

2003 No. 404

BUILDING SOCIETIES

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

Made - - - - - 27th February 2003

Laid before Parliament 27th February 2003

Coming into force - - 20th March 2003

The Treasury, considering 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, in exercise of the powers conferred upon them under section 8 and 9 of the Electronic Communications Act 2000^(a) hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Building Societies Act 1986 (Electronic Communications) Order 2003, and comes into force on 20th March 2003.

(2) In this Order, “the 1986 Act” means the Building Societies Act 1986^(b).

Electronic notification of details concerning a director

2. In section 60 of the 1986 Act (directors: elections and retirements), after subsection (7) insert—

“(7A) Where the information required to be notified by subsection (7)(b) is sent electronically, it must be sent to an electronic address notified by the person for the purpose.

(7B) The requirement of subsection (7)(b) to notify information to a person is satisfied by the publication of that information on a web site only if—

- (a) the society and that person have agreed to his accessing information on a web site;
- (b) the published information is information to which the agreement applies;
- (c) that person is notified before the voting date, in a manner agreed between him and the society, of—
 - (i) the publication of the information on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the information may be accessed, and how it may be accessed; and
- (d) the information is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the voting date.

^(a) 2000 c. 7.
^(b) 1986 c. 53.

(7C) Where, in a case in which subsection (7B) is relied on for compliance with a requirement of subsection (7)(b)—

- (a) information is published for a part, but not all, of the period mentioned in subsection (7B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the election of a director.”.

Electronic transmission of election addresses

3.—(1) Section 61 of the 1986 Act (directors: supplementary provisions as to elections, etc.) is amended as follows.

(2) After subsection (7) insert—

“(7A) Subsection (7B) applies where, in a case in which—

- (a) a society gives notice in accordance with paragraph 22A or 22B of Schedule 2 of the meeting at which the election is to be conducted;
- (b) a society gives notice of a postal ballot by which the election is to be conducted by sending it electronically to an electronic address; or
- (c) a society gives notice of an electronic ballot by which the election is to be conducted,

the copy of the election address or revised election address that is required to be sent to a member under subsection (7)(b) is not transmitted or published at the same time as the notice.

(7B) The requirement of subsection (7)(b) to send a member his copy of the election address or revised election address in the same manner as the notice is satisfied if—

- (a) a copy of the address or revised address is made available to the member in the same way as the notice; or
- (b) such a copy (without being made available to the member in that way) is sent to the member in a manner set out by the society for the purpose in the notice.

(7C) Where a copy of an election address or revised election address is sent to a member electronically under subsection (7B), it must be sent to an electronic address notified by the member for the purpose.

(7D) The requirements of subsection (7)(b) or (7B)(a) are satisfied by the publication of a copy of the election address or revised election address on a web site only if—

- (a) the notice of the election meeting or of the electronic ballot is a notice given to that member by being published on a web site;
- (b) an agreement between the society and the member to his accessing information on a web site applies to copies of election addresses or revised election addresses for the meeting or ballot in question;
- (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of a copy of the address or revised address on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the copy may be accessed, and how it may be accessed;
- (d) the notification for the purposes of paragraph (c) above is given no later than the day after the date on which the copy of the election address or revised election address is first capable of being accessed on the notified web site; and
- (e) that date was the same as the date on which the notice of the election meeting or of the electronic ballot was first capable of being accessed on a web site or (in a case to which subsection (7B) applies) was as soon as practicable after that date;
- (f) a copy of the election address or revised election address is continuously published on the notified web site throughout the period beginning with the day on which it was first accessible on that site and ending with the voting date (within the meaning of section 60(17)).

(7E) Where, in a case in which subsection (7D) is relied on for compliance with a requirement under subsection (7)(b) or (7B)(a) above, nothing in subsection (9A) above shall invalidate the election of a director where—

- (a) a copy is published for a part, but not all, of the period mentioned in subsection (7D)(f), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the election of a director.”.

Electronic transmission of statement of particulars of loans etc. for directors falling within section 65

4.—(1) Section 68 of the 1986 Act (records of loans, etc for directors falling within section 65) is amended as follows.

(2) After subsection (6) insert—

“(6A) Where a copy of a statement is required to be sent to a member under subsection (6)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (6B) are satisfied.

(6B) The conditions of this subsection are satisfied in the case of a copy of a statement if—

- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
- (d) a copy of the statement continues to be published on that web site throughout the period of 21 days beginning with the day on which the society notifies the member in accordance with paragraph (c).”.

(3) After subsection (11) insert—

“(11A) Where, in a case in which subsection (6A)(b) is relied on for compliance with a requirement of subsection (6)—

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

no offence is committed under subsection (11) by reason of that failure.”.

Electronic transmission of statement containing particulars of income of related business

5. In section 69 of the 1986 Act (disclosure and record of income of related business), after subsection (15) insert—

“(15A) Where a copy of a statement is required to be sent to a member under subsection (15)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (15B) are satisfied.

- (15B) The conditions of this subsection are satisfied in the case of a statement if—
- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
 - (b) the agreement applies to the statement in question;
 - (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
 - (d) a copy of the statement continues to be published on that web site throughout the period of 21 days beginning with the day on which the society notifies the member in accordance with paragraph (c).”.

Electronic transmission of summary financial statement

6.—(1) Section 76 of the 1986 Act (summary financial statement for members and depositors) is amended as follows.

(2) After subsection (8A)(a) insert—

“(8B) Where a copy of the summary financial statement or of the auditor’s report is required to be sent to a member under subsection (8)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (8C) are satisfied.

(8C) The conditions of this subsection are satisfied in the case of a copy of a summary financial statement or auditor’s report if—

- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the summary financial statement or auditor’s report in question;
- (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the summary financial statement and (where applicable) the auditor’s report on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the statement and (where applicable) the report may be accessed, and how it may be accessed;
- (d) the notification given for the purposes of paragraph (c) is given not less than 21 days before the date of the annual general meeting at which the accounts and reports are to be considered; and
- (e) a copy of the statement and (where applicable) the report is published on the web site throughout a period beginning at least 21 days before the date of meeting.

(8D) Where, in a case in which subsection (8C) is relied on for compliance with a requirement of subsection (8)—

- (a) a copy of a summary financial statement or auditor’s report is published for a part, but not all, of the period mentioned in subsection (8C)(e), and
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society or the officer to prevent or avoid,

the failure shall not invalidate the proceedings of the meeting at which the accounts and reports are considered, and no offence is committed under subsection (10) by reason of that failure.”.

(a) Subsection (8) was substituted together with subsection (8A), for subsection (8) as originally enacted by S.I. 2001/2617, article 13(1), Schedule 3, Part II, paragraphs 131, 168(b).

(3) After subsection (9) insert—

“(9A) Where a copy of the summary financial statement or of the auditor’s report is required under subsection (9)(a) to be sent to an individual who for the first time subscribes for shares in the society (“new subscriber”)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by that new subscriber for the purpose before or at the time when he subscribes for the shares; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (9B) are satisfied.

