.uk/>, <http://www.oscr.org.uk/>,
<http://mutuals.fsa.gov.uk/>]

8.4.5 G Societies should also check if the name they want to use includes any words that require permission or approval for use. See *RFCCBS* App 1 for more information.

8.4.6 G Regulated housing associations must notify their regulator of any change to their name.

8.4.7 G We do not need to be notified of business names or changes to them. However if the society is applying to use a sensitive word that requires FCA approval under financial services legislation e.g. ‘bank’, then it must seek that approval.

[Note: <https://www.fca.org.uk/firms/firm-details/sensitive-business-names>]

8.4.8 G Societies must comply with the requirements in Part 41 Companies Act 2006 about business names.

8.5 Change of financial year end date

8.5.1 G When a new society is registered, it can choose its own financial year-end date. Societies can also change their financial year-end date. There are a few requirements:

- (1) The period the first financial year covers cannot be shorter than six months or longer than eighteen months.
- (2) No financial year can be longer than eighteen months.
- (3) The society cannot give us notification that it is extending its financial year if it has already extended its financial year any time within the last five years.

8.5.2 G Societies must notify us of a change to their financial year-end. We will check the notice to make sure it complies with the requirements above, and give the society confirmation that it can change its financial year-end.

8.5.3 G Societies can change their current or subsequent financial year end dates. However, they cannot change a previous year-end date retrospectively. For example, if a society’s financial year ends on 31 March and it wants to extend it to 30 April, we must receive the notification of the year end extension before 31 March.

8.6 Rule amendments

- 8.6.1 G Societies must register rule amendments with us. A society can only start using the new rule when we have registered the rule amendment. We will confirm registration of rule amendments.
- 8.6.2 G Rule changes come into effect on the date we register them. We cannot register rule amendments retrospectively.
- 8.6.3 G Societies should send the rule changes to us using this form. Amendments can be complete or partial. Complete amendments mean a whole new set of rules is registered in place of the existing rules. Partial amendments change, add to, or delete some rules from the existing registered rules.
- [Note: <http://www.fca.org.uk/your-fca/documents/forms/amendment-of-rules-for-a-society-or-credit-union-form>]
- 8.6.4 G For a complete amendment, we need two copies of the new rule book each signed by three members and the secretary of the society.
- 8.6.5 G For a partial amendment of rules, we need two printed copies of the amendment of rules, each signed by three members and the secretary of the society, plus a printed copy of the existing set of rules marked to show what the amendments are and where they fit. It is best to word partial amendments as directions to a member, telling them exactly what they should do to make the necessary changes in their own copy of the rule book.
- 8.6.6 G The amendments should be arranged in the numerical order of the rules affected. Rules should only be re-numbered on a complete amendment of rules. If many amendments are proposed, or if the rule has already been amended many times, we generally recommend that societies use a complete amendment. This means rescinding the whole rule book and replacing it with a new one. This makes it easier for members to understand. Where the change is simple, an amendment of the part affected may be enough.
- 8.6.7 G Regulated housing associations in Scotland and Wales must include consent from either the Scottish Housing Regulator or Welsh Ministers respectively with their rule amendments (apart from a change of name or registered office address). Regulated housing associations in England must provide consent from the regulator along with the rule amendment if the rule amendment:
- (1) alters the objects of the society;
 - (2) makes provision about the distribution of assets to members; or
 - (3) enables the society to become, or cease to be, a subsidiary or associate of another body.
- 8.6.8 G For charities on the Scottish Charity Register rule amendments relating to the society's purpose must be accompanied with consent from OSCR.

[Note: <https://www.oscr.org.uk/>]

- 8.6.9 G No rule amendment can bind a member to take, or subscribe for, more shares than they held at the date the amendment was registered, or increase their liability to give share or loan capital to the society unless the member gives written consent.
- 8.6.10 G We will assess the rule amendments to determine whether they are contrary to the legislation. We will also check that the rule amendment was made after adequate procedures e.g. if the society's rules require a two-thirds vote in favour of a rule change, we will want to know whether that vote was achieved.

8.7 Recording a charge over a society's assets

- 8.7.1 G When a society wants to use some of its assets as security, usually for a loan, it does so by agreeing to a document that creates a 'charge' over those assets.
- 8.7.2 G Societies can record floating or fixed (except in Scotland) charges on assets of the society with us.
- 8.7.3 G The process of recording the charge with us can be carried out either by the society or by the lender who is given security over the society's assets. This is done using forms or other documents completed by the society.

Recording the charge

- 8.7.4 G We need the following information to record a charge:
- (1) a copy of the charge document certified as true with an original signature;
 - (2) a completed form:
 - (a) giving the society's registration number and full name, and details of the charge and the parties to it; and
 - (b) signed by the society secretary, a solicitor acting for the society, or another person interested in the charge (e.g. the lender) acting for the society.

[Note: <http://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]

- 8.7.5 G This information must be sent to us within 21 days (including the date it was signed) of the date of signing the charge document.
- 8.7.6 G We do not accept redacted copies of charges.

- 8.7.7 G We will confirm we have recorded the charge, and place a copy of it on the public register.

Late registrations of charges

- 8.7.8 G If the application is:

- (1) late; or
- (2) incomplete because of omissions or errors,

‘by reason of inadvertence or other sufficient cause’, we have power to extend the period for recording, or to give a chance to correct the omission or error.

[**Note:** s60 and 63 the Act]

- 8.7.9 G To decide if we can extend the registration period we need to know the reasons for the late application. The form should explain why the application was submitted late. Writing ‘it was submitted late’ is not enough and we will ask for more detailed reasons. Even if the application is correct but has been submitted outside the 21 day limit, we will return it unless satisfactory reasons are given.

Releasing, discharging and dealing with registered charges

- 8.7.10 G When a charge over society assets is released, discharged or subject to any other transaction, societies should complete this form to notify us so that we can include that information on the public register.

[**Note:** <http://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]

- 8.7.11 G To release a charge we need to receive:

- (1) the appropriate form for the society, depending on whether it is registered in Scotland or England and Wales
 - (a) signed by the society secretary, confirming the date that the charge was released or wholly or partially satisfied; and
 - (b) containing the address or other identifying details of the property no longer charged if it is released or wholly satisfied; or, if the charge is only partially satisfied, the amount by which it is partially satisfied; and

[**Note:** <https://www.fca.org.uk/your-fca/documents/forms/notification-of-charges-form>]

- (2) a sworn statutory declaration by the society secretary and one committee member (or director) that the information entered on

the form about the charge is true to the best of their knowledge, information and belief; and

- (3) copies of the original acknowledgement of the registration of the charge and the first page of the charge being released.

8.8 Transfers of engagement

- 8.8.1 G A society can pass a special resolution to transfer its engagements to any other society or company that agrees to fulfil them. The decision to transfer engagements to another society or company must be made in accordance with the society's rules. For instance, a community benefit society with an asset lock cannot transfer its engagements to an entity without a statutory asset lock. The resolution can also transfer all or part of the society's property to the society or company receiving the engagements without any other legal process such as a conveyance. Transferring engagements does not prejudice any right of a creditor of either of the societies or companies involved.
- 8.8.2 G After a transfer has been made, the transferring society still exists. However, if it has transferred both its engagements and all its property, it usually applies to cancel its registration. The society can only be deregistered after it has filed a certificate under section 126 of the Act with us. This confirms that all the society's property has been transferred to those entitled to it.

Special resolution

- 8.8.3 G The wording of the resolution must explain the position of the members of the transferring society and their stake in the society once transferred. Here is specimen wording for this:

'This meeting of members of the [enter name of transferring society] hereby resolves to transfer the whole of the stock, property and other assets and all engagements of the society to the [enter name of accepting society/company] in consideration of the [enter name of accepting society/company] issuing to each member of the [enter name of transferring society] paid up shares equal to the amount standing to the credit of each member in the share ledgers of the [enter name of transferring society] on the date when the transfer of engagements becomes effective.'

- 8.8.4 G If the society has planned a date for the resolution to take effect, then the resolution must be registered on or before that date. The resolution should usually avoid naming that date because we cannot guarantee we can register it in time.
- 8.8.5 G The special resolution for transferring engagements between societies must be passed:

- (1) at a first general meeting by two-thirds of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution; and
 - (2) at a second general meeting:
 - (a) by over half of the members who actually vote in person or by proxy at that meeting;
 - (b) held between fourteen days and one month from the first meeting.
- 8.8.6 G The special resolution for transferring engagements from a society to a company must be passed:
- (1) at a first general meeting by:
 - (a) three-fourths of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
 - (2) at a second general meeting by over half of the members who actually vote in person or by proxy at that meeting.
- 8.8.7 G A declaration by the chair of either meeting that the resolution has been carried is conclusive evidence of that fact.
- 8.8.8 G Within 14 days from the date that the special resolution is confirmed at the second meeting, the society must send us a copy for registration. This copy must be signed by the second meeting chair and countersigned by the society secretary.
- 8.8.9 G The resolution only takes effect when we register it.
- 8.8.10 G The accepting society or company must also confirm that it undertakes to fulfil the engagements being transferred. The accepting society or company will need to pass a resolution to do that. The resolution should be made no later than the date that the confirming resolution is passed by the transferring society. Exactly how this is done depends on what is said in the rules of the accepting society or articles of the accepting company.
- 8.8.11 G If the rules of the accepting society or articles of the accepting company provide that its board has the power to accept engagements by passing a board resolution, then the resolution should be passed by its board. Some society rules may require that this be done by members at a members' meeting.

Registering the transfer

- 8.8.12 G To register a transfer of engagements we need:
- (1) two clean copies of the resolution containing only the wording of the resolution as approved by the members. Each copy must be headed with the name and registration number of the society, and signed by the society secretary and the chair of the second meeting that approved the resolution;
 - (2) two signed copies of a resolution of the accepting society's or company's board or general meeting (depending on which is responsible under its rules) confirming that it undertakes to fulfil the engagements;
 - (3) transfer form (available at <https://www.fca.org.uk/your-fca/documents/forms/transfer-of-engagements-form>) signed by the secretary of each society/company;
 - (4) a statutory declaration confirming that the resolutions were passed in line with legislative requirements and society rules.
- 8.8.13 G For any regulated housing association, or any society on the Scottish Charity Register, the relevant regulator's consent must also be provided for the transfer of engagements to proceed. If the application is complete and meets all applicable statutory requirements, we will register the special resolution and send a formal acknowledgement that it has been registered.
- 8.8.14 G We will also send a final form (a section 126 certificate) with the acknowledgement of registration. This must be completed and returned to us once all the engagements and property have been transferred to the accepting society or company.
- [Note: <https://www.fca.org.uk/your-fca/documents/forms/certificate-under-section-59-industrial-and-provident-societies-act-1965-form>]
- 8.8.15 G When we have received this, we will cancel the transferring society's registration and issue a certificate confirming this.

8.9 Amalgamations

- 8.9.1 G Two or more societies may amalgamate and become one society. A society and a company may amalgamate to become one company. The amalgamation can, but need not, involve the dissolution of one or more of the societies or companies first or a division of funds among members where allowed. On the amalgamation, the property of each society or company vests in the new amalgamated entity without needing any form of conveyance or ownership transfer other than the special resolution that carried out the amalgamation.

- 8.9.2 G The amalgamation does not prejudice any right of a creditor of any of the societies or companies so they have the same claim against the new amalgamated entity as they had against the amalgamating societies or companies.
- 8.9.3 G The amalgamation of two societies or a society and a company results in the new body stepping into the shoes of those that chose to amalgamate, once the amalgamation resolutions of all the societies become effective on registration. If a society amalgamates with a company then the registration of the society becomes void and must be cancelled.
- 8.9.4 G The decision to amalgamate with another entity must be made according to with the society's rules. For example, a community benefit society with an asset lock cannot amalgamate to become an entity without a statutory asset lock.

Special resolution

- 8.9.5 G Amalgamation requires each of the amalgamating societies to pass a special resolution. The special resolution for amalgamating societies must be passed:
- (1) at a first general meeting by two-thirds of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution; and
 - (2) at a second general meeting:
 - (a) by over half of the members who actually vote in person or by proxy at that meeting;
 - (b) held between fourteen days and one month from the first meeting.
- 8.9.6 G The special resolution for amalgamating with a company must be passed:
- (1) at a first general meeting by:
 - (a) three-fourths of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
 - (2) at a second general meeting by over half of the members who actually vote in person or by proxy at that meeting.

- 8.9.7 G A declaration by the chair of either meeting that the resolution has been carried is conclusive evidence of that fact.
- 8.9.8 G Within 14 days from the date that the special resolution is confirmed at the second meeting, the society must send us a copy for registration. The copy must be signed by the chair of the second meeting and countersigned by the society secretary.
- 8.9.9 G The resolution only takes effect when we register it.

Registration of amalgamation

- 8.9.10 G To register the amalgamation we need:
- (1) two clean copies of the resolution containing only the wording of the resolution as approved by the members. Each copy must be headed with the name and registration number of the society/company, and signed by the society/company secretary and the chair of the second meeting that approved the resolution;
 - (2) forms signed by the secretary of each society/company;
- [**Note:** <https://www.fca.org.uk/your-fca/documents/forms/transfer-of-engagements-form>]
- (3) a statutory declaration confirming that the resolutions were passed in line with legislative requirements and society rules;
 - (4) any regulated housing association, or society on the Scottish Charity Register, must also provide consent from the relevant regulator for the amalgamation to proceed.
- 8.9.11 G If the application is complete and correct, we will register the special resolution and send a formal acknowledgement of its registration.
- 8.9.12 G We will also register the new society, sending a certificate of registration of a new society.

8.10 Conversion to a company

- 8.10.1 G Societies can pass a resolution to convert into a company. Societies can convert into companies limited by shares or companies limited by guarantee. Currently, the legislation does not allow societies to convert to a Charitable Incorporated Organisation; but a society can convert to a Scottish charitable incorporated organisation (see *RFCCBS* 8.11.2).
- 8.10.2 G If a society converts itself into a company it will no longer be registered under the Act.

- 8.10.3 G The decision to convert to a company must be made according to the society's rules. For example, a community benefit society with an asset lock cannot convert to a company without a statutory asset lock.

Special resolution

- 8.10.4 G The wording of the resolution will depend on the society's circumstances e.g. the value of its share capital. The wording of the resolution should include the following points:

- (1) the society will be converted into a company incorporated under the Companies Act 2006 limited by shares/guarantee
- (2) the name of the company;
- (3) the registered office of the company [England/Wales/Scotland];
- (4) the objects for which the company is established;
- (5) the liability of members;
- (6) the share capital (if any) of the company;
- (7) that the memorandum and articles attached to the resolution, signed for identification by the chair of the meeting, will be the memorandum and articles of association of the company.

- 8.10.5 G The special resolution must be passed:

- (1) at a first general meeting by:
 - (a) 75% of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
- (2) at a second general meeting (to be held at least 14 days, and no more than one month, from the day of the first meeting) by over half of the members who actually vote in person or by proxy at that meeting.

- 8.10.6 G A declaration by the chair of either meeting that the resolution has been carried is conclusive evidence of that fact.

- 8.10.7 G Within 14 days from the date that the special resolution is confirmed at the second meeting, the society must send us a copy for registration. The copy must be signed by the chair of the second meeting and countersigned by the society secretary.

Registration of the conversion

- 8.10.8 G Before applying to us to register the special resolution, societies need to contact Companies House to apply for a company to be set up on conversion from a society. It is important that societies tell Companies House not to register the company until we have agreed a date with them. Societies cannot convert into an existing company.
- 8.10.9 G When we have received the application we will contact Companies House to agree a conversion date.
- 8.10.10 G To register a conversion we will need:
- (1) three copies of the special resolution. Each copy must be headed with the name and registration number of the society, and signed by the society secretary and the chair of the second meeting that approved the resolution;
 - (2) a copy of the proposed memorandum and articles for the company;
 - (3) confirmation that the society has applied to Companies House to register a company and has told them that the application is coming from a converting society;
 - (4) conversion form signed by the secretary;
- [Note: <http://www.fca.org.uk/your-fca/documents/forms/application-for-the-conversion-of-a-society-into-a-company-form>]
- (5) a statutory declaration confirming that the resolution was passed in line with legislative requirements and society rules;
 - (6) for any regulated housing association, or society on the Scottish Charity Register, consent from the relevant regulator must also be provided for the conversion to proceed.
- 8.10.11 G If the application is complete and correct, we will send a formal acknowledgement of registration of the special resolution. Following that, we will send confirmation of the cancellation of the society.
- 8.10.12 G Companies House will send us information relating to the company registration.

8.11 Conversion to a Scottish charitable incorporated organisation

- 8.11.1 G A society can convert into a Scottish charitable incorporated organisation (SCIO). When it has converted to an SCIO then it will no longer be registered under the Act.

Resolutions

- 8.11.2 G The society can convert by passing the following resolutions:
- (1) a resolution that it be converted into an SCIO; and
 - (2) a resolution adopting the proposed constitution of the SCIO.
- 8.11.3 G The resolution that the society be converted to an SCIO needs to be either a special resolution or a unanimous written resolution. The unanimous written resolution must be signed on behalf of all the members of the society who would be entitled to vote on a special resolution.
- 8.11.4 G To be a special resolution the resolution must be passed:
- (1) at a first general meeting by:
 - (a) 75% of the members actually voting on the resolution, whether in person or by proxy. Notice of the meeting must have specified the intention to propose the resolution;
 - (b) with at least 50% of all members entitled to vote at the meeting in person or by proxy casting their vote; and
 - (2) at a second general meeting (to be held at least 14 days, and no more than one month, from the day of the first meeting): by over half of the members who actually vote in person or by proxy at that meeting.

Registration of the conversion

- 8.11.5 G The resolutions must be passed and sent to the OSCR along with an application form.
- [Note: <http://www.oscr.org.uk/>]
- 8.11.6 G OSCR will consult us before agreeing the application for conversion.
- 8.11.7 G If OSCR decide to accept the application to convert then they will agree a date with us to process the conversion. OSCR will then register the SCIO and provide us with copies of the resolutions and confirmation of registration as an SCIO.
- 8.11.8 G When we receive the resolutions and confirmation of registration as an SCIO we will cancel the registration of the society. We will confirm to OSCR that we have done this, and OSCR will then update the Scottish Charity Register to show that the SCIO has been formed as a result of a conversion from a society.

