

# COVID-19 Briefing

## Practical governance advice

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Version three – 15 July 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:

**Alan Stokes**  
Policy Lead  
[astokes@sfha.co.uk](mailto:astokes@sfha.co.uk)

**Lorna Wilson**  
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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](mailto: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](http://www.sfha.co.uk/COVID-19)

[www.sfha.co.uk/COVID-19](http://www.sfha.co.uk/COVID-19)

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## 1. 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 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. Appendices are included providing further guidance pertaining to SFHA's existing governance documentation; AGMs (including specific advice on holding virtual AGMs this year); and business continuity.

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

## 2, Existing SFHA Governance Documentation/Guidance

Whilst the suite of governance documents and guidance available to SFHA members remains relevant during this difficult time, there are a number of considerations that should be taken into account during the ongoing crisis that RSLs should bear in mind when using them. [Appendix A](#) outlines supplemental coronavirus considerations pertaining to:

- Model Code of Conduct for Staff
- Model Code of Conduct for Governing Body Members
- Model Entitlements Payments and Benefits Policy
- Schedule of Registers
- Governing Body Member Annual Review (Appraisal) Guidance
- Governing Body Succession Planning and Recruitment Guidance
- Senior Staff Succession Planning Guidance

Please note that there will also be a separate more in-depth general review of all existing SFHA governance guidance, which has had to be pushed back in the wake of the ongoing crisis. We hope to resume the review process later this summer and are currently seeking volunteers to be a part of small working groups - in order to provide a view on how the documents have worked in practice, comment on revised drafts, and offer good practice examples. More details on the in depth review process and how to sign up are available here: [Review of Existing SFHA Governance Guidance](#)

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.

### 3 Annual General Meetings (AGMs)

The [Corporate Insolvency and Governance Act 2020](#) received royal assent on 25 June. Most significantly, the legislation:

- allows 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 physically attend or participate further in the meeting.
- changes 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 2020, 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 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.

At the time of writing, Scotland is in Phase 3 of the Scottish Government route map, which means that restrictions continue to be in place in respect of public gatherings. SFHA therefore recommends RSLs seek to hold their AGM virtually by 30 September using the provisions in this legislation.

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

[Appendix C](#) provides some practical guidance on holding a virtual AGM by 30 September, including:

- Technology considerations
- Format of meeting
- Equalities
- Convening a virtual meeting
- Calling the meeting
- Achieving a quorum
- Confirming eligibility to attend virtual AGMs
- Voting requirements

- Voting methods
- Proxy votes
- Nominations for governing body
- Recording the AGM
- Information to members post meeting
- Timeline
- Holding a virtual AGM after 30 September 2020

A separate SFHA briefing note on the technical aspects of Digital Meetings/Events is also available here:

[SFHA Digital Meetings/Events Briefing](#)

### 3. 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*.<sup>1</sup> 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'.

An SFHA briefing on Digital Meetings/Events is available here:

[SFHA Digital Meetings/Events Briefing](#)

#### 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

<sup>1</sup> SFHA (March 2020) [SFHA Charitable Model Rules 2020, Rule 51](#)

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 Rules (and SHR constitutional requirements<sup>2</sup>) 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.

### **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

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<sup>2</sup> Scottish Housing Regulator (Feb 2019) [Regulatory Framework](#)

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 2020<sup>3</sup>. 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.

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.

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<sup>3</sup> 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”.*

## Maintaining Contact

In recognition of the age profile of the sector's GBMs, it is important 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; What's app; 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.

## 4. 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 F](#) 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 Events<sup>4</sup> 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.

## 5. Legal/Regulatory Obligations

### Scottish Housing Regulator Guidance and Returns

Following changes in the Coronavirus (Scotland) (No.2) Bill, 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
- The deadline for the Loan Portfolio Return is extended to 31 July

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 7<sup>th</sup> 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:

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

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

The SHR issued advisory governance guidance to all RSLs in April (with an update due in July) 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:

- [SFHA webinar on 28 April](#)

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.

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. 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 indicated those organisations who are required to submit accounts to them by 31 October, will not be penalised for submitting up to three months late. For example, this would mean that any due to be submitted by 30 September would not be penalised by the FCA if delayed up until 30 December.

### **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 2020 regarding virtual attendance 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 has also updated 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 Act expire on 30 September 2020).

### **GBM Annual Reviews**

Where annual reviews normally involve face to face meetings (as is recommended in SFHA’s GBM Annual Review Guidance<sup>5</sup>), it should be relatively straightforward to

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<sup>5</sup> SFHA (2015) [Governing Body Member Annual Review Guidance](#)

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 has prepared 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. This can be found at [Appendix A](#).

### Further Information

If you have any queries regarding this briefing note please contact Alan Stokes, Policy Lead [astokes@sfha.co.uk](mailto:astokes@sfha.co.uk)

In terms of the Coronavirus more generally, SFHA is working with the Scottish Government and Scottish Housing Regulator to provide answers to all queries received. Members can send questions to Lorna Wilson, Head of Membership, Policy and Innovation, [lwilson@sfha.co.uk](mailto:lwilson@sfha.co.uk) and Sara Jackson, Head of Business Services, [sjackson@sfha.co.uk](mailto:sjackson@sfha.co.uk)

We have also 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 SFHA Digital Lead Gary Dickson [gdickson@sfha.co.uk](mailto:gdickson@sfha.co.uk)

## Appendix A – Existing SFHA Governance Guidance: Coronavirus Considerations

The following SFHA guidance documents are considered within this appendix in respect of the ongoing Coronavirus crisis:

1. [Model Code of Conduct for Governing Body Members](#)
2. [Model Code of Conduct for Staff](#)
3. [Model Entitlements Payments and Benefits Policy](#)
4. [Model Schedule of Registers](#)
5. [Governing Body Member Annual Review \(Appraisal\) Guidance](#)
6. [Governing Body Succession Planning and Recruitment Guidance](#)
7. [Senior Staff Succession Planning Guidance](#)

### 1. [Model Code of Conduct for Governing Body Members](#)

The table below outlines the relevant clauses and principles impacted by the Covid-19 situation within the SFHA Model Code of Conduct for Governing Body Members. It should be noted that the requirements of the Code of Conduct continue to apply throughout any period of Leave of Absence that is granted to a GBM.