(9B) The conditions of this subsection are satisfied in the case of a copy of a summary financial statement or of an auditor’s report if—

- (a) before or at the time when he subscribes for the shares, the society and the new subscriber have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the summary financial statement or to the auditor’s report in question;
- (c) before or at the time when he subscribes for the shares, the new subscriber is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the summary financial statement or auditor’s report on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where that statement or that report may be accessed, and how it may be accessed; and
- (d) a copy of the summary financial statement or of the auditor’s report is published on that web site throughout a period beginning on the date on which the new subscriber is notified in accordance with paragraph (c) and ending no later than the date of the publication of the next summary financial statement.

(9C) Where a copy of the summary financial statement or of the auditor’s report is required to be sent to a member under subsection (9)(b)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by that member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in subsection (9D) are satisfied.

(9D) The requirements of this subsection are satisfied in the case of a copy of a summary financial statement or of an auditor’s report if—

- (a) the society and that member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the summary financial statement or auditor’s report in question;
- (c) within the seven days specified in subsection (9)(b), the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the summary financial statement or auditor’s report on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the statement or report may be accessed, and how it may be accessed; and
- (d) a copy of the summary financial statement or of the auditor’s report is published on that web site throughout a period beginning on the date on which the member is notified in accordance with paragraph (c) and ending no earlier than the date of the publication of the next summary financial statement.

(9E) Where, in a case in which subsection (9A)(b) or (9C)(b) is relied on for compliance with a requirement under subsection (9),

- (a) a copy of a summary financial statement or auditor’s report is published for a part, but not all, of the period mentioned in paragraph (d) of subsection (9B) or (9D) (as the case may be), but

- (b) the failure to publish that copy of a statement or report throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society or the officer to prevent or avoid,
the failure shall not prevent the requirements of subsection (9) from being treated as fulfilled in relation to that copy of a statement or report, and no offence is committed under subsection (11) by reason of that failure.”.

Electronic transmission of accounts

7.—(1) In section 81 of the 1986 Act (laying and furnishing accounts, etc., to members and the Authority)(a) is amended as follows.

(2) After subsection (3) insert—

“(3A) Where a copy of the annual accounts is required to be sent to a member or depositor under subsection (3)—

- (a) they may be sent to him electronically only if they are sent to an electronic address notified to the society by that member or depositor for the purpose; but
(b) the requirement to send them shall also be treated as satisfied if the conditions set out in subsection (3B) are satisfied.

(3B) The conditions of this subsection are satisfied in the case of a copy of the annual accounts if—

- (a) the society and the member or depositor have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
(b) the agreement applies to the annual accounts in question;
(c) within seven days of his demand, the member or depositor is notified, in a manner agreed for the purpose between him and the society, of—
(i) the publication of the accounts on a web site,
(ii) the address of that web site, and
(iii) the place on that web site where the accounts may be accessed, and how they may be accessed; and
(d) the accounts are published on that web site throughout the period beginning on the date on which the member or depositor is notified in accordance with paragraph (c) and ending with the conclusion of the annual general meeting at which the accounts are to be considered.”.

(3) After subsection (5) insert—

“(5A) Where, in a case in which subsection (3A)(b) is relied on for compliance with a requirement under subsection (3)—

- (a) a copy of the annual accounts is published for a part, but not all, of the period mentioned in subsection (3B)(d), but
(b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society or the officer to prevent or avoid,

no offence is committed under subsection (5) by reason of that failure.”.

Electronic service of notices

8. In section 115 of the 1986 Act (service of notices), after subsection (2) insert—

“(2A) The reference in subsection (2)(a) to delivering a document to a person includes a reference to sending it electronically to an electronic address which that person has notified for the purpose in accordance with express provision made by this Act.”.

Interpretation of the 1986 Act

9.—(1) Subsection (1) of section 119 of the 1986 Act (Interpretation) is amended as follows.

(a) The section heading to section 81 was amended by S.I. 2001/2617, article 13(1), Schedule 3, Part II, paragraphs 131, 170(a).

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

““ballot” means an electronic ballot or a postal ballot, as the case may be;”;

““electronic address” includes any number or address used for the purposes of receiving electronic communications which are sent electronically;”;

““electronic ballot”, in relation to an election or resolution of a building society, means the electronic ballot taking place, in accordance with paragraph 33A of Schedule 2 to this Act, in the case of the election or resolution;”;

““electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000 the processing of which on receipt is intended to produce writing;”;

““postal ballot”, in relation to an election or resolution of a building society, means any postal ballot taking place by virtue of any rules of the society made in accordance with paragraph 33 of Schedule 2 to this Act, in the case of the election or resolution;”.

(3) For the definition of “notice” substitute—

““notice” means written notice but includes a notice in an electronic communication to the extent only that this Act provides for the manner in which the notice may be given electronically, and “notice to” and “notify” shall be construed accordingly;”.

Power of society to use electronic communications notwithstanding any provision to the contrary in its rules

10. In Schedule 2 to the 1986 Act (establishment, incorporation and constitution of building societies), in paragraph 3 (the rules), after sub-paragraph (4) insert—

“(5) Nothing in the rules of a society shall prevent the service of a notice or other document by the society—

(a) by sending it electronically to an electronic address notified for the purpose in accordance with express provision made by this Act; or

(b) by its publication on a web site in accordance with any such provision.”.

Use of name in documents sent or made available by electronic transmission

11. In Schedule 2 to the 1986 Act, in sub-paragraph (2A) of paragraph 9 (use and change of name)(a), after “the following documents,” insert “in every electronic communication containing any of the following documents and on every web site on which any of the following documents is published,”.

Inclusion of electronic address in register of members

12.—(1) In Schedule 2 to the 1986 Act, paragraph 13 (register of members) is amended as follows.

(2) In sub-paragraph (1)(a), before “address” insert “postal”.

(3) After sub-paragraph (1) insert—

“(1A) Where a member has notified to the building society an electronic address for the purpose of receiving notices or documents required to be sent by the society under this Act, the register shall show—

(a) the electronic address in addition to the postal address of the member; and

(b) the purposes for which the electronic address has been notified.”.

(4) In sub-paragraph (4)—

(a) in paragraph (a), before “address” insert “postal”; and

(b) in paragraph (b), before “address” (the first time it appears), insert “postal”.

(a) Sub-paragraph (2A) was substituted, together with sub-paragraph (2), for sub-paragraph (2) as originally enacted by the Building Societies Act 1997 (c. 32), section 36(1).

Special meeting on members' requisition: electronic transmission of statement

13.—(1) In Schedule 2 to the 1986 Act, paragraph 20A (special meeting on members' requisition)(a) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) Where a copy of a statement is required to be sent to a member under sub-paragraph (1)(b)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (1B) are satisfied.

