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# 1. Background

These guidance notes have been prepared as part of the overall update and revision of the SFHA Charitable Model Rules concluded in 2020. The guidance is designed to be illustrative of how the Rules should be interpreted and to cover some of the practical issues concerning their use that cannot easily be incorporated into the Rules themselves. The guidance notes should be read in conjunction with the Rules themselves and do not in themselves have any legal effect. **Associations should always seek legal advice when carrying out any amendments to rules.**

The term ‘Association’ has been used throughout this document, in line with the wording in the Model Rules. The Model Rules however, are applicable to all bodies, whether they refer to themselves as housing associations, organisations, societies, partnerships or co-operatives provided that they:

* Are, or are seeking to become registered as a Co-operative and Community Benefit Society with the Financial Conduct Authority

and

* Are (or are seeking to become) registered as a Registered Social Landlord (RSL) with the Scottish Housing Regulator (SHR)

Similarly, the word “committee” is used throughout these rules, but this refers to all governing bodies regardless of the terminology that your own organisation uses (i.e. you may call your governing body “board”). For consistency, organisations may wish to amend the word “committee” when adopting the rules if you use an alternative term, but this is not necessary.

**2. Latest review of SFHA Model Rules**

The SFHA Charitable Model Rules 2020 are a revision of the 2015 version. They have been produced in conjunction with our membership, and approved by the Scottish Housing Regulator, the Office of the Scottish Charity Regulator and the Financial Conduct Authority. The revised model can be found on the SFHA website by clicking on the link below:

* [SFHA Charitable Model Rules 2020](https://www.sfha.co.uk/download.php?file=1393)

The update to reflects the Regulatory Standards of Governance and Financial Management and the Constitutional Requirements for Registered Social Landlords set out by the Scottish Housing Regulator in its Regulatory Framework (revised in 2019), as well as legislative changes such as the Housing (Amendment)(Scotland) Act 2018. The most significant changes in the update relate to:

* the creation of a discretionary power for the governing body to impose a leave of absence when there is a severe breach of the Code of Conduct being investigated
* the creation of a discretionary power for governing body in rare circumstances to block a nomination to committee if it was not in the interest of the association or if there would be a conflict of interests in that person becoming a governing body member
* optional provisions (within supporting guidance) where an association could – if it so wished – reserve places on the board for specific skill sets and appoint to those positions

To help the process of updating your rules, a document tracking all of the changes in the 2020 update as compared to the previous version of the model (the 2015 version) is available on the SFHA website here:

* [SFHA Charitable Model Rules 2020 (changes tracked to 2015 version)](https://www.sfha.co.uk/download.php?file=1394)

If you did not update to the 2015 rules and are still using either the 2013 version or 2009 version, documents tracking the 2020 update as compared to those versions are also available from the SFHA on request.

**3. How to use this document**

This document contains all of the supporting guidance to the SFHA Charitable Model Rules in the same place for the first time.

Appendices A – F provide further guidance (approved by the SHR and OSCR) as to how you can adapt the model to fit your organisation’s needs if you are:

* [Community based](#AppA) (Appendix A)
* [A fully mutual co-operative](#AppB) (Appendix B)
* [Non-charitable](#AppC) (Appendix C)
* [Seeking to allow appointed committee members](#AppD) (Appendix D)
* [Seeking to make amendments regarding employees as committee members; committee members who are related; or payment of committee members](#AppE) (Appendix E)
* [Seeking to allow virtual attendance at general meetings](#Virtual) (Appendix F)

Appendix G provides on overview of the procedure that must be followed in order to make any amendments to your rules using the model or guidance provided in this document, and is available by clicking the link below:

* [Guide to making rule amendments](#AppF)

Finally, Section 4 provides a comprehensive table outlining further guidance (where available) for each of the clauses within the SFHA Charitable Model Rules 2020. The guidance relates to:

* The statutory/regulatory basis by which the rule has been included
* How readily the rule can be amended (with examples where appropriate)
* Further guidance as to the application of the rule (where relevant)

As the left-hand column of the table includes the specific wording of each clause within the rules, this makes the document more user friendly as it is no longer necessary to cross refer to the Rules document. Further guidance on specific sections of the rules (where relevant) are also included within the Appendices, specifically:

**Appendix H** [Electing committee members worked example](#AppG)

**Appendix I** [Example of rejection of nomination under Rule 40.3](#AppH)

**Appendix J** [Example of appointment of office bearers](#AppI)

In the contents page, a link is included to the guidance relating to each section of the Model Rules to make this document easier to navigate.

