

2011 No. 593

BUILDING SOCIETIES

FRIENDLY SOCIETIES

INDUSTRIAL AND PROVIDENT SOCIETIES

The Mutual Societies (Electronic Communications) Order 2011

<i>Made</i> - - - -	<i>21st March 2011</i>
<i>Laid before Parliament</i>	<i>22nd March 2011</i>
<i>Coming into force</i> - -	<i>12th April 2011</i>

The Treasury consider that the authorisation of the use of electronic communications by this Order for any purpose is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications than in other cases.

The Treasury make the following Order in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000(a):

PART 1

Preliminary

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mutual Societies (Electronic Communications) Order 2011 and comes into force on 12th April 2011.

(2) In this Order—

“the 1965 Act” means the Industrial and Provident Societies Act 1965(b);

“the 1968 Act” means the Friendly and Industrial and Provident Societies Act 1968(c);

“the 1974 Act” means the Friendly Societies Act 1974(d);

“the 1986 Act” means the Building Societies Act 1986(e);

(a) 2000 c. 7.
(b) 1965 c.12.
(c) 1968 c. 55.
(d) 1974 c. 46.
(e) 1986 c.53.

“the 1992 Act” means the Friendly Societies Act 1992(a).

PART 2

Building societies

Amendment to proxy voting requirements

2.—(1) For sub-paragraphs (1A) and (1B) of paragraph 24 of Schedule 2 to the 1986 Act(b) (proxies) substitute—

“(1A) A form for the appointment of a proxy—

- (a) may be sent electronically to a member if it is sent to an electronic address notified by that member to the society for the purpose;
- (b) is to be treated as having been sent electronically to a member, where the conditions in sub-paragraph (1B) below are satisfied.

(1B) The conditions are that—

- (a) the society and the member have agreed that a form may instead be accessed by the member on a website;
- (b) in a manner agreed between the society and that member, the member is notified of—
 - (i) the publication of the form on a website;
 - (ii) the address of that website; and
 - (iii) the place on that website where the form may be accessed, and how it may be accessed; and
- (c) the form is published on the website throughout the period beginning with the day on which the member is notified in accordance with paragraph (b) above and ending with the last day specified for the return of appointments of proxies.

(1C) If the form is absent from the website for part of the period referred to in sub-paragraph (1B)(c), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected the society to prevent or avoid.

(1D) Where a form for the appointment of a proxy is made available by a society on a website in accordance with subsection (1A)(b), the society may also make available on the website a facility for completing the form and returning the appointment in an electronic communication (but see paragraph 34).”.

(2) In sub-paragraph (2A) of paragraph 34 of Schedule 2 to the 1986 Act(c) (declarations to be made in proxy and ballot forms), for “contained in an electronic communication sent in accordance with paragraph 24(1A)(b)” substitute “returned in an electronic communication in accordance with paragraph 24(1D)”.

Minor amendments to the 1986 Act

3.—(1) In section 61(7E) of the 1986 Act(d) (directors: electronic transmission of election address), in paragraph (a) omit “, nothing in subsection (9A) above shall invalidate the election of a director where”.

(2) In Part 3 of Schedule 2 (meetings, resolutions and postal ballots) to that Act—

(a) 1992 c.40.

(b) 1986 c.53; sub-paragraphs (1A) and (1B) were inserted by S.I. 2003/404 art 15.

(c) 1986 c.53; sub-paragraph (2A) was inserted by S.I. 2003/404 art 19(1), (2).

(d) 1986 c.53; section 61(7E) was inserted by S.I. 2003/404 art 3(2).

(a) in paragraph 23(6)(bb)(a), for “if species” substitute “specifies”, and

(b) in paragraph 32(3A)(b), after “or copy” insert “is”.

(3) In paragraph 6(2) of Schedule 16 to that Act(c) (electronic notification of merger proposal: penalty for default), for “sub-paragraph (1) or (2)” substitute “paragraph (a) or (b)”.

PART 3

Friendly societies

Interpretation

Interpretation of the 1992 Act

4.—(1) In section 119(1) of the 1992 Act(d) (general interpretation), insert at the appropriate place—

““electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;”.

(2) After section 119A of the 1992 Act(e), insert—

“Meaning of electronic form, electronic means etc.

119AA.—(1) The following provisions apply for the purposes of this Act.

(2) A document or information is sent in electronic form if it is sent—

(a) by electronic means (for example, by email or fax), or

(b) by any other means while in electronic form (for example, sending a disk in the post).

References to “electronic copy” have a corresponding meaning.

(3) A document or information is sent by electronic means if it is—

(a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and

(b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

References to “electronic means” have a corresponding meaning.

