

CREDIT UNIONS SOURCEBOOK (AMENDMENT NO 5 AND CONSEQUENTIAL AMENDMENTS TO THE HANDBOOK) INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making powers);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance)
- 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 as follows:
- (1) the amendments in Annex A come into force on 1 August 2004;
 - (2) CRED 14.10.8AG comes into force on 1 August 2004;
 - (3) CRED 10.3.6R comes into force on 31 October 2004;
 - (4) the remainder of this instrument comes into force on 1 March 2004.

Amendments to the Supervision manual

- D. The Supervision manual is amended in accordance with Annex A to this instrument.

Amendments to the Credit Unions sourcebook

- E. The Credit Unions sourcebook is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Credit Unions Sourcebook (Amendment No 5 and Consequential Amendments to the Handbook) Instrument 2004.

By Order of the Board
15 January 2004

Annex A

Amendments to the Supervision manual

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

SUP 16 Annex 14
Reporting requirements

16 Ann14(2) R Annual return (CY) for credit unions

...

Notes to accounts

...

Provision for members' doubtful debt

<i>General provision</i>	Balance at beginning of year		
	...		
	Written off during year	(—————)	16C
	...		
<i>Specific provision</i>	Balance at beginning of year		
	...		
	Written off during year	(—————)	16H
	Decrease in year	(—————)	16J
	...		
...			

Auditor's statement

In my opinion, the information contained in the balance sheet and revenue account of the Annual Return ~~has been completely and accurately extracted from~~ is * / is not *# consistent with the audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968.

* delete as appropriate

attach a statement detailing inconsistencies

...

SUP 16 Annex 15
Reporting requirements

16 Ann15(2) G Notes on completing the Annual Return (CY) for credit unions

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General information

The Annual Return (CY) should be completed by all *credit unions* in Great Britain at the end of their financial year. The form may be updated from time to time. Credit unions should use the form in force at the end of the financial year on which they are reporting. It should be completed using the accruals-based accounting method.

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Revenue account

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Expenditure

4A Admin expenses This figure should include the following expenditure items as a total figure:

...	
5.	Legal fees
6.	<u>Depreciation</u>
7.	<u>Other</u>

...

Applications

...

9D Rate of dividend The percentage of dividend paid on members' accounts. *Credit unions* cannot pay more than 8% dividend to members in any one financial year even if several dividends are paid. **If different rates are paid on different types of accounts these different rates should be shown in the boxes provided.**

...

Provision for members' doubtful debts

General Provision

...

16C ~~Written off in year~~ The ~~total amount of loans written off from the general bad debt provision during the financial.~~

...

FIXED ASSETS

17A Opening net book value ~~cost~~ The ~~value total amount~~ of fixed assets the *credit union* had at the end of the previous financial year.

17B Additions during the year ~~at cost~~ The ~~value total amount~~ of fixed assets purchased during the financial year.

17C ~~Value-Original cost of~~ disposals during the year The ~~value total amount~~ of fixed assets sold during the financial year, included within 17A shown at original cost. It is shown as a negative, as it reduces the total amount of fixed assets held by the *credit union*.

17D Opening depreciation Total value Amount of depreciation at the end of the previous financial year.

17E	Depreciation charge in year	Total amount of depreciation charged <u>to expenditure this financial year against assets.</u>
17F	Depreciation eliminated on disposals	Total value amount taken out due to disposal of <u>depreciation associated with assets disposed of during the year.</u>
17G	<u>Closing n</u> Net book value	The value total amount of fixed assets held by the <i>credit union</i> at the end of the financial year. This figure is the sum total of boxes 17A+17B-17C-17D-17E-17F and match that shown in the balance sheet at 1A .

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32D	Total assets	This is the same as box 1PM on the Balance Sheet.
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...

Auditor's statement	This statement that the information in the Annual Return (CY) <u>is or is not consistent with</u> has been completely and accurately extracted from the annual audited accounts of the <i>credit union</i> should be completed by the <i>credit union's</i> auditor (<u>with an attached statement detailing inconsistencies if there are any</u>). It is important to note that the <i>credit union</i> remains responsible for the completion of the Annual Return (CY).
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Annex B

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 being inserted the place where it goes is indicated and it is not underlined.

- 4.3.68 G The committee of management should consider the range of possible outcomes in relation to various risks. These risks are increased when a *credit union* provides ancillary services like issuing and administering means of payment and money transmission, which result, in particular, in higher liquidity and operational risks.
- ...
- 7.2.6 G (1) ...
...
(4) ...