Relevant Principle(s) in Code	Covid-19 Implications
<p><b>A - Selflessness</b></p> <p>A1 - You must always uphold and promote our aims, objectives and values and act to ensure their successful achievement.</p> <p>A3 - You must accept responsibility for all decisions properly reached by the Governing Body (or a sub-committee or working group with appropriately delegated responsibility) and support them at all times, even if you did not agree with the decision when it was made.</p> <p>A4 - If you are unable to support in public a decision that has been properly reached by the Governing Body, you should resign.</p> <p>A7 - You must not seek to use your influence for the benefit of yourself or your business interests, or the benefit of someone to whom you are closely connected or their business interests.</p>	<p><b>Collective Responsibility</b></p> <p>Each GBM must accept responsibility for and support all decisions that have been properly made. During the emergency, many RSLs have taken actions which have been authorised by the exercise of delegated authority. It is important that there is regular communication with all GBMs to report the exercise of delegated authority and to log the decisions and consequent actions taken within this framework.</p>
<p><b>A - Selflessness</b></p> <p>A7 - You must not seek to use your influence for the benefit of yourself or your business interests, or the benefit of someone to whom you are closely connected or their business interests.</p> <p><b>B - Openness</b></p>	<p><b>Using Influence</b></p> <p>As people with a strong social commitment, many GBMs are involved with other organisations in addition to their roles with the RSL. It is important that these other roles are recognised and, where relevant/appropriate, recorded to</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p>B2 - You should avoid any situation that could give rise to suspicion or suggest improper conduct.</p> <p>B3 - You must declare any personal interest(s) and manage openly and appropriately any conflicts of interest and observe the requirements of our policy on the matter.</p>	<p>ensure that any partnerships or collaboration between the RSL and another organisation in which members of the GB are involved is transparent (see also <i>Model Entitlements, Payments and Benefits Policy</i>).</p> <p>Where a GBM is involved in the decision-making structures of another organisation that the RSL may be collaborating/working in partnership with, this should be declared and the GBM should not be involved in making the decision. This is a key consideration in the exercise of delegated authority during the emergency.</p>
<p><b>C - Honesty</b></p> <p>C4 - You must ensure that the organisation has an effective policy and procedures to enable, encourage and support any staff or Governing Body member to report any concerns they have about possible fraud, corruption or other wrongdoing</p> <p>C5 - You must report any concerns or suspicions about possible fraud, corruption or other wrongdoing to the appropriate senior person within the organisation in accordance with our whistleblowing policy.</p> <p><b>E - Integrity</b></p> <p>E5 - You must uphold our equality and diversity, whistleblowing and acceptable use policies.</p> <p><b>F - Accountability</b></p> <p>F1 - You must observe and uphold the principles and requirements of the SHR's Regulatory Standards of Governance and Financial Management, guidance issued by the SHR and other regulators, and ensure that (Name of Organisation's) legal obligations are fulfilled.</p>	<p><b>Whistleblowing</b></p> <p>In accordance with SG directions, landlords have been offering only limited services during the emergency – but must continue to comply with statutory requirements (e.g. in respect of tenant and resident safety). GBMs have a personal responsibility to speak out about any failure to do so which is not justified by the emergency. RSLs should remind GBMs (and staff) about both the complaints and whistleblowing processes as part of their Covid-19 arrangements</p>
<p><b>C - Honesty</b></p> <p>C8 - You, or someone closely connected to you, cannot as a result of your role with us receive preferential treatment relating to any services provided by the organisation or its contractors/suppliers, and you should be able to demonstrate this.</p>	<p><b>Preferential Treatment</b></p> <p>Robust maintenance of the Register of Interests and active declarations is essential, including throughout the emergency (and afterwards) to reduce any risk of concerns that GBMs are (or have</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p><b>E – Integrity</b></p> <p>E3 – You must declare any personal interests in accordance with this Code; in the event that you have a continuing personal interest which conflicts with our activities, values, aims or objectives, you should resign.</p> <p>E9 - You must not seek or accept benefits, gifts, hospitality or inducements in connection with your role as a member of our Governing Body, or anything that could reasonably be regarded as likely to influence your judgement. You must not benefit, or be perceived to benefit, inappropriately from your involvement with the organisation and must comply with our policies on the matter.</p>	<p>been) treated differently because of their role. It is important that these protections are in place to safeguard GBMs when stress levels are high (i.e. during the current crisis).</p>
<p><b>D – Objectivity</b></p> <p>D2 - You must prepare effectively for meetings and ensure you have access to all necessary information to enable you to make well-informed decisions.</p> <p>D4 - You should use your skills, knowledge and experience to review information critically and always take decisions in the best interests of the organisation, our tenants and our service users.</p> <p>D5 - You should ensure that the Governing Body seeks and takes account of additional information and external/independent advice where necessary and/or appropriate.</p>	<p><b>Informed Decision Making</b></p> <p>RSLs have moved swiftly to remote working for both service delivery and governance and this has required many GBMs to become familiar with a different form of presentation for reports and meetings. It is critical that all GBMs are supported effectively to fulfil their duties by ensuring that good information is provided in an accessible format and timely way to enable informed decision making</p>
<p><b>D – Objectivity</b></p> <p>D6 – You should ensure that effective policies and procedures are implemented so that all decisions are based on an adequate assessment of risk, deliver value for money, and ensure the financial well-being of the organisation.</p> <p><b>F – Accountability</b></p> <p>F2 – You must ensure that we have effective systems in place to monitor and report its performance and that corrective action is taken as soon as the need is identified.</p>	<p><b>Risk Assessment and Performance Monitoring</b></p> <p>The reduction in income and potentially increased expenditure associated with the emergency are likely to have a significant impact on RSL’s finances and risk profiles: GBMs must have access to comprehensive information to enable them to monitor both service delivery and financial performance as well as changes to the risk register</p>
<p><b>E – Integrity</b></p> <p>E1 – You must always treat your Governing Body colleagues, our staff and their opinions with respect.</p>	<p><b>Personal Conduct</b></p> <p>Virtual meetings should be conducted to the same standards</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p>E2 – You must always conduct yourself in a courteous and professional manner; you must not, by your actions or behaviour, cause distress, alarm or offence.</p> <p>E4 – You must ensure that you fulfil your responsibilities as they are set out in the relevant role description; that you maintain relationships that are professional, constructive and that do not conflict with your role as a member of the Governing Body.</p> <p><b>F – Accountability</b></p> <p>F2 - You must ensure that we have effective systems in place to monitor and report its performance and that corrective action is taken as soon as the need is identified.</p> <p>F4 - You should always be courteous and polite and behave appropriately when acting on our behalf.</p> <p><b>G – Leadership</b></p> <p>G8 – You must not act in a way that could jeopardise our reputation or bring us into disrepute</p>	<p>as ‘normal’ meetings. It may be helpful to agree ‘etiquette’ for virtual meetings to ensure that the scope for misunderstandings is reduced (e.g. where people might appear to be interrupting/speaking over/ignoring others because of a ‘lag’ in transmission)</p> <p>Tools such as the “raising hand” icon in programmes like Microsoft Teams and Zoom can also be helpful to prevent people accidentally speaking over one another.</p>
<p><b>E – Integrity</b></p> <p>E6 - You must respect confidentiality and ensure that you do not disclose information to anyone who is not entitled to receive it, both whilst you are a member of the Governing Body and after you have left.</p> <p>E7 - You must observe and uphold the legal requirements and our policies in respect of the storage and handling of information, including personal and financial information.</p>	<p><b>Confidentiality</b></p> <p>The transmission and storage of information on personal devices to support governance continuity presents some risks – RSLs should ensure that adequate security measures are in place to enable GBMs to maintain confidentiality and uphold their responsibilities.</p> <p>This consideration extends to virtual GB meetings where it is important to ensure that business and discussions remain confidential (e.g. ensuring that conversations or committee discussions cannot be overheard). This is another issue that could be included in the ‘virtual etiquette’ adopted by RSLs but which also has to be considered when establishing remote/virtual governance structures. The ICO has <a href="#">published relevant guidance</a>.</p>
<p><b>F – Accountability</b></p>	<p><b>Effective Participation</b></p>