8.12 Arrangements and reconstructions

- 8.12.1 G The procedures in Part 26 of the Companies Act 2006, which deal with arrangements and reconstructions of companies, can be used by some societies. They allow societies to use provisions for compromises or

arrangements with their members or creditors, or particular classes of them. The Part 26 procedure cannot be used by a regulated housing association.

[**Note:** The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 SI 2014/229 applies Part 26 with some modifications]

- 8.12.2 G References in Part 26 to company directors mean society committee members or directors, and references to company articles are read as references to society rules.
- 8.12.3 G The procedure involves court orders to convene meetings of relevant classes of creditors and members to vote on the proposed Scheme after the information required by Part 26 has been circulated to them. If the Scheme is approved at those meetings by appropriate majorities, it is only binding after a further court order.
- 8.12.4 G When applied to society members, the reference to a ‘majority of 75% in value’ of members or a class of members in Part 26 is read as simply ‘75% of members’ (i.e. one-member-one-vote). The value of their stake is not taken into account. However, for creditors, a majority by value is required in the case of a society, as it is for a company.

[**Note:** s889 Companies Act 2006 (as modified by SI 2014/229)]

- 8.12.5 G Before a court can make an order to sanction an arrangement or compromise involving the reconstruction of a society, or its amalgamation with another society or a company, we must state that we are satisfied that it is not contrary to the Act.
- 8.12.6 G Our interest is in whether the nature of the society as a co-operative society or community benefit society has been prejudiced by the proposed compromise or arrangement. For this reason, **it is important to involve us from the very beginning of the process of considering the use of Part 26 for a society.**
- 8.12.7 G The society must deliver a copy of any order made under these provisions within seven days of it being made. It should be accompanied by a copy of the society’s rules, if they have been amended by the order.

8.13 Company voluntary arrangements

- 8.13.1 G Company voluntary arrangements (CVAs) are used by insolvent companies to address their financial difficulties through compromises or other arrangements proposed by an appointed insolvency practitioner and agreed between the company and its creditors. The agreement may propose that the company pays its creditors over a fixed period. CVAs are available to societies as they are to companies, except for regulated housing associations.

- 8.13.2 G References to the Registrar of Companies should be read as a reference to the FCA, in our role as registering authority.

[**Note:** Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.]

- 8.13.3 G The power and role of the qualified insolvency practitioner appointed as a nominee under a voluntary arrangement, and the procedures they must follow are governed by the Insolvency Act 1986 as applied by the Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.

- 8.13.4 G Societies may wish to take appropriate professional advice if considering the use of this procedure.

8.14 Administration

- 8.14.1 G Administration is a procedure which allows a company to reorganise or to realise its assets (whether solvent or insolvent) under the protection of a statutory moratorium. A statutory moratorium means that creditors cannot take action to enforce any claim they have against the company during the administration process. Administration is available to societies in a similar way to companies. It is not available to regulated housing associations.

- 8.14.2 G For societies in England and Wales, any charges registered after 6 April 2014 will be subject to administration procedures rather than administrative receivership. If there are conditions for receivership under the charge and the lender chooses to exercise their power then an administrator can be appointed.

- 8.14.3 G The power, role and procedures followed by the qualified insolvency practitioner appointed as an administrator are defined by the Insolvency Act 1986 as applied by The Co-operative and Community Benefit Society (Arrangements, Reconstructions and Administration) Order 2014, SI 2014/229.

- 8.14.4 G Societies may wish to take appropriate professional advice if they are considering using this procedure.

8.15 Winding up

- 8.15.1 G Winding up, or ‘liquidation’, is a process by which an entity’s assets are used to pay off its debts, usually with any remaining money distributed in accordance with the society’s rules. The winding up provisions of the Insolvency Act 1986 apply to societies. A society can be wound up by a:

- (1) Members’ voluntary winding up by members’ resolution if it is solvent; or
- (2) creditors’ voluntary winding up by members’ resolution with creditor involvement if it is insolvent; or

- (3) court winding up order at the petition of the society itself, a creditor, or member.
- 8.15.2 G These procedures are governed by Part IV of the Insolvency Act 1986 as applied and modified by the Act.
- 8.15.3 G A special resolution is needed to pass a winding up resolution. The special resolution must meet the requirements in the Companies Act 2006. It is not a special resolution as defined in the Act.
- [Note: s84 Insolvency Act 1986]
- 8.15.4 G A special resolution under the Companies Act 2006 requires:
- (1) only one meeting, called with 14 days' notice;
 - (2) the text of the resolution and intention to propose to appear in the notice;
 - (3) a majority of not less than 75%.
- [Note: ss283 & 307 Companies Act 2006]
- 8.15.5 G We play the same role for societies that Companies House does for companies. The society must send us the resolution within 15 days of it being passed. The liquidator must give us notice of their appointment within 14 days of being appointed.
- 8.15.6 G If a society is wound up by the court then the society must immediately send us a copy of the court order.
- [Note: s130 Insolvency Act 1986]
- 8.15.7 G A liquidator must send us periodic progress reports if winding up is not completed within one year of the process starting. These reports are of the kind submitted to Companies House in a winding up.
- [Note: s192 Insolvency Act 1986]
- 8.15.8 G At the end of the winding up process, once the liquidator has submitted a section 126 certificate to us, the society will be dissolved and its registration will be cancelled.
- 8.15.9 G There are additional requirements for regulated housing associations. A society on the Scottish Charity Register must seek the consent of OSCR.

8.16 Dissolution

- 8.16.1 G Dissolution is where the assets and property of the society are redistributed and the society's registration is brought to an end. Societies can be dissolved either by:

- (1) an instrument of dissolution; or
- (2) at the end of an insolvency procedure – such as winding up or administration.

Instrument of dissolution

- 8.16.2 G Societies can dissolve by an instrument of dissolution. The instrument needs to be drafted and then approved by either:
- (1) three-quarters of all the society’s members signing the instrument to show their consent to it; or
 - (2) for a dormant society, passing the instrument by a special resolution at society meetings.
- 8.16.3 G The instrument must set out:
- (1) the society’s assets and liabilities in detail;
 - (2) the number of members and the nature of their interests in the society;
 - (3) any creditors’ claims, and the provision to be made for their payment;
 - (4) the intended appropriation or division of the society’s funds and property (unless the instrument states that this is to be left to the award of the FCA or PRA).
- 8.16.4 G The dissolution should be carried out according to the society’s rules. For example, some rules forbid funds being distributed to members. In the case of a community benefit society with a statutory asset lock, the society can only distribute any surplus in accordance with that asset lock.
- 8.16.5 G Any changes to an instrument have to be approved in the same way as the original instrument.
- 8.16.6 G We have provided a form for societies to use. Societies must also send us a statutory declaration and the final annual return and accounts, completed up to the date of the instrument of dissolution. Any regulated housing associations, or societies on the Scottish Charity Register, must also provide consent from the relevant regulator.
- [**Note:** <https://www.fca.org.uk/publication/forms/mutuals-instrument-dissolution-cuip-form.doc>]
- 8.16.7 G We will register the instrument of dissolution when we have this information. The instrument is then binding on members and cannot be changed.

- 8.16.8 G We advertise a notice of the dissolution in the London or Edinburgh Gazette as well as in a newspaper which is local to the society.
- [Note: <https://www.thegazette.co.uk/>]
- 8.16.9 G Interested people have up to three months after the advertisement in the Gazette appears to challenge the dissolution. Any society member, creditor, or anyone with an interest in the society's funds can challenge the decision.
- 8.16.10 G Challenges to the resolution need to be made in the courts. In England and Wales this is the County Court and in Scotland the Sheriff Court. Anyone issuing proceedings must tell us within seven days of the proceedings starting and before the expiry of the three month deadline.
- 8.16.11 G If the challenge is successful, the dissolution will be set aside and the society's registration will continue. So it is important that societies do not distribute assets until the three month window for challenge is over.
- 8.16.12 G The society can distribute its assets after three months. They must be distributed in the way the instrument specifies.
- 8.16.13 G When this is done the society should send us a section 126 certificate confirming that all property vested in the society has been conveyed or transferred to those entitled to receive it. A society cannot be dissolved until we have received this certificate.
- [Note: <https://www.fca.org.uk/publication/forms/section-126-certificate.docx>]
- 8.16.14 G Any society that thinks it will have difficulty following this procedure may want to get professional advice. The advice might be that the society should go into voluntary liquidation.
- 8.16.15 G Alternatively, a society with no liabilities or with minimal assets (less than £1,000) could ask us to cancel its registration.

Dissolution after winding up

- 8.16.16 G Societies can be dissolved after winding up. The winding up procedures in the Insolvency Act 1986 apply to societies, and references to the 'registrar of companies' are references to the FCA.
- 8.16.17 G The rights of members and the destination of any surplus are decided in accordance with the society's rules. Those provisions will be followed by any court called upon to deal with the issue. In the absence of any such provision, it is likely that a court will decide that any surplus should be paid to the members according to their entitlements, which is likely to be based on their rights and interests in the society.

- 8.16.18 G In a voluntary winding up, the liquidator will file a final account and return. In a winding up by the court, the liquidator will file a notice of holding a final meeting. This triggers the start of a three month time period. A section 126 certificate confirming that all property vested in the society has been conveyed or transferred to those entitled to receive it must be filed to complete the dissolution.
- 8.16.19 G If the certificate is filed within the three month time period, then the dissolution takes effect at the end of the three months. If the certificate is filed after the three month period, the dissolution takes effect at that point.
- 8.16.20 G Unlike Companies House, we have no power to restore the registration of a society after it has been dissolved.

Dissolution after administration

- 8.16.21 G Societies can go through administration, which could result in a rescued, solvent society. If the society cannot be rescued through administration then the process of winding up under the Insolvency Act 1986 can follow.
- 8.16.22 G If an administrator thinks that the society has no property to distribute to creditors they will send us a notice to tell us.
- 8.16.23 G We will register that notice. At the point of registration of that notice, the administration ends and the society is dissolved three months later (unless a court orders an extension). Where the society is being dissolved on notice from an administrator the dissolution is not dependent on a relevant notice under section 126 of the Act.

[**Note:** Schedule B1, para. 84, Insolvency Act 1986 as applied by s125 CCBSA 2014 and SI 2014/229.]

Member liability

- 8.16.24 G Society members have limited liability for the society's debts. They will normally lose the value of their shares if the society is wound up. Any additional liability they have to contribute towards payments to creditors is limited to the amount they may owe on their shares.
- 8.16.25 G Shares are usually fully paid up when they are issued and so no further payment will be required by members. However, the liability of members to contribute to paying creditors lasts for one year after their membership ends.
- 8.16.26 G So anyone who held withdrawable shares and gave notice to withdraw their shares less than a year before winding up began may still have to contribute as part of the winding up process.
- 8.16.27 G This liability is only triggered if the total amounts paid by current members for unpaid shares is not enough to pay the society's debts.

8.17 Cancellation

Effects of cancellation

- 8.17.1 G A society's registration cannot be restored when it has been cancelled. There is no process of 're-registration'. Cancellation is a final, irreversible act.
- 8.17.2 G The Act states that if a society's registration is cancelled or suspended, it loses all the privileges of registration when the relevant notice is published in the London or Edinburgh Gazette.
- [Note: <https://www.thegazette.co.uk/>]
- 8.17.3 G From the date of this publication, the society is no longer a corporate body. This means:
- (1) it can no longer sue or be sued in its registered name;
 - (2) it can no longer hold property;
 - (3) members will no longer be entitled to limited liability for debts created by a continuing, unregistered and unincorporated, society on their behalf.
- 8.17.4 G In this case, the law on unregistered partnerships or unincorporated associations can decide how members are liable.
- 8.17.5 G Any liabilities generated by the society before registration is cancelled will not be affected by cancellation. This means creditors can take legal action against remaining members of the now unregistered society to recoup these debts.
- 8.17.6 G The society's rules decide what rights members have to get their capital returned and how any surplus will be distributed after the society has paid its debts. These rules should also be taken into account if a society is wound up or dissolved.
- 8.17.7 G The courts have suggested that cancellation, other than on the ground that the society no longer exists at all or that it existed for an illegal purpose, may simply end registration and its privileges. This may leave the unregistered society as an unincorporated association, governed by its rules under contract law.
- [Note: Boyle v Collins [2004] EWHC 271]
- 8.17.8 G After registration has been cancelled, we cannot get involved in the process of distributing the society's property. We cannot advise on property distribution or on the rights or liabilities of members at any stage.

- 8.17.9 G There is no equivalent to Part 31 of the Companies Act 2006, which allows a company to be restored the Register after it has been struck off by the Registrar of Companies.
- 8.17.10 G Any application by the same individuals to set up a society will be treated as an application to register a new society. Any new registration must be under a different name to the previous society, and the society will receive a new registration number.

Requesting to cancel

- 8.17.11 G We can cancel a society's registration on a number of grounds. We explain our powers to cancel a society's registration on *RFCCBS* 9.6. Here we deal with cancellation at the request of the society.
- 8.17.12 G We have to be satisfied that it is appropriate to cancel the society's registration. We will generally only do this if it:
- (1) has ceased to carry on any business;
 - (2) has limited (e.g. less than £1000) assets or liabilities; and
 - (3) is not insolvent.
- 8.17.13 G We take this approach to protect members and creditors, and to prevent societies using cancellation to avoid insolvency procedures.
- 8.17.14 G Societies need to complete a request to cancel form. The form asks for justifications for the cancellation. The information provided must satisfy us that it is appropriate to cancel the society's registration. We also:
- (1) ask for confirmation of how the decision to cancel the society's registration was reached. Generally, we would expect the decision to have been made by members at a general meeting. If this is not the case we will need to know why;
 - (2) check whether all outstanding fees owed to us have been paid;
- [Note: <http://www.fca.org.uk/your-fca/documents/forms/request-to-cancel-forms>]
- 8.17.15 G If the society's request follows a transfer of engagements to another society or a company, we can only cancel the society's registration after it sends us a 'relevant certificate' as defined in section 126 of the Act confirming that its property has all been transferred to those entitled to it.
- 8.17.16 G After we cancel a society's registration on this ground, we send out a formal acknowledgement. We place advertisements in the London or Edinburgh Gazette and in a local newspaper in the area in which the society's registered office was situated.

[Note: <https://www.thegazette.co.uk/>]

- 8.17.17 G There is no appeal to the courts against our decision to cancel a society's registration on this ground.

9 Our powers

This chapter provides a summary of the powers given to us by the Act, an overview of our approach to using these powers, and details of each power.

9.1 Overview

- 9.1.1 G If we believe a society is not complying with its requirements under the Act, we can, subject to statutory requirements:

- (1) require the society to give us information and documents;
- (2) require the society to have its accounts audited by a qualified auditor;
- (3) appoint an inspector to inspect the society;
- (4) suspend or cancel a society's registration;
- (5) prosecute societies, which can result in a fine from the court.

- 9.1.2 G These are the powers given to us by the Act. Before we use them we will usually try to discuss our concerns with the society to resolve things without having to use our powers. However, we have, and will, use our powers where appropriate. We publish a list of prosecutions and cancellations.

[Note: <https://www.fca.org.uk/firms/annual-returns-accounts-mutual-societies/prosecutions-cancellations>]

- 9.1.3 G Where applicable, we will use our powers to the extent necessary to maintain confidence in the society legal form.

- 9.1.4 G Below are more details about our powers.

9.2 Requiring information and documents

- 9.2.1 G If a society does not give us the information and documents we ask for then we may formally require them to do so. It is an offence for a society to refuse to supply them.

- 9.2.2 G We may use this power if we feel we need information to enable us to determine whether a society is complying with the Act.

9.3 Auditing accounts

9.3.1 G We can demand that a society's accounts are audited by a qualified auditor. This applies to the current year of account or any number of previous years.

9.3.2 G We may do this if, for example, a society has not submitted accounts or if its accounts have not been done to a reasonable standard.

9.4 Appointing an inspector

9.4.1 G We have the power to appoint an inspector to investigate the affairs of a society (except where the society is a regulated housing association) in certain circumstances, for example if it appears to us that:

- (1) there may be possible fraud against creditors;
- (2) the society may be breaking the law;
- (3) members are not getting the information they should expect;
- (4) members are not being consulted properly, e.g. decisions are being made without a vote.

9.4.2 G Inspectors may demand documents and interview people under oath. If anyone obstructs the inspector's work, the court may treat this obstruction as a contempt of court, which is a criminal offence.

9.4.3 G Once the inspectors have written their report, we may publish it if we think it would be in the public interest. If we appoint an inspector we can still take other steps.

9.5 Suspending registration

9.5.1 G We can suspend the society's registration for periods of three months if:

- (1) it has wilfully, and after being informed by us, violated any legal requirements under the Act;
- (2) the society exists for an illegal purpose;
- (3) the applicable condition for registration is not met;
- (4) appears to us that a lending society for members involved in horticulture, agriculture or forestry no longer consists mainly of members engaged in those activities or no longer lends to members as its main activity.

9.5.2 G A suspended society is not entitled to any of the privileges of registration for as long as they are suspended.

9.5.3 G We must give at least two months' notice in writing of our intention to suspend the society's registration.

9.5.4 G After the first three-month period of suspension, a society may appeal to the court against any further suspension period.

9.6 Cancelling registration

9.6.1 G We may cancel a society's registration under certain circumstances. This would happen where there has been a breach of the legislation by the society, including where:

- (1) we believe that the society is no longer complying with its condition for registration;
- (2) it has wilfully and after being informed by us, violated legal requirements under the Act (including failing to submit annual returns);
- (3) we are satisfied that:
 - (a) registration was obtained by fraud or mistake;
 - (b) the society has fewer than three members (or two if those members are registered societies);
 - (c) the society no longer exists;
 - (d) the society exists for an illegal purpose; or
- (4) it appears to us that a lending society for members involved in horticulture, agriculture or forestry no longer consists mainly of members engaged in those activities or no longer lends to members as its main activity.

