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COMPANY

LAW

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*Electronic Communications for  
Companies:  
An Order Under the Electronic  
Communications Bill*

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A CONSULTATIVE DOCUMENT

**dti**

Department of Trade and Industry

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Companies:  
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Communications Bill*

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**A Consultative Document  
February 2000**

**URN 00/626**

Company Law: a Consultative Document

**ELECTRONIC COMMUNICATIONS FOR COMPANIES: AN  
ORDER UNDER THE ELECTRONIC COMMUNICATIONS BILL**

February 2000

The Department of Trade and Industry invites comments by **17 April 2000** on the issues set out in this paper.

A questionnaire is attached as Annex C, or you can send your response separately. In either case, please reply to:

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Under the Code of Practice on Access to Government Information, comments may be made publicly available unless consultees specifically request otherwise. If you wish your response to remain confidential, please state this clearly. A summary of responses will be published on the website.

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## **INTRODUCTION**

1. The Electronic Communications Bill is currently being considered by Parliament, with the aim (if Parliament so approves) of receiving Royal Assent by April 2000. Under clauses 8 and 9 of the Bill, Ministers may make orders amending legislation in order to authorise or facilitate the use of electronic communications or storage.
2. The purpose of this consultative document is to seek views on a draft Order which the Government intends to make assuming that the power in clause 8 is enacted in its current form. The Order deals with communications between a company and its members, and will also enable companies to be incorporated at Companies House, and deliver other significant documents to Companies House by electronic means.
3. The Department consulted on the principles behind these issues on 5 March 1999, in a letter from Jane Swift headed *Electronic communication: change to the Companies Act 1985*. You can read this letter, together with a summary of the responses, on the Department's web site at <http://www.dti.gov.uk/cld/condocs.htm>. Following that consultation, Mr Ian McCartney, then Minister of State at the Department, announced that the power in the Electronic Communications Bill would enable amendments to be made to the Companies Act 1985 to facilitate specified electronic communications between companies and Companies House or their members. This paper fulfils the Department's undertaking to publish for consultation a draft Order to put into effect these changes.

## **SUMMARY**

4. The draft Order is attached at Annex A, and detailed notes explaining each of the provisions are in paragraphs 9 - 31 below. In brief, the Order provides for electronic communication in the following circumstances:
  - (Articles 2 - 9 and 17 - 21) between the company and Companies House, in order to incorporate or re-register as a different type of company (eg. a private company re-registering as a public company). These provisions mainly amend current requirements for statutory declarations of compliance with the requirements of the Act. Since statutory declarations (which have to be sworn before a solicitor or notary) cannot be made electronically, they are replaced with requirements for statements, which can be made electronically. However, false statements will be as serious as false declarations, and will attract equivalent penalties;
  - (Articles 10 - 14) from the company to its members, relating to reports, accounts and notices of meetings;
  - (Articles 15 and 16) from members to the company, appointing proxies.

In addition, the Order:

- (Article 22) makes new provision for the Registrar of companies to approve the submission of all documents to him electronically, replacing the existing section 707 of the Companies Act 1985; and
- (Schedule 1) amends Table A in line with the other amendments, to ensure that, for companies that adopt Table A in the future, full account is taken of the amendments concerning electronic communications. In any event, however, the amendments in articles 10-14 make clear that any contrary provision in a company's articles is overridden without the need for the company specifically to amend its articles.

### **Costs and benefits to business**

5. A draft Regulatory Impact Assessment is at Annex B, setting out the possible costs and benefits to business. The Government would welcome comments on these estimates and the assumptions on which they are based.

**Q1: Do you wish to make any comments on the costs and benefits of the Order as set out in the Regulatory Impact Assessment?**

### **No compulsion to use electronic communication**

6. An important point is that the Order does not require companies, members or Companies House to use electronic communication, it simply enables them to do so, provided both sides agree. So, for example, companies will not be able to incorporate electronically unless they comply with directions which will be issued by the Registrar of companies; and members will not be obliged to receive electronic notification of reports and accounts if they do not wish to do so. This may mean that a company will communicate electronically with some of its members, but by post with others, who may prefer paper copies or have no equipment (such as a computer linked to the Internet or fax machine) by which to receive information electronically. This is an important safeguard which ensures that people will not be obliged to purchase equipment or forgo the right to receive paper copies of information. Similarly, a company will not be obliged to accept appointment of proxies by e-mail or telephone – it must have agreed to appointment in that way.

7. The Order makes this clear by providing, in relevant places, that electronic communications must be sent to an address which has been provided for the particular purpose, or that the company and member must agree. In the Government's view, members should be asked to 'opt in' to electronic communications, rather than be taken to agree by default, if they do not raise objections. This is in the spirit of the voluntary approach which underlies the Electronic Communications Bill, and ensures that members have no discouragement from taking part in the governance of their company.

**Q2: Do you agree with the approach taken in the Order on agreement to send and receive electronic communications?**

**Statutory requirements and best practice**

8. The Order is intended to provide flexibility for companies to organise electronic communication in a way which best suits their own circumstances. So it does not make detailed and prescriptive provision for all matters, such as how agreement on whether to communicate electronically should be reached, or the publication of reports and accounts on a web site. This is a matter for the company to decide. However, for these and other matters, for example publishing information on the Internet, good practice is likely to emerge which companies will wish to follow. The Government therefore welcomes the initiative of the Institute of Chartered Secretaries and Administrators in taking steps to draw up a Best Practice Guide, on which it will shortly be publishing a discussion document for consultation. Copies of the discussion document will be available from:

The Policy Unit  
ICSA  
16 Park Crescent  
London  
W1M 4AH  
Tel: 020 7580 4741  
Fax: 020 7612 7034  
E-Mail: [cwilliams@icsa.co.uk](mailto:cwilliams@icsa.co.uk)

or from the web site [www.icsa.org.uk/icsa/](http://www.icsa.org.uk/icsa/)

**NOTES AND QUESTIONS ON THE DRAFT ORDER**

**Procedure, commencement etc (Preamble etc, Article 1)**

9. This would be one of the first orders to be made under the powers in the Electronic Communications Bill. The Government is committed to making the first few orders under the affirmative resolution procedure - meaning the order must be debated and approved in both Houses of Parliament - in order to ensure that issues of principle are fully aired. This is reflected in the *heading and preamble*. Once the principles have been established, most subsequent orders are likely to be made under the negative resolution procedure (under which orders are laid before both Houses, but are not debated unless a member calls for a debate). The affirmative resolution procedure would still be used when major issues of principle were at stake - Clause 9 of the Electronic Communications Bill as currently drafted provides for either form of Parliamentary procedure to be adopted. The preamble also reflects the fact that before the Secretary of State can make the Order he must be satisfied that the changes in the Order will not adversely affect the ability to keep satisfactory records. This is a requirement of clause 8(3) of the Electronic Communications Bill.

10. *Article 1* provides for the Order to come into force on a specified date.

