

COVID-19 Briefing

Practical governance advice

Version two – 8 June 2020

COVID-19 Questions

SFHA is liaising with other bodies (such as the Scottish Housing Regulator, Financial Conduct Authority, Office of the Scottish Charity Regulator and Scottish Government) to provide answers to your questions. Members can send questions to:

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COVID-19 SFHA Member Forum

We have created a private forum on Microsoft Teams for SFHA members to discuss the situation, ask questions, and share advice and information. If you would like to join please email:

enquiries@sfha.co.uk

COVID-19 Latest Information

Information is also collated and regularly updated on SFHA's dedicated Covid-19 web page:

www.sfha.co.uk/COVID-19

www.sfha.co.uk/COVID-19

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COVID-19 Briefing – Practical governance advice

This document forms part of a series of briefings from the SFHA regarding the Coronavirus (COVID-19). This particular briefing note covers the following topics:

- [Annual General Meetings \(AGMs\)](#)
- [Governing Body Meetings](#)
- [Business Continuity](#)
- [Legal/Regulatory Obligations](#)
- [Appendix A: Business Continuity Update Template](#)
- [Appendix B: AGM Frequently Asked Questions](#)

Background

Whilst we understand the situation regarding the Coronavirus is ever evolving and seemingly changing on a daily basis, SFHA will be issuing a series of practical guidance notes designed to help members continue to operate as effectively as possible during this difficult period. These should be used in conjunction with the latest guidance issued by Scottish Government (SG) and the Scottish Housing Regulator (SHR), which can be found on SFHA's dedicated [Covid-19 briefings webpage](#). This will be continuously updated as any new information is made available.

The briefing that follows provides some practical advice in terms of governance, and will be of particular relevance to senior staff, governing body members and any staff with a specific governance role. This most recent update includes an update on AGMs and legislation permitting virtual attendance. It also includes an AGM Frequently Asked Questions document at [Appendix B](#).

Annual General Meetings (AGMs)

The Corporate Insolvency and Governance Bill is currently working its way through the UK Parliament and will include some key provisions regarding AGMs that impact on RSLs. It is expected to be finalised in the coming weeks (later in June). Most significantly, the legislation will:

- Allow for virtual AGMs to take place up until 30 September 2020, even if not provided for in the constitution, offering a means for members to vote but not participate further in the meeting.
- Change the period by which an AGM must take place for all RSLs regardless of when their financial year ended. All are required to take place by 30 September, which offers a means for those who were due to hold in June/July to delay the AGM without breaching their constitution.
- The provisions in the legislation will override anything that is stated in the constitution of an RSL.
- There are also provisions giving the Secretary of State powers to pass further regulations to extend the period by which an AGM must take place beyond 30 September, although it is likely that this is a "just in case" provision should there be a further spike in the virus.

COVID-19 Briefing – Practical governance advice

SFHA would recommend RSLs seek to hold their AGM virtually by 30 September using the provisions in this legislation (once enacted).

An **AGMs FAQ** document is included at [Appendix B](#). It covers:

- AGM requirements
- Current regulatory advice
- Virtual AGMs and new legislation
- What it means if you have to reschedule your AGM
- Quorum requirements
- SFHA Model Rules 2020

Governing Body Meetings

Format of meetings

The SFHA Charitable Model Rules 2020 provide for meetings to take place *in any manner which permits those attending to hear and comment on proceedings*¹. This means that governing body (GB) meetings can be held virtually (e.g. via Skype or Zoom or equivalent) and by means of conference calls. Governing body members (GBMs) can 'attend' in different ways i.e. some could participate via Skype whilst others participate via conference call by 'dialling-in'.

Recording Proceedings

The minutes should identify how those attending participated (e.g. alongside GBM names, include 'via Skype' or 'by phone'). If a connection is lost during the meeting, that should be recorded in the same way as if someone physically leaves a meeting (i.e. GBM present until Item X).

Quorum

Quorum requirements for ordinary GB meetings must be achieved. At least four members must be able to participate for the meeting to go ahead. If neither the Chair nor Vice-Chair are in attendance, the normal arrangement where those present appoint a Chair for the meeting will apply. If a quorum cannot be achieved, the meeting must be re-arranged.

Absence

Apologies for absence should be submitted and recorded in the usual way. Given the nature of the current situation, there may be some concerns about the requirement to attend/not miss four consecutive meetings. If this is an issue, it would be appropriate for the GB to grant a leave of absence to any GBM in this situation if they are unlikely to be able to participate in meetings for reasons related to the Covid-19 virus.

Minimum Number of Meetings

The SFHA Model Rules (and SHR constitutional requirements²) require at least six meetings of the GB per year. Virtual meetings 'count' towards this requirement. If you have cancelled or suspended (or intend to cancel/suspend) GB meetings as provided for in your emergency arrangements, you must ensure that this requirement will be met for the period between the 2019 and 2020 AGMs.

