

**CREDIT UNIONS SOURCEBOOK (AMENDMENT NO 3 AND  
CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT  
2002**

**Powers exercised**

- A. The Financial Services Authority 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 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers);
  - (4) section 157 (Guidance); and
  - (5) section 210 (Statements of policy).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 October 2002.

**Amendments to the Credit Unions sourcebook**

- D. The Credit Unions sourcebook is amended in accordance with Annex A to this instrument.

**Amendments to the Enforcement manual**

- E. The Enforcement manual is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Credit Unions Sourcebook (Amendment No 3 and Consequential Amendments to the Handbook) Instrument 2002.

By order of the Board  
19 September 2002

## Annex A

### Amendments to the Credit Unions sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is inserted, the place that it goes is indicated and it is not underlined.

*CRED* Transitional provisions

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1 Table Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provision: coming into force</b>
<u>3</u>	<u><i>CRED</i> 15.5</u> <u><i>CRED</i> 15</u> <u>Ann 3G</u>	<u>G</u>	The <i>FSA</i> will not impose financial penalties upon <i>credit unions</i> for the late submission of: (1) quarterly returns made up for quarters ending before 1 July 2003; (2) the complaints handling report for the period ending 31 March 2003.	from 1 <u>October 2002</u>	<u><i>credit unions day</i></u>

After 15.4, insert the following new section:

15.5 Financial penalties for late submission of reports

15.5.1 G This section is a modified summary of *ENF* 13.5 (Financial penalties for late submission of reports) which sets out the *FSA*'s policy and procedures in relation to financial penalties for late submission of reports. (See *ENF* 13.5 for full details).

15.5.2 G The *FSA* attaches considerable importance to the timely submission by *credit unions* of the reports referred to in *ENF* 13.5. This is because the information that they contain is essential to the *FSA*'s assessment of whether a *credit union* is complying with the requirements and standards of the *regulatory system* and to the *FSA*'s understanding of that *credit union*'s business.

15.5.3 G (1) In general, the *FSA*'s approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.

Where the period of delay is no more than 28 *business days*, the *FSA* considers that in the majority of cases it will be appropriate to limit the sanction imposed on the *credit union* concerned to a financial penalty fixed by reference to the indicative scale of penalties at *ENF* 13 Ann 1G (reproduced at *CRED* 15 Ann 3G).

- (2) There may, however, be exceptional circumstances in which the *FSA* considers that it is appropriate not to seek a penalty, or to impose a lower penalty than the one indicated by the scale. An administrative difficulty such as pressure of work does not, in itself, constitute an exceptional circumstance for this purpose.
- (3) Equally, the *FSA* may impose a higher penalty than the one indicated by the scale at *ENF* 13 Ann 1G (*CRED* 15 Ann 3G) having regard to the seriousness of the contravention and the extent to which the contravention was deliberate or reckless. This may include, for example, a case where a *credit union* repeatedly fails to submit its reports on time or where there is information that suggests that such a delay was deliberate.
- (4) The *FSA* will also have regard to the submission frequency of the late report when assessing the seriousness of the contravention. For example, a short delay in submitting a quarterly report may have more serious implications for the supervision of the *credit union* in question than a similar delay in submitting an annual report. Such a delay may therefore be subject to a higher penalty than the one suggested by the indicative scale.

15.5.4G Reference to an indicative scale of penalties for breaches of this nature represents an exception to the *FSA*'s general policy described in *ENF* 13.3.1 G (Factors relevant to determining the appropriate level of financial penalty). The *FSA* considers that it is appropriate to treat this type of breach differently from other regulatory breaches on the basis that the nature of the facts establishing the breach is likely to be similar in each case and that the scale will ensure consistency in the treatment of the *credit unions* in question.

- 15.5.5 G
- (1) Where a report is submitted more than 28 *business days* after the due date, and there are no exceptional circumstances justifying the failure to submit on time, the financial penalty imposed is likely to exceed the amount indicated by the scale at *ENF* 13 Ann 1G (*CRED* 15 Ann 3G) for 21 to 28 *business days* delay. The *FSA* will determine the precise level of the financial penalty to be imposed in accordance with the approach discussed in *ENF* 13.3.3 G (Factors relevant to determining the appropriate level of financial penalty).
  - (2) In addition, in appropriate cases, the *FSA* may bring disciplinary action against the *approved person* or *persons* within the *credit*

*union's* management who are ultimately responsible for ensuring that the *credit union's* reports are completed and returned to the *FSA* (see *ENF* 11.5 (Action against *approved persons*)).