Relevant Principle(s) in Code	Covid-19 Implications
<p>F3 - You should contribute positively to our activities by regularly attending and participating constructively in meetings of the Governing Body, its committees and working groups.</p> <p>F5 - You must participate in and contribute to an annual review of the contribution you have made individually to our governance.</p>	<p>The move to remote / virtual governance may have the effect of excluding some GBMs from their role because they are unable to participate effectively in the emergency arrangements. Clearly, there's no suggestion that failure to participate in an annual review because the programme has been delayed or because a GBM is unable to do so because of (legitimate) Covid-19 factors would constitute a breach of the Code of Conduct (or a material breach of the Regulatory Standards).</p>
<p><b>F – Accountability</b></p> <p>F6 - You must ensure that there is an appropriate system in place for the support and appraisal of our Senior Officer and that it is implemented effectively.</p>	<p><b>Appraisal of the Senior Officer</b></p> <p>It is important that the GB continues to fulfil its employment related responsibilities effectively throughout the emergency and this includes supporting staff and monitoring performance. Any decision to delay the senior officer's annual appraisal should be time-limited and include regular ongoing arrangements to ensure support and demonstrate continuing accountability.</p>
<p><b>F - Accountability</b></p> <p>F7 - You must not speak or comment in public on our behalf without specific authority to do so.</p> <p><b>G - Leadership</b></p> <p>G3 – You must always be a positive ambassador for the organisation.</p> <p>G5 – You must not criticise the organisation or our actions in public.</p> <p>G6 – You must not criticise staff in public; any staffing related matters should be discussed privately with the Chair and/or Senior Officer.</p> <p>G7 – You must not use social media to criticise or make inappropriate comments about the organisation, its actions or any member of the Governing Body, staff or other partners.</p>	<p><b>Public Comment</b></p> <p>The Covid-19 emergency has generated a huge amount of online debate and conversation. Any comments from a GBM that relate to or affect the RSL (directly, reputationally or in any other way) are covered by the Code of Conduct and great care should continue to be exercised about the content (and context) of online posts.</p>

Relevant Principle(s) in Code	Covid-19 Implications
G8 - You must not act in a way that could jeopardise our reputation or bring us into disrepute.	

## 2. Model Code of Conduct for Staff

The table below outlines the relevant clauses and principles impacted by the Covid-19 situation within the SFHA Model Code of Conduct for Staff. It should be noted that the requirements of the Code of Conduct continue to apply throughout any period of furlough that staff have been placed on.

Relevant Principle(s) in Code	Covid-19 Implications
<p><b>A - Honesty and Integrity</b></p> <p>A2 - You must not accept any offers of gifts or hospitality from individuals or organisations which might reasonably create – or be capable of creating – an impression of impropriety, influence or place you under an obligation to these individuals or organisations. You must comply with our policy on the matter.</p> <p>A4 - We forbid all forms of bribery - meaning a financial or other advantage or inducement intended to persuade someone to perform improperly any function or activity. You must not offer, seek or accept bribes and must comply with our policy on bribery. Offering, seeking or accepting bribes will result in disciplinary action and may also result in criminal prosecution.</p> <p>A6 - You, or someone closely connected to you, cannot as a result of your role with us receive preferential treatment relating to any services provided by the organisation or its contractors/suppliers, and you should be able to demonstrate this</p> <p>A7 - You must not use, or seek to use, your position to promote your personal interests or those of any person with whom you are closely connected or the interests of any business or other organisation with which you have a connection.</p> <p>A17 - You must avoid any situation that could give rise to suspicion or suggest improper conduct.</p> <p><b>B - Openness and Accountability</b></p> <p>B1 - We must ensure that no conflict arises, or could reasonably be perceived to arise, between your duties and</p>	<p><b>Preferential Treatment</b></p> <p>Robust maintenance of the Register of Interests and active declarations are essential at all times, including throughout the emergency (and afterwards) to reduce any risk of concerns that staff (or their families) have been treated differently because of their role or have benefitted because of their employment with the RSL</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p>your personal interests, financial or otherwise. You must declare, and manage openly and appropriately, any actual or potential interests or conflicts.</p> <p>B2 - Where you have a personal, business or financial interest in any matter that is relevant to our activities or is being considered (or is likely to be considered), or you know that someone to whom you are closely connected has such an interest, you must declare it promptly and record it in our Register of Interests.</p> <p>B3 - You must keep your entry in the Register of Interests complete, accurate and up to date.</p>	
<p><b>A – Honesty and Integrity</b></p> <p>A8 - You must use our resources, facilities and premises only for the purposes intended and in a responsible and lawful manner. This includes office premises, telephone, computer and other IT facilities, equipment, stationery, transport and staff. Reasonable personal use of office telephones and computers and company mobile telephones is permitted but must be kept to a minimum. Our [<i>name of policy</i>] gives further information including what is meant by 'reasonable personal use'.</p> <p>A9 - You must comply with all of our relevant policies, including (but not exclusively) usage of internet &amp; email social media, health &amp; safety, equal opportunities and dignity at work.</p> <p>A10 - You must not undertake work for another organisation - or for any personal business - on [<i>name of organisation</i>]'s premises nor use our resources or facilities for such a purpose, unless you have specific permission from your line manager.</p>	<p><b>Personal Benefit</b></p> <p>The emergency has resulted in staff being issued with equipment (laptops, phones etc.) to support working from home. The requirements/restrictions on the use of the RSL's resources in the office (policies and procedures) apply equally to equipment being used at home</p>
<p><b>B – Openness and Accountability</b></p> <p>B4 - You must observe and uphold the legal requirements and our policies in respect of the storage and handling of information, including personal and financial information. Our [<i>name of policy</i>] gives further guidance.</p> <p>B7 - You must respect confidentiality and ensure that you do not disclose information to anyone who is not entitled to receive it, both whilst you are a member of staff and after you have left our employment.</p>	<p><b>Maintaining Confidentiality</b></p> <p>When working from home, staff must ensure that all information relating to all aspects of the RSL's business is kept secure. This is likely to require specific attention as most people's homes are not equipped to store secure important information/documents. Additionally, it is critical to ensure that e.g. telephone conversations cannot be overheard.</p>