1 SFHA (March 2020) [SFHA Charitable Model Rules 2020](#), Rule 51

2 Scottish Housing Regulator (Feb 2019) [Regulatory Framework](#)

COVID-19 Briefing – Practical governance advice

GB Business

As it is likely that attendance/participation at meetings (however it is achieved) will be affected during the emergency, it would be wise to audit planned business and identify what is critical in order to focus scrutiny and oversight on these key areas. The following are some business-critical areas (in no particular order):

- Annual budget 2020/21
- Service delivery arrangements during the Covid-19 emergency
- Business continuity oversight
- Tenant safety assurance
- Annual audit
- Cash flow and covenant compliance
- Risk assessment and monitoring
- Health and safety for GBMs, staff and contractors (remote and on-site working)
- Insurance cover
- Development of a Recovery Plan

Emergency Arrangements, Decision Making and Delegated Authority

Many RSLs have provisions in their Standing Orders for emergency decision-making out with meetings of the GB. Some have already taken the decision to suspend GB meetings for the foreseeable future and to rely on these provisions. When drafted, these arrangements are likely to have been based on an expectation that the emergency would be immediate and short-lived, requiring action in advance of a planned meeting.

Some RSLs may find that their current Standing Orders do not make provision for emergency decision-making or that existing provisions are not adequate under the current circumstances. If this is the case, it is essential that proposed amendments to the Standing Orders or Scheme of Delegation are considered and approved by as many members of the GB as possible. Care should be taken to avoid placing those GBMs to whom authority is being delegated in a situation where they are also being asked to approve the amendments to give effect to the emergency arrangements (as this could represent a conflict of interests). For example, whilst it would be fine for office bearers to be involved in a vote/overall GB decision to delegate authority to office bearers, it would not be appropriate for a sub-committee made up of only the office bearers to take this decision.

SFHA advises that any proposed amendments to Standing Orders or delegated authorities are approved either at a 'virtual' meeting of the GB or by means of a written resolution, as provided for at Rule 55 of the SFHA Model Rules 2020³. It is perfectly proper for such resolutions to be circulated electronically and for approval to be given by means of a confirmatory e-mail reply (which should be retained).

It is essential to ensure that – during the ongoing prolonged and completely exceptional situation – normal good governance requirements and standards continue to be met as far as practically possible. Care should be taken to ensure that no undue or disproportionate level of responsibility is imposed on a small number of people (e.g. office bearers and senior staff) for a prolonged period. Conflicts of Interest must continue to be recognised and managed, meaning delegation of authority must ensure that there is sufficient flexibility to manage potential conflicts appropriately.

³ SFHA (March 2020) [SFHA Charitable Model Rules 2020](#), Rule 55: "A written resolution signed by not fewer than three quarters of the Committee Members or three quarters of the members of a sub-committee will be as valid as if it had been passed at a Committee Meeting or sub-committee meeting duly called and constituted".

COVID-19 Briefing – Practical governance advice

Delegation is not about transferring power. During the emergency, delegation should be focussed on ensuring effective, accountable decision-making and the appropriate exercise of authority. Consequently, it is important to ensure that authority is delegated appropriately. GBMs should not be asked to authorise actions or take decisions which are of an operational nature and in which they would not normally be involved. Similarly, staff should not be asked to act beyond their normal levels of responsibility. The key is to ensure that enough people have authority to make decisions and take action to ensure business continuity during a period when absence rates are likely to be high.

It is equally important to remember that decision-making and the exercise of authority/granting of approval must always be informed. For instance, responsibility for authorising payments should not normally be delegated to someone who is not in a position to know whether or not the payment should be made - and the current situation does not change that. Of course, what may have to change is providing access to information to enable informed decision-making but that should be appropriate to the role of the GB and the seniority of staff.

It will be helpful to identify those decisions and actions which will/may require to be authorised to ensure business continuity and tenant safety during the current emergency, Once identified, these can be used as a guide to identify the appropriate range of people who should hold authority.

Periodic bulletins to GBMs about the exercise of delegated authority will be essential throughout the emergency period. It is critical that decision-making continues to be robust, accountable and in accordance with organisational policies and procedures.

Maintaining Contact

In recognition of the age profile of the sector's GBMs, it is vital to ensure the well-being of GBMs during the emergency. Whilst the emphasis is likely to be on electronic communication, it is important to remember that not everyone has internet access. If e-mail; social media; WhatsApp; Zoom; Skype; Facetime etc. are not viable means of maintaining contact with individual GBMs, it is important to ensure that they do not feel excluded from the ongoing communication. Posting briefings in the mail should remain a viable method of communication and it is suggested that telephone calls from senior staff to 'check-in' on GBMs should be made regularly. GBMs support the sector with a huge degree of commitment and it is essential that their contributions continue to be recognised and valued during the ongoing unprecedented situation.

COVID-19 Briefing – Practical governance advice

Business Continuity

Every RSL will have business continuity arrangements, but most are unlikely to have had to implement them in situations such as the current emergency. Developing effective arrangements and adapting them to take account of experience remain key activities. The GB needs to be assured that there are robust and adequate arrangements in place to:

- ensure service delivery to tenants and customers
- safeguard staff
- meet legal and regulatory requirements
- honour contractual obligations
- meet covenant terms

Consideration should be given as to how this assurance can be provided to the GB both initially and on an ongoing basis to ensure effective monitoring and oversight. It may be appropriate to provide a regular briefing (frequency to be determined according to individual organisation's needs but likely to be at least monthly). It is important to remember that matters that are normally delegated to staff will continue to be so delegated. The ongoing emergency should not introduce additional reporting requirements or increased frequency unless specific matters require the GB's involvement. The Business Continuity Update Template at [Appendix A](#) may be helpful as part of this approach.

