

*Draft Order laid before Parliament under section 9(4) of the Electronic Communications Act 2000  
for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2000 No.**

**COMPANIES**

**The Companies Act 1985 (Electronic  
Communications) Order 2000**

*Made* - - - - 2000  
*Coming into force* - - 2000

Whereas the Secretary of State considers 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;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 8 and 9 of the Electronic Communications Act 2000(1) and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 9(4) of that Act, and approved by a resolution of each House of Parliament:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Companies Act 1985 (Electronic Communications) Order 2000 and shall come into force on the day after the day on which it is made.

(2) In this Order, “the 1985 Act” means the Companies Act 1985(2).

**Electronic attestation of subscriber’s signature**

2.—(1) Section 2 of the 1985 Act (requirements with respect to memorandum)(3) is amended as follows.

(2) In subsection (6), for the words “The memorandum” substitute the words “Subject to subsection (6A), the memorandum”.

(3) Insert the following subsection after subsection (6)—

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(1) 2000 c. 7.

(2) 1985 c. 6.

(3) Section 2 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995 (c. 7).

“(6A) Where the memorandum is delivered to the registrar otherwise than in legible form and is authenticated by each subscriber in such manner as is directed by the registrar, the requirements in subsection (6) for signature in the presence of at least one witness and for attestation of the signature do not apply.”

**3.—**(1) Section 7 of the 1985 Act (articles prescribing regulations for companies)(4) is amended as follows.

(2) In subsection (3), insert the words “subject to subsection (3A),” at the beginning of paragraph (c).

(3) Insert the following subsection after subsection (3)—

“(3A) Where the articles are delivered to the registrar otherwise than in legible form and are authenticated by each subscriber to the memorandum in such manner as is directed by the registrar, the requirements in subsection (3)(c) for signature in the presence of at least one witness and for attestation of the signature do not apply.”

#### **Electronic statement of compliance with incorporation requirements**

**4.—**(1) Section 12 of the 1985 Act (duty of registrar) is amended as follows.

(2) In subsection (3), for the words “A statutory declaration” substitute the words “Subject to subsection (3A), a statutory declaration”.

(3) Insert the following subsections after subsection (3)—

“(3A) In place of the statutory declaration referred to in subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a) or (b) of subsection (3) that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

#### **Electronic statement of compliance with section 30 requirements**

**5.—**(1) Section 30 of the 1985 Act (exemption from requirement of “limited” as part of the name) is amended as follows.

(2) In subsection (4)—

(a) for the words “A statutory declaration” substitute the words “Subject to subsection (5A), a statutory declaration”, and

(b) omit the words from “; and the registrar” to the end.

(3) Insert the following subsections after subsection (5)—

“(5A) In place of the statutory declaration referred to in subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a person falling within the applicable paragraph of subsection (5) stating that the company complies with the requirements of subsection (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

(5B) The registrar may refuse to register a company by a name which does not include the word “limited” unless a statutory declaration under subsection (4) or statement under subsection (5A) has been delivered to him.

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(4) Section 7 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995.

(5C) Any person who makes a false statement under subsection (5A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

#### **Electronic statement concerning private company becoming public**

6.—(1) Section 43 of the 1985 Act (re-registration of private company as public) is amended as follows.

(2) At the beginning of paragraph (e) of subsection (3), insert the words “subject to subsection (3A).”.

(3) Insert the following subsections after subsection (3)—

“(3A) In place of the statutory declaration referred to in paragraph (e) of subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

7.—(1) Section 47 of the 1985 Act (certificate of re-registration under s.43) is amended as follows.

(2) In subsection (2), after the words “declaration under section 43(3)(e)”, insert the words “or a statement under section 43(3A)”.

#### **Electronic statement concerning limited company becoming unlimited**

8.—(1) Section 49 of the 1985 Act (re-registration of limited company as unlimited) is amended as follows.

(2) At the beginning of paragraph (b) of subsection (8), insert the words “subject to subsection (8A).”.

(3) Insert the following subsections after subsection (8)—

“(8A) In place of the lodging of a statutory declaration under paragraph (b) of subsection (8), there may be delivered to the registrar of companies using electronic communications a statement made by the directors of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

(8B) Any person who makes a false statement under subsection (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

#### **Electronic statement concerning public company share capital**

9.—(1) Section 117 of the 1985 Act (public company share capital requirements) is amended as follows.

(2) At the end of subsection (2) insert the words “This subsection is subject to subsection (3A).”.

(3) Insert the following subsection after subsection (3)—

“(3A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company complying with the requirements of subsection (3) (a) to (d).”

(4) In subsection (5), after the words “statutory declaration” insert the words “or statement”.

(5) After subsection (7) insert the following subsection—

“(7A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic statement concerning financial assistance**

**10.**—(1) Section 155 of the 1985 Act (relaxation of s.151 for private companies) is amended as follows.

(2) In subsection (6), for the words “The directors of the company” substitute the words “Subject to subsection (6A), the directors of the company”.