(4) A document or information sent in electronic form must be sent in a form, and by a means, that the sender reasonably considers will enable the recipient—

(a) to read it, and

(b) to retain a copy of it.

(5) For the purposes of this section, a document or information can be read only if—

(a) it can be read with the naked eye, or

(b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(a) 1986 c.53; paragraph 23(6)(bb) was inserted by S.I. 2003/404 art 30(7).

(b) 1986 c.53; paragraph 32(3A) was inserted by S.I. 2003/404 art 16(3).

(c) 1986 c.53; paragraph 6(2) of Schedule 16 was amended by S.I. 2003/404 art 26(2).

(d) 1992 c.40; section 119(1) was amended by S.I. 1994/1984 to insert the definition of “EFTA State”. There are other amendments to section 119(1) not relevant to this Order.

(e) 1992 c.40; section 119A was inserted by S.I.1994/1984 reg 31.

(6) The provisions of this section apply whether the provision of this Act in question uses the word “send” or uses other words (such as “furnish”, “circulate”, “provide”, “produce”, “supply”, “give” or “deliver”) to refer to the sending of a document or information.

Communications by means of a website

119AB.—(1) For the purposes of this Act, a person (A), other than the Authority, makes a document or information available on a website to another person (B) if each of the following conditions is satisfied.

(2) The first condition is that B—

- (a) has agreed (generally or specifically) that A may make the document or information available to B in that manner, and
- (b) has not revoked that agreement.

(3) The second condition is that A has notified B of—

- (a) the presence of the document or information on the website,
- (b) the address of the website,
- (c) the place on the website where the document or information may be accessed, and
- (d) how to access the document or information.

(4) The third condition is that the document or information is present on the website for the whole of the period—

- (a) beginning when A sends B the notification referred to in subsection (3) or, if later, when the document or information first appears on the website, and
- (b) ending with the end date specified for the purposes of this paragraph in the provision of, or made under, this Act that requires or permits A to send the document to B.

(5) If the document or information is absent from the website for part of the period referred to in subsection (4), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected A to prevent or avoid.

(6) A is not to be regarded as making a document available on a website for the purposes of this section if the website is the Authority’s website (an electronic copy of the document having been placed there in reliance on section 104(1A)(b)).”.

Societies and the Authority

Public file may be maintained electronically

5. In section 104 of the 1992 Act (a) (public file of a friendly society)—

(a) after subsection (1) insert—

“(1A) The requirement to prepare and maintain the public file of a friendly society does not apply in relation to a document, a copy of a document or a record, if the Authority—

- (a) prepares and maintains an electronic copy of the document, copy or record; and
- (b) places the electronic copy on the Authority’s website.”;

(b) in subsection (2A)(b), after “subsection (1)(b) above,” insert “for making an electronic copy available under subsection (1A) above”.

(a) 1992 c.40; section 104 was amended by S.I. 2001/2617 art 13(1), Sch 3 Pt 1, paras 53, 108 and S.I. 2001/3649 art 203(1), (5).

(b) 1992 c.40; subsection (2A) was inserted by S.I. 2001/2617, art 13(1), Sch 3 Pt 1, paras 53, 108(c).

Forms of documents to be sent to the Authority

6.—(1) In section 114(1) of the 1992 Act(a) (forms of documents), after “the particulars to be included in”, insert “, and the authentication of,”.

(2) After section 114(2) insert—

“(3) As regards the authentication of a document sent to the Authority electronically, the Authority may—

- (a) require the document to be authenticated by a particular person or a person of a particular description;
- (b) specify the means of authentication;
- (c) require the document to contain or be accompanied by the name or registered number of the society to which it relates (or both).

(4) As regards the procedure to be followed in sending a document electronically, the Authority may specify requirements as to the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption).

(5) Directions made by the Authority under this section must not require documents to be sent electronically.

(6) In this section, a document is sent electronically if it is sent by electronic means or in electronic form.”.

Communications by and with societies

Electronic transmission of annual accounts etc.

7. After section 78(4) of the 1992 Act(b) (laying and furnishing of accounts and reports) insert—

“(4A) A friendly society or registered branch is to be regarded as sending a copy of a document to a member for the purposes of subsection (3)(b) or (4)(b) if it makes the document available to the member on a website; and the end date for the purposes of section 119AB(4)(b) is the date when the duty ceases.”.

Electronic service of notices

8. In section 113(2) of the 1992 Act(c) (service of notices)—

(a) omit “or” immediately after paragraph (b); and

(b) after paragraph (c) insert—

“; or

(d) by sending it by electronic means to an electronic address notified by the person for the purpose.”.