Relevant Principle(s) in Code	Covid-19 Implications
	<p><a href="#">The ICO has published relevant guidance.</a></p>
<p><b>B – Openness and Accountability</b></p> <p>B8 - Unless specifically authorised to do so, you must not make comments or statements in public or to the media or pass any documents or other information to the press or media about us or our activities. If you are approached by the press or other media you must quickly pass the enquiry to [title of relevant post].</p> <p>B10 - We respect your right to a private life, and that includes joining any social media sites that you wish. However, as information posted on such sites is classed as public and not private, you must not disclose any private or confidential information relating to us, our customers, partners, suppliers, board members, or employees on any social networking sites, bulletin boards, blogs or similar.</p> <p><b>C – Selflessness, Objectivity &amp; Leadership</b></p> <p>C12 – You must not act in a way that could reasonably be regarded as bringing us into disrepute. This would include publicly making any derogatory comments about the organisation, its staff, governing body members, service users, partners and anyone that we are doing business with. If you have a grievance or concern relating to a member of staff or of the governing body, or have any concern about potential wrongdoing, you should discuss it with your line manager or with [title of relevant post].</p>	<p><b>Public Comment</b></p> <p>Staff must ensure that any public comments they make on behalf of the RSL comply with current delegated authority and protocols. The Covid-19 emergency has generated a huge amount of online debate and conversation – any comments from a staff member that relate to or affect the RSL (directly, reputationally or in any other way) are covered by the Code of Conduct and great care should continue to be exercised about the content (and context) of online posts</p>
<p><b>B – Openness and Accountability</b></p> <p>B11 - If you become aware of any actual or potential fraud, corruption or wrongdoing, or breaches of this Code, you must report this to your manager or to [title of relevant post or posts]. You may do so on a confidential basis. Our policy on whistleblowing gives further information.</p> <p>B12 - You must not victimise any person who has used - or intends to use - or is suspected of having used - our confidential reporting or whistleblowing procedures to report any actual or alleged fraud, corruption or wrongdoing by others.</p>	<p><b>Reporting Concerns</b></p> <p>In accordance with SG directions, landlords have been offering only limited services during the emergency – but must continue to comply with statutory requirements (e.g. in respect of tenant and resident safety). Staff have a personal responsibility to speak out about any failure to do so which is not justified by the emergency. RSLs should remind staff about both the complaints and whistleblowing processes as part of their Covid-19 arrangements.</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p><b>C - Selflessness, Objectivity &amp; Leadership</b></p> <p>C1 - You must comply with your terms of appointment and our policies and procedures relating to your role.</p> <p>C2 - You must fulfil your duties responsibly, exercising reasonable skill and care and acting at all times in our best interests and that of our tenants and other service users. As an organisation, we always aim to put the needs of our tenants and service users first, and we expect all of our staff to do the same in their day to day work, within the framework of our policies and procedures.</p> <p>C4 - You must work at all times in accordance with our policies and procedures and not allow your own personal or political opinions to affect the way in which you carry out your duties. This does not impinge on your right to be an active citizen or, for example, to be an active trade unionist.</p> <p>C6 - You must not seek to use informal channels to influence the governing body regarding decisions to be made about the conduct of our business.</p> <p>C7 - You must consult your manager before taking on any outside work or any position (paid or unpaid) that will in any way impact on your role with us. Any such work or position must not interfere with your existing job or conflict with our interests. Appendix 1 (p13-p15) gives more details on declaring interests.</p>	<p><b>Fulfilling your Role</b></p> <p>Clearly working from home does not change the expectations about the standards to which staff are expected to perform or the policy framework which applies (e.g. hours of work, absence reporting/management; holidays)</p>
<p><b>C – Selflessness, Objectivity and Leadership</b></p> <p>C9 - You must maintain high standards of professionalism, fairness and courtesy in all your dealings with tenants and other service users.</p> <p>C12 - You must not act in a way that could reasonably be regarded as bringing us into disrepute. This would include publicly making any derogatory comments about the organisation, its staff, governing body members, service users, partners and anyone that we are doing business with. If you have a grievance or concern relating to a member of staff or of the governing body, or have any concern about potential wrongdoing, you should discuss it with your line manager or with [title of relevant post].</p> <p>C13 - You must always be a positive ambassador for us and our work, especially when attending events as a member of our staff or in dealing with outside bodies.</p>	<p><b>Personal Conduct</b></p> <p>Staff communicate extensively with tenants via phone in 'normal' times but the Covid-19 emergency has resulted in almost all business being conducted online or by telephone. Telephone contact with tenants should, of course, be conducted in the same professional manner that would apply to face-to-face meetings. The same is true of e-mail responses to online queries.</p> <p>Virtual meetings should be conducted to the same standards as 'normal' meetings. It may be helpful to agree 'etiquette' for virtual meetings to ensure that the scope for misunderstandings is reduced (e.g.</p>

Relevant Principle(s) in Code	Covid-19 Implications
<p>C14 - You must treat others with respect at all times. This includes considering the views of others and being tolerant of differences.</p> <p>C15 - You must adhere to both the letter and the spirit of our equality and diversity policy.</p> <p>C16 - You must always conduct yourself in a courteous and professional manner. You must not, by your actions or behaviour, cause distress, alarm or offence.</p> <p>C19 - When attending meetings, you must be courteous to all attendees and respect the position of the meeting chair or convenor. You must also ensure that mobile phones are switched off/on silent other than in very exceptional circumstances where it is necessary to take an urgent call.</p>	<p>where people might appear to be interrupting/speaking over/ignoring others because of a 'lag' in transmission).</p>

### 3. Model Entitlements, Payments and Benefits Policy

It is important to note (as highlighted in the Code of Conduct sections above) that declarations of interest must continue to made/recorded during the crisis.

There are also number of Covid-19 implications that impact on Appendix A of the Entitlements, Payments and Benefits Policy – which describes the steps necessary before certain actions are (or are not) permitted. These are described below.

#### **Human Resources and Recruitment**

Any bonus or other form of supplementary payments made to staff e.g. in recognition of efforts during the emergency must be consistent with contractual provisions and the RSL's approved policy. Additional payments or benefits (including e.g. via vouchers) that are not covered by an RSL's policy would not be compliant with the EPB policy. Reimbursement of expenses associated with working from home (for GBMs and staff), such as additional costs incurred because of RSL-related internet usage, are permitted.

#### **Our People as Tenants or Service Users**

Generally, any payments or benefits that are made as part of a general policy are permitted. So, for example, GBMs who are tenants and who receive support that is being provided to all tenants in similar situations/circumstances are permitted. This would include the exceptional support being provided by many RSLs to particularly vulnerable tenants throughout the lockdown period e.g. fuel cards, food packages.