(3) Insert the following subsection after subsection (6)—

“(6A) In place of the statutory declaration referred to in subsection (6), there may be delivered to the registrar of companies under section 156(5) a statement made by the persons mentioned in subsection (6) above complying with the section next following.”

**11.**—(1) Section 156 (statutory declaration under s.155) is amended as follows.

(2) After subsection (1) insert the following subsection—

“(1A) A statement made by a company’s directors under section 155(6A) shall state—

- (a) the names and addresses of all the directors of the company,
- (b) whether the business of the company is that of a banking company or insurance company or some other business,
- (c) that the company or (as the case may be) a company (naming such company) of which it is the holding company is proposing to give financial assistance in connection with the acquisition of shares in the company or (as the case may be) its holding company (naming that holding company),
- (d) whether the assistance is for the purpose of that acquisition or for reducing or discharging a liability incurred for the purpose of that acquisition,
- (e) the name and address of the person to whom the assistance is to be given (and in the case of a company its registered office),
- (f) the name of the person who has acquired or will acquire the shares and the number and class of the shares acquired or to be acquired,
- (g) the principal terms on which the assistance will be given,
- (h) the form the financial assistance will take (stating the amount of cash or value of any asset to be transferred to the person assisted), and
- (i) the date on which the assistance is to be given.”

(3) In subsection (2) after the words “The declaration” insert the words “under section 155(6) or (as the case may be) statement under section 155(6A)”.

(4) In subsections (4), (5) and (7), after the word “declaration” in each place where it occurs insert the words “or statement”.

### **Electronic transmission of accounts and annual reports**

**12.**—(1) Section 238 of the 1985 Act (persons entitled to receive copies of accounts and reports) (5) is amended as follows.

(2) After subsection (4), insert the following subsections—

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(5) Section 238 was substituted by sections 1 and 10 of the Companies Act 1989 (c. 40).

“(4A) References in this section to sending to any person copies of a company’s annual accounts, of the directors’ report and of the auditors’ report include references to using electronic communications for sending copies of those documents to such address as may for the time being be notified to the company by that person for that purpose.

(4B) For the purposes of this section copies of those documents are also to be treated as sent to a person where—

- (a) the company and that person have agreed to his having access to the documents on a web site (instead of their being sent to him);
- (b) the documents are documents to which that agreement applies; and
- (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of—
  - (i) the publication of the documents on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the documents may be accessed, and how they may be accessed.

(4C) For the purposes of this section documents treated in accordance with subsection (4B) as sent to any person are to be treated as sent to him not less than 21 days before the date of a meeting if, and only if—

- (a) the documents are published on the web site throughout a period beginning at least 21 days before the date of the meeting and ending with the conclusion of the meeting; and
- (b) the notification given for the purposes of paragraph (c) of that subsection is given not less than 21 days before the date of the meeting.

(4D) Nothing in subsection (4C) shall invalidate the proceedings of a meeting where—

- (a) any documents that are required to be published as mentioned in paragraph (a) of that subsection are published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish those documents throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(4E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of subsections (4A) to (4D).”

**13.—**(1) Section 239 of the 1985 Act (right to demand copies of accounts and reports)(6) is amended as follows.

(2) After subsection (2), insert the following subsections—

“(2A) Any obligation by virtue of subsection (1) to furnish a person with a document may be complied with by using electronic communications for sending that document to such address as may for the time being be notified to the company by that person for that purpose.

(2B) A company may, notwithstanding any provision to the contrary in its articles, take advantage of subsection (2A).”

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(6) Section 239 was substituted by sections 1 and 10 of the Companies Act 1989.

### **Electronic transmission of summary financial statement**

14.—(1) Section 251 of the 1985 Act (provision of summary financial statement to shareholders)(7) is amended as follows.

(2) After subsection (2), insert the following subsections—

“(2A) References in this section to sending a summary financial statement to an entitled person include references to using electronic communications for sending the statement to such address as may for the time being be notified to the company by that person for that purpose.

(2B) For the purposes of this section a summary financial statement is also to be treated as sent to an entitled person where—

- (a) the company and that person have agreed to his having access to summary financial statements on a web site (instead of their being sent to him);
- (b) the statement is a statement to which that agreement applies; and
- (c) that person is notified, in a manner for the time being agreed for the purpose between him and the company, of—
  - (i) the publication of the statement on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the statement may be accessed, and how it may be accessed.

(2C) For the purposes of this section a statement treated in accordance with subsection (2B) as sent to an entitled person is to be treated as sent to him if, and only if—

- (a) the statement is published on the web site throughout a period beginning at least 21 days before the date of the meeting at which the accounts and directors' report from which the statement is derived are to be laid and ending with the conclusion of that meeting; and
- (b) the notification given for the purposes of paragraph (c) of that subsection is given not less than 21 days before the date of the meeting.