# 4. Supporting guidance to SFHA Charitable Model Rules 2020

| **Rule** | **Rule Wording** | **Guidance** |
| --- | --- | --- |
| **INTRODUCTION (Rules 1-5)** | | |
| **Name** | | |
| 1 | The name of the Society shall be ………. Limited (hereinafter referred to as “the Association”). | Statutory basis: [Co-operative and Community Benefit Societies Act 2014](https://www.legislation.gov.uk/ukpga/2014/14/contents)  If an Association is choosing a name for the first time or changing its name, care should be taken in considering which name to adopt.  Section 10 of the [Co-operative and Community Benefit Societies Act 2014](https://www.legislation.gov.uk/ukpga/2014/14/contents) states that no society may be registered with a name that the Financial Conduct Authority (FCA) considers undesirable.  In particular, Associations should ensure that their proposed name is not too similar to the name of another society, company or charity. A check of the companies House website is useful here. [www.companieshouse.gov.uk](http://www.companieshouse.gov.uk). As a Co-operative and Communities Benefit Society, the chosen name must end with the word ‘limited’ (although charitable Associations might be able to gain exemption from use of the word limited, if preferred) and this should be shown on all letterheads, business stationery etc. that the Association uses. For charitable Associations, charity law requires that the charity number MUST always be included and if the name does not include the word “charity” or “charitable” there is a requirement to state that it is a charity on any documents, including letters, notices, invoices, bills of exchange, promissory notes and on any conveyances it executes. |
| **Objects** | | |
| 2 | The objects of the Association are: | These are the basic pieces of information that describe what the Association is and what it is for. The term ‘objects’ has a strict legal meaning that defines the limits of what the Association can do. The objects in the 2020 Model Rules are charitable objects based upon s.24 of the Housing (Scotland) Act 2010 and Section 7 of the [Charities and Trustee Investment (Scotland) Act 2005](http://www.legislation.gov.uk/asp/2005/10/contents).  For Associations that are charitable, the objects clauses are of key importance to OSCR and any change of wording will need separate specific prior approval from OSCR.  Where the Association wishes to have objects that are either[AppA](#AppA) a fully mutual co-operative, community based or non-charitable, reference should be made to the relevant appendix to the Model which include relevant objects to be used. |
| 2.1 | to provide for the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage through the provision, construction, improvement and management of land and accommodation and the provision of care; and |  |
| 2.2 | any other purpose or object permitted under Section 24 of the Housing (Scotland) Act 2010 which is charitable both for the purposes of Section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and also in relation to the application of the Taxes Acts. | For community based associations, a further provision setting up the area of operation is required [(see Appendix A)](#AppA). |
| 3 | The permitted activities and powers of the Association will include anything which is necessary or expedient to help the Association achieve these objects. |  |
| 4.1 | The Association shall not trade for profit and any profits shall only be applied for the purpose of furthering the Association’s objects and/or in accordance with these Rules. |  |
| 4.2 | Nothing shall be paid or transferred by way of profit to Members. |  |
| 5 | The registered office of the Association is at: |  |
| **MEMBERSHIP (Rules 6 -11.2)** | | |
| **Applying for Membership** | | |
| 6 | The Members of the Association shall be those persons or organisations who hold a share in the Association and whose names are entered in the Register of Members. | The clauses in this section lay out the provisions about who is a Member, who can apply to be a Member of the Association and the circumstances under which membership can be ended.  Reference to organisations should be removed for fully mutual co-operatives. For fully mutual co-operatives only tenants or prospective tenants can be members (although reference to prospective tenants can be deleted.)  For community based associations, a provision requiring that members live in the area of operation should be inserted [(see Appendix A)](#AppA). |
| 7.1 | The Committee shall set, review and publish its membership policy for admitting new Members. Subject to the provisions of Rule 7.2 the following shall be eligible to become Members: | An association must set, review and publish its policy on membership which details the criteria for membership and the procedures for implementing them.  It is a constitutional requirement that membership of an association should reflect the purpose and objects of the RSL.  These provisions will need to be removed for fully mutual co-operatives [(see Appendix B).](#AppB) |
| 7.1.1 | Tenants of the Association; |
| 7.1.2 | Service users of the Association; |
| 7.1.3 | Other persons who support the objects of the Association. |
| 7.1.4 | Organisations sympathetic to the objects of the Association. |
| 7.2 | If you are applying for membership you must send a completed and signed application form and the sum of one pound (which will be returned to you if the application is not approved) to the Association’s registered office. Whilst it is the Association’s intention to encourage membership, the Committee has absolute discretion in deciding on applications for membership and the following shall constitute grounds for refusal of an application for membership: | Sets out the application process and the grounds for refusal of an application for membership.  If there are any expectations on Members, these should also be made clear. (e.g. for community based Associations membership is normally only open to people who live or work within the Association’s defined geographical area of operation). The rules provide that the following are eligible to become Members (subject to the terms of the membership policy):   * Tenants of the Association * Service Users of the Association * Persons supporting the objects of the Association * Organisations sympathetic to the objects of the Association.   For community based associations, a requirement that members live in the area of operation should be added [(see Appendix A)](#AppA) |
| 7.2.1 | Where membership would be contrary to the Association’s Rules or policies; or |  |
| 7.2.2 | Where a conflict of interest may exist which, even allowing for the disclosure of such an interest, may adversely affect the work of the Association; or |  |
| 7.2.3 | Where the Committee considers that accepting the application would not be in the best interests of the Association. |  |
| 7.3 | Your application shall be considered by the Committee as soon as reasonably practicable after its receipt by the Association. An application for membership will not be considered by the Committee within the period of fourteen days before the date of a general meeting. The Committee has the power in its absolute discretion to accept or reject the application. | For tenants of a fully mutual co-operative residing in the same property – provisions outlined at [Appendix B, rule 7.5](#AppB) allow for the holding of shares jointly or separately (with approval from Committee). |
| 7.4 | If the Committee approve your application, you will immediately become a Member and your name and other necessary particulars will be included in the Register of Members within seven working days. You will then be issued one share in the Association. |  |
| 8 | You can apply for membership of the Association from the age of 16. |  |
| 9 | No Member can hold more than one share in the Association. |  |
| 10 | If you change your address, you must let the Association know by writing to the Secretary at the registered office within three months. This requirement does not apply if you are a tenant of the Association and have moved home by transferring your tenancy to another property owned and managed by the Association. |  |
| **Ending Your Membership** | | |
| 11.1 | Your membership of the Association will end and the Committee will cancel your share and record the ending of your membership in the Register of Members if: | Fully mutual co-operatives should refer to [Appendix B](#AppB) for amendments to these provisions. |
| 11.1.1 | You resign your membership giving seven days’ notice in writing to the Secretary at the registered office; or |  |
| 11.1.2 | The Committee reasonably believes that you have failed to tell the Association of a change of address as required by Rule 10; or | Community based associations should include a provision terminating membership if the member no longer lives in the area of operation [(see Appendix A)](#AppA) |
| 11.1.3 | For five annual general meetings in a row you have not attended, submitted apologies, exercised a postal vote or appointed a representative to attend and vote on your behalf by proxy; or | Associations should ensure that they regularly review and refresh their membership and they should be aware of the level of Member involvement they are achieving. Associations should set out in their policies how often they will review their membership and how they will do this. |
| 11.1.4 | The Association receives a complaint about your behaviour and two-thirds of the Members voting at a special general meeting agree to end your membership. The following conditions apply to this procedure: |  |
| 11.1.4.1 | the complaint must be in writing and must relate to behaviour which could harm the interests of the Association. |  |
| 11.1.4.2 | the Secretary must notify the Member of the complaint in writing not less than one calendar month before the meeting takes place; |  |
| 11.1.4.3 | the notice for the special general meeting will give details of the business for which the meeting is being called; |  |
| 11.1.4.4 | you will be called to answer the complaint at the meeting. The Members present will consider the evidence supporting the complaint and any evidence you decide to introduce; |  |
| 11.1.4.5 | the Members can vote in person or through a representative by proxy; |  |
| 11.1.4.6 | if you receive proper notice but do not go to the meeting without providing a good reason, the meeting will go ahead without you and the Members will be entitled to vote to end your membership. |  |
| 11.2 | If your membership is ended in accordance with Rule 11.1.4, you will immediately cease to be a Member from the date that the resolution to end your membership was passed and any further application for membership by you will need to be approved by two-thirds of the Members voting at a general meeting. |  |
| **REPRESENTING AN ORGANISATION (Rules 12.1 - 12.4)** | | |
| 12.1 | An organisation which is a Member is free to nominate any person it considers suitable as its representative to the Association. That person will represent all of the organisation’s rights and powers at general meetings. | Outside organisations may wish to join the Association as Members.  Typically, the type of organisation that might want to become a Member of the Association would be a local authority or a voluntary organisation with whom the Association is working.  Please note that there is no statutory or regulatory requirement to allow organisations to be members. Rule 12 can therefore be removed by amendment if an RSL does not wish to allow organisations to be members at the option of the Association.  Fully mutual co-operatives should delete these provisions [(see Appendix B).](#AppB) |
| 12.2 | To confirm the identity of a representative, the organisation must send the Association a copy of the authorisation or appointment of an individual as a representative. This should be signed by a Director, Secretary or Authorised Signatory of the organisation which signature must be witnessed, or in the case of a local authority, by the Chief Executive, or properly authorised Officer of the local authority. | Where an outside organisation wishes to join the Association as Members, an individual must be appointed to represent that organisation  Proof of this appointment must be given by an appropriate person. |
| 12.3 | An organisation can change the identity of the person entitled to represent that organisation at any time by confirming the identity of the new representative in terms of Rule 12.2 and withdrawing the authority of the original representative. |  |
| 12.4 | If you are a representative in terms of Rule 12.2, of an organisation which is a Member, you cannot be a Member as an individual yourself. If you are already a Member as an individual when you start to represent an organisation which is a Member, the Association will suspend your membership as an individual, until such time as you are no longer a representative of an organisation which is a Member. |  |
| **SHARE CAPITAL (Rule 13 – 17.3)** | | |
| **Shares** | | |
| 13 | The share capital of the Association will be raised by issuing one-pound shares to Members. Shares cannot be held jointly. Joint tenants of the Association may each become individual Members. | With the exception of fully mutual co-operatives, shares cannot be held jointly. That said, individual shares can be held by each joint tenant. If joint tenants both hold shares, both will be entitled to a vote.  In order to secure limited liability as provided for by Section 3(3) of the Co-operative and Community Benefit Societies Act 2014, share certificates, to the value of £1, should be issued to Members. They should be numbered consecutively and should include the name of the Association and its registration number with the FCA as an Registered Society. Share certificates can be printed by legal stationers, although it is acceptable, where a suitably high-quality package is available (i.e. MS Publisher) for the Association to print certificates. If the Association prints its own certificates, suitable procedures should be established to ensure that the shares are drawn up and issued in a structured and documented manner. |
| 14 | There is no interest, dividend or bonus payable on shares. |  |
| **Transferring Shares** | | |
| 15 | You shall not be entitled to any property of the Association in your capacity as Member and your share is not withdrawable or transferable save in the circumstances set out in Rules 16 and 17. | Shares can be transferred to another designated Member. |
| 16 | You cannot sell your share but you can transfer it if the Committee agrees. | This should be deleted for fully mutual co-operatives [(see Appendix B).](#AppB) |
| 17.1 | If you die or end your membership or have your membership ended, or you are a representative of an organisation which no longer exists, the Committee will cancel your share (except in those circumstances outlined in Rules 17.2 and 17.3) and the value of the share will then belong to the Association. | Reference to member organisations should be deleted for fully mutual co-operatives [(see Appendix B).](#AppB) |
| 17.2 | You can nominate the person to whom the Association must transfer your share in the Association when you die, as long as the person that you nominate is eligible for membership under these Rules and in terms of the Association’s membership policies. On being notified of your death, the Committee shall transfer or pay the full value of your share to the person you have identified. Your nomination must be in the terms required by the Co-operative and Community Benefit Societies Act 2014. | The recipient of the share must be eligible to be a shareholder in terms of the Rules and the Association’s membership policy.  This should be deleted for fully mutual co-operatives [(see Appendix B).](#AppB) |
| 17.3 | If you die or become bankrupt and your personal representative or trustee in bankruptcy seeks to claim your share, the Committee (to the extent that your personal representative or trustee in bankruptcy has right) will transfer or pay the value of your share in terms of your representative’s or trustee’s instructions. |  |
| **BORROWING POWERS (Rules 18.1-19)** | | |
| 18.1 | The Association can borrow money as long as the total borrowing at any time is not more than £……………. | The Association must include a borrowing limit within its Rules. The Association should set an upper limit which is informed by and appropriate to the business plan of the Association. |
| 18.2 | In respect of any proposed borrowing for the purposes of Rule 18.1, the amount remaining undischarged of any index-linked loan previously borrowed by the Association or any deep discounted security shall be deemed to be the amount needed to repay such borrowing in full if the pre-existing borrowing became repayable in full at the time of the proposed borrowing. | In assessing whether or not their current or intended borrowings exceed or will exceed the stated limit, Associations may need to make a calculation in relation to loans which are index linked or deep discounted where the rate fluctuates or will fluctuate in the future so that an exact borrowing figure can be calculated as if loans were repayable in full on the date of the proposed borrowing. |
| 18.3 | For the purposes of Rule 18.1 in respect of any proposed borrowing intended to be index-linked or on any deep discounted security the amount of borrowings shall be deemed to be the proceeds of such proposed borrowings that would be receivable by the Association at the time of the proposed borrowing. |  |
| 18.4 | The Association will not pay more than the market rate of interest as determined by the Committee having regard to the terms of the loan on any money borrowed. |  |
| 18.5 | The Association will not accept money on deposit. | The rules of an Association are to a large extent based upon the provisions of the Co-operative and Community Benefit Societies Act 2014.  Rule 18.5 is used specifically to differentiate RSLs from building societies whose principal purpose was to accept deposits from Members. Where an RSL considers entering into an arrangement with owners in relation to factoring or major repairs or improvements, which may involve accepting money on deposit, it is recommended that this should be dealt with by joint banking arrangements.  This rule will not prevent the Association accepting a deposit in any transaction other than a banking transaction. |
| 18.6 | The Association can lend money to an organisation which is a subsidiary of the Association within the meaning of the Companies Act 2006 or the Co-operative and Community Benefit Societies Act 2014 at a market rate of interest as determined by the Committee having regard to the terms of the loan. Where the Association is using a loan facility to on lend it must comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time. | These rules authorise an Association which has a wholly-owned subsidiary to lend money to that subsidiary, subject to the Regulatory Framework for Registered Society Landlords and Regulatory Guidance issued by the Scottish Housing Regulator from time to time. Appropriate documentation should be put in place in connection with such lending and appropriate professional advice should be sought on the proposed arrangements. The rate of interest should be the market rate of interest having regard to the terms of the loan. |
| 18.7 | The Association may borrow money from such lawful sources as is permitted by its Treasury Management Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time. | This rule confirms that an Association must have a Treasury Management Policy in place to govern its borrowing activity and borrowing activity must comply with the Regulatory Framework for Registered Society Landlords and any relevant Regulatory Guidance issued by the SHR from time to time. Associations should also seek appropriate professional advice on their proposed arrangements. |
| 18.8 | Subject to the foregoing provisions the Committee can determine and change the conditions under which the Association borrows or lends money. |  |
| 19. | The Association shall not lend money to Members. | The Association is not permitted to lend money to Members in terms of Section 34 of the Co-operative and Community Benefit Societies Act 2014. |
| **GENERAL MEETINGS (Rules 20 – 36)**  There are two types of General Meeting – Annual and Special – the latter arranged in response to particular circumstances that the Association has to deal with that fall outside the normal cycle of AGMs or to deal with particular items of business reserved only to Special General Meetings (e.g. rule amendment). | | |
| **Annual General Meeting** | | |
| 20. | 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 functions of the annual general meeting are to: |  |
| 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. | Members do not have a right to raise matters at the AGM. They may request in advance that matters are placed on the agenda but there is no obligation on the Association to do so, although they may do so at their discretion. Unless there are clear reasons why agenda items cannot be accepted, it is good practice to allow their inclusion.  Matters can only be discussed at the AGM if they are on the agenda. Questions can be raised on any of the items on the agenda, however if Members wish to raise a matter that is not on the agenda of the General Meeting, they have the option of calling a Special General Meeting under the provisions given in the Rules. Such a meeting must be requested in writing and by the required number of Members. If a motion to call a special general meeting in this way is not competent (i.e. it is ultra-vires) the Secretary is not required to call the meeting.  Whilst there is no legislative or regulatory restriction on doing so, it is recommended that Associations do not include an item on the agenda for Any Other Business (AOB). Only those items that are on the agenda should be discussed. |
| **Special General Meeting** | | |
| 21.1 | All general meetings other than annual general meetings are known as special general meetings. The Secretary will call a special general meeting if: | Special General Meetings can either be called by the Secretary at the request of the Committee or by Members of the Association. There are strict processes that must be observed in calling these meetings. The meeting can discuss only that business specified in the formal notice of the meeting. |
| 21.1.1 | the Committee requests one; or |  |
| 21.1.2 | At least four Members request one in writing. If there are more than 40 Members, at least one tenth of all the Members must ask for the meeting. |  |
| 21.2 | Whoever asks for the meeting must give the Secretary details of the business to be discussed at the meeting. |  |
| 21.3 | If a special general meeting is requested, the Secretary must within 10 days of having received the request give all Members notice calling the meeting. The meeting must take place within 28 days of the Secretary receiving the Members’ request. The Secretary should decide on a time, date and place for the meeting in consultation with the Committee or the Chairperson, but if such consultation is not practicable the Secretary can on his/her own decide the time, date and place for the meeting. |  |
| 21.4 | If the Secretary fails to call the meeting within 10 days, the Committee or the Members who requested the meeting can arrange the meeting themselves. |  |
| 21.5 | A special general meeting must not discuss any business other than the business mentioned in the notice calling the meeting. |  |
| **Notice for Meetings** | | |
| 22.1 | The Secretary will call all general meetings by written notice posted or sent by fax or email to every Member at the address, fax number or email address given in the Register of Members at least 14 days before the date of the meeting. This notice will give details of: | The Secretary should call all general meetings **at least** 14 days before the date of the meeting by writing to every Member of the Association informing them of the time, date and place of the meeting and whether it is a special or general meeting, such notice to be sent by post, fax or email to an address or fax number set out in the Register of Members. In relation to the election of Committee Members, postal\* ballot papers must be sent out no less than 14 days before the meeting. (Ballot papers can be sent out with the notice of meeting).  As a consequence, in order that nominations can be received and processed before the issuing of ballot papers notification of the intention to hold a General Meeting and an Invitation to Stand for Election must be sent out prior to this. This notification should be issued at least 28 days prior to the date of the meeting.  \*As per the guidance at 27.6, some organisations may choose to remove provisions for postal voting. If postal voting is not used there is no need to engage in the pre-notice invitation process. |
| 22.1.1 | the time, date and place of the meeting; |  |
| 22.1.2 | whether the meeting is an annual or special general meeting; |  |
| 22.1.3 | the business for which the meeting is being called. |  |
| 22.2 | The Committee may ask the Secretary to include with the letter or send separately to Members any relevant papers or accounts. If a Member does not receive notice of a meeting or papers relating to the meeting, this will not stop the meeting going ahead as planned. Each communication sent to a Member by post, addressed to his or her registered address, shall be deemed to have arrived forty eight hours after being posted. Each communication sent to a Member by fax or email shall be deemed to have arrived on the day it is sent. |  |
| 23 | The proceedings of a meeting shall not be invalidated by the inadvertent failure of the Association to send a notice calling the meeting to any Member. |  |
| **Procedure at General Meetings** | | |
| 24.1 | 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. | Meetings must have seven Members present, or one tenth of the Members present or represented by a proxy (whichever is greater), to be deemed quorate. If the meeting is not quorate, the meeting will be rescheduled for a week later. This meeting can go ahead even if the meeting does not have a high enough number of Members present to be quorate. Even though this may be inconvenient for the individual Associations affected, it does provide a mechanism for the business of the meeting to be considered. The Chairperson will announce at the inquorate meeting the venue of the re-scheduled meeting. Although no formal notice of the re-scheduled meeting requires to be given, Associations should also consider any other appropriate ways of publicising the venue of the re-scheduled meeting. Where attendance at meetings is a recurring problem for an Association, steps should be taken to improve attendance.  The Association may allow non-members to attend General Meetings, but they cannot speak to any matter unless invited to do so by the Chairperson and may not vote. Where an Association encourages non-members to attend general meetings, they should ensure that they can distinguish between Members and non-members.  There is no statutory requirement that states one tenth must be present when there are more than 70 members. This means that this rule can potentially be amended by associations who feel that a lower percentage might be more appropriate to their circumstances (e.g. some fully mutual co-operatives have lowered this to 5%). |
| 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. |  |
| 25 | If a majority of Members present agree, the Chairperson of a meeting can adjourn the meeting. No business can be discussed at the adjourned meeting other than the business not reached or left unfinished at the original meeting. There is no need to give notice to Members of the adjourned meeting. |  |
| 26.1 | The Chairperson of the Committee will be Chairperson at all meetings of the Association. If there is no Chairperson or he/she is not present or willing to act, the Members present must elect a Member of the Committee to be Chairperson of the meeting. If no Committee Members are present, the Members present must elect a Member to be Chairperson of the meeting. |  |
| 26.2 | If the Chairperson arrives later, after the meeting has commenced, s/he will take over as Chairperson of the meeting as soon as the current agenda item is concluded. |  |
| **Proxies/Representatives/Postal Votes** | | |
| 27.1 | 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. | The use of proxy votes can be controversial, particularly where a large number of proxies are collected by one person. The original intention behind the use of proxies was to provide a mechanism where a person could take one or two proxy votes for Members who were ill or were not able to attend for some other reason. |
| 27.2 | If there is any doubt about whether your representative has authority to vote, the Chairperson will decide and his/her decision will be final. | In some cases, organised proxy collections run counter to this intention. |
| 27.3 | The maximum number of proxy votes that may be cast by any one person is 10. | For this reason the number of proxy votes held by one person has been limited. **[In the Rules the figure used is 10, but Associations may wish to seek to amend this number in light of the total number of Members who are eligible to vote, bearing in mind what percentage of the total number of votes one person can use.]** An Association with only 100 Members may feel that 10 is too high and reduce this number to 5. |
| 27.4 | To reverse your appointment of a representative, you must let the Association have a properly completed document in the form shown in Appendix 2. The document must be presented to the Association before the meeting at which you no longer want to be represented convenes. Alternatively, if you declare yourself present before the meeting convenes, the appointment of a representative to vote on your behalf will automatically fall. |  |
| 27.5 | The Chairperson will report to the meeting the details of any documents seeking to appoint a representative received but which are not valid. If you represent an organisation, your authorisation or appointment as a representative requires to be in accordance with the terms of Rule 12.2. | Proxy votes should be checked against the Register of Members and against the Member’s original signature.  Reference to member organisations should be deleted for fully mutual co-operatives [(see Appendix B).](#AppB) |
| 27.6 | If there is to be an election of Committee Members at an Annual General Meeting, you can vote by post. Not less than 14 days before a meeting is held at which one or more Committee Members will be elected, you will receive a ballot paper for the election. You can vote in the election by returning the ballot paper to the Secretary at least 5 days before the day of the meeting, or by bringing your ballot paper along to the meeting. | In terms of promoting the widest possible participation of Members in the election of the Governing Body, and in relation **only** to the election of Committee Members, the Members of the Association may choose to vote by post, using the ballot paper that the Association issues at least 14 days prior to the meeting where Committee Members are due to be elected. For a postal vote, the ballot paper must be returned to the Association’s office no later than 5 days prior to the meeting. Postal votes will be counted in the result of the poll that takes place at the meeting. The ballot paper can alternatively be used to vote in person at the AGM.  The provision allowing for postal voting can be removed if the Association wishes to (e.g. some community based organisations do not require this provision). |
| **Voting** | | |
| 28 | If a decision of a meeting is put to the vote, the outcome will be determined by the majority of those Members voting. Voting will be by a show of hands except where a poll is requested or required. Votes cannot be taken on resolutions which conflict with any provisions of these Rules or the law. | Some people may not be able to take part in a show of hands. In that case, the organisers of the meeting should be alert to this fact and either appoint a helper where necessary or revert to a poll rather than a show of hands. |
| 29.1 | Where a vote is by a show of hands every Member present in person has one vote. Where a vote is by a poll every Member present in person or who has appointed a representative has one vote. Where an appointed proxy is present, and he/she advises the Chairperson, the Chairperson shall direct that the vote is by a poll. | In the case of a poll being required because there are declared proxies or by the request of the Members in terms of Rule 31.1, Associations must ensure that they have voting papers and a ballot box available for polls. |
| 29.2 | In relation to the election of Committee Members, the vote is by a poll using the ballot paper issued to the Members prior to the meeting; votes received by post in advance of the meeting will be counted in the total number of votes at the meeting. | Members will be invited to vote for candidates up to the number of vacancies, e.g. if there are three vacancies for the committee each member can vote for no more than three of the listed candidates. Voting for a greater number would result in the ballot paper being spoiled. |
| 30 | If there is an equal number of votes for and against a resolution, or in relation to the election of Committee Members, the Chairperson will have a second and deciding vote. The Chairperson’s announcement of the decision of a vote will be final and conclusive. The decision is then recorded in the minutes of the meeting. There is no need to record the number of votes for or against the decision. | In the event of a tie, it is an option to introduce a standing order for the conduct of election that the Chairperson will exercise a casting vote in accordance with the drawing of lots between the tied candidates. |
| 31.1 | A poll can be required before or immediately after a vote by a show of hands, if at least one-tenth of the Members present at the meeting (in person or by proxy through a representative appointed in accordance with Rule 27.1) request this. |  |
| 31.2 | A poll must take place as soon as the Chairperson has agreed to it, in line with the Chairperson’s instructions. The result of the poll will stand as the decision of the meeting. |  |
| **Proceedings at General Meetings** | | |
| 32 | All speakers must direct their words to the Chairperson. All Members must remain quiet and orderly while this is happening. | Only the business that is on the Agenda of the General Meeting can be discussed at that meeting. A special general meeting can be requested by a Member to discuss any other issues that arise. |
| 33 | You will not be allowed to speak more than once on any individual matter unless it is to explain something or ask for an explanation until every other Member has had the chance to speak. You will then have the opportunity to speak a second time on a matter but only if the Chairperson agrees. Where the Chairperson raised the matter for discussion initially, she/he shall be permitted to make a final reply on the matter. |  |
| 34 | The Chairperson will decide how long each speaker is allowed to speak, allowing equal time to each speaker. |  |
| 35 | If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling. If the Chairperson’s ruling is challenged by more than one person, the Chairperson will step down and those present will decide the point raised on a majority vote. If the vote is tied, the Chairperson’s original ruling is carried. |  |
| 36 | Meetings must not last longer than two hours unless at least two-thirds of the Members present agree after the end of that time to continue the meeting. |  |
| **THE COMMITTEE OF MANAGEMENT (Rules 37.1-38.3)** | | |
| **Composition of the Committee** | | |
| 37.1 | The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 15 persons. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation. | Constitutional Requirement 16 set out that an Association shall have a maximum of 15 Members of the Management Committee (including co-optees) and a minimum of 7. Although a lower maximum number (often 12) is increasingly common. The Association must keep a register of Committee Members and publish their names in relevant documentation and its website.  It is an option for the Committee to comprise both elected and appointed members (see [Appendix D](#AppD)) and/or employees (see [Appendix E](#AppE) provisions a, b, c, d, e, f, i, j, k and l). |
| 37.2 | The first Committee Members will be the Members who have signed the application to register the Association. The first Members and all subsequent Members who are eligible shall be Committee Members until there are more than seven Members. Once there are more than seven Members of the Association, at the end of the next annual general meeting, all of the Committee Members shall retire. |  |
| 37.3 | A person must be aged 18 or over and a Member to become a Committee Member (including any person appointed to fill a casual vacancy) other than a person appointed as a co-optee or appointed by The Scottish Housing Regulator who must be aged 18 or over but need not be a Member. | The age limit for becoming a committee member in terms of Section 31 of the Co-operative and Community Benefit Societies Act 2014 is 16 and this provision can be amended accordingly should the organisation so wish. |
