



HM TREASURY

Electronic communications in the mutuals sector: a consultation document

December 2010



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Introduction

1.1 This consultation concerns proposals to facilitate the use of electronic communications by mutual societies that is, building societies, friendly societies, industrial and provident societies (cooperatives and community benefit societies) and credit unions.

1.2 Mutual societies are under a number of statutory obligations to communicate with their members or the public in the conduct of their business. The cost to societies of sending paper copies of documents can be considerable, particularly for the larger societies. The ability to elect to use electronic communications to discharge some of these statutory obligations would allow some mutual societies to significantly reduce their administrative costs.

1.3 Companies formed under the Companies Acts and their members have significant scope to use electronic communications in their dealings with each other. Since 2003 when the Building Societies Act 1986 (Electronic Communications) Order 2003 came into force, building societies have also had significant scope to communicate with their members electronically.

1.4 The legislation applying to other forms of mutual society does not obviously contemplate the use of electronic communications because these were not used when the statutory provisions were enacted in 1965 (Industrial and Provident Societies (IPS)), 1974 and 1992 (friendly societies) and 1979 (credit unions). Consequently, when societies are under a statutory obligation to inform a member of something in writing, there is often uncertainty whether that duty may be fulfilled by the use of email, or website publication. In other cases, it is clear from the context that the information or notice must be provided in paper form through the post (e.g. a postal ballot).

1.5 The Electronic Communications Act 2000 gives the Government the power to amend primary and secondary legislation to facilitate the use of electronic communications where legislation presently contemplates the use of traditional forms of communications (or at least it is ambiguous whether electronic communications are permitted). The power is exercised by the Government making an order under that Act which would normally follow the negative Parliamentary procedure.

1.6 In 2007 the previous Government consulted on the use of the Electronic Communications Act 2000 to make an Order to facilitate the use of electronic communications by cooperatives and credit unions. The responses were generally favourable and, after some further informal consultation with trade industry bodies in 2009, the draft statutory instruments at Annexes A and B are the result.

Summary of Proposals

What is being consulted on:

1.7 The Government is consulting on a draft Order which exercise the powers in sections 8 and 9 of the 2000 Act to make amendments to provisions of the following pieces of legislation to enable societies to elect to use electronic communications to communicate with their members if certain conditions are met:

- the Friendly Societies Acts of 1974 and 1992

- the Friendly and Industrial and Provident Societies Act 1968
- the Building Societies Act 1986
- the Industrial and Provident Societies Act 1965
- the Credit Unions Act 1979

1.8 The proposed amendments affect the following types of entity:

- registered and incorporated friendly societies (but not other societies registered under the 1974 Act)
- building societies
- industrial and provident societies in Great Britain
- credit unions in Great Britain

1.9 For friendly societies incorporated under the 1992 Act, the Government is also consulting on new draft Friendly Societies (Proxy Voting) Regulations. This is found at Annex B.

1.10 The FSA is currently the registrar (and regulator, in the case of financial mutual societies) for building societies, friendly societies, Industrial and Provident Societies (IPs) and credit unions.

Timing

1.11 It is anticipated that the Order and Regulations would both come into force on 1st April 2011, although the Government hopes to be able to make and lay the instruments in late February or early March of next year. This should allow many societies whose financial reporting years end on 31st December to start to use the provisions for their 2011 AGM.

Devolution

1.12 Matters relating to IPs are reserved to the Westminster Parliament under the Scottish and Welsh devolution arrangements. However, credit unions and IPs in Northern Ireland are transferred matters under the Northern Ireland Act 1998 and it is not proposed to amend Northern Irish legislation applying to industrial and provident societies in Northern Ireland, or credit unions in Northern Ireland.

Channel Islands

1.13 The Industrial and Provident Societies Act 1965 extends to the Channel Islands. However, the Electronic Communications Act 2000 does not extend to the Channel Islands. It follows from this that amendments made under powers contained in the 2000 Act to the IPSA 1965 will not apply to industrial and provident societies in the Channel Islands.

Consultation details

1.14 This consultation document will be sent to the representative bodies of the mutuals sector, cooperatives and credit unions in Great Britain, academics and stakeholders in the financial services sector. It will also be posted on the Treasury's public website and printed copies will be made available on request.

1.15 This consultation will last 8 weeks from Monday 6 December 2010 to Friday 28 January 2011. Please send your written responses to

Jamil Mohamed
Building Societies and Mutuals Branch
Savings and Investments Team
Internal & Finance Directorate
HM Treasury
1 Horse Guards Road
London SW1A 2HQ
Email: jamil.mohamed@hmtreasury.gsi.gov.uk

1.16 An impact assessment is set out at Annex C and we would be grateful for comments on the impact assessment.

Consultation disclosure

1.17 All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

1.18 Information provided in response to this consultation, including personal information, might be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004.

1.19 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

1.20 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

1.21 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions - one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

Freedom of information

1.22 Any Freedom of Information Act queries should be directed to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury
1 Horse Guards Road
London SW1A 2HQ
Telephone: 020 7270 4558
Fax: 020 7270 4681
Email: public.enquiries@hmtreasury.gsi.gov.uk

Code of practice for written consultation

1.23 This consultation is being conducted in line with the Code of Practice for written consultation, which sets down the following criteria:

- formal consultation should take place at a stage when there is scope to influence the policy outcome;
- consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
- keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
- consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation; and
- officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

1.24 The consultation exercise is being run for 8 weeks instead of 12 weeks because the Government is committed to delivering the administrative efficiency savings from these measures to the mutual sector as soon as possible. The shorter timescale can also be justified because the proposals set out in the consultation are technical and aimed at a small and limited group of stakeholders and that the Government has informally consulted with the sector over the summer.

1.25 If you feel that this consultation does not fulfil these criteria, please contact:

Angela Carden

Better Regulation Unit

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

Email: angela.carden@hmtreasury.gsi.gov.uk

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Building Societies

Introduction

2.1 Amendments were made to specific provisions of the Building Societies Act 1986 by the Building Societies Act 1986 (Electronic Communications) Order 2003, allowing for electronic communications where traditional means of communication were specified or implied. These provisions came into force on 20th March 2003 so have now been effective for seven and a half years. The Government is proposing a minor change to the drafting of some of these provisions, to improve how they work in practice.

Appointments of Proxies

2.2 The appointment of proxies needs to be able to cater for two distinct sets of circumstances: where a member appoints the chair of the meeting as their proxy, and where the member appoints a representative who physically attends the meeting and votes at it. The former is what most members do, but the latter must also be provided for.

2.3 For those cases where members appoint a representative other than the chair, the Building Societies Association have indicated that some of its members would like the ability to publish proxy forms on their website for members to download, complete and return. The law currently allows appointment of proxy forms to be sent as an attachment to an email to members who have given an email address to the society, but it does not specifically provide for website access to a proxy form. The Government therefore proposes that such a member could access the form through the website and print a hard copy of it. They would then need to complete and sign it, and either post it back, or scan it in, and send it back to the society as an attachment to an email to the correct address. This process, although it makes use of electronic communications to some extent, would not also facilitate the electronic recording or counting of proxy votes given.

2.4 Article two of the draft Order at Annex A amends paragraph 24 of Schedule 2 to the Building Societies Act 1986 to allow societies to publish a proxy form on a website for a member to access, download, complete (by signing) and return to the society by post or email. It also provides that in certain circumstances a society must accept communications relating to proxies by email.