### **Incorporation issues: signatures and statutory declarations (Articles 2-9 and 17-21)**

11. Sections 2 and 7 of the Companies Act 1985 require the signatures of subscribers to the memorandum and articles sent by the company to Companies House on incorporation to be attested by a witness. *Articles 2 and 3* amend the sections to provide that where the memorandum and articles are signed electronically in accordance with directions of the Registrar (which are likely to provide for the same system approved by the Registrar in respect of other forms currently delivered electronically), then the requirement for attestation of those signatures no longer applies. Together with Article 4 and the new provision to be inserted by Article 22, this will enable companies to incorporate electronically at Companies House, once the Registrar has directed the form and manner for doing so.

12. Various sections of the Companies Act provide for the Registrar to accept a statutory declaration as sufficient evidence that particular requirements in the Act have been met. *Articles 4 - 9 and 17 - 21* provide for the statutory declaration to be replaced by an electronic statement, which the Registrar may equally accept as sufficient evidence of the matters it contains. The form and manner of delivery of the electronic statement must be in accordance with directions issued by the Registrar under the new section 707B to be inserted by Article 22. This will follow the formula already in use by the Registrar in his approval of the electronic delivery of other documents. It covers such issues as the order of the information and character set to be used.

13. Under the Perjury Act 1911, false statements made in statutory declarations constitute perjury, which is punishable by up to two years' imprisonment or a fine. New subsections inserted by these Articles provide for the same penalties.

**Q3: Do you agree with the amendments to be made by these provisions relating to incorporation?**

### **Companies' communications with their members (Articles 10 - 14, Schedule 1 paragraphs 6 - 8 and Schedule 2)**

14. These provisions are intended to enable the most important and common communications a company has with its members to be dealt with electronically rather than by sending documents through the post. The provisions which the Order amends are: sections 238 and 239, relating to the **annual accounts, directors' report and auditors' report**; section 251, **summary financial statements**; section 253, the ability for a member to **require a general meeting** where the private company has elected to dispense with one; and section 369, **notice of meetings**.

15. Companies may well wish to amend their articles to provide for electronic communication and how it is to be done. Meanwhile, the Order provides that any provision in a company's articles which would prevent it from taking advantage of the

Order is overridden, so it will not be necessary to wait until the article is amended before agreeing to communicate electronically.

16. In addition, *Schedule 1* to the Order updates relevant Table A provisions to cover electronic communication. *Paragraphs 6 and 7* amend Articles 111 and 112 of Table A to provide for notices to be given in accordance with 369(4A), which is inserted by Article 14 of the Order. *Paragraph 8* amends Article 115 of Table A, which provides that proof of correct posting is conclusive evidence that notice has been given, and that notice is deemed to have been given 48 hours after posting. In order to deal with electronic communication, the paragraph provides for the notice to be deemed to have been given 48 hours after sending. It does not, however, provide for conclusive proof of sending by electronic means, since this is not considered to be helpful. Evidence that a notice (or notification of its publication on a web site) was sent may be provided by, for example, a print-out of the company's 'out' box in its e-mail.

**Q4: Do you consider that there are any other important communications which a company is likely to want to make to its members by electronic means, and which the Order should therefore cover? If so, what are they?**

17. *Article 10* amends section 238 to provide that, where the company and a member agree, accounts and reports may be sent to that member by fax or e-mail, or the company can notify the member in an agreed manner (which could be by post) that the accounts and reports are published on a web site or sites, and of the address of the web sites. The information will have to be available for a 21 day period before the meeting, in line with existing requirements. The provisions recognise that companies may wish to publish on more than one web site in case technical failure or excess demand mean that members cannot access a site during the required period.

18. The Best Practice Guide being drawn up by ICSA is likely to be helpful to companies in encouraging good practice in publishing these documents on web sites. An important statutory safeguard that covers financial information published on web sites is section 240 of the Companies Act 1985 which deals with the publication of statutory and non-statutory accounts. The ICSA consultative document may propose that visitors to a web site are made aware whether or not the information being reviewed is part of the audited annual accounts or Annual Report. This is an area of rapid change and it is probable that the Guide will have to be updated as developments take place. In particular, the recent Discussion Paper on "Business Reporting on the Internet" issued by the International Accounting Standards Committee (which can be seen on the web at [http://www.iasc.org.uk/frame/cen3\\_26.htm](http://www.iasc.org.uk/frame/cen3_26.htm)) recommends the creation of a code of conduct to improve the quality of web-based business reporting.

19. *Article 11* amends section 239 so that, where a member or debenture holder exercises his or her right to ask for an additional copy of the accounts and reports, the company may send them electronically if the member agrees.

20. *Article 12 and Schedule 2* amend the provisions relating to summary financial statements in recognition that these may be sent by fax or e-mail, or published on a web site, rather than sent by post.

21. Section 252 of the Companies Act provides for a private company to elect to dispense with the laying of the accounts and reports before the general meeting, but section 253 provides for a member nevertheless to require a meeting to be held by giving notice. *Article 13* provides for the member to give this notice by electronic means, where the company has specified an address for this purpose.

22. *Article 14* provides for the company to give notice of meeting by electronic communication. As for the accounts and reports, the company can send electronically either all the information it would otherwise have put in the post, or a notification that the notice has been published on a web site, and the address of the web site or sites. The notification must then remain available on the site until the end of the meeting.

23. Respondents to last year's consultation were concerned that members might overlook important meetings if notice was published on a web site. The Government undertook to ensure that the notification was sufficient to alert members to important matters. New section 369(4C) intends to meet this undertaking. It requires that notification that a meeting notice has been published on a web site should include the place, date and time of the meeting, state whether it is an annual or extraordinary meeting, and state that it concerns a statutory notice given under the Companies Act.

24. The aim of the provisions is to give members sufficient information to encourage them to look up further details on the web site, if they consider they are likely to have an interest. It is not possible to make a general provision about the importance of the meeting, since that will depend upon individual circumstances and will vary from member to member. It could also prove difficult to interpret. Similarly, a requirement to describe the business of the meeting could result in companies deciding that the provision could only be complied with by setting out the full notice of meeting in the notification. That would defeat the purpose of the notification provision. A member who is concerned that he or she will miss important information can refuse to accept anything other than full notices either through the post or by e-mail.

**Q5: Do you agree that the requirements of new subsection (4C), inserted by Article 14, on notice of meetings are adequate? If not, what would you wish to be included?**

**Q6: Do you wish to comment further on the provisions relating to communications between a company and its members?**

#### **Appointment of proxies (Articles 15 and 16, Schedule 1 paragraphs 1 - 5)**

25. *Articles 15 and 16* amend sections 372 and 373 to provide for members to lodge appointments of proxies by electronic means, where the company agrees and has provided an address (including a phone or fax number) for doing so. A company's

articles may at present already enable voting instructions to be given electronically to the proxy, even though under section 372 the appointment of proxy must be lodged in hard copy. However, as with the earlier provisions, the Order overrides any provision in the company's articles which would otherwise prevent these matters from being dealt with electronically. Paragraphs 1 - 5 of Schedule 1 amend Articles 60 - 63 of Table A to provide for appointment by electronic communication (including the specimen form enabling voting instructions to be given to the proxy) and delivery of the appointment form by electronic means.