(1B) The requirements of this sub-paragraph are satisfied in the case of a statement if—

- (a) the society and that member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) no later than one working day after the statement is first capable of being accessed on a web site that person is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
- (d) a copy of the statement is published continuously on that web site throughout the period beginning (so far as practicable) at the same time as copies of the statement are sent to members in accordance with sub-paragraph (1)(b), and ending with the conclusion of the meeting.”.

(3) After sub-paragraph (11) insert—

“(11A) Where, in a case in which sub-paragraph (1A)(b) is relied on for compliance with a requirement of sub-paragraph (1)(b)—

- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (1B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the proceedings at the meeting.”.

Electronic transmission of notice of meetings

14. In Schedule 2 to the 1986 Act, after paragraph 22 (persons entitled to notice of meetings) insert—

“Transmission of notice of meeting to an electronic address

22A—(1) Where a notice of a meeting of a society is required to be sent to a person under any provision of this Act, the notice may be sent to him electronically only if it is sent to an electronic address notified by him to the society for the purpose.

(2) In a case in which this paragraph is relied on for compliance with a requirement to send a notice, a notice given in accordance with this paragraph is to be treated as given to a person on the day that the notice is transmitted.

Publication of notice of meeting on a web site

22B—(1) A requirement under any provision of this Act to send a notice of a meeting of the society to a person shall also be treated as satisfied if the conditions set out in sub-paragraph (2) are satisfied.

(a) Paragraph 20A was inserted by the Building Societies Act 1997 (c. 32), section 25.

- (2) The conditions of this sub-paragraph are satisfied in the case of a notice of a meeting of a society if—
- (a) the society and the person have agreed that notices which are required to be sent to him may instead be accessed by him on a web site;
 - (b) the agreement applies to the notice in question
 - (c) that person is notified, in a manner agreed between him and the society for that purpose, of—
 - (i) the publication of the notice on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
 - (d) the notice is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.
- (3) A notification given for the purposes of sub-paragraph (2)(c) must—
- (a) state that it concerns a notice of a meeting of the society served in accordance with this Act;
 - (b) specify the place, date and time of the meeting; and
 - (c) state whether the meeting is to be an annual or special general meeting.
- (4) In a case in which this paragraph is relied on for compliance with a requirement to send a notice, a notice given in accordance with this paragraph is to be treated as given to a person on the day that person is notified in compliance with sub-paragraphs (2)(c) and (3).
- (5) Where, in a case in which this paragraph is relied on for compliance with a requirement to send a notice of a meeting—
- (a) a notice is published for a part, but not all, of the period mentioned in sub-paragraph (2)(d), but
 - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- the failure shall not invalidate the proceedings of the meeting.”.

Electronic appointment of proxies

15. In Schedule 2 to the 1986 Act, in paragraph 24 (proxies), after sub-paragraph (1) insert—

“(1A) A form for the appointment of a proxy may only be sent electronically to a person if it is sent to an electronic address notified by that person to the society for the purpose.

(1B) The appointment of a proxy may be contained in an electronic communication sent by a member to an electronic address notified by or on behalf of the society for the purpose.”.

Electronic transmission of notices and statements in connection with a members’ resolution

16.—(1) In Schedule 2 to the 1986 Act, paragraph 32 (members’ resolutions: supplementary provisions) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) Sub-paragraph (2B) applies where, in a case in which a society gives notice in accordance with paragraph 22A or 22B of this Schedule of the annual general meeting at which a resolution is intended to be moved, the notice of the resolution and the copy of a statement in respect of the resolution that are required to be sent to a member under paragraph 3 1 (1)(a) or (b) are not transmitted or published at the same time as the notice.

(2B) The requirement of sub-paragraph (2) to send a member his notice of the resolution and his copy of a statement in the same manner as the notice of the annual general meeting is satisfied if—

- (a) a notice of the resolution and a copy of the statement are made available to the member in the same way as the notice; or

- (b) such a notice and such a copy (without being made available to the member in that way) are sent to the member in a manner set out by the society for the purpose in the notice.

(2C) Where a notice of a resolution and copy of a statement are sent to a member electronically under sub-paragraph (2B), they must be sent to an electronic address notified by the member for the purpose.

(2D) The requirements of sub-paragraph (2) or (2B)(a) are satisfied by the publication of a notice of the resolution and a copy of the statement on a web site only if—

- (a) the notice of the annual general meeting at which the resolution is intended to be moved is a notice given to that member by being published on a web site;
- (b) an agreement between the society and the member to his accessing information on a web site applies to the notice of a resolution and copy of a statement for the meeting in question;
- (c) the member is notified, in a manner agreed between the society and the member, of—
 - (i) the publication of the notice of a resolution and copy of a statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the notice and copy may be accessed, and how they may be accessed;
- (d) the notification for the purposes of paragraph (c) is given no later than the day after the date on which the notice of a resolution and the copy of a statement are first capable of being accessed on the notified web site;
- (e) that date was the same as the date on which the notice of the annual general meeting was first capable of being accessed on a web site or (in a case to which sub-paragraph (2B)(a) applies) was as soon as practicable after that date;
- (f) the notice of a resolution and copy of a statement are continuously published on the notified web site for a period beginning (so far as practicable) at the same time as the notices and statements are sent to members in accordance with sub-paragraph (2), and ending with the conclusion of the annual general meeting at which the resolution is moved.”.

(3) After sub-paragraph (3) insert—

“(3A) Where, in a case in which sub-paragraph (2D) is relied on for compliance with a requirement of sub-paragraph (2) or (2B)(a)—

- (a) a notice or copy published for a part, but not all, of the period mentioned in sub-paragraph (2D)(f), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the proceedings at the meeting.”.

Postal ballots: electronic transmission of notices

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

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

(3) After sub-paragraph (1) insert—

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

(4) After sub-paragraph (5) insert—

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

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

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

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

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

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

- (a) a notice of a postal ballot is published for a part, but not all, of the period mentioned in sub-paragraph (5C)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the postal ballot.”.

(5) In sub-paragraph (6)—

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

(6) After sub-paragraph (6) insert—

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

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

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

- (a) the society and that member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the related notice or accompanying document in question;
- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the postal ballot, it notifies him of—
 - (i) the publication of the related notice or accompanying document on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where that statement or notification may be accessed, and how it may be accessed; and

- (d) the related notice or accompanying document is published continuously on that web site throughout the period beginning with the giving of that notification in accordance with paragraph (c) and ending with the voting date (within the meaning of section 60(17)).

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

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

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

(7) After sub-paragraph (7) insert—

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

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

the failure shall not invalidate the postal ballot.”.

Electronic ballots

18. In Schedule 2 to the 1986 Act, after paragraph 33 (postal ballots) insert—

“Electronic ballots

33A.—(1) Where—

- (a) the rules of a building society provide for a postal ballot to be conducted in any circumstances in the case of an election or resolution, and
- (b) those rules do not expressly prohibit the conduct of an electronic ballot in those circumstances,

the ballot in the case of that election or resolution may, in those circumstances, be an electronic ballot instead of a postal ballot.

