



HM TREASURY

# Electronic communications in the mutual sector

summary of responses

April 2011



HM TREASURY

# Electronic communications in the mutual sector

---

summary of responses

April 2011



Official versions of this document are printed on 100% recycled paper. When you have finished with it please recycle it again.

If using an electronic version of the document, please consider the environment and only print the pages which you need and recycle them when you have finished.

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

ISBN 978-1-84532-877-1  
PU1175

# Contents

---

		Page
Chapter 1	Introduction	3
Chapter 2	Building societies	5
Chapter 3	Friendly societies	7
Chapter 4	Industrial & provident societies and credit unions	9
Chapter 5	List of respondents	11
Chapter 6	Impact Assessment	13
Chapter 7	Statutory Instruments	21

# 1

# Introduction

---

## Summary and Commencement

**1.1** 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.

**1.2** 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.

**1.3** In December 2010 the Government published a consultation on a draft Order which exercises powers in sections 8 and 9 of the Electronic Communications Act 2000. The proposals were designed 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 were 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

**1.4** 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

**1.5** For friendly societies incorporated under the 1992 Act, the Government also consulted on new draft Friendly Societies (Proxy Voting) Regulations.

**1.6** 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.

**1.7** The responses to the consultation were positive and mostly in favour of the proposals suggested. The broad range of respondents gave a reliable evidence base on which to test the various measures suggested in the document and the Government is grateful for the timely responses received in this shortened consultation period. A full list of respondents can be found in Chapter 5.

**1.8** Given the potential cost savings for the mutual sector in line with the Government's commitment to reduce burdens on business, the legislation has been made and laid in Parliament. The Order and Regulations both come into force on 12 April 2011.

# 2

## Building societies

---

### **Q1 Are you content with the amendments made to paragraph 24 of Schedule 2 to the Building Societies Act 1986?**

Respondents were largely content. There was some query over the need for amendments 1c and 1d to the Schedule. This was due to the preferred method of sending and receiving proxy voting forms, which is set out in the response to Q2 and Q3.

### **Q2 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?**

Building societies advised that a number of societies already appoint proxies using a secure online form, and it is achieved by providing two separate codes that must be used to access a secure online form. This was championed as the best way of achieving the efficiencies whilst maintaining the responsible level of security.

### **Q3 Do you consider that the draft deemed consent provision is appropriate so that societies must accept some communications about proxies by email?**

Following on from the response to Q2, there was concern over the suggested method of emailing a form to be filled out by the member. The major concern was one of security and identification; insofar that it would be harder to validate and securely identify the member by their emailed form alone. If a form or link to an online form is sent via email, it is challenging to provide unique identity codes. Forcing societies to accept forms in this way could raise problems, whereas the method currently in use of having an online form with two identity codes/signatures ensures the identity of the member is known. As a result, the need for amendments 1c and 1d to the Schedule was questioned.

## **Government Response**

**2.1** The Government notes the concerns raised by the respondents with regard to Schedule 2 of paragraph 24 in the Building Societies Act 1986. Amendments have been made to subsection 1 (D) to accommodate these concerns.

**2.2** It is important to stress the rationale for this amendment is to provide for the option to carry out electronic communications in this regard. The Government also notes how the ability for organisations to manipulate technology has moved quite rapidly in recent years. The amendments to the Act should suitably provide for this innovation.

# 3

## Friendly societies

---

**Q4 Notices of meetings. Should societies be required to change their rules to allow a 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?**

Most respondents believed the majority of rulebooks allowed the notice of a meeting to be given electronically, and therefore did not raise any issue with the suggested amendments to cover this.

**Q5 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?**

The majority of the respondents were in support of the measure. One response queried whether the measure may be excessive and confuse consumers/clients.

**Q6 Registers of members;**

- **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.**
- **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?**

In general this was accepted, but a large number suggested this should be covered within a society's rulebook and the ability to amend addresses as and when a society deemed it necessary should be retained. A large number suggested these rules should be in line with what is currently the case for most Friendly Societies. One response recommended that a 3 year transition period should be in place to allow societies to gear up for the change. One response also suggested it should not be the responsibility of the society to chase members for their current addresses (as these can change regularly), and as such the responsibility should lie with the member to update the society. In this instance, the society should then be responsible for ensuring the address is up to date.

**Q7 Postal, electronic and combined ballots. Are you content with these new provisions?**

Respondents were content.