26. The Order does not provide for direct electronic voting at meetings, but only for the electronic appointment of proxies, and the giving of electronic voting instructions to a proxy. It will still be necessary for the member or his proxy actually to attend a physical meeting. The holding of meetings electronically raises wider issues relating to the conduct of Annual General Meetings. These issues are being considered as part of the wider Company Law Review, which is due to report to Ministers in spring 2001. The Review issued a consultative document on these issues in October 1999 (*Modern Company Law for a Competitive Economy: Company General Meetings and Shareholder Communication*). It can be found on [www.dti.gov.uk/cld/review.htm](http://www.dti.gov.uk/cld/review.htm)). In practice, however, where the member appoints the chairman as proxy, as is most common, any voting instructions included in the appointment will have the effect of a vote where there is a poll.

27. The Order does not require members to provide any additional authentication when appointing proxies by electronic means. Companies may well wish to institute their own systems to secure the identity of those it deals with electronically, for example by issuing members with PIN numbers or other personal identifiers such as electronic signature certificates. Many companies already have such systems, and the Government considers that companies should be free to use whatever arrangements suit their circumstances. The Central IT Unit in the Cabinet Office have published an *Authentication framework for Information Age Government* (see [www.iagchampions.gov.uk/guidelines/authentication](http://www.iagchampions.gov.uk/guidelines/authentication)) to advise on these issues. Again, the ICSA Best Practice Guide should provide helpful advice on this point.

**Q7: Do you wish to comment on the provisions relating to the appointment of proxies?**

### **Delivery to the Registrar using electronic communication (Article 22)**

28. *Article 22* inserts a new section into the Companies Act replacing section 707. It provides for documents to be delivered to the Registrar at Companies House in any electronic form (which is wider than the current definition of “non-legible” in section 707 including, for example, communication by phone and fax as well as by e-mail).

### **Technical provisions (Articles 23 - 26)**

29. *Article 23* amends section 742, a definition section in the Companies Act, to ensure that any reference in the Companies Act to sending out the annual accounts and

reports allows for the fact that they may be sent electronically, or published on a web site.

30. *Article 24* defines ‘address’ to cover phone or fax numbers and e-mail address. It defines ‘communication’ and ‘electronic communication’ as having the same meaning as in the Electronic Communications Act. These definitions are reproduced in Annex C, and follow consultation on the Bill. They are intended to cover all known forms of electronic communication and any future ones which new technology may produce. *Article 25* inserts the definitions into the index of defined expressions in section 744A of the Companies Act.

31. *Article 26* makes consequential changes, including inserting into Schedule 24 of the Companies Act, which sets out the offences in the Act, all the new offences relating to false statements made by electronic means (introduced by Articles 4 - 9 and 17 - 21). In practice, however, they do not constitute additional offences since they simply replace the current offence of perjury for false statutory declarations (see paragraph 13 above).

**Q8: Do you wish to make any further comments on the draft Order?**

*Draft Order laid before Parliament under section [9(4)] of the Electronic Communications Act 2000 for approval by resolution of each House of Parliament*

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## STATUTORY INSTRUMENTS

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2000 No.

### COMPANIES

The Companies Act 1985 (Electronic Communications) Order 2000

<i>Made.....</i>	2000
<i>Coming into force...</i>	2000

[Whereas the Secretary of State considers 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 no less satisfactory in cases where use is made of electronic communications than in other cases;]

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections [8 and 9] of the Electronic Communications Act 2000<sup>(a)</sup> and of all other powers enabling him in that behalf, hereby makes the following Order, a draft of which has been laid before Parliament in accordance with section 9(4) of that Act, and approved by a resolution of each House of Parliament:

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

1.-(1) This Order may be cited as the Companies Act 1985 (Electronic Communications) Order 2000 and shall come into force on .

(2) In this Order, “the 1985 Act” means the Companies Act 1985<sup>(b)</sup> .

#### **Electronic attestation of subscriber’s signature**

2.-(1) Section 2 of the 1985 Act (requirements with respect to memorandum) <sup>(c)</sup> is amended as follows.

(2) In subsection (6), for the words “The memorandum” substitute the words “Subject to subsection (6A), the memorandum”.

(3) Insert the following subsection after subsection (6) –  
“(6A) Where the memorandum is signed electronically by each subscriber, the requirement in subsection (6) for attestation of the signatures does not apply.”

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<sup>(a)</sup> 2000 c. .

<sup>(b)</sup> 1985 c.6.

<sup>(c)</sup> Section 2 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995 (c.7).

**3.**-(1) Section 7 of the 1985 Act (articles prescribing regulations for companies)<sup>(d)</sup> is amended as follows.

(2) In subsection (3), insert the words “subject to subsection (3A),” at the beginning of paragraph (c).

(3) Insert the following subsection after subsection (3) –  
“(3A) Where the articles are signed electronically by each subscriber of the memorandum, the requirement in subsection (3)(c) for attestation of the signatures does not apply.”

#### **Electronic statement of compliance with incorporation requirements**

**4.**-(1) Section 12 of the 1985 Act (duty of registrar) is amended as follows.

(2) At the beginning of subsection (3) insert the words “Subject to subsection (3A),”.

(3) Insert the following subsections after subsection (3) –

“(3A) In place of the statutory declaration required by subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a) or (b) of subsection (3) that the requirements mentioned in subsection (1) have been complied with; and the registrar may accept such a statement as sufficient evidence of compliance.

(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

#### **Electronic statement of compliance with section 30 requirements**

**5.**-(1) Section 30 of the 1985 Act (exemption from requirement of “limited” as part of the name) is amended as follows.

(2) At the beginning of subsection (4), insert the words “Subject to subsection (5A)”, and after the words “such a declaration” insert the words “or statement under subsection (5A)”.

(3) Insert the following subsections after subsection (5) –

“(5A) In place of the statutory declaration referred to in subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a person mentioned in paragraph (a), (b) or (c) of subsection (5) that a company complies with the requirements of

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<sup>(d)</sup> Section 7 was amended by section 14(2) of, and Schedule 5 to, the Requirements of Writing (Scotland) Act 1995.

subsection (3); and the registrar may accept such a statement as sufficient evidence of the matters stated in it.

(5B) Any person who makes a false statement under subsection (5A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

**Electronic statement concerning private company becoming public**

**6.** -(1) Section 43 of the 1985 Act (re-registration of private company as public) is amended as follows.

(2) At the beginning of paragraph (e) of subsection (3), insert the words “Subject to subsection (3A),”.