(2) A ballot in the case of an election or resolution is an electronic ballot if it is conducted—

- (a) in accordance with the following provisions of this paragraph as to electronic voting; and
- (b) in so far as it is not conducted with those provisions, as if it were a postal ballot.

(3) But voting in the case of an election or resolution may not be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10) unless the rules of the society expressly permit it.

(4) The rules of a building society may provide for voting in the case of—

- (a) an election of directors, or
- (b) a resolution of the society other than a share holding members’ resolution or a borrowing members’ resolution,

to be conducted by an electronic ballot in which all the voting is electronic voting in accordance with sub-paragraphs (8) to (10).

(5) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) the rules of the society may contain provision supplementing rules relating to postal ballots in so far as it is necessary to provide for the conduct of electronic voting in accordance with subparagraphs (8) to (10).

(6) Where voting may be conducted by electronic ballot by virtue of sub-paragraph (1) or (3) the rules of the society may make provision as to the consequences of any irregularities occurring in the course of a ballot, including (but not restricted to) provision as to the validity of multiple votes cast by a member in the same election or on the same resolution.

- (7) In the case of an electronic ballot, the society is not required to send notice of the ballot to any person if—
- (a) that person has agreed, in accordance with sub-paragraph (9)(a) below, that notices of electronic ballots and a voting facility may be accessed by him on a web site; and
 - (b) the society notifies that person in accordance with sub-paragraph (9)(c) below.
- (8) The voting of a person in an electronic ballot is electronic if—
- (a) a person has access on a web site to the notice of the electronic ballot, any document which is required to accompany the notice and a facility for registering his vote;
 - (b) that person registers his vote by means of that facility; and
 - (c) the conditions set out in sub-paragraph (9) are satisfied.
- (9) The conditions of this sub-paragraph are satisfied if—
- (a) the society and the person have agreed that notices of electronic ballots, any document which is required to accompany the notice, and a voting facility may be accessed by him on a web site;
 - (b) that agreement applies to the electronic ballot and accompanying documents in question;
 - (c) that person is notified, in a manner agreed for the purpose between him and the society of—
 - (i) the publication of the notice and documents and the availability of the voting facility on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the notice, any such documents, and the facility may be accessed, and how they may be accessed; and
 - (d) the notice and each such document continues to be published and the facility continues to be available on that web site throughout the period beginning with the giving of that notification and ending with the date which the society specifies as the final date for the registration of votes.
- (10) A notice given for the purposes of sub-paragraph (9)(c) must—
- (a) state that it concerns a notice of an electronic ballot given in accordance with this Act; and
 - (b) state whether the voting to be conducted by the electronic ballot is in an election or on a resolution or both.
- (11) Nothing in sub-paragraph (9) shall invalidate an electronic ballot where—
- (a) any notice or document that is required to be published, and any facility which is required to be made available, for the period mentioned in sub-paragraph (6)(d) is published or made available for a part, but not all, of that period, but
 - (b) the failure to publish that notice or document, or make that facility available, throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid.
- (12) Sub-paragraphs (3) to (7) of paragraph 33 apply, with the modification specified in subparagraph (13) below, in relation to notices of an electronic ballot as they apply in relation to notices of a postal ballot.
- (13) Sub-paragraph (3) of paragraph 33 has effect as if the reference to the receipt of completed ballot papers included a reference to the registration of votes by means of a voting facility on a web site.
- (14) For the purposes of sub-paragraph (3) of paragraph 33 (as applied to electronic ballots by sub-paragraph (13) above), in a case in which a person is notified for the purposes of subparagraph (9)(c), a notice of an electronic ballot is treated as given to a person on the day when notification is given in accordance with that sub-paragraph.”

Declarations where electronic communications are used in the appointment of proxies or in the conduct of ballots

19.—(1) In Schedule 2 to the 1986 Act, paragraph 34 (declarations to be made in proxy and ballot forms) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) Where an appointment of a proxy is contained in an electronic communication sent in accordance with paragraph 24(1A)(b), the requirements of sub-paragraph (2) above are satisfied only if—

- (a) the appointment incorporates the terms of the declaration required by that subparagraph; and
- (b) the authenticity and integrity of the appointment is established (whether by an electronic signature or otherwise) in such manner as may have been agreed between the member and the society.

(2B) Where a member voting in a postal ballot returns a completed voting paper electronically as mentioned in sub-paragraph (6E)(b) of paragraph 33 above, the requirements of sub-paragraph (2) above are satisfied only if—

- (a) the voting paper incorporates the terms of the declaration required by that subparagraph; and
- (b) the authenticity and integrity of the completed paper is established (whether by electronic signature or otherwise) in such manner as may have been agreed between the member and the society.

(2C) Where a member registers a vote on a web site in accordance with sub-paragraph (8)(b) of paragraph 33A above, the requirements of sub-paragraph (2) above are satisfied only if—

- (a) at the place on the web site where the voting facility is accessed, the member has confirmed the terms of the declaration specified by that sub-paragraph; and
- (b) the authenticity and integrity of the member’s vote is established (whether by electronic signature or otherwise) in such a manner as may have been agreed between the member and the society.”.

(3) After sub-paragraph (3) insert—

“(3A) A building society shall ensure that—

- (a) every voting paper sent by it to a member by means of an electronic communication incorporates a declaration in accordance with sub-paragraph (2) above, and
- (b) every voting facility provided by it on a web site is accompanied by such a declaration,

for completion or confirmation by the member purporting to exercise his right to vote.”.

(4) In sub-paragraph (5), before the definition of “qualifying shareholding” insert—

““authenticity” and “integrity”, with reference to an electronic communication, must be construed in accordance with section 15(2) of the Electronic Communications Act 2000(a);

“electronic signature” has the same meaning as in section 7(2) of that Act;”.

Directions to transfer engagements: electronic service of statements to members

20.—(1) In Schedule 8A to the 1986 Act (transfer directions: modifications of Part X)(b), paragraph 3 (statements to members) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) Where a statement is required to be sent to a member under sub-paragraph (2)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by that member for the purpose;
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(a) 2000 c. 7.

(b) Schedule 8A was inserted by the Building Societies Act 1997 (c. 32), section 17(2), Schedule 4.

- (2B) The conditions of this sub-paragraph are satisfied in the case of a statement if—
- (a) the society and that person have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
 - (b) the agreement applies to the statement in question;
 - (c) in a manner agreed between the society and that person, the society notifies him within the period specified in sub-paragraph (3) below of—
 - (i) the publication of the notice and any statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the documents may be accessed, and how they may be accessed; and
 - (d) that statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the decision of the Authority whether to confirm the transfer pursuant to section 95.