- 15.5.6 G In applying the *guidance* in *ENF* 13.5 (Financial penalties for late submission of reports), the *FSA* may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the *guidance*, the *FSA* may also treat a report as not received where the method by which it is submitted to the *FSA* does not comply with the prescribed method of submission.
- 15.5.7 G In most late reporting cases, it will not be necessary for the *FSA* to appoint an investigator under its powers discussed in *ENF* 2 (Information gathering and investigation powers) since the fact of the breach will be clear. It follows that the *FSA* will not usually send the *credit union* concerned a preliminary findings letter (see *ENF* 2.5.12 G (The *FSA's* policy on exercising its powers: firms, approved persons and others)) for late-reporting disciplinary action.
- 15.5.8 G A failure by a *credit union* to submit a report by the due date may indicate wider problems within the *credit union*, for which more serious disciplinary sanctions or other enforcement action (see *ENF* 11.2.3G (Introduction)) or both may be appropriate.
- 15.5.9 G The *FSA* will use the decision making procedure set out in *DEC* 4.5.2G to *DEC* 4.5.6G (Delegation of RDC decisions and modified RDC procedures) to decide whether to impose a financial penalty for the late submission of a report. It will use this procedure whether the period of delay is more than or less than 28 *business days* including if no submission has been made at all.
- 15.5.10 G (1) Once a *final notice* has been issued relating to a financial penalty and any other relevant sanction for a late report, the *FSA* will consider whether it is unfair to the *credit union* or prejudicial to the interests of *consumers* to publish information relating to the decision. The *FSA* anticipates that in most cases where reports have been submitted late, no such unfairness or prejudice will exist. If so, it will enter details of the decision in the *FSA* Register.
- (2) The *FSA* may also publicise the sanctions on a wider basis where the contravention is considered to be particularly serious. Examples of situations that may result in wider publicity include where the period of delay exceeds 28 *business days* or where the *credit union* in question has previously failed to submit its reports on time to the *FSA* or to any *previous regulator*.

15 Ann 3 After *CRED* 15 Ann 2, insert the following new Annex:

**CRED 15: Enforcement**

**Annex 3G**

**Annex 3: Financial penalties**

1 Table Indicative scale of financial penalties for reports no more than 28 *business days* late (see *ENF* 13.5)

Number of business days late	Annual fees payable by firm							
	Note	£1 to £150	£151 to £500	£501 to £1,000	£1,001 to less than £10,000	£10,000 to less than £20,000	£20,000 to less than £50,000	£50,000 to less than £100,000
22-28	40	100	200	400	800	2000	4000	6000
15-21	30	75	150	300	600	1500	3000	4500
8-14	20	50	100	200	400	1000	2000	3000
1-7	10	25	50	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *credit union* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *credit union* before the date on which the relevant report first became late.
2. Where the *credit union* first becomes authorised after 2 July 2002, and at the time the report first becomes late the *credit union* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *credit union* will be treated as that for £1 to £150.

- 9.3.9 E (1) For the purposes of calculating the ratio of a *credit union*'s liquid assets to its total relevant liabilities (in *CRED* 9.3.2R – *CRED* 9.3.5R), the *securities* referred to in *CRED* 7.2.1R – *CRED* 7.2.3R should be valued on the basis that they could be realised at ~~par~~ market value minus the following discounts (whether or not this is the case in fact):
- (a) maturity less than 1 year – zero;
  - (b) maturity 1 to 5 years – 5%.

10.5.2 R A *credit union* ~~should~~ must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:

- (1) 35% of the net liability to the *credit union* of borrowers where the amount is more than three *months* in arrears; and
- (2) 100% of the net liability to the *credit union* of borrowers where the amount is more than 12 *months* in arrears.

13.4.1 G For registration, applicants must demonstrate to the satisfaction of the *FSA* that the statutory conditions set out in section 1 of the Credit Unions Act 1979 will be fulfilled. *CRED 13 Annex 1G* contains a table listing these statutory conditions. The application pack contains the relevant forms for registration and explanatory notes on how to complete the forms. *CRED 13 Ann 2G* contains information about eligibility for membership of a *credit union*.