9.6.2 G More guidance on what we regard as a co-operative society or community benefit society (the conditions for registration) are on *RFCCBS* 4 and 5 respectively.

9.6.3 G Once a society's registration has been cancelled it cannot be restored.

9.6.4 G If we propose to cancel a society's registration, we will give at least two months' notice of this, stating our reasons.

9.6.5 G If we propose to cancel the registration of a society because it appears to us that it is not complying with its condition for registration, the society or its representatives may, during the two month period of notice, make representations as to why the society's registration should not be cancelled. The society also has the right to have an opportunity to be heard by us. This can be done in writing and in person.

9.6.6 G If we are cancelling the registration of a society on the ground that it appears to us that it is not complying with its condition for registration we would expect it to take steps to convert to a company, or to dissolve itself. If the society has not taken such steps within a month, we can give any

directions that we consider necessary to make sure that the society's affairs are wound up before registration is cancelled. It would be an offence for a person not to follow such direction.

9.6.7 G We can also cancel the registration of a society at its request (see *RFCCBS* 8.17.11 for more details).

9.6.8 G Cancellations are advertised in a newspaper local to the society and in the London or Edinburgh Gazette.

[Note: <https://www.thegazette.co.uk/>]

9.7 Prosecution

9.7.1 G We can prosecute societies for offences under the Act. These are criminal offences and include:

- (1) not sending us annual returns or other documents we require;
- (2) an officer not carrying out any duties which an officer of the society is required to do;
- (3) deliberately ignoring or refusing a request for information from us or from anyone we have authorised, e.g. an auditor;
- (4) giving false or incomplete information or returns.

9.7.2 G If an officer personally did not commit any of these offences, but was aware of the offence or did not try to prevent the offence, that officer may still be prosecuted.

9.7.3 G We publish our prosecutions of societies. Details of past prosecutions can be found here.

[Note: <https://www.fca.org.uk/firms/annual-returns-accounts-mutual-societies/prosecutions-cancellations>]

9.8 Powers against community benefit societies with statutory asset locks

9.8.1 G Community benefit societies can have a statutory asset lock. This is designed to ensure that the value of any assets is used for the benefit of the community. Find more detail from *RFCCBS* 3.4.12.

9.8.2 G We have additional powers under secondary legislation where an asset lock is in place:

- (1) Warning and enforcement notifications: If we consider that a community benefit society has breached its asset lock rules we can issue an enforcement notification. This will impose requirements on the society to take all necessary steps so that the society complies with its asset lock. These requirements may include an

order to bring assets back into the society and not to breach the limits in future.

- (2) Order restitution by officers: If we consider that a breach of the asset lock has caused financial loss on the society and one or more officers of the society was knowingly concerned in the breach, we can require the relevant officer(s) of the society to pay to the society what we think is a fair amount in respect of the loss suffered.
- (3) Removal of officers: We can remove an officer if they were knowingly concerned with the breach.

- 9.8.3 G Our approach in deciding whether and how to exercise these powers is based on the principle that these powers should be exercised only to the extent necessary to maintain confidence in the community benefit society legal form.

10 Disputes

We often receive questions about society disputes, including between members, or between members and the society. This chapter explains our remit, role and approach to disputes, and gives some details about members' rights.

10.1 Overview

- 10.1.1 G We do not determine disputes. That is a matter for the society's rules and, ultimately, for the courts. Members may take legal action against the society or its committee.
- 10.1.2 G Disputes between a society or its officers and a member (or a former member who left within the last six months) must be decided in the way laid down in the society's rules.
- 10.1.3 G Many societies choose to include a provision for arbitration or alternative dispute resolution in their rules. Many of the model rules give that role to the sponsoring body.
- 10.1.4 G If the rules state that the dispute is to be decided by us (or our predecessors) then the dispute must be referred to the county court (or Sheriff in Scotland). It cannot be decided by us.
- 10.1.5 G However, if members are concerned that the society is not being operated in accordance with the relevant registration requirements for a society, they can complain to us. This would be on the basis that we should exercise our statutory powers and we will consider the information provided by the member.

10.2 Members' rights

- 10.2.1 G Members are shareholders of the society. They have voting power and can exercise democratic member control together with other members. They should try and resolve any issues they have through these processes.
- 10.2.2 G As well as any rights given in the rules of a society, the Act gives members a right to:
- (1) receive a copy of the annual return and accounts of the society;
 - (2) receive a copy of the society rules. If the member has already been provided with a copy (e.g. on joining) and requests another copy then the society may charge a fee;
 - (3) inspect the society's register of members at reasonable hours in the society's registered office. The society should not disclose a member's financial holding;
 - (4) request that the FCA appoints inspectors to look at the accounts of the society. This request must be made by at least 10 members of the society, who must deposit money with us as security for the costs of the process;
 - (5) request that the FCA orders an inspector to look into the society's affairs or to call a special meeting. This request must be made by at least 10% of members, or 100 members if that is a smaller number. The request must be supported by evidence that there are good reasons to do this, and that the request is not malicious.

App 1 Names

This Appendix explains our guidance on particular words or expressions, in addition to the guidance on *RFCCBS* 3.8 of this document. We generally consider a name to be undesirable if it includes an expression listed below and does not follow the accompanying guidance. Our guidance below applies as much to derivations and versions of the words below as it does to the full word. For instance, we would generally treat 'co-op', 'co-operatives' and 'coop' in the same way as 'co-operative'.

App 1.1 Expressions covered by further guidance

<p>Accountancy and Actuarial Discipline Board</p> <p>Accounting Council</p> <p>Actuarial Council</p> <p>Audit and Assurance Council</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Financial Reporting Council 8th Floor 125 London Wall London EC2Y 5AS</p> <p>Email: enquiries@frc.org.uk</p>
---	--

<p>Accounts Commission for Scotland</p>	<p>You can use this expression if the department shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Accounts Commission for Scotland 110 George Street Edinburgh EH2 4LH</p> <p>Email: info@audit-scotland.gov.uk</p>
<p>Accredit Accreditation Accredited Accrediting</p>	<p>You can use this expression if the department shown below confirms by letter or email that it has no objection.</p> <p>Department for Business Innovation & Skills Accreditation Policy 1 Victoria Street London SW1H 0ET</p>
<p>Adjudicator</p>	<p>This expression normally implies the society has a quasi-judicial role similar to decisions made by a court of law, an administrative tribunal, an official ombudsman or government officials.</p> <p>You can use this expression if a government body or relevant body confirms (letter or email) that it has no objection.</p>
<p>Agency</p>	<p>This word will normally be allowed provided it does not imply a connection with a government department or body, or a local or any public authority unless the relevant body confirms (letter or email) it has no objection.</p>
<p>Alba Na h-Alba Albannach</p>	<p>This expression could imply a connection with a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms (letter or email) that it has no objection. This applies even if the word is a surname.</p> <p>If you wish to use this word at the start of your society name, you will need to demonstrate that the society is pre-eminent or very substantial in its field. You will also need to provide independent support from a representative body, trade association or other relevant body. The society's registered office or principal place of business must be in Scotland.</p> <p>If this word is used elsewhere in the name, the society's registered office or principal place of business must be in Scotland.</p>

	If you want to use the word because it is a surname you will normally be given approval if the proposed name includes forenames or initials.
Anzac	This word is protected under section 1 of the Anzac (Restriction on Trade Use of Word) Act 1916 and will not be allowed in a society or business name.
Architect	<p>With the exception of ‘naval architect’, ‘landscape architect’ or ‘golf-course architect’, the use of this word is controlled under section 20 of the Architects Registration Act 1997.</p> <p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Architects Registration Board 8 Weymouth Street London W1W 5BU Email: info@arb.org.uk</p>
Archwilydd Cyffredinol Cymru	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Auditor General for Wales 24 Cathedral Road Cardiff CF11 9LJ</p> <p>or</p> <p>Archwilydd Cyffredinol Cymru 24 Heol y Gadeirlan Caerdydd CF11 9LJ</p> <p>Email: info@wao.gov.uk</p>
Arts psychotherapist Art therapist Biomedical scientist Chiropodist Clinical psychologist Clinical scientist Counselling psychologist Diagnostic radiographer	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection:</p> <p>Health Professions Council Registration Department</p> <p>Health Professions Council Park House 184 Kennington Park Road London SE11 4BU. Email: registration@hpc-uk.org</p>

Dietician	
Dietitian	
Drama therapist	
Diagnostic radiographer	
Educational psychologist	
Forensic psychologist	
Health psychologist	
Hearing aid dispenser	
Music therapist	
Occupational psychologist	
Occupational therapist	
Operating department practitioner	
Orthoptist	
Orthotist	
Paramedic	
Physical therapist	
Physiotherapist	
Podiatrist	
Practitioner psychologist	
Prosthetist	
Radiographer	
Registered psychologist	
Social worker	
Speech and language therapist	
Speech therapist	
Sport and exercise psychologist	

Therapeutic radiographer	
Assembly	This expression could imply a connection with a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection
Association	To use this word in your proposed name the society should normally be run on a non-profit basis, with rules preventing profit distribution to members. We would generally expect an association to be run on the basis of one-member-one-vote. These requirements do not apply if the society is a regulated housing association, tenants or residents association.
Assurance Assurer	You can use this expression if we confirm that we have no objection: Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS Email: SensitiveBusinessN@fca.org.uk Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names
Attorney General	You cannot use this expression because it implies a connection with the office of the Attorney General, the chief legal advisor to the Crown.
Audit Commission for Local Authorities and the National Health Service in England and Wales	You can use this expression if the body shown below confirms by letter or email that it has no objection. Chief Executive's Office Audit Commission 1st Floor, Millbank Tower Millbank London SW1P 4HQ
Auditor General for Northern Ireland	You can use this expression if the body shown below confirms by letter or email that it has no objection. Comptroller and Auditor General for Northern Ireland Northern Ireland Audit Office 106 University Street

	<p>Belfast BT7 1EU</p> <p>Email: info@niauditoffice.gov.uk</p>
<p>Auditor General for Scotland.</p> <p>Audit Scotland</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Auditor General for Scotland 110 George Street Edinburgh EH2 4LH</p> <p>Email: info@audit-scotland.gov.uk</p>
<p>Auditor General Audit Office</p>	<p>You can use this expression if the relevant body confirms by letter or email that it has no objection.</p> <p>England:</p> <p>Comptroller & Auditor General Corporate Secretariat National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP</p> <p>Email: enquiries@nao.gsi.gov.uk</p> <p>Wales:</p> <p>Wales Audit Office 24 Cathedral Road Cardiff CF11 9LJ</p> <p>Email: info@wao.gov.uk</p> <p>Scotland:</p> <p>Audit Scotland 110 George Street Edinburgh EH2 4LH</p> <p>Email: info@audit-scotland.gov.uk</p>
<p>Auditor General for Wales</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Auditor General for Wales 24 Cathedral Road Cardiff CF11 9LJ info@wao.gov.uk</p> <p>or</p> <p>Archwilydd Cyffredinol Cymru 24 Heol y Gadeirlan</p>

	<p>Caerdydd CF11 9LJ</p> <p>Email: info@wao.gov.uk</p>
Bachelor of medicine	<p>This expression is a protected title controlled by section 49 of the Medical Act 1983. You can use this expression in your society name if your professional body confirms by letter or email that you are authorised to use the relevant title.</p>
Banc Bank Banking	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Benevolent	<p>To use this word, the society should normally be a community benefit society. The rules should include objects that reflect the specific purpose of the society and a non-profit distribution clause, which provides that any profits should be used to further the objects of the society and not paid to the members as dividends. The rules should also include a one member one vote clause.</p>
Border Force Border Agency	<p>As these expressions imply a connection with the Border Force or UK Visas and Immigration, (both part of the Home Office), you must provide an email or letter of non-objection from the Home Office: https://www.gov.uk/government/organisations/home-office</p> <p>Email: public.enquiries@homeoffice.gsi.gov.uk</p>
Breatainn Bhreatainn Breatannach Bhreatanach Bhreatanaich Breatannaich	<p>This expression could imply a connection with a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the name is a surname.</p> <p>If you wish to use this word at the start of your society name, you will need to demonstrate that the society is pre-eminent or very substantial in its field. You will also need to provide independent support from a</p>

	<p>representative body, trade association or other relevant body. If this word is not the first word in the name it will normally be allowed.</p> <p>If you want to use the word because it is a surname (and the name does not imply a connection with government), you will normally be given approval if the name includes forenames or initials.</p>
<p>Brenin Frenin Brenhines Frenhines</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p>
<p>Brenhinol Frenhinol Brenhiniaeth Frenhiniaeth</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park CF10 3NQ</p>
<p>Britain British</p> <p>Great Britain Great British</p>	<p>This expression could imply a connection with a government department or body, or a local or any public authority. You can use this word if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use it at the start of your society name or ‘of Britain’ or ‘of Great Britain’ anywhere in the name, you will need to demonstrate that the society is pre-eminent or very substantial in its field by providing independent support from a representative body, trade association or other relevant body. If ‘Britain’ or ‘British’ is not the first word in the name it will normally be allowed.</p> <p>If you want to use the word because it is a surname (and the name does not imply a connection with</p>

	government), you will usually be given approval if the society name includes forenames or initials.
Building Society	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Cabinet Office	<p>This expression implies a connection with the Her Majesty's Government. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Cabinet Office 70 Whitehall London SW1A 2AS</p>
Cadw	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Cadw Welsh Government Plas Carew Unit 5/7 Cefn Coed Parc Nantgarw Cardiff CF15 7QQ</p>
Care and Social Services Inspectorate Wales CISSW	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>National Office Welsh Government Rhydycar Business Park Merthyr Tydfil CF48 1UZ</p> <p>Email: cssiw@wales.gsi.gov.uk</p>
Chamber(s) of	<p>This expression could imply representative or government status. To support your application you will need to set out the reasons for using this expression and you will need to obtain the views by letter or email of an appropriate body.</p>

<p>Chamber(s) of: Commerce Business Industry Enterprise Training Trade</p>	<p>You can use ‘Chamber of Commerce, Business, Enterprise, Industry, Trade or Training’ if you have a letter or email of non-objection from one of the following bodies:</p> <p>England and Wales:</p> <p>Email: info@britishchambers.org.uk</p> <p>British Chambers of Commerce 65 Petty France London SW1H 9EU</p> <p>https://www.britishchambers.org.uk/</p> <p>Scotland</p> <p>Email: admin@scottishchambers.org.uk</p> <p>Scottish Chambers of Commerce 30 George Square Glasgow G2 1EQ</p> <p>https://www.scottishchambers.org.uk</p>
<p>Charter Chartered</p>	<p>You can use the expression ‘Chartered’ in your proposed name if you have confirmation by email or letter from the relevant professional body.</p> <p>If you are an existing body and wish to incorporate as a society using ‘Charter’ or ‘Chartered’ in the name please provide evidence of your royal charter status. Please note, if you have already registered as a society, you cannot use this word in another society name. This does not apply to expressions such as ‘Air Charter’, ‘Chartered Flights’ or ‘Chartered Travel’.</p>
<p>Chartered Accountant ICAEW</p>	<p>You can use the expression ‘Chartered Accountant’ (or the abbreviation ICAEW) if you obtain the consent of one of the bodies shown below. If you decide to resubmit your application you will need to provide a letter or email of non-objection from the relevant body.</p> <p>England and Wales:</p> <p>The Institute of Chartered Accountants in England and Wales Chartered Accountants’ Hall Moorgate Place London EC2R 6EA</p> <p>Email: contactus@icaew.com</p> <p>Scotland:</p> <p>The Institute of Chartered Accountants of Scotland Head Office CA House</p>

	<p>21 Haymarket Yards Edinburgh EH12 5BH</p> <p>Email: enquiries@icas.org.uk</p>
Chartered Secretary	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Institute of Chartered Secretaries and Administrators Saffron House 6-10 Kirby Street London EC1N 8TS</p> <p>Email: membersupport@icsaglobal.com</p>
Chartered Surveyor	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Royal Institution of Chartered Surveyors RICS Parliament Square London SW1P 3AD</p> <p>Email: contactrics@rics.org</p>
Charity Charitable	<p>In England and Wales you may use this word if you are a charity.</p> <p>In Scotland you may use this word if the body shown below confirms by letter or email that it has no objection:</p> <p>Office of the Scottish Charity Regulator 2nd Floor Quadrant House 9 Riverside Drive Dundee DD1 4NY</p> <p>Email: info@oscr.org.uk</p>
<p>Chemist</p> <p>Dispensing Chemist</p> <p>Dispensing Druggist.</p> <p>Druggist.</p> <p>Pharmaceutical</p> <p>Pharmaceutical chemist</p> <p>Pharmaceutical druggist</p> <p>Pharmaceutist</p>	<p>These expressions are protected titles and controlled by section 78 of the Medicines Act 1968. You can use any of these titles in your society name if the body shown below confirms by letter or email that you are authorised to use the relevant title.</p> <p>England, Wales and Scotland:</p> <p>The General Pharmaceutical Council 25 Canada Square London E14 5LQ</p>

Pharmacist Pharmacy	
Child Maintenance	These expressions imply a connection with services provided by the UK government. In England, Wales and Scotland services are provided by Child Maintenance Options, part of the Department for Work and Pensions and in Northern Ireland by Child Maintenance Choices.
Child Support	You can use this expression if the bodies above confirm by letter or email that it has no objection. Further information can be found at: England, Wales and Scotland www.cmoptions.org .
Chiropractor Chiropractic practitioner Chiropractioner Chiropractic physician	These expressions are controlled by the Chiropractors Act 1994. You can use this expression if the body shown below confirms by letter or email that it has no objection. The Chief Executive General Chiropractic Council 44 Wicklow Street London WC1X 9HL Email: enquiries@gcc-uk.org
Coimisean Choimisean Chomisein Coimisein	To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise. You will also need to obtain a letter or email of non-objection from a government body or other relevant organisation.
Comhairle Chomhairle Comhairlean Chomhairlean	To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise. You will also need to obtain a letter or email of non-objection from a government body or other relevant organisation.