| 37.4 | An employee of the Association, or a Close Relative of an employee, may not be a Committee Member. | Employees of the Association or Close Relatives of employees (as defined in the Rules) cannot be Members of the Committee.  Please note, that if an employee is Secretary of the Association (as is often the case) that employee does not become a committee member by virtue of being the Secretary. This means that they are unaffected by the provisions of Rule 37.4.  For an employee to become a Committee Member, the relevant amendments (being a, b, c, d, e, f, i, j, k and l) set out in [Appendix E](#AppE) would need to be incorporated into the rules. |
| 37.5 | No Committee Member may take office until they have agreed to and signed the Association’s code of conduct for Committee Members. | All Committee Members must sign the Association’s Code of Conduct prior to taking office. |
| 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. The Committee must be assured that any Committee Member who has continuous service on the Committee of nine years or more and who is seeking re-election is able to demonstrate his/her continued effectiveness as a Committee Member before he/she may stand for re-election. | All Committee Members shall be subject to an annual performance review and the Committee must satisfy itself that any Committee Member seeking re-election after 9 years continuous service on the Committee must demonstrate his/her continued effectiveness as a Committee Member. SFHA will provide further guidance in this connection as part of its Governance Handbook. |
| 37.7 | Each of the Committee Members shall, in exercising his/her role as a Committee Member, act in the best interests of the Association, its tenants and service users and will not place any personal or other interests ahead of his/her primary duty to the Association; and, in particular, must:- | Rule 37.7 sets out the statutory duties of Committee Members as charity trustees in terms of the Charities and Trustee Investment (Scotland) Act 2005. |
| 37.7.1 | seek, in good faith, to ensure that the Association acts in a manner which is in accordance with its objects. |  |
| 37.7.2 | act with the care and diligence which it is reasonable to expect of a person who is managing the affairs of another person. |  |
| 37.7.3 | in circumstances giving rise to the possibility of a conflict of interest between the Association and any other party:- |  |
| 37.7.3.1 | put the interests of the Association before that of the other party, in taking decisions as a Committee Member; |  |
| 37.7.3.2 | where any other duty prevents him/her from doing so, disclose the conflicting interest to the Association and refrain from participating in any discussions or decisions involving the other Committee Members with regard to the matter in question |  |
| 37.7.4 | ensure that the Association complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005. | Non-charitable associations should remove this provision. |
| 37.8 | The Committee can require that a Committee Member who is being investigated for a potential breach of the Association’s Code of Conduct for Committee Members take leave of absence and not attend any meeting in his or her capacity as Committee Member until the Committee has completed its consideration of the potential breach. When on such leave of absence, the Committee Member will not be entitled to receive minutes and/or documents in his or her capacity as a Committee Member relating to the business of the Association. | This provision would not restrict the right of a committee member on such a leave of absence to access documents under Data Protection or Freedom of Information legislation. As such, a Committee Member should continue to receive documents in his/her capacity as a tenant if appropriate.  It is at the option of the Committee, if considered appropriate, to continue to provide minutes and documents to a Committee Member on leave of absence in these circumstances. |
| **Interests** | | |
| 38.1 | The Committee shall set and periodically review its policy on payments and benefits. If a person is a Member, employee of the Association or serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the policy. In making any payment or conferring any benefit the Association shall act at all times with transparency, honesty and propriety. | Each Association must have a policy setting out the circumstances when it is and is not appropriate to make payments and benefits to particular categories of persons connection with the Association. Each Association’s policy and practice must comply with the regulatory guidance and charity law where relevant. The law and regulatory guidance around payments and benefits play an important part in maintaining the good reputation of the sector.  RSLs should exercise good governance and judgment and maintain high ethical standards of honesty, integrity and probity. If an Association has any doubt about payments and benefits then it should seek its own independent legal advice.  The SFHA’s Model Entitlements Payments and Benefits Policy is available on the SFHA website here:  [Model Entitlements Payments and Benefits Policy](https://www.sfha.co.uk/our-work/policy-category/governance-and-regulation/sub-category/governance/policy-article/entitlements-payments-and-benefits-policy-review-concludes) |
| 38.2 | If a person serves on the Committee or any sub-committee he/she must declare any personal or other external interests on an annual basis in accordance with the Association’s Code of Conduct for Committee Members. If while serving on the Committee that person has any conflict of interest in any contract or other matter about to be discussed at a meeting, he/she must tell the Committee. He/she will be required to leave the meeting while the matter is discussed and will not be allowed to vote on the matter or to stay in the meeting while any vote on the matter is being held. If that person is inadvertently allowed to stay in the meeting and vote on the matter, his/her vote will not be counted. | Where a Committee Member has any conflict of interest in any contract or agreement that is about to be discussed at a meeting, the Member **must** declare this interest. The Committee Member will be required to leave the meeting while the matter is being discussed and voted upon.  Committee Members should always act in a personal capacity and in the best interest of the RSL and its tenants and service users and must not act as representatives of any other organisation or interest group.  Associations should ensure that they have effective standing orders, policies and procedures in place to deal with conflicts of interests, and should ensure that all decisions of Committee are minuted.  Associations should always be mindful of the potential conflict of interest that can arise given the roles of some individuals. Associations should think through these issues and identify how conflicts can be avoided or dealt with, and if a situation developed where too many conflicts of interest were arising for a Committee Member, this may suggest that that Committee Member should stand down from the Committee. |
| 38.3 | If a person serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Association’s policy referred to in Rule 38.1. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise. | It is accepted that tenant Members of the Committee are not subject to conflict of interest when the Committee is discussing general policy in connection with rent setting.  Non-charitable associations should remove this provision (see [Appendix D](#AppC)). |
| **ELECTING COMMITTEE MEMBERS (Rules 39.1- 44.8)**  The election and re-election of the Members of the Committee has occasionally caused confusion in terms of precisely which Members should stand down and which may seek re-election. To provide further guidance, an example is provided at [Appendix H](#AppG). | | |
| 39.1 | At the end of the first annual general meeting after the total membership of the Association has risen to seven or more, all Committee Members must retire. From then on at the end of every annual general meeting, one-third of the Committee Members or the nearest whole number thereto, must retire. Anybody appointed as a co-optee under Rule 42.1 or to fill a casual vacancy under Rule 41 and who retires for that reason, shall not count towards the one third provision. The retiring Committee Members should be selected in accordance with Rule 39.2. | **Elected Members** – Under Rule 39.1 a third of the Committee must stand down.  **Co-optees** – All co-optees must stand down under Rule 39.1. It is normally assumed that by the AGM the co-optees will have done their good work and will leave the Committee. In some circumstances, Associations may wish to retain the skills/knowledge/experience of the co-optees and re-co-opt them, but it is not good practice to do this on a rolling year to year basis. Where that person is eligible for membership of the organisation, they may wish to stand for election. Associations need to ensure that Committee Members have the necessary skills and experience. Associations should consider how they target and recruit Committee Members with the required skills and experience. And, ensure that ongoing relevant training is provided to Committee Members.  In determining how many committee members should stand down under the one third provision, first disregard anyone appointed as a co-optee or to fill a casual vacancy and then take one third of the rest (a number 0.5 or above is rounded up). |
| 39.2 | In the absence of Committee Members standing down voluntarily, the retiring Committee Members should be those who have served the longest on the Committee since the date of their last election. If two or more Committee Members have served equally long and cannot agree who should retire, they must draw lots. | If agreement cannot be reached about who should stand down between Committee Members who have served equally long then these particular Committee Members will draw lots to decide who should stand down.  Any Committee Member standing down voluntarily at the AGM will count towards the one third irrespective of how long that person has served on the Committee. |
| 39.3 | Committee Members must also retire if they have been co-opted onto the Committee under Rule 42.1 or have filled casual vacancies under Rule 41. |  |
| 39.4 | If a Committee Member retires from the Committee in terms of Rule 39 on the date of the next annual general meeting, that Committee Member can stand for re-election without being nominated. |  |
| 40.1 | If, at the annual general meeting the number of Members standing for election is less than or equal to the number of vacant places, the Chairperson will declare them elected without a vote. If there are more Members standing for election than there are vacant places, those present at the general meeting or those exercising a postal vote in accordance with Rule 27.6 will elect Members onto the Committee, in accordance with Rule 29.2. Each Member present or who has appointed a representative will have one vote for each place to be filled on the Committee. A Member must not give more than one vote to any one candidate. | If an election is necessary for the election of Committee Members, this vote must be taken by way of a poll using the issued postal ballot voting paper.  Members can vote, as part of the poll to elect Committee Members by exercising a postal vote. |
| 40.2 | The Association will post or send by fax or email intimation of the intended date of the annual general meeting and information on the nomination procedure to each Member at the address, fax number or email address given in the Register of Members of the Association not less than 28 days before the date of the meeting. Nominations for election to the Committee can be made only by Members, must be in writing and in the form specified by the Association and must give the full name, address and occupation of the Member being nominated. A Member cannot nominate himself/herself for election to the Committee. Nominations must be signed by and include a signed statement from the Member being nominated to show that they are eligible to join the Committee in accordance with Rules 37.4 and 43, and that they are willing to be elected. Nomination forms can be obtained from the Association and must be completed fully and returned by hand or by post to the Association’s registered office at least 21 days before the general meeting. | No less than 14 days before the meeting at which the election of Committee Members will take place, ballot papers should be sent out to all Members who qualify to vote in the election. Where a Member wishes to vote by post\*, the ballot paper should be returned to the Secretary at least 5 days prior to the day of the meeting. If the Member chooses not to exercise a postal vote, the ballot paper should be brought along to the meeting.  **The postal votes received will be counted along with the total number of votes at the meeting.**  Nominations for the Committee must be delivered to the Secretary or left at the Registered Office of the Association at least twenty-one days before the general meeting.  Late nominations cannot be accepted.  The requirement of 28 days is to allow members 7 days to arrange a nomination in order that it can be delivered at least 21 days before the AGM. This gives the Association 7 days to prepare a ballot paper to go out with the notice 14 days before the meeting.  \*The provisions allowing for postal voting can be removed if the Association wishes (e.g. some community based organisations do not require this provision). Under such circumstances, the timescales outlined above can be adjusted to reflect the Association’s process – provided enough time is allocated for receipt of nominations prior to the AGM and the issuing of ballot papers thereafter. |
| 40.3 | A nomination for election to the Committee can be rejected by a decision by not fewer than three quarters of the Committee Members on one or more of the following grounds:- | This provision allows the Committee to reject a nomination for election to the Committee on a similar basis to the provision allowing the Committee to reject an application to become a shareholder.  SHR have stressed that it is expected that this provision is used in exceptional circumstances only.  It should be noted that the timescale for this is tight as the Committee must reach any decision to reject a nomination between the date the nomination is received and the date of the relevant AGM.  Further guidance and a worked example for this clause is provided at [Appendix I](#AppK) |
| 40.3.1 | where election to the Committee would be contrary to the Association’s Rules or policies; or |  |
| 40.3.2 | where a conflict of interest may exist which, even allowing for the disclosure of such an interest may adversely affect the work of the Association; or |  |
| 40.3.3 | where there is clear evidence of relevant circumstances from which it is concluded that election to the Committee would not be in the best interests of the Association. |  |
| 40.4 | The rejection of a nomination for election to the Committee shall be notified to the Member concerned in writing at any time prior to the date of the relevant annual general meeting. |  |
| 41 | If an elected Committee Member leaves the Committee between the annual general meetings, this creates a casual vacancy and the Committee can appoint a Member to take their place on the Committee until the next annual general meeting. | **Casual Vacancies** – A Member filling a vacancy that has arisen on the Committee during the year must stand down at the next AGM under Rule 41, but they are allowed to seek election to the Committee in the normal way. |
| **Co-optees** | | |
| 42.1 | The Committee can co-opt to the Committee or to a sub-committee anyone it considers is suitable to become a Committee Member or member of a sub-committee. Co-optees do not need to be Members, but they can only serve as co-optees on the Committee or sub-committee until the next annual general meeting or until removed by the Committee. A person co-opted to the Committee can also serve on any sub- committees. | There are no Rules as to who is a “suitable” Committee Member, over and above the formal Rules which state which people are not allowed to serve upon a Committee.  When discussing co-options, Committees should aim to co-opt people who can complement the mix of skills and knowledge on the Committee already. The option of co-opting Committee Members could be used for example in circumstances where potential Committee Members would normally be excluded from membership of the Association because of the existing membership criteria. Co-option should not, however, be used simply to circumvent the organisation’s membership policies although it is recognised that for community based associations and fully mutual co-operatives where membership rights are more restrictive, co-options might be a means for the Committee to benefit from particular skill sets not available from the body of members. |
| 42.2 | A person appointed as a co-optee shall undertake the role of Committee Member or member of a sub-committee and accordingly will be subject to the duties and responsibilities of a Committee Member. Co-optees can take part in discussions at the Committee or any sub-committees and vote at Committee and sub-committee meetings on all matters except those which directly affect the Rules, the membership of the Association or the election of the Association’s Office Bearers. Co-optees may not stand for election, nor be elected as one of the Office Bearers of the Committee. | **Any** Committee Member, be they elected, co-opted or filling a casual vacancy, must **at all times** act in the best interests of the Association.  Rule 42 is also worded to discourage the continual co-option of Committee Members (i.e. year, in year out). In terms of best practice, where possible – and it is acknowledged that some Association’s membership requirements may preclude this – co-optees who are likely to have an ongoing involvement with Committees should become elected, full Members of the Committee.  Co-optees can serve as chair of sub-committees/working groups. |
| 42.3 | Committee Members co-opted in this way must not make up more than one-third of the total number of the Committee or sub-committee members at any one time. The presence of co-optees at Committee Meetings will not be counted when establishing whether the minimum number of Committee Members are present to allow the meeting to take place as required by Rule 48 and the presence of co-optees will not count towards the quorum for sub-committee meetings. | Co-optees are subject to much the same Rules as any other Committee Member, so for example, if they had missed four Committee meetings without prior leave of absence their place on the Committee would end.  Rule 42.1 – 42.3 Note that any co-optees cannot participate in votes or decisions affecting the Rules, the appointment of Office Bearers or membership of the Association. |
| **Eligibility for the Committee** | | |
| 43.1 | A person will not be eligible to be a Committee Member and cannot be appointed or elected as such if:- | Committee Members themselves have the primary responsibility, that where these circumstances occur, and they are, or become, ineligible to be on the Committee they declare this and step down from the Committee or withdraw from seeking election to the Committee. The Committee also has a responsibility to take reasonable steps to satisfy itself that serving Committee Members or persons seeking election or appointment to the Committee are eligible to serve. The Committee should have in place adequate procedures in this connection and provide suitable training and information to Committee Members and potential Committee Members |
| 43.1.1 | he/she is an undischarged bankrupt, has granted a trust deed which has not been discharged or is in a current Debt Payment Plan under the Debt Arrangement Scheme; or |  |
| 43.1.2 | he/she has been convicted of an offence involving dishonesty which is not spent by virtue of the Rehabilitation of Offenders Act 1974 or an offence under the Charities and Trustee Investment (Scotland) Act 2005; or | Non-charitable associations should remove reference to the Charities and Trustee Investment (Scotland) Act 2005 (see [Appendix C](#AppC)). |
| 43.1.3 | he/she is a party to any legal proceedings in any Court of Law by or against the Association; or | This Rule is a ‘two way street’ in as much as the Association or a Member may have initiated the civil proceedings. Effectively, the point at which legal proceedings commence is when official Court papers are served on a defender notifying them of the action. The legal action that is taken could involve the usual areas over which legal action is taken by any Housing Association, such as rent arrears or non-payment of an owner’s factoring bill. Once the legal action has been concluded, the Committee Member involved would have to stand for election onto the Committee again if they wished. |
| 43.1.4 | he/she is or will be unable to attend the Committee Meetings for a period of 12 months; or |  |
| 43.1.5 | he/she has been removed from the Committee of another registered social landlord within the previous five years; or |  |
| 43.1.6 | he/she has resigned from the Committee in the previous five years in circumstances where the resignation was submitted after the date of his/her receipt of notice of a special committee meeting convened to consider a resolution for his/her removal from the Committee in terms of Rule 44.5; or |  |
| 43.1.7 | he/she has been removed from the Committee in terms of Rules 44.4 or 44.5 within the previous five years; or |  |
| 43.1.8 | he/she has been removed, disqualified or suspended from a position of management or control of a charity under the provisions of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or the Charities and Trustee Investment (Scotland) Act 2005; or |  |
| 43.1.9 | he/she has been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners for England and Wales or by Her Majesty’s High Court of Justice in England on the grounds of any misconduct in the administration of the charity for which he/she were responsible or to which he/she were privy, or which his/her conduct contributed to or facilitated; or |  |
| 43.1.10 | a disqualification order or disqualification undertaking has been made against that person under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (which relate to the power of a Court to prevent someone from being a director, liquidator or administrator of a company or a receiver or manager of company property or being involved in the promotion, formation or management of a company); or |  |
| 43.1.11 | his/her nomination for election to the Committee has been rejected in accordance with Rule 40.3 during the period between the return of the completed nomination form and the commencement of the relevant Annual General Meeting. | Rejecting a nomination applies only to the AGM for which the nomination was received. It does not prevent the members being nominated in subsequent years. |
| 43.2 | A person cannot be re-elected as a Committee Member if the Committee is not satisfied under Rule 37.6 of the individual’s continued effectiveness as a Committee Member. In these circumstances the Committee must not allow the individual to stand for re-election |  |
| 44 | A Committee Member will cease to be a Committee Member if: |  |
| 44.1 | he/she resigns his/her position as a Committee Member in writing; or |  |
| 44.2 | he/she ceases to be a Member unless he/she is a co-optee in terms of Rule 42.1 or an appointee of The Scottish Housing Regulator; or |  |
| 44.3 | he/she misses four Management Committee meetings in a row without special leave of absence previously being granted by the Committee either at his/her request or by exercise of the Committee’s discretion; or |  |
| 44.4 | the majority of Members voting at a general meeting decide this. (The Members at the meeting may then elect someone to take his/her place. If a replacement is not elected at the meeting, the Committee may appoint a Committee Member in terms of Rule 41); or. |  |
| 44.5 | the majority of those remaining Committee Members present and voting at a special meeting of the Committee convened for the purpose decide to remove him/her as a Committee Member. The resolution to remove him/her as a Committee Member must relate to one of the following issues: | Rule 44.5 permits the removal of a Committee Member if they have breached any one of the conditions, in Rules 44.5.1 – 44.5.3  There is an onus upon individual Committee Members to ensure that they are familiar with the requirements of published standards, the Code of Conduct, the Rules, standing orders and all other relevant policies. This should be included in Committee Members’ induction training.  Associations should note that breaches of Committee Member discipline constitute notifiable events in terms of SHR’s guidance. |
| 44.5.1 | failure to perform to the published standards laid down by the Scottish Federation of Housing Associations and/or The Scottish Housing Regulator adopted and operated by the Association; |  |
| 44.5.2 | failure to sign or failure to comply with the Association’s Code of Conduct for Committee Members; or | The SFHA Model Code of Conduct for Governing Body Members is available on the SFHA website here:  [Model Code of Conduct for Governing Body Members](https://www.sfha.co.uk/our-work/policy-category/governance-and-regulation/sub-category/governance/policy-article/update-to-sfha-model-codes-of-conduct-for-staff-and-governing-body-members) |
| 44.5.3 | a breach of the Association’s Rules, standing orders or other policy requirements; |  |
| 44.6 | he/she becomes ineligible as a Committee Member in terms of Rule 43; or |  |
| 44.7 | he/she is a co-optee or was appointed to fill a casual vacancy and whose period of office is ended in accordance with Rules 39.1 or 42.1; or |  |
| 44.8 | he/she is a Committee Member retiring in accordance with Rule 39.1. |  |
| **POWERS OF THE COMMITTEE OF MANAGEMENT (Rule 45 – 47.8)** | | |
| 45 | The Committee is responsible for directing the affairs of the Association and its business and may do anything lawful which is necessary or expedient to achieve the objects of the Association. The Committee is not permitted to exercise any powers which are reserved to the Association in general meetings either by these Rules or by statute. The Committee is responsible for the leadership, strategic direction and control of the Association with the aim of achieving good outcomes for its tenants and other service users in accordance with Regulatory Standards and Guidance issued by The Scottish Housing Regulator from time to time. The Committee is responsible for ensuring that the Association can demonstrate its governance and financial arrangements are such as to allow The Scottish Housing Regulator to regulate effectively and exercise its full regulatory powers. | These clauses relate to Constitutional Requirement 17 within the Scottish Housing Regulator’s [Regulatory Framework](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3), i.e.  *“The powers and responsibilities of the governing body are clearly set out.”* |
| 46 | The Committee acts in the name of the Association in everything it does. A third party acting in good faith and without prior notice does not need to check if the powers of the Committee have been restricted, unless they are already aware that such a restriction may exist. |  |
| 47 | Amongst its most important powers, the Committee can: |  |
| 47.1 | buy, sell, build upon, lease or exchange any land and accept responsibility for any related contracts and expenses. |  |
| 47.2 | agree the terms of engagement and remuneration of anyone employed in connection with the business of the Association and act as employer for anyone employed by the Association. |  |
| 47.3 | grant heritable securities over land owned by the Association and floating charges over all or any part of property and assets both present and in future owned by the Association. This includes accepting responsibility for any related expenses. |  |
| 47.4 | decide, monitor and vary the terms and conditions under which property owned by the Association is to be let, managed, used or disposed of. |  |
| 47.5 | appoint and remove solicitors, surveyors, consultants, managing agents and employees, as required by the Association’s business. |  |
| 47.6 | refund any necessary expenses as are wholly necessary incurred by Committee Members and sub-committee members in connection with their duties. |  |
| 47.7 | compromise, settle, conduct, enforce or resist either in a Court of Law or by arbitration any suit, debt, liability or claim by or against the Association. |  |
| 47.8 | accept donations in support of the activities of the Association. |  |
| **COMMITTEE PROCEDURE (Rule 48 – 58.4)** | | |
| 48 | It is up to the Committee to decide when and where to hold its ordinary meetings, but it must meet at least six times a year. There must be at least four Committee Members present for the meeting to take place. | Ideally each Association should have:   * an agreed schedule of Committee meetings for the year * an accompanying set of dates for when papers are mailed **and** * deadlines for finalising agenda items prior to mailing (by post, delivery, fax or email).   As a matter of good practice, any papers tabled at the meeting should be included with the subsequent set of Committee papers:  **(1)** to ensure that they are on file and  **(2)** to ensure Committee Members not present receive a copy.  Meetings can take place in any manner permitting those attending to hear and comment on the proceedings including by telephone or video conferencing.  Committees will usually have in place standing orders incorporating practical arrangements relating to the conduct of meetings such as a maximum length of time for meetings. |
| 49 | The Committee will continue to act while it has vacancies for Members. However, if at any time the number of Committee Members falls below seven, the Committee can continue to act only for another two months. If at the end of that period the Committee has not found new Members to bring the number of Committee Members up to seven, the only power it will have is to act to bring the number of Committee Members up to seven. |  |
| 50 | Committee Members must be sent written notice of Committee meetings posted, or delivered, by hand or sent by fax or email to the last such address for such communications given to the Secretary at least seven days before the date of the meeting. The accidental failure to give notice to a Committee Member or the failure of the Committee Member to receive such notice shall not invalidate the proceeding of the relevant meeting. |  |
| 51. | Meetings of the Committee can take place in any manner which permits those attending to hear and comment on the proceedings. | This could include telephone conference, video conference, skype, etc. |
| 52 | All speakers must direct their words to the Chairperson. All Committee Members must remain quiet and maintain order while this is happening. The Chairperson will decide who can speak and for how long. |  |
| 53 | If any point arises which is not covered in these Rules, the Chairperson will give his/her ruling which will be final. |  |
| 54 | All acts done in good faith as a result of a Committee Meeting or sub-committee meeting will be valid even if it is discovered afterwards that a Committee Member was not entitled to be on the Committee. |  |
| 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. |  |
| **Special Committee Meetings** | | |
| 56.1 | The Chairperson or two Committee Members can request a special meeting of the Committee by writing to the Secretary with details of the business to be discussed. The Secretary will send a copy of the request to all Committee Members within three working days of receiving it. The meeting will take place at a place mutually convenient for the majority of Committee Members, normally the usual place where Committee Meetings are held, between 10 and 14 days after the Secretary receives the request. | Special Committee Meetings can be requested by the Chairperson or two Committee Members. The request should be sent to the Secretary, who should send a copy of the request to all Committee Members within three days of receiving it. The meeting, at which only the business requested should be discussed, will take place between 10 and 14 days after the Secretary receives the letter at a mutually convenient location: usually where Committee Meetings are normally held. Such a meeting can deal only with business for which the meeting was called. |
| 56.2 | No other business may be discussed at the meeting other than the business for which the meeting has been called. |  |
| 56.3 | If the Secretary does not call the special meeting as set out above, the Chairperson or the Committee Members who request the meeting can call the meeting. In this case, they must write to all Committee Members at least seven days before the date of the meeting. |  |
| 57 | If a Committee Member does not receive notice of the meeting, this will not prevent the meeting going ahead. |  |
| **Sub-committees** | | |
| 58.1 | The Committee can delegate its powers to sub-committees or to staff or to Office Bearers. The Committee will establish the terms of reference for such delegation, which will be set down in writing and communicated to the recipient of the delegated powers. Such delegation will be set out down in writing in standing orders, schemes of delegated authority or other appropriate documentation. In the case of a sub-committee such delegation shall include the purposes of the sub-committee, its composition and quorum for meetings. A minimum number of members for a sub-committee shall be three. There must be at least three of the members of a sub-committee present for the meeting to take place. The Committee shall be responsible for the on-going monitoring and evaluation of the use of delegated powers. | The Committee can delegate powers to sub-committees, staff or to Office Bearers but must set out terms of reference for such delegation; including its composition, purposes and quorum. A sub-committee cannot have or fewer than 3 Members and its quorum shall be at least 3.  Sub-committees usually have a significant degree of responsibility delegated to them for specific subjects, e.g., housing management, development or finance. Decisions of the sub-committees should be noted from their minutes. Depending upon a sub-committee’s remit, its limits of responsibility and the wider implications for the Association of that sub-committee’s decisions, decisions of significance to other or all parts of the Association should be formally reported to the Management Committee. These matters should be specified in the Association’s scheme of delegated authority.  There are no mandatory sub-committees but SHR does require that the Committee ensures oversight of the internal audit function. |
| 58.2 | The meetings and procedures of sub-committees or otherwise must comply with the relevant terms of reference. |  |
| 58.3 | Any decision made by sub-committee must be reported to the next Committee Meeting. |  |
| 58.4 | The Committee can establish and delegate powers to sub committees, designated as Area Committees, to take decisions relating to the management and maintenance of properties within a particular geographical area. The Committee will determine the membership and delegated responsibility of an Area Committee in its terms of reference. An Area Committee shall exercise such delegated powers notwithstanding the provisions of Rules 42.1 and 42.3 which provisions shall not apply to Area Committees. | The Model Rules allow for delegation to Area Committees which, although sub-committees under the Rules, are not subject to the restriction on the proportion of co-optees. The aim is to maximize community participation in the Area Committee strategy. Associations should decide the level of delegated authority to be given to Area Committees. The extent of delegation might vary between different Area Committees as appropriate to meet the aspirations of individual areas. Associations should also have arrangements in place for populating their Area Committees and Associations will be free to put in place different mechanisms for involving local people in Area Committees. |
| **THE SECRETARY AND OFFICE BEARERS (Rule 59.1 -59.11)** | | |