2.5 The Building Societies Association has indicated that it may be preferable to some societies for there to be an online appointment process which would also serve as a depository for proxies, and which would allow the society or scrutineers to record and aggregate electronically the large number of proxies given to the chair. Critical to the process is how any online appointment should be authenticated. Hard copy instruments appointing proxies are signed by the appointer so a reasonably secure form of electronic authentication equivalent to a signature would be necessary. Any electronic alternative must satisfy the condition in section 8(3) of the Electronic Communications Act 2000 that the records of things done electronically must be no less satisfactory than when the appointment is signed. The current draft does not provide for this for building societies. However, in principle, this could be provided for if building societies were content to remove the requirement for an appointment of proxy to be signed, and instead have some form of secure password by which the appointer could be identified and their

appointment authenticated. Something like this has been provided for friendly societies in the new draft Friendly Society (Proxy Voting) Regulations.

Summary of questions relating to building societies

Box 2.A: Questions relating to building societies

- 1 Are you content with the amendments made to paragraph 24 of Schedule 2 to the Building Societies Act 1986?
- 2 Do you want to be able to appoint proxies using an online facility? If so, how do societies propose to authenticate the appointment if there is to be no signature by the appointer?
- 3 Do you consider that the draft deemed consent provision is appropriate so that societies must accept some communications about proxies by email?

3

Friendly Societies

Introduction

3.1 Generally, societies are free to communicate with their members by any means of communications they choose. In particular, their rules may make general or specific provision detailing the manner in which a society and its members may communicate in various situations. This principle finds expression in paragraph 4(1) of Schedule 12 to the Friendly Societies Act 1992 and in the naturally broad meaning of some of the words used in the Act, for example “send”, which includes sending by electronic means. However, in some situations there appears to be a statutory obligation on societies to provide documents or information to their members, a member of the public, or the FSA in a traditional manner (e.g. a paper copy sent by post).

3.2 The legislation governing friendly societies is contained in the Friendly Societies Act 1974, the Friendly Societies Act 1992 and secondary legislation made under those Acts, such as the Friendly Societies (Proxy Voting) Regulations 1993. Much of it is in a form similar to the Building Societies Act 1986 before it was amended by the Building Societies Act 1986 (Electronic Communications) Order 2003.

3.3 Because its drafting precedes the widespread use of electronic communications in business, the terms of the legislation can, in places, require the use of traditional forms of communication where electronic communication would now be possible (e.g. postal ballots). In other places, the language is ambiguous as to whether the use of electronic communications is possible.

3.4 Sending information in printed form, by post, can be costly to societies who will normally need to send the information to each of its members. For one of the largest friendly societies, if only 20% of its members elected to receive information electronically, that would result in considerable printing and posting costs to that Society. For smaller societies the cost savings may be smaller, but not insignificant.

3.5 The Government has considered whether it would be possible to have general provisions similar to those in the companies communications provisions (in sections 1143 to 1148 and Schedules 4 and 5 of the Companies Act 2006) appropriately adapted for friendly societies. However, it has concluded that the scope of the enabling power in the Electronic Communications Act 2000 does not allow any amendments to be made to non-electronic forms of communication, and this makes the creation of a complete code difficult using existing powers.

3.6 It is therefore proposed that an Order be made under the powers in the Electronic Communications Act 2000 to amend provisions of the 1992 and 1974 Acts to facilitate the use of electronic communications by societies and by registered branches and their members.

Communications between societies and their members

3.7 The Government proposes that both incorporated friendly societies and registered friendly societies (or branches) and their members should have the option of using electronic communications to fulfil many of their statutory obligations to provide information to members. But societies or branches that wish to retain traditional means of communicating will be able to do so, as will members of friendly societies.

3.8 Two main forms of electronic communication are envisaged by the Government as alternatives to sending paper copies of documents in the post. First, if a member provides the society with an email address for the purpose of receiving information from the society, the society may email the information to the member. Clearly, this involves a choice both by the society and a member to use email. One disadvantage to this method is that some documents that are required to be sent can be large, and take up significant memory space in the member's inbox. The second method can get around that as it involves the society publishing the documents on a website and a member agreeing to access the document by viewing it on that website. This method requires the member and society to agree details such as when and how the member will be notified that documents have been published on a website, the address of that site, and for how long it will be available to access there.

3.9 Under the current law a failure to comply with some statutory information-providing obligations is a criminal offence. The Government propose that, as was done for building societies in 2003, this should be modified to allow societies to discharge the obligation by relying on members accessing the information online, or email, if that is not already possible. A new defence is created for societies where, for reasons which could not be anticipated, a document is not published on a website for all of the time that it should have been.

3.10 If societies and branches and their members are to use email for the dissemination of information about the society, it follows that the society or branch in question must maintain information about members' electronic addresses, and the purpose(s) for which they have been provided to the society. The obligation on societies to maintain a register of members' addresses has therefore been widened to include electronic addresses, where one has been provided.

3.11 The draft Order identifies specific parts of the 1992 Act where documents are required to be sent to members, and makes specific provision for, say, website access. In many cases, communication by email is not specifically provided for because the existing wording (often the word "sent" or something similar) is already capable of including sending by this means. It also contains definitions for "electronic address", "in electronic form", "by electronic means" of general application.

Specific Proposals

Transmission of annual accounts to members

3.12 Section 78(3)(b) and 78(4)(b) of the 1992 Act requires societies and registered branches to send copies of their annual accounts, auditor's report and, in the case of societies, the report of the committee of management, to members who ask for them free of charge. It is proposed that amendments be made so that a society (or branch) and a member may arrange for the member to access them on a website. The conditions for website access are:

- the society and member have agreed that the member will access information on a website
- the society notifies the member in a manner agreed of the publication of the accounts and reports on a website, its address, and how they may be accessed
- the accounts and reports are available on that website from the date of notification to the date when those accounts and reports cease to be the latest for that society or branch.

3.13 It is an offence for a society or branch to fail to comply with section 78(3) or 78(4): section 78(6). In view of this, in the case of a member accessing information through a website, there will be no offence committed by the society if the documents are not published for all the

period mentioned, but the failure to publish is wholly attributable to circumstances which it would be reasonable for the society or branch to prevent.

3.14 Because “sent”, used in both subparagraphs (b) has a naturally wide meaning capable of including sending information by email, the Government does not consider that any further amendment specifically allowing the sending of information by email is necessary.

Service of notices and documents

3.15 It is proposed to amend section 113(2) of the 1992 Act to add a further means of service: by sending the document by electronic means to an address noticed by the recipient for that purpose. This will permit service by email. However, this will not apply to the service of documents on the FSA, and is subject to any contrary provisions in a society’s rules concerning documents sent by a society to its members.

Provision of copies of rules to members and non-members

3.16 It is proposed to amend paragraph 13 of Schedule 3 to the 1992 Act to allow a society to remove the requirement that the copy of its rules be printed, so that they might be sent by email (or other electronic means) if a person provides an email address to which they might be sent. The Government considers that “annex” in its ordinary meaning of “add” is sufficiently broad to cover a case where a single document in a portable document format (pdf) contains the main document and its annex. It would also seem to cover the case where an email attached the main document and the annex. However, the Government does not consider that sending the main document attached to one email, and the annex in a second email would satisfy the obligation.