<p>Comisiwn Gomisiwn Chomisiwn</p>	<p>To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise.</p> <p>You will also need to obtain a letter or email of non-objection from a government body or other relevant organisation.</p>
<p>Comisiwn Cynulliad Cenedlaethol Cymru</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The National Assembly for Wales Cardiff Bay Cardiff CF99 1NA</p> <p>or</p> <p>Clerc y Cynulliad Cynulliad Cenedlaethol Cymru Bae Caerdydd Caerdydd CF99 1NA</p>
<p>Commission</p>	<p>To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession.</p> <p>Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise. You will also need to obtain a letter or email of non-objection from a government body or other relevant organisation.</p>
<p>Commonhold Association</p>	<p>You cannot use this expression in your name.</p>
<p>Company</p>	<p>You cannot use this expression in your name.</p>
<p>Comptroller and Auditor General</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Corporate Secretariat National Audit Office Elizabeth 2 151 Buckingham Palace Road London SW1W 9SS</p> <p>Email: enquiries@nao.gsi.gov.uk</p>

<p>Comptroller and Auditor General for Northern Ireland</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Comptroller and Auditor General for Northern Ireland Northern Ireland Audit Office 106 University Street Belfast BT7 1EU</p> <p>Email: info@niauditoffice.gov.uk</p>
<p>Contact lens</p>	<p>You can use this expression if you are a registered medical practitioner, a registered optometrist or a registered dispensing optician authorised to carry out this activity. You will need to provide evidence of your registration with your application.</p> <p>Alternatively, if you are a manufacturer or supplier of contact lenses you will need to confirm this in writing with your application.</p>
<p>Co-operative</p>	<p>You can use this expression if you are a bona fide co-operative society. You cannot use this expression if you are a community benefit society (or a pre-commencement society meeting the condition for registration that your business is conducted for the benefit of the community) unless the use of the word describes the business of the society, rather than the society itself e.g. [Place name] Co-operative Development Centre Limited.</p>
<p>Council</p>	<p>To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise.</p> <p>You will also need to obtain a letter or email of non-objection from a government body, a local or any public authority or a relevant body.</p>
<p>Court(s)</p>	<p>This expression could imply a connection with the Her Majesty's Courts & Tribunals Service. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Ministry of Justice 102 Petty France London SW1H 9AJ United Kingdom</p> <p>Email: general.queries@justice.gsi.gov.uk</p>

Credit Union	<p>You can use this word if we confirm by letter or email that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Crime Squad Criminal Intelligence Service	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: communication@nca.x.gsi.gov.uk</p> <p>National Crime Agency Units 1-6 Citadel Place Tinworth Street London SE11 5EF</p>
Crown Estate	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Crown Estate: https://www.thecrownestate.co.uk/contact-us/</p>
Cymru Gymru Chymru Nghymru Cymreig Cymraeg Chymraeg Chymreig Gymraeg Gymreig Chymreig	<p>This expression could imply a connection with a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this word at the start of your society name you would need to demonstrate that the society is pre-eminent or very substantial in its field. You will also need to provide independent support from a representative body, trade association or other relevant body. The society's registered office or principal place of business must be in Wales.</p> <p>If you want to use the words because it is a surname, you will usually be given approval if the society name includes forenames or initials.</p>
Cyngor Chyngor Gyngor	<p>To use this word the society should normally be an independent advisory body; a deliberative assembly; or a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims,</p>

	<p>and that it has the support of whoever it claims it will govern, supervise, or look to it for expertise.</p> <p>You will also need to obtain a letter or email of non-objection from a government body, a local or any public authority or a relevant body.</p>
<p>Cenedlaethol Cymru</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The National Assembly for Wales Cardiff Bay Cardiff CF99 1NA</p> <p>or</p> <p>Clerc y Cynulliad Cynulliad Cenedlaethol Cymru Bae Caerdydd Caerdydd CF99 1NA</p>
<p>Dental Dentistry</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>General Dental Council Registration Development 37 Wimpole Street London W1G 8DQ</p> <p>Email: businessnames@gdc-uk.org</p>
<p>Dentist Dental Surgeon Dental-Practitioner</p>	<p>These words and expressions are controlled by the Dental Act 1984. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar General Dental Council 37 Wimpole Street London W1G 8DQ</p> <p>Email: businessnames@gdc-uk.org</p>
<p>Diùc Dhiùc Diùcan Dhiùcan Ban-diùc Bhan-dhiùc Bhan-dhiùcan Ban-diùcan</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>The Scottish Government Protocol Team Victoria Quay Edinburgh EH6 6QQ</p>

<p>Dispensing Optician</p>	<p>This expression is controlled by the Opticians Act 1989. You can use it if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar General Optical Council 41 Harley Street London W1G 8DJ</p> <p>Email: goc@optical.org</p>
<p>Dug Ddug Duges Dduges</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p>
<p>Duke Duchess</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>E-mail (faster & preferred): royalnames@cabinetoffice.gov.uk</p> <p>or write to:</p> <p>Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word: information about the society/organisation and its future plans; its present administration and activities; details of any Royal or Government associations; details of leading members and membership numbers; publications and if appropriate accounts for the last 3 years.</p> <p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information</p>

	<p>Wales:</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>The Scottish Government Protocol Team 3-D Bridge, Victoria Quay Edinburgh EH6 6QQ</p>
<p>Ei Fawrhydi Ei Mawrhydi</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p>
<p>Employment Medical Advisory Service EMAS</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England, Wales and Scotland:</p> <p>Health and Safety Executive (1G) Redgrave Court Merton Road Bootle L20 7HS</p>
<p>England English</p>	<p>This expression could imply a connection with a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this word at the start of your society name or ‘of England’ anywhere in the name, you will need to show that the society is pre-eminent or very substantial in its field. You will also need to provide independent support from a representative body, trade association or other relevant body. The society’s</p>

	<p>registered office or principal place of business must be in England.</p> <p>If the word is used elsewhere in the name, the society's registered office or principal place of business must be in England.</p> <p>If you want to use the word because it is a surname, you will usually be given approval if the society name includes forenames or initials.</p>
Enrolled Optician	<p>This expression is controlled by the Opticians Act 1989. You can use it if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar General Optical Council 41 Harley Street London W1G 8DJ</p> <p>Email: goc@optical.org</p>
Europe European European Union	<p>This expression could imply a connection with a government department or body, or any public authority, e.g. the European Union. You can use this word if the relevant body confirms by letter or email that it has no objection.</p> <p>If you wish to use it at the start of your society name or 'of Europe' or 'of the European Union' anywhere in the name, you will need to demonstrate that the society is pre-eminent or very substantial in its field by providing independent support from a representative body, trade association or other relevant body. If 'Europe' or 'European' is not the first word in the name it will normally be allowed.</p>
Financial Conduct Authority Financial Services Authority	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Financial Reporting Council	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p>

	<p>General Counsel & Company Secretary Financial Reporting Council 5th Floor, Aldwych House 71-91 Aldwych London WC2B 4HN</p> <p>Email: enquiries@frc.org.uk</p>
Financial Reporting Review Panel	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Financial Reporting Council 8th Floor 125 London Wall London EC2Y 5AS</p> <p>Email: enquiries@frc.org.uk</p>
Foundation	<p>To use this expression the society should normally be a community benefit society (or a pre-commencement society conducting its business for the benefit of the community). The rules should include objects that reflect the specific purpose of the society and a non-profit distribution clause, which provides that any profits should be used to further the objects of the society and not paid to the members as dividends.</p> <p>The society should have a pool of money or a regular source of finance available to promote the objects. You will need to confirm this when you submit your application.</p>
Friendly Society	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Fund	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p>

	<p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Further Education	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>Department for Business, Innovation & Skills Higher Education Governance 1 Victoria Street London SW1H 0ET</p> <p>Scotland:</p> <p>Scottish Government Higher Education Governance Team Atlantic Quay 150 Broomielaw Glasgow G2 8LG</p> <p>Wales:</p> <p>Welsh Government Cathays Park Cardiff CF10 3NQ</p>
General practitioner	<p>This expression is a protected title controlled by section 49 of the Medical Act 1983. You can use this expression in your society name if your professional body confirms (letter or email) that you are authorised to use the relevant title.</p>
Geneva Cross	<p>This expression is controlled by the Geneva Convention Act 1957 and will not be permitted for use in a society name.</p>
Government	<p>This expression could imply a connection with Her Majesty's Government. If there is a connection you will need to obtain a letter or email of non-objection from a government department or body.</p>
The Governor and Company of the Bank of England	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Governor and Company of the Bank of England Threadneedle Street London EC2R 8AH</p>
Gwasanaeth iechyd.	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p>

Wasanaeth iechyd	Welsh Government Head of Communications Health & Social Services Directorate General Head of Corporate Management South Wing, 4th Floor Cathays Park Cardiff CF10 3NQ
Health and Safety	This expression will be allowed provided your proposed name does not imply a connection with the Health and Safety Executive.
Health and Safety Executive	You can use this expression if the body shown below confirms by letter or email that it has no objection. England, Wales and Scotland: Health and Safety Executive Redgrave Court Merton Road Bootle L20 7HS
Health and Social Care	You can use this expression if the body shown below confirms by letter or email that it has no objection. Department of Health or relevant local authority.
Health centre Health service	You can use this expression if the body shown below confirms by letter or email that it has no objection. England: Department of Health Head of Brand Management Skipton House 80 London Road London SE1 6LH Scotland: Scottish Government Health Directorate Business Management and Support Floor 2N.11 St Andrew's House Regent Road Edinburgh EH1 3DG Email: ceu@scotland.gsi.gov.uk Wales: Welsh Government Head of Communications Health & Social Services Directorate General Head of Corporate Management

	<p>South Wing, 4th Floor Cathays Park Cardiff CF10 3NQ</p>
Health visitor	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Head of Office of the Chair and Chief Executive Nursing & Midwifery Council 23 Portland Place London W1B 1PZ</p> <p>Email: ceoffice@nmc-uk.org</p>
Higher Education	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>Department for Business, Innovation & Skills Higher Education Governance 1 Victoria Street London SW1H 0ET</p> <p>Scotland:</p> <p>Scottish Government Higher Education Governance Team Atlantic Quay 150 Broomielaw Glasgow G2 8LG</p> <p>Wales:</p> <p>Welsh Government Cathays Park Cardiff CF10 3NQ</p>
His Majesty Her Majesty	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>E-mail (faster and preferred): royalnames@cabinetoffice.gov.uk or write to:</p> <p>Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word: information about the society/organisation and its future plans; its present administration and activities; details of</p>

	<p>any Royal or Government associations; details of leading members and membership numbers; publications and if appropriate accounts for the last 3 years.</p> <p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information.</p> <p>Wales: Email: PAD@wales.gsi.gov.uk or write to: Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland: Email: protocol@scotland.gsi.gov.uk or write to: Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
Home Office	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Home Office Direct Communications Unit 2 Marsham Street London SW1P 4DF</p> <p>Email: public.enquiries@homeoffice.gsi.gov.uk</p>
House of Commons	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Corporate Officer of the House of Commons House of Commons Legal Services Office London SW1 0AA</p>
House of Lords	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p>

	Corporate Officer of the House of Lords Houses of Parliament London SW1A 0AA
HPSS HSC	You can use this expression if the body shown below confirms by letter or email that it has no objection. Office of the Permanent Secretary Department of Health, Social Services and Public Safety (DHSSPS) C.4.15, Castle Buildings Stormont Estate Belfast BT4 3SQ Email: ops@dhsspsni.gov.uk
Industrial and Provident Society	You can use this expression if you are a ‘pre-commencement society’ i.e. a society that was registered or deemed registered under the Industrial and Provident Societies Act 1965.
Inspectorate	This word could imply the society has a quasi-judicial role similar to decisions made by a court of law, administrative tribunal or government officials. You can use this expression if a government body or a relevant body, confirms by letter or email that it has no objection.
Intellectual Property IPO	This expression will normally be allowed provided the name does not imply a connection with the Intellectual Property Office (IPO). If there is a connection we may contact IPO to seek their view.
Institute Institution	Approval to use this expression is normally given only to fully functioning organisations that are established in the field but operate under a different name. The range of activities may vary but institutes are organisations that typically undertake research at the highest level or are professional bodies of the highest standing. The factors we will take into account include: <ul style="list-style-type: none"> • whether there is a good reason for establishing the institute • whether the activities are regulated or unregulated • whether the organisation already exists in some form • the nature of any work it provides for other organisations • the relevance and nature of support from existing organisations

	<ul style="list-style-type: none"> • whether the institute offers training leading to its own qualifications • whether the institute provides training or activities that support qualifications provided by other bodies such as universities or colleges • whether the institute’s activities are supported by or associated with activities undertaken by a government body, an independent organisation established in the field or a funding organisation <p>You will need to obtain the written views by letter or email of one or more relevant bodies.</p>
<p>Insurance Insurer</p>	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
<p>Judicial appointment</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Ministry of Justice Democracy, Constitution and Law Group 102 Petty France London SW1H 9A</p>
<p>King</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>E-mail (faster & preferred) royalnames@cabinetoffice.gov.uk</p> <p>or write to:</p> <p>Cabinet office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word; the</p>

	<p>history of the society/organisation and its future plans; details of any Royal or Government associations/leading members; details of leading members and membership numbers; details of any publications and if appropriate, accounts for the last 3 years.</p> <p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information.</p> <p>Wales: Email: PAD@wales.gsi.gov.uk or write to: Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland: Email: protocol@scotland.gsi.gov.uk or write to: Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
Law Commission	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Ministry of Justice Democracy, Constitution and Law Group 102 Petty France London SW1H 9AJ</p>
Licensing	<p>This expression is normally associated with an authority that carries out licensing functions under the Licensing Act 2003. This includes, for example, the licensing of the sale of alcohol, entertainment, films and clubs.</p> <p>Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern or supervise.</p> <p>You will also need to obtain a letter or email of non-objection a relevant body such as a local or any public authority.</p>

Licensing Authority Assets Recovery	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: communication@nca.x.gsi.gov.uk</p> <p>National Crime Agency Units 1-6 Citadel Place Tinworth Street London SE11 5EF</p>
Llywodraeth Lywodraeth	<p>You can use this expression in any part of the UK if the body shown below confirms (letter or email) that it has no objection.</p> <p>Welsh Government Head of Communications Cathays Park Cardiff CF10 3NQ</p>
Medical centre	<p>You can use this expression anywhere in the UK if the body shown below confirms by letter or email that it has no objection.</p> <p>Office of the Permanent Secretary Department of Health, Social Services and Public Safety (DHSSPS) C.4.15, Castle Buildings Stormont Estate Belfast BT4 3SQ</p> <p>Email: ops@dhsspsni.gov.uk</p>
Midwife Midwifery	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Head of Office of the Chair and Chief Executive Nursing & Midwifery Council 23 Portland Place London W1B 1PZ</p> <p>Email: ceoffice@nmc-uk.org</p>
Mòrachd Mhòrachd	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>The Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
Mutual	<p>For the purposes of this guidance, where a society wants to use this expression in its name to describe itself we</p>

	<p>would generally expect to see a society meeting this following indicators:</p> <ul style="list-style-type: none"> • those who participate in the society’s business are its members • only those who contribute to any surplus through participation in the society’s business receive any part of the surplus • on solvent dissolution any remaining surplus is distributed amongst the membership.
<p>National Accounts National Accounting NAO</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Comptroller & Auditor General Corporate Secretariat National Audit Office 157-197 Buckingham Palace Road London SW1W 9SP</p> <p>Email: enquiries@nao.gsi.gov.uk</p>
<p>National Assembly for Wales National Assembly for Wales Commission</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The National Assembly for Wales Cardiff Bay Cardiff CF99 1NA</p>
<p>NHS</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Department of Health Head of Brand Management Skipton House 80 London Road London SE1 6LH</p>
<p>Northern Ireland Northern Irish</p>	<p>This expression could imply a connection with the Northern Ireland Assembly or Executive, a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection.</p> <p>If you wish to use this expression at the start of your society name or ‘of Northern Ireland’ anywhere in the name, you will need to show that the society is pre-eminent or very substantial in its field by providing independent support from a representative body, trade association or other relevant body. The society’s registered office or principal place of business must be in Northern Ireland.</p>

	<p>If the word does not imply a connection with government and is not the first word in the name, it will normally be allowed. The society's registered office or principal place of business must be in Northern Ireland.</p>
<p>Northern Ireland Assembly</p> <p>Northern Ireland Assembly Commission</p> <p>Northern Ireland Executive</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Northern Ireland Assembly Parliament Buildings Belfast BT4 3XX</p>
<p>Northern Ireland Audit Office</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Northern Ireland Audit Office 106 University Street Belfast BT7 1EU Email: info@niauditoffice.gov.uk</p>
<p>Notary</p> <p>Notary public</p> <p>Notarial</p>	<p>You can use this expression in your proposed name if the body shown below confirms by letter or email that you are authorised to use this title.</p> <p>England & Wales:</p> <p>The Faculty Office 1 The Sanctuary London SW1P 3JT Email: faculty.office@thesanctary.com</p> <p>Scotland:</p> <p>The Law Society of Scotland 26 Drumsheugh Gardens Edinburgh EH3 7YR</p>
<p>Nuclear Installation</p>	<p>The Office for Nuclear regulation (ONR) is responsible for the licensing and regulation of all Nuclear installations in the UK. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: ONRenquiries@onr.gsi.gov.uk</p> <p>Office for Nuclear Regulation Building 4 Redgrave Court Merton Road Bootle L20 7HS</p>