After *CRED 13 Ann 1G*, insert the following new Annex:

## **CRED 13: Registration and authorisation**

## **Annex 2G**

### **Annex 2: Eligibility for membership of a credit union**

#### **Admission of members**

1. It is a condition of registration of a *credit union* that its membership is restricted to persons who fulfil (directly or indirectly) the qualification stated in the *credit union's* registered rules (section 1(2) of the Credit Unions Act 1979).

#### **Categories of membership**

2. Eligibility for membership of a *credit union* is determined by its registered rules. Each member of a *credit union* should fall within one of the following categories.

- (1) Category 1. Directly qualifying member

A directly qualifying member is a person who:

- (a) meets the membership criteria set out in the *credit union's* registered rules (section 1 of the Credit Unions Act 1979); and
- (b) is above the age of 16 (unless the *credit union's* registered rules stipulate a higher age) (section 20 of the Industrial & Provident Societies Act 1965).

Note: A member who is under the age of 18 may not be a member of the committee, trustee, manager or treasurer of the *credit union* (section 20 of the Industrial & Provident Societies Act 1965) or receive a loan (section 11(1) of the Credit Unions Act 1979).

(2) Category 2. Indirectly qualifying member

An indirectly qualifying member ("family member") qualifies only through a directly qualifying member (Category 1 above). This category of membership is available only if the registered rules of the *credit union* provide for it explicitly.

An indirectly qualifying member ("family member") is a person who is:

- (a) a member of the same household as; and
- (b) a relative of another person who is;

a directly qualifying member of the *credit union* (section 1(6) of the Credit Unions Act 1979).

(3) Category 3. Non-qualifying member

A person in this category would originally have joined the *credit union* as a directly qualifying member (Category 1) or indirectly qualifying member ("family member") (Category 2). This category of membership is available unless the *credit union's* registered rules provide otherwise. The number of non-qualifying members should not at any time exceed ten per cent of the total membership of the *credit union* (section 5(6) of the Credit Unions Act 1979). The registered rules of a *credit union* should make provision for terminating the membership of members in order to comply with this limit (paragraph 13 of Schedule 1 to the Credit Unions Act 1979).

A non-qualifying member is a person who has ceased to fulfil the membership qualification; that is to say a person who:

- (a) joined the *credit union* as a qualifying member (whether qualifying directly or indirectly); but
- (b) later ceased to qualify (section 5(5) of the Credit Unions Act 1979).

Note: When directly qualifying members become non-qualifying members, then all members who qualified indirectly through them will also become non-qualifying members (unless subsequently by some other route they have themselves become either directly qualifying members or indirectly qualifying members). A person who is eligible for membership under more than one category will hold membership under

the higher of those categories (so, for example, someone who is eligible under Categories 1 and 2 will be regarded as a Category 1 member, and someone who is eligible under Categories 2 and 3 will be regarded as a Category 2 member).

<b>Category of Membership</b>		
<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
<b>Directly qualifying member</b>	<b>Indirectly qualifying member ("family member")</b>	<b>Non-qualifying member</b>
<b>DQM</b>	<b>IQM</b>	<b>NQM</b>
Fulfils the membership qualification set out in the common bond rule of the <i>credit union</i>	Lives in the same household as, and is a relative of, a DQM	Has ceased to be a DQM or IQM

### **Persons too young to be members**

3. A person too young to be a member ("juvenile depositor") may make deposits with a *credit union* (section 9 of the Credit Unions Act 1979). A person too young to be a member ("juvenile depositor") is a person who:
  - (1) is below the age of 16 (unless the *credit union's* registered rules stipulate a higher age for entry) (section 20 of the Industrial & Provident Societies Act 1965); and
  - (2) would qualify for membership (directly or indirectly) if he were old enough.

Note: These deposits are not shares and these depositors are not members.

### **Status of transactions**

4. *Credit unions* may only undertake the activities authorised by their registered rules. If they purport to undertake wider activities, then any transactions arising from such activities are void. Any transactions with an ineligible person are unenforceable.
5. If a *credit union* becomes aware that it has admitted ineligible persons as "members", it should immediately take steps to:
  - (1) reclaim any loans made to such persons; and



- (2) repay to such persons any sums they have deposited with the *credit union* by way of share purchase.
6. There are legal rights - such as the doctrine of unjust enrichment - that should enable a *credit union* to recover funds lent to such persons. Similar principles should apply to enable such persons to recover any funds deposited with the *credit union*.
7. If a *credit union* discovers that it has admitted to membership a significant number of ineligible persons, it should inform the *FSA* at the earliest opportunity to discuss the implications and the way forward.