3.17 It is an offence for an incorporated friendly society to fail to comply with this paragraph. Omitting the word “printed” will increase the number of ways in which a society may comply with this obligation, thereby reducing the potential costs of compliance.

3.18 The Government does not consider that any amendment is necessary to section 21 of the 1974 Act to permit copies to be delivered by email by the society, if that is desired by the person requesting copy.

Inclusion of members’ electronic addresses in register

3.19 The Government proposes to amend paragraph 14 of Schedule 3 to the 1992 Act to require, in new (1A), incorporated friendly societies to include in their register of members, electronic addresses which members have notified to them for receiving notices and other documents. Subsection (4A) allows a society to remove a postal address if it appears no longer to be current. A person’s “registered address”, under the Act, remains their postal address, or some other non-electronic address requested by that person.

3.20 Similar amendments are proposed to section 63A of the 1974 Act for registered friendly societies.

Incorporation of registered societies; delivery of documents by trustees to the society

3.21 Paragraph 12 of Schedule 4 of the 1992 Act requires the former trustees and treasurer of a registered friendly society or a branch, and the Public Trustee, to deliver to the newly incorporated society property and documents relating to the society held by them. Although incorporation only happens once it is not efficient for it to impose on former trustees the burden of printing off hundreds of pages to comply with an obligation. Similarly, if a trustee only has hard copies of document, it is not efficient to require them go to the trouble of getting them scanned and delivered in electronic form. The draft amendment therefore only requires a trustee to deliver a document in an electronic form if they hold it in that form. If a trustee has both electronic and hard copies of a document, even if they are identical, both should be delivered in

the form in which they are held so that the trustee is left with nothing, and the recipient society obtains the documents in as many extant forms as possible.

Notification of a person's eligibility to be a committee member

3.22 Paragraph 3(3)(b) of Schedule 11 requires members entitled to vote to be notified if a person has attained the normal retirement age but has been approved as eligible to be elected by a resolution of the committee. The proposed amendments would allow a member to elect to access it on a website if a society wishes to publish it online. The document must be available on the website until the day after the election. Failure to comply with this paragraph is a criminal offence, so the proposed amendments will provide another, potentially less costly, means of complying with the obligation.

Transmission of notices of meetings

3.23 Unlike the Building Societies Act 1986 which itself prescribes how notices are sent to members, the Friendly Societies Act 1992 provides that the rules of a society or branch prescribe in what manner notice of meetings is given to members: paragraph 4(1) of Schedule 12. It follows that there is little in practice in the current legislation to stop a society changing its rules to provide for notices of meeting to be sent electronically if that is what a society (or branch) and its members want. However, informal feedback from friendly societies received to date is to the effect that they would like societies to be able to send out notices of meetings by email (or provide access on a website) without first having to change their rules.

3.24 The proposed amendments achieve this, but is a departure from the previous position that, as a general rule, the rules of the society or branch, rather than the Act, prescribed the manner of transmitting notice of meetings to members. The new draft paragraph (1A) permits the use of email delivery or website access unless the rules of the society or branch expressly prohibit it.

3.25 Subparagraph (1C) is similar to section 333(1) of the Companies Act 2006. It provides that a society or branch that gives a notice which contains an electronic address, it is taken to have agreed to receive documents or information about that meeting at that address, subject to any conditions or restrictions specified in that notice.

3.26 (1D) and (1E) clarify when a member is treated as having received notices given by electronic means.

Resolutions requiring special notice

3.27 If the new sub-paragraphs 4(1A) to (1F) of Schedule 12 is adopted, the rules of a society would no longer be the sole determinant of the manner in which notices of meetings are given to members. Therefore, consequential amendments are necessary to paragraph 9(2) (which concerns resolutions requiring special notice) of Schedule 12.

Transmission of statement by person ceasing to hold office

3.28 The draft Order proposes an amendment to allow these statements to be accessed by a member on a website: paragraph 14 of Schedule 14. The broad meaning of the word "send" as it is used in paragraph 14 already allows copies of statements to be sent by email. Failure to comply with this is an offence, so the effect of this amendment is to make it easier for societies to comply with the obligation.

Transmission of statements to members relating to transfers of engagements

3.29 The draft Order proposes amendments to allow these statements to be accessed by a member on a website: paragraph 4 of Schedule 15. The broad meaning of the word "send" as it is used in paragraph 4 already allows copies of statements to be sent by email.

Incorporation: Obtaining documents from retiring trustees

3.30 Article 11 of the draft Order alters the obligation on existing trustees to hand over to the society documents relating to the society on its incorporation. It amends paragraph 12 of Schedule 4 to the 1992 Act so that trustees must only hand over copies of documents held in electronic form to the extent that they are held by the trustee in that form. A trustee will not, therefore, be required to convert hard copies of documents into electronic form, or change them from one electronic form to another, before handing them over.

Postal ballots

3.31 It is proposed to amend the current provisions relating to postal ballots to allow the use of electronic communications in postal ballots (as distinct from electronic ballots, which are separately provided for). Generally, societies may provide as they wish for the use of such communication in their rules. Specifically, notices of postal ballots may be accessed by members on a website if certain conditions are met. Any related notices and accompanying documents should be made available on the website with the notice.

3.32 Subject to the rules of the society or the notice, ballot papers may be returned in two ways: they may be printed off, completed, signed and returned by post, or, they may be completed, signed, scanned and returned by electronic means to an electronic address given by the society.

Electronic ballots

3.33 Provision for the conduct of electronic ballots will be new for friendly societies. Societies and branches' rules must permit the conduct of electronic ballots in the manner set out in new paragraph 8A. Societies' rules may also make provision as to the consequences of irregularities occurring in the conduct of the ballot, and may differ from society to society.

Combined ballots

3.34 The new paragraph 8B will allow societies to conduct ballots using both types of ballot mechanism, with some members voting by post, and others electronically, so that the returns from both forms may be added together to obtain the final return. It is hoped that this will encourage as many members as possible to engage with the business of societies.

Proxy forms

3.35 Although many societies have indicated that they would like the same as building societies currently have, as will be seen from Chapter 2 the experience of building societies is that the law with regard to proxy votes could be improved.

3.36 The draft Order replaces references to "instruments appointing proxies" in the 1992 Act with "appointments of proxies" in Schedules 12 and 15.

3.37 The Government also proposes to use the specific power in paragraph. 7(6) of the Schedule 12 to the 1992 Act, to, in effect, repeal the Friendly Societies (Proxy Voting) Regulations 1993 for meetings called after 1st April 2011, and replace them with Regulations which expressly refer to electronic communications. A draft is found at Annex B. It would apply to meetings called on or after 1st April 2011.

3.38 This is therefore an opportunity for incorporated friendly societies to look again at how the procedure for proxy voting works in practice under the 1993 Regulations, and suggest improvements. The Government proposes to omit the standard form contained in the Schedule to the 1993 Regulations. Proxy forms may be emailed to a person's email address, or made available on a website. Societies may also operate an online appointment facility if they wish so long as they provide for the appointer to authenticate the appointment in a suitable secure manner as it will not be signed in the usual manner.

3.39 New provisions have been made for the return of proxy forms. A society is deemed to have agreed to receive at its electronic address documents or information relating to proxies for that meeting.

