

Chapter 9

Our powers

9.1 Overview

9.1 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.

9.1.1 **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**  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**  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 **RFCCBS 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.