#### **Gifts and Hospitality**

It is likely that people who have been helped during the emergency will want to show their appreciation and may bring gifts once offices re-open. The Model EPB policy states that gifts valued at less than £25 can be accepted, provided they are recorded

in the relevant Register and the same person does not make more than one gift in any year. It would be unreasonable to adopt a strict interpretation to this aspect if someone has already offered a gift during the year for some other reason and then wishes to offer a token of their appreciation for exceptional support during the emergency. Under these circumstances it is reasonable not to refuse the second gift valued under £25 - as they would be potentially offended and/or upset.

#### **4. Model Schedule of Registers**

It is important during this time to ensure Registers of Interest are kept up to date, particularly to include for example staff and GBM voluntary activities to support the Covid-19 relief effort where these are directed towards or may benefit the RSL's tenants and/or communities. It is important to remember that furloughed staff remain employed by the RSL and must follow/comply with all relevant policies and processes, including the Code of Conduct and EPB policy. Any voluntary activities that might be connected to the RSL's tenants or service users should be recorded in the interests of transparency.

Involvement in any activities that are supported (financially or otherwise) by the RSL's suppliers, contractors and/or consultants should also be recorded. Any gifts received by individuals (Staff and GBMs) from appreciative tenants and service users must always be recorded and must comply with the RSL's EPB policy.

#### **5. Governing Body Member Annual Review (Appraisal) Guidance**

Regulatory Standard 6.3 requires all GBMs to take part in annual reviews, stating: *"The RSL ensures that all governing body members are subject to annual performance reviews to assess their contributions and effectiveness."*

The SFHA Model Rules 2020 reflect this, stating at Rule 37.6:

*"The committee shall assess annually the skills, knowledge, diversity and objectivity that it needs for its decision making and what is contributed by the committee members by way of annual performance reviews."*

This is further supported by Clause F5 in the SFHA Model Code of Conduct for Governing Body Members. SFHA does not believe that failure to carry out annual reviews as a result of the impact of the Covid-19 emergency should be treated as a material breach of regulatory standards. A gap of more than twelve months between annual reviews is likely to be a breach of Regulatory standards and an RSL's constitution but, provided the delay is wholly attributable to the health emergency and arrangements are in hand to conduct reviews at the earliest opportunity, this is unlikely to have adverse consequences.

SFHA's Governing Body Annual Review Guidance, which provides advice to RSLs on implementing good practice and complying with regulatory requirements, strongly advises that annual reviews involve live interaction with individual GBMs and should

not be simply a paper or administrative exercise. As already advised in SFHA's Covid-19 Governance Briefing, it is important that GBMs are supported by the RSL throughout the emergency (e.g. by regular phone calls).

RSLs work to different calendars for the conduct of annual reviews, but it is likely that many would normally have conducted their annual programme during the period when Covid-19 restrictions were at their tightest. Many RSLs have successfully moved to virtual methods for the conduct of the annual appraisals, using telephone conferencing or video calls. This approach means that planning for effective succession, training and elections can be progressed as normal and removes a significant task from the catch-up programme that will be required during the recovery period. It is understandable, however, that some GBMs and RSLs have decided that the annual reviews can be deferred whilst the focus is on responding to the public health emergency and the needs of tenants and service users.

Annual reviews that are being conducted remotely should adopt the framework that would normally be used in respect of the template, time allowed, production of individual notes and the feedback report to the GB. Similarly, a training and succession plan should be produced. The discussion template should be distributed to GBMs in advance of the planned discussion, which should, of course, be arranged at a time to suit the individual.

It is important to allow sufficient time for these virtual meetings. They may take longer because people take the opportunity to 'catch up', so it is also important to allow enough time in between meetings so that they do not run into each other. It is not so easy to ask people to go and have a coffee while they wait for a virtual meeting to end, although some software offers "virtual waiting rooms" for meetings due to take place. The RSL's agreed virtual meetings etiquette should apply to these discussions. If using a telephone conferencing facility, care should be taken to ensure that the GBM does not incur costs that take time to be reimbursed.

If annual reviews have not been completed by the time the AGM is being held, the GB will not be able to rely on the review feedback to inform its approval of an experienced GBM's intention to seek re-election (i.e. the "nine year rule" under regulatory standard 6.3). In this situation, the RSL's formal approval continues to be essential to ensure that the constitution is not breached (i.e. Rule 42.3 in the SFHA Model Rules 2020) otherwise the election of a committee member would be invalid. In these exceptional circumstances, it would be appropriate for the GB to confirm its support for re-election based on recent contributions.

## **6. Governing Body Succession Planning and Recruitment Guidance**

This is linked to the advice on annual GBM reviews and appraisals (above at Section 5) and to Appendix B of this briefing relating to AGMs. The key issue is to ensure that the RSL is aware of GBM's intentions in respect of continuing membership. If a GBM has intimated their intention to step down at the next AGM, do they intend to remain until it is held, even if re-scheduled? Or do they intend to step down when the AGM

would have taken place as originally scheduled? It is important to be clear about this at the earliest possible stage to avoid being in a situation where the GBM's membership is at risk of falling to seven or below.

SFHA advises updating the Succession Plan urgently to confirm GBMs' intentions and enable appropriate planning, where necessary. SFHA's AGM FAQs (see Appendix B) confirms that short-term extensions to the nine-year rule which arise because of the Covid-19 emergency should not be treated as material non-compliance, as long as there is an intention to hold elections and confirm continued effectiveness as soon as practically possible.

## **7. Senior Staff Succession Planning Guidance**

As the emergency and associated restrictions continue, temporary 'freezes' on recruitment and delays to plans are likely to be more difficult to sustain. It is possible to recruit during the emergency, although face to face contact with candidates is likely to continue to be difficult. In the course of providing ongoing support to staff, any plans relating to retirement should be re-visited to establish whether original timescales are to be maintained/how long deferred decisions will be sustained. This information will be essential in ensuring that the RSL is able to plan ahead in terms of managing the emergency, driving recovery and developing/implementing a revised business strategy.

## 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)?*

## 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 *elect 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.

## **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 Act allows for virtual AGMs up until 30 September 2020, 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.*

*“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.”*

The provisions of the Corporate Insolvency and Governance Act 2020 enable AGMs to be held by 30 September 2020 because they permit the meeting to be conducted virtually. It should therefore be possible for RSLs to meet their constitutional requirement to hold a AGM within six months' of the end of the annual accounting period.

### 3. Virtual AGMs and new legislation

#### ***Can we hold virtual AGMs?***

The [Corporate Insolvency and Governance Act 2020](#) makes 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 Act 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 terms of the Act, 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 have to be 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 , 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?

Further SFHA guidance on holding virtual AGMs this year is included at Appendix C.

INSERT LINK SFHA has also updated 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.