| 59.1 | The Association must have a Secretary, a Chairperson and any other Office Bearers the Committee considers necessary. The Office Bearers, except for the Secretary, must be elected Committee Members or Committee Members appointed to fill casual vacancies in accordance with Rule 41 but cannot be co-optees. An employee may hold the office of Secretary although not be a Committee Member. The Committee will appoint these Office Bearers. If the Secretary cannot carry out his/her duties, the Committee, or in an emergency the Chairperson, can ask another Office Bearer or employee to carry out the Secretary’s duties until the Secretary returns. | The Rules provide that an Association must have a Chairperson and a Secretary (together with any other office bearers determined by the Committee). Associations should consider scheduling a brief Committee meeting immediately after the AGM (i.e. the same day/evening), where votes for office bearers take place.  The appointment of the Chairperson should be dealt with as the first item of business and it might be helpful to do this by secret ballot. In the event of a tie, discussions should continue to try to resolve an appointment on an agreed basis perhaps by drawing lots or the appointment of a compromise candidate.  A worked example relating to the election of office bearers is provided at [Appendix J](#Appl) |
| 59.2 | The Secretary and the other Office Bearers will be controlled, supervised and instructed by the Committee. | The role of the Secretary is an important one within the Association. Among the Secretary’s main duties are   * Advising the Committee on matters of propriety, its legal rights and obligations * Ensuring correct arrangements in terms of the Rules (i.e. Filing the annual report, dealing with membership applications, making returns etc.   It is therefore essential that the Association consider carefully who should take on the role of the Secretary in light of the Association’s circumstances and the scale and nature of its business. |
| 59.3 | The Secretary’s duties include the following (these duties can be delegated to an appropriate employee with the Secretary assuming responsibility for ensuring that they are carried out in an effective manner): | An Association can decide to have the duties of the Secretary carried out by a Committee Member or a Senior Member of staff.  Many Associations currently have a senior member of staff as Secretary and this arrangement works very successfully. In these circumstances, the Secretary is not a Committee Member unless formally appointed as an Executive Committee Member with the relevant rule amendments incorporated. The Association should ensure that the status of the Secretary is clear in its relevant documentation and website.  It is equally acceptable for the duties of the Secretary to be carried out by an elected Committee Member. This retains the legal responsibility within the Committee. Many (if not all) tasks can then be delegated to a senior staff member. |
| 59.3.1 | calling and going to all meetings of the Association and all the Committee Meetings; |  |
| 59.3.2 | keeping the minutes for all meetings of the Association and Committee; |  |
| 59.3.3 | sending out letters, notices calling meetings and relevant documents to Members before a meeting; |  |
| 59.3.4 | preparing and sending all the necessary reports to the Financial Conduct Authority and The Scottish Housing Regulator; |  |
| 59.3.5 | ensuring compliance with these Rules; |  |
| 59.3.6 | keeping the Register of Members and other registers required under these Rules; and |  |
| 59.3.7 | supervision of the Association’s seal. |  |
| 59.4 | The Secretary must produce or give up all the Association’s books, registers, documents and property whenever requested by a resolution of the Committee, or of a general meeting. | Overall responsibility is held by the Committee and it is the Committee’s responsibility to ensure that it is receiving the best advice and meeting its legal responsibilities. This should be taken into account when the role of the Secretary is considered. |
| 59.5 | At its first meeting after registration of the Association, the Committee will elect the Chairperson of the Association, the Secretary and any other Office Bearers the Committee considers necessary. Thereafter a Chairperson and other Office Bearers will be appointed on an annual basis at the next scheduled Committee Meeting held after each annual general meeting. | Rule 59.5 sets out the responsibility of the Chairperson. The Chairperson cannot hold office continuously for more than 5 years. |
| **Role of the Chair** | | |
| 59.6 | The Chairperson is responsible for the leadership of the Committee and ensuring its effectiveness in all aspects of the Committee’s role and to ensure that the Committee properly discharges its responsibilities as required by law, the Rules and the standing orders of the Association. The Chairperson will be delegated such powers as is required to allow the Chairperson to properly discharge the responsibilities of the office. Among the responsibilities of the Chairperson are that:- | The clauses in this section relate to Constitutional Requirement 24 in the Scottish Housing Regulator’s [Regulatory Framework](https://www.housingregulator.gov.scot/for-landlords/regulatory-framework#section-3), i.e.  *“The Chairperson’s role is set out formally; the Chairperson is responsible for the leadership of the governing body and ensuring its effectiveness in all aspects of its role. There is a clear process to select the Chairperson, who cannot be an executive member, and must not hold office continuously for more than five years.”* |
| 59.6.1 | the Committee works effectively with the senior staff; |  |
| 59.6.2 | an overview of business of the Association is maintained; |  |
| 59.6.3 | the Agenda for each meeting is set; |  |
| 59.6.4 | meetings are conducted effectively; |  |
| 59.6.5 | minutes are approved and decisions and actions arising from meetings are implemented; |  |
| 59.6.6 | the standing orders, code of conduct for Committee Members and other relevant policies and procedures affecting the governance of the Association are complied with; |  |
| 59.6.7 | where necessary, decisions are made under delegated authority for the effective operation of the Association between meetings; |  |
| 59.6.8 | the Committee monitors the use of delegated powers; |  |
| 59.6.9 | the Committee receives professional advice when it is needed; |  |
| 59.6.10 | the Association is represented at external events appropriately; |  |
| 59.6.11 | appraisal of the performance of Committee Members is undertaken, and that the senior staff officer’s appraisal is carried out in accordance with the agreed policies and procedures of the Association; and |  |
| 59.6.12 | the training requirements of Committee Members, and the recruitment and induction of new Committee Members is undertaken. |  |
| 59.7 | The Chairperson must be elected from the Committee Members (excluding co-optees) and must be prepared to act as Chairperson until the end of the next annual general meeting (unless s/he resigns the post). The Chairperson can only be required to resign if a majority of the remaining Committee Members present at a special meeting agree to this. |  |
| 59.8 | If the Chairperson is not present at a Committee meeting or is not willing to act, the Committee Members present will elect another Committee Member to be Chairperson for the Committee Meeting. If the Chairperson arrives at the meeting late, s/he will take over as Chairperson of the Committee meeting as soon as the current agenda item is concluded. |  |
| 59.9 | If the votes of the Committee Members are divided equally for and against an issue, the Chairperson will have a second and deciding vote. |  |
| 59.10 | The Chairperson can resign his/her office in writing to the Secretary and must resign if s/he leaves the Committee or is prevented from standing for, or being elected to the Committee under Rule 43. The Committee will then elect another Committee Member as Chairperson. |  |
| 59.11 | The Chairperson can be re-elected but must not hold office continuously for more than five years. |  |
| **FINANCIAL GUARANTEES FOR OFFICERS (Rule 60.1 – 61)** | | |
| 60.1 | The Committee shall take out fidelity guarantee insurance to cover all Office Bearers and employees who receive or are responsible for the Association’s money, or, these office bearers and employees must be covered by a bond as set out in Schedule 1 of the Co-operative and Community Benefit Societies Act 2014, or a guarantee under which they promise to account for and repay money due to the Association accurately. | Members of the SFHA are covered by an indemnity insurance policy that applies to staff and Committee Members.  This Rule refers to a bond given by a third party who guarantees the obligations of the Association’s officer. Such a person would have to have the means to repay all sums of money dealt with by the officer in question. Since such individuals are thin on the ground it is probably better to ensure that the Association is adequately insured! |
| 60.2 | The Committee shall have the power to purchase and maintain indemnity insurance for, or for the benefit of, persons who are, or were at any time, Committee Members, officers or employees of the Association. A Committee Member may form part of a quorum and vote at a meeting where such insurance is under consideration notwithstanding the terms of Rules 38.1 and 38.2. |  |
| 61 | Office Bearers and employees will not be responsible for the Association’s loss while they are carrying out their duties unless there has been gross negligence or dishonesty. If an Office Bearer or employee is dishonest, the Association will try to recover any loss that it has suffered and may alert the police or other relevant authority. |  |
| **THE COMMITTEE’S MINUTES, SEAL, REGISTERS AND BOOKS (Rule 62 – 68)** | | |
| **Minutes** | | |
| 62 | Minutes of every general meeting, Committee Meeting and sub-committee meeting must be kept. Those minutes must be presented at the next appropriate meeting and if accepted as a true record, signed by the Chairperson of the meeting at which they are presented. All minutes signed by the Chairperson of the meeting shall be conclusive evidence that the minutes are a true record of the proceedings at the relevant meeting. | A formal minute should be taken of all meetings, as an accurate representation of the issues discussed. Minutes should be formally approved at the subsequent meeting of the Committee or Sub-Committee. It is a requirement of the Scottish Housing Regulator’s Regulatory Framework that minutes of committee meetings are made publicly available including on-line (having regard to the confidentiality of any personal data). The Association should also be aware of its obligations under GDPR and FOI.  Once approved minutes should be made publicly available (this can include making them available at the Association’s Office, in the local Library or on the Association’s Website. Where confidential items were discussed at the meeting, the public minute should refer only to the discussion of a confidential item. However, a full minute of the discussion should be kept for Committee Members to view. |
| **Execution of Documents and Seal** | | |
| 63 | The Association shall execute deeds and documents in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 and record the execution in the register.  The use of a common seal is not required.  The Association may have a seal which the Secretary must keep in a secure place unless the Committee decides that someone else should look after it.  The seal must only be used if the Committee decides this.  When the seal is used, the deed or document must be signed by the Secretary or a Member of the Committee or another person duly authorised to subscribe the deed or document on the Association’s behalf and recorded in the register. | The Association does not require to use a seal and can execute documents by the signature of a Committee Member, the Secretary or other authorised signatory and a witness. If the Association has a seal, the secretary should keep it in a secure place unless the Committee nominates someone else to look after it. The seal will only be used if the Committee decides that it requires to be. If the seal is used the document must be signed by the Secretary or a Member of the Committee, or another person duly authorised to subscribe the deed or document on the Association’s behalf and recorded in the register. |
| **Registers** | | |
| 64 | The Association must keep at its registered office a Register containing: | The Association is required to keep and update various registers at its registered office. With regard to the Register of Members the Association is required to keep two versions, the first setting out the information set out in Rule 64, with the second being the information set out in Rule 65.1.  This is a requirement of Section 30 of the Co-operative and Community Benefit Societies Act 2014.  The information can be held electronically but it is recommended that in addition hard copy Registers as above are printed off also being reprinted whenever information on the electronic version changes.  For fully mutual co-operatives an additional provision should be included to provide for prospective tenants (if any) (see [Appendix B](#AppB)). |
| 64.1 | the names and addresses of the Members and where provided for the purposes of electronic communication, fax numbers and e-mail addresses; | Where a member has notified the Association with an electronic address for the purpose of receiving notices or documents, under the Co-operative and Community Benefit Societies Act 2014 the purposes for which the electronic address has been notified should be entered into the Register. This is a statutory provision and consent under GDPR to hold and retain this information is not required. |
| 64.2 | a statement of the share held by each Member and the amount each Member paid for it; |  |
| 64.3 | the date each person was entered in the Register as a Member and the date at which any person ceased to be a Member of the Association; |  |
| 64.4 | a statement of other property in the Association, whether in loans or loan stock held by each Member; and |  |
| 64.5 | the names and addresses of the Office Bearers of the Association, their positions and the dates they took and left office. |  |
| 65.1.2 | a register of loans and to whom they are made. |  |
| 65.1.3 | a register showing details of all loans and charges on the Association’s land. |  |
| 65.2 | The inclusion or omission of the name of any person from the original Register of Members shall, in the absence of evidence to the contrary, be conclusive that the person is or is not a Member of the Association. |  |
| **Registered Name** | | |
| 66 | The registered name of the Association must be clearly shown on the outside of every office or place where the Association’s business is carried out. The name must also be engraved clearly on the Association’s seal and printed on all its business letters, notices, adverts, official publications, website and legal and financial documents. | The Registered Name of the Association must be clearly shown on the outside of every office place where the Association’s business is carried out. It should also be engraved on the company seal and printed on all of the Association’s printed documentation.  Where the Association wishes to change its name, the Housing (Scotland) Act 2010 requires that the SHR be notified. The change of name should be registered by the FCA by way of application on an FCA Change of name Form.  For charities the consent of OSCR is required for a change of name. Associations can get details of how to apply for consent from OSCR’s website.  **Charitable Associations**  Section 2 of the Co-operatives and Community Benefit Societies Act 2003 introduced an obligation upon charitable Associations to state that they are charities on all business correspondence and various other formal documents. They are also governed by the Charities and Trustee Investment (Scotland) Act 2005, the Charities References in Documents (Scotland) Regulations 2007 and the Charities References in Documents (Scotland) Amendment Regulations 2008.  In summary, charitable Associations must state the following information on documents issued or signed on their behalf:   * the Association's name, as entered in the Register * any other name by which the Association is commonly known * the Association’s Scottish Charity Number allocated to it at the time of registration (SC0xxxxx).   A charitable Association whose name does not contain the word "charity" or "charitable" must also state on their documents the fact that it is a charity. This can be done in a number of ways including referring to themselves as a:   * charity * charitable body * registered charity * charity registered in Scotland.   Charitable Associations entered in the Scottish Charity Register which are established under the law of Scotland, or which are managed or controlled wholly or mainly from Scotland, are also permitted to use one of the following descriptions:   * Scottish charity * registered Scottish charity.   Again, further information is available from the Office of the Scottish Charity Regulator [(OSCR) website.](https://www.oscr.org.uk/) |
| **Documentation** | | |
| 67 | The Association’s books of account, registers, securities and other documents must be kept at the registered office or any other place the Committee decides is secure. | The Associations books of account, registers, securities and other documents must be held at the registered office of the Association or another secure place decided by the Association. |
| 68 | At the last Committee Meeting before the annual general meeting, the Secretary must confirm in writing to the Committee that Rules 62 to 67 have been followed or, if they have not been followed, the reasons for this. The Secretary’s confirmation or report must be recorded in the minutes of the Committee Meeting. |  |
| **ACCOUNTS (Rule 69 – 71)** | | |
| 69 | The Association must keep proper books of accounts to cover its income, expenditure transactions and its assets, liabilities and reserves in line with Part 7 of the Co-operative and Community Benefit Societies Act 2014. It must also set up and maintain a suitable system for controlling its books of accounts, its cash and its receipts and invoices. | These rules state that an Association must keep proper books of accounts and outlines the process for appointing an auditor. The Committee is obliged by Rule 73 to take such steps as it considers necessary to ensure the continuing independence of the auditor including the periodic review of the need for audit rotation. |
| 70 | The Committee must send the Association’s accounts and balance sheet to the Association’s auditor. The auditor must then report to the Association on the accounts it has examined. In doing this, the auditor must follow the conditions set out in Part 7 of the Co-operative and Community Benefit Societies Act 2014 and Part 6 of the Housing (Scotland) Act 2010. |  |
| 71 | The Association must provide The Scottish Housing Regulator and the Financial Conduct Authority with a copy of its accounts and the auditor’s report within six months of the end of the period to which they relate. |  |
| **THE AUDITOR (Rule 72.1-74.4)** | | |
| 72.1 | Each year the Association must appoint, at a general meeting of the Association, a qualified auditor to audit the Association’s accounts and balance sheet. In this Rule “qualified auditor” means someone who is a qualified auditor under Section 91 of the Co-operative and Community Benefit Societies Act 2014. | This requirement is set out in Section 83 of the Co-operative and Community Benefit Societies Act 2014. |
| 72.2 | None of the following can act as auditor to the Association:- |  |
| 72.2.1 | a Committee Member or employee of the Association; |  |
| 72.2.2 | a person who is a partner of, or an employee or employer of a Committee Member or employee of the Association; |  |
| 72.2.3 | an organisation which is a Member of the Association. | This should be removed for fully mutual co-operatives (see [Appendix B](#AppB)). |
| 73 | The Association must appoint an auditor within three months of being registered by the Financial Conduct Authority. The Committee will appoint the auditor unless there is a meeting of the Association within that time. The Committee may appoint an auditor to fill in a casual vacancy occurring between general meetings of the Association. The Committee shall take such steps as it considers necessary to ensure the continuing independence of the Association’s auditor including the periodic review of the need for audit rotation. The Association must send a copy of its accounts and the auditor’s report to The Scottish Housing Regulator within six months of the end of the period to which they relate. |  |
| 74.1 | An auditor appointed to act for the Association one year will be re-appointed for the following year unless:- | Section 93 of the Co-operative and Community Benefit Societies Act 2014 sets out protection against improper renewal of an auditor. Where audit services are up to be reviewed in accordance with good governance practice the incumbent will step down to facilitate this process. |
| 74.1.1 | a decision has been made at a general meeting to appoint someone else or specifically not to appoint them again; or |  |
| 74.1.2 | they have given the Association notice in writing that they do not want to be re-appointed; or |  |
| 74.1.3 | they are not a qualified Auditor or are excluded under Rule 72.2; or |  |
| 74.1.4 | they are no longer capable of acting as Auditor to the Association; or |  |
| 74.1.5 | notice to appoint another Auditor has been given. |  |
| 74.2 | To prevent an auditor being re-appointed or to appoint another person as auditor, not less than 28 days’ notice must be given to the Association that the matter requires to be discussed at the next meeting of the Association. |  |
| 74.3 | The Association shall give notice to the auditor who is to be asked to step down that the matter will be discussed at the next meeting of the Association. If possible the Association will also give proper notice of this matter to the Members but if this is not possible, the Association can give notice by advertising in the local newspaper at least 14 days before the meeting. |  |
| 74.4 | The retiring Auditor may make representations to the Association or give notice that he/she intends to make representations at the meeting and the Association must tell the Members of any representations made by the Auditor under Section 95 of the Co-operative and Community Benefit Societies Act 2014. |  |
| **ANNUAL RETURNS AND BALANCE SHEET (Rule 75.1 – 78)** | | |
| 75.1 | Every year, within the time allowed by the law, the Secretary shall send to the Financial Conduct Authority the annual return in the form required by the Financial Conduct Authority. | The Association has obligations in relation to Annual Returns and the Balance Sheet. The Secretary must send the annual return, a copy of the auditor’s report and a copy of the balance sheet to the FCA. |
| 75.2 | The Secretary must also send: |  |
| 75.2.1 | a copy of the auditor’s report on the Association’s accounts for the period covered by the return; and |  |
| 75.2.2 | a copy of each balance sheet made during that period and of the auditor’s report on that balance sheet. |  |
| 76 | If requested, the Association must provide a free copy of the latest annual return and auditor’s reports to Members or people with a financial interest in the Association. | The SHR’s requests for Annual returns must be complied with, and a free copy should be provided, along with the auditor’s report, to Members and those with a financial interest in the Association. |
| 77 | The Association must always keep a copy of the latest balance sheet and auditor’s report publicly displayed at its registered office. | A copy of the balance sheet and auditors report should be publicly displayed at the registered office. |
| 78 | The Association must comply with the requests of The Scottish Housing Regulator for annual returns. |  |
| **SURPLUSES AND DONATIONS (Rule 79.1 – 79.2)** | | |
| 79.1 | The Association must not distribute its surpluses to Members. | Surpluses must not be distributed to Members. The Association should have a policy for the donation of funds to charities. Any such donation must be in furtherance of the Association’s own charitable purposes. |
| 79.2 | The Committee shall set and review periodically its policy for the donation of funds to charities. Such donations must further the objects of the Association and the Committee shall report to the Members on such donations. | Non-charitable associations should delete reference to charities and replace with reference to other voluntary groups (see [Appendix C](#AppC)). |
| **INVESTMENTS (Rule 80)** | | |
| 80 | The Association’s funds may be invested by the Committee in such manner as is permitted by its Investment Policy subject always to the requirement that the Association will comply with the Regulatory Framework and Regulatory Guidance issued by The Scottish Housing Regulator from time to time. | Investments can be made, in terms of the Association’s Investment Policy and subject to compliance with the Regulatory Framework and Regulatory Guidance. Associations should take appropriate professional advice where necessary. |
| **INSPECTING THE REGISTER (Rule 81)** | | |
| 81 | Any Member or person having a financial interest in the Association can inspect their own account. They may also inspect the second copy of the Register of Members which shall be made available to them for inspection within 7 days of the request of a Member or eligible person. The books must be available for inspection at the place they are kept at all reasonable hours. The Committee may set conditions for inspecting the books. | Any Member or person having a financial interest in the Association can inspect their own account and/or within 7 days of request, inspect the second copy of the Register of Members. The Committee may set conditions for inspecting the books |
| **DISPUTES (Rule 82 – 82.3)** | | |
| 82 | Every dispute between the Association or the Committee and:- | Disputes in this Rule refer to disputes about the Rules and their interpretation. The Association must ensure that it has in place appropriate procedures in this regard. Other complaints should be dealt with under the Association’s complaints procedure, the Scottish Public Services Ombudsman or the Courts. |
| 82.1 | a Member; or |  |
| 82.2 | a person aggrieved who has ceased to be a Member within the previous six months; or |  |
| 82.3 | a person claiming under the Rules of the Association shall be dealt with in accordance with these Rules and any procedures determined by the Committee from time to time but without prejudice to all rights which any person may have to raise an action on the matter in any court with competent jurisdiction, including without prejudice the Sheriff Court in the Sheriffdom in which the Association's registered office is located. |  |
| **STATUTORY APPLICATIONS TO THE FINANCIAL CONDUCT AUTHORITY (Rule 83-84.2)** | | |
| 83 | Any 10 Members of the Association who have been Members for at least the 12 previous months can apply to the Financial Conduct Authority to appoint an accountant or actuary to inspect and report on the Association’s books on payment to the Financial Conduct Authority of the costs required. | The Financial Conduct Authority can appoint an accountant or actuary to inspect and report on the Association’s books where any 10 of the Members of the Association, who have been Members for at least the previous 12 months, make application and payment to them. |
| 84.1 | One-tenth of Members can apply to the Financial Conduct Authority to: |  |
| 84.1.1 | appoint an inspector to examine and report on the affairs of the Association; or |  |
| 84.1.2 | call a special general meeting of the Association. |  |
| 84.2 | If there are more than 1000 Members in the Association, only 100 Members need to apply to the Financial Conduct Authority in terms of Rule 84.1. | The FCA can also appoint an inspector to examine the affairs of the Association or call a Special General Meeting where one-tenth of the Members (or 100, if there are 1000+ Members) apply to the FCA. |
| **COPIES OF RULES (Rule 85)** | | |
| 85 | The Secretary shall, on demand, provide a copy of the Rules of the Association free of charge to any Member who has not previously been given a copy and, upon payment of such fee as the Association may require, not exceeding the amount specified by law, to any other person. | Each new Member of the Association should be provided with a copy of the Rules by the Secretary. The Rules should also be made available to anyone who asks for a copy for a reasonable sum in accordance with the law as it applies from time to time. Associations should ensure that they have a policy on the distribution of rule books to Members. |
| **CLOSING DOWN THE ASSOCIATION (Rule 86.1 – 87)** | | |
| 86.1 | The Association may be closed down in either of the following ways: | Where dissolution is being considered by the Association there are statutory requirements that must be met and it is vital that the SHR is contacted at the earliest possible opportunity. |
| 86.1.1 | by an order or resolution to wind up the Association as set out in the Insolvency Act 1986; or |  |
| 86.1.2 | In accordance with Section 119 of the Co-operative and Community Benefit Societies Act 2014, by an instrument of dissolution to which not less than three-fourths of the Members have given their consent testified by their signatures to the instrument. | See: [S119 of the Co-operative and Community Benefit Societies Act 2014](https://www.legislation.gov.uk/ukpga/2014/14/section/119) |
| 86.2 | The prior approval of the Office of the Scottish Charity Regulator is required before the Association can be dissolved. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to dissolve. | Non-charitable associations should delete this provision (see [Appendix C](#AppC)). |
| 87 | If any property remains after the Association has paid its debts, this property will be transferred to such other charitable registered social landlord as determined by The Scottish Housing Regulator. | Non-charitable associations should delete reference to charitable registered social landlords in this rule (see [Appendix C](#AppC)). |
| **CHANGING THE RULES (Rule 88.1-88.6)** | | |
| 88.1 | Any of these Rules can be changed or deleted and new Rules can be introduced if three-quarters of the votes at a special general meeting are in favour of the change(s). | SFHA guidance on making rule amendments is provided at [Appendix G](#AppF).  Rule changes are no longer subject to prior consent from SHR. Rule changes must be notified to SHR in accordance with statutory guidance on Notifiable Events.  For charitable associations any changes to the objects (section 2 of the Model Rules) require prior consent from OSCR. |
| 88.2 | Where an amendment of these Rules affects the purposes of the Association the prior approval of the Office of the Scottish Charity Regulator is required. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to amend its purposes. Any other amendment of these Rules requires to be notified to them within three months of the change having been made. | Non-charitable associations should delete this rule (see [Appendix C](#AppC)). |
| 88.3 | The Association must apply to the Financial Conduct Authority to register every rule change as set out in treasury regulations. Each Member must receive a copy of the change. No change is valid until it has been registered by the Financial Conduct Authority. The Association must notify The Scottish Housing Regulator within 28 days of the change or amendment being made. |  |
| 88.4 | The Association can change its name if: |  |
| 88.4.1 | three-quarters of the votes at a special general meeting are in favour of the change; and |  |
| 88.4.2 | the Financial Conduct Authority approves the change in writing. |  |
| 88.4.3 | the Office of the Scottish Charity Regulator has given its prior approval. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to change its name. | Non-charitable associations should delete this rule (see [Appendix C](#AppC)). |
| 88.5 | If the Association changes its name in terms of Rule 88.4 it must notify The Scottish Housing Regulator in writing within 28 days of the change being made. |  |
| 88.6 | The Association can change its registered or principal office but must: |  |
| 88.6.1 | notify The Scottish Housing Regulator of the change in registered office within 28 days of the change having been made; and the Financial Conduct Authority as soon as possible after the change in registered office has been made. |  |
| 88.6.2 | notify the Office of the Scottish Charity Regulator within 3 months of the change having been made. | Non-charitable associations should delete this rule (see [Appendix C](#AppC)). |
| **INTERPRETING THESE RULES (Rule 89 – 89.22)** | | |
| 89 | In these Rules, the following words and phrases have the meanings given below: |  |
| 89.1 | “A person claiming through a Member”: includes an heir, executor, assignee or nominee. This heading would be used in connection with disputes about the transfer of a Member’s share after his death. It would also cover executors of a former Member | This should be deleted for fully mutual co-operatives (see [Appendix B](#AppB)). |
| 89.2 | “Association” means the registered social landlord referred to in Rule 1 whose Rules these are. |  |
| 89.3 | “Chairperson” means the Chairperson (or such other term that is used by the Association to denote the holder of this office) of the Association referred to in Rule 59.1. | Alternative terms for Chairperson (e.g. Convenor) are acceptable. You do not have to amend your rules to reflect any alternative term you use if you do not wish to, but some organisations may wish to do so for consistency. |
| 89.4 | “Close Relative” means someone who is the spouse or civil partner of a person, or (being either of the same or different sex) who cohabits with that person, or is that person’s parent, grandparent, child, stepchild, grandchild, brother or sister. |  |
| 89.5 | “Committee” means the Committee of Management (or such other term that is used by the Association to donate the governing body of the Association) referred to in Rule 37.1. | Alternative terms for the Committee (e.g. Board) are acceptable. You do not have to amend your rules to reflect any alternative term you use if you do not wish to, but some organisations may wish to do so for consistency. |
| 89.6 | “Committee Meeting” means a meeting of the Committee. |  |
| 89.7 | “Committee Member” means a member of the Committee. |  |
| 89.8 | “Financial Conduct Authority” means the registering authority for societies registered under the Co-operative and Community Benefit Societies Act 2014 and the Credit Unions Act 1979 set up in terms of the Financial Services Act 2012 or its successor body. |  |
| 89.9 | “Group” means the Association and any organisation which is its parent, its subsidiary or is a subsidiary of its parent. |  |
| 89.10 | “Meeting” means a general meeting of the Association, whether special, general or annual referred to in Rules 20-23. |  |
| 89.11 | “Member” means a member of the Association whose name is entered in the Register of Members. |  |
| 89.12 | “Office Bearer” means the Chairperson, Secretary, and such other Officer Bearer appointed under Rule 59.1. |  |
| 89.13 | “Office of the Scottish Charity Regulator” means the body set up under the Charities and Trustee Investment (Scotland) Act 2005 to regulate charities in Scotland. | Non-charitable associations should delete this rule (see [Appendix C](#AppC)). |
| 89.14 | “organisation” means a legal body which exists separately and distinctly from its members and includes companies, building societies, community benefit societies, local authorities and so on and also for the purposes of these Rules includes unincorporated organisations such as social clubs, branches of political parties or trade unions and other voluntary bodies. |  |
| 89.15 | “property” includes everything which can be passed on by inheritance (including loans, certificates, books and papers). |  |
| 89.16 | A reference to law or statute is a reference to that law or statute as re-enacted, amended or replaced. |  |
| 89.17 | “Register of Members” means the register of members referred to in Rule 64. |  |
| 89.18 | “Rules” means the registered Rules of the Association. |  |
| 89.19 | “Taxes Acts” means Part 11 of the Corporation Tax Act 2010 as read with Schedule 6 of the Finance Act 2010 and any statute or statutory provision which amends, extends, consolidates or replaces the same. |  |
| 89.20 | “The Scottish Housing Regulator” means The Scottish Housing Regulator as established pursuant to Section 1 of the Housing (Scotland) Act 2010. |  |
| 89.21 | “Secretary” means the Office Bearer appointed by the Committee to be the Secretary of the Association or anyone authorised by the Committee to stand in for the Secretary. |  |
| 89.22 | Words in the singular also include the plural. Words in the plural also include the singular. |  |
| **APPENDICES** | | |
| App 1 | Proxy Form | It is important that this template for a proxy form is used as required by rule 27.1. |
| App 2 | Cancellation of Proxy | It is important this template for the cancellation is used as required by rule 27.4. |
| **SIGNATURE OF COMMITTEE MEMBERS** | | |
| Page 28 | Signature of Committee members | When adopting a complete new rulebook, the new rulebook should be signed by three Committee Members and the Secretary. The signature of seven committee members and the Secretary is required when a new Association is being registered under the Co-operative and Community Benefit Societies Act 2014 for the first time. |