(5) CRED 9.3.7R(2) applies to loans between *credit unions* in relation to liquidity.
- 7.2.7 G Loans between *credit unions* should only be arranged after careful consideration by both parties. For example:
- (1) the borrower should consider the financial implications of relying on such borrowing in order to lend to members, or to finance share withdrawals; and
- (2) the lender should assess the risk of late and non-repayment arising from the borrower's own liquidity and credit risks, and keep the aggregate of its loans to other *credit unions* to a very modest level.
- Land holding
- 7.2.8 G A *credit union* may only hold land (and buildings) for the purpose of conducting its business on that land, and where it needs to do so as security for loans to members (section 12 of the Credit Unions Act 1979). This means that a *credit union* must not acquire as an investment land (and buildings) greatly in excess of its operating requirements, with the real purpose of letting out the excess.
- ...
- 7.3 Borrowing and Financial risk management
- Borrowing

7.3.1	R	<u>[Deleted]</u>
<u>7.3.1A</u>	<u>R</u>	<u>A credit union must not borrow from a natural <i>person</i>, except by subordinated loan qualifying as capital under CRED 8.2.1R(4).</u>
7.3.2	G	<u>[Deleted]</u>
<u>7.3.2A</u>	<u>G</u>	<u>Although section 10 of the Credit Unions Act 1979 now permits a credit union to borrow money without restriction, CRED 7.3.1AR imposes a limitation. Further explanation is given at CRED 7A.3.2 G.</u>
<u>Borrowing</u>		
...		
7A.3		<u>Deposits by persons too young to be members</u>
7A.3.1	R	(1) <u>A credit union must not accept deposits except:</u> (a) <u>as shares from its members who are natural <i>persons</i> qualifying in accordance with CRED Ann2 Table 1G 1;</u> <u>or</u> (b) <u>from natural <i>persons</i> too young to be members under CRED 7A.3.1R(2); or</u> (c) <u>as loans from <i>persons</i> under CRED 7.3.1AR – CRED 7.3.2AG.</u> (2) <u>A credit union must not accept take deposits exceeding the greater of £5,000 and 1.5 per cent of the total shareholdings in the credit union from a person who is under the age at which, under section 20 of the Industrial and Provident Societies 1965, he may become a member of the <i>credit union</i>.</u>
7A.3.2	G	(1) <u>The effect of the general prohibition in section 19 of the <i>Act</i> is that no person may carry on the <i>regulated activity</i> of accepting deposits, unless authorised or exempt.</u> (2) <u>CRED 7.3.1AR and CRED 7A.3.1R are intended to ensure that the liberalisation of <i>credit union</i> borrowing (CRED 7.3.2AG) does not have the unintended effect of undermining the common bond concept (CRED 13 Ann1G) by allowing <i>credit unions</i> to operate deposit accounts for natural <i>persons</i> who do not qualify for membership.</u> (3) <u>Section 20 of the Industrial and Provident Societies Act 1965 provides that a person above the age of 16 may be a member of a <i>credit union</i>, unless its rules provide to the contrary (see CRED 13 Ann2 Table1G3.</u>

- (4) CRED 13 Ann2G Table 1G3 gives guidance on the eligibility of natural *persons* too young to be members.
- (5) (a) A credit union is no longer required to:
- (i) hold such juvenile *deposits* in a fund apart from the general funds of the *credit union*; and
 - (ii) distribute all the interest earned on the fund (after deduction of expenses) to juvenile depositors.
- (b) A credit union may make a commercial judgement on the appropriate amount of interest to pay juvenile depositors.
- (c) These changes were made by amendment of section 9 of the Credit Unions Act 1979 by Order under section 428 of the *Act*. (The Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 - SI 2002 No. 1501)

...

9.2.8 G ...

9.2.9 G When a *credit union* provides ancillary services such as issuing and administering means of payment and money transmission, it should take into account the potentially greater volatility of its funds when deciding what amount and composition of liquid assets is necessary to comply with CRED 9.2.1R.

...

- 9.3.7 R
- (1) For the purposes of CRED 9.3.2R – CRED 9.3.5R, only those assets shall count as liquid which can be realised for cash at short notice, and within at most eight days.
 - (2) Amounts loaned by one *credit union* to another must not be counted as liquid by the lender.

...

10.2 General requirements concerning lending policy

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10.2.6 G ...