Use of name in electronic communications

9. In paragraph 10 of Schedule 3 to the 1992 Act (establishment, incorporation and constitution of incorporated friendly societies)—

(a) omit “and” immediately after sub-paragraph (1)(b);

(a) 1992 c.40; section 114 was substituted by S.I. 2001/2617, arts 2, 8(1), 13(1), Sch 3, Pt 1, para 113 and by S.I. 2001/3649 arts 1, 204.

(b) 1992 c.40; subsection (4) was amended by S.I. 2001/2617 art 13(1), Sch 3 Pt 1, paras 53, 91(b) and by S.I. 2008/1140 art 9, Sch 1, paras 1,4.

(c) 1992 c.40; section 113 was amended by S.I. 2001/2617 art 13(1), Sch 3 Pt 1, paras 53, 112.

- (b) after sub-paragraph (1)(c) insert—
 - “(d) in all its business correspondence and documentation that takes electronic form; and
 - (e) on all its websites.”; and
- (c) after sub-paragraph (2) insert—
 - “(3) The reference in this paragraph to a society’s websites includes a reference to a section of another person’s website—
 - (a) which relates to the society; and
 - (b) which the society placed, or the placement of which the society authorised, on the other person’s website.”.

Electronic provision of copies of rules to members

10. In paragraph 13(2) of Schedule 3 to the 1992 Act (societies to supply copies of rules etc), omit “printed” in each place it appears.

Inclusion of electronic addresses in register of members

11.—(1) In section 63A of the 1974 Act(a) (register of members of registered friendly societies)—

- (a) after subsection (1) insert—
 - “(1A) Where a member has notified to the society an electronic address for the purpose of receiving notices or documents under this Act, the requirement under subsection (1) includes a requirement to secure that the register shows—
 - (a) that electronic address; and
 - (b) the purposes for which it has been notified.”;
- (b) after subsection (4) insert—
 - “(4A) Where it appears to a society that an electronic address shown on the register pursuant to subsection (1) is no longer current, the society may remove that address from the register.”; and
- (c) after subsection (5) insert—
 - “(6) In this section, “electronic address” has the meaning it has in the 1992 Act.”.

(2) In paragraph 14 of Schedule 3 to the 1992 Act (register of members)—

- (a) after sub-paragraph (1) insert—
 - “(1A) Where a member has notified to the society an electronic address for the purpose of receiving notices or documents under this Act, the requirement under sub-paragraph (1) includes a requirement to secure that the register shows—
 - (a) that electronic address; and
 - (b) the purposes for which it has been notified.”;
- (b) after sub-paragraph (4) insert—
 - “(4A) Where it appears to an incorporated friendly society that an electronic address shown on the register pursuant to sub-paragraph (1) is no longer current, the society may remove that address from the register.”;
- (c) in sub-paragraph (6)(a), insert “postal” before “address”; and
- (d) in sub-paragraph (6)(b), after “some other address” insert “(not being an electronic address)”.

(a) 1992 c.40; section 63A was inserted by the Friendly Societies Act 1992, section 95, Sch 16 para 22.

Delivery of documents held in electronic form

12. In paragraph 12 of Schedule 4 to the 1992 Act (consequences of transfer), after sub-paragraph (4) insert—

“(4A) A person required by this paragraph to deliver a document does not satisfy the requirement by sending the document in an electronic form except in so far as the document is held by that person in that electronic form.”.

Electronic notification of details concerning a person’s eligibility to be a committee member

13. In paragraph 3 of Schedule 11 to the 1992 Act (eligibility to be elected committee member), after sub-paragraph (3) insert—

“(3A) A friendly society is to be regarded as notifying a person for the purposes of sub-paragraph (3)(b) if it makes the information available to the person on a website; and the end date for the purposes of section 119AB(4)(b) is the day after the election.”.

Electronic transmission of notice of meetings

14. In paragraph 4 of Schedule 12 to the 1992 Act (notice for calling meetings), after sub-paragraph (1) insert—

“(1A) Sending the notice by electronic means to an electronic address which the member has notified for that purpose, or making the notice available to a member on a website, is to be regarded as giving the member notice for the purposes of sub-paragraph (1), unless the rules of the society or branch make express provision to the contrary.

(1B) The end date for the purposes of section 119AB(4)(b) is the date of the meeting.

(1C) If a notice calling a meeting includes an electronic address for the society or registered branch, the address is to be regarded as one to which documents or information relating to the meeting may be sent; but that is subject to such conditions or restrictions as the notice specifies.

(1D) Where notice of a meeting is given to a member by sending it to an electronic address, the notice is to be treated as given to that member on the day it is sent.