**COMMUNITY BASED ASSOCIATION AMENDMENTS TO SFHA**

**CHARITABLE MODEL RULES (SCOTLAND) 2020**

This guide highlights the amendments required to the SFHA Chartable Model Rules (Scotland) 2020 to implement model rules for Community Based organisations. These recommended changes have been approved by the Scottish Housing Regulator and the Office of the Scottish Charity Regulator. The changes to the text of the standard charitable model are set out below but where such changes are being implemented this may require further renumbering of clauses and changes to cross referencing of clauses.

Please note that when submitting your application to the FCA, you will need to include these amendments as tracked changes within the tracked copy of your rule book that you submit.

The following amendments are suggested for Community Based organisations:

(a) Add to Rule 2:-

“2.3 We will operate in the geographical area…”

(b) Add the following wording to Rule 6:-

“Members must live within the area in which the Association operates, as set out in Rule 2.3. This does not apply to an organisation which is a Member.”

(c) Add to the end of the first sentence of Rule 7.2:-

“and you must live within the area in which we operate (except for an organisation which is a Member).”

(d) Add to end of Rule 11.1.2, after the words “Rule 10”

“or your main home is no longer located in the area within which we operate as set out in Rule 2.3”

|  |  |  |
| --- | --- | --- |
| **FURTHER GUIDANCE ON COMMUNITY BASED ASSOCIATION RULES** | | |
| **Rule** | **Rule Wording** | **Guidance** |
| 2.3 | We will operate in the geographical area… | Community Based Associations are restricted to operating in a specified geographical area, often set out in a plan attached to the rules. |
| 6 | The Members of the Association shall be those persons or organisations who hold a share in the Association and whose names are entered in the Register of Members. Members must live within the area in which the Association operates, as set out in Rule 2.3. This does not apply to an organisation which is a Member. | Members must have their principal residence in the specified geographical area. |
| 11.1.2 | If your membership is ended in accordance with Rule 11.1.4, you will immediately cease to be a Member from the date that the resolution to end your membership was passed and any further application for membership by you will need to be approved by two-thirds of the Members voting at a general meeting; or your main home is no longer located in the area within which we operate as set out in Rule 2.3. | No longer living in the specified geographical area will result in membership being terminated. |



**FULLY MUTUAL CO-OPERATIVE AMENDMENTS TO SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020**

This guide highlights the amendments required to the SFHA Charitable Model Rules (Scotland) 2020 to implement model rules for Fully Mutual Co-operatives. These recommended changes have been approved by the Scottish Housing Regulator. The changes to the text of the standard charitable model are set out below but where such changes are being implemented this may require further renumbering of clauses and changes to cross referencing of clauses.