(3) Insert the following subsections after subsection (3) –

“(3A) In place of the statutory declaration referred to in paragraph (e) of subsection (3), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

(3B) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

**7.** -(1) Section 47 of the 1985 Act (certificate of re-registration under s.43) is amended as follows.

(2) In subsection (2), after the words “declaration under section 43(3)(e)”, insert the words “or a statement under section 43(3A)”.

**Electronic statement concerning limited company becoming unlimited**

**8.**-(1) Section 49 of the 1985 Act (re-registration of limited company as unlimited) is amended as follows.

(2) At the beginning of paragraph (b) of subsection (8), insert the words “Subject to subsection (8A),”.

(3) Insert the following subsections after subsection (8) –

“(8A) In place of the statutory declaration referred to in paragraph (b) of subsection (8), there may be delivered to the registrar of companies using electronic communications a statement made by the directors of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.

(8B) Any person who makes a false statement under subsection (8A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic statement concerning public company share capital**

**9.** -(1) Section 117 of the 1985 Act (public company share capital requirements) is amended as follows.

(2) At the end of subsection (2) insert the words “This subsection is subject to subsection (3A).”.

(3) Insert the following subsection after subsection (3) –

“(3A) In place of the statutory declaration required to be delivered to the registrar of companies by subsection (2), there may be delivered to him using electronic communications a statement made by a director or secretary of the company as to the matters set out in paragraphs (a) to (d) of subsection (3).”

(4) In subsection (5), after the words “statutory declaration” insert the words “or statement”.

(5) After subsection (7) insert the following subsection –

“(7A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic transmission of accounts and annual reports**

**10.**-(1) Section 238 of the 1985 Act (persons entitled to receive copies of accounts and reports) <sup>(e)</sup> is amended as follows.

(2) In subsection (4), after the words “duly sent”, insert the words “or, in the case of publication on a web site otherwise than in accordance with subsection (4A)(b), duly given,”.

(2) After subsection (4), insert the following subsections –

“(4A) References in this section to sending copies of annual accounts, the directors’ report and the auditors’ report to any person include –

(a) using electronic communications for sending copies to the address notified to the company by that person for that purpose, or

(b) where the company and the person to whom they are to be sent so agree, publishing the accounts and reports on a web site or sites for the period specified in subsection (4B) below, and notifying that person in a manner agreed with him for that purpose that they have been so published and of the address of each web site.

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<sup>(e)</sup> Section 238 was substituted by section 10 of the Companies Act 1989 (c.40).

(4B) For the purposes of subsection (4A)(b), the period is that commencing on or before a date not less than 21 days before the date of the meeting referred to in subsection (1), and ending at the conclusion of the meeting.

(4C) A provision contained in a company's articles is void in so far as it would prevent a company from taking advantage of subsection (4A)."

**11.**-(1) Section 239 of the 1985 Act (right to demand copies of accounts and reports)<sup>(f)</sup> is amended as follows.

(2) After subsection (2), insert the following subsections –

“(2A) References in this section to furnishing any person with copies of the annual accounts, directors' report and auditors' report include using electronic communications for sending copies to the address notified to the company by that person for that purpose.

(2B) A provision contained in a company's articles is void in so far as it would prevent a company from taking advantage of subsection (2A).”

### **Electronic transmission of summary financial statement**

**12.**-(1) Section 251 of the 1985 Act (provision of summary financial statement to shareholders)<sup>(g)</sup> is amended as follows.

(2) After subsection (2), insert the following subsections -

“(2A) References in this section to sending a summary financial statement to an entitled person include -

- (a) using electronic communications for sending the statement to the address notified to the company by that person for that purpose, or
- (b) where the company and the entitled person so agree, publishing the statement on a web site or sites for the period specified in subsection (2B) below, and notifying that person in a manner agreed with him for that purpose that it has been so published and of the address of each web site.

(2B) For the purposes of subsection (2A)(b), the period is that commencing on or before a date not less than 21 days before the date of the meeting at which the accounts and directors' report from which the summary financial statement is derived are to be laid, and ending at the conclusion of that meeting.

(2C) A provision contained in a company's articles is void in so far as it would prevent a company from taking advantage of subsection (2A).”

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<sup>(f)</sup> Section 239 was substituted by section 10 of the Companies Act 1989.

<sup>(g)</sup> Section 251 was substituted by section 15 of the Companies Act 1989, and amended by regulation 3 of S.I. 1992/3003.

**Electronic requirement that accounts and reports be laid before the company in general meeting**

**13.**-(1) Section 253 of the 1985 Act (right of shareholder to require laying of accounts) <sup>(h)</sup> is amended as follows.

(2) After subsection (2), insert the following subsection -

“(2A) The power of a member or auditor under subsection (2) to require the holding of a general meeting is exercisable (as well as by the deposit of a notice in writing) by the transmission to the company at an address specified for the purpose by the company of an electronic communication containing the requirement.”

(3) In subsection (3) -

(a) for the words “ the deposit of such a notice proceed” substitute-

“ -

(a) the deposit of a notice containing a requirement under subsection (2), or

(b) the receipt of such a requirement contained in an electronic communication,

proceed” , and

(b) for the words “deposited the notice” substitute the words “required the holding of the meeting”.

(4) In subsection (5), for the words “deposited the notice” substitute the words “required the holding of the meeting”.

**Electronic transmission of notices of meetings**

**14.** -(1) Section 369 of the 1985 Act (length of notice for calling meetings) <sup>(i)</sup> is amended as follows.

(2) Insert the following subsections after subsection (4) –

“(4A) References in this section to notice in writing include –

(a) using electronic communications for sending a notice to the address notified to the company for that purpose by the person entitled to receive the notice, or

(b) where the company and the person entitled to receive the notice so agree, publishing the notice on a web site or sites for the period specified in subsection (4B) below, and notifying that person in a manner agreed with him for that purpose that it has been so published and of the address of each web site.

(4B) For the purposes of subsection (4A)(b), the period is that commencing on or before the day on which notice in writing of the meeting is required to be given, and ending at the conclusion of the meeting.

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<sup>(h)</sup> Section 253 was substituted by section 16 of the Companies Act 1989.

<sup>(i)</sup> Section 369 was amended by section 115(3) of the Companies Act 1989.

- (4C) The notification referred to in subsection (4A)(b) should –
- (a) state that it concerns a notice of a company meeting 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 extraordinary general meeting.

(4D) In so far as the articles of the company do not provide for notices and notifications to be served using electronic communications, the provisions of Table A as to such service shall apply.”

### **Electronic transmission of proxy appointments**

**15.**–(1) Section 372 of the 1985 Act (proxies) is amended as follows.

- (2) After subsection (2) insert the following subsections –

“(2A) Notwithstanding any provision to the contrary in the company’s articles, the appointment of a proxy may be contained in an electronic communication sent to an address notified by or on behalf of the company for this purpose.

(2B) In so far as the articles of the company do not make other provision in that behalf, a member may appoint a proxy by electronic communication in the manner in which such appointments may be made under Table A.”

