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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.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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.