It is probable that organisations will experience prolonged periods of disruption because of staff absence. It is essential to be explicit from the outset that a huge amount of flexibility will be required from staff – an 'all-hands-on-deck' approach. This is likely to be easier to apply in small organisations where there is already a high level of collaboration across the staff team which means that information and knowledge are shared. Conversely, small staff teams are much more vulnerable to absence.

Whilst it is expected that high levels of delegation will be applied in large staff teams to compensate for absence, there must be clarity about who takes on responsibility when someone is suddenly absent. Staff and GBMs need to know the 'delegation chain' and this should be reviewed and communicated at the earliest opportunity. When delegated authority/responsibility is implemented, affected staff should be advised and, in the case of senior staff, the Chair should be notified. Whilst the SHR Statutory guidance on Notifiable Events⁴ indicates that the SHR only be notified when the senior officer is absent for an extended period of time – under the current circumstances the SHR has asked to be kept informed if the senior officer is unable to work. .

For smaller organisations where the capacity to delegate from the senior officer may be limited to e.g. one or two colleagues, consideration could be given to a partnering arrangement with another RSL. In the event that the senior officer and the appointed deputy are unwell and absent at the same time, responsibility would be transferred to the appointed 'partner' senior officer. Any such arrangement would have to be approved by the GB as part of the business continuity arrangements and authority would have to be very clearly defined to focus only on what is essential.

The governance responsibility for the GB is to ensure that services to tenants are maintained and that health and safety obligations to staff are honoured. Whilst it is reasonable for staff to continue to work whilst self-isolating, it is not reasonable to expect someone who is unwell to continue to work or be asked to make decisions.

4 Scottish Housing Regulator (April 2019) [Statutory Guidance on Notifiable Events](#)

COVID-19 Briefing – Practical governance advice

Legal/Regulatory Obligations

Scottish Housing Regulator Guidance and Returns

The SHR has extended the deadline for financial returns. This means:

- Audited accounts do not have to be submitted until 9 months after the end of the period to which they relate (instead of six months)
- The submission deadline for Five Year Financial Projections is extended to 30 September
- The deadline for the Annual Financial Statements submission is extended to 31 December

More details are available on the SHR website here: [SHR Financial Returns Extension](#)

The SHR is requesting a monthly return from all landlords. The Return (to be submitted by 7th of each month) does not require GB approval but should be reported to the next meeting. SHR publishes a monthly sector dashboard of the results here:

- [Monthly Dashboard](#)
- [SHR Monthly Return Template](#)

The SHR issued advisory governance guidance to all RSLs in April (with an update due in June) available here: [SHR Coronavirus Advisory Guidance \(April 2020\)](#)

Michael Cameron, CEO of the SHR, participated in an SFHA webinar on 28 April, which is available on the SFHA website [here](#).

The SHR is currently discussing the Annual Assurance Statement requirement for this year and if this will be amended. SFHA will update this briefing and its Self Assurance guidance once more information is available.

Employer Obligations

The GB should be assured that staff welfare is being maintained whilst alternative working arrangements are being implemented. Considerations are likely to include arrangements for staff support (e.g. team meetings and 1:1s could happen remotely via Skype or Zoom) and the resilience of IT connections to support effective home working. It would be appropriate to establish arrangements for line managers to maintain daily contact with staff to ensure their well-being during homeworking. Should an employee become unwell, normal absence management processes would apply.

Annual Audits and Submitting Accounts to Regulators

The virus emergency has occurred just at the point when attention, for most RSLs, is turning to the financial year-end, the preparation of the annual accounts and the conduct of the annual audit. Audit planning meetings will have been taking place and audit dates will already be fixed.

The expectation is that annual audits will proceed, with auditors currently working with their clients to identify how to ensure that the planned programme of work can be maintained. For some, this involves undertaking work remotely and some auditors have established secure IT methods for data sharing and review; others have re-scheduled the programme to accommodate the disruption associated with the early stages of lockdown. The GB needs to be assured that the requirements for the audit can be fulfilled, including the capacity of the appointed auditor to carry out the onsite work and prepare their report for presentation to the GB.

COVID-19 Briefing – Practical governance advice

The Scottish Government has agreed [additional temporary legislation](#) to extend the deadline for submitting approved accounts to the Scottish Housing Regulator from six to nine months. OSCAR has said that Scottish Charities will have six months' leeway, beyond the normal deadlines, in submitting returns and accounts to them and has been explicit in saying that no charity will be penalised for late submission (see OSCAR webinar [Charities and the Coronavirus 13 May 2020](#))

The FCA has also indicated those organisations who are required to submit accounts to them by 30 June, will not be penalised for submitting up to three months late. SFHA has contacted the FCA to determine if this will also be applied to those submitting in August/September (in line with the legislative changes to the SHR requirement). The FCA will take a decision on this in June.