(3) In subsection (5), after the word “instrument” insert the words “(including electronic communication)”.

(4) In subsection (6), delete the words “in writing” in both places where they occur.

- (5) Insert the following subsection after subsection (6) –

“(6A) There is no breach of subsection (6) by reason only of the fact that some invitations are issued by means of electronic communication and others are issued by other means.”

**16.**–(1) Section 373 of the 1985 Act (right to demand a poll) is amended as follows.

(2) In subsection (2), for the words “The instrument appointing” substitute the words “The appointment of”.

**Electronic statement to obtain memorandum of satisfaction**

**17.**-(1) Section 403 of the 1985 Act (entries of satisfaction and release: England and Wales)<sup>(i)</sup> is amended as follows.

(2) At the beginning of subsection (1), insert the words “Subject to subsection (1A),”.

(3) Insert the following subsection after subsection (1) –

“(1A) The registrar of companies may, in place of the statutory declaration referred to in subsection (1), take receipt of a statement made by a director or secretary of the company which is contained in an electronic communication and which -

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,
- (b) contains a description of the charge,
- (c) states the date of creation of the charge and the date of its registration under this Chapter,
- (d) states the name and address of the chargee or, in the case of a debenture, trustee, and
- (e) where paragraph (b) of subsection (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company’s property or undertaking (as the case may be).”

(4) Insert the following subsection after subsection (2) -

“(2A) Any person who makes a false statement under subsection (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

**18.**-(1) Section 419 of the 1985 Act (entries of satisfaction and release: Scotland) is amended as follows.

(2) At the beginning of subsection (1), insert the words “Subject to subsections (1A) and (1B),”.

(3) Insert the following subsections after subsection (1) –

“(1A) The registrar of companies may, in place of the statutory declaration referred to in subsection (1), take receipt of a statement made by a director or secretary of the company which is contained in an electronic communication and which -

- (a) verifies the matters set out in paragraph (a) or (b) of that subsection,
- (b) contains a description of the charge,

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<sup>(i)</sup> Sections 395 to 420 (new provisions relating to the registration of charges with respect to companies registered in Great Britain) were substituted for sections 395 to 408, and 410 to 423 by sections 92 to 104 of the Companies Act 1989. Those substitutions have not yet been brought into force.

- (c) states the date of creation of the charge and the date of its registration under this Chapter,
- (d) states the name and address of the chargee or , in the case of a debenture, trustee, and
- (e) where paragraph (b) of subsection (1) applies, contains short particulars of the property or undertaking which has been released from the charge, or which has ceased to form part of the company's property or undertaking (as the case may be).

(1B) Where the statement under subsection (1A) concerns the satisfaction of a floating charge, then there shall be delivered to the registrar a certificate which confirms that the particulars contained in the statement are correct and which –

- (a) is incorporated into, or logically associated with, the electronic communication containing the statement, and
- (b) is made by the creditor entitled to the benefit of the floating charge or a person authorised to act on his behalf.

(4) Insert the following subsection after subsection (5) -

“(5A) Any person who makes a false statement under subsection (1A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Electronic statement concerning joint stock company becoming public**

**19.**-(1) Section 685 of the 1985 Act (registration of joint stock company as public company) <sup>(k)</sup> is amended as follows.

(2) At the beginning of paragraph (e) of subsection (4), insert the words “Subject to subsection (4A),”.

(3) Insert the following subsection after subsection (4) –

“(4A) In place of the statutory declaration referred to in paragraph (e) of subsection (4), there may be delivered to the registrar of companies using electronic communications a statement made by a director or secretary of the company as to the matters set out in sub-paragraphs (i) and (ii) of that paragraph.”

(4) In subsection (5), after the words “subsection (4)(e)”, insert the words “or statement under subsection (4A)”.

(5) Insert the following subsection after subsection (6) –

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<sup>(k)</sup> Section 685 was amended by regulation 2 of, and paragraph 53 of the Schedule to, S.I. 1991/1997.

“(6A) Any person who makes a false statement under subsection (4A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

**Electronic statement concerning other registrations under Chapter II of Part XXII**

**20.**-(1) Section 686 of the 1985 Act (other requirements for registration) <sup>(l)</sup> is amended as follows.

(2) At the beginning of subsection (2), insert the words “Subject to subsection (2A),”.

(3) Insert the following subsection after subsection (2) –

“(2A) In place of the statutory declaration referred to in subsection (2), there may be delivered to the registrar of companies using electronic communications a statement made by any two or more directors or other principal officers of the company verifying the matters set out in that subsection.”

(4) Insert the following subsection after subsection (3) –

“(3A) Any person who makes a false statement under subsection (2A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

**Electronic statement concerning establishment of place of business in Great Britain**

**21.**-(1) Section 691 of the 1985 Act (documents to be delivered to registrar) <sup>(m)</sup> is amended as follows.

(2) At the beginning of sub-paragraph (iv) of paragraph (b) of subsection (1), insert the words “Subject to subsection (3A),”.

(3) Insert the following subsection after subsection (3) –

“(3A) In place of the statutory declaration referred to in sub-paragraph (iv) of paragraph (b) of subsection (1), there may be delivered to the registrar of companies using electronic communications a statement made by any person specified in that sub-paragraph stating the date on which the company’s place of business in Great Britain was established.”

(4) Insert the following subsection after subsection (4) –

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<sup>(l)</sup> Section 686 was amended by section 145 of, and paragraph 5 of Schedule 19 to, the Companies Act 1989.

<sup>(m)</sup> Section 691 was amended by section 145 of, and paragraph 6 of Schedule 19 to, the Companies Act 1989.

“(4A) Any person who makes a false statement under subsection (3A) which he knows to be false or does not believe to be true is liable to imprisonment or a fine, or both.”

### **Insertion of new section 707B**

**22.** The following section shall be inserted after section 707A<sup>(n)</sup> –

#### **“Delivery to the registrar using electronic communications**

**707B-** (1) Any requirement under any provision of the Companies Acts to deliver a document to the registrar, or to deliver a document in the prescribed form, is satisfied by using electronic communications to deliver the document, provided that such delivery is in such form and manner as is directed by the registrar.

(2) Where the document is required to be signed or sealed, it shall instead be authenticated in manner directed by the registrar.

(3) The document must –

(a) contain in a prominent position the name and registered number of the company to which it relates and, if the document is delivered under section 695A(3), 703P or 703Q or Schedule 21A or 21D the registered number of the branch to which it relates, and

(b) be furnished in such manner, and conform to such requirements, as the registrar may direct for the purpose of enabling him to read and copy the document.

(4) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.

(5) Where the registrar serves such a notice, then unless a replacement document –

(a) is delivered to him within 14 days after the service of the notice, and

(b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements, the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar’s notice.”

### **Expressions used in the 1985 Act**

**23.** –(1) Section 742 of the 1985 Act (expressions used in connection with accounts)<sup>(o)</sup> is amended as follows.

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<sup>(n)</sup> Section 707A was inserted by section 126(1) of the Companies Act 1989.

(2) After subsection (2), insert the following subsection –

“(2A) References in this Act to sending or sending out copies of any of the documents referred to in section 238(1) include sending or sending out such copies in accordance with section 238(4A).”

**24.**-(1) Section 744 of the 1985 Act (expressions used generally in that Act) <sup>(p)</sup> is amended as follows.

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

““address”, in relation to electronic communications, includes any number or address used for the purposes of such communications;

“communication” means the same as in the Electronic Communications Act 2000;

“electronic communication” means the same as in the Electronic Communications Act 2000;”.

**25.**-(1) Section 744A of the 1985 Act (index of defined expressions) <sup>(q)</sup> is amended as follows.

(2) Insert the following entries at the appropriate places –

“ “address”	section 744
“communication “	section 744
“electronic communication”	section 744”.

### **Consequential amendments**

**26.**-(1) Section 707 of the 1985 Act (delivery to the registrar of documents otherwise than in legible form) <sup>(r)</sup> is hereby repealed, and in section 735A(2) of the 1985 Act (relationship of the Companies Act to the Insolvency Act) <sup>(s)</sup> for “707(1)” substitute “707B(1)”.

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<sup>(o)</sup> Section 742 was substituted by section 23 of, and paragraph 15 of Schedule 10 to, the Companies Act 1989.

<sup>(p)</sup> Section 744 has been amended in manner not relevant to this Order.

<sup>(q)</sup> Section 744A was inserted by section 145 of, and paragraph 20 of Schedule 19 to, the Companies Act 1989, and has been amended in manner not relevant to this Order.

<sup>(r)</sup> Section 707 was substituted by section 125(2) of the Companies Act 1989, and amended by regulation 4 of, and paragraphs 3 and 6 of Schedule 3 to, S.I. 1992/3179.

<sup>(s)</sup> Section 735A was inserted by section 439(1) of, and Part II of Schedule 13 to, the Insolvency Act 1986 (c.45), and subsection (2) was amended by section 127(5) of the Companies Act 1989, and by section 76 of, and paragraph 9 of Schedule 16 to, the Deregulation and Contracting Out Act 1994 (c.40).

(2) Schedule 24 to the 1985 Act (punishment of offences) <sup>(t)</sup> is amended as follows.

(3) Insert the following entries at the appropriate places -

Section of Act creating offence	General nature of offence	Mode of prosecution	Punishment	Daily default fine (where applicable)
“ 12(3B)	Person making false statement under section 12(3A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
30 (5B)	Person making false statement under section 30(5A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
43(3B)	Person making false statement under section 43(3A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
49(8B)	Person making false statement under section 49(8A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
117(7A)	Person making false statement under section 117(3A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
403(2A)	Person making false statement under section 403(1A) which he knows to be false or does not believe to be true	1. On indictment 2. Summary	2 years or a fine; or both 6 months or the statutory maximum; or both	
419(5A)	Person making false statement under section 419(1A)	1. On indictment	2 years or a fine; or both	

<sup>(t)</sup> Schedule 24 has been amended in manner not relevant to this Order.

	which he knows to be false or does not believe to be true	2. Summary	6 months or the statutory maximum;or both
685(6A)	Person making false statement under section 685(4A)	1. On indictment	2 years or a fine; or both
	which he knows to be false or does not believe to be true	2. Summary	6 months or the statutory maximum;or both
686(3A)	Person making false statement under section 686(2A)	1. On indictment	2 years or a fine; or both
	which he knows to be false or does not believe to be true	2. Summary	6 months or the statutory maximum;or both
691(4A)	Person making false statement under section 691(3A)	1. On indictment	2 years or a fine; or both
	which he knows to be false or does not believe to be true	2. Summary	6 months or the statutory maximum;or both”

**Amendment of subordinate legislation made under the Companies Act**

**27.** -(1) Table A as prescribed by the Companies (Tables A to F) Regulations 1985 <sup>(u)</sup> is amended in accordance with Schedule 1 to this Order.

(2) The Companies (Summary Financial Statement) Regulations 1995 <sup>(v)</sup> are amended in accordance with Schedule 2 to this Order.

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<sup>(u)</sup> S.I. 1985/805, as amended by S.I. 1985/1052.

<sup>(v)</sup> S.I. 1995/2092.

## **SCHEDULE 1**

Article 27(1)

### **Amendment of Table A**

**1.** Article 1 of Table A (interpretation) is amended by inserting the following definitions at the appropriate places –

“address”, in relation to electronic communications, includes any number or address used for the purposes of such communications,

“communication” means the same as in the Electronic Communications Act 2000,

“electronic communication” means the same as in the Electronic Communications Act 2000”.

**2.**-(1) Article 60 of Table A (appointment of proxy) is amended as follows.

(2) For the words “ An instrument appointing” substitute the words “The appointment of”, and omit the words “in writing,”.

**3.** In article 61 of Table A (instructions to proxy), for the words “instrument appointing” substitute the words “the appointment of”.

**4.**-(1) Article 62 of Table A (lodging of proxy appointment) is amended as follows.

(2) For the words “The instrument appointing” substitute the words “The appointment of”.

(3) In sub-paragraph (a), before the words “be deposited” insert “in the case of an instrument in writing”.

(4) After sub-paragraph (a) insert the following –

“(aa) in the case of an appointment contained in an electronic communication, be received at an address within the United Kingdom specified in the notice convening the meeting or in any instrument of proxy sent out, or invitation contained in an electronic communication to appoint a proxy issued by the company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;”

(5) In sub-paragraph (b), after the words “be deposited” insert the words “ or received ”.

(6) For the words “and an instrument of proxy which is not deposited or delivered” substitute “and an appointment of proxy which is not deposited, delivered or received”.

**5.** In article 63 of Table A (determination of proxy appointment), after the word “deposited” insert the words “or, where the invitation to appoint a proxy was contained in an electronic communication, at the address specified for that purpose”.

**6.** For article 111 of Table A (form of notices) substitute the following –

“111. Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors) shall be in writing or in accordance with section 369(4A).”

**7.** In article 112 of Table A (giving of notices) after the words “leaving it at that address”, insert the words “or in accordance with section 369(4A)”.

**8.** In article 115 of Table A (when notices deemed to be given), after the words “was posted” insert the words “or, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent”.

**Amendment of the Companies (Summary Financial Statement) Regulations 1995**

**1.** The Companies (Summary Financial Statement) Regulations 1995 are amended as follows.

**2.-(1)** Regulation 2 (interpretation) is hereby renumbered regulation 2(1), and the following definitions are inserted at the appropriate places –

“address” means the same as in the Companies Act 1985;

“communication” means the same as in the Electronic Communications Act 2000;

“electronic communication” means the same as in the Electronic Communications Act 2000;”.

(2) Insert the following paragraph after regulation 2(1) –

“(2) References in these Regulations to sending an entitled person copies of the full accounts and reports include sending such copies in accordance with section 238(4A), and references to sending an entitled person a summary financial statement include sending such a statement in accordance with section 251(2A).”

**3.** In regulation 4 (ascertainment of entitled person’s wishes) –

(a) in paragraph (2)(a) omit the words “in writing”,

(b) in paragraph (3), after the words “paragraph (2)(a) above” insert the words “and subject to paragraph (3A) below”, and

(c) insert the following paragraph after paragraph (3) –

“(3A) If a relevant notification is not in writing, it must be contained in an electronic communication transmitted to the company at an address specified by or on behalf of the company for that purpose.”

**4.-(1)** Regulation 5 (consultation by notice) is amended as follows.

(2) In paragraph (1) –

(a) for the words “ authorised by the company’s” substitute the words “in which the company may send notices of meetings pursuant to the 1985 Act or its”,

(b) in sub-paragraph (a) omit the words “in writing”, and

(c) in sub-paragraph (c) omit the word “printed”.

(3) In paragraph (2) –

(a) for the words from “printed card” to “paid by the company”, substitute “card or form (in respect of which, in the case of a card or form sent by post,

any postage necessary for its return to the company has been, or will be, paid by the company), and

(b) after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.

**5.**–(1) Regulation 6 (relevant consultation) is amended as follows.

(2) In paragraph (2) –

(a) for the words “ authorised by the company’s” substitute the words “in which the company may send notices of meetings pursuant to the 1985 Act or its”,

(b) in sub-paragraph (a), for the words “in writing” substitute “either in writing or by sending the notification in an electronic communication to an address specified for that purpose”, and

(c) in sub-paragraph (d), omit the word “printed”, and after the words “returning the card or form” insert “either by post or in an electronic communication sent to a specified address”.

**6.** In paragraph (5)(b) of regulation 7 (provisions applying to all companies and groups), omit the words “in writing”.

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

This Order modifies various provisions of the Companies Act 1985 (c.6) (“the 1985 Act”) for the purpose of authorising or facilitating the use of electronic communications between companies and their members and debenture holders, and between companies and the registrar of companies.

2. **Articles 2 and 3** modify sections 2 and 7 of the 1985 Act respectively (requirements with respect to memorandum and articles of association), to remove the requirement for attestation of the signatures of subscribers to the memorandum where the subscribers have signed electronically.

3. **Articles 4 to 9 and 17 to 21** modify the following provisions of the 1985 Act to provide in each case for the electronic delivery to the registrar of companies of a statement as an alternative to the delivery of a sworn statutory declaration in writing -

- section 12 (duty of registrar on incorporation of a company)
- section 30 (exemption from requirement of “limited” as part of company name)
- sections 43 and 47 (re-registration of private company as public)
- section 49 (re-registration of limited company as unlimited)
- section 117 (public company share capital requirements)
- section 403 (entries of satisfaction and release of charges: England and Wales)
- section 419 (entries of satisfaction and release of charges: Scotland)
- section 685 (registration of joint stock company as public company)
- section 686 (other requirements for registration)
- section 691 (documents to be delivered to registrar by oversea company establishing place of business).

Penalties for making false statements under these provisions are inserted into Schedule 24 to the 1985 Act by **article 26(2) and (3)**.

4. **Article 10** modifies section 238 of the 1985 Act (persons entitled to receive copies of accounts and reports) to enable copies of the annual accounts and reports to be sent electronically to those entitled to receive them. Either the accounts and reports can be sent directly to an electronic address supplied for the purpose by the recipient, or they can be published on a web site or sites and the recipient notified of their availability in a manner agreed with him. In the latter case, the accounts and reports must be published on the web site for at least 21 days before the general meeting before which they are to be laid. **Articles 12, 27(2) and Schedule 2** makes equivalent modifications to section 251 concerning the sending of summary financial statements in place of the full accounts.

5. **Article 11** modifies section 239 of the 1985 Act (right to demand copies of accounts and reports) to enable a member or debenture holder to demand that the company send a copy of the annual accounts and reports to an electronic address notified by him for the purpose.

6. **Article 13** modifies section 253 of the 1985 Act (right of member or auditor to require laying of accounts) to enable members or auditors exercising their powers under that section to require the holding of a general meeting for the laying of accounts, to do so by communicating with an electronic address supplied by the company for the purpose.
7. **Article 14** modifies section 369 of the 1985 Act (length of notice for calling meetings) to enable notices of company meetings to be sent electronically to those entitled to receive them. Either the notices can be sent directly to an electronic address supplied for the purpose by the recipient, or they can be published on a web site or sites and the recipient notified of their availability in manner agreed with him. In the latter case, the notice must be published on the web site for at least the period for which notice of the meeting must be given under section 369. Furthermore, the notification given to the recipient that the notice is available on a web site must contain certain details of the meeting (see section 369(4C)).
8. **Articles 15 and 16** modify sections 372 and 373 of the 1985 Act (proxies) to enable a member to appoint proxies electronically by communicating with an electronic address supplied by the company for the purpose.
9. **Article 22** inserts a new section 707B into the 1985 Act replacing section 707 (which is repealed by article 26(1)) enabling the registrar of companies to direct that any document required to be delivered to him under the Companies Acts (as defined in section 744) and the Insolvency Act 1986 (see section 735A as amended by article 26(1)) may be delivered electronically in form and manner directed by him.
10. **Articles 23 to 25** insert relevant definitions into the 1985 Act.
11. **Article 27(1)** amends the articles of association prescribed in Table A to enable the electronic appointment of proxies and sending of notices.
12. A Regulatory Impact Assessment of this Order is available from the Department of Trade and Industry, Company Law and Investigations Directorate, Room 507, 1 Victoria Street, London SW1H 0ET. A copy has also been placed in the libraries of both Houses of Parliament.

**ANNEX B**

**THE COMPANIES ACT 1985 (ELECTRONIC COMMUNICATIONS) ORDER  
2000**

**DRAFT**

**REGULATORY IMPACT ASSESSMENT**

**PURPOSE AND INTENDED EFFECT OF THE MEASURE**

**Issue and Objective**

32. With the growing popularity of electronic commerce and its acknowledged benefits of speed and cost effectiveness, companies are keen to use electronic media to communicate with their members and with Companies House. There is doubt however whether the Companies Act 1985 (the “Act”) permits such communication. The Act also fails to permit the electronic incorporation of companies. This Order will amend the relevant parts of the Act to remove this doubt and enable companies to choose, with the agreement of members or Companies House, their preferred method of communication.

**OPTIONS**

33. Having identified the lack of clarity in the Act, three options presented themselves:

Option 1 - To do nothing;

Option 2 - To introduce a Code of Practice;

Option 3 - To clarify the requirements of the Act via legislation.