Communications with the public

Use of name in electronic communications

3.40 It is proposed to amend paragraph 10 of Schedule 3 to the 1992 Act to require incorporated friendly societies to have their names mentioned in legible characters in all business correspondence and documentation that takes electronic form (such as emails) and on their websites (if they have one). This provision will mirror the requirements on companies in the Companies (Trading Disclosures) Regulations 2008 (SI 2008/495), regulations 1(2)(e) and 6. Societies will be aware that failure to comply with paragraph 10 may be a criminal offence.

3.41 The Government considers that most societies currently do this. It will not require the use of electronic communications or require societies to own websites if they do not at the moment, but ensure that if they do have a website or if they cause a website to be placed on a third party's website, their registered name is legible. This places them in a similar position to trading companies and building societies.

Transmission of actuary's report on transfer of long term business

3.42 Section 88(3) of the 1992 Act requires a society, on payment of a reasonable fee, to send a copy of the auditor's report to any person who asks for it. The Government is advised that this currently allows a copy of the report to be emailed to the person, assuming that they can provide an email address.

3.43 No change is made to section 88(2) with the result that the original independent actuary's report furnished to the FSA by a society must continue to be furnished in hard copy form.

Communications between societies and the FSA

General

3.44 Various provisions of the 1992 Act require incorporated or registered societies to send accounts, returns, reports or other documents to the FSA. There is no reason in principle why these should not, in appropriate cases, be able to be submitted electronically, whether in electronic form but by conventional means (e.g. sending a disc in the post), as an attachment to an email, or by submitting the document online through a web portal.

3.45 To facilitate this, section 114 of the 1992 Act has been revised to enable the FSA to direct how this may be done. The provisions drafted draw on similar provisions in the Companies Act 2006. This power does not give the FSA power to require documents to be delivered by electronic means so societies who do not use electronic communications will not be compelled to use them. And it does not permit electronic communications where the context of a particular provision appears to prohibit that for some reason (like it requires three copies signed by the secretary to be submitted).

Public files

3.46 The FSA is required to keep public files for each society: Section 104 of the 1992 Act. These paper files contain statutory documents for each society. These files may be inspected by members of the public, who may take copies of documents on it, subject to charging a reasonable fee. At present, these files are not maintained electronically, and are not available online for members of the public to access. However, the FSA is currently working to make [some documents from friendly society public files](#) available online. Where all or part of a public file is

maintained by the FSA on its website, the proposed draft removes the requirement on the FSA to maintain and store a paper file.

Provisions not amended by draft Order

Registration applications

3.47 At the moment applications for first registration and incorporation of a new friendly society must comply with the procedure set out in Schedule 3 to the 1992 Act. Many of the steps set out require hard copies of documents to be signed and sent to the FSA. Similarly, applications to register changes to rules of existing societies must currently be submitted in hard copy form. Generally, the Government considers that it is desirable, in principle, to be able to make applications online to form a friendly society or amend rules, in the same way that applications made to Companies House. However, as the number of these applications are currently relatively small, and doing this would require a significant change in the technology to be developed by the FSA, the Government does not propose in this Order to change that. The Government will, however, review this with the registrar of mutual societies once its reforms to the regulation of financial services is complete.

Transmission of benefit terms

3.48 Section 18(2) of the 1992 Act requires a society to send a copy of benefit terms free of charge to a member who demands them if these are not set out in the rules. The Government is advised that an amendment to this section is unnecessary because “sent” has a naturally broad meaning, capable of including sending by electronic means such as email. The position is the same for registered friendly societies in section 65B of the 1974 Act.

Nominations of small estates

3.49 Because they are quasi-testamentary in nature, the Government considers that the communication of nominations for death benefits, provided for in Schedule 9 to the 1992 Act are best done in a conventional manner, for example, by returning a nomination form or completing a register with the member’s original signature, rather than, by the sending of an email, as the latter is relatively insecure. The position is the same for registered societies and branches under the 1974 Act: section 66.

Application of provisions of the Building Societies Act 1986

3.50 Paragraph 9 of Schedule 11 to the 1992 Act incorporates a number of sections of the 1986 Act (including sections 68 and 69) as being applicable to friendly societies. Articles 4 and 5 of the Building Societies (Electronic Communications) Order 2003 made amendments to sections 68 (records of loans) and 69 (disclosure and record of related businesses). The Government is advised that, notwithstanding that these amendments were made after 1992, they apply to friendly societies and no further provision is necessary.

Electronic validation and ratification of action by members

3.51 Section 94 of the 1992 Act allows members of a friendly society registered under the 1974 Act to ratify action not permitted by the rules of the society or branch. At present, members’ agreement to the action must be “signified in writing”. The Government is advised that these words do not prevent signifying by writing that is electronic in form. It follows that no amendments are proposed.

Record-keeping by societies: section 112.

3.52 Do societies agree that the breadth of the existing provision is sufficient to allow societies to make and store records electronically if they so wish, and does not need amending?

Others societies registered under the Friendly Societies Act 1974.

3.53 Some societies (other than friendly societies) are registered under the 1974 Act. These include working men's clubs, cattle insurance societies, benevolent societies and old people's home societies. In many sections, the wide wording in the 1974 Act used (like "sent" or "deliver") may already allows some forms of electronic communication, such as email.

Summary of questions relating to Friendly Societies

Box 3.A: Questions relating to friendly societies

- 4 **Notices of meetings.** Should societies be required to change their rules to allow notice of meeting to be given electronically, or do the proposed amendments achieve what is wanted, notwithstanding that this is a departure from the previous position that the rules of the society or branch prescribe the manner of transmitting notice of meetings to members?
- 5 **Use of name on websites.** Are you content that societies will be put in a similar position to trading companies with regard to the use of the registered name of their websites, or the websites of third parties which they cause to be placed, and that breach of these provisions may be a criminal offence?
- 6 **Registers of members.**
 - a Are you content with the new requirement to keep members' electronic addresses on the register, and that breach of this requirement is potentially a criminal offence.
 - b Is there adequate provision for the situation where it appears to a society that an electronic address that it holds for a member is no longer current?
- 7 **Postal, electronic and combined ballots.** Are you content with these new provisions?
- 8 **Proxy forms.**
 - a Are you content with the removal of the standard form in the Schedule?
 - b Are any other changes desirable to the draft Friendly Societies (Proxy Voting) Regulations?
 - c Do you consider that any transitional arrangements are necessary?
- 9 **1974 Act Registered Societies.** Are any further changes required to provisions in the 1974 Act?

4

Industrial and Provident Societies and Credit Unions

General

4.1 Generally Industrial and Provident Societies and credit unions in Great Britain registered under the Industrial and Provident Societies Act 1965 are free to communicate with their members as their rules provide or as they agree between themselves. However, in some situations, societies and credit unions are under a statutory obligation to send a document or piece of information to their members. Because these statutory obligations were drafted before electronic communications were developed and used widely by businesses they sometimes do not clearly permit the use of such communications and, in some cases, clearly contemplate the use of traditional forms of communication.

4.2 In its Review of the GB cooperative and credit union legislation: a consultation published in June 2007, the Government asked IPSs and credit unions about the merits of facilitating the use of electronic communications. Responses were generally in favour of facilitating electronic communications subject to some non-electronic provision being maintained for members who did not wish to participate in technological developments or who did not have access to the internet or where record-keeping considerations point to retaining traditional methods. It was felt that societies were at present seriously disadvantaged by their inability to communicate electronically with their members or file returns with the FSA.

4.3 The main pieces of legislation governing industrial and provident societies and credit unions (registered as a form of IPS) is the Industrial and Provident Societies Act 1965 and the Credit Unions Act 1979.