Please note: there are currently no provisions in the Corporate Insolvency and Governance Bill relevant to an RSL's accounts, but we will monitor this as the legislation progresses.

Adoption of 2020 Model Rules

If RSLs do not feel it would be practical to adopt the new model this year, then there is no issue with waiting until your AGM in 2021. As the update is relatively minor, some RSLs may decide that they still wish to do so this year – but there is no requirement to do so.

The SHR Advisory Governance Guidance from April states:

“Clearly your focus during the Coronavirus pandemic is on continuing to deliver services in these very challenging circumstances and this may impact on your capacity and ability to update your constitution to comply with the new Regulatory Framework. We recognise that it may not be possible for you to update your constitution at this year's AGM. Please let us know if you are unable to do so and when you think you will be able to make the necessary changes to your constitution.”

Furthermore Michael Cameron stated at an [SFHA webinar on 28 April](#) that it would be fine to adopt in 2021, and that under the current circumstances *“this is not something that (the SHR) will make a big deal out of.”*

It is important to note that all of the provisions in the Corporate Insolvency and Governance Act regarding virtual attendance will also apply to Special General Meetings (SGMs). An SGM would be necessary to adopt the new model rules – with most organisations usually holding this at the same time as the AGM. The [Supporting Guidance to the SFHA Model Rules 2020](#) outlines the necessary process when carrying out amendments to rules, and this may help inform any decision on whether or not to hold off until next year.

SFHA will also shortly update the Supporting Guidance to the rules to include an optional amendment that organisations may wish to adopt to allow for virtual attendance at AGMs on a more permanent basis (the provisions in the Corporate Insolvency and Governance Bill expire on 30 September).

COVID-19 Briefing – Practical governance advice

GBM Annual Reviews

Where annual reviews normally involve face to face meetings (as is recommended in SFHA's GBM Annual Review Guidance⁵), it should be relatively straightforward to adjust arrangements to involve telephone or video conversations. These will continue to be structured around the agreed template and recorded in the normal fashion. Feedback reporting to the GB and the development of the GB training, development and succession plans should be unaffected. Where it is not possible to conduct one or more individual reviews by an alternative means, this should be recorded as being related to the Covid-19 emergency and should not be treated as a material breach of the Regulatory Standards. Outstanding reviews can be conducted in the normal way once the emergency is over.

SFHA will shortly issue supplemental Coronavirus guidance to its existing Governance materials – including its Governance Body Annual Review Guidance – to provide a steer on further considerations during the ongoing crisis.

5 SFHA (2015) [Governing Body Member Annual Review Guidance](#)

COVID-19 Briefing – Practical governance advice

Appendix A: Business Continuity Update Template

Critical Issue	Update/Assurance	Actions Taken/Required
Service Delivery/ Performance		
Repairs		
Allocations		
Voids management		
Rent payment facilities		
Homelessness applications/referrals		
Welfare benefits		
Tenancy sustainment ⁶		
Staff Welfare		
Adequate Cover		
Remote working arrangements		
Absence levels		
Support/welfare issues		
Legal and Regulatory Requirements		
Tenant Safety		
Staff Safety/Employment		
Health and Safety		
Construction site safety/security		
Notifiable Events ⁷		
Governance		
Finance		
Cash flow		
Income protection measures		
Debt management		
Covenant compliance		
Contractual Obligations		
To service providers		
From third parties		
Resilience of contractors		
Implementation of Delegated Authority		
Operational (staff)		
Governance (GB)		

6 Including court actions for recovery of possession: not currently suspended

7 Including Office Closure and interruptions to service delivery

COVID-19 Briefing – Practical governance advice

Appendix B: AGM FAQs

The following subjects are addressed within this Appendix:

1. [AGM requirements](#)

- What is the requirement within the SFHA Model Rules?
- Is it a legal requirement to hold an AGM?

2. [Current regulatory advice](#)

- What advice has the Scottish Housing Regulator (SHR) given about AGMs during the Coronavirus crisis?
- What about OSCR and the FCA?

3. [Virtual AGMs and new legislation](#)

- Can we hold virtual AGMs?
- What if the lockdown measures are still in place in September or beyond?

4. [What it means if you have to reschedule your AGM](#)

- Should we reschedule our AGM?
- Will rescheduling our AGM impact on having our accounts approved?
- If we have unopposed nominations for the board – can these be approved prior to an AGM?
- Can members who were due to step down at AGM continue on the governing body until we reschedule? What happens if they wish to step down anyway?
- Will rescheduling our AGM impact on appointing the auditor?

5. [Quorum requirements](#)

- How many members do we need to attend the AGM?
- How can proxies be used as a means of achieving a quorum?
- What if we attempt to hold an AGM but do not achieve a quorum?

6. [SFHA Model Rules 2020](#)

- Should we adopt the SFHA Model Rules 2020 this year or wait until next years' AGM (2021)?

Please note:

- i. The [Corporate Insolvency and Governance Bill](#) is currently working its way through the UK Parliament which will:
 - allow for virtual AGMs to take place up until 30 September,
 - change the period by which an AGM must take place for all RSLs regardless of when your financial year ended.