(2D) Nothing in subsection (2C) shall invalidate the proceedings of a meeting where—

- (a) any statement that is required to be published as mentioned in paragraph (a) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish that statement throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2E) A company may, notwithstanding any provision to the contrary in its articles, take advantage of any of subsections (2A) to (2D).”

### **Electronic requirement that accounts and reports be laid before the company in general meeting**

15.—(1) Section 253 of the 1985 Act (right of shareholder to require laying of accounts)(8) is amended as follows.

(2) After subsection (2), insert the following subsection—

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(7) Section 251 was substituted by sections 1 and 15 of the Companies Act 1989, and amended by regulation 3 of S.I.1992/3003.

(8) Section 253 was substituted by sections 1 and 16 of the Companies Act 1989.

“(2A) The power of a member or auditor under subsection (2) to require the holding of a general meeting is exercisable not only by the deposit of a notice in writing but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.”

(3) In subsection (3)—

(a) for the words “the deposit of such a notice proceed” substitute

(a) “the deposit of a notice containing a requirement under subsection (2), or

(b) the receipt of such a requirement contained in an electronic communication, proceed”, and

(b) for the words “deposited the notice” substitute the words “required the holding of the meeting”.

(4) In subsection (5), for the words “deposited the notice” substitute the words “required the holding of the meeting”.

#### **Definition of “address”**

**16.**—(1) The following definition is inserted at the appropriate place in section 262(1) of the 1985 Act (minor definitions)(**9**)—

““address”, except in section 228, in relation to electronic communications, includes any number or address used for the purposes of such communications”.

(2) The following entry is inserted at the appropriate place in the index of defined expressions set out in section 262A(**10**)—

““address” section 262(1)”.

#### **Electronic requirement that annual general meeting be held**

**17.**—(1) Section 366A of the 1985 Act (election by private company to dispense with annual general meetings)(**11**) is amended as follows.

(2) After subsection (3), insert the following subsection—

“(3A) The power of a member under subsection (3) to require the holding of an annual general meeting is exercisable not only by the giving of a notice but also by the transmission to the company at such address as may for the time being be specified for the purpose by or on behalf of the company of an electronic communication containing the requirement.”

(3) In subsection (4), after the words “notice is given” insert “or electronic communication is transmitted”.

(4) In subsection (5), after the words “notice given” insert “or electronic communication transmitted”.

(5) Insert the following subsection after subsection (5)—

“(5A) In this section, “address” includes any number or address used for the purposes of electronic communications.”

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(9) Section 262 was substituted by sections 1 and 22 of the Companies Act 1989, and has been amended in manner not relevant to this Order.

(10) Section 262A was inserted by section 22 of the Companies Act 1989 and has been amended in manner not relevant to this Order.

(11) Section 366A was inserted by section 115(2) of the Companies Act 1989.

## Electronic transmission of notices of meetings

**18.**—(1) Section 369 of the 1985 Act (length of notice for calling meetings)(**12**) is amended as follows.

(2) Insert the following subsections after subsection (4)—

“(4A) For the purposes of this section the cases in which notice in writing of a meeting is to be taken as given to a person include any case in which notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(4B) For the purposes of this section a notice in writing of a meeting is also to be treated as given to a person where—

- (a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;
- (b) the meeting is a meeting to which that agreement applies;
- (c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of—
  - (i) the publication of the notice on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the notice may be accessed, and how it may be accessed;

and

- (d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this section a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

(4C) A notification given for the purposes of subsection (4B)(c) must—

- (a) state that it concerns a notice of a company meeting served in accordance with this Act,
- (b) specify the place, date and time of the meeting, and
- (c) state whether the meeting is to be an annual or extraordinary general meeting.

(4D) Nothing in subsection (4B) shall invalidate the proceedings of a meeting where—

- (a) any notice that is required to be published as mentioned in paragraph (d) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and
- (b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(4E) A company may, notwithstanding any provision to the contrary in a company’s articles, take advantage of any of subsections (4A) to (4D).

(4F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in force) as to such service shall apply.

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(12) Section 369 was amended by section 115(3) of the Companies Act 1989.



(4G) In this section, “address” includes any number or address used for the purposes of electronic communications.”

### **Electronic transmission of proxy appointments**

**19.**—(1) Section 372 of the 1985 Act (proxies) is amended as follows.

(2) After subsection (2) insert the following subsections—

“(2A) The appointment of a proxy may, notwithstanding any provision to the contrary in a company’s articles, be contained in an electronic communication sent to such address as may be notified by or on behalf of the company for that purpose.

(2B) In so far as the articles of the company do not make other provision in that behalf, the appointment of a proxy may be contained in an electronic communication in accordance with the provisions of Table A (as for the time being in force).”

(3) In subsection (5), for the words “the instrument appointing a proxy, or any other” substitute the words “the appointment of a proxy or any”.