Please note that when submitting your application to the FCA, you will need to include these amendments as tracked changes within the tracked copy of your rule book that you submit.

The following amendments are suggested for Fully Mutual Co-operatives:

* 1. On contents page delete “Representing an Organisation” from the Item List column and “3” from Page No. column.
  2. Delete existing Rules 2.1 and 2.2 and substitute the following:-

“2.1 to provide, construct, improve and manage;

2.1.1 houses for occupation by Members.

2.1.2 hostels.

2.2 to undertake any additional purposes or objects permitted under Section 24 of the Housing (Scotland) Act 2010”

(c) Delete from existing Rule 6 the words “or organisations” on the first line.

(d) Add to end of existing Rule 6:-

“You are only eligible to apply for membership of the Association if you are a tenant occupying housing or accommodation provided by the Association under the terms of a Tenancy Agreement granted by the Association, or, where the Association admits prospective tenants into membership, if you are a prospective tenant. If the Association determines to admit prospective tenants into membership prospective tenants will be those persons fulfilling the relevant criteria determined by the Committee and whose names are entered in the register of prospective tenants. You can apply to the Association to dispose of, transfer or assign your Tenancy Agreement but this will be possible only if the Association consents in writing.”

(e) Add to Rule 7.1 after the words “for admitting new Members”:

“and its policy on allocation of tenancies.”

(f) Delete Rules 7.1.2, 7.1.3 and 7.1.4

(g) Add to Rule 7.2 after the words “If you are applying for membership”:-

“you must be a tenant of the Association or a prospective tenant and”.

(h) Delete from Rule 7.3 the words “An application for membership will not be considered by the Committee within the period of fourteen days before the date of a general meeting.”

1. Add to the end of Rule 7.3 after the word “application”:-

“but your application will be determined by the Committee in accordance with the Association’s membership and allocation policies.”

(j) Add new Rule 7.5:-

“7.5 You may at any time, with the approval of the Committee, become a joint Member together with another person admitted by the Committee to joint membership and the share issued to you as a Member shall be converted to a joint share in both your names. The Register of Members shall be amended accordingly and your name shall stand first in the Register of Members as between you and the other person. The joint Member whose name appears first in the Register of Members is solely entitled to exercise the rights of membership granted by these Rules. Joint Members must become joint tenants under the Tenancy Agreement. If you are a joint tenant of the Association you may become an individual Member of the Association if you wish, with the approval of the Committee.”

(k) Add new Rule 7.6:-

“7.6 Two or more persons may apply for joint membership. You must send an application form and One Pound (which will be returned to you if the application is not approved) to the Secretary at the registered office. The Committee will consider your application as soon as reasonably practicable after its receipt by the Association.

If your application is approved, each of your names shall be entered into the Register of Members as joint Members and one share of the Association shall be issued to you. Your names shall be entered in the Register of Members and shall appear on the Share Certificate in the order that they appeared on your application form. As joint Members, you must sign a Tenancy Agreement for a house provided by the Association. You must each sign the Tenancy Agreement and occupy the house within one month of being requested to do so by the Association. The joint Member whose name appears first in the Register of Members is solely entitled to exercise the rights of membership granted by these Rules. Joint Members must become joint tenants under the Tenancy Agreement. If you are a joint tenant of the Association you may become an individual Member of the Association if you wish, with the approval of the Committee. “

(l) Delete existing Rule 10

(m) Renumber Rule 11.1 as Rule 10.1

(n) Renumber Rule 11.1.1 as Rule 10.1.1 and replace existing wording with

“You resign your membership by giving the Secretary one month’s notice in writing at the registered office provided that you give up your Tenancy Agreement at the same time.”

(o) Add new Rules 10.1.2, 10.1.3, 10.1.4, 10.1.5 and 10.1.6:-

“10.1.2 You have ceased to occupy the house provided by the Association under the Tenancy Agreement; or

10.1.3 Your Tenancy Agreement ends or is ended; or

10.1.4 you are a prospective tenant and you have notified the Association in writing that you no longer require accommodation to be provided by the Association or you have refused to enter into a Tenancy Agreement which the Association has offered to you; or

10.1.5 you have died; or

10.1.6 you fail to sign a Tenancy Agreement as required by Rule 6; or”

(p) Delete existing Rule 11.1.2 and 11.1.3

(q) Renumber existing Rule 11.1.4 as Rule 10.1.7

(r) Renumber existing Rule 11.2 as Rule 10.2 and renumber sub-clauses as appropriate

(s) Insert new Rule 10.3 as follows:-

“10.3. Your joint membership shall end and the Association will cancel your share, the value of which will then belong to the Association with effect from the date of a Committee resolution to that effect, and the Register of Members will be amended accordingly if:-

10.3.1 you fail to sign a Tenancy Agreement as required by Rules 7.5 and 7.6; or

10.3.2 your Tenancy Agreement ends or is ended; or

10.3.3 you cease to occupy the house provided by the Association under the Tenancy Agreement.”

(t) Insert new Rule 10.4 as follows

“10.4 If one of you ceases to occupy the house provided by the Association under the Tenancy Agreement or dies your interest in the membership share and the Tenancy Agreement shall belong to the remaining joint Member who will then become an individual Member. The joint share shall be changed to a share in the sole name of the remaining Member and the Register of Members shall be amended accordingly.”

(u) Insert new Rule 10.5 as follows:-

“10.5 If your Tenancy Agreement ends or is ended, you will cease to be a Member seven days after the Tenancy Agreement comes to an end unless within those seven days you enter into a new Tenancy Agreement with us.”

(v) Insert new Rule 10.6 as follows:-

“10.6 If you notify the Association in writing that you no longer need the house provided by the Association, your name will be removed from the register of prospective tenants.”

(w) Delete the heading “REPRESENTING AN ORGANISATION”.

(x) Delete existing Rules 12.1, 12.2, 12.3 and 12.4

(y) Renumber Rule 13 as Rule 11 and amend by deleting the sentence on the second line "Shares cannot be held jointly.”

(z) Renumber Rule 14 as Rule 12.

(aa) Renumber Rule 15 as Rule 13 and delete the words “Rules 16 and 17” and replace with “Rule 14”)

(ab) Delete existing Rule 16.

(ac) Renumber Rule 17.1 as Rule 14.1 and delete the words on the first and second line:

“or you are a representative of an organisation which no longer exists,”

and delete the words “Rules 17.2 and 17.3” and replace with “Rules 14.2 and 14.3”

(ad) Renumber 17.2 as 14.2 and insert the words “and allocation” after the wording “in terms of the Association’s membership” on the third line and before “policies” on the fourth line.

(ae) Amend numbering and cross numbering throughout.

(af) Delete the last sentence from existing Rule 27.5 (now Rule 24.5):-

“If you represent an organisation, your authorisation or appointment as a representative requires to be in accordance with the terms of Rule 12.2.”

(ag) Add to existing Rule 64 (now Rule 61) a new sub-clause 61.6 as follows:-

“61.6 the names and addresses of prospective tenants and the date on which each person was accepted in the register of prospective tenants and the date at which any person withdrew their interest in becoming a tenant, or the date at which any person became a tenant.”

(ah) Delete existing Rule 72.2.3

(ai) Delete existing Rule 89.1

| **FURTHER GUIDANCE ON FULLY MUTUAL CO-OPERATIVE RULES** | | |
| --- | --- | --- |
| **Rule** | **Rule Wording** | **Guidance** |
| 7.1 | The Committee shall set, review and publish its membership policy for admitting new Members and its policy on allocation of tenancies. Subject to the provisions of Rule 7.2 the following shall be eligible to become Members:- | Reference to allocations policies was added to the suggested wording in June 2022 following discussion with the FCA. |
| 7.2 | If you are applying for membership you must be a tenant of the Association or a prospective tenant and you must send a completed and signed application form and the sum of one pound (which will be returned to you if the application is not approved) to the Association’s registered office. Whilst it is the Association’s intention to encourage membership, the Committee has absolute discretion in deciding on applications for membership and the following shall constitute grounds for refusal of an application for membership:- | Reference to “prospective tenants” can be deleted from the Rules or further defined as required. |
| 7.3 | Your application shall be considered by the Committee as soon as reasonably practicable after its receipt by the Association. The Committee has the power in its absolute discretion to accept or reject the application but your application will be determined by the Committee in accordance with the Association’s membership and allocation policies. | If the Co-operative grants a tenancy agreement prior to membership the tenancy is not a Scottish Secure Tenancy until such time as membership is taken. If a tenant is a member but subsequently ceases to be a member, the tenancy remains a Scottish Secure Tenancy.  Reference to allocations policies was added to the suggested wording in June 2022 following discussion with the FCA. |
| 7.5 | You may at any time, with the approval of the Committee, become a joint Member together with another person admitted by the Committee to joint membership and the share issued to you as a Member shall be converted to a joint share in both your names. The Register of Members shall be amended accordingly and your name shall stand first in the Register of Members as between you and the other person. The joint Member whose name appears first in the Register of Members is solely entitled to exercise the rights of membership granted by these Rules. Joint Members must become joint tenants under the Tenancy Agreement. If you are a joint tenant of the Association you may become an individual Member of the Association if you wish, with the approval of the Committee. | The provisions outlined above at “k” (new rule 7.6), “s” (new rule 10.3), “t” (new rule 10.4) also relate to this provision.  Where two tenants occupy the property they can be individual members (with approval of the Committee) or joint members. This offers fully mutual co-operatives flexibility in terms of how joint tenants can hold shares.  These provisions could be amended by a fully mutual co-operative where they would prefer to remove this flexibility – i.e.so that joint tenants could only hold shares jointly or joint tenants could only hold individual shares. |
| 14.1 | If you die or end your membership or have your membership ended, the Committee will cancel your share (except in those circumstances outlined in Rules 14.2 and 14.3) and the value of the share will then belong to the Association. | Reference to Rules 14.2 and 14.3 added in June 2022 following discussions with the FCA. |
| 14.2 | You can nominate the person to whom the Association must transfer your share in the Association when you die, as long as the person that you nominate is eligible for membership under these Rules and in terms of the Association’s membership and allocation policies. On being notified of your death, the Committee shall transfer or pay the full value of your share to the person you have identified. Your nomination must be in the terms required by the Co-operative and Community Benefit Societies Act 2014. | This wording was amended slightly in June 2022 following discussions with the FCA. |
| 24.1 | 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. | Some Co-operatives have a lower quorum for general meetings. |

**As noted in the table above, some minor amendments were applied to this Appendix following discussions with the FCA in June 2022. There is no immediate requirement for fully mutual co-operatives to update their rules to reflect these changes, but the changes should be applied next time such rules are updated. The FCA may not approve any application to amend a set of fully mutual co-operative rules if the changes agreed in June 2022 are not applied.**



**NON-CHARITABLE AMENDMENTS TO SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020**

This guide highlights the amendments required to the SFHA Chartable Model Rules (Scotland) 2020 to implement model rules for non-charitable associations. These recommended changes have been approved by the Scottish Housing Regulator. The changes to the text of the standard charitable model are set out below but where such changes are being implemented this may require further renumbering of clauses and changes to cross referencing of clauses.

Please note that when submitting your application to the SHR and FCA, you will need to include these amendments as tracked changes within the tracked copy of your rule book that you submit.

The following amendments are suggested for Non-charitable organisations:

(a) Delete the existing Rule 2.1 and replace with:

“2.1 to provide, construct, improve and manage housing and hostels”

(b) Delete the existing Rule 2.2 and replace with:

“2.2 to undertake activity allowed under Section 24 of the Housing (Scotland) Act 2010.”

(c) Delete Rule 37.7.4

(d) Delete Rule 38.3.

(e) Delete from existing Rule 43.1.2 “or an offence under…Act 2005.”

(f) At the end of the first sentence of Rule 79.2 insert the following:

“…or other voluntary groups”

(g) Delete Rule 86.2

(h) In Rule 87 delete the word “charitable”

(i) Delete Rule 88.2

(j) Delete Rule 88.4.3

(k) Delete 88.6.2.

(l) Delete 89.1.13.

|  |  |  |
| --- | --- | --- |
| **GUIDANCE ON NON-CHARITABLE RULES** | | |
| **Rule** | **Rule Wording** | **Guidance** |
| 2.1 | to provide, construct, improve and manage housing and hostels | This amendment removes references to statutory provisions relating to charitable status. |
| 37.7.4 | ~~ensure that the Association complies with any direction, requirement, notice or duty imposed on it by the Charities and Trustee Investment (Scotland) Act 2005.~~ | This removes reference to the obligation to comply with duties under charity law. |
| 38.3 | ~~If a person serves on the Committee or any sub-committee he/she must not receive any payment or benefit unless it is permitted by the Charities and Trustee Investment (Scotland) Act 2005 and as set out in the Association’s policy referred to in Rule 38.1. He/she shall also comply with the requirements of the Charities and Trustee Investment (Scotland) Act 2005 in respect of any conflict of interest that might arise.~~ | This removes the prohibition against receiving benefits contrary to charity law. |
| 43.1.2 | ~~he/she has been convicted of an offence involving dishonesty which is not spent by virtue of the Rehabilitation of Offenders Act 1974; or~~ | This removes the prohibition against a person convicted of an offence under charity law from serving on the committee. |
| 79.2 | ~~The Committee shall set and review periodically its policy for the donation of funds to charities. Such donations must further the objects of the Association and the Committee shall report to the Members on such donations.~~ | This allows association to make donation to non-charitable voluntary group. |
| 86.2 | ~~The prior approval of the Office of the Scottish Charity Regulator is required before the Association can be dissolved. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to dissolve.~~ | No approval of OSCR is required for dissolving the association. |
| **Rule** | **Rule Wording** | **Guidance** |
| 88.2 | ~~Where an amendment of these Rules affects the purposes of the Association the prior approval of the Office of the Scottish Charity Regulator is required. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to amend its purposes. Any other amendment of these Rules requires to be notified to them within three months of the change having been made.~~ | No approval of OSCR is required for changing the objects of the Association. |
| 88.4.3 | ~~the Office of the Scottish Charity Regulator has given its prior approval. The Association must submit its application for approval to the Office of the Scottish Charity Regulator not less than 42 days before the date on which the Association intends to change its name.~~ | No approval or notification to OSCR is required for changing the name or registered office. |
| 88.6.2 | ~~notify the Office of the Scottish Charity Regulator within 3 months of the change having been made.~~ | No notification to OSCR is required for rule changes. |



**OPTIONAL AMENDMENTS TO SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020**

**APPOINTED COMMITTEE MEMBERS**

The following guidance has been approved by the Scottish Housing Regulator and provides optional amendments for those associations who wish to have the power to directly appoint governing body members in addition to those who are elected. The below outlines provisions for up to 5 appointed Committee members, but organisations could adjust this to be fewer if that suited their circumstances. However, it is important to note that the majority of Committee Members must always be elected (as per clause 37.1 below).

The changes to the text of the standard charitable model are set out in this guide but where such changes are being implemented this may require a further renumbering of clauses and changes to cross referencing of clauses.

1. Delete existing Rules 37.1 and replace with:-

“37.1 The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees) of 15 persons comprising not more than 10 persons nominated and elected in accordance with the provisions of Rules 40.1 and 40.2 (“Elected Committee Members”) and not more than 5 persons who shall be appointed for a specified term of office as Committee Members by the Committee subject to such persons being willing and eligible to be so appointed (“Appointed Committee Members”). Appointed Committee Members shall not retire in accordance with Rule 39.1 but shall continue in office (subject to Rules 43 and 44) until the specified term of office expires or such appointment is revoked by resolution of the Committee. A majority of the Committee of Management must at all times be Elected Committee Members. Appointed Committee Members can be appointed by the Committee at any time and shall not be co-optees for the purposes of these Rules. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation.”

1. Delete existing Rule 37.6 and replace with:-

“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. The Committee must be assured that both any Elected Committee Member seeking re-election to the Committee, or Appointed Committee Member seeking to continue as a Committee Member who has continuous service on the Committee of nine years or more is able to demonstrate his/her continued effectiveness as a Committee Member before he/she may stand for re-election or continue as an Appointed Committee Member.”

1. Delete existing Rules 39.1 and 39.2 and replace with:-

“39.1 At the end of the first annual general meeting after the total membership of the Association has risen to seven or more, all Committee Members must retire. From then on at the end of every annual general meeting, one-third of the Elected Committee Members or the nearest whole number thereto, must retire. Anybody appointed as a co-optee under Rule 42.1 or to fill a casual vacancy under Rule 41 and who retires for that reason, shall not count towards the one third provision. The retiring Elected Committee Members should be selected in accordance with Rule 39.2.

39.2 In the absence of Committee Members standing down voluntarily, the retiring Elected Committee Members should be those who have served the longest on the Committee since the date of their last election. If two or more Elected Committee Members have served equally long and cannot agree who should retire, they must draw lots.”

1. Delete existing Rule 39.4 and replace with:-

“39.4 If an Elected Committee Member retires from the Committee in terms of Rule 39 on the date of the next annual general meeting, that Committee Member can stand for re-election without being nominated.”

1. Delete existing Rule 40.1 and replace with:-

“40.1 If, at the annual general meeting the number of Members standing for election is less than or equal to the number of vacant places for Elected Committee Members, the Chairperson will declare them elected without a vote. If there are more Members standing for election than there are vacant places for Elected Committee Members, those present at the general meeting or those exercising a postal vote in accordance with Rule 27.6 will elect Members onto the Committee, in accordance with Rule 29.2. Each Member present or who has appointed a representative will have one vote for each place to be filled by election on the Committee. A Member must not give more than one vote to any one candidate.”

1. Delete existing Rule 41 and replace with:-

“41 If an Elected Committee Member leaves the Committee between the annual general meetings, this creates a casual vacancy and the Committee can appoint a Member to take their place on the Committee until the next annual general meeting.”

1. Delete existing Rule 42.1 and replace with:-

“42.1 The Committee can co-opt to the Committee or to a sub-committee anyone it considers is suitable to become a Committee Member in the Elected Committee Member category or member of a sub-committee. Co-optees do not need to be Members, but they can only serve as co-optees on the Committee or sub-committee until the next annual general meeting or until removed by the Committee. A person co-opted to the Committee can also serve on any sub- committees.”

1. Delete existing Rule 42.3 and replace with:-

“42.3 Committee Members co-opted in this way must not make up more than one-third of the number of Elected Committee Members or the total number of sub-committee members at any one time. The presence of co-optees at Committee Meetings will not be counted when establishing whether the minimum number of Committee Members are present to allow the meeting to take place as required by Rule 48 and the presence of co-optees will not count towards the quorum for sub-committee meetings.”

