
STATUTORY INSTRUMENTS

2003 No. 404

**The Building Societies Act 1986
(Electronic Communications) Order 2003**

Electronic ballots

18. In Schedule 2 to the 1986 Act, after paragraph 33 (postal ballots) insert—

“Electronic ballots

33A.—(1) Where—

- (a) the rules of a building society provide for a postal ballot to be conducted in any circumstances in the case of an election or resolution, and
- (b) those rules do not expressly prohibit the conduct of an electronic ballot in those circumstances,

the ballot in the case of that election or resolution may, in those circumstances, be an electronic ballot instead of a postal ballot.

(2) A ballot in the case of an election or resolution is an electronic ballot if it is conducted—

- (a) in accordance with the following provisions of this paragraph as to electronic voting; and
- (b) in so far as it is not conducted with those provisions, as if it were a postal ballot.

(3) But voting in the case of an election or resolution may not be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10) unless the rules of the society expressly permit it.

(4) The rules of a building society may provide for voting in the case of—

- (a) an election of directors, or
- (b) a resolution of the society other than a share holding members' resolution or a borrowing members' resolution,

to be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10).

(5) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) the rules of the society may contain provision supplementing rules relating to postal ballots in so far as it is necessary to provide for the conduct of electronic voting in accordance with subparagraphs (8) to (10).

(6) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) or (3) the rules of the society may make provision as to the consequences of any irregularities occurring in the course of a ballot, including (but not restricted to) provision as to the validity of multiple votes cast by a member in the same election or on the same resolution.

(7) In the case of an electronic ballot, the society is not required to send notice of the ballot to any person if—

- (a) that person has agreed, in accordance with sub-paragraph (9)(a) below, that notices of electronic ballots and a voting facility may be accessed by him on a web site; and
 - (b) the society notifies that person in accordance with sub-paragraph (9)(c) below.
- (8) The voting of a person in an electronic ballot is electronic if—
- (a) a person has access on a web site to the notice of the electronic ballot, any document which is required to accompany the notice and a facility for registering his vote;
 - (b) that person registers his vote by means of that facility; and
 - (c) the conditions set out in sub-paragraph (9) are satisfied.
- (9) The conditions of this sub-paragraph are satisfied if—
- (a) the society and the person have agreed that notices of electronic ballots, any document which is required to accompany the notice, and a voting facility may be accessed by him on a web site;
 - (b) that agreement applies to the electronic ballot and accompanying documents in question;
 - (c) that person is notified, in a manner agreed for the purpose between him and the society of—
 - (i) the publication of the notice and documents and the availability of the voting facility on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the notice, any such documents, and the facility may be accessed, and how they may be accessed; and
 - (d) the notice and each such document continues to be published and the facility continues to be available on that web site throughout the period beginning with the giving of that notification and ending with the date which the society specifies as the final date for the registration of votes.
- (10) A notice given for the purposes of sub-paragraph (9)(c) must—
- (a) state that it concerns a notice of an electronic ballot given in accordance with this Act; and
 - (b) state whether the voting to be conducted by the electronic ballot is in an election or on a resolution or both.
- (11) Nothing in sub-paragraph (9) shall invalidate an electronic ballot where—
- (a) any notice or document that is required to be published, and any facility which is required to be made available, for the period mentioned in sub-paragraph (6)(d) is published or made available for a part, but not all, of that period, but
 - (b) the failure to publish that notice or document, or make that facility available, throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid.
- (12) Sub-paragraphs (3) to (7) of paragraph 33 apply, with the modification specified in subparagraph (13) below, in relation to notices of an electronic ballot as they apply in relation to notices of a postal ballot.
- (13) Sub-paragraph (3) of paragraph 33 has effect as if the reference to the receipt of completed ballot papers included a reference to the registration of votes by means of a voting facility on a web site.
- (14) For the purposes of sub-paragraph (3) of paragraph 33 (as applied to electronic ballots by sub-paragraph (13) above), in a case in which a person is notified for the purposes of

subparagraph (9)(c), a notice of an electronic ballot is treated as given to a person on the day when notification is given in accordance with that sub-paragraph.”.