<p>Nurse Nursing</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Head of Office of the Chair and Chief Executive Nursing & Midwifery Council 23 Portland Place London W1B 1PZ</p> <p>Email: ceoffice@nmc-uk.org</p>
<p>Olympic Olympian Olympiad Paralympic Paralympian Paralympiad</p>	<p>The expressions Olympic, Olympian, Olympiad, Paralympic, Paralympian and Paralympiad plus their plurals, translations and anything similar to them are protected by the Olympic Symbol etc. (Protection) Act 1995.</p> <p>To use any of these words and expressions you must obtain the written consent of:</p> <p>British Olympic Association 60 Charlotte Street London W1T 2NU</p> <p>Email: brandprotection@teamgb.com</p>
<p>Citius, Altius, Fortius, Faster, Higher, Stronger Spirit in Motion.</p>	<p>These expressions, their translations and anything similar to them are protected by the Olympic Symbol etc. (Protection) Act 1995. To use any of these expressions you must obtain the written consent of the British Olympic Association at the above address.</p>
<p>Office for Nuclear Regulation</p>	<p>You can use this expression or anything similar if the Office for Nuclear Regulation confirms by letter or email that it has no objection.</p> <p>Email: ONRenquiries@onr.gsi.gov.uk</p> <p>Office for Nuclear Regulation Building 4 Redgrave Court Merton Road Bootle L20 7HS</p>
<p>Oifis sgrùdaidh</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Audit Scotland 110 George Street Edinburgh EH2 4LH</p> <p>Email: info@audit-scotland.gov.uk</p>

<p>Oilthigh t-Oilthigh Oilthighean h-Oilthighean</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>The Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Ombudsman Ombwdsmon</p>	<p>This expression is normally associated with a statutory organisation appointed by government or an organisation authorised to investigate complaints, generally on behalf of individuals such as consumers or taxpayers, against private or public institutions. These organisations may request relevant information from parties in relation to a dispute.</p> <p>If you are not a statutory body you must:</p> <ul style="list-style-type: none"> • be certified as a provider of alternate dispute resolution by Trading Standards Institute (the body appointed by the Secretary of State for Business Innovation and Skills to carry out such certification), or other competent authority set out in the Consumer Protection, Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015; and • be a member of the Ombudsman Association at ombudsman level • membership; and have a proven track record in dispute resolution in respect of the activity that forms the basis of your application. We would normally expect that track record to be for at least 12 months. <p>To support the application to register a society name or to obtain approval to use a business name, you should provide:</p> <ul style="list-style-type: none"> • evidence of certification by the relevant Competent Authority; • a copy of an email or letter from the Ombudsman Association (or other evidence) confirming your ombudsman level membership; • evidence of providing dispute resolution for consumers in the sector you wish to operate in, including membership numbers, member names

	<p>and examples of case studies relating to dispute resolution.</p> <p>If you don't meet all of these criteria, you should register using a different name and, if applicable, reapply later when you can demonstrate that you do meet them.</p>
<p>Ophthalmic Optician Optician Optometrist</p>	<p>These words and expressions are controlled by the Opticians Act 1989. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar General Optical Council 41 Harley Street London W1G 8DJ</p> <p>Email: goc@optical.org</p>
<p>Ordnance Survey</p>	<p>You can use the expression in your proposed name if the body shown below confirms by letter or email that it has no objection.</p> <p>Ordnance Survey Explorer House Adanac Drive Southampton SO16 0AS</p> <p>Email: customerservices@ordnancesurvey.co.uk</p>
<p>Parlamaid Pharlamaid Parlamaidean Pharlamaidean</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Scottish Parliamentary Corporate Body The Scottish Parliament Edinburgh EH99 1SP</p>
<p>Parliament Parliamentarian Parliamentary</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Corporate Officer of the House of Lords and separately The Corporate Officer of the House of Commons Houses of Parliament London SW1A 0AA</p>
<p>Patent Patentee</p>	<p>You can use this expression if the Intellectual Property Office (IPO) confirms by letter or email that it has no objection.</p>

	<p>Legal Framework Team Copyright and Enforcement Directorate Intellectual Property Office Concept House Cardiff Road Newport NP10 8QQ</p> <p>Email: ipenforcement@ipo.gov.uk</p>
The Pensions Advisory Service	<p>You can use this expression if the department shown below confirms by letter or email that it has no objection.</p> <p>Department for Work and Pensions Protection and Stewardship, 7 floor, Caxton House 6-12 Tothill Street London SW1H 9NA</p>
Physician	<p>This word is a protected title controlled by section 49 of the Medical Act 1983. You can use it in your society name if your professional body confirms by letter or email that you are authorised to use the relevant title.</p> <p>Email: gmc@gmc-uk.org</p>
Police	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England & Wales:</p> <p>Home Office Policing Strategy Team Crime and Policing Group Fry Building 2 Marsham Street London SW1P 4DF</p> <p>Scotland:</p> <p>Scottish Government Police Division St Andrews House Regent Road Edinburgh EH1 3DG</p>
Polytechnic	<p>You can use this expression if the department shown below confirms by letter or email that it has no objection.</p> <p>Department for Business, Innovation & Skills Higher Education Governance Level 3, Kingsgate House</p>

	66-74 Victoria Street London SW1E 6SW
Post Office	You can use this expression if the body shown below confirms by letter or email that it has no objection. Post Office Limited 148 Old Street London EC1V 9HQ
Prifysgol Brifysgol Phrifysgol	You can use this expression if the body shown below confirms by letter or email that it has no objection. Email: PAD@wales.gsi.gov.uk or write to: Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ
Primary Education	You cannot use this expression if your proposed name implies a connection with education services provided by a local authority. If appropriate you should include a copy of a letter or email of non-objection from a relevant local authority.
Prince Princess	You can use this expression if the body shown below confirms by letter or email that it has no objection. England: E-mail (faster & preferred): royalnames@cabinetoffice.gov.uk or write to: Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word; information about the society/organisation and its future plans; its present administration and activities; details of any Royal or Government associations; details of leading members and membership numbers; details of any publications and if appropriate, accounts for the last 3 years.

	<p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information.</p> <p>Wales:</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Prionnsa Phrionnsa Prionnsaichean Phrionnsaichean</p> <p>Bana-phrionnsa Bhana-Phrionnsa Bana-Prionnsaichean Bhana-Phrionnsaichean</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Prudential Regulation Authority</p>	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p>

	<p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
<p>Prydain Phrydain Brydain</p> <p>Prydeinig Phrydeinig Brydeinig</p>	<p>This expression could imply a connection with a government department or body or a local or any public authority. You can use this word if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this word at the start of your name, or you wish to use the expression ‘o Prydain’ or ‘o Prydain Mawr’ (or mutated forms) anywhere in the name, you will need to demonstrate that the society is pre-eminent or very substantial in its field. To support your application you will also need to obtain the views (letter or email) of a representative body, trade association or other relevant body.</p> <p>If the expression does not imply a connection with government and is not the first word in the name, it will normally be allowed. If you want to use the word because it is a surname, you will usually be given approval if you include forenames or initials.</p>
<p>Queen</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>E-mail (preferred & faster): royalnames@cabinetoffice.gov.uk</p> <p>or write to:</p> <p>Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word; information about the society/organisation and its future plans; its present administration and activities; details of any Royal or Government associations; details of leading members and membership numbers; details of any publications and if appropriate, accounts for the last 3 years.</p> <p>If you wish to use the name to represent an existing public house, hotel or similar establishment please</p>

	<p>provide evidence including the length of time it has existed; if the name represents the name of a street please provide evidence of location; if the name is a surname please include this information in your email (or letter); if appropriate, provide details of long usage and any other relevant information.</p> <p>Wales:</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Reassurance Reassurer Reinsurance Reinsurer</p>	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
<p>Red Crescent Red Cross Red Lion and Sun</p>	<p>These expressions are protected controlled by the Geneva Conventions Act 1957 and will not be permitted for use in a society or business name.</p>
<p>Regional Health and Social Care Board Regional Agency for Public Health</p>	<p>You can use this expression if the department shown below confirms by letter or email that it has no objection.</p> <p>Office of the Permanent Secretary Department of Health, Social Services and Public Safety</p>

and Social Well-being	<p>Room C4.15, Castle Buildings Stormont Estate, Belfast BT4 3SQ</p> <p>Email: SensitiveBusinessN@fca.org.uko</p>
Registered Optician	<p>This expression is controlled by the Opticians Act 1989. You can use it if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar General Optical Council 41 Harley Street London W1G 8DJ</p> <p>Email: goc@optical.org</p>
Registrar	<p>This expression could imply that the society has a regulatory role such as a governing, supervisory or representative body of an activity, trade, business or profession. If this applies then evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern or supervise.</p> <p>You will also need to provide a letter or email of non-objection from a government body, a local or any public authority or a relevant body.</p>
Regulator	<p>This expression could imply that the society has a regulatory role such as a governing, supervisory or representative body of an activity, trade, business or profession.</p> <p>Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern or supervise. You will also need to obtain confirmation by letter or email from a government body, a local or any public authority or a relevant body, that it has no objection.</p>
Riaghaltas Riaghaltais Riaghaltasan	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Scottish Parliamentary Corporate Body The Scottish Parliament Edinburgh EH99 1SP</p>
Rìgh Banrigh Bhanrigh	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk or write to:</p>

<p>Bhanrighrean Banrighrean</p>	<p>The Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Rìoghail Rìoghalachd</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>The Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Royal Royalty</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>E-mail (faster & preferred): royalnames@cabinetoffice.gov.uk</p> <p>or write to:</p> <p>Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word information about the society/organisation and its future plans; its present administration and activities; details of any Royal or Government associations; details of leading members and membership numbers; details of any publications and if appropriate, accounts for the last 3 years.</p> <p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information.</p> <p>Wales:</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p>

	<p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
<p>Scotland Scottish</p>	<p>This expression could imply a connection with the Scottish Government, a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this word at the start of your society name or ‘of Scotland’ anywhere in the name, you will need to show that the society is pre-eminent or very substantial in its field. You will also need to provide independent support from a representative body, trade association or other relevant body. The society’s registered office or principal place of business should be in Scotland.</p> <p>If the word is used elsewhere in the name, the society’s registered office or principal place of business should be in Scotland.</p> <p>If you want to use the word because it is a surname, you will usually be given approval if the society name includes forenames or initials.</p>
<p>Scottish Law Commission</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Chief Executive Scottish Law Commission 140 Causewayside Edinburgh EH9 1PR</p>
<p>The Scottish Parliament The Scottish</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Secretary Scottish Parliamentary Corporate Body</p>

Parliamentary Corporate Body	The Scottish Parliament Edinburgh EH99 1SP
SCE	You can use this expression in this form (upper or lower case) at the start or end of your proposed name if you are a European Co-operative Society.
Scrivener Scrivener notary	You can use this expression if the body shown below confirms by letter or email that you are authorised to use this title. The Faculty Office 1 The Sanctuary London SW1P 3JT Email: faculty.office@thesanctary.com
SE	You cannot use this expression in this form (upper or lower case) at the start or end of your proposed name because it suggests you are a ‘Societas Europaea’ (European Company).
Secondary education	You cannot use this expression if your proposed name implies a connection with education services provided by a local authority. If appropriate your application should include a copy of a letter or email of non-objection from a relevant local authority.
Select Committee	This expression normally implies a connection with the House of Commons. You can use this expression if the body shown below confirms by letter or email that it has no objection. Corporate Officer of the House of Commons Houses of Commons Legal Services Office London SW1A 0AA
Senedd	You can use this expression if the body shown below confirms by letter or email that it has no objection. The National Assembly for Wales Cardiff Bay Cardiff CF99 1NA
Serious Organised Crime SOCA	You can use this expression if the body shown below confirms by letter or email that it has no objection. Email: communication@nca.x.gsi.gov.uk National Crime Agency Units 1-6 Citadel Place Tinworth Street London SE11 5EF

Sheffield	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Company of Cutlers C/O Hulse & Co 15 Jessops Riverside Brightside Lane Sheffield S9 2RX</p>
Siambur	<p>This word could imply representative status. To support your application you will need to set out the reasons for using this word and in most cases you will need to obtain the views by letter or email of an appropriate body.</p>
<p>Siambur o: Fasnach Fusnes Ddiwydiant Fenter Hyfforddiant Masnach</p>	<p>You can use ‘Chamber of Commerce, Business, Enterprise, Industry, Trade or Training’ if you have a letter or email of non-objection from one of the following bodies:</p> <p>England and Wales: Email: info@britishchambers.org.uk British Chambers of Commerce 65 Petty France London SW1H 9EU https://www.britishchambers.org.uk/</p> <p>Scotland Email: admin@scottishchambers.org.uk Scottish Chambers of Commerce 30 George Square Glasgow G2 1EQ https://www.scottishchambers.org.uk/</p>
Social Service	<p>This expression implies a connection with a local authority Social Services department with access rights to sensitive personal information. You will be able to use this word if the appropriate local authority or other relevant body confirms by letter or email that it has no objection.</p>
Solicitor	<p>Different requirements apply for societies registered in England and Wales, or Scotland.</p> <p>England and Wales:</p>

	<p>If you are an existing firm of solicitors (i.e. a sole proprietor or partnership) you will already be regulated by the Solicitors Regulatory Authority (SRA).</p> <p>Your application to form a society must include a copy of your practice letterhead which includes the statement ‘regulated by the Solicitors Regulatory Authority’.</p> <p>If you are a new firm your application must include a letter or email from the SRA confirming that it has no objection.</p> <p>Email (preferred): operations@sra.org.uk</p> <p>The Solicitors Regulatory Authority Operations The Cube 199 Wharfside Street Birmingham B1 1RN</p> <p>Scotland:</p> <p>You cannot use this word unless the body shown below confirms by letter or email it has no objection.</p> <p>The Law Society of Scotland 26 Drumsheugh Gardens Edinburgh EH3 7YR</p> <p>http://www.lawscot.org.uk/abiyt-us/contact-usw</p>
Special School	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>England:</p> <p>Department for Education 2 St Paul’s Place 125 Norfolk Street Sheffield S1 2FJ</p> <p>Scotland:</p> <p>Scottish Government Edinburgh EH99 1SP</p> <p>Wales:</p> <p>Welsh Government Cathays Park Cardiff CF10 3NQ</p>

Standards	<p>This expression could imply that the society has a regulatory role such as a governing, supervisory or representative body of an activity, trade, business or profession. Evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern or supervise.</p> <p>You will also need to obtain a letter or email of non-objection from a government body, a local or any public authority or a relevant body.</p>
Stock exchange	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
Surgeon	<p>This word is a protected title controlled by section 49 of the Medical Act 1983. You can use this word in your society name if your professional body confirms by letter or email that you are authorised to use the relevant title.</p> <p>Email: gmc@gmc-uk.org</p>
Swyddfa Archwilio Cymru	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Auditor General for Wales Cathedral Road Cardiff CF11 9LJ</p> <p>in Welsh:</p> <p>Archwilydd Cyffredinol Cymru 24 Heol y Gadeirlan Caerdydd CF11 9LJ</p> <p>Email: info@wao.gov.uk</p>
Teyrnas Gyfunol Teyrnas Unedig	<p>You may use this expression provided your proposed name does not imply a connection with a devolved administration, government department or a local or public authority.</p>

Trade Mark	You can use this expression in your proposed name provided it does not imply a connection with the Intellectual Property Office (IPO) which is part of the Department for Business, Innovation & Skills. If there is a connection we may contact IPO to seek their view.
Trade Union	Section 10 (3) of the Trade Union and Labour Relations (Consolidation) Act 1992, prohibits a trade union from being registered as a society under the Co-operative and Community Benefit Societies Act 2014.
Tribunal	<p>This word could imply that the society has a regulatory role such as a governing, supervisory or representative body of an activity, trade, business or profession. If this applies, evidence must be produced to show that the society will be what it claims, and that it has the support of whoever it claims it will govern or supervise.</p> <p>You will also need to provide a letter or email of non-objection from a government body, a local or any public authority or a relevant body.</p>
Trust	Approval to use the word trust depends on the reasons you wish to use it in your proposed name. We will consider each application on its merits but to use this word your organisation should normally be a community benefit society (or a pre-commencement society conducting its business for the benefit of the community) and include a non-profit distribution clause in its rules and be one of the following trusts: Artistic; Community Land; Educational; Enterprise; or Supporters. The requirements for the approval are set out below.
	<p>Artistic Trust</p> <p>To use this expression in your proposed name (or if the society is this type of trust but does not include ‘Artistic’ in the name) the society should normally be a community benefit society (or pre-commencement society conducting its business for the benefit of the community) and include a non-profit distribution clause in the rules.</p> <p>The society’s objects should normally include activities such as advancement and development of the arts, culture, heritage or science.</p>
	<p>Community Land Trust</p> <p>To use this expression in your proposed name the society should normally be a community benefit society</p>

	(or a pre-commencement society conducting its business for the benefit of the community) that meets the definition set out in s79 Housing and Regeneration Act 2008.
	<p>Educational Trust</p> <p>To use this expression in your proposed name (or if the society is this type of trust but does not include ‘Educational’ in the name) the society should normally be a community benefit society (or a pre-commencement society conducting its business for the benefit of the community) and include a non-profit distribution clause in its rules.</p> <p>The society’s objects should normally include activities that relate to the advancement and promotion of education, art, culture, educational or the community. The rules should also reflect the purpose of the trust.</p>
	<p>Enterprise Trust</p> <p>To use this expression in your proposed name (or if the society is this type of trust but does not include ‘Enterprise’ in the name) the society should normally be a community benefit society (or a pre-commencement society conducting its business for the benefit of the community) and include a non-profit distribution clause in its rules. Society’s objects should normally include activities that are intended to support the community, for example, by providing advice on business start-up, opportunities for training and development, or removing barriers to further education etc.</p> <p>To support your application you will need to obtain the views by letter or email of a relevant body such as a local Chamber of Commerce, a local authority, a bank or any other relevant organisation.</p>
	<p>Supporters Trust</p> <p>To use this expression in your name the society will usually be a community benefit society (or pre-commencement society conducting its business for the benefit of the community) with a non-profit distribution clause in its rules, controlled on the basis of one-member-one-vote. The society’s objects would normally include being the democratic and representative voice of the supporters of a particular sports club, achieving supporter and community influence in running and owning the club, and promoting community engagement of the communities served by the society and the club.</p>

