

Explanatory notes and guidance on revisions to the CHC Model Rules

May 2021

Introduction

This document has been issued alongside the updated CHC Model Rules, which were published in May 2021.

It provides explanatory notes on the revisions that have been made. It goes on to set out the steps that housing associations may wish to go through when adopting the updated rules – or adapting their own rules based on these changes.

If you have questions or concerns in relation to the updated Model Rules, please contact Laura-Courtney@CHCymru.org.uk.

Rationale for updating the rules

In 2020, the UK Government acknowledged that the operating rules for many organisations would not allow for the virtual or hybrid general meetings which were necessary due to the Covid-19 pandemic. As a result, the Corporate Insolvency and Governance Act 2020 was passed, allowing time for organisations to update their rules to include the necessary flexibility.

CHC determined that this would be a good opportunity to review and update our Model Rules for Housing Associations in Wales. This review was conducted at a time of continuing pressure for CHC members due to the Covid-19 pandemic, and in the context of reviews of the Regulatory Framework for Housing Associations in Wales and the CHC Code of Governance.

Consequently, the review was designed to only identify the updates which were particularly necessary at this time. In order to do this, the scope of the review was as follows:

- To make changes that reflect changes to the legislative and operating context since 2017.
- To provide flexibilities in light of the impact of Covid-19 on long-term working practice.
- To update outdated language.
- To address any reported anomalies or lack of clarity within the current Model Rules.

Member engagement

In October 2020, CHC issued a sector survey calling for suggested changes based on the above criteria, and asked for volunteers to take part in a critical readers group.

We then commissioned Devonshires Solicitors to undertake a review of the rules. During this process we sought input from the critical readers group, updated relevant SDGs on key themes and consulted members of the Welsh Government social housing regulatory team.

The changes we have made to the rules reflect changes in the legislative and operating environment, and the comments of CHC members.

They focus on:

- Providing flexibility with regards to the manner and delivery of general meetings in a post-Covid environment, in particular to allow virtual or hybrid meetings.

- Updates to reflect legislative changes since the original CHC Model Rules were published in 2017.
- Changes to provide clarity with regards to queries raised by the sector, and to address any perceived anomalies.
- Bringing optional provisions in relation to co-optees into the main body of the rules.
- Updating the optional provisions for LSVT housing associations, acknowledging that changes to the rules of individual associations will have been made based on legal advice and removing text that is no longer likely to support the current context for these organisations.
- Deletion of references to regulation where the general powers of the regulator apply.
- Alterations to outdated language – e.g. in relation to those we serve who are at risk of living in poverty, gender, etc.
- Ensuring read across to the Code of Governance – e.g. in relation to diversity of thought within sector governance.

Changes since the ‘pre-publication’ document was issued

In early May 2021, a ‘pre-publication’ version of the rules was shared with the sector. Further amendments have been made based on discussion since this version was shared.

These changes include:

- Retaining the required time period between retiring from the board and re-election to the board of the same housing association in rule D11.2 at three years, as per the 2017 Model Rules.
- Amendments to the LSVT option in relation to local authority persons and local authority appointees.
- A footnote to D12.1 which states *‘Boards should ensure that they have regard to the provisions in the Regulation of Registered Social Landlords (Wales) Act 2018, the Regulatory Framework and to their selected Code of Governance when preparing their selection criteria and election procedures.’* This is designed to provide housing associations with a reminder that they should consider any potential risk in relation to the cumulative impact of local authority influence in terms of ONS reclassification when appointments are made to the Board. Housing associations should consider this in relation to local authority persons as defined at G15.13 within LSVT option O3.10, as well as local authority appointees.
- Corrections resulting from reported errors or omissions.

Further suggested changes that fell outside of the remit of this review have been noted for further sector discussion. CHC will seek to provide timely opportunities for discussion on these points.

Navigating changes to the rules

These notes are designed to be read alongside the demonstration copy of the updated Model Rules. In order to make it easier for members to read and understand the changes that have been made, we have highlighted text which has been added or adapted in yellow within the demonstration copy. We have also itemised the text that has been removed from the Model Rules. This can be found in Appendix A at the end of the document.

Guidance for Housing Associations on the adoption process

The Model Rules are not mandatory. They have been designed to be a model set to help support consideration locally if and when housing associations in Wales review their own rules and arrangements. If a housing association decides to either amend existing rules to reflect aspects of the new rules or adopt a new set of rules, they should follow the steps below.

In drafting the Model Rules, Devonshires has made it clear that no model can be completely appropriate for all circumstances. Consequently, it is appropriate for housing associations to adapt the rules based on their own particular circumstances before submitting them for approval. This will be particularly relevant where previous changes have been made to the 2017 model based on legal advice. Devonshires has advised two possible approaches to adoption of the Model Rules:

- i. **Wholesale adoption of the updated rules.** In this case, the housing association would present the updated CHC Model Rules for adoption. If the organisation has previously made changes to their rules since adopting the original 2017 model, or if alterations to this model need to be made to reflect their specific circumstances, this can be done before the rules are presented for adoption to the Board and then the shareholders. This is the approach that Devonshires has particularly recommended.
- ii. **Adoption of some of the changes within the updated Model Rules.** In this case, a housing association would simply choose the changes within the updated Model Rules that they would like to adopt, and itemise the changes when introducing them for adoption to the Board and then the shareholders. This would of course run the risk of missing some of the updates which Devonshires has recommended within this review.

Steps to take

- Determine the approach you will be taking to making changes to your rules – either through wholesale or partial adoption of the updated Model Rules.
- Confirm the approach you are taking and the proposed changes with the Board of your housing association.
- The housing association's members should then call a Special General Meeting (SGM) to adopt the rule changes. Associations can hold an SGM on the same date as an Annual General Meeting (AGM); however, separate notices should be sent out and separate minutes should also be recorded.
- At this stage the new rules need to be signed off by three Board members and the Secretary. There should be three clean copies of the rules signed off and two tracked copies incorporating any changes.
- Devonshires do not consider the changes that have been made to the Model Rules in 2021 to be 'fundamental', when compared to the 2017 model. Consequently, they have advised that a two-thirds majority of shareholders may be appropriate to approve the rules. However, if a housing association does consider the changes to represent a fundamental difference to their rules, they may feel that a three-quarter majority would be necessary.

Housing Regulator

Schedule 1 of the Housing Act 1996 (as amended) requires RSLs to notify the Regulator about certain restructuring, company arrangements and reconstruction, registered society dissolution and constitutional changes. RSLs are required to comply fully with the Directions issued pursuant to that Act.

The provisions do not mandate that all types of rule changes need to be notified however, under co regulation principles, it is advised that RSLs submit a copy of any revised rules, once formally adopted, along with a summary of the changes made to the Regulator.

Financial Conduct Authority (FCA)

The revised rules will then need to be submitted and registered by the FCA. The submission will need to include:

- Cover letter from the association
- Two of the clean signed copies of the new rules indicated above
- One track changed copy to show only any new wording not taken from the base Model Rules or any of the options sections
- Any approval correspondence for the Housing Regulator
- The relevant FCA registration forms which are available on their website. These should be signed off by the Secretary of the Association

Once reviewed and registered, the FCA will send the Rules directly back to the Association.