(4) In subsection (6), delete the words “in writing” in both places where they occur.

(5) Insert the following subsection after subsection (6)—

“(6A) In this section, “address” includes any number or address used for the purposes of electronic communications.”

**20.**—(1) Section 373 of the 1985 Act (right to demand a poll) is amended as follows.

(2) In subsection (2), for the words “The instrument appointing” substitute the words “The appointment of”.

### **Electronic transmission of notice of meeting to pass elective resolution**

**21.**—(1) Section 379A of the 1985 Act (elective resolution of private company)(**13**) is amended as follows.

(2) Insert the following subsections after subsection (2A)—

“(2B) For the purposes of this section, notice in writing of the meeting is to be taken as given to a person where notice of the meeting is sent using electronic communications to such address as may for the time being be notified by that person to the company for that purpose.

(2C) For the purposes of this section a notice in writing of the meeting is also to be treated as given to a person where—

- (a) the company and that person have agreed that notices of meetings required to be given to that person may instead be accessed by him on a web site;
- (b) the meeting is a meeting to which that agreement applies;
- (c) that person is notified, in a manner for the time being agreed between him and the company for the purpose, of—
  - (i) the publication of the notice on a web site;
  - (ii) the address of that web site; and
  - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and

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(13) Section 379A was inserted by section 116 of the Companies Act 1989 and amended by article 2 of S.I. 1996/1471.

- (d) the notice continues to be published on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting;

and for the purposes of this section a notice treated in accordance with this subsection as given to any person is to be treated as so given at the time of the notification mentioned in paragraph (c).

(2D) A notification given for the purposes of subsection (2C)(c) must—

- (a) state that it concerns a notice of a company meeting at which an elective resolution is to be proposed, and  
(b) specify the place, date and time of the meeting.

(2E) Nothing in subsection (2C) shall invalidate the proceedings of a meeting where—

- (a) any notice that is required to be published as mentioned in paragraph (d) of that subsection is published for a part, but not all, of the period mentioned in that paragraph; and  
(b) the failure to publish that notice throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the company to prevent or avoid.

(2F) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A (as for the time being in force) as to such service shall apply.”

(3) In subsection (5), for the words “subsection (1)” substitute “subsections (1) and (2B) to (2E)”.

(4) Insert the following subsection after subsection (5)—

“(5A) In this section, “address” includes any number or address used for the purposes of electronic communications.”

### **Electronic statement to obtain memorandum of satisfaction**

**22.**—(1) Section 403 of the 1985 Act (entries of satisfaction and release: England and Wales)(**14**), as in force at the date of coming into force of this Order, is amended as follows.

(2) At the beginning of subsection (1), for the words “The registrar” substitute the words “Subject to subsection (1A), the registrar”.

(3) Insert the following subsection after subsection (1)—

“(1A) The registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, administrator or administrative receiver of the company which is contained in an electronic communication and that statement—

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,  
(b) contains a description of the charge,  
(c) states the date of creation of the charge and the date of its registration under this Chapter,  
(d) states the name and address of the chargee or, in the case of a debenture, trustee, and

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**(14)** Sections 395 to 420 (new provisions relating to the registration of charges with respect to companies registered in Great Britain) were substituted for sections 395 to 408, and 410 to 423 by sections 92 to 104 of the Companies Act 1989. Those substitutions have not yet been brought into force.

(e) where paragraph (b) of subsection (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be)."

(4) Insert the following subsection after subsection (2)—

"(2A) Any person who makes a false statement under subsection (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both."

**23.**—(1) Section 419 of the 1985 Act (entries of satisfaction and release: Scotland), as in force at the date of coming into force of this Order, is amended as follows.

(2) At the beginning of subsection (1), for the words "The registrar" substitute the words "Subject to subsections (1A) and (1B), the registrar".

(3) Insert the following subsections after subsection (1)—

"(1A) On an application being made to him in the prescribed form, the registrar of companies may make any such entry as is mentioned in subsection (1) where, instead of receiving such a statutory declaration as is mentioned in that subsection, he receives a statement by a director, secretary, liquidator, receiver or administrator of the company which is contained in an electronic communication and that statement—

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Chapter,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and
- (e) where paragraph (b) of subsection (1) applies, contains short particulars of the property which has been released from the charge, or which has ceased to form part of the company's property (as the case may be).

(1B) Where the statement under subsection (1A) concerns the satisfaction of a floating charge, then there shall be delivered to the registrar a further statement which—

- (a) is made by the creditor entitled to the benefit of the floating charge or a person authorised to act on his behalf;
- (b) is incorporated into, or logically associated with, the electronic communication containing the statement; and
- (c) certifies that the particulars contained in the statement are correct."

(4) Insert the following subsection after subsection (5)—

"(5A) Any person who makes a false statement under subsection (1A) or (1B) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both."