This legislation is referred to throughout this document and we will update the guidance once the legislation is finalised (later in June).

- ii. It is recognised that RSLs have yet to adopt the SFHA Model Rules 2020. Whilst the FAQ document refers to clauses within the 2020 model throughout, all of the clauses referred to are longstanding and also included in earlier versions adopted.

COVID-19 Briefing – Practical governance advice

1. AGM requirements

What is the requirement within the SFHA Model Rules?

The [SFHA Model Rules 2020](#) state at Rule 20 that:

“The Association will hold a general meeting known as the annual general meeting within six months of the end of each financial year of the Association.”

The model defines the functions of the AGM as:

- 20.1: present the Chairperson’s report on the Association’s activities for the previous year;
- 20.2: present the accounts, balance sheet and auditor’s report;
- 20.3: select Committee Members;
- 20.4: appoint the auditor for the following year; and
- 20.5: consider any other general business included in the notice calling the meeting.

Is it a legal requirement to hold an AGM?

Not holding an AGM would breach an RSL’s constitution and therefore breach the requirements of the Scottish Housing Regulator (and the Office of the Scottish Charity Regulator (OSCR) where the RSL is a charity) and Financial Conduct Authority (FCA). This would be a Notifiable Event to the SHR.

The requirement in the SFHA Model Rules is based on the Scottish Housing Regulator’s Constitutional Requirements within its [Regulatory Framework](#), in particular Constitutional Requirement 29 that states:

“There is a clear procedure, including the quorum and voting procedure for the membership of the RSL to meet and it is clear what business the membership can discuss and what decisions it can make, subject to a minimum of one annual meeting.”

The most important aspect of an AGM is to demonstrate accountability to shareholding members, and the Co-operative and Community Benefits Societies Act 2014 requires the arrangements for general meetings of these members to be specified in the constitution of the RSL.

COVID-19 Briefing – Practical governance advice

2. Current regulatory advice

What advice has the SHR given about AGMs during the Coronavirus crisis?

The [SHR's advisory governance guidance](#) issued in April states:

"We recognise that while the restrictions on social gatherings remain in place some RSLs may have to delay holding their AGM which will mean they won't comply with the provisions in their constitution about holding their AGM within 6 months of the year end.

"Our advice to RSLs is to take appropriate advice to guide your decision about your AGM. If having taken advice you decide you will be unable to hold your AGM on time please get in touch with us to let us know by submitting a Notifiable Event. If you have been unable to hold your AGM on time because of the Coronavirus you should arrange your AGM for as soon as possible after the restrictions have been lifted."

Therefore, the SHR expectation remains that AGMs will take place, albeit that these may have to be rescheduled. The Corporate Insolvency and Governance Bill will allow for virtual AGMs, which impacts significantly on the ability of RSLs to hold an AGM in the coming months (see [Can we hold virtual AGMs?](#)).

The SHR has highlighted that if any organisations are concerned regarding AGMs or any other regulatory requirements during this time, to contact their Lead Regulator for a chat about their particular situation.

What about OSCR and the FCA?

OSCR held a webinar entitled [Charities and the Coronavirus](#) on 13 May outlining general advice.

In April, the FCA provided the following statement, particularly in regard to AGMs:

"We are aware that some societies are considering a number of options, including postponing scheduled member meetings, such as Annual General Meetings (AGMs). Societies are concerned that this could lead to them breaching their own rules or legislative requirements.

"It is for societies to reach their own decision as to whether to go ahead with any planned meeting, taking into account any relevant Government guidance, their own individual circumstances and, where appropriate, legal advice. Societies should take reasonable steps to ensure they meet any obligations they are under as soon as reasonably practicable. Societies will want to consider alternative arrangements such as making use of video conferencing where permitted (see [Can we hold virtual AGMs?](#))

"The rules of an individual society govern the relationship between a society and its members. It is important members are afforded the ability to exercise their rights under the rules of a society. Societies may want to take their own advice to consider any risks arising from action taken by members as a result of a breach of their own rules. The FCA has no role to play in determining disputes over society rules.

COVID-19 Briefing – Practical governance advice

“Where, following Government guidance, the postponement of a general meeting results in a breach of a legislative requirement, it may fall to the FCA to make a decision as registering authority as to what if any action we take. We do not consider it to be in the public interest for us to take action in this context where we can see that a society is taking steps to ensure they meet the legislative obligation as soon as reasonably practicable. Members of societies will, of course, retain the ability to take action in accordance with their rights under the rules of a society.”

3. Virtual AGMs and new legislation

Can we hold virtual AGMs?

The [Corporate Insolvency and Governance Bill](#) will make provisions to hold virtual AGMs up until 30 September 2020, which can be used as a means of holding an AGM with no one attending physically.

Under the SFHA Model Rules 2020 (and previous versions) there is no provision for individuals to attend an AGM via video link or phone. This is because Rule 24.1 – that outlines the quorum that must be present for a general meeting to be valid – refers to members being “present at the venue”. Under normal circumstances, a rule change would be necessary to permit virtual attendance. However, the Bill makes specific provisions to override an organisation’s constitution to allow for virtual AGMs up to 30 September.