(2C) In a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (2)—

- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (2B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the proceedings of the meeting.”.

(3) After sub-paragraph (3) insert—

“(3A) For the purposes of sub-paragraph (3) above, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (2), a statement published on a web site in accordance with sub-paragraph (2B) is to be treated as sent to a person on the day that the notification is given in accordance with sub-paragraph (2B)(c).”.

Directions to transfer business: electronic transmission of statements to members

21.—(1) In Schedule 8A to the 1986 Act, paragraph 9 (statements to members) is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) Where a statement is required to be sent to a member under sub-paragraph (2)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified to the society by that member for the purpose;
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(2B) The conditions of this sub-paragraph are satisfied in the case of a statement if—

- (a) the society and that person have agreed that statements that are required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) in a manner agreed between the society and that person, the society notifies him within the period specified in sub-paragraph (3) of—
 - (i) the publication of the notice and any statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the documents may be accessed, and how they may be accessed; and
- (d) that statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the decision of the Authority whether to confirm the transfer pursuant to section 98.

(2C) Where, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement of sub-paragraph (2)—

- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (2B)(d), but

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

the failure shall not invalidate the proceedings of the meeting.”.

- (3) After sub-paragraph (3), insert

“(3A) For the purposes of sub-paragraph (3) above, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (2), a statement published on a web site in accordance with sub-paragraph (2B) is to be treated as sent to a person on the day that the notification is given in accordance with sub-paragraph (2B)(c).”.

Electronic transmission of written representations of auditors against removal or replacement

22.—(1) In Schedule 11 to the 1986 Act (auditors: appointment, tenure, qualifications), paragraph 4 is amended as follows.

- (2) After sub-paragraph (9) insert—

“(9A) Sub-paragraphs (9B) and (9C) apply where—

- (a) a copy of representations is required to be sent under sub-paragraph (4)(b) or (9)(b); or
- (b) a statement is required to be sent under sub-paragraph (9)(a).

(9B) Where a copy of representations or a statement is required to be sent to a member—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (9C) are satisfied.

(9C) The conditions of this sub-paragraph are satisfied in the case of a copy of representations or a statement if—

- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the representations or statement in question;
- (c) the member is notified, in a manner agreed between him and the society, of—
 - (i) the publication of the copy of the representations or the statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the representations or statement may be accessed, and how it may be accessed,

and where the notification concerns the publication of a statement required to be sent by sub-paragraph (9)(a), the member is notified within the period specified in that paragraph; and

- (d) the copy of the representations or the statement is published continuously on that web site throughout the period beginning with the date on which notification is given in accordance with paragraph (c) and ending with the conclusion of the meeting.”.

- (3) After sub-paragraph (10) insert —

“(10A) Where, in a case in which sub-paragraph (9A)(b) is relied on for compliance with a requirement of sub-paragraph (4) or (9)—

- (a) a copy of representations or a statement is published on a web site for a part, but not all, of the period mentioned in sub-paragraph (9C)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

no offence is committed under sub-paragraph (10) by reason of that failure.”.

Electronic transmission of notices of resignation of auditors

23.—(1) In Schedule 11 to the 1986 Act, paragraph 7 (resignation of auditors) is amended as follows.

(2) After sub-paragraph (7) insert—

“(7A) Sub-paragraphs (7B) and (7C) apply where—

- (a) the reference to a notice containing a statement under sub-paragraph (2)(b) is required to be sent to a person under sub-paragraph (3)(b) or sub-paragraph (7)(b); or
- (b) a statement is required to be sent under sub-paragraph (7)(a).

(7B) Where a notice or a statement is required to be sent to a person, the notice or statement may be sent to him electronically only if—

- (a) in a case where a person mentioned in sub-paragraph (3)(b) has notified the society of an electronic address for the purpose of this paragraph, it is sent to that address; or
- (b) in a case where no electronic address has been notified for the purpose of this paragraph, it is sent to an electronic address notified by him for the purpose of subsection (8B) of section 76 (electronic address for the reception of summary financial statement for members and depositors).

(7C) The requirement to send a notice or a statement shall also be treated as satisfied if—

- (a) the society and a person mentioned in sub-paragraph (3)(b) have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the notice or statement in question;
- (c) in a manner agreed between the society and that person, he is notified of—
 - (i) the publication of the notice or statement on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the notice or statement may be accessed, and how it may be accessed; and
- (d) the notice or statement is published on the web site throughout a period of at least 14 days, beginning with the day on which the person is notified in accordance with paragraph (c). ”.

(3) After sub-paragraph (8) insert—

“(8A) Where, in a case in which sub-paragraph (7C) is relied on for compliance with a requirement under sub-paragraph (3) or (7)—

- (a) a notice or a statement is published for a part, but not all, of the period mentioned in sub-paragraph (7C)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

no offence is committed under sub-paragraph (8) by reason of that failure.”.

Electronic transmission of auditor’s statement of circumstances connected with his resignation

24.—(1) In Schedule 11 to the 1986 Act, paragraph 8 is amended as follows.

(2) After sub-paragraph (3) insert—

“(3A) Where a copy of a statement is required to be sent to a member under sub-paragraph (3)(b)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by the member for the purpose; but
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (3B) are satisfied.

(3B) The conditions of this sub-paragraph are satisfied in the case of a copy of a statement if—

- (a) the society and the member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) that member is notified, in a manner agreed between him and the society for the purpose, of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site, and
 - (iii) the place on that web site where the notice may be accessed, and how it may be accessed; and
- (d) the statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the conclusion of the meeting.

(3C) Where, in a case in which sub-paragraph (3A)(b) is relied on for compliance with a requirement under sub-paragraph (3)(b)—

- (a) a statement is published for a part, but not all, of the period mentioned in sub-paragraph (3B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

that failure shall not invalidate the proceedings of the meeting.”.

Mergers: electronic transmission of statement to members

25.—(1) In Schedule 16 to the 1986 Act (mergers: supplementary provisions), paragraph 1 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) Where a statement is required to be sent to a member in or with the notice of the meeting under sub-paragraph (2)—

- (a) in a case where notice of the meeting is given to that member electronically in accordance with paragraph 22A of Schedule 2, the statement may be sent to him electronically only if it is sent to the same electronic address, and at the same time, as the notice;
- (b) in a case where notice of the meeting is given on a web site in accordance with paragraph 22B of Schedule 2, the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(2B) The conditions of this sub-paragraph are satisfied in the case of a statement if—

- (a) the society and that member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement in question;
- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the meeting, it notifies him of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the statement may be accessed, and how it may be accessed; and
- (d) the statement is published continuously on that web site throughout the period beginning with the giving of that notification and ending with the decision of the Authority whether to confirm the amalgamation or transfer of engagements pursuant to section 95.