### **Extension of common bond**

8. Transactions with an ineligible person are not validated if that person subsequently becomes eligible for membership through, say, an extension of the common bond. Although a newly registered common bond extension allows a *credit union* to admit members in the additional area, it does not have retrospective effect for those who were erroneously admitted before the extension. If funds are not to be returned in accordance with the guidance given under “Status of Transactions” (paragraphs 4 to 7), immediate steps will have to be taken to ensure that proper business relations commence - and are shown to commence - after the common bond extension has been effected. The following steps should generally be taken:
  - (1) the *credit union* should issue a new pass book;
  - (2) share deposits and loans should be started again - stating the current position - being entered as new transactions in the new passbook.

### **Powers available under other Acts**

9. This annex draws attention to a number of offences under the Industrial & Provident Societies Act 1965 and the Credit Unions Act 1979. The existence of these offences does not preclude the *FSA* from using any other powers that are available to it under the *Act*.
10. A *credit union*, officer, member or other person who does anything forbidden by credit union legislation is liable on summary conviction to a fine not exceeding level 3 on the standard scale (currently £1,000) (section 61(b) of the Industrial & Provident Societies Act 1965 and section 28(1) of the Credit Unions Act 1979).
11. The registration of a *credit union* may be cancelled on proof that it has wilfully and after notice from the *FSA* violated any of the provisions of the Industrial & Provident Societies Act 1965 or Credit Unions Act 1979 (section 20 of the Credit Unions Act 1979).

- 13.6.1 G The nature of the information and *documents* requested by the *FSA* for a *Part IV permission*, in the application pack, or in subsequent requests, will be proportional to the risks posed by *firms*. For instance, in the case of *credit unions*, the risks posed by an applicant seeking *permission* to carry out the activities of a *version 2 credit union* will normally be greater than those of an applicant seeking to become a *version 1 credit union*. Similarly, the risks will be greater for an applicant with a widely-drawn common bond.

After 14.10.4G(4), insert the following new paragraphs:

- “14.10.4A G *SUP* 16.3.11R states that a *credit union* must submit reports to the *FSA* containing all the information required.
- 14.10.4B G *SUP* 15.6 refers to and contains requirements regarding the steps that *credit unions* must take to ensure that information provided to the *FSA* is accurate and complete. Those requirements apply to reports required to be submitted under *SUP* 16 (Reporting requirements).
- 14.10.4C G (1) *SUP* 16.3.13R states that a *credit union* must submit a report in the frequency, and so as to be received by the *FSA* no later than the due date, specified for that report.
- (2) *SUP* 16.3.13R states that if the due date for submission of a report required by *SUP* 16 falls on a day which is not a *business day* the report must be submitted so as to be received by the *FSA* no later than the first *business day* after the due date.
- (3) *SUP* 16.3.13R states that if the due date for submission of a report required by *SUP* 16 is a set period of time after the quarter end, the quarter ends will be the following dates, unless another *rule* or the reporting form states otherwise:
- (a) the *credit union's accounting reference date*;
  - (b) 3 months after the *credit union's accounting reference date*;
  - (c) 6 months after the *credit union's accounting reference date*; and
  - (d) 9 months after the *credit union's accounting reference date*.
- 14.10.4D G Failure to submit a report in accordance with the *rules* in *SUP* 16.7 may lead to the imposition of a financial penalty and other disciplinary sanctions (see *ENF* 13.5 and *CRED* 15.5).

14.10.4E G The *FSA* may from time to time send reminders to *credit unions* when reports are overdue. *Credit unions* should not, however, assume that the *FSA* has received a report merely because they have not received a reminder.

14.10.4F G The *credit union* is responsible for ensuring delivery of the required report at the *FSA*'s offices by the due date. If a report is received by the *FSA* after the due date and the *credit union* believes its delivery arrangements were adequate, it may be required to provide proof of those arrangements. Examples of such proof would be:

- (1) "proof of posting" receipts from a UK post office or overseas equivalent which demonstrate that the report was posted early enough to allow delivery by the due date in accordance with the delivery service standards prescribed by the relevant postal authority; or
- (2) recorded postal delivery receipts showing delivery on the required day; or
- (3) records of a courier service provider showing delivery on the required day.