As organisations will likely have been using similar technology to hold virtual governing body meetings, this will place many RSLs in a good position to apply this technology to AGMs. Under the current terms of the Bill, those attending would be given the right to vote, but not to participate beyond this. This will also make the technological requirements more manageable. One issue that will be necessary to overcome will be if members have the necessary technology to attend in this way, and how this could restrict attendance for those who do not. Proxies may be one method to allow those affected to still be represented at the meeting (see [how can proxies be used as a method of achieving a quorum with fewer people attending?](#))

When holding a virtual AGM (once the legislation is finalised), here are some practical points for consideration:

- Does your RSL have the necessary technology?
- Do your members have the necessary technology/WiFi connection etc?
- What support can be provided for members who do not have access to technology to allow them to participate, or who may need support/training to use the necessary technology?
- Have you undertaken an equalities assessment to take account of the impact this may have on participation – e.g. on individuals with disabilities?
- Can you ensure that participants are valid shareholders entitled to attend?
- How would voting be recorded for governing body elections?
- If attending by conference call, would the RSL reimburse members the cost for participating?

COVID-19 Briefing – Practical governance advice

SFHA will produce further guidance on holding virtual AGMs/allowing virtual attendance in due course. SFHA will also be updating the Supporting Guidance to the Model Rules to allow for a permanent change to be made by organisations who wish to allow virtual attendance going forward beyond 30 September this year.

Important to carry out an equalities assessment for virtual AGMs to demonstrate have considered and taken account of any impacts on people with protected characteristics, for example individuals with disabilities. Would be helpful for the guidance to say more about how an RSL could do that.

What if the lockdown measures are still in place in September or beyond?

The [Corporate Insolvency and Governance Bill](#) will make provisions to hold virtual AGMs by 30 September this year – meaning no physical attendance is necessary to hold an AGM. This should offer a means of holding an AGM with no physical attendance, even with restrictions on public gatherings still in place.

There are contingency provisions in the Bill that would allow the Secretary of State to extend the time frame in which AGMs must take place (without breaching your constitution) beyond 30 September in circumstances where it became necessary. SFHA would recommend proceeding on the basis of holding a virtual AGM by 30 September.

4. What it means if you have to reschedule your AGM

Should we reschedule our AGM?

The [Corporate Insolvency and Governance Bill](#) currently working its way through the UK Parliament, will make provisions to ensure that organisations holding their AGM by 30 September will not be in breach of their constitution. This applies to all RSLs, including those who were due to hold their AGM in June.

The Bill will also make provisions for holding virtual AGMs up to 30 September, which will provide RSLs with a means to hold AGMs without anyone physically attending (see [Can we hold virtual AGMs?](#))

Whilst the duration of the current emergency is uncertain, the timescales indicated by the [Scottish Government's route map](#) show that holding public gatherings in any form will remain illegal for several months to come (until at least Phase 3). Consequently, SFHA advise that RSLs make use of the upcoming virtual AGM provisions in order to hold an AGM by 30 September. Where an AGM would normally take place in June or July 2020, SFHA would recommend rescheduling until Aug/September to allow more time to arrange what will be a very different meeting than previous years.

COVID-19 Briefing – Practical governance advice

For organisations who have had to reschedule from their planned timeframe, it will have a consequential impact on the arrangements for the election and re-election of GBMs, for the nomination of candidates and for the 'closure' of the membership register 14 days in advance of the AGM⁸. SFHA has confirmed with the Scottish Housing Regulator that there would be no issue with, for example, a Chair who is in the final year of a five-year term and would be expected to stand down at the AGM scheduled for June 2020, continuing until the re-scheduled AGM in September 2020. Alternatively, the GB may decide to implement the agreed Succession Plan and elect a new Chair in advance of the 2020 AGM, as the election of the Chair is the responsibility of the GB and not the shareholding members.

Similarly, SFHA has confirmed with the SHR that there would not be any issue with slightly extending the 'nine-year rule' in circumstances where the AGM had to be delayed. GBMs continue in their role until the AGM, with experienced members' effectiveness reviewed as part of the ongoing and re-scheduled process.

SFHA will shortly be providing a supplemental briefing to members, including updates to some of our key governance guidance in terms of the Coronavirus. Within this we will include further considerations in terms of Governing Body Annual Review (appraisal) and the nine-year rule. We will also provide further guidance regarding virtual AGMs.

Will rescheduling our AGM impact on having our accounts approved?

Whilst it is one of the functions of the AGM (as per Rule 20.2) to present the accounts, balance sheet and auditor's report, it is not a requirement to have the accounts approved at the AGM. The SHR's Advisory Governance Guidance released in April states:

"Not being able to hold your AGM within 6 months of the year end due to Coronavirus shouldn't mean your accounts can't be approved. RSLs which are Registered Societies are not required by the Co-operative and Communities Benefits Societies Act 2014 or by the Model Rules to have their accounts approved at AGMs. RSLs which are Limited Companies are similarly not required by the Companies Act 2016 to have their accounts approved at an AGM. So if you can't hold you AGM you may still be able to approve your accounts on time. It is important you take your own professional advice about how to appropriately approve your accounts, particularly if you have not adopted the Model Rules and might have different arrangements set out in your constitution."