Proposals

4.4 The Government proposes that societies and members who wish to should have the option of using electronic communications to fulfil their statutory obligations. This is an option both for societies and individual members. Societies or individual members who wish to retain traditional means of communicating will be able to do so.

4.5 Two main forms of electronic communication are envisaged by the Government as alternatives to sending paper copies of documents in the post. First, if a member provides the society with an email address for the purpose of receiving information from the society, the society may email the information to the member. In many situations, this is already permissible. Clearly, this involves a choice both by the society and a member to use email to deliver the document in electronic form. One disadvantage to this method is that some documents that are required to be sent can be large, and take up significant memory space in the member's inbox.

4.6 The second method involves the society publishing the documents on a website and a member agreeing to access the document by viewing it on that website. This method requires the member and society to agree details such as when and how the member will be notified that documents have been published on a website, the address of that site, and for how long it will be available to access there.

4.7 Under the current law a failure to comply with the statutory obligation will often be a criminal offence. The Government proposes that, as was done for building societies in 2003, a new defence is created for societies where, for reasons which could not be anticipated, a document is not published on a website for all of the time that it should be.

4.8 The draft Order, made under the powers in the Electronic Communications Act 2000, identifies specific parts of IPS and credit union legislation where documents are required to be sent, and specifically provides for members to access them on a website. It also includes new definitions of terms related to electronic communications in the new section 74A.

Communications with members and persons interested

Use of name in electronic communications

4.9 It is proposed to amend sections 5 and 5A of the 1965 Act to require a society (including a charitable society) to have its name mentioned in legible characters in all its business correspondence and documentation that takes electronic form and on all its websites. This will include websites owned by it, or websites owned by another person but placed by the society or authorised to be placed by it. This provision is similar to the requirements on companies in the Companies (Trading Disclosures) Regulations 2008 (SI 2008/495), regulations 1(2)(e) and 6, and similar obligations on registered charities. Societies will be aware that failure to comply with these sections may be a criminal offence.

Transmission of annual returns

4.10 Section 39 of the 1965 Act requires societies to send copies of their annual returns to members and persons interested in their funds free of charge. It is proposed that amendments be made so that the society may arrange for publication of the annual return on a website for members to access it there. The conditions for website access are:

- the society and member have agreed that the member will access information on a website;
- the society notifies the member in a manner agreed of the publication of the return on a website, its address, and how they may be accessed; and
- the return is available on that website from the date of notification to the date when the return ceases to be the latest for that society.

4.11 Because it is an offence for a society or branch to fail to comply with section 39(5) (see sections 61-63 of the Act), it is made clear that, there will be no offence if the documents are not published for all the period mentioned, but the failure to publish is wholly attributable to circumstances which it would be reasonable for the society or branch to prevent.

4.12 The new provisions have also been applied to the similar obligation in section 13 of the Friendly & Industrial and Provident Societies Act 1968 in respect of the group accounts of an IPS. Breach of this obligation is also a criminal offence. The Government believes that these amendments will make it easier for societies to comply with their obligations.

Inclusion of electronic address in register of members and officers

4.13 It is proposed to amend section 44(1) of the 1965 Act to require societies to include in their register of members and officers, electronic addresses which members have notified to them for receiving notices and other documents.

4.14 Unlike for friendly societies, there is currently no provision to remove an address from the register if it appears no longer to be current. Do societies have any view as to what provision, if any, should be made where it appears to a society that an electronic address that it holds for a

member is no longer current (for example, the society receives a message that the email is undeliverable)?

Representations from retiring auditors

4.15 The Government proposes to allow members of a society to access representations from a retiring auditor on a website, if the conditions set out in the amendments to section 6 of the 1968 Act are fulfilled. Because failure to comply with the obligation in section 6 is an offence, the proposed amendment should make it easier for societies to comply with it, and a defence is provided to societies where the page is absent for a period and that is wholly attributable to circumstances that it would not be reasonable to have expected the society to prevent or avoid.

Communications with the FSA

4.16 The Government also proposes a minor amendment to section 2 to remove the requirement that copies of rules be printed.

4.17 The Government proposes to amend the general section, section 72 of the 1965 Act, under which the FSA is able to impose requirements as to how it receives documents from societies and credit unions. Importantly, the FSA will not be empowered to require societies to deliver documents to it by electronic means. It will instead be an option for societies who wish to submit returns electronically so long as the Act does not expressly contemplate hard copies. Section 8(6)(a) of the ECA 2000 states that an order under section 8 must not require the use of electronic communications or electronic storage for any purpose.

4.18 The new section 72A is also applied to section 11(3) and section 14 of the F&IPS Act 1968 Act and section 31(2) of the Credit Unions Act 1979.

4.19 In particular, how might effective provision be made electronically for the need for certain documents to be signed then counter-signed?

Provisions not amended

Registration provisions

4.20 At the moment applications for first registration of a new society must comply with the procedure set out in the 1965 Act. Many of the steps set out require hard copies of documents to be signed and sent to the FSA. Similarly, applications to register changes to rules of existing societies must currently be submitted in hard copy form. Generally, the Government considers that it is desirable, in principle, to be able to make applications online to form a society or amend rules, in the same way that applications made to Companies House. However, as the numbers of these applications are currently relatively small, and doing this would require a significant change in the technology to be developed by the FSA, the Government does not propose in this Order to change that. The Government will, however, review this with the registrar of mutual societies once its reforms to the regulation of financial services is complete.

Electronic provision of copies of rules to any person

4.21 The Government is advised that the naturally broad meaning of the words “delivered” and “gives” in section 15 of the 1965 Act allows a society, if it chooses and if the person demanding a copy supplies an address for this purpose, to supply a copy of its rules in electronic form to the person by sending them by email (or other electronic means) to the address provided.

Secondary legislation

4.22 It is not currently proposed to amend any secondary legislation relating to IPSs or credit unions.

Display of latest balance sheet on website

4.23 Do societies consider that there is anything to be gained from an obligation on societies to publish their balance sheet on the websites of a society, if it has one, in addition to the obligation in section 40 to display it in the registered office of the society? The Government is currently minded not to extend this provision to require publication on a website.

Summary of Questions relating to IPSs and Credit Unions

Box 4.A: Questions relating to IPSs and Credit Unions

- 10 **Annual returns.** Do you agree that, in the case of website access, the return should be published on a website until that return ceases to be the latest for that society?
- 11 **Registers of members.**
 - a Are you content with the new requirement to keep electronic addresses on the register, and that breach of this requirement is potentially a criminal offence.
 - b Is there adequate provision for the situation where it appears to a society that an electronic address that it holds for a member is no longer current?
- 12 **Use of names.** Are you content that societies will be put in a similar position to trading companies with regard to the use of the registered name of their websites, or the websites of third parties which they cause to be placed, and that breach of these provisions may be a criminal offence?
- 13 **Communications with the FSA.**
 - a Are the amendments to section 72, and the new 72A, appropriate?
 - b Are any specific provisions of the 1965, 1968 and 1979 Acts, or other legislation, inconsistent with the electronic submission of documents to the FSA and need amendment?



Draft Mutual Societies (Electronic Communications) Order

STATUTORY INSTRUMENTS

2010 No.

BUILDING SOCIETIES

CREDIT UNIONS

FRIENDLY SOCIETIES

INDUSTRIAL AND PROVIDENT SOCIETIES

The Mutual Societies (Electronic Communications) Order 2011

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	1 st April 2011

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⁽¹⁾:

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 1st April 2011.