**What if restrictions remain in place in September or beyond?**

The [Corporate Insolvency and Governance Act](#) makes 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 Act 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. At present, there is no indication that this provision will be used and so SFHA recommends proceeding on the basis of holding a virtual AGM by 30 September 2020.

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

**Should we reschedule our AGM?**

The [Corporate Insolvency and Governance Act](#) makes 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 Act also makes 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?**)

At the time of writing, Scotland is in Phase Three of the Scottish Government’s route map, which means that there continue to be restrictions on public gatherings and working from home remains the default for those who can. The Scottish Government has been clear that Phase Three is likely to extend for a longer period than earlier phases, which means that it is unlikely that AGMs can be held in their traditional format at the usual time. Current guidance means that indoor gatherings of more than eight people and involving people from more than three households are not permitted.<sup>6</sup> Consequently, SFHA advise that RSLs make use of the virtual AGM provisions in order to hold an AGM by 30 September and, where possible, to allow more time to

<sup>6</sup> Scottish Government Guidance Coronavirus Phase 3: staying safe and protecting others (13 July 2020)

arrange what will be a very different meeting than previous years (See Timeline at Appendix C).

For organisations who have had to reschedule from their planned timeframe, there will be 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 AGM<sup>7</sup>. 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.

#### **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 31 October, will not be penalised for submitting up to three months late.

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<sup>7</sup> SFHA (March 2020) [SFHA Charitable Model Rules 2020, Rule 7.3](#)

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 the membership of your governing body before you are able 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 H 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](mailto:astokes@sfha.co.uk)

### **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 Act – 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.*

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.

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.

Now the Corporate Insolvency and Governance Act is in 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 (especially once it becomes possible to hold an AGM physically or/and virtually) – 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 new model 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 has also updated 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 Act will expire on 30 September 2020).

## **Appendix C - Practical tips on holding a virtual AGM before 30 September 2020**

As highlighted in Appendix B, given the current national situation and the provisions allowed for in the Corporate Insolvency and Governance Act, SFHA advises that RSLs should plan to hold a virtual AGM by 30 September 2020. This Appendix provides some practical tips and considerations to bear in mind in doing so.

### **Technology Considerations**

A separate SFHA briefing note regarding Digital Meetings/Events is available, covering:

- Platform choice and setup
- Users and event arrangements
- Privacy and Security
- IT and equipment setup
- Testing and organising
- Additional links and resources

This note will also be helpful to consider when planning your AGM, and is available on the SFHA website here:

### **[SFHA Digital Meetings/Events Briefing](#)**

### **Format of Meeting**

You must ensure that your system has the necessary capacity to accommodate anticipated attendance and that there are effective security features to prevent the meeting being 'hacked' (the nature of the business being conducted will not be sensitive or confidential but it is important to ensure that the integrity of the meeting is protected). This is likely to be achieved, at least in part, by the use of passwords to control access to the platform hosting the meeting.

It will be important to ensure that the platform can accommodate anticipated attendance: facilities which can accommodate e.g. meetings of the governing body, may not be capable of accommodating significantly increased numbers. Access to the meeting can be restricted to simply viewing the proceedings as they happen i.e. members can watch and listen but not comment or otherwise take part.

### **Equalities**

It is important that steps are taken to assess if any groups within your membership may be disadvantaged by holding a virtual AGM in 2020 and – where possible – to put in place measures to mitigate against such issues. For instance, virtual attendance will not be possible where people do not have internet access or if disabilities prevent using the necessary technology. One way of minimising the impact in these circumstances is to offer postal voting (which we would recommend). Additionally,

issuing information soon after the AGM about what happened (either the draft minute or an information leaflet) will help to keep people informed.

RSLs often invite tenants to attend the AGM, whether or not they are shareholding members. This is not recommended in 2020 because of the potential numbers involved (i.e. invitations should be issued to shareholding members only). Holding an information forum or other form of gathering once the restrictions have ended will help to mitigate the risk of shareholding members and tenants feeling excluded or disadvantaged.

Similarly, restricting the business being transacted at the AGM to the minimum required should help to counter any concerns that members are not able to participate.

### **Convening a Virtual Meeting**

Most RSLs have been conducting virtual meetings since Lockdown restrictions were imposed so will already have a preferred platform that staff and GBMs are familiar with. The virtual AGM should be convened using your preferred platform.

The provisions of the emergency legislation mean that there is no requirement for those attending a virtual AGM to be present in the same location, so the virtual meeting can be convened between people in different locations. Equally, the legislation specifies that shareholding members cannot insist on participating in the AGM other than by voting.

To manage the impact of the current restrictions, therefore, RSLs can opt to hold a virtual meeting with only the minimum number of people required to form a quorum. Provided the use of proxies is encouraged, for most RSLs, this approach is likely to involve numbers of participants that are broadly similar to attendance at a GB meeting.

If you have very large quorum requirements, or if you are expecting a high attendance at your virtual AGM, you must ensure that your video-conferencing platform and IT systems have adequate capacity to support high volume attendance. Shareholding members attending a virtual AGM up until 30 September do not need to have access to contribute, only to view. It is only the office bearers and senior staff/auditor who are likely to require to be able to participate by speaking at the meeting.

All of these arrangements will require to be explained carefully in the information that is sent to every shareholding member.

### **Calling the Meeting**

Your Rules/Articles set out the requirements for informing members of the arrangements for the AGM and for notifying members of the process to stand for election to the GB or to nominate another member for election. These arrangements should be followed in 2020, even although the format of the AGM will be very different. SFHA recommends issuing information about the altered format of the 2020 AGM at

an early stage so that members are aware of the exceptional arrangements that will apply (see Timeline).

In addition to what is normally issued, specific information should be provided about the exceptional arrangements that are being made because of the COVID-19 emergency and the restrictions on public gatherings. A template is provided for this purpose at [Appendix D](#).

SFHA advises that intimation of the AGM should be given earlier than normal to accommodate the additional steps that members are likely to be asked to take (e.g. for the return of proxy forms). A recommended timeline is included at [Appendix C](#).

### **Achieving a Quorum**

The requirements for the quorum are set out in an RSL's constitution. Typically, the quorum is either seven OR, if there are more than 70 members, one tenth of the membership. To achieve the quorum, the required minimum number of members must be present at the meeting. Up until 30 September 2020, those attending virtually will count towards the quorum.

The quorum can also be achieved by the use of proxies. This would involve shareholding members appointing someone else (who does not need to be a member) to act on their behalf. The SFHA Model Rules provide that one person can accept proxy instructions from a maximum of ten members. It would be possible, therefore, for shareholding members to be invited to appoint members of the GB to attend the virtual AGM on their behalf.

If this approach is to be adopted, SFHA recommends that the AGM information should include the proxy form with a list of those GBMs who can be appointed as proxies by shareholding members. Returned proxy appointments will have to be monitored to ensure that the permitted maximum number of appointments is not exceeded for any individual. The GB may wish to consider approving that specific members of staff can be appointed as proxies, since the Rules provide that non-members can exercise proxy votes.