(2C) Where, in a case in which sub-paragraph (2A)(b) above is relied on for compliance with a requirement under sub-paragraph (2)—

- (a) a statement is published for a part, but not all, of the period mentioned in sub-paragraph (2B)(d), but

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

that failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (2B) from being treated as fulfilled in relation to section 95(4)(c).”.

Inclusion of merger statement where the notice of a meeting is transmitted electronically

26.—(1) In Schedule 16 to the 1986 Act, in paragraph 4 (notification of proposals for merger: inclusion of merger statement with notice of meeting) after sub-paragraph (2) insert—

“(2A) Where a merger statement or a transfer proposal notification is required to be sent to a person in or with the notice of a meeting of the society under sub-paragraph (1) or (2)—

- (a) in a case where notice of a meeting is given electronically to a person in accordance with paragraph 22A of Schedule 2, the merger statement or transfer proposal notification may be sent to him electronically only if it is sent to the same electronic address and at the same time as the notice;
- (b) in a case where notice of a meeting is given on a web site in accordance with paragraph 22B of Schedule 2, the requirement to send the statement or notification shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(2B) The conditions of this sub-paragraph are satisfied in the case of a merger statement or transfer proposal notification if—

- (a) the society and that person have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the merger statement or transfer proposal notification in question;
- (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the meeting, it notifies him of—
 - (i) the publication of the merger statement or transfer proposal notification on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where that statement or notification may be accessed, and how it may be accessed; and
- (d) the statement or notification is published continuously on that web site throughout the period beginning when the person is notified in accordance with paragraph (c) and ending with the conclusion of the meeting.

(2C) Where, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (1) or (2)—

- (a) a statement or notification is published for a part, but not all, of the period mentioned in sub-paragraph (2B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

that failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (2B) from being treated as fulfilled in relation to section 95(4)(c).”.

(2) Paragraph 6 of Schedule 16 to the 1986 Act shall become sub-paragraph (1) of that paragraph and, in that paragraph, after that sub-paragraph, insert—

“(2) Where, in a case in which paragraph 4(2A)(b) is relied on for compliance with a requirement under sub-paragraph (1) or (2) of paragraph 4(2)—

- (a) a merger statement or transfer proposal notification is published for a part, but not all, of the period mentioned in sub-paragraph (2B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

no offence is committed under this paragraph by reason of that failure.”.

Electronic transmission of transfer statements or summaries to members

27.—(1) In Part I of Schedule 17 to the 1986 Act (transfers of business: supplementary provisions)(a), paragraph 4 is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) Where a transfer statement or transfer summary is required under sub-paragraph (1) to be sent to a member in or with the notice of the meeting of the society at which the requisite transfer resolutions are to be moved—

- (a) in a case where notice of that meeting is given to that member electronically in accordance with paragraph 22A of Schedule 2, the transfer statement or transfer summary may be sent to him electronically only if it is sent to the same electronic address, and at the same time as the notice;
- (b) in a case where notice of that meeting is given on a web site in accordance with paragraph 22B of Schedule 2, the requirement to send the statement or summary to that member shall also be treated as satisfied if the conditions set out in sub-paragraph (1B) are satisfied.

(1B) The conditions of this sub-paragraph are satisfied in the case of a transfer statement or transfer summary if—

- (a) the society and that member have agreed that information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the statement or summary in question;
- (c) at the same time and in the same manner as the society notifies that member of the publication of the notice of the meeting, it notifies him of—
 - (i) the publication of the statement or summary on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where that statement or summary may be accessed, and how it may be accessed; and
- (d) the statement or summary is published continuously on that web site throughout the period beginning when the member is notified in accordance with paragraph (a) and ending with the decision of the Authority whether to confirm the transfer pursuant to section 98.

(1C) Where, in a case in which sub-paragraph (1A)(b) is relied on for compliance with a requirement under sub-paragraph (1)—

- (a) a statement is published for a part, but not all, of the period mentioned in sub-paragraph (1B)(d), but
- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,

the failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (1B) from being treated as fulfilled in relation to section 98.”

(3) After sub-paragraph (2) insert—

“(2A) Where a transfer statement is required to be sent to a member under sub-paragraph (2)(b)—

- (a) it may be sent to him electronically only if it is sent to an electronic address notified by him to the society for the purpose;
- (b) the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (2B) are satisfied.

(2B) The conditions of this sub-paragraph are satisfied in the case of a transfer statement if—

- (a) the society and that member have agreed information which is required to be sent to him may instead be accessed by him on a web site;
- (b) the agreement applies to the transfer statement in question;

(a) Part I was substituted, together with Part IA, for Part I as originally enacted by the Building Societies Act 1997 (c. 32), section 30(3), Schedule 5, Part I.

- (c) the society notifies the member forthwith, on receiving a request from him for such a statement, of—
 - (i) the publication of the statement on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where the statement may be accessed and how it may be accessed; and
 - (d) that statement is published continuously on that web site for the period beginning with the giving of that notification and ending with the decision of the Authority whether to confirm the transfer pursuant to section 98.
- (2C) Where, in a case in which sub-paragraph (2A)(b) is relied on for compliance with a requirement under sub-paragraph (2)(b)—
- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (2B)(d), but
 - (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
- the failure shall not invalidate the proceedings of a meeting or prevent the requirements of sub-paragraph (2B) from being treated as fulfilled in relation to section 98.”.

Inclusion of transfer proposal notifications where notice of a meeting is transmitted electronically

28.—(1) Part IA of Schedule 17 to the 1986 Act(a) is amended as follows.

(2) Paragraph 5C shall become sub-paragraph (1) of that paragraph and, in that paragraph, after that sub-paragraph, insert—

- “(2) Where a transfer proposal notification is required under sub-paragraph (1) to be sent to a member in or with the notice of an annual general meeting of the society—
- (a) in a case where notice of that meeting is given to that member electronically in accordance with paragraph 22A of Schedule 2, the transfer proposal notification may be sent to him electronically only if it is sent to the same electronic address, and at the same time as the notice.
 - (b) in a case where notice of that meeting is given on a website in accordance with paragraph 22B of Schedule 2, the requirement to send it shall also be treated as satisfied if the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions of this sub-paragraph are satisfied in the case of a transfer proposal notification if—
- (a) the society and the member have agreed that information that is required to be sent to him may instead be accessed by him on a web site;
 - (b) the agreement applies to the transfer proposal notification in question;
 - (c) at the same time and in the same manner as the society notifies that person of the publication of the notice of the meeting, it notifies him of—
 - (i) the publication of the transfer proposal notification on a web site,
 - (ii) the address of that web site,
 - (iii) the place on that web site where that notification may be accessed, and how it may be accessed; and
 - (d) the notification is published continuously on that web site throughout the period beginning when the person is notified in accordance with paragraph (c) and ending with the conclusion of the meeting.
- (4) Where, in a case in which sub-paragraph (2)(b) is relied on for compliance with a requirement under sub-paragraph (1)—
- (a) a statement is published for a part, but not all, of the period mentioned in subparagraph (3)(d), but

(a) Part IA of Schedule 17 was substituted, together with Part I, for Part I as originally enacted by the Building Societies Act 1997, section 30(3), Schedule 5, Part I.