#### **Change of accounting reference date**

14.10.4G G (1) *SUP* 16.3.17R states that a *credit union* must notify the *FSA* if it changes its *accounting reference date*.

(2) When a *credit union* extends its accounting period, it must make the notification in (1) before the previous *accounting reference date*.

(3) When a *credit union* shortens its accounting period, it must make the notification in (1) before the new *accounting reference date*.

17.6.6 G ~~The reports will form part of a credit union's quarterly return.~~ [Deleted]

#### *CRED* Appendix 2

2.1 Detailed contents of *CRED*

2.1.1 Table

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13 **Registration and Authorisation**

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Ann 2 Eligibility for membership of a credit union

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#### **15 Enforcement**

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15.5 Financial penalties for late submission of reports

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Ann 3 Financial Penalties [table – indicative scale of financial penalties for reports no more than 28 days late]

CRED Schedule 2

Credit unions

Schedule 2

Notification requirements

...

2 Table Notification requirements

...

<u>CRED</u>	<u>Reporting</u>	<u>The fact of a</u>	<u>A change in</u>	<u>If extending its</u>
<u>14.10.4G G</u>	<u>:change of</u>	<u>change in</u>	<u>accounting</u>	<u>accounting</u>
	<u>accounting</u>	<u>accounting</u>	<u>reference date</u>	<u>reference</u>
	<u>reference date</u>	<u>reference date</u>		<u>period, before</u>
				<u>the previous</u>
				<u>accounting</u>
				<u>reference date.</u>
				<u>If shortening</u>
				<u>its accounting</u>
				<u>period, before</u>
				<u>the new</u>
				<u>accounting</u>
				<u>reference date.</u>

## Annex B

### Amendments to the Enforcement manual

ENF TR 1 Transitional provisions applying to the Enforcement manual

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1 Table ENF TR 1

(1)	(2)	(3)	(4)	(5)	(6)
	<b>Material to which the transitional provision applies</b>		<b>Transitional provision</b>	<b>Transitional provision: dates in force</b>	<b>Handbook provision coming into force</b>
... <u>3</u>	<u>ENF 13.5,</u> <u>ENF 13 Ann</u> <u>1G.</u>	<u>G</u>	<u>The FSA will not impose financial penalties upon credit unions for the late submission of:</u> <u>(1) quarterly returns made up for quarters ending before 1 July 2003;</u> <u>(2) the complaints handling report for the period ending 31 March 2003.</u>	<u>from 1</u> <u>October 2002</u>	<u>commencement,</u> <u>but applying to</u> <u>credit unions from</u> <u>credit unions day</u>

- 13.5.1 G (6) the reporting requirements in the pensions review provisions and *FSAVC* review provisions; that is, the provisions of the deemed scheme under the Financial Services and Markets Act 2000 (Transitional Provisions) (Review of Pensions Business) Order 2001 (SI 2001/2512); ~~and~~
- (7) *IPRU(INV)* 4.4.2D to *IPRU(INV)* 4.4.5D (Financial resource requirements)-; and
- (8) *CRED* 17.6.3R to *CRED* 17.6.7R (Complaint handling procedures for credit unions).

...reports that must be submitted to the *FSA* in accordance with the *rules* and other provisions specified in (1) to ~~(7)~~(8).

13 Ann 1G

Indicative scale of financial penalties for reports no more than 28 business days late (see *ENF* 13.5 (Financial penalties for late submission or reports))

- 1 Table Indicative scale of financial penalties for reports no more than 28 business days late

Number of business days late	Annual fees payable by firm								
	Note	£1 to £150	£151 to £500	£501 to £1,000	£1,001 to less than £10,000	£10,000 to less than £20,000	£20,000 to less than £50,000	£50,000 to less than £100,000	£100,000 or greater
22-28		<u>40</u>	<u>100</u>	<u>200</u>	400	800	2000	4000	6000
15-21		<u>30</u>	<u>75</u>	<u>150</u>	300	600	1500	3000	4500
8-14		<u>20</u>	<u>50</u>	<u>100</u>	200	400	1000	2000	3000
1-7		<u>10</u>	<u>25</u>	<u>50</u>	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *firm* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *firm* before the date on which the relevant report first became late.
2. Where the *firm* first becomes authorised after 1 December 2001, and at the time the report first becomes late the *firm* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *firm* will be treated as less than £10,000.