The quorum can be achieved by a combination of attendance and proxies. RSLs can offer members the choice of attending the virtual meeting by logging on or by appointing a proxy. Proxies are appointed in accordance with the Rules/Articles and there is a template proxy form included with the SFHA Model Rules 2020.

## **Confirming eligibility to attend virtual AGM**

The virtual AGM should be accessible only to shareholding members and others whose attendance is required e.g. staff, auditors, other advisers. Access should be controlled by password/secure link in the same way as GB or staff meetings and the password/joining instructions should be issued only to those who have confirmed their intention to attend.

If there are concerns about people seeking to access the meeting who should not be present, the risk can be managed by issuing the link a short time before the meeting starts e.g. on the day.

Shareholding members should be asked to confirm their intention to attend the virtual AGM by signing and returning an attendance form and providing an e-mail address that the access details/link can be sent to. A template that can be used for this purpose is included at [Appendix E](#).

It is very unlikely that any confidential business will be conducted at the AGM which are, by their nature, subject to a publicly available record. Consequently, there is a low level of risk posed by a non-member accessing the virtual meeting, unless the intention is to disrupt.

## **Voting Requirements**

SFHA's advice is to limit the business being transacted at the AGM to that which is required by the Rule/Articles. The required business is:

- presentation of the Chair's Report;
- presentation of the annual accounts;
- election of GBMs;
- appointment of Auditors.

Neither the Chair's Report nor the annual accounts require to be approved or voted on. One third of the GB is required to stand down at the AGM; with retiring members usually, eligible for re-election.<sup>8</sup> Elections to the vacant places only require a vote if there are more nominations than there are vacancies; if the number of nominations matches or is less than the number of vacancies, all nominees are elected unopposed, provided their nomination is valid.

The GB will make a recommendation to the AGM for the appointment or re-appointment of the auditors: such a recommendation does not usually prompt a 'vote'

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<sup>8</sup> Subject to the RSL's constitution and/or policy and to the nine-year rule

but is simply agreed. Provided proxy voting rights have been given, approval given in this way is unlikely to be challenged.

### **Voting Methods**

The Corporate Insolvency and Governance Act (2020) provides that, for all business being conducted in general meetings until September 2020, voting may be by any means, regardless of whether specified or permitted by the constitution: SFHA advises that RSLs conduct any votes required by post. The SFHA Model Rules 2020 provide for postal voting and SFHA advises that the process set out in the Model should be followed for the 2020 AGM, whether or not your Rules allow.

### **Proxy Votes**

RSLs will need to ensure that all proxies submitted are legitimate. The most straight forward way of doing this is to ensure the signature on the proxy corresponds to the signature on the membership application (if that is accessible) or, in the case of a tenant shareholding member, the tenancy agreement. Consequently, SFHA recommends that all proxy appointments should be submitted by post

### **Nominations for Governing Body**

RSLs should adopt their usual arrangements for advertising vacancies, seeking and validating nominations. SFHA recommends that nominations should be submitted by post, in the usual way.

GBMs who are retiring at the AGM as part of the 'one third' requirement are eligible to seek re-election without being nominated. GBMs who have completed nine or more years' service cannot stand for re-election unless they have the agreement of the GB which must be satisfied that the member can demonstrate that they continue to make an effective contribution. The GB must, therefore, agree, by means of a resolution at a GB meeting in advance of the closing date for nominations, that the GBM may seek re-election

As normal, a report based on the annual GBM reviews should first be considered by the GB and their resolution/decision minuted.

### **Business to be conducted**

SFHA's advice is to limit the business being transacted at the AGM to that which is required by the Rules/Articles. The required business is: presentation of the Chair's Report; presentation of the annual accounts; election of GBMs; appointment of Auditors.

AGMs usually involve presentations and/or speeches. The style of these contributions is likely to require some modification in 2020. The Chair may deliver their Annual

Report as usual but, if this is difficult because of the virtual format, it is possible for the Chair's Report to be presented 'formally' and without the usual speech.

The Auditor will usually present the accounts at the AGM and there is no reason why this shouldn't happen in 2020, provided the Auditor is available.

It may not be possible for questions to be asked during the meeting, although they could be invited in advance by highlighting this possibility in the information about the meeting. Please remember that, in 2020, shareholding members cannot insist on participating in a general meeting, other than by voting: individual members cannot insist on putting questions to the Auditor or Chair or otherwise taking part in the meeting.

Often, RSLs invite guest speakers to the AGM but it is unlikely that this will be appropriate in 2020.

### **Recording the AGM**

The proceedings of the meeting should be recorded in the usual way and the minutes should specify the format of the meeting (e.g. the meeting took place via [specify platform]). Attendance should be recorded, with specific details included about proxies and about virtual attendance.

For example: the meeting was attended by 40 shareholding members, represented by 15 members attending remotely via web-link and 25 proxies, of which X were exercised by Ms B; Y were exercised by Mr C and Z were exercised by Mrs D attending remotely). The Minutes should record the names of each member who participated either by virtual attendance or by proxy as well as those who submitted apologies.

### **Information to Members Post Meeting**

In view of the exceptional arrangements in 2020 it may be appropriate to consider issuing some information to members after the AGM e.g. to confirm the outcome of the elections. It may also be appropriate to consider holding some form of members' event once restrictions on gatherings have been lifted. If this is the intention, it should be highlighted in the calling notice.

### **Recommended Timeline**

The Supporting guidance to the SFHA Model Rules outlines an example of the timeline when issuing various papers ahead of an AGM. It is recommended that RSLs – where possible - start the process 14-21 days earlier to accommodate the extra steps and additional planning that will be required this year. The deadlines for submitting nominations/postal ballots etc remain the same.

Activity	Number of days must happen prior to AGM (as per SFHA Model Rules)	Recommended Number of days to happen before AGM (prior to 30 Sept 2020)
Information circulated informing Members that the General Meeting will take place - including arrangements for proxies and indication of attendance form (see Appendix D & E)	28 days	42-49 days
Invite nominations for Committee places	28 days	42-49 days
Nominations due in	21 days	21 days
Indication of intention to attend form due in	N/A	21 days
Notice of AGM issued	14 days	14 days
Ballot paper issued	14 days	14 days
Postal ballot papers due	5 days	5 days
AGM, including the election of Committee Members	0 days	0 days

### **Holding a Virtual AGM after 30 September 2020**

After 30 September an amendment will be needed to your existing constitution in order to conduct any general meetings including virtual attendance. An optional amendment for this purpose is included in the Supporting Guidance to the SFHA Model Rules 2020. At this stage, it is not anticipated that the provisions in the emergency legislation will be extended beyond 30 September.