The Scottish Government has also agreed [additional temporary legislation](#) to extend the deadline for submitting approved accounts to the Scottish Housing Regulator from six to nine months. OSCR has said that Scottish Charities will have six months' leeway, beyond the normal deadlines, in submitting returns and accounts to them and has been explicit in saying that no charity will be penalised for late submission (see OSCR webinar [Charities and the Coronavirus 13 May 2020](#)).

The FCA has also indicated those organisations who are required to submit accounts to them by 30 June, will not be penalised for submitting up to three months late. SFHA has contacted the FCA to determine if this will also be applied to those submitting in August/September (in line with the legislative changes to the SHR requirement). The FCA will take a decision on this in June. Please note: there are currently no provisions in the Corporate Insolvency and Governance Bill relevant to an RSL's accounts, but we will monitor this as the legislation progresses.

COVID-19 Briefing – Practical governance advice

In summary, the annual accounts are **presented** to the shareholding members at the AGM, they are **not approved** by the members. Approval is the responsibility of the governing body. Normally, having presented the accounts to the AGM and answered any questions from members, the accounts will then be submitted to the SHR, FCA and OSCR.

If we have unopposed nominations for the board – can these be approved prior to an AGM?

This cannot be done without an AGM.

The election process is not triggered until members are invited to stand for committee as part of the notice of intention to hold an AGM (issued to members a minimum of 28 days before). Until this is issued no nominations can be submitted by members.

It is not recommended to issue such an invitation until you intend to hold an AGM. If there is any shortfall in your governing body whilst you are not in a position to hold an AGM (the minimum number of members is 7, and it is a **Notifiable Event** to the SHR if numbers fall to 7 or below), it is recommended you try to use casual vacancies or co-optees to address this until such time as an AGM can take place.

Appendix G in the Supporting Guidance to the Model Rules provides some more guidance on the election process and necessary timescales prior to the AGM for providing papers, receiving nominations etc, as well as more information on casual vacancies and co-optees.

Can members who were due to step down at AGM continue on the governing body until we reschedule? What happens if they wish to step down anyway?

As per Rule 39.1, at the AGM a third of members are required to step down (usually those who have served the longest since last stepping down). There would be no issue for those intending to step down staying on as a governing body member until such time as a rescheduled AGM takes place.

However, if there are members intending to step down and not stand for re-election then this could potentially leave governing bodies in a position where they have fewer than the minimum 7 members (required by Rule 37.1) if they cannot hold an election/appoint new members to replace them at an AGM. This could be a particular problem if those stepping down decide they do not wish to hold off until a rescheduled meeting.

The SHR Governance Advice note from April states:

“If governing body membership falls below the minimum number of people required in your organisation’s constitution you should report it to us as a Notifiable Event and refer to your constitution.

Your constitution should set out how this must be managed. The (SFHA) model rules state that in these types of circumstances, landlords can operate as normal for two months. After this, the only powers the governing body has are to appoint new members. Governing bodies can appoint co-optees or fill casual vacancies to bring their numbers up.”

If you would be interested in being a part of a pool of volunteers to fill casual vacancies (until such time that an AGM can take place) that SFHA members can draw upon, please contact Alan Stokes astokes@sfha.co.uk.

COVID-19 Briefing – Practical governance advice

Will rescheduling our AGM impact on appointing the Auditor?

Section 93 of the Co-operative and Communities Benefits Societies Act 2014 states:

“A qualified auditor appointed to audit a registered society’s accounts and balance sheet for the preceding year of account (“the existing auditor”) is re-appointed as the society’s auditor for the current year of account.”

Essentially this means that the auditors’ appointment will continue unless (as outlined by Section 93 of the Act): the auditor has given their notice; is ineligible to be the auditor or a resolution is passed at a general meeting. This means that delaying an AGM should not impact on reappointment.

5. Quorum requirements

How many members do we need to attend the AGM?

Rule 24.1 in the SFHA Model Rules 2020 states:

“For a meeting to take place there must be at least seven Members either present at the venue or represented at the venue by a representative approved in terms of Rule 27.1. If there are more than 70 Members, at least one-tenth must either be present or represented at the venue by a representative in terms of Rule 27.1.”

The quorum requirements are unaffected by the Corporate Insolvency and Governance Bill – other than it would allow members participating virtually to count towards the quorum.

From analysis of the [2018/19 Annual Return on the Charter Statistics](#) on the SHR website,

- on average RSLs have 167 members, with on average 24 members attending the AGM. This means the average quorum is approximately 17.
- Only 44 have 70 members or fewer (which means a quorum of 7)
- 49 RSLs have 150 or more members, meaning a quorum of 15 or more
- 25 RSLs have more than 200 members, with 8 of these between 500 and 2000 members (reaching a 10% quorum may be particularly difficult in these cases)

How can proxies be used as a means of achieving a quorum?

If the constitution you have adopted allows for proxies to count towards the quorum, then this may be a sensible method of achieving a quorum with fewer people required to virtually attend. This may also be particularly helpful where a member does not have access to the necessary technology to participate, or if there is a capacity limit in terms of the RSL’s technology.