(2) In this Order—

⁽¹⁾ 2000 c. 7.

- “the 1965 Act” means the Industrial and Provident Societies Act 1965⁽²⁾;
 “the 1968 Act” means the Friendly and Industrial and Provident Societies Act 1968⁽³⁾;
 “the 1974 Act” means the Friendly Societies Act 1974⁽⁴⁾;
 “the 1986 Act” means the Building Societies Act 1986⁽⁵⁾;
 “the 1992 Act” means the Friendly Societies Act 1992⁽⁶⁾.

PART 2

Building societies

Amendment to proxy voting requirements

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

- (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) Where a society has given an electronic address—

- (a) in a form for the appointment of a proxy sent by the society in relation to the meeting, or
- (b) in an invitation to appoint a proxy issued by the society in relation to the meeting,

it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the form or invitation or in the notice of the meeting).

(1D) In sub-paragraph (1C) above, documents relating to proxies include—

- (a) the appointment of a proxy,
- (b) any document to show the validity of, or otherwise relating to, the appointment of a proxy.

(1E) 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.”

⁽²⁾ 1965 c.12.
⁽³⁾ 1968 c. 55.
⁽⁴⁾ 1974 c. 46.
⁽⁵⁾ 1986 c.53.
⁽⁶⁾ 1992 c.40.

PART 3

Friendly societies

Interpretation

Interpretation of the 1992 Act

- 3.—(1) In section 119(1) of the 1992 Act (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, 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.
- (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 with the day on which A sends B the notification referred to in subsection (3) or, if later, the day on which the document or information first appears on the website, and
- (b) ending on the day specified as the end date for the purposes of this paragraph in the provision of 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) But 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

4. In section 104 of the 1992 Act (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), after “subsection (1)(b) above,” insert “for making an electronic copy available under subsection (1A) above”.

Form of documents to be sent to the Authority

5.—(1) In section 114(1) of the 1992 Act (form 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.

6. After section 78(4) of the 1992 Act (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

7. In section 113(2) of the 1992 Act (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

8. 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);
- (b) after sub-paragraph (1)(c) insert—
 - “(d) in all its business correspondence and documentation that takes electronic form; and
 - (e) on the society’s 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

9. In paragraph 13(2) of Schedule 3 to the 1992 Act (societies to supply copies of rules etc), omit “printed” both times it appears.

Inclusion of electronic addresses in register of members

10.—(1) In section 63A of the 1974 Act (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.”;
- (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 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”;

(d) in sub-paragraph (6)(b), after “some other address” insert “(not being an electronic address)”.

Delivery of documents held in electronic form

11. After paragraph 12 of Schedule 4 to the 1992 Act (incorporation of registered friendly societies: supplementary) 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

12. After paragraph 3(3) of Schedule 11 to the 1992 Act (committee of management: supplementary) 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

13. 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

14. 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

15. 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

16. 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

17. 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

18.—(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

19. 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 subparagraph (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

20.—(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

21.—(1) In section 5(6) of the 1965 Act (display of registered name), 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—

- (a) in paragraph (b), for “or (d)” substitute “, (d) or (e)”;
- (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 reference in this section, and section 5A, 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.”.
- (4) In section 5A(1) of the 1965 Act (display of charitable status), after paragraph (e) insert—
 - “(f) in all its business correspondence and documentation that takes electronic form;
 - (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)”;
 - (b) omit “or” immediately after paragraph (b);
 - (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

- 22.**—(1) After subsection (5) of section 39 of the 1965 Act (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) 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 (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

- 23.** 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.”;
 - (c) in subsection (5)(a), for “addresses” substitute “postal and electronic addresses”.

Registration provisions

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

Form and delivery of documents to the Authority

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

(2) After section 72 of the 1965 Act 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 (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⁽⁷⁾ (interpretation), for “72 and 74” insert “72, 72A, 74 and 74A”.

Interpretation: communications

26.—(1) In section 74(1) of the 1965 Act (interpretation: general), 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 74 of the 1965 Act, insert—

“Meaning of electronic form, by electronic means etc

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

⁽⁷⁾ 1979 c. 34.

- (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

27. 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 with the day on which S sends M the notification referred to in subsection (7C) or, if later, the day on which 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.”.

	<i>Name</i>
Address	<i>Name</i>
Date	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.

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

Article 6 amends section 78 of the 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 7 amends section 113 of the Act (service of notices) to provide an alternative way of serving notices on persons under the 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 8 and 9 amend Schedule 3 to the 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 10 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 11 amends paragraph 12 of Schedule 4 to the 1992 Act to require former trustees to provide documents relating to the society held in electronic form to the society on its incorporation.

Article 12 amends paragraph 3 of Schedule 11 to the Act (committee of management: supplementary) 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 13 and 14 amend Schedule 12 to the Act (meetings and resolutions) 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 15 and 16 amend paragraph 14 of Schedule 14 (statement by person ceasing to hold office) and Part 1 of Schedule 15 to the 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 17 to 20 make provision for the use of electronic communications in the conduct of postal ballots and when members appoint proxies, and the use of electronic ballots. Article 17 inserts a definition of "ballot" into section 116 of the Act (friendly societies etc). Article 18 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 give by making it available on a website. Article 19 inserts new paragraphs 8A and 8B into Schedule 12 of the 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 21 amends section 5 (display of registered 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 22 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 23 amends section 44 of the 1965 Act (register of members and officers) to requiring 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 24 amends section 2 of the 1965 Act (registration) to omit the requirement that copies of rules be printed.

Article 25 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 26 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 27 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.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Mutuels Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. It is also available on HM Treasury’s website (hm-treasury.gov.uk), and a copy of the document has been placed in the libraries of both Houses of Parliament.



Draft Friendly Societies (Proxy Voting) Regulations

STATUTORY INSTRUMENTS

2011 No.

FRIENDLY SOCIETIES

The Friendly Societies (Proxy Voting) Regulations 2011

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - 1st April 2011

The Treasury, in exercise of the powers conferred by paragraph 7(6) of Schedule 12 to the Friendly Societies Act 1992⁽¹⁾, makes the following Regulations:

Citation, commencement, interpretation and application

28.—(1) These Regulations may be cited as the Friendly Society (Proxy Voting) Regulations 2011 and come into force on 1st April 2011.

(2) In these Regulations—

“resolution” means a resolution which, if passed as mentioned in paragraph 7(2) of Schedule 12 to the Friendly Societies Act 1992 would be a special resolution;

“society” means a friendly society registered under the Friendly Societies Act 1974⁽²⁾ or incorporated under the Friendly Societies Act 1992.

Limited application of the Friendly Societies (Proxy Voting) Regulations 1993

29. The Friendly Societies (Proxy Voting) Regulations 1993⁽³⁾ do not apply to meetings called by a society on or after 1st April 2011.

Notice of right to vote by proxy

30.—(1) In every notice calling a meeting of a society at which a resolution is to be moved there must be a statement that—

- (a) a member entitled to attend and vote may appoint a proxy to attend and vote at the meeting instead of that member; and
- (b) the member may direct the proxy how to vote at the meeting.

⁽¹⁾ 1992 c. 40.

⁽²⁾ 1974 c. 46.

⁽³⁾ S.I. 1993/2294.

(2) The proxy need not be a member of the society and must not, in the case of a collecting society, be a collector or superintendent of that society.