- 10.2.6A R
- (1) A credit union must not make a loan to:
 - (a) an officer, or other *approved person*; and

		(b) <u>a relative of, or any person other wise connected with, anyone included in (1) above, on terms more favourable than those available to other members of the <i>credit union</i>.</u>
		(2) <u>"Relative" has the same meaning as in section 31 of the Credit Unions Act 1979.</u>
10.2.7	G	(1) <u>To prevent conflicts of interest, a <i>A-credit union</i> should have clear arrangements for dealing with loans to officers, staff and the persons specified in CRED 10.2.6A R <i>connected persons</i> (for example, relatives and other close relationships) to prevent conflicts of interest.</u> (2) <u>In relation to staff, the prohibition in CRED 10.2.6A R applies only to those who are officers or <i>approved persons</i>.</u> (3) <u>"Connected" in CRED 10.2.6A R includes any close business or personal relationship.</u>
...		
10.2.10	G	...
10.2.11	G	(1) <u>A <i>credit union</i> may only make loans to:</u> (a) <u>its members who are natural <i>persons</i> qualifying in accordance with section 1(2) of the Credit Unions Act 1979 (see CRED 13 Ann2 Table 1G 1);</u> (b) <u>other <i>credit unions</i>.</u> (2) <u>A <i>credit union</i> may make a loan to a member for a business purpose. However, this does not mean that the <i>credit union</i> may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose. A <i>credit union</i> should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in CRED 10.3.</u>
10.3		Lending limits
10.3.1	R	<u>Subject to CRED 10.3.6R, a <i>A-version 1 credit union</i> must not lend for a period of more than three years where unsecured and seven years where secured.</u>
...		
10.3.3	R	<u>Subject to CRED 10.3.6R, a <i>A-version 2 credit union</i> must not lend for a period of more than five years where unsecured and fifteen years where secured.</u>

...

10.3.5 G ...

10.3.6 R *A credit union with permission for entering into a regulated mortgage contract must not enter into such a contract for a term of more than 25 years.*

...

13.1.1 G This chapter applies to:

(1) [Deleted]

(1A) a person considering applying to the FSA for approval of the use in a name of the words "credit union" or "undeb credyd";

(2) ...

...

After section 13.2 insert the following new section.

13.2A Use of name “credit union”

13.2A.1 G Section 3 of the Credit Unions Act 1979 (as amended) makes the following provisions about the use of the name "credit union":

(1) under section 3(1), every credit union with its registered office:

(a) in England or Scotland should have "credit union" in its name;

(b) in Wales should have "credit union" or "undeb credyd" in its name;

(2) under section 3(2), unless one is registered as a credit union, it is an offence to:

(a) refer to oneself as a "credit union" or "undeb credyd", or any related words;

(b) represent oneself as being a credit union;

subject to section 3(3) (see *CRED* 13.2AG(3));

(3) section 3(3) provides that section 3(2) (see *CRED* 13.2A.1G(2)) does not apply:

- (a) to specified overseas deposit-takers;
- (b) to a *person* who has the *FSA's* written approval;
- (c) where an officer or employee uses a title or descriptive expression indicating his office or post with:
 - (i) a credit union; or
 - (ii) an organisation in *CRED* 13.2AG(3)(a) or (b).

13.2A.2 G The effect of section 3 of the Credit Unions Act 1979 (see *CRED* 13.2A.1G) is that if one of the following organisations, for example, wishes to use the words "credit union" in its name, it will need the approval in writing of the *FSA*:

- (1) a study group working towards registration as a credit union;
- (2) a body representing or providing services to credit unions.

13.2A.3 G Approval for study groups (*CRED* 13.2A.2G(1)) will generally be limited to a period of no more than 2 years.

13.2A.4 G The organisations in *CRED* 13.2A.2G are subject to the general prohibition mentioned in *CRED* 7A.3.2G(1), which means that they cannot accept *deposits*.

...

13.4.1 G (1) 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 Ann 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 ~~*credit union*~~.

- (a) One of the conditions is that the objects of the credit union are those, and only those, of a credit union. The objects are set out in full in the table. Unless an activity is consistent with these objects, a credit union has no power to engage in it. It is important that a credit union satisfies itself that it has the necessary power before engaging in the activity. For instance, it is clear that a credit union does not have the power to run a lottery. However, a credit union is permitted to receive donations from an outside organisation, so may receive the proceeds from a lottery run by that organisation. Any such organisation will need to be independent from the credit union, with separate management and accounting.
- (b) Another condition is that admission to membership of the credit union is restricted to persons who fulfil an appropriate membership qualification ("AMQ") and that in consequence a common bond exists among the members.