(1E) Where a notice of a meeting is given to a member by making the notice available on a website, the notice is to be treated as given on the day the member is notified in accordance with section 119AB(3).

(1F) If the notice is absent from the website for part of the period referred to in section 119AB(4), and the absence is disregarded for the purposes of section 119AB(5), that absence does not invalidate the proceedings of the meeting or resolutions passed.”.

Electronic communication of resolutions requiring special notice

15. In paragraph 9 of Schedule 12 to the 1992 Act (resolutions requiring special notice), after sub-paragraph (2) insert—

“(2A) Sending the notice by electronic means to an electronic address which the member has notified for that purpose, or making the notice available to a member on a website, is to be regarded as giving the member notice for the purposes of sub-paragraph (2), unless the rules of the society make express provision to the contrary.

(2B) The end date for the purposes of section 119AB(4)(b) is the date of the meeting.

(2C) If a notice calling a meeting includes an electronic address for the society, the address is to be regarded as one to which documents or information relating to the meeting may be sent; but that is subject to such conditions or restrictions as the notice specifies.

(2D) Where notice of a meeting is given to a member by sending it to an electronic address, the notice is to be treated as given to that member on the day it is sent.

(2E) Where a notice of a meeting is given to a member by making the notice available on a website, the notice is to be treated as given on the day the member is notified in accordance with section 119AB(3).

(2F) If the notice is absent from the website for part of the period referred to in section 119AB(4), and the absence is disregarded for the purposes of section 119AB(5), that absence does not invalidate the proceedings of the meeting or resolutions passed.”.

Electronic transmission of statement by person ceasing to hold office

16. In paragraph 14 of Schedule 14 to the 1992 Act (statement by person ceasing to hold office), after sub-paragraph (7) insert—

“(8) A society is to be regarded as sending a person a copy of the statement for the purposes of sub-paragraph (4)(a) or (7)(a) if it makes the information available to the person on a website; and the end date for the purposes of section 119AB(4)(b) is the day falling 28 days after the later of the two dates referred to in section 119AB(4)(a).”.

Transfers of engagements: electronic transmission of statement to members

17. In Part 1 of Schedule 15 to the 1992 Act (amalgamations, transfers of engagements and conversion: supplementary), after paragraph 4 insert—

“**4A.**—(1) A society is to be regarded as sending a member—

- (a) the statement required by paragraph 1; or
- (b) the statement required by paragraph 3,

if it makes the statement available to the member on a website; and the end date for the purposes of section 119AB(4)(b) is the day falling 28 days after the later of the two dates referred to in section 119AB(4)(a).

(2) If the statement is absent from a website for part of the period referred to in section 119AB(4), and the absence is disregarded for the purposes of section 119AB(5), that absence does not invalidate—

- (a) the proceedings of a meeting of the society,
- (b) a subsequent amalgamation of the society,
- (c) a transfer of engagements by or to the society, or
- (d) a conversion of the society into a company.”.

Ballots and proxies

Interpretation

18. In section 116 of the 1992 Act (interpretation), insert at the appropriate place—

““ballot” means—

- (a) a postal ballot (within the meaning of paragraph 8 of Schedule 12),
- (b) an electronic ballot (within the meaning of paragraph 8A of that Schedule), or
- (c) a combined ballot (within the meaning of paragraph 8B of that Schedule);”.

Electronic communications in postal ballots

19.—(1) Paragraph 8 of Schedule 12 to the 1992 Act (postal ballots) is amended as follows.

(2) In sub-paragraph (1), omit “in this Act “ballot” or”.

(3) After sub-paragraph (1) insert—

“(1A) The rules of a friendly society or registered branch may also make provision in relation to the use of electronic communications in the conduct of a postal ballot.”.

(4) After sub-paragraph (4) insert—

“(4A) A friendly society or registered branch is to be regarded as giving notice of a postal ballot for the purposes of this paragraph if it makes the notice available to a member on a website; and the end date for the purposes of section 119AB(4)(b) is the voting date.

(4B) A notice given in accordance with sub-paragraph (4A) is to be treated as given to the member on the day the member is notified in accordance with section 119AB(3).

(4C) If the notice of postal ballot is absent from the website for part of the period referred to in section 119AB(4), and the absence is disregarded for the purposes of section 119AB(5), that absence does not invalidate the postal ballot.

(4D) If a notice of postal ballot includes an electronic address for the society or registered branch, the address is to be regarded as one to which a completed voting paper, or other documents or information relating to the ballot may be sent; but that is subject to such conditions or restrictions as the notice specifies, and any express provision to the contrary made in the rules of the society or branch.”.