1. At the end of Rule 44.8, add:-

“; or”

1. Add new Rule 44.9 as follows:-

“44.9 he/she is an Appointed Committee Member whose specified term of office has expired, or whose appointment has been revoked by resolution of the Committee or who has continuous service on the Committee of nine years or more and the Committee is not satisfied of the individual’s continued effectiveness as a Committee Member and in these circumstances the Committee has resolved that he/she shall cease to be a Committee Member.”

1. Delete existing Rule 48 and replace with:-

“48 It is up to the Committee to decide when and where to hold its ordinary meetings, but it must meet at least six times a year. There must be at least four Committee Members present for the meeting, with a majority of the Committee Members present being Elected Committee Members, for the meeting to take place.”

1. Amend 59.1 on the third line whereby “elected” should be amended to “Elected”.



**FURTHER OPTIONAL AMENDMENTS TO SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020**

This guide highlights further options which have been approved by the Scottish Housing Regulator. The changes to the text of the standard charitable model are set out in this guide but where such changes are being implemented this may require a further renumbering of clauses and changes to cross referencing of clauses.

The following optional amendments can be made should your association choose:

* To allow staff members to be a part of your governing body as Executive Committee members (provisions a, b, c, d, e, f, i, j, k &l); or
* To prohibit related Governing Body members (provision h); or
* To allow payment to Committee Members (provision g)

1. Delete existing Rules 37.1 and replace with:-

“37.1 The Association shall have a Committee of Management which shall have a minimum of 7 and a maximum (including co-optees and Executive Committee Members) of 15 persons. There shall be not more than [insert number] Executive Committee Members serving on the Committee at any one time. The Association shall keep up to date a register of the names of the Committee Members which shall be made available to any person at no cost. The names of Committee Members will also be published by the Association on its website, and in its annual reports and other similar documentation.”

1. Add new Rule 37.2:-

“37.2 The Committee can appoint to the Committee any employees the Committee considers are suitable to the role of Executive Committee Members subject to the provisions of Rule 37.1. Executive Committee Members shall serve until removed by the Committee and shall not be subject to retiral in terms of Rule 39.1 or the provisions of Rule 43.2. Executive Committee Members can also serve on any sub-committees. Executive Committee Members must not receive any additional payment in connection with their role as a Committee Member over and above what they are entitled to receive under their contract of employment.”

(c) Renumber Rule 37.2 as Rule 37.3.

(d) Delete existing Rule 37.3 and replace with:-

“37.4 A person must be aged 18 or over and a Member to become a Committee Member (including any person appointed to fill a casual vacancy) other than a person appointed as a co-optee, a person appointed by The Scottish Housing Regulator or an Executive Committee Member.”

(e) Delete existing Rule 37.4 and replace with:-

“37.5 Executive Committee Members can take part in discussions at the Committee or any sub-committees and vote at Committee and sub-committee meetings on all matters except those which directly affect the membership of the Association or the election of the Association’s Office Bearers. Executive Committee Members may not stand for election, nor be elected as one of the Office Bearers of the Committee. The presence of Executive Committee Members at Committee Meetings will not be counted when establishing whether the minimum number of Committee Members are present to allow the meeting to take place as required by Rule 48 and the presence of Executive Committee Members will not count towards the quorum for sub-committee meetings. No Committee Meetings or sub-committee meetings can take place if Executive Committee Members constitute the majority of those Committee Members present. Executive Committee Members shall comprise a minority of the total number of Committee Members at all times. A Close Relative of an employee may not be a Committee Member.”

(f) Renumber existing Rule 37.5 as 37.8 respectively.

(g) Add new Rule 38.4:-

“If the Association’s policy on payments and benefits permits payment to non-executive Committee Members (or any of them) the Committee must take account of any independent guidance and good practice in fixing the amount of such payments and can demonstrate value for money. Any payments will be linked to specified duties to be undertaken by the relevant Committee Members and the Association will have in place a clear and robust process for assessing the performance of Committee Members in carrying out such duties. The Association must ensure that any such payments to Committee Members are disclosed in the audited accounts of the Association. Where the Association has one or more subsidiaries it must ensure that any payments and benefits to the subsidiary governing body members are included in the policy. The Association must comply with the Charities and Trustee Investment (Scotland) Act 2005 and any associated guidance from the Office of the Scottish Charity Regulator when considering payment or benefits to the charity trustees.”

(h) Add new Rule 43.1.12:-

“he/she is the spouse, partner, child (including adopted child or step child), parent, parent-in-law, grandparent, grandchild or sibling of a Committee Member or of a governing body member of any other organisation in the Group.”

(i) Delete existing Rule 44.2 and replace with:-

“44.2 he/she ceases to be a Member unless he/she is a co-optee in terms of Rule 42.1 or an Executive Committee Member or an appointee of The Scottish Housing Regulator; or

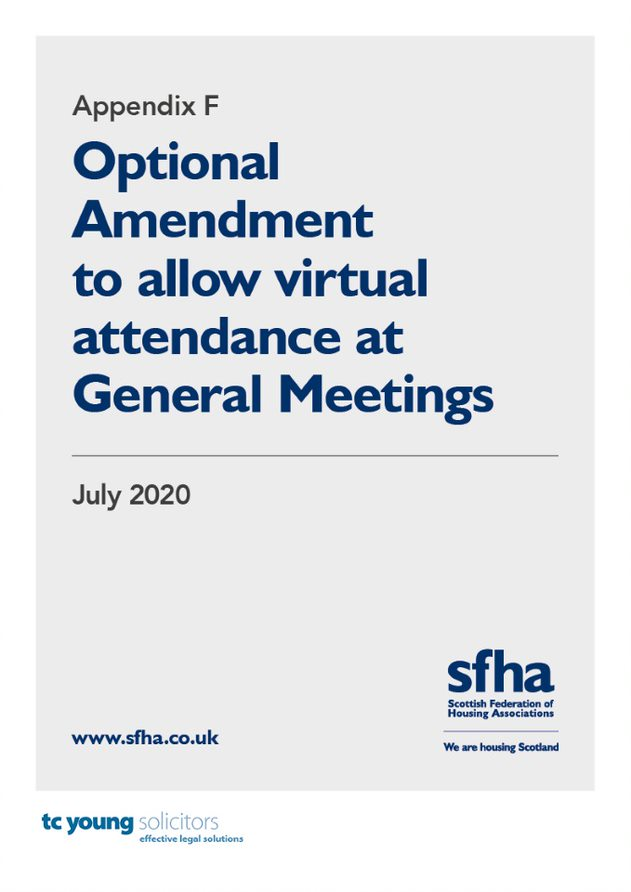
(j) Add new Rule 44.9:

“44.9 he/she is an Executive Committee Member whose period of office is ended in accordance with Rule 37.2; or”

(k) Add new Rule 89.1.8

“89.1.8 Executive Committee Member means an employee of the Association appointed as a Committee Member in accordance with Rule 37.2.”

(l) Renumber existing Rule 89.1.8 to 89.1.22 respectively.



**OPTIONAL AMENDMENTS TO SFHA CHARITABLE MODEL RULES (SCOTLAND) 2020 TO ALLOW VIRTUAL ATTENDANCE AT GENERAL MEETINGS**

This guide highlights an optional amendment approved by the Scottish Housing Regulator that would allow for virtual attendance at AGMs. The quite exceptional circumstances as a result of the Coronavirus in 2020, led to the UK Government passing temporary legislation (the Corporate Insolvency and Governance Act 2020) to make provision for virtual General Meetings up until 30 September 2020. Many RSLs wish to make provisions to permanently allow for virtual attendance moving forward, which the following optional amendments would facilitate.

* 1. Insert new Rule 20-

“20 Notwithstanding any other provisions of the Rules (which shall be subject to the terms of this Rule 20) a Member cannot insist on attending a general meeting of the Members, or voting at the meeting, by any particular means. Further, the following provisions shall apply to the conduct of general meetings when so determined by the Committee:-

20.1      A general meeting need not be held in any particular place and the meeting may be held without any number of those participating in the meeting being together at the same place;

20.2      A general meeting may be held by any means which permits the Members attending to hear and comment on the proceedings during the meeting.  Members attending the meeting by such means shall be present at the meeting for the purposes of Rule 24.1; and

20.3      A Member is able to exercise the right to vote at a meeting (including if a poll is required) by such means as is determined by the Chairperson and which permits the Member’s vote to be taken into account in determining whether or not a resolution is passed.”

* 1. Renumber existing rule 20 to 21.
  2. Renumber existing rule 21 to 22.
  3. Renumber existing rule 22 to 23
  4. Renumber existing rule 23 to 23.3
  5. Delete existing rule 24.1 and replace with:-

“For a meeting to take place there must be at least seven Members either present at the meeting or represented 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 by a representative in terms of Rule 27.1

| **GUIDANCE ON VIRTUAL GENERAL MEETING AMENDMENTS** | | |
| --- | --- | --- |
| **Rule** | **Rule Wording** | **Guidance** |
| 20 | Notwithstanding any other provisions of the Rules (which shall be subject to the terms of this Rule 20) a Member cannot insist on attending a general meeting of the Members, or voting at the meeting, by any particular means. Further, the following provisions shall apply to the conduct of general meetings when so determined by the Committee | This provision allows the Committee to determine the means by which a general meeting should be held and to apply the provisions for a “virtual” meeting set out below when this is considered desirable or necessary.  Where “virtual” attendance at a meeting is to be permitted the Committee must give early consideration to the platform to be used, to the format of notice to Members and the mechanics of joining and running a meeting of this kind. |
| 20.1 | A general meeting need not be held in any particular place and the meeting may be held without any number of those participating in the meeting being together at the same place. | In accordance with this provision, it is not necessary for any particular number of Members to be physically present at a venue for the meeting to proceed, i.e. virtual attendance would count towards the quorum requirements outlined at rule 24.1. |
| 20.2 | A general meeting may be held by any means which permits the Members attending to hear and comment on the proceedings during the  meeting.  Members attending the meeting by such means shall be present at the meeting for the purposes of Rule 24.1. | This provision allows for meetings to be held “virtually”. If there was a lockdown in place - and it was not permitted to have a physical meeting a “virtual” meeting could be held.  In normal times the Committee could decide to hold a purely physical meeting in the traditional way, or allow both physical and “virtual” attendance. It is not anticipated that a Committee would hold a purely “virtual” meeting in circumstances when physical attendance was possible. |
| 20.3 | A Member is able to exercise the right to vote at a meeting (including if a poll is required) by such means as is determined by the Chairperson and which permits the Member’s vote to be taken into account in determining whether or not a resolution is passed. | This allows appropriate voting arrangements to be put in place here there is “virtual” attendance at the meeting. |
| 24.1 | For a meeting to take place there must be at least seven Members either present at the meeting or represented 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 by a representative in terms of Rule 27.1 | This removes any reference to “a venue”, therefore making it possible for anyone attending virtually to count towards the quorum. |



**Guide to making rule amendments**

**Introduction**

If your association decides to amend its existing rules, this step by step guide is designed to aid you through each stage of the process.

The SFHA Charitable Model Rules (Scotland) 2020 were produced in conjunction with our membership and approved by the Scottish Housing Regulator (SHR), the Office of the Scottish Charity Regulator (OSCR) and accepted as a model set of rules by the Financial Conduct Authority (FCA). They are available on the SFHA website here:

* [SFHA Charitable Model Rules 2020](https://www.sfha.co.uk/download.php?file=1393)

This is the recommended model if you are looking to make any constitutional changes. It is strongly recommended that any organisations using Rules based on a Model developed prior to 2020 update to this Model as soon as possible. The FCA may not register any rules based on earlier SFHA models or alternatives.

To help the process of updating your rules, a document tracking all of the changes in the 2020 update as compared to the previous version of the model (the 2015 version) is available on the SFHA website here:

* [SFHA Charitable Model Rules 2020 (changes tracked to 2015 version)](https://www.sfha.co.uk/download.php?file=1394)

If you did not update to the 2015 rules and are still using either the 2013 version or 2009 version, documents tracking the 2020 update as compared to those versions are also available from the SFHA on request.

Appendices A – E provide further guidance (approved by the SHR and OSCR) as to how you can adapt the model to fit your organisation’s needs if you are:

* [Community based](#AppA) (Appendix A)
* [A fully mutual co-operative](#AppB) (Appendix B)
* [Non-charitable](#AppC) (Appendix C)
* [Seeking to allow appointed committee members](#AppD) (Appendix D)
* [Seeking to make amendments regarding employees as committee members; committee members who are related; or payment of committee members](#AppE) (Appendix E)

**Please note: if your organisation is non-charitable and also community based or a co-operative, you would have to apply both sets of amendments to the Model.**

For further guidance on individual clauses within the model, see [page 3-60](#Introduction).

**Procedure When Amending Rules**

When adopting the SFHA Charitable Model, or seeking to make any amendments to your existing rules, the following steps should be followed:

1. **What changes (if any) do you need to make to your rules?**

* The first step will be to internally assess what changes your organisation needs to make (if any) to its existing rules. At this stage it is recommended that you seek appropriate legal advice to aid with the drafting process and to ensure that the rules you are looking to adopt match your organisation’s requirements.
* The SFHA Model Rules (Scotland) 2020 were developed in conjunction with our members and take account of the Regulatory Standards and Constitutional Requirements contained within the Scottish Housing Regulator’s [Regulatory Framework](https://www.scottishhousingregulator.gov.uk/for-landlords/regulatory-framework). It is recommended that organisations seek to adopt this model (or an amended version of this model) as soon as is practical.

1. **Has your governing body thoroughly considered any proposed amendments?**
   1. The governing body must consider and take advice on any proposed constitutional change. It also must ensure it complies with Regulatory Standard 7. Detailed reports should be provided to the governing body outlining the benefits and risks attached to each proposed change, and adequate time allowed for in depth discussion.
   2. Before you can seek consent from any regulatory body to any rule amendment, your governing body must first formally agree to the proposals.
2. **Do you need to seek consent from the Office of the Scottish Charity Regulator (OSCR)?**

* If your organisation is a charity, then you must consider the requirements of the Office of the Scottish Charity Regulator (OSCR) at this stage.

**3.1 Adopting the SFHA Model without changes to objects**

* **If you are adopting the SFHA Charitable Model Rules 2020 and propose to make no amendments to the objects within the model (section 2 of the SFHA Charitable Model Rules 2020), then you do not require to seek OSCR consent**. This is because OSCR has, as well as approving the Model Rules, given its consent to any charities that adopt the Model. The only requirement would be to notify OSCR once the Model has been adopted (see step 7).
* Charitable organisations adopting the Model using the optional revisions outlined in the SFHA Accompanying Guidance to the Rules (e.g. for Community Based organisations) also do not require to seek OSCR consent, provided they notify OSCR once the model has been adopted (see step 7).

**3.2 Adopting the SFHA Model with changes to objects**

* However, if you wish to make any other amendments to the objects (section 2 of SFHA Charitable Model Rules 2020), an application for consent must be made to OSCR at least 42 days in advance of the proposed change taking effect. This also applies to any charitable organisation applying revisions outlined in the SFHA guides for fully mutual co-operatives.
* Charitable organisations must seek OSCR's prior consent when changing the name of the organisation, amalgamating with another body, dissolving/winding up or changing the charity’s legal form. The application for consent must be made at least 42 days in advance of the proposed change taking effect.
* OSCR aim to respond to any basic application (such as changing objects or changing name) within 28 days.
* Application forms and guidance on seeking OSCR consent can be downloaded from the OSCR website:

[OSCR Consent Application Forms and Guidance](http://www.oscr.org.uk/charities/managing-your-charity/making-changes-to-your-charity)

* Please note, that if your organisation is not currently a charity, but wishes to apply to OSCR to change status to become a charity, there is a separate process that must be followed. More details of the requirements under these circumstances are available on the OSCR website: [Becoming a Charity](https://www.oscr.org.uk/becoming-a-charity)

1. **Do you need to seek Scottish Housing Regulator (SHR) consent?**

* The Housing (Amendment) (Scotland) Act 2018 removed the requirement to seek the SHR’s consent prior to making any rule amendments. You must however notify the SHR once you have adopted any revisions to your rules (see step 7).
* Please note, an RSL making a constitutional change that requires it to consult its tenants - for example becoming the subsidiary of another body - should contact SHR at an early stage in its deliberations.

1. **What approval do you need to seek from your members?**

* The Association’s members must be invited to a Special General Meeting (SGM) to adopt any rule changes.
* Your current rules will outline the necessary notice period that you are required to give members prior to the SGM. (As per the SFHA Charitable Model Rules 2020, your Secretary would have to provide **14 days’ written notice** in advance of the SGM, see [Rules 21-23](https://www.sfha.co.uk/mediaLibrary/other/english/18219.docx))
* At the SGM, a majority of three-quarters of members present will be required to adopt any amendment.
* Many organisations hold the SGM on the same date as their Annual General Meeting (AGM), however separate notices must be sent out and separate minutes must also be recorded.

1. **Registering your rules with the Financial Conduct Authority (FCA)**

**6.1 How to apply to FCA**

* Once you have gained your members’ approval at the SGM, you must then apply to the Financial Conduct Authority to formally register your amended rules. There are two methods of doing so:
  + **Option 1 – Mutuals Society Portal**
    - The FCA has launched a new Mutuals Society Portal. If you have not already, you will need to register to submit applications online. You can register/login here:
      * [Mutuals Society Portal](https://societyportal.fca.org.uk/account/login?ReturnUrl=%2f).
    - Once you have registered your own individual account (where you create your username and password), you then need to associate that account with your RSL. The steps on screen set out how to do that.
    - When you ask to be associated with your society, a letter will be sent by the FCA to the registered office address of the society. This ensures there is no unauthorised access to your society.
    - The letter will arrive within a week at the latest. When you get this letter, please take the action described in it as soon as possible.
    - The letter will ask you to log in to the Portal and enter the ‘One-Time-Passcode’ (OTP) contained within that letter. Once you have completed this step, your user account is associated to your society. You do not need the OTP again.
    - Up to 5 people can associate to any one RSL.
    - The portal is a gateway to the Mutuals Team (who will assess your application) and provides a quicker and easier way for RSLs to apply to register rule amendments. **It is strongly recommended that you use this method**.
* **Option 2 – Downloading forms and submitting via e-mail/post**
  + - Whilst the most efficient and effective way to apply is through the portal, you may also choose to download and complete the relevant forms from [the FCA website](https://www.fca.org.uk/firms/mutual-societies-forms) and submit these in writing:
    - via e-mail to: [mutual.societies@fca.org.uk](mailto:mutual.societies@fca.org.uk)
    - as hard copies to:

Mutual Societies

Financial Conduct Authority

12 Endeavour Square

London

E20 1JN

**6.2 Required forms and signatures**

* The following summarises the relevant forms you must use for each type of rule change.