#### Q8 Proxy forms;

- Are you content with the removal of the standard form in the Schedule?
- Are any other changes desirable to the draft Friendly Societies (Proxy Voting) Regulations?
- Do you consider that any transitional arrangements are necessary?

Respondents were content and suggested no substantive amendments.

#### Q9 1974 Act Registered Societies. Are any further changes required to provisions in the 1974 Act?

No specific changes were suggested in responses.

### Government Response

**3.1** The Government notes the responses highlighting that a large number of the suggested amendments are covered in existing rulebooks, and reiterates the rationale of the instruments is to ensure that electronic communication is performed effectively when it is optionally carried out by a society.

**3.2** The Government agrees with the majority of responses in support of putting mutuals on the same footing as trading companies with regard to the use of names on websites.

**3.3** The Government does not believe a 3 year transition period is required for the requirement to put members' electronic addresses on the register as the use of email communications is optional and societies can decide to postpone sending information to members' email addresses if they wish.

# 4

## Industrial & provident societies and credit unions

---

**Q10 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?**

The majority of respondents were eager to point out that this should be an option for societies who do not have adequate websites (or websites at all) – in these instances the paper option should be available. One response suggested that small local societies could post a paper copy in a local community centre instead. One response also suggested that balance sheets should be displayed on websites for increased transparency.

A number of responses felt that some information on Directors, e.g. date of birth and addresses should be kept private; one response suggested having the Annual Returns on a password protected section of websites for members only.

**Q11 Registers of members:**

- 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?
- 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?

In line with the response to Q6, this was widely accepted, but a large number suggested the ability to amend addresses as and when a society deemed it necessary should be retained. A large number suggested these rules should be in line with what is currently the case for Friendly Societies. Equally, it should not be the responsibility of the society to chase members for their current addresses (as these can change regularly), and as such the responsibility should lie with the member to update the society. In this instance, the society should then be responsible for ensuring the address is up to date on their systems.

One response suggested that if an email is 'bounced' back (undeliverable) it should be essential that societies contact that member by other means.

**Q12 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?**

The majority of the respondents were in support of the measure. One response pointed out that this should only apply to the websites for which organisations have editorial control.

**Q13 Communications with the FSA.**

- Are the amendments to section 72, and the new 72A, appropriate?
- 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?

Respondents were content and raised no issue with the above.

## **Government Response**

**4.1** Again, the Government emphasises that the rationale for the legislation is to provide the option to use electronic communication. Those without the ability or wish to do so, have no need to alter their communications as a direct result of this legislation.

**4.2** The Government understands that some organisations would prefer to keep some information private on a members-only site, which in some cases is already the case. This will remain permissible as long as it otherwise complies with the new provisions and members are told how to access the site.

**4.3** The Government agrees with the majority of responses in support of putting mutuals on the same footing as trading companies with regard to the use of societies' names on websites. The Government notes that this obligation will only apply in relation to third party websites which the society itself actually places or which the society itself authorises to be placed. So a society will not be liable where a name is incorrectly given on a third party's website which had not been authorised or placed by the society itself.

# 5

## List of respondents

---

The Government is grateful for the responses submitted by the following:

- ABCUL
- Anglia Regional Co-operative Society
- Association of Financial Mutuals
- Building Societies Association
- Channel Islands Co-operative Society
- Co-operatives UK
- Country Markets Limited
- Energy4All Limited & Associated Co-ops
- Grosmont Co-op Society Limited
- Hanover Scotland
- Liverpool Victoria Friendly Society Limited
- Midlands Co-operative Society
- Scottish Midland Co-operative Society Limited
- SOAS Limited
- Southern Co-operative
- UK Credit Unions Limited
- University of Leicester
- Wrigleys Solicitors
- Yorkshire Building Society

# 6

# Impact Assessment

<b>Title:</b> <b>Electronic Communications in the Mutual Sector</b> <b>Lead department or agency:</b> HM Treasury <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b> <b>IA No:</b> <b>Date:</b> 07/02/2011 <b>Stage:</b> Final <b>Source of intervention:</b> Domestic <b>Type of measure:</b> Secondary legislation <b>Contact for enquiries:</b> Ben.Crosland@hmtreasury.gsi.gov.uk 020 7270 6620
---	--

## Summary: Intervention and Options

<b>What is the problem under consideration? Why is government intervention necessary?</b> 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.	
<b>What are the policy objectives and the intended effects?</b> 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.	
<b>What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)</b> 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.	
<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 4/2016 <b>What is the basis for this review?</b> PIR. <b>If applicable, set sunset clause date:</b> Month/Year	
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes

**SELECT SIGNATORY Sign-off** For final proposal stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.*

Signed by the responsible SELECT SIGNATORY:         A. A         Date:         2/3/11

# Summary: Analysis and Evidence

# Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)			
			Low: £11.05m	High: £112.72m	Best Estimate: £89.9m	
<b>COSTS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>		
Low		£0.25m	0	£0.25m		
High		£0.25m	0	£0.25m		
Best Estimate		£0.25m	0	£0.25m		
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
The FSA have indicated that the cost of putting the electronic records online (as opposed to hard copy) will present an initial cost of £0.25m, but this is not a cost to business.						
<b>Other key non-monetised costs by 'main affected groups'</b>						
This is a deregulatory measure, fully designed to encourage cost savings in the mutual sector. Throughout informal and formal consultation the main affected groups have encouraged the cost savings and have not highlighted any extra net costs.						
<b>BENEFITS (£m)</b>		<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>		
Low		0	£1.51m	£11.3m		
High		0	£15.1m	£114.9m		
Best Estimate		0	£12.05m	£90.15m		
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
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 labour costs in having to handle the administrative burden. These areas have been confirmed by the sector as the vast majority of the contribution to costs.						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
There is a possibility of an increased level of voting engagement due to the ease of communicating electronically						
<b>Key assumptions/sensitivities/risks</b>						
					<b>Discount rate (%)</b>	3.5
In calculating the costs and benefits the sector agreed that at the minimum they would expect to see a 10% take up and at the maximum a 100% take up of sending/receiving information through electronic means. Engagement rates were taken from consultations carried out by trade bodies themselves. From the individual consultations with sectors, it was approximated that for Building Societies and Friendly societies, 80% of the sector would take electronic communications up from Year 1. For Cooperatives and Credit Unions it was approximated that 25% of the member base would engage from Year 1, and in subsequent discussions on minimum/maximum engagement agreed that the boundaries would most probably be in line with variations predicted for the building and friendly societies (c.3.1% - c.31%).						
<b>Direct impact on business (Equivalent Annual) (£m):</b>						
<b>Costs: £0</b>	<b>Benefits: £10.8m</b>	<b>Net: £10.8m</b>	<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>		
			Yes	OUT		

## 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 <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> 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:		
Distribution of annual cost (%) by organisation size (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
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	7
Small firms <a href="#">Small Firms Impact Test guidance</a>	Yes	7
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	Yes	7
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	7
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain 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 assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

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 <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0.25m									
<b>Annual recurring cost</b>										
<b>Total annual costs</b>	0.25m									
<b>Transition benefits</b>										
<b>Annual recurring benefits</b>	12.05m	11.6m	11.2m	10.9m	10.5m	10.2m	9.8m	9.5m	9.2m	8.8m
<b>Total annual benefits</b>	12.05m	11.6m	11.2m	10.9m	10.5m	10.2m	9.8m	9.5m	9.2m	8.8m

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



Microsoft Office  
Excel Worksheet



## Evidence 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 and formal 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 consultations with the mutual sector.

#### 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 £2m per year if there was a 100% take up by societies of using electronic communications to vote – **a 80% take up will result we estimate in a £1.6mn cost savings**. The sector believe this would be a solid conservative estimate.

#### 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 consultation exercise that if the £250,000 figure were representative across the sector then this would result in £4m annual cost savings. Using the estimate **of an 80% take up of sending/receiving information electronically the annual cost savings are £3.2m.**

#### **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. This has been identified as approximately £0.25m initial cost.

#### **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 .*
- *IPs 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.*

The industry representative bodies for IPS and credit unions, estimate that the impact on the sector from above proposals will be cost savings of about **£7.25m a year after taking into consideration a 25% engagement from the sector's members**; this cost is related to postage, printing and labour savings as member institutions have an average of over 3 meetings a year, which can present quite a burden on societies and credit unions.