Electronic ballots and combined ballots

20. After paragraph 8 of Schedule 12 to the 1992 Act (postal ballots) insert—

“Electronic ballots

8A.—(1) The rules of a friendly society or registered branch may provide for the voting in an election of the committee of management or, where applicable, the secretary, or on any resolution (whether special or not) to be conducted in all, or any particular, circumstances by electronic ballot.

(2) An “electronic ballot”, in relation to such an election or resolution, means an electronic ballot taking place by virtue of those rules.

(3) A person is to be regarded as voting in an electronic ballot only if the following conditions are satisfied.

(4) The first condition is that the person—

(a) has agreed (generally or specifically) that the society or branch may make a facility for registering a vote in the ballot available on a website, and

(b) has not revoked that agreement.

(5) The second condition is that the society or branch has notified the person of—

(a) the presence of the facility on the website;

(b) the address of the website;

(c) the place on the website where the facility may be accessed; and

(d) how to access the facility.

(6) The third condition is that the facility is present on the website for the whole of the period—

(a) beginning with the day on which the notification under sub-paragraph (5) is given, and

(b) ending at the time which the society or branch specifies in the notice of the ballot as the final time for the registration of votes in the ballot.

(7) The fourth condition is that the person registers a vote in the ballot by using the facility.

(8) The notification given under sub-paragraph (5) must—

(a) state that it concerns a notice of an electronic ballot on a specified matter, and

(b) be given not less than 14 days before the final date for the registration of votes in the ballot.

(9) Notice of an electronic ballot must be given not less than 14 nor more than 56 days before the date which the society or branch specifies as the final day for the registration of votes in the ballot.

(10) Unless express provision to the contrary is made in the rules of a society or branch, sub-paragraphs (4) and (5) of paragraph 8 apply to a notice of an electronic ballot as they apply to a notice of a postal ballot.

(11) The rules of the society or branch may make provision as to the consequences of any irregularities occurring in the course of a ballot, including provision as to the validity of multiple votes cast by a member in the same election or on the same resolution.

(12) Unless express provision to the contrary is made in the rules of a society or branch, if the facility for registering a vote is absent from the website for part of the period referred to in sub-paragraph (6), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected the society or branch to prevent or avoid.

Combined ballots

8B.—(1) The rules of a friendly society or registered branch may provide for the voting in an election of the committee of management or, where applicable, the secretary, or on any resolution (whether special or not) to be conducted in all, or any particular, circumstances by combined ballot.

(2) A “combined ballot”, in relation to such an election or resolution, means a postal ballot and electronic ballot taking place in accordance with those rules.

(3) The rules must, in particular, stipulate that no person entitled to vote in a combined ballot is permitted to do so in both the postal and the electronic ballot.

(4) Paragraph 8(2) to (5) applies to a combined ballot in so far as it involves a postal ballot.

(5) Paragraph 8A(3) to (12) applies to a combined ballot in so far as it involves an electronic ballot.”.

Consequential amendments

21.—(1) In the following provisions of the 1992 Act for “instruments appointing proxies” substitute “appointments of proxies”—

- (a) paragraph 4(1)(b) of Schedule 12;
- (b) paragraph 7(1)(b)(ii) of Schedule 12;
- (c) paragraph 1(3)(b) of Schedule 15;
- (d) paragraph 4(b) of Schedule 15.

(2) In the following provisions of the 1992 Act, omit “postal”—

- (a) section 86(9)(b);
- (b) paragraph 1(2) of Schedule 11;
- (c) paragraph 7(2) and (3) of Schedule 12.

(3) In paragraph 7(1)(c) of Schedule 12 to the 1992 Act, after “ballot papers” insert “or, in the case of an electronic ballot, the section of the website on which in which the facility for registering a vote may be used”.