<p>Tywysog Thywysog Tywysoges Thywysoges Dywysog Dywysoges</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications The Welsh Government Cathays Park Cardiff CF10 3NQ</p>
<p>Underwrite Underwriting</p>	<p>You can use this expression if we confirm that we have no objection.</p> <p>Sensitive Business Names Team Financial Conduct Authority 25 The North Colonnade Canary Wharf London E14 5HS</p> <p>Email: SensitiveBusinessN@fca.org.uk</p> <p>Application form available from: https://www.fca.org.uk/firms/firm-details/sensitive-business-names</p>
<p>United Kingdom</p>	<p>This expression could imply a connection with the UK Government, a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this expression at the start of your society name or ‘of the United Kingdom’ anywhere in the name, you will need to show that the society is pre-eminent or very substantial in its field.</p> <p>To support your application you will also need to obtain the views by letter or email of a representative body, trade association or other relevant body. The society’s registered office or principal place of business should be in the United Kingdom.</p> <p>If the expression is used elsewhere in the name, the society’s registered office or principal place of business must be in the United Kingdom.</p>
<p>University</p>	<p>You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>Use where the registered office of the proposed society will be in:</p>

	<p>England and Wales:</p> <p>Department for Business, Innovation & Skills Higher Education Governance 1 Victoria Street London SW1H 0ET</p> <p>Wales:</p> <p>Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Scottish Government Higher Education Governance Team Atlantic Quay 150 Broomielaw Glasgow G2 8LG</p>
<p>Vet</p> <p>Veterinary</p> <p>Veterinary Surgeon</p> <p>Veterinary Practitioner</p>	<p>These words and expressions are controlled by the Veterinary Surgeons Act 1966. You can use this expression if the body shown below confirms by letter or email that it has no objection.</p> <p>The Registrar Royal College of Veterinary Surgeons 62-64 Horseferry Rd London SW1P 2AF</p> <p>Email: info@rcvs.org.uk</p>
<p>Wales</p> <p>Welsh</p>	<p>This expression could imply a connection with the Welsh Government, a government department or body, or a local or any public authority. You can use this expression if the relevant body confirms by letter or email that it has no objection. This applies even if the word is your surname.</p> <p>If you wish to use this expression at the start of your society name or ‘of Wales’ anywhere in the name, you will need to show that the society is pre-eminent or very substantial in its field.</p> <p>To support your application you will also need to obtain the views (letter or email) of a representative body, trade association or other relevant body. The society’s registered office or principal place of business should be in Wales.</p>

	<p>If the expression is used elsewhere in the name, the society's registered office or principal place of business must be in Wales.</p> <p>If you want to use the expression because it is a surname, it will normally be allowed if you include forenames or initials.</p>
Wales Audit Office	<p>You can use this word if the body shown below confirms by letter or email that it has no objection.</p> <p>Email: info@wao.gov.uk</p> <p>Wales Audit Office 24 Cathedral Road Cardiff CF11 9LJ</p>
Welsh Government Welsh Assembly Government	<p>This expression suggests the society is a part of the Welsh Government. You can use this expression if the body shown below confirms by letter or email it has no objection.</p> <p>Welsh Government Cathays Park Cardiff CF10 3NQ</p>
Windsor	<p>You can use this expression if the body shown below confirms by letter or email it has no objection.</p> <p>England:</p> <p>E-mail (faster & preferred): royalnames@cabinetoffice.gov.uk</p> <p>or write to:</p> <p>Cabinet Office Constitutional Policy Team 4th Floor (South 1) 1 Horse Guards Road London SW1A 2HQ</p> <p>To support and speed up your application please email the Cabinet Office with as much information as possible such as the reason(s) you wish to use this word; information about the society/organisation and its future plans; its present administration and activities; details of any Royal or Government associations; details of leading members and membership numbers; details of any publications and if appropriate, accounts for the last 3 years.</p>

	<p>If you wish to use the name to represent an existing public house, hotel or similar establishment please provide evidence including the length of time it has existed; if the name represents a street name, evidence of location; if the name is a surname; if it has long usage and any other relevant information.</p> <p>Wales:</p> <p>Email: PAD@wales.gsi.gov.uk</p> <p>or write to:</p> <p>Brand Manager Strategic and Corporate Communications Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>Scotland:</p> <p>Email: protocol@scotland.gsi.gov.uk</p> <p>or write to:</p> <p>Scottish Government Protocol Team 3-D Bridge Victoria Quay Edinburgh EH6 6QQ</p>
--	--

Appendix 5

Changes to MIFIDPRU to provide clarification, and to SYSC, COND, MIFIDPRU, IPRU-INV and SUP to remedy errors

**INVESTMENT FIRMS PRUDENTIAL REGIME AND INTERIM PRUDENTIAL
SOURCEBOOK FOR INVESTMENT BUSINESSES (IPRU-INV) (AMENDMENT)
INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 138D (Actions for damages);
 - (4) section 139A (Power of the FCA to give guidance);
 - (5) section 143D (Duty to make rules applying to parent undertakings); and
 - (6) section 143E (Powers to make rules applying to parent undertakings).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. Annex E and Part 2 of Annex F of this instrument come into force on [*Editor’s note*: insert date one month after the application date specified in paragraph D].
- D. Part 1 of Annex F and all the other Annexes of this instrument come into force on [*date*].

Amendments to the FCA Handbook

- E. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU-INV)	Annex E
Supervision manual (SUP)	Annex F

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Investment Firms Prudential Regime and Interim Prudential sourcebook for Investment Businesses (IPRU-INV) (Amendment) Instrument 2023.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

consolidated situation ...

- (2) (other than in (1)) the situation that results from applying the requirements in *MIFIDPRU 3*, *MIFIDPRU 4*, *MIFIDPRU 5*, *MIFIDPRU 8* ~~6~~ and *MIFIDPRU 9* in accordance with *MIFIDPRU 2.5* to a *UK parent entity* as if that *undertaking*, together with all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* that are its *subsidiaries* or *connected undertakings* or *connected undertakings* of its *subsidiaries*, formed a single *MIFIDPRU investment firm*. For the purpose of this definition, the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* also apply to *undertakings* established in other countries that, if established in the *UK*, would satisfy the definitions of those terms.

non-core liquid asset has the meaning in *MIFIDPRU 7.7.8R*, which is any of the following, except to the extent excluded by *MIFIDPRU 7.7.8R(2)*:

- (1) short-term deposits at a *credit institution* that does not have a *Part 4A permission* in the *UK* to *accept deposits*;
- (1A) short-term non-sterling deposits at a *UK credit institution*;

...

own funds wind-down trigger (Except in the circumstances explained in *MIFIDPRU TP 2.25AR*) an amount of *own funds* that is equal to:

...

qualifying holding

- (1) ~~{deleted}~~ (in *MIFIDPRU*) a direct or indirect holding in an *undertaking* which:
- (a) represents 10% or more of the capital of that *undertaking*;
- (b) represents 10% or more of the voting rights of that *undertaking*; or
- (c) makes it possible to exercise a significant influence over the management of that *undertaking*.

...

Annex B

Senior Management Arrangements, Systems and Controls (SYSC)

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

19G MIFIDPRU Remuneration Code

...

19G.6 Variable remuneration

...

Assessment of performance

19G.6.4 R *A non-SNI MIFIDPRU investment firm* must ensure that where variable remuneration is performance-related:

(1) the total amount of the variable remuneration is based on a combination of the assessment of the performance of:

(a) the ~~individual~~ material risk taker;

...

...

Performance adjustment

19G.6.30 R *A non-SNI MIFIDPRU investment firm* must ensure that any variable remuneration, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified on the basis of the performance of the *firm*, the *business unit* and the ~~individual~~ material risk taker concerned.

...

24 Senior managers and certification regime: Allocation of prescribed responsibilities

...

24.2 Allocation of FCA-prescribed senior management responsibilities: Main allocation rules

...

What the FCA-prescribed senior management responsibilities are

...

24.2.6 R Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Reference letter
...		
<p>(19) Responsibility for:</p> <p>(a) managing the <i>firm's</i> internal stress tests; and</p> <p>(b) ensuring the accuracy and timeliness of information provided to the <i>FCA</i> and other <i>regulatory bodies</i> for the purposes of stress testing.</p>	<p>Stress testing refers to stress testing under <i>SYSC 20</i> (Reverse stress testing) <u><i>MIFIDPRU 7.5</i></u> <u>(ICARA process: capital and liquidity planning, stress testing, wind-down planning and recovery planning)</u>.</p> <p>This responsibility only applies to a <i>firm</i> to which <i>SYSC 20</i> <u><i>MIFIDPRU 7.5</i></u> applies.</p>	(s)
...		

Annex C

Amendments to the Threshold Conditions (COND)

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

2 **The threshold conditions**

...

2.7 **Business model**

...

Paragraph 3E to Schedule 6 of the Act

...

- 2.7.10 G *Firms* should consider scenarios which may negatively impact on the *firm's* business model with a view to ensuring the sustainability of the *firm* and, further, to consider the vulnerability of the business model to specific events and the risks and consequences that might arise. Where appropriate, this might include reverse stress-testing (~~see SYSC 20 'Reverse stress testing'~~). A *firm* should put in place a credible plan to minimise the risks that it identifies from, or in relation to, its business model and a contingency plan for dealing with risks that have crystallised.

...

Annex D

Amendments to the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

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

1 Application

...

1.2 SNI MIFIDPRU investment firms

...

Additional provisions relating to the calculation of conditions to be classified as an SNI MIFIDPRU investment firm

...

1.2.10 R (1) ...

(2) The relevant conditions are:

- (a) where a MIFIDPRU investment firm has metrics for AUM, average AUM under MIFIDPRU 1.2.1R(1);
- (b) where a MIFIDPRU investment firm has metrics for COH, average COH under MIFIDPRU 1.2.1R(2);

...

1.2.11 G (1) ...

(1A) (a) A MIFIDPRU investment firm that does not have metrics for AUM or COH, does not need to take into account the AUM or COH of other members of its group when calculating average AUM under MIFIDPRU 1.2.1R(1) or average COH under MIFIDPRU 1.2.1R(2). This is illustrated by the example in (b).

(b) Firm A (a MIFIDPRU investment firm providing services for the execution of orders on behalf of clients, with no AUM itself) is part of the same group as Firm B and Firm C (both MIFIDPRU investment firms providing portfolio management services, each with AUM of £0.8 billion). As Firm A does not have any AUM, it does not need to take into account the average AUM of Firms B and C when considering the average AUM threshold in MIFIDPRU 1.2.1R(1), and Firm A is therefore not a non-SNI investment firm under this particular metric. Firms B and C would both be non-SNI MIFIDPRU

investment firms because they do have metrics for AUM and because their combined average AUM is more than the threshold in MIFIDPRU 1.2.1R(1).

...

2 Level of application of requirements

...

2.5 Prudential consolidation

...

Prudential consolidation in practice: own funds requirement

...

Consolidated fixed overheads requirement

2.5.25 R (1) ...

(2) A UK parent entity must:

...

(b) if the relevant figures under (a) are not available, calculate the consolidated fixed overheads as the sum of the following:

...

(iii) the relevant proportion of the individual fixed overheads of each *relevant financial undertaking* that is subject to proportional consolidation on a *consolidated basis*.

(c) Where the relevant figures under (2)(a) are available, but the consolidated annual financial statements include undertakings that are not members of the investment firm group, a UK parent entity may use the approach in (2)(b) to calculate its fixed overheads requirement on a consolidated basis.

...

...

Consolidated K-AUM, K-COH and K-DTF requirements

2.5.29 R ...

(4) Where the consolidated AUM, COH or DTF under (2) includes amounts attributable to transactions or arrangements solely between two or more entities included within the *consolidated situation*, those

amounts are excluded when calculating the consolidated *AUM*, *COH* or *DTF*.

- 2.5.29A **G** (1) As the exclusion in *MIFIDPRU 2.5.29R(4)* applies only to transactions or arrangements solely between two or more entities included within the *consolidated situation* of an *investment firm group*, it does not apply to transactions or arrangements involving counterparties or *clients* outside that *consolidated situation*. This is illustrated by the example in (2).
- (2) Firm A and Firm B are part of the *consolidated situation* of an *investment firm group*. Firm A delegates management of assets to Firm B. If the assets delegated by Firm A are beneficially owned by a *client* outside the *consolidated situation*, such assets would not benefit from the exclusion under *MIFIDPRU 2.5.29R(4)* for the purposes of the *UK parent entity*'s calculation of consolidated *AUM*.

...

2.6 The group capital test

...

Group capital test: reporting requirements

...

- 2.6.11 **R** An *investment firm group* may designate ~~one parent undertaking in the UK~~:
- (1) a *parent undertaking* in the *UK* that is part of the *investment firm group*; or
- (2) a *MIFIDPRU investment firm* that is part of the *investment firm group* and that is not a *parent undertaking*;

to submit reports to the *FCA* under *MIFIDPRU 2.6.10R* on behalf of the *GCT parent undertakings* in the *investment firm group*.

...

2 Annex 8R Notification under *MIFIDPRU 2.4.20R* relating to membership of an investment firm group and/or a financial conglomerate

[*Editor's note*: the form can be found at this address:

[https://www.fca.org.uk/publication/forms/\[xxx\]](https://www.fca.org.uk/publication/forms/[xxx])]

Notification under MIFIDPRU 2.4.20R of membership of an investment firm group and/or a financial conglomerate

Under MIFIDPRU 2.4.20R(3), a firm (X) is not required to submit this form if another member of the investment firm group or financial conglomerate (Y) has notified the FCA of any relevant changes and the information provided by Y includes information about X and all other information required under MIFIDPRU 2.4.20R.

...

2. Please confirm which of the following apply or applies:

...

If you selected:

...

- option (c), please complete questions 4A, 7BA and 8

...

- option (f), please complete questions 14 to ~~16~~ 15

...

3 Own funds

...

3.3 Common equity tier 1 capital

...

Common equity tier 1 instruments of partnerships

- 3.3.16 R A *partner's* account in relation to a *firm* that is a *partnership* satisfies the conditions in article 28(1)(e) (perpetual) and article 28(1)(f) (reduction or repayment) of the *UK CRR* if:

...

- (2) under the terms of the partnership agreement an amount representing capital may be withdrawn from the account by a partner (“A”), otherwise than with prior *FCA* consent pursuant to MIFIDPRU 3.6.2R or deemed consent under MIFIDPRU 3.6.3R, only if:

...

...

Common equity tier 1 instruments of limited liability partnerships

3.3.17 R A member's account in relation to a *firm* that is a *limited liability partnership* will meet the conditions in article 28(1)(e) (perpetual) and article 28(1)(f) (reduction or repayment) of the *UK CRR* if:

...

(2) under the terms of the *limited liability partnership* agreement, an amount representing capital may be withdrawn from the account by a *partner* ("B"), otherwise than with prior FCA consent pursuant to MIFIDPRU 3.6.2R or deemed consent under MIFIDPRU 3.6.3R, only if:

...

...

3.6 General requirements for own funds instruments

...

Reduction of own funds instruments

3.6.2 R To apply for permission for the purposes of articles 77 and 78 of the *UK CRR* to do any of the following, a *firm* must save in the circumstances set out in MIFIDPRU 3.6.3R, complete the form in *MIFIDPRU 3 Annex 4R* and submit it to the *FCA* using the *online notification and application system*:

...

...

4 Own funds requirements

...

4.7 K-AUM requirement

...

Investment advice of an ongoing nature

...

4.7.21 R (1) Subject to (2), for the purposes of the calculation of *average AUM* under *MIFIDPRU 4.7.5R*, the value of *AUM* for recurring *investment advice* given in relation to a *client* in any given *month* is the sum of:

...

- (b) the *AUM* arising from the ~~recurring~~ recurring investment advice given by the *firm* to that *client* during the immediately preceding 11 *months*.

...

...

4.10 K-COH requirement

...

Measuring the value of orders for COH

...

4.10.21 G ...

- (6) The effect of *MIFIDPRU* 4.10.19R(2) is that when measuring the value of *COH* at the end of each *business day*, a *firm* must apply the relevant conversion rate on that date to any amounts in foreign currencies forming part of the *COH* attributable to that *business day*. The *COH* for each preceding *business day* should continue to be measured by reference to the ~~conversion~~ conversion rate that was applicable on that preceding day.

...

...

4.14 K-TCD requirement

...

Potential future exposure: derivative netting ratio approach

...

- 4.14.18 R A *firm* must calculate a net potential future exposure for each *netting set* using the following formula:

$$PFE_{net} = \frac{RC_{net}}{RC_{gross}} \cdot PFE_{gross}$$

where:

...

- (3) RCnet = the sum of the replacement cost (as determined in accordance with *MIFIDPRU* 4.14.9R) of all transactions included in the *netting set*, unless that sum is a negative amount, in which case RCnet is zero; ~~and~~
- (4) RCgross = the sum of the replacement cost (as determined in accordance with *MIFIDPRU* 4.14.9R) of all transactions included in the *netting set* that have a positive *CMV*; and
- (5) where the value of RCgross is zero, then the result of RCnet divided by RCgross is deemed to be:
- (a) a value of '1' when a *netting set* consists of a single derivative contract; or
- (b) a value of zero when a *netting set* consists of more than one derivative contract.

4.14.18A G For the purposes of *MIFIDPRU* 4.14.18R(5), a *firm* should:

- (1) still consider any residual risk of potential harm that may arise in connection with using the derivative netting ratio approach as part of the *ICARA process* under *MIFIDPRU* 7; and
- (2) be consistent in its approach to allocating transactions to *netting sets*.

...

6 Basic liquid assets requirement

...

6.3 Core liquid assets

...

6.3.4 R (1) If a *firm's relevant expenditure* or guarantees are incurred in a currency other than pound sterling, the *firm* may also treat the following assets as *core liquid assets*, when denominated in that currency:

...

- (2) ~~The assets in (1) must not account for more than the proportion of fixed overheads or guarantees that the *firm* incurs in that currency.~~
The proportion of *core liquid assets* denominated in any currency other than pound sterling that a *firm* can rely upon to meet its *basic liquid asset requirement*, must be no greater than:

- (a) for the requirement in MIFIDPRU 6.2.1R(1), the proportion of *relevant expenditure* incurred in that currency; and
- (b) for the requirement in MIFIDPRU 6.2.1R(2), the proportion of *guarantees* provided in that currency.

...

