
STATUTORY INSTRUMENTS

2003 No. 404

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

Postal ballots: electronic transmission of notices

17.—(1) Paragraph 33 of Schedule 2 to the 1986 Act (postal ballots) is amended as follows.

(2) In sub-paragraph (1), omit the words from “: and in this Act “ballot” or “postal ballot”” to the end of that sub-paragraph.

(3) After sub-paragraph (1) insert—

“(1A) Rules made pursuant to sub-paragraph (1) may also make provision in relation to the use of electronic communications in the conduct of a postal ballot.”.

(4) After sub-paragraph (5) insert—

“(5A) Where a notice of a postal ballot is required to be given to a person by sub-paragraph (4) or (5), the notice may be sent to him electronically only if it is sent to an electronic address notified by the person to the society for the purpose.

(5B) In a case in which notice of a postal ballot is sent electronically to an electronic address in accordance with sub-paragraph (5A), the notice is to be treated as given to a person on the day on which it is transmitted.

(5C) A requirement of sub-paragraph (4) or (5) to send a notice of a postal ballot shall also be treated as satisfied if—

- (a) the society and the person have agreed that notices which are required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the notice in question
- (c) that person is notified, in a manner agreed between him and the society for that 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 is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the voting date (within the meaning of section 60(17)).

(5D) In a case in which sub-paragraph (5B) is relied on for compliance with a requirement of sub-paragraph (4) or (5), a notice of a postal ballot is to be treated as sent to a person on the day when notification is given in accordance with sub-paragraph (5C)(d).

(5E) Where, in a case in which sub-paragraph (5C) is relied on for compliance with a requirement of sub-paragraph (4) or (5)—

- (a) a notice of a postal ballot is published for a part, but not all, of the period mentioned in sub-paragraph (5C)(d), but

- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the postal ballot.”.

(5) In sub-paragraph (6)—

- (a) in paragraph (a), after “such other notices relating to the election or resolution” insert “(‘related notices’)”; and
- (b) in paragraph (b), after “such other documents” insert “(‘accompanying documents’)”.

(6) After sub-paragraph (6) insert—

“(6A) Where the notice of a postal ballot is required by sub-paragraph (6) to contain a related notice or to be accompanied by an accompanying document—

- (a) in a case where the notice of that ballot is given to a person electronically in accordance with sub-paragraph (5A), the related notice or accompanying document may be sent to him electronically only if it is sent to the same electronic address, and at the same time as the notice of the postal ballot;
- (b) in a case where notice of that ballot is given on a web site in accordance with subparagraph (5C), the requirement to send the related notice or accompanying document to that person shall also be treated as satisfied if the conditions set out in sub-paragraph (6B) are satisfied.

(6B) The conditions of this sub-paragraph are satisfied in the case of a related notice or accompanying document if—

- (a) the society and that member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the related notice or accompanying document in question;
- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the postal ballot, it notifies him of—
 - (i) the publication of the related notice or accompanying document on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where that statement or notification may be accessed, and how it may be accessed; and
- (d) the related notice or accompanying document is published continuously on that web site throughout the period beginning with the giving of that notification in accordance with paragraph (c) and ending with the voting date (within the meaning of section 60(17)).

(6C) Where notice of a postal ballot and any related notice or accompanying document is sent to a person electronically, that person may return the completed voting paper to the society either—

- (a) by post; or
- (b) electronically by sending it to an electronic address notified by the society to that person for the purpose,

unless the rules of the society make provision to the contrary.”.

(7) After sub-paragraph (7) insert—

“(7A) Where, in a case in which sub-paragraph (6A)(b) is relied on for compliance with a requirement of sub-paragraph (6)—

- (a) a related notice or accompanying document is published for a part, but not all, of the period mentioned in sub-paragraph (6B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the postal ballot.”.