PART 4

Industrial and provident societies and credit unions

Use of name in electronic communications

- 22.**—(1) In section 5(6) of the 1965 Act(**a**) (name of society), after paragraph (d) insert—
- “(e) in all its business correspondence and documentation that takes electronic form;
 - (f) on all its websites.”.
- (2) In section 5(7) of the 1965 Act(**b**)—
- (a) in paragraph (b), for “or (d)” substitute “, (d) or (e)”; and
 - (b) after paragraph (c), insert—
 - “; or
 - (d) causes or authorises the appearance on the internet of a website such as is mentioned in subsection (6)(f) in which the society’s registered name is not mentioned in legible characters,”.
- (3) After section 5(7), insert—
- “(8) The references in this section and section 5A to a society’s websites include a reference to a section of another person’s website—
 - (a) which relates to the society, and
 - (b) which the society placed, or the placement of which the society authorised, on the other person’s website.”.
- (4) In section 5A(1) of the 1965 Act(**c**) (display of charitable status), immediately after paragraph (d) omit “and” and after paragraph (e) insert—
- “(f) in all its business correspondence and documentation that takes electronic form; and
 - (g) on all its websites.”.
- (5) In section 5A(5) of the 1965 Act—
- (a) in paragraph (a), for “or (d)” substitute “, (d) or (f)”; and
 - (b) omit “or” immediately after paragraph (b); and
 - (c) after paragraph (c), insert—
 - “; or
 - (d) causes or authorises the appearance on the internet of a website such as is mentioned in subsection (1)(g) in which the society’s registered name is not mentioned in legible characters,”.

Electronic transmission of annual returns and group accounts

- 23.**—(1) After subsection (5) of section 39 of the 1965 Act(**d**) (annual returns), insert—
- “(6) A society (“S”) is to be regarded as having supplied to a person (“P”) a copy of S’s latest return if each of the following conditions is satisfied.
 - (7) The first condition is that P—

(a) 1965 c.12; section 5(6) was amended by the Co-operatives and Community Benefit Societies Act 2003, section 5(3), (9), Sch.

(b) 1965 c.12; section 5(7) was amended by the Co-operatives and Community Benefit Societies Act 2003, section 5(4), (9), Sch.

(c) 1965 c.12; section 5A was inserted by the Co-operatives and Community Benefit Societies Act 2003, section 2.

(d) 1965 c.12; there are amendments to section 39 not relevant to this Order.

- (a) has agreed (generally or specifically) that S may make the return available to P on a website, and
 - (b) has not revoked that agreement.
- (8) The second condition is that S has notified P of—
- (a) the presence of the return on the website,
 - (b) the address of the website,
 - (c) the place on the website where the return may be accessed, and
 - (d) how to access the return.
- (9) The third condition is that the return is present on the website for the whole of the period—
- (a) beginning with the day on which S sends P the notification referred to in subsection (8) or, if later, the day on which the return first appears on the website, and
 - (b) ending on the day when that return ceases to be S’s latest return.
- (10) If the return is absent from the website for part of the period referred to in subsection (9), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected S to prevent or avoid.”

(2) In section 13 of the 1968 Act(a) (group accounts of industrial and provident societies), after subsection (7), insert—

“(8) Subsections (6) to (10) of section 36 of the Act of 1965 apply to the latest group accounts of an industrial and provident society as those subsections apply to a copy of the latest annual return of an industrial and provident society.”

Inclusion of electronic address in register of members and officers

24. In section 44(1) of the 1965 Act (register of members and officers)—

- (a) in paragraphs (a) and (e), before “addresses” insert “postal”;
- (b) after subsection (1) insert—

“(1A) Where a member or officer has notified to the society an electronic address for the purpose of receiving notices or documents under this Act, the requirement under subsection (1) includes a requirement to secure that the register shows—

- (a) that electronic address; and
- (b) the purposes for which it has been notified.

(1B) Where it appears to a society that an electronic address shown on the register pursuant to subsection (1) is no longer current, the society may remove that address from the register.”; and

- (c) in subsection (5)(a), for “addresses” substitute “postal and electronic addresses”.

Registration provisions

25. In section 2(1)(b) and (2) of the 1965 Act(b) (registration), omit “printed”.

Form and delivery of documents to the Authority

26.—(1) In section 72 of the 1965 Act (the title to which becomes “Form, delivery and evidence of documents”), in subsection (1)(c), for “deposited” substitute “delivered”.

(a) 1968 c.55; section 13 was amended by S.I. 2001/2617 arts 4(1)(a), 13(1), Sch 1, Pt 1, Sch 3 Pt III paras 246, 255.
 (b) 1965 c.12; subsections (1) and (2) were amended by S.I. 1996/1738 arts 3(1), 4(1) and S.I. 2001/2617 art 13(1), Sch 3, Pt III paras 214, 215(i).
 (c) 1965 c.12; section 72(1) was substituted by S.I. 2001/3649, art 182.

(2) After that section insert—

“Form etc. of electronic documents sent to the Authority

72A.—(1) The Authority may impose requirements as to the form, authentication and manner of delivery of documents sent electronically to the Authority under this Act.

(2) As regards authentication of a document sent to the Authority electronically, the Authority may—

- (a) require the document to be authenticated by a particular person or a person of a particular description;
- (b) specify the means of authentication;
- (c) require the document to contain or be accompanied by the name or registered number of the society to which it relates (or both).