### **Electronic statement concerning joint stock company becoming public**

**24.**—(1) Section 685 of the 1985 Act (registration of joint stock company as public company)(15) is amended as follows.

(2) At the beginning of paragraph (e) of subsection (4), insert the words "subject to subsection (4A),".

(3) Insert the following subsection after subsection (4)—

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(15) Section 685 was amended by regulation 2 of, and paragraph 53 of the Schedule to, [S.I 1991/1997](#).

“(4A) In place of the statutory declaration referred to in paragraph (e) of subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.”

(4) In subsection (5), after the words “subsection (4)(e)”, insert the words “or statement under subsection (4A)”.

(5) Insert the following subsection after subsection (6)—

“(6A) Any person who makes a false statement under subsection (4A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic statement concerning other registrations under Chapter II of Part XXII**

**25.**—(1) Section 686 of the 1985 Act (other requirements for registration)(16) is amended as follows.

(2) In subsection (2), for the words “The lists” substitute the words “Subject to subsection (2A), the lists”.

(3) Insert the following subsection after subsection (2)—

“(2A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that subsection.”

(4) Insert the following subsection after subsection (3)—

“(3A) Any person who makes a false statement under subsection (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic statement concerning establishment of place of business in Great Britain**

**26.**—(1) Section 691 of the 1985 Act (documents to be delivered to registrar)(17) is amended as follows.

(2) At the beginning of sub-paragraph (iv) of paragraph (b) of subsection (1), insert the words “subject to subsection (3A)”.

(3) Insert the following subsection after subsection (3)—

“(3A) In place of the statutory declaration referred to in sub-paragraph (iv) of paragraph (b) of subsection (1), there may be delivered to the registrar of companies using electronic communications a statement made by any person by whom the declaration could have been made stating the date on which the company’s place of business in Great Britain was established.”

(4) Insert the following subsection after subsection (4)—

“(4A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Insertion of new section 707B**

**27.** The following section shall be inserted after section 707A(18)—

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(16) Section 686 was amended by section 145 of, and paragraph 5 of Schedule 19 to, the Companies Act 1989.

(17) Section 691 was amended by section 145 of, and paragraph 6 of Schedule 19 to, the Companies Act 1989.

(18) Section 707A was inserted by section 126(1) of the Companies Act 1989.

**“Delivery to the registrar using electronic communications**

**707B.**—(1) Electronic communications may be used for the delivery of any document to the registrar under any provision of the Companies Acts (including delivery of a document in the prescribed form), provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the document is required under any provision of the Companies Acts to be signed or sealed, it shall instead be authenticated in such manner as is directed by the registrar.

(3) The document must contain in a prominent position—

- (a) the name and registered number of the company to which it relates, or
- (b) if the document is delivered under Part XXIII, the registered number of the branch or place of business of the company to which it relates.

(4) If a document is delivered to the registrar which does not comply with the requirements imposed by or under this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(5) Where the registrar serves such a notice, then unless a replacement document—

- (a) is delivered to him within 14 days after the service of the notice, and
- (b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,

the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.

(6) In this section references to the delivery of a document include references to the forwarding, lodging, registering, sending or submission of a document and to the giving of a notice, and cognate expressions are to be construed accordingly.”

**Expressions used in the 1985 Act**

**28.**—(1) Section 742 of the 1985 Act (expressions used in connection with accounts)(**19**) is amended as follows.

(2) After subsection (2), insert the following subsection—

“(2A) References in this Act to sending or sending out copies of any of the documents referred to in section 238(1) include sending or sending out such copies in accordance with section 238(4A) or (4B).”

**29.**—(1) Section 744 of the 1985 Act (expressions used generally in that Act)(**20**) is amended as follows.

(2) Insert the following definitions at the appropriate places—

““communication” means the same as in the Electronic Communications Act 2000;

“electronic communication” means the same as in the Electronic Communications Act 2000;”.

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(19) Section 742 was substituted by section 23 of, and paragraph 15 of Schedule 10 to, the Companies Act 1989.

(20) Section 744 has been amended in manner not relevant to this Order.

**30.**—(1) Section 744A of the 1985 Act (index of defined expressions)(**21**) is amended as follows.

(2) Insert the following entries at the appropriate places—

“communication”	section 744
“electronic communication”	section 744”.

### Consequential amendments

**31.**—(1) In section 29 of the 1985 Act (regulations about names)—

- (a) in subsection (2)(a), for the words “required by section 12(3)”, substitute the words “under section 12(3) or statement under section 12(3A) (as the case may be)”,
- (b) in subsection (2)(b), for the words “required by section 686(2)” substitute the words “under section 686(2) or statement under section 686(2A) (as the case may be)”, and
- (c) in subsection (3)(a), after the words “statutory declaration” insert the words “or statement”.