- (b) the failure to publish it throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid,
the failure shall not invalidate the proceedings of a meeting .”.

(3) Paragraph 5E shall become sub-paragraph (1) of that paragraph and, in that paragraph, after that sub-paragraph, insert—

- “(2) But no offence is committed under this paragraph, in a case in which paragraph 5C(2)(b) is relied on for compliance with a requirement under paragraph 5C(1), where—
 - (a) a transfer proposal notification is published for a part, but not all, of the period mentioned in paragraph 5C(3)(d); and
 - (b) the failure to publish that notification throughout that period is wholly attributable to circumstances which it would not be reasonable to have expected the society to prevent or avoid.”.

Consequential amendments: electronic appointment of proxies

29.—(1) The 1986 Act is amended as follows.

(2) In section 60 (directors: election and retirement), in paragraph (c) of the definition of “voting date” in subsection (17) for “instruments appointing” substitute “appointments of”.

(3) In Schedule 2, in—

- (a) sub-paragraph (1) of paragraph 21 (length of notice for calling meetings);
- (b) sub-paragraph (2A) of paragraph 22 (persons entitled to notice of meetings)(a);
- (c) sub-paragraph (6)(c) of paragraph 23 (members’ entitlement to vote on resolutions); and
- (d) sub-paragraph (2) of paragraph 24 (proxies),

for “instruments appointing” substitute “appointments of”.

(4) In that Schedule, in sub-paragraph (6) of paragraph 24, for “the instrument appointing a proxy, or any other” substitute “the appointment of a proxy, or any”.

(5) In that Schedule, in sub-paragraph (2) of paragraph 25 (right to demand a poll) for “The instrument appointing” substitute “Any appointment of”.

(6) In that Schedule, in paragraph 34 (declarations to be made in proxy and ballot forms)—

- (a) in sub-paragraph (1), omit “instrument of”; and
- (b) in sub-paragraph (3), for “or as an instrument for the” substitute “and every”.

Consequential amendments: electronic ballots

30.—(1) The 1986 Act is amended as follows.

(2) In section 60 (directors: elections and retirements)—

- (a) in subsection (1)(b) after “by postal” insert “or electronic”; and
- (b) in subsection (17), in the definition of “voting date”—
 - (i) in paragraph (b), after “by postal ballot” insert “or by electronic ballot in the case of which not all the voting is electronic (within the meaning of paragraph 33A of Schedule 2)”,
 - (ii) after paragraph (b) insert—

“(bb) in the case of an election conducted by electronic ballot in which all the voting is electronic voting (within the meaning of that paragraph), the date which the society specifies as the final date for registering votes;”, and

- (c) in subsection (17), for “by postal ballot” (in the second place it occurs) substitute “by postal or electronic ballot”.

(3) In section 61 (directors: supplementary provisions as to elections, etc.)—

- (a) in subsection (7)(b), for “the ballot papers are” substitute “the notice of the postal or electronic ballot is”; and

(a) Sub-paragraph (2A) was substituted, together with sub-paragraph (2), for sub-paragraph 2 as originally enacted by the Building Societies Act 1997, section 43, Schedule 7, paragraph 57(2).

- (b) in subsection (12), after “postal” (in both places) insert “or electronic”.
- (4) In section 66A (transactions with directors and persons connected with them)(a), in subsection (8)(a) after “on a postal” insert “or electronic”.
- (5) In section 92A (acquisition or establishment of a business)(b), in subsection (2)(b) after “in a postal” insert “or electronic”.
- (6) In Schedule 2—
- (a) in sub-paragraph (3) of paragraph 17 (powers of directors to bind society); and
 - (b) in sub-paragraph (9)(a) of paragraph 20A (special meeting on members’ requisition)(c),
- after “on a postal” insert “or electronic”.
- (7) In that Schedule, in paragraph 23 (members’ entitlement to vote on resolutions)—
- (a) in sub-paragraph (4)(b) after “on a postal” insert “or electronic”;
 - (b) in sub-paragraph (6)(b), after “by postal ballot” insert “or by electronic ballot in the case of which not all the voting is electronic (within the meaning of paragraph 33A of Schedule 2)”;
 - (c) after that sub-paragraph, insert—
 - “(bb) in the case of an election conducted by electronic ballot in which all the voting is electronic voting (within the meaning of that paragraph), the date which the society specifies as the final date for registering votes;”.
- (8) In that Schedule, in sub-paragraph (1)(b) of paragraph 27, after “in a postal” insert “or electronic”.
- (9) In that Schedule, in paragraph 31 (members’ right to propose and circulate resolutions), in sub-paragraph (5), after “a postal” insert “or electronic”.
- (10) In that Schedule, in sub-paragraph (1) of paragraph 33 (postal ballots) omit the words from “and in this Act “ballot” or “postal ballot”,” to the end of that sub-paragraph.
- (11) In that Schedule, in paragraph 34 (declaration to be made in proxy and ballot forms), in sub-paragraph (1)(b), after “a postal” insert “or electronic”.
- (12) In that Schedule, in paragraph 35 (advertising requirements in lieu of notice of meetings etc.)—
- (a) in sub-paragraph (1), after “or postal” insert “or electronic”;
 - (b) in sub-paragraph (3), after “completed ballot papers” insert “or for the registration of votes in an electronic ballot (as the case may be)”;
 - (c) in sub-paragraph (4), after “the ballot papers” insert “, or, in the case of an electronic ballot, how members may access electronic voting facilities”.

Philip Woolas
Nick Ainger

Two of the Lords Commissioners
of her Majesty’s Treasury

27th February 2003

(a) Section 66A was inserted by the Building Societies Act 1997 (c. 32), section 38.
(b) Section 92A was inserted by the Building Societies Act 1997, section 29.
(c) Paragraph 20A was inserted by the Building Societies Act 1997, section 25.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order which is made under sections 8 and 9 of the Electronic Communications Act 2000 (c.7) modifies various provisions of the Building Societies Act 1986 (c.53) (“the Act”) for the purpose of facilitating the use of electronic communications by building societies when sending notices and other documents to their members and to other persons, and when conducting voting in resolutions of the society and elections of directors.

Article 2 amends section 60 of the Act (directors: elections and retirements) so as to clarify the conditions which a society must satisfy if it uses electronic communications to comply with the requirement to notify persons of specified information about candidates for election as director. If the information is sent to a person electronically, it must be sent to an electronic address notified by that person for the purpose. The information will also be treated as properly notified to a person if it is published on a web site throughout a specified period and that person, who has previously agreed to accessing information on a web site instead of it being sent to him, is notified by the society of its availability in a manner agreed by him.