**Please note that the links below will only be required if you are not using the Mutuals Society Portal. If you are using the Mutuals Society Portal, you should instead first** [**login**](https://societyportal.fca.org.uk/account/login?ReturnUrl=%2f)**, and click on the relevant form on** [**the FCA website**](https://www.fca.org.uk/firms/mutual-societies-forms) **under “Co-operative and Communities Benefits Societies” and “Online Forms”.**

* + If the only amendment you are making is to change the name of the organisation or its registered office **only**, then you need to complete the appropriate form(s) below, or the online form Mutuals Society Portal equivalent:
    - [Change of Name Form](https://www.fca.org.uk/publication/forms/change-of-name.docx)
    - [Change of Office Form](https://www.fca.org.uk/publication/forms/change-of-registered-office.docx)
  + For all other amendments, you are required to fill out the appropriate form below, or the online form Mutuals Society Portal equivalent:
    - [Partial amendment to the rules](https://www.fca.org.uk/publication/forms/partial-amendment-to-rules-1969-and-2014-act.docx) – this should be used where very small changes are being made to your rules that do not impact on the numbering. This will very rarely be used, and it is not recommended to make minor changes very often. The amendment should be worded as a direction to members, telling them exactly what they should do to make the necessary changes to their own copy of the rule book. An example of such a direction is included at the end of application form.
    - [Complete amendment to the rules](https://www.fca.org.uk/publication/forms/complete-amendment-to-rules-1969-and-2014-act.docx) – this should be used for most changes to your rules. **This form (or the online form Mutuals Society portal equivalent) is required if you are updating to the SFHA Model Rules 2020.**
  + Irrespective of whether you are submitting a Partial or a Complete Amendment application - it must be signed off by the Secretary of the Association. In addition, a Notary Public (a solicitor qualified as such) must also sign and stamp the Statutory Declaration included in the forms. **Please note: you will require to upload digital versions of these signatures and stamp if submitting via the Mutuals Society Portal or via e-mail.**

**6.3 How many copies of your rules to submit to FCA**

* Regardless of which method you use to submit your applications, the relevant forms must be submitted to the FCA along with necessary accompanying documents. The documents to be submitted with the completed form depend on the type of amendment:
  + For a partial amendment:
    - one signed copy of the proposed rule amendment (or two copies when submitting via post).
    - a marked-up version of the rules tracking changes made to your existing rules.
    - a completed Statutory Declaration form (included at section 5 in the [Partial amendment to the rules](https://www.fca.org.uk/publication/forms/partial-amendment-to-rules-1969-and-2014-act.docx) form).
  + For a complete amendment:
    - one signed copy of the society’s rules (or two copies when submitting via post)
    - a marked up version of the rules tracking changes made to the model, if you are using the SFHA model
    - a completed Statutory Declaration form (included at section 6 in the [Complete amendment to the rules](https://www.fca.org.uk/publication/forms/complete-amendment-to-rules-1969-and-2014-act.docx) form).
* Please note, that if at Stage 3 you required OSCR consent (i.e. if you are making changes to the objects in your rules) then a copy of OSCR’s consent letter must also be forwarded to OSCR. In most circumstances OSCR consent will not be required, and nothing further will require to be submitted to the FCA in this regard.

**6.4 Further FCA guidance**

* The FCA also provides guidance on making rule amendments on its website (see [p53-54](https://www.fca.org.uk/publication/finalised-guidance/fg15-12.pdf) ).

**7. When you will receive confirmation of registration from the FCA and who you must notify**

* The FCA will generally aim to respond within 15 working days. If the FCA requires no further information and concludes that the rules are not contrary to the Co-operative and Community Benefit Societies Act 2014, it will confirm that your amended rules have been registered. Your rule amendments are not legally effective until the date on which the FCA confirms it has registered them.
* You should notify the SHR within 28 days of the amendment being made through the SHR’s [Social Landlord Portal](https://portal.scottishhousingregulator.gov.uk/_layouts/15/CN.SHR.Portal.FBA/login.aspx?ReturnUrl=%2f_layouts%2f15%2fAuthenticate.aspx%3fSource%3d%252F&Source=%2F). When notifying SHR you must forward the following:
  + Confirmation that you have complied with Regulatory Standard 7
  + A statement that you have adopted rules based on the SFHA model (should this be the case).
  + Either
    - a statement that you have adopted the SFHA model without amendment or
    - a brief outline of any amendments to the SFHA model you have made or
    - a statement outlining the alternative constitutional model you have adopted
  + A signed copy of the new constitution
  + The date the constitution was or will be adopted
  + A copy of the report and minute of the governing body meeting at which it was agreed to adopt the new constitution
* Charitable organisations must also notify OSCR upon confirmation of FCA registration and following notification to the SHR. Each must forward the following to OSCR:
  + A copy of the FCA registration
  + A copy of the SHR’s confirmation e-mail that it has received the required information and documentation above
  + A copy of the registered rules
* These can be sent via e-mail to [info@oscr.org.uk](mailto:info@oscr.org.uk) or via post to:

OSCR

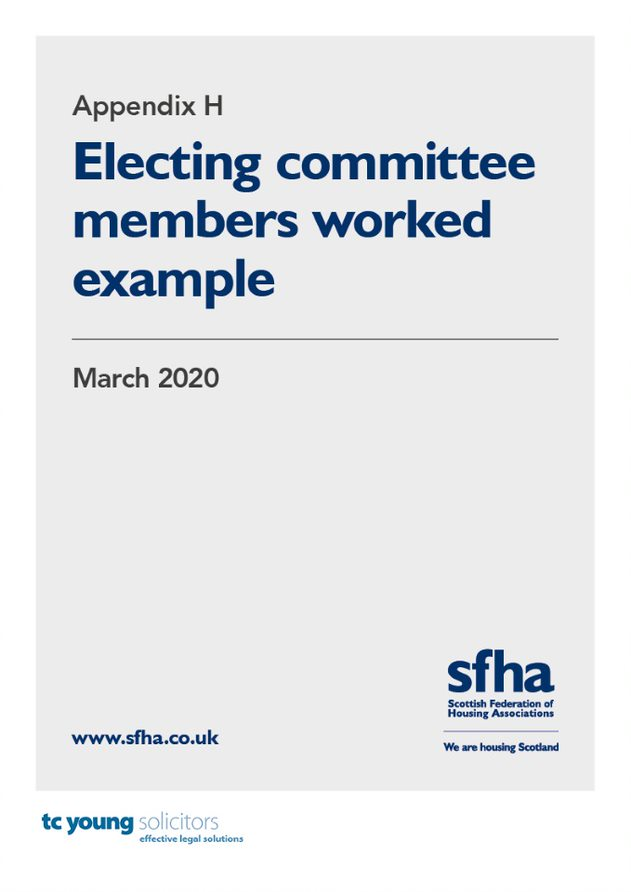
2nd Floor

Quadrant House

9 Riverside Drive

Dundee

DD1 4NY



**Further guidance on different types of Committee Member and elections**

The election and re-election of the Members of the Committee has occasionally caused confusion in terms of precisely which Members should stand down and which may seek re-election. To illustrate, here is an example:

**An Association with 15 Members is approaching its AGM. The Committee is made up of 10 elected Members, 3 co-optees, and 2 places have been vacated and then filled as casual vacancies in the course of the year.**

**Elected Members** – Under Rule 39.1 a third of the Committee must stand down. In this case the number is 3, a third of the 10 elected Members, all of whom are allowed to stand for re-election. (If the number of elected Committee Members had been 11, then the ‘third’ would have been 32/3 and the nearest number to that would be 4.) If agreement cannot be reached about who should stand down between Committee Members who have served equally long then these particular Committee Members will draw lots to decide who should stand down.

**Co-optees** – All of the co-optees must stand down under Rule 39.1. It is normally assumed that by the AGM the co-optees will have done their good work and will leave the Committee. In some circumstances, Associations may wish to retain the skills/knowledge/experience of the co-optees and re-co-opt them, but it is not good practice to do this on a rolling year to year basis. Where that person is eligible for membership of the organisation, they may wish to stand for election. Associations need to ensure that Committee Members have the necessary skills and experience. Associations should consider how they target and recruit Committee Members with the required skills and experience. And, ensure that ongoing relevant training is provided to Committee Members.

**Casual Vacancies** – A Member filling a vacancy that has arisen on the Committee during the year must stand down at the next AGM under Rule 41, but they are allowed to seek election to the Committee in the normal way.

**In total** 8 Committee Members must stand down, 3 of the elected Members, all 3 of the co-optees and both of the casual vacancies.

***Figure 1: Who is required to stand down from Committee?***

Elected Members

Co-Opted Members

Casual Vacancies

1/3 of elected Committee Members should stand-down (longest serving Members)

All Co-Optees must stand-down

All Members who have filled casual vacancies between scheduled AGMs must stand-down

**Table 1: Differences between co-optees and those filling casual vacancies on Committee**

| **Area** | **Co-Optees** | **Casual Vacancies** |
| --- | --- | --- |
| How do they get onto Committee? | The Committee co-opts a person onto the Committee. (It is a Committee decision – the Members do not require to elect co-optees)  Co-option can be made by the Committee, where appropriate, at any time | A casual vacancy is filled by a Member who becomes a full Committee Member, without going through an election process, as they are filling a vacancy that has arisen on the Committee in the course of the year between scheduled AGMs. The Committee Member who is brought on to the Committee in this way may vote on all matters in a Committee meeting unlike a co-optee whose right to vote on matters is limited. |
| Why should they go onto Committee | Co-optees should be chosen in order that they can bring specific knowledge, experience and skills to the Committee (e.g. a local authority councillor or health trust official) | Casual vacancies are essentially a substitute Committee Member until the next AGM |
| Membership and Term of Tenure | Co-optees do not require to be Members of the Association.  1) Co-optees may be used where people would usually be excluded from membership because of the existing membership criteria.  2) If Committee wish the co-optee to remain on Committee, the co-optee must stand down at the AGM and be re-co-opted. This is not recommended however, as continual co-option should not be encouraged (i.e. a Member being co-opted year in year out) Where a co-opted Member has skills that are required on a continuous basis, they should be elected as a full Member if possible. Or the Committee could consider other training or recruitment options. | Casual Vacancies must   1. Be filled by people who are Members of the Association 2. stand down at the next AGM for re-election |
| Obligations and Rights on Committee | Co-optees are subject to much the same Rules as any other Committee Member, so for example, if they had missed four Committee meetings without leave of absence, they would lose their place on Committee. Voting powers are, however, limited (see below) | Those who fill casual vacancies on Committee are Full Committee Members, and subsequently, have the same rights, obligations and voting powers as those Committee Members who were elected onto Committee at the AGM |
| Voting rights | Right to vote on matters is limited (cannot vote on matters directly affecting the membership of the Association or election of Associations Office Bearers (cannot stand as or be elected as an office bearer either) | The Committee Member who is brought on to the Committee in this way may vote on all matters in a Committee meeting unlike a co-optee whose right to vote on matters is limited. |
| Proportion of Committee | Cannot make up more than 1/3 of the total number of Committee Members | Dependent upon the number of places that are vacated on Committee between AGMs. |
| Quorum | Do not contribute towards the required quorum at meetings | Count towards any required quorum at meetings |
| Age | Must be 18+ | Must be 18+ |
| Legal Advice | It should be noted that SFHA has received legal advice that places filled under the casual vacancy Rule must be those that have arisen as a result of Committee Members leaving the Committee **between** the Annual General Meetings. Casual vacancies cannot be used to fill places on the Committee that remain unfilled after the AGM. Co-Option can be made at any time throughout the year, subject always to the maximum of 1/3 of Committee being made up of co-optees | |

If an election is necessary for the election of Committee Members, this vote must be taken by way of a poll using the issued postal ballot voting paper (where the Association uses postal voting).

Members can vote, as part of the poll to elect Committee Members by exercising a postal vote.

No less than 14 days before the meeting at which the election of Committee Members will take place, ballot papers should be sent out to all Members who qualify to vote in the election. Where a Member wishes to vote by post, the ballot paper should be returned to the Secretary at least 5 days prior to the day of the meeting. If the Member chooses not to exercise a postal vote, the ballot paper should be brought along to the meeting.

**The postal votes received will be counted along with the total number of votes at the meeting.**

Nominations for the Committee must be delivered to the Secretary or left at the Registered Office of the Association at least twenty-one days before the general meeting.

The timescales involved in calling the general meeting where Committee Members are to be elected are now:

***Figure 2: Timescales***

**Ballot Paper Due to be Returned**

**Date of Meeting**

**Notice of AGM and Ballot Paper sent**

**Nominations Due**

**Notice of intention to hold General Meeting and Invitation to Stand For Committee**

**Meeting date**

**+ 5 days**

**+ 14 days**

**+ 21 days**

**+ min. 28 days**

**For example, an AGM to be held on 30 September, where the election of Committee Members will take place:**

***Table 2: Timescales Example***

|  |  |
| --- | --- |
| **Activity** | **Deadline** |
| Information Circulated informing Members that the General Meeting will take place | 2September (at the latest) |
| Invite nominations for Committee places | 2September (at the latest) |
| Nominations Due in | 9September |
| Notice of AGM issued | 16 September |
| Ballot Paper Issued | 16 September |
| Postal Ballot Papers Due | 25 September |
| AGM, including the election of Committee Members | 30 September |



**Example of rejection of nomination under Rule 40.3**

The following example is provided for illustrative purposes only.

**Nomination for Election to the Committee**

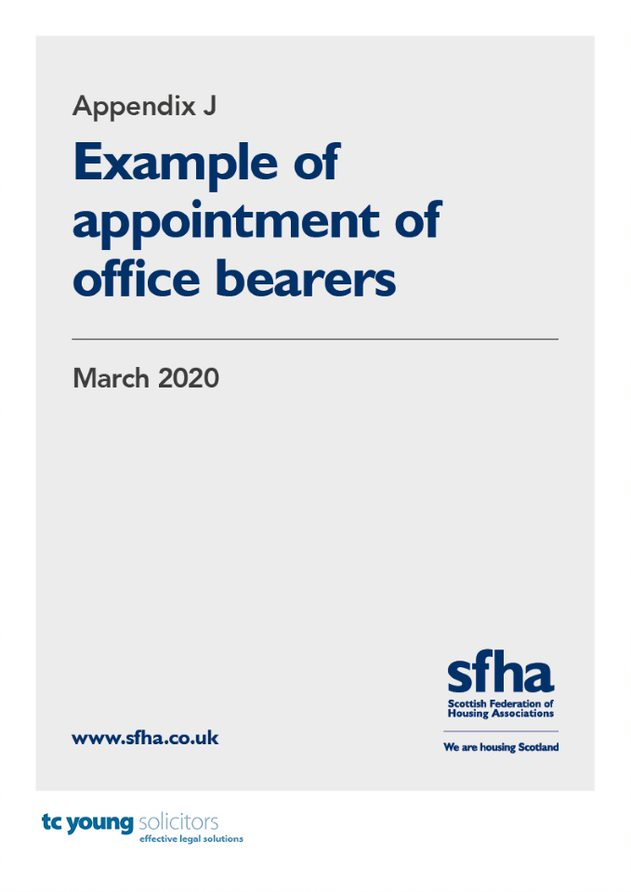
*Association A provided members on 1 August with notification of its intention to hold its Annual General Meeting on 1 September. The notification also contains an invitation to members to lodge nominations for election to the Management Committee by 11 August.*

*Association A receives a nomination on behalf of Member Z who is subject to action under the Association’s Unacceptable Actions Policy having been abusive and threatening towards staff. The matter is raised with the Chairperson. In consultation between the Chairperson and other Office Bearers it is considered that it would not be in the best interests of the Association for Member Z to become a Committee Member.*

*At its scheduled Committee meeting on 15 August, the Committee consider and approve unanimously a resolution from the Chairperson that the nomination from Member Z be rejected on the basis that election to the Management Committee would not be in the best interests of the Association given the clear evidence of recent abusive and threatening behavior towards staff and taking account of the duty of care owed by the Association to its employees.*

*Member Z was subsequently advised in writing of the rejection of the nomination and Member Z’s name was not included in the ballot paper sent to members.*

In the event that the Association had not had a scheduled Committee meeting taking place within the required timescales the matter could have been dealt with at a Special Committee Meeting called in accordance with rule 56 or by written resolution in accordance with rule 55.



**Example of appointment of office bearers**

Rule 59.1 requires that the Association have a Secretary, a Chairperson and any other office bearer the Committee considers necessary. Rule 59.5 requires that the offer bearers will be appointed on an annual basis at the next scheduled meeting after each annual general meeting.

In order to avoid any gap in office, it is common for Associations to schedule a short Committee meeting immediately after the Annual General Meeting for the purpose of appointing office bearers.

It is recommended that, at the relevant meeting, the appointment of the Chairperson is dealt with first on the agenda with the appointed Committee Member then taking the chair to oversee the appointment of the other office bearers.

Often the appointments are made on the basis of a simple majority signified by a show of hands. The Association might wish to consider having facilities to undertake the vote by written ballot.

It is an option to circulate ballot papers in advance of the meeting, although some flexibility might be required in the event of a contested election for Committee at the Annual General Meeting and previous Committee Members failing to secure re-election.

Although unusual, occasionally there will be a tie for appointment to an office. In an effort to achieve a resolution, the following options might be considered:

* re-running the vote as a secret ballot;
* asking if any of the tied candidates might be willing to withdraw;
* drawing lots;
* exploring whether a compromise candidate might be appointed.

The following example is provided for illustrative purposes only:

*The Management Committee convenes immediately after the Annual General Meeting to appoint office bearers in accordance with rule 59.5. The Chief Executive facilitates the first item of business, namely the appointment of the Chairperson.*

*The previous Chairperson, having been re-elected to the Committee and not having served 5 years as Chairperson, undertakes her/his willingness to be re-appointed. Two other Committee Members indicate their willingness to stand. In a vote by show of hands, two candidates receive 4 votes each and one receives 2. The candidate with the lower vote is discounted and the two remaining candidates are subject to a further run-off. Both receive 5 votes and neither is willing to withdraw.*

*On a suggestion from the Chief Executive, the committee votes unanimously to appoint the candidate who is successful on the drawing of lots. Lots are drawn and the successful candidate is subsequently appointed Chairperson by the unanimous decision of the Committee.*

*The Committee then goes forward to appoint the Secretary. The previous Secretary offers herself/himself for re-appointment and, there being no other candidate, is reappointed by unanimous resolution.*

*The Committee resolves that it should fill the office of vice-chair. As the previous incumbent of that office was unsuccessful in seeking re-election to the Committee, the Chairperson asks for nominations to the office of vice-chair. Having received only one nomination, the nominee is appointed by unanimous resolution.*

*The Committee then resolves that it will not have any additional office bearers at this time.*