Coops UK informed us that there are about 7,720 active societies which has listed members of about 13m. Given there are an average of over three mailings done each year to members and the cost of a second class stamp is currently 32 pence, the postage cost savings alone from not having to post to members are considerable. Combine this with the cost of stationary, publishing accompanying literature and the cost of labour and according to the sector there can be costs of approximately £0.75 per member, per mailing. **In the previous Impact Assessment the cost was approximated at 2 mailings per year, but after consultation it has been revised to 3, accounting for the increase in benefit the legislation would bring.**

#### C. Preferred Option

Given the outcome of the consultation, the Government is committed to 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

F. 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. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. 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><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p> <p>Within 5 years of the statutory instruments coming into force the Treasury will review the implementing regulations</p>
<p><b>Review objective:</b> [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><b>Review approach and rationale:</b> [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><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p><b>Success criteria:</b> [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><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a 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><b>Reasons for not planning a review:</b> [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.

# 7

# Statutory Instruments

---

---

## STATUTORY INSTRUMENTS

---

**2011 No. 593**

**BUILDING SOCIETIES**

**FRIENDLY SOCIETIES**

**INDUSTRIAL AND PROVIDENT SOCIETIES**

**The Mutual Societies (Electronic Communications) Order 2011**

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

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

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

### PART 1

#### Preliminary

##### **Citation, commencement and interpretation**

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

(2) In this Order—

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

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

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

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

---

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

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

## PART 2 Building societies

### Amendment to proxy voting requirements

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

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

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

(1B) The conditions are that—

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

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

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

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

### Minor amendments to the 1986 Act

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

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

---

(a) 1992 c.40.  
(b) 1986 c.53; sub-paragraphs (1A) and (1B) were inserted by S.I. 2003/404 art 15.  
(c) 1986 c.53; sub-paragraph (2A) was inserted by S.I. 2003/404 art 19(1), (2).  
(d) 1986 c.53; section 61(7E) was inserted by S.I. 2003/404 art 3(2).

- (a) in paragraph 23(6)(bb)(a), for “if species” substitute “specifies”, and
  - (b) in paragraph 32(3A)(b), after “or copy” insert “is”.
- (3) In paragraph 6(2) of Schedule 16 to that Act(c) (electronic notification of merger proposal: penalty for default), for “sub-paragraph (1) or (2)” substitute “paragraph (a) or (b)”.

## PART 3

### Friendly societies

#### *Interpretation*

#### **Interpretation of the 1992 Act**

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

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

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

#### **“Meaning of electronic form, electronic means etc.**

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

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

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

References to “electronic copy” have a corresponding meaning.

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

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

References to “electronic means” have a corresponding meaning.

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

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

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

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

---

(a) 1986 c.53; paragraph 23(6)(bb) was inserted by S.I. 2003/404 art 30(7).  
 (b) 1986 c.53; paragraph 32(3A) was inserted by S.I. 2003/404 art 16(3).  
 (c) 1986 c.53; paragraph 6(2) of Schedule 16 was amended by S.I. 2003/404 art 26(2).  
 (d) 1992 c.40; section 119(1) was amended by S.I. 1994/1984 to insert the definition of “EFTA State”. There are other amendments to section 119(1) not relevant to this Order.  
 (e) 1992 c.40; section 119A was inserted by S.I.1994/1984 reg 31.

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

#### **Communications by means of a website**

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

(2) The first condition is that B—

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

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

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

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

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

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

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

#### *Societies and the Authority*

#### **Public file may be maintained electronically**

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

(a) after subsection (1) insert—

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

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

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

---

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

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



### **Forms of documents to be sent to the Authority**

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

(2) After section 114(2) insert—

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

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

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

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

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

### *Communications by and with societies*

### **Electronic transmission of annual accounts etc.**

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

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

### **Electronic service of notices**

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

- (a) omit “or” immediately after paragraph (b); and
- (b) after paragraph (c) insert—
  - “; or
  - (d) by sending it by electronic means to an electronic address notified by the person for the purpose.”.

### **Use of name in electronic communications**

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

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

---

(a) 1992 c.40; section 114 was substituted by S.I. 2001/2617, arts 2, 8(1), 13(1), Sch 3, Pt 1, para 113 and by S.I. 2001/3649 arts 1, 204.  
(b) 1992 c.40; subsection (4) was amended by S.I. 2001/2617 art 13(1), Sch 3 Pt 1, paras 53, 91(b) and by S.I. 2008/1140 art 9, Sch 1, paras 1,4.  
(c) 1992 c.40; section 113 was amended by S.I. 2001/2617 art 13(1), Sch 3 Pt 1, paras 53, 112.