(3) As regards the manner of delivery of a document sent electronically, the Authority may specify requirements as to the hardware and software to be used, and technical specifications (for example, matters relating to protocol, security, anti-virus protection or encryption).

(4) The power conferred by this section does not authorise the Authority to require documents to be delivered electronically.

(5) Requirements imposed under this section must not be inconsistent with requirements imposed by this Act or any other enactment with respect to the form, authentication and delivery of the document concerned.

(6) In this section, a document is sent electronically if it is sent by electronic means or in electronic form.”.

(3) In section 11(3) of the 1968 Act(a) (amendments relating to annual returns), for “section 72(1)” substitute “section 72(1) or 72A”.

(4) After section 14 of the 1968 Act (exemption from requirements in respect of group accounts), insert—

“Form etc. of electronic documents sent to the Authority

14A. Section 72A of the Act of 1965 applies for the purposes of this Act as it applies for the purposes of that Act.”.

(5) In section 31(2) of the Credit Unions Act 1979(b) (interpretation, etc), for “72 and 74” insert “72, 72A, 74 and 74A”.

Interpretation: communications

27.—(1) In section 74 of the 1965 Act (interpretation: general), in subsection (1)(c), insert at the appropriate place—

““electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means.”.

(2) After that section insert—

“Meaning of “electronic form”, “by electronic means” etc.

74A.—(1) The following provisions apply for the purposes of this Act.

(a) 1968 c.55; section 11(3) was amended by the Friendly Societies Act 1974, section 116, Sch 11 and by S.I. 2001/2617, art 13(1), Sch 3, Pt III, paras 246, 253(b).
(b) 1979 c. 34; section 31(2) was amended by S.I. 2001/2617, art 13(1), Sch 3, PtIV, paras 264, 289(a), Sch 4 and S.I. 2002/1555, art 7(1), (3).
(c) 1965 c.12; there are amendments to section 74(1) not relevant to this Order.

- (2) A document or information is sent in electronic form if it is sent—
- (a) by electronic means (for example, by email or fax), or
 - (b) by any other means while in electronic form (for example, sending a disk in the post).

References to electronic copy have a corresponding meaning.

- (3) A document or information is sent by electronic means if it is—
- (a) sent initially and received at its destination by means of electronic equipment for the processing (which expression includes digital compression) or storage of data, and
 - (b) entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

References to “electronic means” have a corresponding meaning.

(4) A document or information sent in electronic form must be sent in a form, and by a means, that the sender reasonably considers will enable the recipient—

- (a) to read it, and
- (b) to retain a copy of it.

(5) For the purposes of this section, a document or information can be read only if—

- (a) it can be read with the naked eye, or
- (b) to the extent that it consists of images (for example photographs, pictures, maps, plans or drawings), it can be seen with the naked eye.

(6) The provisions of this section apply whether the provision of this Act uses the word “send” or uses other words (such as “deliver”, “furnish”, “issue”, “produce”, “provide” or “supply”) to refer to the sending of a document or information.”.

Electronic transmission of representations of retiring auditor

28. In section 6 of the 1968 Act (provisions as to resolutions relating to appointment and removal of auditors), after subsection (7) insert—

“(7A) A society (“S”) is to be regarded as sending a member (“M”) a copy of the document containing the representations received by it for the purposes of subsection (7)(c) if each of the following conditions is satisfied.

(7B) The first condition is that M—

- (a) has agreed (generally or specifically) that S may make the document available to M on a website, and
- (b) has not revoked that agreement.

(7C) The second condition is that S has notified M of—

- (a) the presence of the document on the website,
- (b) the address of the website,
- (c) the place on the website where the document may be accessed, and
- (d) how to access the document.

(7D) The third condition is that the document is present on the website for the whole of the period—

- (a) beginning when S sends M the notification referred to in subsection (7C) or, if later, when the document first appears on the website, and
- (b) ending 28 days after the later of the two dates referred to in paragraph (a).

(7E) If the document is absent from the website for part of the period referred to in subsection (7D), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected S to prevent or avoid.”.

*Angela Watkinson
Michael Fabricant*

21st March 2011

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which is made under sections 8 and 9 of the Electronic Communications Act 2000 (c. 7), amends various provisions of the law applying to mutual societies for the purpose of facilitating the use of electronic communications by such societies when sending notices and other documents to their members and other persons, and when conducting ballots of their members.

Article 2 amends paragraph 24 of Schedule 2 to the Building Societies Act 1986 to permit proxy forms to be sent to a member's electronic address or to be accessed by a member on a website. It also allows societies to make available an online facility for the completion and return of appointments electronically. Article 3 corrects minor errors and does not alter the meaning of the provisions.