6.3.4A G The effect of MIFIDPRU 6.3.4R(2) is illustrated by the following example:

- (1) A firm has total fixed overheads with a value of £1,200,000, as follows:
 - (a) 20%, equivalent to £240,000, are incurred in USD; and
 - (b) 5%, equivalent to £60,000, are incurred in Swiss francs (CHF).
- (2) In addition, the firm has provided total guarantees to clients with a value of £10,000,000, of which 50%, equivalent to £5,000,000, are incurred in USD.
- (3) The firm's fixed overheads requirement (one quarter of its total fixed overheads calculated in accordance with MIFIDPRU 4.5) is £300,000.
- (4) Under MIFIDPRU 6.2.1R, the firm's basic liquid assets requirement amounts to £260,000, as follows:
 - (a) £100,000 are in respect of the requirement in MIFIDPRU 6.2.1R(1) (one third of the amount of its fixed overheads requirement); and
 - (b) £160,000 are in respect of the requirement in MIFIDPRU 6.2.1R(2) (1.6% of the total amount of any guarantees provided to clients).
- (5) To meet its requirement in MIFIDPRU 6.2.1R, a firm may choose to use liquid assets listed in MIFIDPRU 6.3.4R denominated in a currency other than pound sterling, up to a maximum equivalent to £105,000, as follows:
 - (a) Up to the equivalent of £100,000 may be held in USD denominated liquid assets (i.e. 20% of 100,000 = 20,000, to meet the requirement in MIFIDPRU 6.2.1R(1); and 50% of 160,000 = 80,000 to meet the requirement in MIFIDPRU 6.2.1R(2)); and

- (b) Up to the equivalent of £5,000 may be held in CHF denominated *liquid assets* (i.e. 5% of 100,000 = 5,000, to meet the requirement in *MIFIDPRU 6.2.1R(1)*).

...

7 Governance and risk management

...

7.6 ICARA process: assessing and monitoring the adequacy of own funds

...

7.6.4 G ...

- (6) *MIFIDPRU TP 2.25AR and MIFIDPRU TP 2.25BG contain rules and guidance on the interaction between a firm’s own funds threshold requirement and the alternative requirement for its fixed overheads requirement, K-factor requirement or permanent minimum capital requirement.*

...

7.7 ICARA process: assessing and monitoring the adequacy of liquid assets

...

7.7.8 R (1) Except as specified in (2), the following assets are eligible as *non-core liquid assets*:

- (a) short-term deposits at a *credit institution* that does not have a *Part 4A permission* in the *UK* to accept deposits;
- (aa) short-term non-sterling deposits at a *UK credit institution*;

...

...

7.7.12 G This table belongs to *MIFIDPRU 7.7.11G*.

Non-core liquid asset	Haircut
Short-term deposits at a <i>credit institution</i> that does not have <i>permission</i> in the <i>UK</i> to accept deposits	0%
<u>Short-term non-sterling deposits at a <i>UK credit institution</i></u>	0%

Assets representing claims on, or guaranteed by, multilateral development banks or international organisations	0%
...	

...

9 Reporting

...

9.4 Group capital test reporting

...

9.4.5 G Under *MIFIDPRU 2.6.11R*, a *GCT parent undertaking* may designate a ~~single parent undertaking in the UK~~:

...

(1) a parent undertaking in the UK that is part of the investment firm group; or

(2) a MIFIDPRU investment firm that is part of the investment firm group and that is not a parent undertaking;

to submit *data items* to the *FCA* on behalf of all *GCT parent undertakings* within the same *investment firm group*. However, each *GCT parent undertaking* remains responsible for ensuring the timely submission and accuracy of any *data items* submitted on its behalf.

9 Annex 2G Guidance notes on data items in MIFIDPRU 9 Annex 1R

This annex consists of guidance which can be found through the following link:

[*Editor's note*: insert link to document containing guidance on completing data items in MIFIDPRU 9 Annex 1R]

Guidance notes for MIFIDPRU 9 Annex 2G

MIF001 – Adequate financial resources (Own funds)

...

Own funds held

...

3A – Common Equity Tier 1 capital

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU – Common equity tier 1 capital. ~~This cell must always be completed with a positive number.~~

...

Daily Trading Flow

...

17A – Adjusted K-DTF (cash trades) coefficient, where used

Under MIFIDPRU 4.15.11R, an FCA investment firm may adjust the coefficient used to calculate the K-DTF requirement if stressed market conditions occurred during the calculation period. Where an FCA investment firm has adjusted the cash trades coefficient in accordance with that rule, it should enter the value of the adjusted cash trades coefficient in this cell. The value entered should be the adjusted coefficient expressed as a decimal value. For example, if the adjusted coefficient for cash trades is ~~0.09%~~ 0.0961%, the firm should enter ~~0.0009~~ 0.000961 in this cell.

Firms should refer to MIFIDPRU 4.15.13G for a worked example of how to calculate the adjusted coefficient.

...

19A – Adjusted K-DTF (derivatives trades) coefficient, where used

Under MIFIDPRU 4.15.11R, an FCA investment firm may adjust the coefficient used to calculate the K-DTF requirement if stressed market conditions occurred during the calculation period. Where an FCA investment firm has adjusted the derivatives trades coefficient in accordance with that rule, it should enter the value of the adjusted derivative trades coefficient in this cell. The value entered should be the adjusted coefficient expressed as a decimal value. For example, if the adjusted coefficient for derivatives trades is ~~0.009%~~ 0.00961%, the firm should enter ~~0.00009~~ 0.0000961 in this cell.

Firms should refer to MIFIDPRU 4.15.13G for a worked example of how to calculate the adjusted coefficient.

...

Own funds threshold requirement/wind-down trigger

...

26A – Own funds threshold requirement

An FCA investment firm should enter the higher of:

- its latest own assessment of its own funds threshold requirement as determined through the ongoing ICARA process (MIFIDPRU 7.6) or

...

MIF002 – Adequate financial resources (Liquid assets)

...

Liquid assets threshold requirement/wind-down trigger

...

7A – Liquid assets threshold requirement

An FCA investment firm should enter the higher of:

- its latest own assessment of its liquid assets threshold requirement as determined through the ongoing ICARA process as set out in MIFIDPRU 7.7 or

...

MIF007 – ICARA Questionnaire

...

Part B: Assessing and monitoring the adequacy of own funds

...

Own funds held as at the ICARA accounting reference date**7A – Common Equity Tier 1 capital**

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU – Common equity tier 1 capital. ~~This cell must always be completed with a positive number.~~

...

TP 2 Own funds requirements: transitional provisions

...

Disapplication of permanent minimum capital requirement transitional provisions because of changes to a firm's permissions

- 2.19 R The transitional arrangements in *MIFIDPRU* TP 2.12R to 2.16R and *MIFIDPRU* TP 2.18R cease to apply if there is a change to the *permissions* of the relevant *MIFIDPRU investment firm*, or any *limitation* or *requirement* that applies to the *firm*, on or after 1 January 2022 that increases the *permanent minimum capital requirement* that would apply to the *firm* under *MIFIDPRU* 4.4.

...

Interaction between alternative fixed overheads requirement and basic liquid assets requirement

...

- 2.25 G ...
- (3) ...
- (a) ...
- ...
- (e) The *firm* would therefore need to hold *core liquid assets* of 31.6 to satisfy its *basic liquid assets requirement*.

Interaction between alternative requirements under MIFIDPRU TP 2, own funds wind-down trigger and own funds threshold requirement

- 2.25A R (1) Where a firm is applying an alternative requirement for its:
- (a) fixed overheads requirement under any of the following: MIFIDPRU TP 2.7R(2)(a), MIFIDPRU TP 2.10R(2)(a), or MIFIDPRU TP 2.21R(2)(a);
 - (b) K-factor requirement under any of the following: MIFIDPRU TP 2.7R(2)(b); MIFIDPRU TP 2.10R(2)(b); MIFIDPRU TP 2.11R(2); or MIFIDPRU TP 2.21R(2)(b);
 - (c) permanent minimum capital requirement under any of the following: MIFIDPRU TP 2.12R(2), MIFIDPRU TP 2.13R(3), MIFIDPRU TP 2.14R(3), MIFIDPRU TP 2.15R(2), MIFIDPRU TP 2.16R(3), or MIFIDPRU TP 2.18R(2); or
 - (d) own funds requirement under MIFIDPRU TP 2.20R(2);
- that firm may substitute the alternative requirement for the corresponding requirement when calculating its own funds threshold requirement in accordance with MIFIDPRU 7.6.4G.
- (2) Where a firm is applying an alternative requirement for its fixed overheads requirement under any of the provisions listed in (1)(a), the firm's own funds wind-down trigger is:
- (a) the alternative requirement for its fixed overheads requirement; or
 - (b) another amount specified by the FCA in a requirement applied to the firm.
- (3) Where a firm is applying an alternative requirement for its own funds requirement under MIFIPPRU TP 2.20R(2), the firm's own funds wind-down trigger is:
- (a) the lower of its fixed overheads requirement and the alternative requirement for its own funds requirement; or
 - (b) another amount specified by the FCA in a requirement applied to the firm.

- 2.25B G (1) The effect of MIFIDPRU TP 2.25AR(1) is that a firm may substitute an alternative requirement under a transitional provision in this annex for its corresponding requirement when calculating its own funds threshold requirement. This is illustrated by the example in (2).
- (2) MIFIDPRU TP 2.12R(2) permits a MIFIDPRU investment firm (that was classified under the rules in force on 31 December 2021 as an exempt CAD firm) to substitute the alternative requirement in TP2.12R(3) for its permanent minimum capital requirement under MIFIDPRU 4.4. MIFIDPRU TP 2.25AR(1) further allows such firm to substitute the alternative requirement for its permanent minimum capital requirement when determining its own funds wind-down threshold requirement in accordance MIFIDPRU 7.6.4G.

Continuing validity of UK CRR market risk permissions

2.26 R (1) ...

...

Annex E

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU-INV)

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

Comes into force on [Editor's note: insert date one month after the application date specified in paragraph D of the cover page of this instrument]

3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms

[Editor's note: insert link]

...

3-61 The Basic Computation

...

3-61(2) R A firm must calculate its financial resources and its financial resources requirement in accordance with the table below and rules 3- 62 to 3-182.

Table 3-61. The basic financial resources calculation

Financial resources	Financial resources requirement
Capital ("A") the sum of – <ul style="list-style-type: none"> - ordinary share capital - preference share capital - share premium account - profit and loss account - other approved reserves, and - partners' current and capital accounts, and - eligible LLP members' capital 	Primary requirement ("E") the sum of – <ul style="list-style-type: none"> - base requirement - <u>total liquidity adjustment, which is the sum of:</u> <ul style="list-style-type: none"> • <u>tangible fixed assets (in accordance with IPRU(INV) 3-75(3)R)</u> • <u>land and buildings used as security for non-recourse loans (in accordance with IPRU(INV) 3-75(4)R)</u> • <u>land and buildings used as security for other loans (in accordance with IPRU(INV) 3-75(5)R)</u> • <u>physical stocks (in accordance with IPRU(INV) 3-75(6)R)</u> • <u>investments in connected companies (in accordance with IPRU(INV) 3-75(7)R)</u>
Deductions ("B") the sum of – <ul style="list-style-type: none"> - Intangible intangible assets, and 	

<p>- excess LLP members' drawings ("B")</p> <p>A – B = tangible net worth ("C")</p>	<ul style="list-style-type: none"> • <u>pre-payments (in accordance with IPRU(INV) 3-75(9)R)</u> • <u>other debtors (in accordance with IPRU(INV) 3-75(11)R)</u> • <u>cash deposits (in accordance with IPRU(INV) 3-75(12)R)</u> • <u>other assets (in accordance with IPRU(INV) 3-75(13) R)</u> <p>- charged assets</p> <p>- contingent liabilities, <u>and</u></p> <p>- deficiencies in subsidiaries</p>
<p>Eligible capital substitutes ("D")</p> <p>the sum of –</p> <ul style="list-style-type: none"> - subordinated loans - approved bank bonds - approved undertakings 	<p>Total PRR ("F")</p> <p>Total CRR ("G")</p>
<p>C + D = financial resources</p>	<p>E + F + G = financial resources requirement</p>

3-62 Tangible net worth

Calculation

3-62(1) R A firm must calculate its tangible net worth in accordance with table 3-61, subject to (2), ~~(3)~~ and ~~(4)~~ to (9) below.

...

Profit and loss account/partners' current and capital accounts

...

3-62(8) R Where applicable, a firm must deduct any asset in respect of deferred acquisition costs and add back in any liability in respect of deferred income (but excluding from the deduction or addition any asset or liability which will give rise to future cash flows), together with any associated deferred tax

Intangible assets and excess LLP members' drawings

3-62(9) R For the calculation of tangible net worth, a firm must deduct any intangible assets and excess LLP members' drawings from capital to arrive at tangible net worth under 3-62.

Annex F

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on [date]

16 Reporting requirements

...

16.12 Integrated Regulatory Reporting

...

Regulated Activity Group 4

...

- 16.12.15 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data items (note 1)</i>					
	<i>MIFIDPRU investment firms</i>	<i>Firms other than MIFIDPRU investment firms</i>				
		<i>IPRU(INV)</i> Chapter 3	<i>IPRU(INV)</i> Chapter 5	<i>IPRU(INV)</i> Chapter 11 (<i>collective portfolio management firms only</i>)	<i>IPRU(INV)</i> Chapter 12	<i>IPRU(INV)</i> Chapter 13
...						
Volumes and types of business	<u>FSA038</u>	FSA038	FSA038	FSA038		FSA038
...						

- 16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	<i>Non-SNI MIFIDPRU investment firm</i>	<i>SNI MIFIDPRU investment firm</i>	<i>Investment firm group</i>	<i>Firm other than a MIFIDPRU investment firm</i>
...				
FSA035				Quarterly
<u>FSA038</u>	<u>Half yearly</u>	<u>Half yearly</u>		<u>Half yearly</u>
...				

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R, unless indicated otherwise.

<i>Data item</i>	Quarterly	Half yearly	Annual
...			
FSA035	<i>20 business days</i>		
<u>FSA038</u>		<u><i>30 business days</i></u>	
...			

Part 2: Comes into force on [Editor's note: insert date one month after the application date specified for Part 1]

16 Annex Data items for SUP 16.12 24R

This annex consists only of one or more forms. Forms are to be found through the following address:

[Editor's note: insert link]

...

FSA033 Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)

Regulatory Capital

A

B

...

Primary requirement

8	Liquidity adjustment:	Non-trade debtors	[Deleted]	
9		Prepayment	[Deleted]	

...

16 Annex 25G **Guidance notes for data items in SUP 16 Annex 24R**

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance notes for data items in SUP 16 Annex 24R -

[Editor's note: insert link]

...

FSA033 **Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)**

...

Description	Data element	Guidance
Regulatory Capital		
<i>Tangible net worth</i>	1B and 2B	<p>For an incorporated firm, tangible net worth includes ordinary share capital plus redeemable preference shares, meeting the criteria set out in IPRU(INV) 3-62R, approved reserves as explained in IPRU(INV) 3-62R, share premium account and retained earnings, less any intangible assets.</p> <p>For a partnership or sole trader, tangible net worth includes the capital account plus current account, less any intangible assets <u>and excess LLP members' drawings</u>.</p>

...

Total liquidity
adjustment

10B

~~The liquidity adjustment should be calculated in accordance with IPRU(INV) 3-75R and should be deducted in order to arrive at the financial resources.~~

The total liquidity adjustment is calculated in accordance with IPRU(INV) 3-75R. It is one component of the financial resources requirement (see IPRU(INV) Table 3-61).

(Firms should note that intangible assets are not relevant to the calculation of the liquidity adjustment, as they are instead deducted in the firm's calculation of its financial resources (see item 'B' in IPRU(INV) Table 3-61)).

...

Appendix 6

Changes to EG 19 which reflect the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022

ENFORCEMENT GUIDE (AMENDMENT) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A (power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Enforcement Guide (Amendment) Instrument 2023.

By order of the Board
[*date*]

Annex A

Amendments to the Enforcement Guide

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

EG 19 **Non-FSMA powers**

...

EG 19.14 **The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

...

EG 19.14.4A The *FCA* also has powers under regulation 74C to impose a direction on a *cryptoasset business* or Annex 1 financial institution to:

- remedy a failure to comply with a requirement under *the Money Laundering Regulations*;
- prevent a failure to comply, or continued non-compliance with a requirement under the *Money Laundering Regulations*; or
- prevent the *cryptoasset business* or Annex 1 financial institution from being used for money laundering ~~or~~ terrorist financing or proliferation financing.

The *FCA* may impose a direction requiring or prohibiting the taking of specified action. *Cryptoasset businesses* or Annex 1 financial institutions can also apply for a direction to be imposed, varied or rescinded.

...

EG 19.15 **The conduct of investigations under the Money Laundering Regulations**

...

EG 19.15.1A Where the *FCA* considers it appropriate to do so, it will exercise its powers under regulation 74C of the *Money Laundering Regulations*, to impose a direction on a *cryptoasset business* or Annex 1 financial institution to ensure requirements of the *Money Laundering Regulations* are met. The *FCA* will exercise this power where:

- (1) it has serious concerns about the ~~*cryptoasset business*~~ *cryptoasset business* or Annex 1 financial institution's compliance with the *Money Laundering Regulations*;
- (2) it is concerned that a failure of the *cryptoasset business* or Annex 1 financial institution to take the desired steps may result in a breach of the *Money Laundering Regulations*;

- (3) the imposition of a direction reflects the importance the *FCA* attaches to the need for the *cryptoasset business* or Annex 1 financial institution to address its concerns;
- (4) the imposition of a direction may assist the *cryptoasset business* or Annex 1 financial institution to take steps which would otherwise be difficult because of legal obligations owed to third parties.

...