(2) In subsections (2), (4), (5) and (7) of section 157 (special resolution under s. 155), and in subsection (4) of section 158 (time for giving financial assistance under s. 155) after the word “declaration” in each place where it occurs, insert the words “or statement”, and in subsection (4) (b) of section 158 after the word “declarations” insert the words “or statements”.

(3) In section 390 of the 1985 Act (auditors' right to attend company meetings, etc.)(**22**), insert the following subsection after subsection (1)—

“(1A) Subsections (4A) to (4G) of section 369 (electronic communication of notices of meetings) apply for the purpose of determining whether notice of a meeting is received by the company’s auditors as they apply in determining whether such a notice is given to any person.”

(4) Section 707 of the 1985 Act (delivery to the registrar of documents otherwise than in legible form)(**23**) is hereby repealed, and—

- (a) in section 706(4)(b) (delivery to the registrar of documents in legible form) for “707” substitute “707B”, and
- (b) in section 735A(2) of the 1985 Act (relationship of the Companies Act to the Insolvency Act)(**24**) for “707(1)” substitute “707B(1)”.

(5) In section 711(1)(g) of the 1985 Act (public notice by registrar of receipt of statutory declaration under section 117)(**25**), after the words “statutory declaration” insert the words “or statement”.

(6) Schedule 24 to the 1985 Act (punishment of offences)(**26**) is amended as follows—

(a) Insert the following entries at the appropriate places—

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(21) Section 744A was inserted by section 145 of, and paragraph 20 of Schedule 19 to, the Companies Act 1989, and has been amended in manner not relevant to this Order.

(22) Section 390 was substituted by sections 118 and 120(1) of the Companies Act 1989, and amended by article 3(2)(b) of S.I. 1996/1471.

(23) Section 707 was substituted by section 125(2) of the Companies Act 1989, and amended by regulation 4 of, and paragraphs 3 and 6 of Schedule 3 to, S.I. 1992/3179.

(24) Section 735A was inserted by section 439(1) of, and Part II of Schedule 13 to, the Insolvency Act 1986 (c. 45), and subsection (2) was amended by section 127(5) of the Companies Act 1989, and by section 76 of, and paragraph 9 of Schedule 16 to, the Deregulation and Contracting Out Act 1994 (c. 40).

(25) Section 711 has been amended in manner not relevant to this Order.

(26) Schedule 24 has been amended in manner not relevant to this Order.

<i>“Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
12(3B)	Person making false statement under section 12(3A) which he knows to be false or does not believe to be true	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory maximum; or both</p>	
30(5C)	Person making false statement under section 30(5A) which he knows to be false or does not believe to be true	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory maximum; or both</p>	
43(3B)	Person making false statement under section 43(3A) which he knows to be false or does not believe to be true	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory maximum; or both</p>	
49(8B)	Person making false statement under section 49(8A) which he knows to be false or does not believe to be true	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory maximum; or both</p>	
117(7A)	Person making false statement under section 117(3A) which he knows to be false or does not believe to be true	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory maximum; or both</p>	
403(2A)	Person making false statement under section 403(1A) which he knows to be false or	<ol style="list-style-type: none"> <li>1. indictment</li> <li>2. Summary</li> </ol>	<p>On 2 years or a fine; or both</p> <p>6 months or the statutory</p>	

<i>“Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Mode of prosecution</i>	<i>Punishment</i>	<i>Daily default fine (where applicable)</i>
	does not believe to be true		maximum; or both	
419(5A)	Person making false statement under section 419(1A) or (1B) which he knows to be false or does not believe to be true	1. indictment 2. Summary	On 2 years or a fine; or both 6 months or the statutory maximum; or both	
685(6A)	Person making false statement under section 685(4A) which he knows to be false or does not believe to be true	1. indictment 2. Summary	On 2 years or a fine; or both 6 months or the statutory maximum; or both	
686(3A)	Person making false statement under section 686(2A) which he knows to be false or does not believe to be true	1. indictment 2. Summary	On 2 years or a fine; or both 6 months or the statutory maximum; or both	
691(4A)	Person making false statement under section 691(3A) which he knows to be false or does not believe to be true	1. indictment 2. Summary	On 2 years or a fine; or both 6 months or the statutory maximum; or both”;and	

(b) in the entries relating to sections 156(6) and (7), after the word “declaration” in both places where it occurs, insert the words “or statement”.

#### **Amendment of subordinate legislation made under the Companies Act**

**32.**—(1) Table A as prescribed by the Companies (Tables A to F) Regulations 1985(27) is amended in accordance with Schedule 1 to this Order.

(2) The Companies (Summary Financial Statement) Regulations 1995(28) are amended in accordance with Schedule 2 to this Order.

(27) S.I. 1985/805, as amended by S.I. 1985/1052.

(28) S.I. 1995/2092.