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

**Electronic provision of copies of rules to members**

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

**Inclusion of electronic addresses in register of members**

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

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

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

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

---

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

#### **Delivery of documents held in electronic form**

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

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

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

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

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

#### **Electronic transmission of notice of meetings**

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

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

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

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

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

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

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

#### **Electronic communication of resolutions requiring special notice**

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

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

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

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

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

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

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

#### **Electronic transmission of statement by person ceasing to hold office**

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

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

#### **Transfers of engagements: electronic transmission of statement to members**

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

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

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

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

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

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

#### *Ballots and proxies*

#### **Interpretation**

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

““ballot” means—

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

#### **Electronic communications in postal ballots**

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

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

(3) After sub-paragraph (1) insert—

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

(4) After sub-paragraph (4) insert—

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

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

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

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

#### **Electronic ballots and combined ballots**

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

##### **“Electronic ballots**

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

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

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

(4) The first condition is that the person—

- (a) has agreed (generally or specifically) that the society or branch may make a facility for registering a vote in the ballot available on a website, and
- (b) has not revoked that agreement.

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

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

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

- (a) beginning with the day on which the notification under sub-paragraph (5) is given, and
- (b) ending at the time which the society or branch specifies in the notice of the ballot as the final time for the registration of votes in the ballot.

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

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

- (a) state that it concerns a notice of an electronic ballot on a specified matter, and
- (b) be given not less than 14 days before the final date for the registration of votes in the ballot.

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

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

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

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

### **Combined ballots**

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

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

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

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

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

### **Consequential amendments**

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

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

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

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

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

## PART 4

### Industrial and provident societies and credit unions

#### Use of name in electronic communications

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

#### Electronic transmission of annual returns and group accounts

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

---

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

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

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

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

- (a) has agreed (generally or specifically) that S may make the return available to P on a website, and
  - (b) has not revoked that agreement.
- (8) The second condition is that S has notified P of—
- (a) the presence of the return on the website,
  - (b) the address of the website,
  - (c) the place on the website where the return may be accessed, and
  - (d) how to access the return.
- (9) The third condition is that the return is present on the website for the whole of the period—
- (a) beginning with the day on which S sends P the notification referred to in subsection (8) or, if later, the day on which the return first appears on the website, and
  - (b) ending on the day when that return ceases to be S’s latest return.
- (10) If the return is absent from the website for part of the period referred to in subsection (9), the absence is to be disregarded if it is wholly attributable to circumstances that it would not be reasonable to have expected S to prevent or avoid.”.
- (2) In section 13 of the 1968 Act(a) (group accounts of industrial and provident societies), after subsection (7), insert—
- “(8) Subsections (6) to (10) of section 36 of the Act of 1965 apply to the latest group accounts of an industrial and provident society as those subsections apply to a copy of the latest annual return of an industrial and provident society.”.

**Inclusion of electronic address in register of members and officers**

- 24.** In section 44(1) of the 1965 Act (register of members and officers)—
- (a) in paragraphs (a) and (e), before “addresses” insert “postal”;
  - (b) after subsection (1) insert—
    - “(1A) Where a member or officer has notified to the society an electronic address for the purpose of receiving notices or documents under this Act, the requirement under subsection (1) includes a requirement to secure that the register shows—
      - (a) that electronic address; and
      - (b) the purposes for which it has been notified.
    - (1B) Where it appears to a society that an electronic address shown on the register pursuant to subsection (1) is no longer current, the society may remove that address from the register.”; and
  - (c) in subsection (5)(a), for “addresses” substitute “postal and electronic addresses”.

**Registration provisions**

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

**Form and delivery of documents to the Authority**

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

---

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



(2) After that section insert—

**“Form etc. of electronic documents sent to the Authority**

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

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

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

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

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

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

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

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

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

**“Form etc. of electronic documents sent to the Authority**

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

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

**Interpretation: communications**

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

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

(2) After that section insert—

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

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

---

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

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

References to electronic copy have a corresponding meaning.

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

References to “electronic means” have a corresponding meaning.

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

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

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

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

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

#### **Electronic transmission of representations of retiring auditor**

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

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

(7B) The first condition is that M—

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

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

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

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

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

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

Date Name  
Name  
Two of the Lords Commissioners of Her Majesty's Treasury

#### EXPLANATORY NOTE

*(This note is not part of the Order)*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## HM Treasury contacts

This document can be found in full on our website at:  
[hm-treasury.gov.uk](http://hm-treasury.gov.uk)

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: [public.enquiries@hm-treasury.gov.uk](mailto:public.enquiries@hm-treasury.gov.uk)

ISBN 978-1-84532-877-1



9 781845 328771 >