EG 19.15.1C Examples of circumstances in which the *FCA* will consider imposing a direction on a *cryptoasset business* and Annex 1 financial institution because it has serious concerns about a *cryptoasset business* or Annex 1 financial institution, or about the way its business is being or has been conducted include where the *cryptoasset business* or Annex 1 financial institution appears to be failing, or appears likely to fail, to comply with requirements under the *Money Laundering Regulations*, because:

- (1) it appears to have consistently failed to comply with requirements of the *Money Laundering Regulations* and in doing so, it may have put itself at risk of being used for the purposes of *money laundering* or terrorist financing or proliferation financing;
- (2) its personnel do not appear to have adequate skills and experience to carry on *cryptoasset business* or an Annex 1 financial institution's business; or
- (3) it appears to have breached requirements imposed on it by or under the *Money Laundering Regulations*, for example in respect of disclosure requirements about the applicability of the jurisdiction of the *Financial Ombudsman Service* to its *cryptoasset business*, or Annex 1 financial institution, and whether it is subject to *FSCS* protection.

...

EG 19.15.1E The *FCA* will consider imposing a direction as a matter of urgency where:

- (1) the information available to it indicates serious concerns about the *cryptoasset business* or Annex 1 financial institution that need to be addressed immediately; and
- (2) circumstances indicate that it is appropriate to impose a direction immediately to require and/or prohibit certain actions by the *cryptoasset business* or Annex 1 financial institution to ensure the *cryptoasset business* or Annex 1 financial institution addresses these concerns.

EG 19.15.1F The *FCA* will consider the full circumstances of each case when it decides whether an urgent imposition of a direction is appropriate. The following is a non-exhaustive list of factors the *FCA* may consider:

- (1) The extent of any loss, or risk of loss, or other adverse effect on consumers caused by the failure to adhere to the *Money Laundering Regulations*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the urgent imposition of a direction will be appropriate, to protect the *consumers'* interests.
- (2) The extent to which *customer* assets appear to be at risk due to the failure to comply with the *Money Laundering Regulations*. Urgent imposition of a direction may be appropriate where the information available to the *FCA* suggests that *customer* assets held by, or to the order of, the *cryptoasset business* or Annex 1 financial institution may be at risk.
- (3) The nature and extent of any false or inaccurate information provided by the *cryptoasset business* or Annex 1 financial institution. Whether false or inaccurate information warrants the urgent imposition of a direction will depend on matters such as:
 - (a) the impact of the information on the *FCA's* view of the *cryptoasset business's* *cryptoasset business* or *Annex 1 financial institution's* compliance with the requirements of the *Money Laundering Regulations*, or the likelihood that the *cryptoasset business* or Annex 1 financial institution may be being used in connection with *financial crime*;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the *FCA*, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *cryptoasset business'* or Annex 1 financial institution's actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the *Money Laundering Regulations* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *cryptoasset business* or Annex 1 financial institution. Serious concerns may arise where there is a likelihood of the *cryptoasset business's* *cryptoasset business* or *Annex 1 financial institution's* assets being dissipated without the *FCA's* intervention.
- (6) The risk that the *cryptoasset business* or Annex 1 financial institution may be used or has been used to facilitate *financial crime*, especially *money laundering* and, terrorist financing or proliferation financing. The information available to the *FCA*, including information supplied by other law enforcement agencies may suggest the *cryptoasset business* or Annex 1 financial institution is being used for, or is itself involved in *financial crime*. Where this appears to be the case, and the

cryptoasset business or Annex 1 financial institution appears to be failing to comply with requirements of the *Money Laundering Regulations* or has put its *customers'* interests at risk, the *FCA's* urgent imposition of a direction may be appropriate.

- (7) The risk that the ~~*cryptoasset business's*~~ *cryptoasset business* or Annex 1 financial institution's conduct or business presents to the *UK financial system* and to confidence in the *UK financial system*.
- (8) The ~~*cryptoasset business's*~~ *cryptoasset business* or Annex 1 financial institution's conduct. The *FCA* will take into account:
 - (a) whether the *cryptoasset business* or Annex 1 financial institution identified the issue (and if so whether this was by chance or as a result of the *cryptoasset business's* or Annex 1 financial institution's normal *controls* and monitoring);
 - (b) whether the *cryptoasset business* or Annex 1 financial institution brought this issue promptly to the *FCA's* attention;
 - (c) the *cryptoasset business's* or Annex 1 financial institution's past history, management ethos and compliance culture;
 - (d) steps that the *cryptoasset business* or Annex 1 financial institution has taken or is taking to address the issue.
- (9) The impact that the imposition of a direction will have on the ~~*cryptoasset business's*~~ *cryptoasset business* or Annex 1 financial institution's business and on its *customers*. The *FCA* will need to be satisfied that the impact of any use of the direction power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its *statutory objectives*.

EG 19.15.1G Examples of directions that the *FCA* may consider imposing in support of its enforcement function are: a direction not to take on new business; a direction that prohibits the disposal of, or other dealing with, any of the *cryptoasset business's*, or Annex 1 financial institution's assets (whether in the *United Kingdom* or elsewhere) or restricts those disposals or dealings; and a direction that all or any of the *cryptoasset business's*, or Annex 1 financial institution's assets, or all or any assets belonging to *consumers* but held by the *cryptoasset business* or Annex 1 financial institution's to its order, must be transferred to a *trustee* approved by the *FCA*.

...

Appendix 7

Amendments to the product governance rules for general insurance and pure protection products distributed overseas

**PRODUCT GOVERNANCE FOR OVERSEAS NON-INVESTMENT INSURANCE
PRODUCTS INSTRUMENT 2023**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Product Intervention and Product Governance sourcebook (PROD) is amended in accordance with Annex B to this instrument.

Notes

- F. In this instrument, the notes (indicated by “**Note:**”, “Note:” or “*Editor’s note:*”) are intended for the convenience of the reader but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Product Governance for Overseas Non-Investment Insurance Products Instrument 2023.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

overseas non-
investment insurance
product

(in PROD) a non-investment insurance product:

(1) that:

(a) is only available for distribution to; or

(b) (for a legacy non-investment insurance product) is not still being marketed or distributed but there are policies under the product that remain in force where the policyholder is,

a customer who is not habitually resident in and, if applicable, the State of the risk is outside, the United Kingdom; and

(2) where, for all policies issued or that will be issued under the product, any policyholder is not habitually resident in and, if applicable, the State of the risk is outside, the United Kingdom.

Amend the following definition as shown.

distribute

(1) ...

(2) (in relation to ICOBS 1, ICOBS 6B, an overseas non-investment insurance product, PROD 1.4 and PROD 4) advising on or proposing a *contract of insurance* to a customer.

...

Annex B

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

1 Product Intervention and Product Governance Sourcebook (PROD)

...

1.4 Application of PROD 4

...

Interaction of PROD 4 and the RPPD Guide

1.4.10 G ...

Modification of PROD 4.2 and 4.3 for overseas non-investment insurance products

1.4.11 R PROD 4 applies in relation to an overseas non-investment insurance product with the following modifications:

(1) The changes made to PROD 4.2 and PROD 4.3 in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 (FCA 2021/19) do not apply, unless otherwise specified in (2).

(2) The following rules and guidance in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 (FCA 2021/19) continue to apply:

(a) PROD 4.2.1AG;

(b) PROD 4.2.21AG;

(c) PROD 4.2.34AG;

(d) PROD 4.2.36BR.

[Note: the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 can be found at https://www.handbook.fca.org.uk/instrument/2021/FCA_2021_19.pdf]

1.4.12 G (1) The effect of PROD 1.4.11R is that, for an overseas non-investment insurance product, including where this is a legacy non-investment insurance product subject to PROD 4.6, a firm's product approval

process (and arrangements for ongoing monitoring) need only comply with the requirements in PROD 4.2 or 4.3 as they stood on 30 September 2021, except for those provisions in PROD 1.4.11R(2), and any subsequent changes made by an instrument other than the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021. PROD 1.4 and PROD 4 as they stood on 30 September 2021 can be accessed by using the timeline on the FCA Handbook website. Firms will need to consider any further changes to PROD after this date to consider if they apply in relation to overseas non-investment insurance products.

(2) A non-investment insurance product:

- (a) that will be or is available for distribution or marketing to customers who are habitually resident or, if applicable, where the State of the risk is, in the United Kingdom; or
- (b) where, for any policy issued under the product, the policyholder is habitually resident in or, if applicable, the State of the risk is in, the United Kingdom,

will not be an overseas non-investment insurance product and the firm will need to meet all applicable requirements in PROD 4, including PROD 4.2.14AR in relation to providing fair value.

(3) A firm should also consider in relation to any overseas non-investment insurance product what is required to meet obligations under other rules in the FCA Handbook including, for example, the Principles and SYSC.

...

4 Product governance: IDD and pathway investments

...

4.2 Manufacture of insurance products

...

4.2.14F R ...

4.2.14F R A (1) For the purposes of PROD 4.2.14ER, and any rules in PROD 4 that rely on the meaning of ‘value’ in this rule, a firm is not required to take into account product distribution arrangements that relate to the distribution of the product to a customer who is not habitually resident in the UK, and, if applicable, where the state of the risk is not the UK.

(2) The effect of (1) includes that a firm is not required to obtain and assess information in relation to the distribution of the product to a customer who is not habitually resident in the UK, and, if applicable, where the state of the risk is not the UK, from a distributor based outside of the

UK, including, in particular, information pertaining to that *person's* remuneration for such distribution.

...

4.3 Distribution of insurance products

...

4.3.6E E ...

(2) Contravention of any of (1) may be relied upon as tending to establish contravention of *PROD* 4.3.6AR.

4.3.6EA R (1) For the purposes of *PROD* 4.3.6AR and *PROD* 4.3.6BR, a *firm* is not required to take into account product distribution arrangements that relate to the *distribution* of the product to a *customer* who is not *habitually resident* in the *UK*, and, if applicable, where the *state of the risk* is not the *UK*.

(2) The effect of (1) includes that a *firm* is not required to assess the impact of a *person's* remuneration in relation to the *distribution* of the product to a *customer* who is not *habitually resident* in the *UK*, and, if applicable, where the *state of the risk* is not the *UK*, when identifying the impact of the distribution arrangements on the value being provided to the *customer*.

...

Appendix 8

Clarificatory amendments to the Consumer Duty

CONSUMER DUTY (AMENDMENTS) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 261I (Contractual scheme rules);
 - (2) Regulation 120 (Guidance) of the PSRs;
 - (3) Regulation 60 (Guidance) of the EMRs;
 - (4) Regulation 6 (FCA Rules) of the Open-Ended Investment Companies Regulations 2001; and
 - (5) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Principles for Businesses sourcebook (PRIN) is amended in accordance with Annex B to this instrument.

Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Consumer Duty (Amendments) Instrument 2023.

By order of the Board

[*date*]

Annex A

Amendments to the Glossary of definitions

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

[*Editor's note:* Annex A takes into account the changes made in FCA 2022/31, which comes into force on 31 July 2023.]

closed product a product:

- (1) where there ~~are~~ is one or more existing contracts ~~with retail customers~~ entered into before 31 July 2023; and those contracts are either:
 - (a) with a retail customer; or
 - (b) contracts in relation to an occupational pension scheme which might determine or materially influence retail customer outcomes;
- (2) which is not marketed or ~~distributed~~ distributed to retail customers (including by way of renewal) on or after 31 July 2023; ~~or~~ and
- (3) is not a product provided in relation to an occupational pension scheme in circumstances where new members could still join that scheme.

non-retail financial instrument

a financial instrument in respect of which the conditions in either paragraphs (1)(a) and (b) or (2) are met:

...

- (2) (except where the financial instrument is a unit or share in a collective investment scheme or AIF) a minimum denomination or otherwise a minimum investment of £50,000 applies to the financial instrument, or equivalent amount for a financial instrument denominated in another currency, where the equivalent amount is calculated not more than three business days before the date the financial instrument was first issued.

retail customer ...

- (2) (in *PRIN* and *COCON*):

...

- (g) where a *firm* carries out activities in relation to an *occupational pension scheme*, any *person* who is not a *client* of the *firm* but who is or would be a beneficiary ~~in relation to investments held in~~ of that *occupational pension scheme*.

...

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

[*Editor's note:* Annex B takes into account the changes made in FCA 2022/31, which comes into force on 31 July 2023.]

2A The Consumer Duty

2A.1 Application and purpose

Application

...

- 2A.1.3 G The application of *Principle 12* is set out in *PRIN 3*, including *PRIN 3.2.6R* to *PRIN 3.2.12G*. *Principle 12* only applies in relation to a firm's retail market business or to the extent that the firm communicates or approves financial promotions which are addressed to, or disseminated in such a way that they are likely to be received by, a retail customer. To the extent that *Principle 12* applies, *Principles 6* and *7* do not apply.

...

Relevance of guidance about Principles 6 and 7

...

- 2A.1.17 G (1) In general terms, *Principle 12* imposes a higher and more exacting standard of conduct in relation to a firm's ~~retail market business~~ activities in *PRIN 3.2.6R* relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* also has a broader application in relation to a firm's ~~retail market business~~ activities in *PRIN 3.2.6R* relative to *Principles 6* and *7*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.

...

...

2A.5 Consumer Duty: retail customer outcome on consumer understanding

Application

- 2A.5.1 R (1) Other than *PRIN 2A.5.15R*, this section applies to:

- (a) all *firms* within scope of Principle 12, as set out in PRIN 3, involved in the production, *approval* or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces, *approves* or distributes *financial promotions* or other advertisements, sales-related communications, and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);

...

- (2) ~~PRIN 2A.5.15R~~; applies to all *firms* within scope of *Principle 12* ~~in relation to a firm's retail market business~~, as set out in PRIN 3.

...

2A.6 Consumer Duty: retail customer outcome on consumer support

Application

- 2A.6.1 R (1) Other than in *PRIN 2A.6.6R*, this section applies:

- (a) to all *firms* within scope of Principle 12, as set out in PRIN 3, who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);

...

- (2) *PRIN 2A.6.6R* applies to all *firms* within scope of *Principle 12* ~~in relation to a firm's retail market business~~, as set out in PRIN 3.

...

3 Rules about application

3.1 Who?

...

- 3.1.10 R (1) ~~Only~~ Subject to (2), only Principles 1, 2, 3, 9, 11, 12 and PRIN 2A, and to the extent that *Principle 12* and *PRIN 2A* do not ~~apply Principle 7~~, apply to a *TP UCITS qualifier* and a *TP AIFM qualifier*, and only with respect to the activities in *PRIN 3.2.2R* (Communication and approval of financial promotions) and PRIN 3.2.6R(2).

- (2) To the extent that *Principle 12* and *PRIN 2A* do not apply, *Principles 1, 2, 3, 7, 9* and *11* apply to a *TP UCITS* qualifier and a *TP AIM* qualifier with respect to the activities in *PRIN 3.2.2R*.

...

3.2 What?

...

Principle 12 and PRIN 2A: additional application provisions

- 3.2.6 R (1) *Principle 12* and *PRIN 2A* apply to a firm's retail market business ~~only~~, including in respect of *existing products* and *closed products*.
- (2) The sections in (3) apply to a firm with respect to the *communication* and *approval of financial promotions* which:
- (a) are addressed to, or disseminated in such a way that they are likely to be received by, a *retail customer*;
- (b) if communicated by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (*Restrictions on financial promotion*); and
- (c) may be *communicated* by a firm without contravening section 238(1) of the *Act* (*Restrictions on promotion of collective investment schemes*).
- (3) Activities relating to *PRIN 3.2.6(2)* are set out in the following table:

<u>Section</u>	<u>Description</u>
<u><i>Principle 12</i></u>	<u>The Consumer Duty</u>
<u><i>PRIN 2A.1</i></u>	<u>Application</u>
<u><i>PRIN 2A.2</i></u>	<u>Cross-cutting obligations</u>
<u><i>PRIN 2A.5</i></u>	<u>Retail customer outcome on consumer understanding</u>
<u><i>PRIN 2A.7</i></u>	<u>General provisions</u>
<u><i>PRIN 2A.8</i></u>	<u>Governance and culture</u>
<u><i>PRIN 2A.9</i></u>	<u>Monitoring of consumer outcomes</u>
<u><i>PRIN 2A.10</i></u>	<u>Redress or other appropriate action</u>

- 3.2.6A G (1) The effect of PRIN 3.2.6R is that a firm that carries on retail market business as well as the activities described in PRIN 3.2.6R(2) may also be subject to other requirements in PRIN 2A in addition to those specified in PRIN 3.2.6R(3).
- (2) The general application of Principle 12 and PRIN 2A in PRIN 3.2.6R is modified in certain sections in PRIN 2A for particular purposes. Application provisions in PRIN 2A should be read in a way that is consistent with the general application in PRIN 3.2.6R.
- 3.2.7 R Where a firm's ~~retail market business~~ involves activities in PRIN 3.2.6R involve operating in a distribution chain, Principle 12 and PRIN 2A apply only to the extent that the person is responsible in the course of that retail market business carrying out those activities in PRIN 3.2.6R for determining or materially influencing retail customer outcomes.
- 3.2.8 R Subject to PRIN 3.2.7R, Principle 12 and PRIN 2A do not apply to activities to the extent that those activities are ~~not included in~~ excluded from a rule which sets out the scope of protections offered to retail customers by COBS, ICOBS, MCOB, BCOBS, CMCOB, FPCOB, PROD or CONC.
- 3.2.9 G (1) ~~Where an activity is carried on within the scope of an exemption in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 it is not an activity to which Principle 12 and PRIN 2A apply.~~ The effect of PRIN 3.2.8R is that where an activity is excluded for any purpose by an application rule in one of the sourcebooks listed, a retail customer will not receive protections under Principle 12 or PRIN 2A from a firm carrying out that activity. If an activity is included within the scope of a listed sourcebook to some degree, or if a sourcebook is silent on that activity, Principle 12 and PRIN 2A apply to the extent that the activity in question falls within PRIN 3.2.6R.
- (2) Examples of PRIN 3.2.8R include:
- (a) where an exclusion exists in the Regulated Activities Order so that a specified activity does not constitute a regulated activity, that would not fall within the scope of regulated activities to which that particular sourcebook applies; or
- (b) where there is a buy-to-let credit agreement, most are subject only to rules on financial promotions in MCOB and so only relevant aspects of Principle 12 and PRIN 2A in relation to the communication of financial promotions would apply.

...