Proxy forms

31.—(1) A form for the appointment of a proxy may—

- (a) be sent to a person by electronic means if it is sent to an electronic address notified by that person to the society for the purpose;
- (b) be made available to a person on a website in accordance with section 119AB of the 1992 Act; and the end date for the purposes of section 119AB(4)(b) is the last day specified for the return of appointments of proxies.

(2) A society may add to a form for the appointment of a proxy issued by it any explanatory notes it may think fit to assist an appointer.

(3) An appointment of proxy must be signed or otherwise sufficiently authenticated by the appointer or the appointer's agent authorised in writing.

(4) An appointment of proxy is sufficiently authenticated for the purposes of paragraph (3) if the identity of the sender is confirmed in a manner specified by the society.

Return of proxy forms

32.—(1) Where a form for the appointment of a proxy is made available by a society on a website in accordance with paragraph 4(1)(b), the society may operate a facility for its completion, authentication and return by electronic means.

(2) Where a society has given an electronic address—

- (a) in a form for the appointment of a proxy sent out by the society in relation to a meeting, or
- (b) in an invitation to appoint a proxy issued by the society in relation to a meeting,

it is deemed to have agreed that any document or information relating to proxies for that meeting may be sent by electronic means to that address (subject to any conditions or limitations specified in the form, invitation or notice of meeting).

(3) The appointment of a proxy or any other document necessary to show the validity of, or otherwise relating to the appointment of a proxy must be received 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—

- (a) at the registered office of the society,
- (b) at such other place within the United Kingdom as is specified for that purpose in the notice convening the meeting,
- (c) where paragraph (1) applies, by the facility, or
- (d) where paragraph (2) applies, at that electronic address.

(4) Any provision in the rules of the society is void in so far as it would have the effect of requiring any documents relating to proxies, to be received more than seven days before a meeting or adjourned meeting in order that the appointment may be effective at the meeting or adjourned meeting, at which the person named in the appointment proposes to vote.

(5) In paragraphs (2) and (4), documents relating to proxies include—

- (a) the appointment of a proxy in relation to a meeting, and
- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

Speaking at meetings and validity of votes

33.—(1) Where the rules of a society permit a proxy to speak at a meeting the appointment of a proxy may confer authority on the proxy to speak at the meeting.

(2) A vote given in accordance with the terms of an appointment of a proxy is valid notwithstanding—

- (a) the previous death or insanity of the appointer or revocation of the appointment of a proxy or of the authority under which the appointment of a proxy was executed, provided that no intimation in

- writing of such death, insanity or revocation has been received by the society at its registered office before the commencement of the meeting or adjourned meeting at which the proxy votes; or
- (b) that since the last day specified for the receipt of appointments of proxies, the appointer has ceased to be entitled to attend and vote at the meeting.

Date

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which are made under paragraph 7(6) of Schedule 12 to the Friendly Societies Act 1992 (c 40), prescribe the procedure to be adopted by societies and members for voting by proxy on any resolution which is to be moved as a special resolution at any meeting of a society other than a meeting of delegates.

Regulation 2 limits the applications of the Friendly Societies (Proxy Voting) Regulations 1993 (SI 1993/2294) to meetings called before 1st April 2011.

Regulation 3 makes provision in relation to the appointment of proxies in notices of meetings. Regulation 4 permits forms to be sent by societies to their members by email, or for forms to be accessed by members on a website. Regulation 5 sets out how proxy forms should be returned to a society and allows the use of an online facility for the appointment and return of proxies. Regulation 6 sets out when a proxy may speak at meetings and provides for the validity of votes cast by proxies of members in certain specific situations.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Mutuels Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. It is also available on HM Treasury's website (hm-treasury.gov.uk), and a copy of the document has been placed in the libraries of both Houses of Parliament.



Impact Assessment

Impact assessment below.

Title: Electronic Communications in the Mutual Sector Lead department or agency: HM Treasury Other departments or agencies:	Impact Assessment (IA)
	IA No:
	Date: 20/10/2010
	Stage: Development/Options
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: jamil.mohamed@hmtreasury.gsi.gov.uk (T) 0207 270 6434

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The Government is committed to foster diversity in financial services, promote mutuals and create a more competitive banking industry. An up-to-date legislative framework is a pre-requisite to a successful mutual sector (that is building societies, friendly societies, industrial and provident societies (cooperative and community benefit societies) and credit unions) given much of the legislation predates the widespread use of electronic communications. Mutual societies are under statutory obligations to communicate with their members or the public in the conduct of their business. The cost to societies of sending paper copies of documents can be considerable.

What are the policy objectives and the intended effects?

The proposed legislative changes are aimed at facilitating the use of electronic communications (such as email and website) by mutual societies in discharging some of their statutory obligations which would allow the sector to reduce its administrative costs.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The policy options considered are either:

Option 1 - to amend existing legislation to modernise the way mutuals can communicate to their members, the regulator - Financial Services Authority - and the wider public,

Option 2 - to do nothing.

Amending existing legislation (option 1) is the preferred option and would allow mutual societies to reduce the sector's administrative costs by enabling them to communicate by email and website when having to send statutory information to their members, the regulator and to the wider public.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed in 5 years
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 9/11/10

Summary: Analysis and Evidence

Description:

Amending existing legislation to enable the mutual sector to use electronic communications (emails and websites) to send certain statutory information to members

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £9.39mn	High: £93.98mn	Best Estimate: £78.18mn

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£0	£0

Description and scale of key monetised costs by 'main affected groups'
 We are seeking more information on these via the consultation process.

Other key non-monetised costs by 'main affected groups'
 We are seeking more information on these via the consultation process.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	£1.45mn	£9.39mn
High	£0	£14.5mn	£93.98mn
Best Estimate	£0	£11.6mn	£78.18mn

Description and scale of key monetised benefits by 'main affected groups'
 Primary benefit is that the mutual sector will make administrative costs savings by having the option should they choose to exercise it, subject to a member's request, to send certain statutory information to members and to the FSA by email and a website. These cost savings will be on postage; paper; printing and photocopying; and manpower in having to put documents into envelopes. We are seeking more information on these via the consultation process.

Other key non-monetised benefits by 'main affected groups'
 We are seeking more information on these via the consultation process.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

In calculating the costs and benefits we assumed that at the minimum we would expect to see a 10% take up and at the maximum a 100% take up of sending/receiving information through electronic means; our best estimate is set at 80% take up and we assume this takes place in year 1 as opposed to gradual take up over time. This is a consultation impact assessment and we are using the consultation exercise to derive from industry stakeholders detailed opinion on the costs and benefits of introducing electronic communication including the likely take up of sending/receiving information electronically.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:		No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	United Kingdom (*)				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	FSA / UK Courts				
What is the annual change in enforcement cost (£m)?	£negligible				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	-
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	7
Small firms Small Firms Impact Test guidance	Yes	7
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	-
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	7
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	-
Human rights Human Rights Impact Test guidance	No	-
Justice system Justice Impact Test guidance	Yes	7
Rural proofing Rural Proofing Impact Test guidance	No	-
Sustainable development Sustainable Development Impact Test guidance	No	-

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Friendly Societies Act 1992
2	Friendly Societies Act 1974 – section 63A
3	Building Societies Act 1986 – paragraph 24 of Schedule 2
4	Industrial and Provident Societies Act 1965 – sections 72 and 74
5	Friendly and Industrial and Provident Societies Act 1968 – sections 6 and 11
6	Credit Unions Act 1979 – section 31

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	11.6mn	10.8mn	10.1mn	9.4mn	8.8mn	8.2mn	7.7mn	7.2mn	6.7mn	6.2mn
Total annual benefits	11.6mn	10.8mn	10.1mn	9.4mn	8.8mn	8.2mn	7.7mn	7.2mn	6.7mn	6.2mn

* For non-monetised benefits please see summary pages and main evidence base section

idence Base (for summary sheets)

A. Background

Mutuals operating in the UK include building societies, Industrial and Provident Societies (IPS), cooperative societies, credit unions and friendly societies. These mutuals employ over 70,000 people, hold around 20% of UK retail deposits; and provide financing for approximately 17% of outstanding UK mortgage balances.