2000

Minister for Small Business and E-Commerce,  
Department of Trade and Industry

## SCHEDULE 1

Article 32(1)

### Amendment of Table A

1. Regulation 1 of Table A (interpretation) is amended by inserting the following definitions at the appropriate places—

“communication” means the same as in the Electronic Communications Act 2000,

“electronic communication” means the same as in the Electronic Communications Act 2000”.

2.—(1) Regulation 60 of Table A (appointment of proxy) is amended as follows.

(2) For the words “An instrument appointing” substitute the words “The appointment of”, and omit the words “in writing”.

3. In regulation 61 of Table A (instructions to proxy), for the words “instrument appointing” substitute the words “appointment of”.

4.—(1) Regulation 62 of Table A (lodging of proxy appointment) is amended as follows.

(2) For the words “The instrument appointing” substitute the words “The appointment of”.

(3) In sub-paragraph (a), before the words “be deposited” insert “in the case of an instrument in writing”.

(4) After sub-paragraph (a) insert the following—

“(aa) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications—

(i) in the notice convening the meeting, or

(ii) in any instrument of proxy sent out by the company in relation to the meeting, or

(iii) in any invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting,

be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;”.

(5) In sub-paragraph (b), after the words “be deposited” insert the words “or received”.

(6) For the words “and an instrument of proxy which is not deposited or delivered” substitute “and an appointment of proxy which is not deposited, delivered or received”.

(7) At the end insert the words “In this regulation and the next, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

5. In regulation 63 of Table A (determination of proxy appointment), after the word “deposited” insert the words “or, where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received.”

6. For regulation 111 of Table A (form of notices) substitute the following—

“**111.** Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.

In this regulation, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

7. In regulation 112 of Table A (giving of notices)—

- (a) after the words “leaving it at that address”, insert the words “or by giving it using electronic communications to an address for the time being notified to the company by the member”,
- (b) after the words “at which notices may be given to him” insert the words “, or an address to which notices may be sent using electronic communications,” and
- (c) at the end insert the words “In this regulation and the next, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.”

8.—(1) Regulation 115 of Table A (when notices deemed to be given) is amended as follows.

(2) After the words “notice was given.” insert “Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given.”

(3) After the words “was posted” insert the words “or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent”.

## SCHEDULE 2

Article 32(2)

### **Amendment of the Companies (Summary Financial Statement) Regulations 1995**

1. The Companies (Summary Financial Statement) Regulations 1995 are amended as follows.

2.—(1) Regulation 2 (interpretation) is hereby renumbered regulation 2(1), and the following definitions are inserted at the appropriate places—

““address” means the same as in section 262(1) of the Companies Act 1985;

“communication” means the same as in the Electronic Communications Act 2000;

“electronic communication” means the same as in the Electronic Communications Act 2000;”.

(2) Insert the following paragraph after regulation 2(1)—

“(2) References in these Regulations to sending an entitled person copies of the full accounts and reports include sending such copies in accordance with section 238(4A) and (4B), and references to sending an entitled person a summary financial statement include sending such a statement in accordance with section 251(2A) and (2B).”

3. In regulation 4 (ascertainment of entitled person’s wishes)—

(a) in paragraph (2)(a) omit the words “in writing”,

(b) in paragraph (3), after the words “paragraph (2)(a) above” insert the words “and subject to paragraph (3A) below”, and

(c) insert the following paragraph after paragraph (3)—

“(3A) If a relevant notification is not in writing, it must be contained in an electronic communication transmitted to the company at an address specified by or on behalf of the company for that purpose.”

4.—(1) Regulation 5 (consultation by notice) is amended as follows.

(2) In paragraph (1)—

(a) for the words “authorised by the company's” substitute the words “in which the company may send notices of meetings pursuant to the 1985 Act or its”,

- (b) in sub-paragraph (a) for the words “in writing” substitute “either in writing or by sending the notification in an electronic communication to an address specified for that purpose”, and
  - (c) in sub-paragraph (c) omit the word “printed”.
- (3) In paragraph (2)—
- (a) for the words from “printed card” to “paid by the company”, substitute “card or form (in respect of which, in the case of a card or form sent by post, any postage necessary for its return to the company has been, or will be, paid by the company),”, and
  - (b) after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.
- (4) In paragraph (3), omit the word “printed”.
- 5.—(1) Regulation 6 (relevant consultation) is amended as follows.
- (2) In paragraph (2)—
- (a) for the words “authorised by the company’s” substitute the words “in which the company may send notices of meetings pursuant to the 1985 Act or its”,
  - (b) in sub-paragraph (a), for the words “in writing” substitute “either in writing or by sending the notification in an electronic communication to an address specified for that purpose”, and
  - (c) in sub-paragraph (d)—
    - (i) omit the word “printed”,
    - (ii) after the words “in respect of which” insert “, in the case of a card or form sent by post,”, and
    - (iii) after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.
6. In paragraph (5)(b) of regulation 7 (provisions applying to all companies and groups), omit the words “in writing”.