(2) The application pack contains the relevant forms for registration and explanatory notes on how to complete the forms. The notes also contain information about the appropriate membership qualifications for credit unions.

(3) ...

...

CRED 13 Annex 1 Requirements of Registration G

1 G Table: The requirements of registration under the Industrial and Provident Societies Act 1965, as set out in the Credit Unions Act 1979 and referred to in *CRED* 13.4.1G.

REQUIREMENT	SECTION OF THE RELEVANT ACTS
That the purposes <u>objects</u> of the society are those, and only those of a credit union.	Credit Unions Act 1979, s.1(2)(a)
<u>The objects of a credit union are:</u>	
... the creation of sources of credit <u>credit</u> for the benefit of the members at a fair and reasonable rate of interest	Credit Unions Act 1979, s.1(3)

...	
the training and education of the members in the wise use of money money and in the management of their financial affairs	Credit Unions Act 1979, s.1(3)
That admission to membership of the society is restricted to individuals all of whom fulfil a specific qualification which is appropriate to a credit union (the <u>and that in consequence a "common bond" exists</u> between members).	Credit Unions Act 1979, s.1(2)(b)
<u>The appropriate membership qualifications ("AMQs") for a credit union are:</u>	
following a particular occupation	Credit Unions Act 1979, s.1(4)(a)
residing in a particular locality	Credit Unions Act 1979, s.1(4)(b)
being employed in a particular locality	Credit Unions Act 1979, s.1(4)(c)
being employed by a particular employer	Credit Unions Act 1979, s.1(4)(d)
being a member of a bona fide organisation or being otherwise associated with other members of the society for a purpose other than that of forming a society to be registered as a credit union	Credit Unions Act 1979, s.1(4)(e)
residing in or being employed in a particular locality	Credit Unions Act 1979, s.1(4)(f)
<u>and such other qualifications as are for the time being approved by the FSA</u>	<u>Credit Unions Act 1979, s.1(4)</u>
<u>The following qualifications (in addition to those set out in section 1(4) of the Credit Unions Act 1979) have been approved by the FSA or its predecessor, the Registry of Friendly Societies:</u>	
...	
any other qualifications as approved by the FSA	

...

CRED 13 Annex 2

Eligibility for membership of a credit union G

1 Table: G

...

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) ...

(2) would qualify for membership (directly or indirectly) if he were old enough.

This means that in a qualification of residing in a particular locality, an eligible juvenile depositor should reside there (because indirect qualification means being a member of the same household as well as a relative of a DQM). In a qualification of being employed in a particular locality, a juvenile depositor is eligible by going to school or college there.

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

...

Insert the following new provision after CRED 14.10.8G

14.10.8A G The form may be updated from time to time. *Credit unions* should use the form in force at the end of the financial the year on which they are reporting.

...

Insert the following new provision after CRED 14.10.12G

Controllers and close links

14.10.13 G (1) *Credit unions* are subject to the requirements of the *Act* and *SUP 11* on *controllers* and *close links*, and are bound to notify the *FSA* of changes. In practice, however, *credit unions* cannot develop such relationships, because:

(a) only individuals may be members of a *credit union* (section 5(1) of the Credit Unions Act 1979);

- (b) every member is entitled to vote and has one vote only (section 5(9) of the Credit Unions Act 1979);
- (c) the minimum number of members of a *credit union* is 21 (section 6(1) of the Credit Unions Act 1979) and its registration may be cancelled if membership falls below that number (section 16(1)(a)(i) of the Industrial and Provident Societies Act 1968 and section 20(1)(a) of the Credit Unions Act 1979);and
- (d) a *credit union* may not have a subsidiary (section 26 of the Credit Unions Act 1979).

(2) *Credit unions* are therefore exempted from the requirement to submit annual reports of *controllers* and *close links* (*SUP* 16.1.1R-16.1.3R, 16.4.1G(-1) and 16.5.1G(-1)).

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Appendix 2.1 Detailed contents of CRED

2.1.1 P Table

...

7	Investment and borrowing
7.1	...
...	
7.3	Borrowing and Financial risk management
7.3.31	Borrowing
...	
7A	Shareholding
...	
7A.3	Deposits by persons too young to be members
...	
13	Registration and Authorisation
...	
13.2	Introduction
<u>13.2A</u>	<u>Use of name "credit union"</u>
...	
14	Supervision
...	
14.10	Reporting requirements
...	
14.10.12(G)	Financial penalties for late submission of reports
<u>14.10.13(R)</u>	<u>Controllers and close links</u>