As member-owned organisations mutuals do not need to maximise profits to satisfy the demands of external shareholders for dividends. Mutuals tend to engage in lower risk activities than the large plc banks – driven in part by legislation, and in part by the absence of owners seeking to extract profits by increasing leverage and returns. As a result mutuals are able to take a longer term outlook than their plc peers.

In the Coalition Agreement the Government said it would '*bring forward detailed proposals to foster diversity in financial services, promote mutuals and create a more competitive banking industry*'. An up-to-date legislative framework is a pre-requisite to a successful mutual sector given much of the legislation applying to mutuals has existed for a long time and predates emails and websites.

The draft Order (The Mutual Societies (Electronic Communications) Order 2010) and draft Regulations (The Friendly Societies (Proxy Voting) Regulations 2010)) propose to update existing legislation by removing restrictions on the ability of mutuals and societies to use electronic communications.

There are two policy options:

- Option 1 – To amend the legislation to enable the mutual sector to use electronic communications (such as email and website) to send certain statutory information to their members and the wider public; or
- Option 2 – To do nothing.

The Treasury carried out informal consultation with the mutual sector to examine the pros and cons of making such a legislative change. Broadly the sector was in favour and highlighted potential lower administrative costs savings if members choose to receive the information electronically.

B. Key Changes Proposed and the Costs and Benefits

The section below provides a summary of the costs and benefits of each of the key proposals under option 2 as provided from the outcome of the Government's informal consultation with the mutual sector over the summer. We are seeking more information on the costs and benefits via the consultation process.

Key Proposal 1 – Building Societies

- *Building societies will be able to publish proxy forms on a website for members to access to facilitate voting by proxy;*

The main benefit is the savings the building society sector will make in terms of paper, printing and postage costs of not having to send out proxy forms in hard copy format if members choose. Using information provided by the Building Societies Association (BSA) which used the example of seven unidentified building societies, this showed annual costs savings of about £2mn per year if there was a 100% take up by members of using electronic communications to receive proxy forms – **a 80% take up will result we estimate in a £1.6mn cost savings.**

Key Proposal 2 – Friendly Societies

- *Friendly societies will be able to:-*
 - *send annual returns to members by email or by providing website access;*
 - *send other statutory information to members by email or website;*
 - *send notices of meetings by providing website access*
 - *send their rules to members of the public by email;*
 - *use electronic communications in the conduct of postal ballots;*
 - *conduct electronic ballots (or a mixture of postal and electronic);*

- use electronic communications to submit some information to the FSA.

- *Friendly societies will be required to include a member's email address on the society register with their postal address and include their registered name in their electronic communications, and on their websites.*

Information provided by the Association of Financial Mutuals (AFM), estimated the impact of the consultation proposals on one medium size friendly society to be about £250,000 a year. This cost savings would arise from the paper, printing and postage costs of not having to send information to members and the FSA by hard copy format. The AFM reported as part of the informal consultation that if the £250,000 figure were representative across the sector then this would result in between £3mn to £5mn annual cost savings - £4mn taking a mid-point. If you take our best estimate **of a 80% take up of sending/receiving information electronically we estimate the annual cost savings to be £3.2mn.**

Key Proposal 3 – Financial Services Authority (FSA)

- *The FSA will be relieved of its obligation to maintain and store hard copies of public documents and public files of friendly societies where the FSA maintains that information electronically by making it available on its website.*

This should result in costs savings for the FSA from not having to store these documents in hard copy format and by making it available to the public in electronic format. There will be a one off costs for the FSA to develop the IT system to be able to store these documents. We are seeking information as part of the consultation to establish the financial costs and benefit to the FSA.

Key Proposal 4 – Industrial and Provident Societies (IPS) and Credit Unions

- *Industrial and Provident societies and Credit unions will be able to:-*
 - *send annual returns and group accounts to members by providing website access;*
 - *send other statutory information to members by website;*
 - *use electronic communications to submit information to the FSA .*
- *IPSs and credit unions will be required to include a member's email address on the register with their postal address and include their registered name in their electronic communications, and on their websites.*

Cooperatives UK, the industry representative body for IPS and credit unions, estimates that the impact on the sector from above proposals will be cost savings of about £8.4mn a year; this cost is solely related to postage savings.

The industry representative body has informed us that there are about 7,720 active societies which has listed members of about 13.1mn resulting in an average of 1,694 members per society. Given there are about two mailings done each year to members and the cost of a second class stamp is currently 32 pence the postage cost savings from not having to post to members would be about £8.4mn per year. **Taking our best estimate of 80% take up to send/receive information electronically the annual cost savings estimated to be £6.72mn.**

C. Preferred Option

Given the outcome of the informal consultation, the Government is committed to, subject to the outcome of the formal consultation, introducing legislation enabling the mutual sector to use electronic communications in sending out certain statutory information to members and others.

D. Implementation

The proposed legislation will be made and laid in Parliament early in 2011 so that it can come into force on 1 April 2011.

E. Risks and Assumptions

None

Impact Tests

The Government's preferred option would have a small impact on the environment and also on competition. Having the option to use electronic communications to send members and others certain statutory information (as opposed to sending it by hard copy) if taken up by members will save on paper.

These measures will also place the mutual sector on the same footing as other companies, notably banks and building societies, who under the Companies Act 2006 and Building Societies Act 1986 (updated in 2003) can send out statutory information to their shareholders using electronic communications.

Many of the companies operating in the mutual sector are small firms, and any cost savings will enhance their competitiveness while putting them on a more level playing field with other financial services providers.

The use of electronic communications will enable disabled persons, individuals in rural communities and stay at home parents and carers to engage more with their mutual provider, whereas in the past access to the postal system may have been difficult or prohibitive. There is no perceived bias on the grounds of race, gender, human rights or religious beliefs.

(*) All measures have a geographical coverage of the United Kingdom save the measures applying to cooperatives and credit unions as these only apply to Great Britain. Matters relating to cooperatives and credit unions in Northern Ireland are a devolved matter for the Northern Ireland Executive.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>Within 5 years of the statutory instruments coming into force the Treasury will review the implementing regulations</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure that the legislation continues to provide a cost effective means for the mutual sector to send certain statutory information to its members and to the wider public</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>Treasury officials will seek views from the mutual sector</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>The Treasury and the mutual sector consider that the implementing legislation can satisfactorily deliver cost efficiency savings for the mutual sector</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Treasury officials are in regular contact with affected stakeholders i.e. the mutual sector and the use of electronic communications will be one of the items as part of this dialogue</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

Add annexes here.

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This document can be found in full on our website at:
hm-treasury.gov.uk

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