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## 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) modifies various provisions of the Companies Act 1985 (c. 6) (“the 1985 Act”) for the purpose of authorising or facilitating the use of electronic communications between companies and their members, debenture holders and auditors, and between companies and the registrar of companies.

2. Articles 2 and 3 modify sections 2 and 7 of the 1985 Act respectively (requirements with respect to memorandum and articles of association), to remove the requirement for attestation of the signatures of subscribers to the memorandum where the memorandum and articles are delivered to the registrar of companies electronically.

3. *Articles 4 to 11 and 22 to 26* modify the following provisions of the 1985 Act to provide in each case for the electronic delivery to the registrar of companies of a statement as an alternative to the delivery of a sworn statutory declaration in writing—

- section 12 (duty of registrar on incorporation of a company)
- section 30 (exemption from requirement of “limited” as part of company name)
- sections 43 and 47 (re-registration of private company as public)
- section 49 (re-registration of limited company as unlimited)
- section 117 (public company share capital requirements)
- sections 155 and 156 (relaxation for private companies of prohibition against financial assistance)
- section 403 (entries of satisfaction and release of charges: England and Wales)
- section 419 (entries of satisfaction and release of charges: Scotland)
- section 685 (registration of joint stock company as public company)
- section 686 (other requirements for registration under Chapter II of Part XXII)
- section 691 (documents to be delivered to registrar by oversea company establishing place of business).

Penalties for making false statements under these provisions are inserted into Schedule 24 to the 1985 Act by *Article 31(6)*, and consequential amendments to sections 29, 157, 158 and 711 are made by *Article 31(1), (2) and (5)*.

4. *Article 12* modifies section 238 of the 1985 Act (persons entitled to receive copies of accounts and reports) to enable copies of the annual accounts and reports to be sent electronically to those entitled to receive them. Either the accounts and reports can be sent directly to an electronic address (“address” is defined for the purposes of Part VII in section 262—see *Article 16*) supplied for the purpose by the recipient, or they can be published on a web site and the recipient notified of their availability in a manner agreed with him. In the latter case, the accounts and reports must be published on the web site for at least 21 days before the general meeting before which they are to be laid. *Articles 14 and 32(2)* and *Schedule 2* make equivalent modifications to section 251 and regulations thereunder concerning the sending of summary financial statements in place of the full accounts.

5. *Article 13* modifies section 239 of the 1985 Act (right to demand copies of accounts and reports) to enable a company to meet a demand under that section for a copy of the annual accounts and reports electronically.

6. *Article 15* modifies section 253 of the 1985 Act (right of member or auditor to require laying of accounts) to enable members or auditors exercising their powers under that section to require the holding of a general meeting for the laying of accounts, to do so by communicating with an electronic address supplied by the company for the purpose. *Article 17* makes equivalent modifications to section 366A (right of member to require the holding of an annual general meeting).

7. *Article 18* modifies section 369 of the 1985 Act (length of notice for calling meetings) to enable notices of company meetings to be sent electronically to those entitled to receive them. Either the notices can be sent directly to an electronic address supplied for the purpose by the recipient, or they can be published on a web site and the recipient notified of their availability in manner agreed with him. In the latter case, the notice must be published on the web site for at least the period for which notice of the meeting must be given under section 369. Furthermore, the notification given to the recipient that the notice is available on a web site must contain certain details of the meeting (see section 369(4C)). *Article 31(3)* applies these provisions for the purpose of section 390 (auditors' right to attend company meetings, etc.), and *Article 21* makes equivalent modifications to section 379A concerning the giving of notice of a meeting at which an elective resolution is to be proposed.

**8.** *Articles 19 and 20* modify sections 372 and 373 of the 1985 Act (proxies) to enable a member to appoint proxies electronically by communicating with an electronic address supplied by the company for the purpose.

**9.** *Article 27* inserts a new section 707B into the 1985 Act replacing section 707 (which is repealed by *Article 31(4)*) enabling the registrar of companies to direct that any document required to be delivered to him under the Companies Acts (as defined in section 744) and the Insolvency Act 1986 (see section 735A as amended by *Article 31(4)*) may be delivered electronically in form and manner directed by him.

**10.** *Articles 28 to 30* insert relevant definitions into the 1985 Act.

**11.** *Article 32(1) and Schedule 1* amend the articles of association prescribed in Table A to enable the electronic appointment of proxies and sending of notices. The guidance referred to in the amendment to regulation 115 of Table A (see paragraph 8 of Schedule 1) is “Electronic Communications with Shareholders: A Guide to Recommended Best Practice”, and copies of the guidance are obtainable from The Policy Unit, The Institute of Chartered Secretaries and Administrators, 16 Park Crescent, London W1B 1AH.

**12.** A Regulatory Impact Assessment of this Order is available from the Department of Trade and Industry, Company Law and Investigations Directorate, Room 507, 1 Victoria Street, London SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament.