EXPLANATORY MEMORANDUM TO

THE MUTUAL SOCIETIES (ELECTRONIC COMMUNICATIONS) ORDER 2011

2011 No. 593

THE FRIENDLY SOCIETIES (PROXY VOTING) REGULATIONS 2011

2011 No. 883

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instruments

2.1 The purpose of these instruments is to amend the legislation applying to building societies, friendly societies, industrial and provident societies and credit unions to facilitate the use of electronic communications by these mutual societies in their communications with their members, the public and with the Financial Services Authority ("the FSA"), in its capacity as the registrar of mutual societies. The amendments allow societies to elect to use electronic communications to comply with their statutory obligations to send certain information to members and to the FSA, to operate electronic ballots and to make available online facilities for the appointment of proxies.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Mutual Societies (Electronic Communications) Order 2011 is made under powers contained in sections 8 and 9 of the Electronic Communications Act 2000. Part 2, which applies to building societies, makes minor changes that build on amendments made to the Building Societies Act 1986 in the Building Societies (Electronic Communications) Order 2003 (SI 2003/404). Part 3 amends provisions of the Friendly Societies Acts of 1974 and 1992, the provisions of which apply to registered and incorporated friendly societies. Part 4 amends provisions of the Industrial and Provident Societies Act 1965, the Friendly and Industrial and Provident Societies Act 1968 and the Credit Unions Act 1979.

4.2 The Friendly Societies (Proxy Voting) Regulations 2011 are made under the power contained in paragraph 7(6) of Schedule 12 to the Friendly Societies Act 1992 to prescribe the procedure to be adopted by friendly societies and their members for voting by proxy on any resolution which is to be moved as a special resolution at any meeting of a society other than a meeting of delegates. The Friendly Societies (Proxy Voting)

Regulations 1993 (SI 1993/2294) will continue to apply to meetings called before the 2011 Regulations come into force until 1st October 2011.

5. Territorial Extent and Application

5.1 Both instruments apply to all of the United Kingdom.

5.2 However, two forms of mutual society in Northern Ireland, credit unions and industrial and provident societies, are registered under separate Northern Ireland legislation that is devolved to the Assembly under the Northern Ireland Act 1998. Accordingly, Part 4 of the Mutual Societies (Electronic Communications) Order 2011 does not apply to these two forms of society.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Mutual Societies (Electronic Communications) Order 2011 are compatible with the Convention rights.

6.2 As the Friendly Societies (Proxy Voting) Regulations 2011 are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

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

7.2 The policy is to put mutual societies in a similar position to companies. Companies formed under the Companies Acts have significant scope to use electronic communications in their dealings with each other. Since 2003, when the Building Societies Act 1986 (Electronic Communications) Order 2003 came into force, building societies have been able to communicate with their members electronically where certain conditions are satisfied. The Order makes minor changes to improve how these provisions apply in relation to proxy voting.

7.3 The legislation applying to other forms of mutual society does not obviously contemplate the use of electronic communications because these were not used when the statutory provisions were enacted in 1965 and 1968 (for industrial and provident societies), 1974 and 1992 (for friendly societies) and 1979 (for credit unions).

Consequently, where these societies are under a statutory obligation to send a member a piece of information it may be unclear whether that duty may be fulfilled by the use of email or website publication. In other cases, it is clear from the context that the information or notice may only be provided in paper form through the post (e.g. a postal ballot).

7.4 The Order and Regulations do not require any societies or their members to use electronic communications but provide it as an alternative to traditional forms of communications where conditions are satisfied. Statutory provisions have been amended to allow statutory notices to be sent by email or made available on a website provided that certain conditions are satisfied. Friendly societies are permitted to conduct electronic ballots where they might otherwise conduct a postal ballot, or a combined ballot (a ballot that uses both forms of communication). The FSA has also been given greater scope to direct how documents sent to it by societies in electronic form must be submitted, and how it stores information submitted to it on the public files of friendly societies.

8. Consultation outcome

8.1 The responses from the sector supported the option to communicate electronically.

8.2 A summary document of responses will be published shortly and available on the HM Treasury website (www.hm-treasury.gov.uk)

9. Guidance

9.1 HM Treasury and the FSA will work with financial mutual trade bodies to ensure that guidance for societies in using electronic communications in communications with their members, the public and the FSA are understood.

10. Impact

10.1 The impact on business is a benefit of around £12 million a year, with cost savings arising from reducing societies' budgets for postage and administration around the sending and processing large numbers of voting forms. This figure was arrived at after consultation with the mutual sector.

10.2 There is no impact on the public sector. The Financial Services Authority will gain greater freedom to store records electronically rather than maintain paper files for some societies.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum.

11. Regulating small business

11.1 The legislation applies to small business. Because the legislative amendments are facilitative only, no business will be required as a result of these amendments to use electronic communications to discharge any of their statutory obligations if they do not elect to, or do not have the facilities to do so.

12. Monitoring & review

12.1 These measures can be reviewed in 5 years, and will form part of a continuous dialogue with the sector on the modernisation of the legislation that applies to mutual societies.

13. Contact

Christopher Moore at the Mutuals Team of HM Treasury Tel: 020 7270 4819 or email: Christopher.Moore@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.

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

Summary: Intervention and Options

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

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

What are the policy objectives and the intended effects?

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

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The policy options considered are either:

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

Option 2 - to do nothing.

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

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 4/2016 **What is the basis for this review?** PIR. **If applicable, set sunset clause date:** Month/Year	
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

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

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

Signed by the responsible SELECT SIGNATORY: _____ Date: 7/3/11

URN 10/1268 Ver. 2.0 12/10

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £11.05m	**High:** £112.72m	**Best Estimate: £89.9m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.25m		0	**£0.25m**
High	£0.25m		0	**£0.25m**
Best Estimate	£0.25m		0	**£0.25m**

Description and scale of key monetised costs by 'main affected groups'

The FSA have indicated that the cost of putting the electronic records online (as opposed to hard copy) will present an initial cost of £0.25m, but this is not a cost to business.

Other key non-monetised costs by 'main affected groups'

This is a deregulatory measure, fully designed to encourage cost savings in the mutual sector. Throughout informal and formal consultation the main affected groups have encouraged the cost savings and have not highlighted any extra net costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		£1.51m	**£11.3m**
High	0		£15.1m	**£114.9m**
Best Estimate	0		£12.05m	**£90.15m**

Description and scale of key monetised benefits by 'main affected groups'

Primary benefit is that the mutual sector will make administrative costs savings by having the option should they choose to exercise it, subject to a member's request, to send certain statutory information to members and to the FSA by email and a website. These cost savings will be on postage; paper; printing and photocopying; and labour costs in having to handle the administrative burden. These areas have been confirmed by the sector as the vast majority of the contribution to costs.

Other key non-monetised benefits by 'main affected groups'

There is a possibility of an increased level of voting engagement due to the ease of communicating electronically

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

In calculating the costs and benefits the sector agreed that at the minimum they would expect to see a 10% take up and at the maximum a 100% take up of sending/receiving information through electronic means. Engagement rates were taken from consultations carried out by trade bodies themselves. From the individual consultations with sectors, it was approximated that for Building Societies and Friendly societies, 80% of the sector would take electronic communications up from Year 1. For Cooperatives and Credit Unions it was approximated that 25% of the member base would engage from Year 1, and in subsequent discussions on minimum/maximum engagement agreed that the boundaries would most probably be in line with variations predicted for the building and friendly societies (c.3.1% - c.31%).

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: £0	**Benefits:** £10.8m	**Net:** £10.8m	Yes	OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			United Kingdom		
From what date will the policy be implemented?			01/04/2011		
Which organisation(s) will enforce the policy?			FSA/UK Courts		
What is the annual change in enforcement cost (£m)?			£negligible		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			**Costs:**	**Benefits:**	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	**Micro**	**< 20**	**Small**	**Medium**	**Large**
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	**Impact**	**Page ref within IA**
Statutory equality duties[1] Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	7
Small firms Small Firms Impact Test guidance	Yes	7
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes	7
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	7
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

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

+ Add another row

Evidence Base

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

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

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

	Y_0	Y_1	Y_2	Y_3	Y_4	Y_5	Y_6	Y_7	Y_8	Y_9
Transition costs	0.25m									
Annual recurring cost										
Total annual costs	0.25m									
Transition benefits										
Annual recurring benefits	12.05m	11.6m	11.2m	10.9m	10.5m	10.2m	9.8m	9.5m	9.2m	8.8m
Total annual benefits	12.05m	11.6m	11.2m	10.9m	10.5m	10.2m	9.8m	9.5m	9.2m	8.8m

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



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

A. Background

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

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

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

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

There are two policy options:

- Option 1 – To amend the legislation to enable the mutual sector to use electronic communications (such as email and website) to send certain statutory information to their members and the wider public; or

- Option 2 – To do nothing.

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

B. Key Changes Proposed and the Costs and Benefits

The section below provides a summary of the costs and benefits of each of the key proposals under option 2 as provided from the outcome of the Government's consultations with the mutual sector.

Key Proposal 1 – Building Societies

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

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

Key Proposal 2 – Friendly Societies

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

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

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

Key Proposal 3 – Financial Services Authority (FSA)

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

  This should result in costs savings for the FSA from not having to store these documents in hard copy format and by making it available to the public in electronic format. There will be a one off costs for the FSA to develop the IT system to be able to store these documents. This has been identified as approximately £0.25m initial cost.

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

- *Industrial and Provident societies and Credit unions will be able to:-*
  - *send annual returns and group accounts to members by providing website access;*
  - *send other statutory information to members by website;*
  - *use electronic communications to submit information to the FSA .*

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

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

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

C. Preferred Option

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

D. Implementation

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

E. Risks and Assumptions

None

F. Impact Tests

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

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

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

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

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

Annexes

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

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

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

Add annexes here.