As above, Rule 24.1 in the SFHA Model Rules 2020 specifically refers to members represented at the venue by a representative approved in terms of Rule 27.1 and that those represented in this way count towards the quorum. Rule 27.1 states:

“To appoint a representative to vote on your behalf by proxy, you must let the Association have a properly completed document in the form shown in Appendix 1. Your representative does not need to be a Member. The document must reach the Association at least five days before the meeting at which you want to be represented. The Chairperson shall not be entitled to act as a representative for any other Member.”

COVID-19 Briefing – Practical governance advice

Rule 27.3 states:

“The maximum number of proxy votes that may be cast by any one person is 10.”

This means that in theory, the average sector quorum of 17 could be achieved with just two individuals virtually attending – and the attending individuals technically do not even have to be members (under Rule 27.1). This method of achieving a quorum should only be used to deal with the completely exceptional current circumstances this year, and safeguards should be built in to make sure that all members have the chance to be included in the process, such as:

- Limiting the business of the meeting to only the core functions of the AGM outlined in your constitution (i.e. do not include any other business)
- Clear communications with shareholding members in advance, outlining the process that will be followed and how to nominate a proxy.
- Elections would have to be carefully administered, and postal voting (for those who have the provision to do so in their rules) could be a useful method of enhancing the democratic process
- Potentially naming some (or all) representatives in advance – with members of the governing body (who are not standing for election) a possible option. The RSL could then ask members to nominate one of the named representatives as a proxy if they so wished. If the RSL received contact from a large number of members seeking to nominate a proxy, it may need to increase the number of representatives
- Phone calls/further reminders to members about submitting proxies are recommended – particularly to ensure all members have an opportunity to be represented
- Offering members the chance to ask questions in advance
- It might also be helpful commit to members that you will hold a physical meeting as soon as possible (not another AGM - just a forum or something similar to allow people the chance to attend and have a more full discussion).
- The Supporting Guidance to the SFHA Model Rules at Appendix G outlines the necessary timescales in terms of providing notice for the AGM and the election process. From a practical perspective, organisations may wish to allow more time than usual given how different this AGM will be from previous years.

What if we attempt to hold an AGM and do not achieve a quorum?

The SFHA Model Rules 2020 state at Rule 24.2:

“If not enough Members are present in person or by representative within half an hour of the time the meeting was scheduled to start, the meeting shall be rescheduled to the same day the following week at the same time and at such place as may be fixed by the Chairperson of the meeting and announced at the meeting. There is no need to give notice to Members of the rescheduled meeting. If at that meeting there are not enough Members present in person or by representative at the scheduled starting time the meeting can still go ahead.”

This effectively means the AGM can still take place even if there is no quorum. It is not recommended to use this rule frequently in the interests of ensuring a democratic and meaningful AGM, but under the current circumstances it may be necessary.

COVID-19 Briefing – Practical governance advice

However, the key point remains that it is not possible to attempt to hold any form of physical AGM whilst restrictions on indoor gatherings and physical distancing requirements are in place. For example, it would be illegal to promote any kind of public gathering - even if this was on the basis of sending out notice of an AGM that you knew could not happen (as no one could legally attend) in order to use Rule 24.2 the following week.

Once the Corporate Insolvency and Governance Bill comes into effect, this rule could be used to reschedule an inquorate virtual meeting if necessary.

6. SFHA Model Rules 2020

Should we adopt the SFHA Model Rules 2020 this year or wait until next years' AGM (2021)?

If RSLs do not feel it would be practical to adopt the new model this year, then there is no issue with waiting until your next AGM in 2021. As the update is relatively minor, some RSLs may decide that they still wish to do so this year – but there is no requirement to do so.

The SHR Advisory Governance Guidance from April states:

“Clearly your focus during the Coronavirus pandemic is on continuing to deliver services in these very challenging circumstances and this may impact on your capacity and ability to update your constitution to comply with the new Regulatory Framework. We recognise that it may not be possible for you to update your constitution at this year’s AGM. Please let us know if you are unable to do so and when you think you will be able to make the necessary changes to your constitution.”

Furthermore Michael Cameron stated at an [SFHA webinar on 28 April](#) that it would be fine to adopt in 2021, and that under the current circumstances “this is not something that (the SHR) will make a big deal out of.”

It is important to note that all of the provisions we have outlined in this document regarding quorums and attendance also apply to Special General Meetings (SGMs). An SGM would be necessary to adopt the rules – with most organisations holding this at the same time as the AGM. The [Supporting Guidance to the SFHA Model Rules 2020](#) outlines the necessary process when carrying out amendments to rules, and this may help inform any decision on whether or not to hold off until next year.

SFHA will also update the Supporting Guidance to include an optional amendment organisations may wish to adopt to allow for virtual attendance at AGMs on a more permanent basis (the provisions for virtual AGMs in the Corporate Insolvency and Governance Bill will expire on 30 September 2020).

A microscopic view of COVID-19 virus particles, showing their characteristic spherical shape and surface spikes. The image is rendered in a dark purple color scheme.

www.sfha.co.uk/COVID-19

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