Restrictions in the Corporate Insolvency and Governance Act 2020 mean that for AGMs taking place up to 30 September 2020, the only right that individuals attending in this way will be to vote – i.e. there is no right to participate in the meeting further. It

is important to note that this restriction will not exist moving forward. For AGMs taking place after 30 September – those adopting the optional amendment for the purpose of allowing virtual attendance, do not have to place such a restriction on those attending virtually.

Further SFHA guidance on virtual attendance at AGMs in 2021 will be issued later this year.

## Appendix D – Template Letter outlining exceptional circumstances for AGM this year

*The template letter below can be forwarded prior to issuing the AGM pack to shareholding members to outline the circumstances this year, but can also be adapted to serve as a covering note to the AGM pack when it is issued. Also included is an optional paragraph should you also be holding a Special General Meeting (SGM) this year to adopt the SFHA Model Rules 2020. Optional parts or where something is required to be adjusted to fit your circumstances are highlighted in brackets and in bold **[like this]**.*

Dear Member

### **[INSERT NAME OF RSL]: Annual General Meeting (AGM) 2020**

Our AGM will be held on **[INSERT DATE]**. I am writing to you now to explain the arrangements that we are making for the meeting this year as a result of the Coronavirus emergency.

We know that restrictions are being eased but public health advice continues to emphasise the need for caution and the importance of ensuring strict hygiene measures. Large public gatherings are not permitted, and the government advice continues to encourage that gatherings take place outside (unless involving friends and family as permitted in the current rules).

We want to ensure that everyone stays safe. Consequently, we have decided that, for this year only, our AGM will not be held in a venue that members will be able to attend. Instead, we will hold our AGM virtually, using **[INSERT DETAILS]**. If you want to attend the meeting remotely, you will be provided with the access details nearer the time.

To attend you will have to be able to access **[INSERT DETAILS, e.g Zoom]** from a tablet, phone or laptop. You will, therefore, have to let us know in advance if you intend to join the meeting. There will be a form included for this purpose in the AGM pack – which we will send to you **[INSERT WHEN AGM PACK WILL BE ISSUED]**. You may also appoint someone else to act as your virtual representative at the meeting (known as a proxy) and a form for you to do this will also be included in the AGM pack.

The agenda for the AGM will be limited to the business that has to be conducted. Nominations for vacancies on the **[Management Committee/Board]** will be invited in the normal way and, if there is to be an election, this will be conducted by post. The results will be announced at the AGM.

**[We will also hold a Special General Meeting (SGM) in order to adopt new Rules on [INSERT DATE] immediately before /after the AGM. The SGM will be**

**held in the same format and the access details will be the same as those for the AGM. A postal vote will be held in order to gain member support for the adoption of the new Rules. A separate pack will be issued with the information that is required for that meeting. The pack will contain a ballot paper and return envelope for you to vote on the new Rules. The result of the vote will be announced at the SGM.]**

Whilst you will be able to virtually attend and watch the proceedings, unfortunately it will not be possible for you to take part. If you have any questions that you want to put to us, you will be able to send them in advance and we will ensure that you receive a reply, whether you attend the meeting or not.

These arrangements are exceptional and will apply only in 2020. They take account of the terms of emergency legislation that was passed at the end of June, even although our Rules do not currently provide for virtual AGMs. We may offer the option of attending remotely in future years, but this will be in addition to holding the AGM in a venue that members are able to attend in person.

I am sorry that we will not have the opportunity to meet members this year and that, although you will be able to attend remotely, you will not be able to participate in the AGM. I hope that you understand that we have decided to proceed in this way in order to safeguard public health and contribute to reducing the risk of community transmission of the virus.

The Chair's annual report will be sent to you as usual, as will the annual accounts, and we will post a report from the meeting on our website immediately afterwards. We will also announce the results of the elections on the website **[INSERT OTHER MEDIA IF APPROPRIATE]**.

If you have any questions about the annual report or the accounts, please contact me using the contact details that will be included in the AGM pack. This will contain all of the information you need for the 2020 AGM, including nomination forms, proxy appointments and attendance forms and will be issued on **[INSERT DATE]**.

Yours sincerely

Secretary

## Appendix E – Template Confirmation of Attendance Form

### Notification of Intention to Attend Annual General Meeting (AGM)

Use this form to tell us that you will attend our AGM on **[INSERT DATE]**. The AGM is being held virtually and you must tell us if you plan to attend so that we can provide you with the details that you need to join the online meeting.

Your Name \_\_\_\_\_

Your Address \_\_\_\_\_

\_\_\_\_\_

Your e-mail address \_\_\_\_\_

I intend to be present at the AGM being held virtually on **[INSERT DATE]**. I am aware that I will have to log in to the meeting using **[INSERT PLATFORM BEING USED]** and that the joining details will be provided via e-mail by **[INSERT DATE NOT MORE THAN 24 HOURS BEFORE MEETING]**

Your signature \_\_\_\_\_

**[Insert relevant data protection/processing information]**

Please return this form by **[INSERT DATE]** to

**[INSERT RETURN DETAILS]**

**IF YOU WOULD PREFER TO APPOINT SOMEONE TO ATTEND THE AGM IN YOUR PLACE, PLEASE APPOINT A PROXY USING THE SEPARATE FORM INCLUDED IN THIS PACK**

## Appendix F - Business Continuity Update Template

Critical Issue	Update/Assurance	Actions Taken/Required
<b>Service Delivery</b> Service Delivery/ Performance: <ul style="list-style-type: none"> <li>• Repairs</li> <li>• Allocations</li> <li>• Voids management</li> <li>• Rent payment facilities</li> <li>• Homelessness applications/referrals</li> <li>• Welfare benefits</li> <li>• Tenancy sustainment<sup>9</sup></li> </ul>		
<b>Staff Welfare</b> <ul style="list-style-type: none"> <li>• Adequate Cover</li> <li>• Remote working arrangements</li> <li>• Absence levels</li> <li>• Support/welfare issues</li> </ul>		
<b>Legal and Regulatory Requirements</b> <ul style="list-style-type: none"> <li>• Tenant Safety</li> <li>• Staff Safety/Employment</li> <li>• Health and Safety</li> <li>• Construction site safety/security</li> <li>• Notifiable Events<sup>10</sup></li> <li>• Governance</li> </ul>		
<b>Finance</b> <ul style="list-style-type: none"> <li>• Cash flow</li> <li>• Income protection measures</li> <li>• Debt management</li> <li>• Covenant compliance</li> </ul>		
<b>Contractual Obligations</b> <ul style="list-style-type: none"> <li>• To service providers</li> <li>• From third parties</li> <li>• Resilience of contractors</li> </ul>		
<b>Implementation of Delegated Authority</b> <ul style="list-style-type: none"> <li>• Operational (staff)</li> <li>• Governance (GB)</li> </ul>		

<sup>9</sup> Including court actions for recovery of possession: currently suspended

<sup>10</sup> Including Office Closure and interruptions to service delivery