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STATUTORY INSTRUMENTS

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**2011 No. 593**

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

**PART 3**

**Friendly societies**

*Interpretation*

**Interpretation of the 1992 Act**

**4.—(1)** In section 119(1) of the 1992 Act<sup>(1)</sup> (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<sup>(2)</sup>, 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

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<sup>(1)</sup> 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.

<sup>(2)</sup> 1992 c.40; section 119A was inserted by S.I.1994/1984 reg 31.

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

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

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

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

(2) The first condition is that B—

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

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

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

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

- (a) beginning 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<sup>(3)</sup> (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.”;

(3) 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) in subsection (2A)(4), after “subsection (1)(b) above,” insert “for making an electronic copy available under subsection (1A) above”.

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

**6.**—(1) In section 114(1) of the 1992 Act(5) (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(6) (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(7) (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.”.

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(4) 1992 c.40; subsection (2A) was inserted by [S.I. 2001/2617](#), art 13(1), Sch 3 Pt 1, paras 53, 108(c).

(5) 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.

(6) 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.

(7) 1992 c.40; section 113 was amended by [S.I. 2001/2617](#) art 13(1), Sch 3 Pt 1, paras 53, 112.

**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);
- (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<sup>(8)</sup> (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.”;

<sup>(8)</sup> 1992 c.40; section 63A was inserted by the Friendly Societies Act 1992, section 95, Sch 16 para 22.

(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)”.

### **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”.