Articles 4 to 7, 13, and 20 to 24 amend the following provisions of the Act to make similar provision in each case in relation to the use of electronic communications to comply with a requirement to send to a person a notice, statement or other document:

section 68 (records of loans, etc for directors falling within section 65)—the statement in question is a statement containing particulars of registered transactions falling within section 65(1);

section 69 (disclosure and record of income of related business)—the statement in question is a statement of the registered particulars of related business of directors or officers of the society;

section 76 (summary financial statement for members and depositors)—the statement or document in question is a summary financial statement or auditor’s report;

section 81 (laying and furnishing accounts, etc, to members and the Authority)—the document in question is a copy of the annual accounts;

paragraph 20A of Schedule 2 (special meeting on members’ requisition)—the statement in question is a statement of the matters to be dealt with at a special meeting of the society;

paragraph 3 of Schedule 8A (transfer directions: modifications of Part X)—the statement in question is a statement containing required particulars in relation to a transfer of engagements;

paragraph 9 of Schedule 8A (statements to members)—the statement in question is a statement containing required particulars in relation to a transfer of business;

paragraph 4 of Schedule 11 (auditors: appointment, tenure, qualifications)—the document in question is a copy of representations made by a retiring auditor or a statement of the effect of an order of the High Court;

paragraph 7 of Schedule 11 (resignation of auditors)—the document in question is an auditor’s notice of resignation or a statement setting out the effect of an order of the High Court or of the Financial Services Authority;

paragraph 8 of Schedule 11—the statement in question is a statement by a resigning auditor of circumstances connected with his resignation.

Article 3 amends section 61 of the Act (directors: supplementary provisions as to elections, etc) to make provision clarifying the conditions which a society must satisfy in order to comply with a requirement to send an election address in the same manner as a notice of a meeting, postal or electronic ballot, in cases where that notice is sent to a person electronically or by publication on a web site.

Articles 8 and 10 make provision to facilitate the use by a society of electronic communications for the service of statutory notices and documents. Article 8 amends section 115 of the Act (service of notices) to clarify that a requirement under the Act to serve a notice on a person may be discharged by sending that notice to an electronic address notified by that person. Article 10 amends paragraph 3 of Schedule 2 to the Act (rules) to provide that nothing in the rules of a society shall prevent the society from using electronic communications to serve a notice or a document in accordance with an express provision of the Act.

Article 9 amends the definition of “notice” in section 119 of the Act (interpretation), and inserts into that section definitions of “ballot”, “electronic address”, “electronic ballot”, “electronic communication” and “postal ballot”.

Article 11 amends paragraph 9 of Schedule 2 to the Act (use and change of name) to clarify that the requirement for specified documents to state the registered name of the society applies where those documents are contained in a electronic communication or published on a web site.

Article 12 amends paragraph 13 of Schedule 2 to the Act (register of members) so as to require that where a member has notified an electronic address for the purpose of receiving notices or documents, that electronic address is included in the register in addition to the postal address of that member.

Article 14 inserts new paragraphs 22A and 22B into Schedule 2 to the Act. Paragraph 22A (transmission of notice of meeting to an electronic address) clarifies that a notice of a meeting of the society may be sent to a person electronically only if it is sent to an electronic address notified for the purpose. Paragraph 22B (publication of notice of meeting on a web site) provides that a society will also be treated as having sent a notice of a meeting to a person if that notice is published on a web site, provided that specified conditions are met. Those conditions are that the person has agreed to accessing notices on a web site, he is notified of the availability of the notice in a manner agreed by him, and the notice is published throughout the period between the giving of that notification and the conclusion of the meeting. The new paragraphs also make provision as to when a notice sent or made available electronically is treated as having been given.

Articles 15 and 19 make provision in relation to the appointment of proxies when electronic communications are used. Article 15 amends paragraph 24 of Schedule 2 to the Act (proxies) to facilitate the use of electronic communications in the notification of proxies where voting is to take place at a meeting of the society. Article 19 amends paragraph 34 of that Schedule (declarations to be made in proxy and ballot forms) to provide for the form of the declaration required under that paragraph, and to ensure the authenticity and integrity of the appointment where the appointment of a proxy is contained in an electronic communication, or of the vote in cases where a voting form is returned electronically in a postal ballot, or votes are registered on a web site in the course of an electronic ballot.

Article 16 amends paragraph 32 of Schedule 2 to the Act (members’ resolutions: supplementary provisions) to make provision clarifying the conditions which a society must satisfy in order to comply with the requirement to send a notice of a resolution and a statement in respect of the resolution in the same manner as the notice of the meeting at which the resolution is to be moved, in cases where that notice is transmitted electronically or made available on a web site.

Article 17 amends paragraph 33 of Schedule 2 to the Act (postal ballots) to facilitate the use of electronic communications in the conduct of a postal ballot. Provision is made to clarify the conditions which apply where notice of a ballot is sent to a member electronically or made available on a web site, and to clarify the conditions which a society must satisfy in order to comply with a requirement that the notice of the ballot must contain or be accompanied by another document, in cases where that notice is given using electronic communications.

Article 18 inserts paragraph 33A into Schedule 2 to the Act (electronic ballots). Paragraph 33A makes provision concerning the conduct of voting by electronic ballot—that is, a ballot conducted either exclusively by electronic voting via a web site voting facility, in accordance with paragraph 33A, or by a combination of electronic voting and postal ballot. Voting may be conducted by electronic ballot which consists of a combination of electronic voting and postal ballot in any election or a resolution which may, under the rules of the society, be conducted by postal ballot; but voting may only be conducted by an electronic ballot where all the voting is electronic voting if the rules of the society expressly permit the exclusive use of electronic voting in those circumstances. Paragraph 33A also modifies provisions of paragraph 33 which regulate the conduct of postal ballots so as to apply them to the conduct of electronic ballots.

Articles 25 to 28 amend the following provisions of the Act so as to clarify the conditions which a society must satisfy in order to comply with a requirement to send a document in or with the notice of a meeting in cases where that notice is given using electronic communications:

paragraph 1 of Schedule 16 (mergers: supplementary provisions)—the document in question is a statement concerning specified matters in connection with a proposed merger;

paragraph 4 of Schedule 16 (notification of proposals for a merger)—the document in question is a merger statement or a transfer proposal notification;

paragraph 4 of Schedule 17 (transfers of business: supplementary provisions)—the document in question is a transfer statement or transfer summary;

paragraph 5C of Schedule 17 (duty to notify members)—the document in question is a transfer proposal notification.

Articles 29 and 30 make minor consequential amendments to provisions of the Act to take account of the possibility that the appointment of a proxy may be contained in an electronic communication, and that voting may be conducted by electronic ballot.

2003 No. 404

BUILDING SOCIETIES

The Building Societies Act 1986
(Electronic Communications) Order 2003

£4.50

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0295 3/2003 130295 19585

ISBN 0-11-045323-9



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