**BENEFITS**

**Option 1 - To do nothing**

34. Under this option, the requirements of the Act relating to the sending of documents to members and appointment of a proxy instrument (including voting instructions) would remain as they are now and companies adopting electronic media for communication with members would be at risk of legal challenge over whether they were correctly fulfilling the requirements of the Act. This would deter the use of modern communications systems and mean most companies continued to use paper-based systems even where these proved more expensive. Electronic incorporation would not be possible.

## **Option 2 - To introduce a code of practice**

35. This option, although possibly raising the profile of electronic media as an option for communicating with members, would still fall short of changing the requirements of the Act and, as a result, would still expose companies to the risk of legal challenge for non-compliance by using electronic media. Similarly, electronic incorporation would not be possible. However, if the statute were amended as required, further details and guidance could usefully be included in a code or good practice guide.

## **Option 3 - To amend the requirements of the Act via legislation**

36. This option would use the power in the Electronic Communications Bill for the Secretary of State to make an Order to amend the relevant sections of the Act to state clearly that, with the consent of the recipient, electronic media are permissible methods of sending documents to members and for the return of proxy instruments (including voting instructions) and for incorporation. This method would therefore remove doubt about the possibility of using electronic media, while at the same time requiring companies to agree with members (individually) or Companies House whether they wish to receive communications in this format.

37. Most respondents to consultation thought that after start-up costs, savings would gradually flow in accordance with the demand for electronic delivery. These costs would be contingent on the size of the company and of its membership, with more informal arrangements for securing consent and registering information likely to be possible in the smallest companies.

38. In terms of recurring costs, estimates of savings on the printing and despatch of the report and accounts varied between £1.80 and £10 per member (for electronic as opposed to paper delivery). In a hypothetical case, based on the lowest estimate of savings (at £1.80 per member), in a company possessing 100,000 members, if only 40% took up the electronic option, they could generate at least £72,000 in savings in a year.

## **COMPLIANCE COSTS FOR BUSINESS**

### **Business Sectors Affected**

39. The effects of the amendment of the Act will be felt by all companies possessing members. The companies themselves will be able to choose whether to offer their members electronically the statutory documents to which they are entitled, although the legislation will not allow members to demand electronic transmission as a right if the company does not agree to it. We expect that many companies will be keen to make use of electronic media in any case, although the legislation will also serve to raise the awareness of members that electronic delivery exists as an option for companies.

## **Compliance costs**

40. Strictly speaking there will be no compliance costs for business, as the Order will not require companies to communicate electronically: it will be left up to them to choose. Where they choose the electronic option, there will be start-up costs (associated with putting in place the necessary registry machinery to record e-mail addresses, arrangements for securing member consent and other ancillary mechanisms). Those businesses, however, that choose to take advantage of the Order will presumably only do so if they consider the benefits to outweigh the costs.

## **RESULTS OF CONSULTATION**

41. The Department sent out its consultative letter entitled, “*Electronic Communication: Change to the Companies Act 1985*” in March 1999 to a range of business and shareholder representative organisations, legal organisations, institutional investors and company secretaries (73 in all). It sought opinions on proposals to take a power in the Electronic Communications Bill to clarify the Companies Act 1985 to:

- enable any document which the Act requires the company to transmit to members to be sent, where the member has so agreed, to a fax number or electronic address nominated by the member;
- enable the company to place any company communication required by the Act on a web-site or other electronic site accessible to those entitled to receive the relevant information; and, where the member has so agreed, to send only a notice of availability to an electronic address nominated by the member, in substitution for sending the communication to him;
- provide that, where the company so decides, the return of an appointment of a proxy instrument to the company (including any voting instructions) may be effected in writing, by fax or by other electronic means;
- enable companies to incorporate at Companies House by electronic means.

42. The Department received a total of 48 responses which were overwhelmingly supportive of the changes. In general respondents agreed that there was no need for legislation to make provision for certain detailed points arising from these changes, for example to determine the manner of securing member consent to receive electronic communications. However the Institute of Chartered Secretaries and Administrators is working on an industry code of practice to cover these issues in more detail and provide working guidance.

## **RECOMMENDATION**

43. Having weighed up the advantages and disadvantages of the three options outlined and taking into account the results of consultation on this issue, the Department is now issuing a second consultative document, including a draft Order under the Electronic Communications Bill, which will make the necessary changes to the Act. This option was favoured, out of the three, as it will remove the obstacles to electronic communication in the Companies Act while maintaining the flexibility for companies, their members and Companies House to agree whether to use this form of communication. Consultees welcomed the option of this clarification of the law (and

the principle of consent) and generally believed that it would reduce costs in the long term.

44. The Government intends the order to include the minimum necessary provisions to facilitate electronic communication, while maintaining flexibility for companies to make detailed provision as suits their own circumstances. The Government welcomes the initiative of the Institute of Chartered Secretaries and Administrators, which is producing a guide to good practice which companies are likely to find helpful in making their detailed arrangements.

#### **ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

45. As stated, the use of the power will be voluntary.

46. The penalties outlined in the draft Order provide a civil remedy in the case of persons making statements which they know to be false or do not believe to be true, and correspond to penalties in the Perjury Act 1911. This is in line with existing penalties for the same offences committed via paper documents (so does not constitute any overall increase in potential offences).

47. The Department will monitor the take up of the option of electronic communication by companies and their members.

**DEFINITIONS OF “COMMUNICATION” AND ‘ELECTRONIC COMMUNICATION’ IN THE ELECTRONIC COMMUNICATIONS BILL**

The definitions, currently in clause 14 of the Bill, are as follows:

“communication” includes a communication comprising sounds or images or both and a communication effecting a payment;

“electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)-

- (a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (b) by other means but while in an electronic form;’

Section 4(1) of the Telecommunications Act 1984 provides:

‘In this Act telecommunications system means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy of -

- (a) speech, music and other sounds
- (b) visual images
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (c) signals serving for the actuation or control of machinery or apparatus.’

## ANNEX D

**SUMMARY OF QUESTIONS** (You may use this form for your reply, but you are free to reply separately if you prefer)

**Q1: Do you wish to make any comments on the costs and benefits of the Order as set out in the Regulatory Impact Assessment?**

**Q2: Do you agree with the approach taken in the Order on agreement to send and receive electronic communications?**

**Q3: Do you agree with the amendments to be made by the provisions relating to incorporation (Articles 2-9 and 17-21)?**

**Q4: Do you consider that there are any other important communications, apart from those dealt with in Articles 10 - 14, which a company is likely to want to make to its members by electronic means? If so, what are they?**

**Q5: Do you agree that the requirements of new subsection (4C), inserted by Article 14, on notice of meetings are adequate? If not, what would you wish to be included?**

**Q6: Do you wish to comment further on the provisions relating to communications between a company and its members?**

**Q7: Do you wish to comment on Articles 15 and 16, on the appointment of proxies?**

**Q8: Have you any further comments on the draft Order?**

*Now e-mail, post or fax your response to:*

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