Part 3 makes amendments to the Friendly Societies Act 1992 ("the 1992 Act"). Article 4 inserts new definitions into that Act. Article 5 amends section 104 of the 1992 Act (public file of a friendly society) and makes provision for the Financial Services Authority ("the Authority") to publish all or part of the public file of a society on its website. Article 6 particularises what the Authority may direct if a society elects to send to the Authority a document electronically.

Article 7 amends section 78 of the 1992 Act (laying and furnishing of annual accounts and reports) to make provision for societies and registered branches to make copies of their annual accounts available to members on a website.

Article 8 amends section 113 of the 1992 Act (service of notices) to provide an alternative way of serving notices on persons under the 1992 Act or the rules of a society. Subject to any provision in the rules, notices may also be sent by electronic means to an electronic address.

Articles 9 and 10 amend Schedule 3 to the 1992 Act (establishment, incorporation and constitution of incorporated friendly societies) to make provision relating to the use of the society's name on business documents that take electronic form and websites created by a society and to remove the requirement for copies of rules sent to the Authority to be printed. Article 11 amends section 63A of the Friendly Societies Act 1974 and paragraph 14 of Schedule 3 to the 1992 Act to make provision requiring the inclusion of electronic addresses provided by members for the purpose of electronic communication in the register of members maintained by societies. Article 12 amends paragraph 12 of Schedule 4 to the 1992 Act (consequences of transfer) to require former trustees to provide documents relating to the society held in electronic form to the society on its incorporation.

Article 13 amends paragraph 3 of Schedule 11 to the 1992 Act (eligibility to be elected committee member) and makes provision to permit the use of a website to notify members of information about a person's eligibility to be a committee member.

Articles 14 and 15 amend Schedule 12 to the 1992 Act (meetings and resolutions) and make provision to facilitate the use by a society of electronic communications for the service of notices of meetings either by sending the notice by electronic means to an electronic address provided by the member for the purpose, or by making it available to the member on a website.

Articles 16 and 17 amend paragraph 14 of Schedule 14 (statement by person ceasing to hold office) and Part 1 of Schedule 15 to the 1992 Act (amalgamations, transfers of engagements and conversion: supplementary) and make provision to allow the use of websites to make information available to members when auditors cease to hold office or on a transfer of a society's engagement to another body if certain conditions are satisfied.

Articles 18 to 21 make provision for the use of electronic communications in the conduct of postal ballots and when members appoint proxies, and for the use of electronic ballots. Article 18 inserts a definition of “ballot” into section 116 of the 1992 Act (friendly societies etc.). Article 19 provides that the rules of a friendly society may make provision for the use of electronic communications in the conduct of a postal ballot and provides that notice of the ballot may be given by making it available on a website. Article 20 inserts new paragraphs 8A and 8B into Schedule 12 of the 1992 Act to allow the conduct of electronic ballots or combined ballots of members by societies if their rules permit it.

Part 4 makes amendments to the law applying to industrial and provident societies and credit unions. Article 22 amends section 5 (use of name) and 5A (display of charitable status) of the Industrial and Provident Societies Act 1965 (“the 1965 Act”) and makes provision relating to the use of the society’s name on business documents that take electronic form and websites created by a society.

Article 23 amends section 39 of the 1965 Act (annual returns) to make provision for societies to make copies of their annual returns available to members on a website, and makes consequential amendments to section 13 of the Friendly and Industrial and Provident Societies Act 1968 (“the 1968 Act”) in respect of group accounts.

Article 24 amends section 44 of the 1965 Act (register of members and officers) to require the inclusion of electronic addresses provided by members and officers for the purpose of electronic communication to be included in the register of members and officers maintained by societies.

Article 25 amends section 2 of the 1965 Act (registration) to omit the requirement that copies of rules be printed.

Article 26 inserts a new section 72A into the 1965 Act and amends sections 11 (amendments relating to annual returns) and 14 (exemption from requirements in respect of group accounts) of the 1968 Act and particularises what the Authority may direct if a society elects to send to the Authority a document in electronic form or by electronic means.

Article 27 amends section 74 of the 1965 Act (interpretation: general) to insert new definitions into that Act of “electronic address” and state what is meant by electronic form and electronic means.

Article 28 amends section 6 of the 1968 Act (provisions as to resolutions relating to appointment and removal of auditors) to make provision for societies to make copies of auditors’ representations available to members on a website if certain conditions are satisfied.

An impact assessment of the effect that this instrument will have on the costs of business is available from the Mutuels Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is published with the Explanatory Memorandum alongside the instrument on legislation.gov.uk.

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