



THE SCOTTISH
HOUSING
REGULATOR

GUIDANCE NOTE

To: All Registered Social Landlords (RSLs)

Subject: Procedures for the Scottish Housing Regulator's Consent to Rule Amendments or Changes in Constitution

Issued by: The Scottish Housing Regulator

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Summary

This guidance note explains the obligations placed on Registered Social Landlords and the procedural issues to be followed in obtaining consent from the Scottish Housing Regulator under Section 19 of the Housing Associations Act 1985 (or, in the case of a Contractual RSL, under the terms of its Contract with Scottish Homes) for amending its rules or constitution. It supersedes SHGN 91/08.

It incorporates revised procedures which take account of a decision that RSLs, which are members of the Scottish Federation of Housing Associations, require to submit their formal applications for rule amendments to the Scottish Housing Regulator via the SFHA.

It also acknowledges the existence of contractual RSLs and the different procedures which apply to them.

For any references to Communities Scotland (or Scottish Homes) please read the Scottish Housing Regulator.

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If you have any questions about this guidance, you should direct them to:

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1. INTRODUCTION

- 1.1 The purpose of this Guidance Note is to advise on the statutory/contractual provisions and procedures relating to an RSL amending its rules (constitution).
- 1.2 RSLs are reminded that any amendment to their rules or constitution requires Scottish Homes' prior consent in writing except for a change:
- in the name of the RSL, or
 - in the location of the RSL's registered office.

In these instances, it is sufficient for the RSL to advise Scottish Homes Registration and Supervision Department once the change has been approved by the Governing Body and registered with the Registry of Friendly Societies or the Registrar of Companies, as appropriate.

2. BACKGROUND

- 2.1 Most RSLs registered with Scottish Homes are Industrial & Provident Societies which have obtained legal incorporation by registering with the Registry of Friendly Societies under the Industrial and Provident Societies Act 1965. ("Statutory RSLs"). Such societies have as their governing instrument or constitution a book of rules, commonly referred to as 'the rules', which determines the objects, permitted activities and general organisation of the society.
- 2.2 The Industrial and Provident Societies Act 1965 (Section 10 (1)) states that any society's amendment of rules is not valid until the amendment has been registered by the Registry of Friendly Societies, i.e. it becomes effective on the date of registration.
- 2.3 The Housing (Scotland) Act 1988 makes it a statutory requirement for registered housing associations to obtain written consent of Scottish Homes to rule amendments.
- 2.4 Some RSLs have been incorporated under The Companies Acts ("Contractual RSLs"). As a condition of their registration with Scottish Homes, these RSLs have a contractual obligation to obtain the written consent of Scottish Homes to any amendments to the Company's objects, permitted activities and general organisation as recorded in their Memorandum and Articles of Association.

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RULE AMENDMENTS – STATUTORY RSLs

- 3.1 Most statutory RSLs adopt 'Model Rules' developed by the Scottish Federation of Housing Associations (SFHA) and endorsed by Scottish Homes. There are five different models, the latest (1998) versions of which are published together in one document, which comprise:
- **Model HSA.** The base model.
 - **Charitable.** For those RSLs that have charitable status granted by the Inland Revenue.
 - **Community Based.** Limits the geographical area from which members can be drawn.
 - **Co-operative.** Allows the association to be run on co-operative principles for the benefit of the members.
 - **Fully Mutual Housing Co-operative.** The membership is restricted to tenants and prospective tenants.
- 3.2 Amendments of rules are either
- **Complete:** where a new set of rules is adopted - this would be the procedure for adopting the 1998 set of Model Rules published by the SFHA - or
 - **Partial:** where only a few of the existing rules within the set currently in use by the RSL are being amended.
- 3.3 An RSL's rules will provide for the manner in which they can be amended. A resolution to amend part or all of an RSL's rules must be passed at a special general meeting of the RSL of which requisite notice has been given specifying the intended amendment.

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- 3.4 Prior to calling the required special general meeting, RSLs should send draft proposals on any proposed complete or partial rule amendments simultaneously to the SFHA• and to Registration and Supervision, Scottish Homes. Where the rules are based on the SFHA Model, a photocopy of the Model should be supplied marked to show where the amendments occur and what they are. In the case of partial amendments, to be acceptable to the Registry of Friendly Societies, the revisions must read as an instruction to a member as to how to alter their rules, e.g. “delete...in clause x and insert....”.
- 3.5 The SFHA• will advise on any particular difficulties that might be raised by the Registry of Friendly Societies.
- 3.6 Provided that the proposal on a rule amendment is acceptable to Scottish Homes it will provide the RSL with written agreement in principle. It is important to note that Scottish Homes will necessarily take wider issues into consideration than the Registry of Friendly Societies, so the consent of both organisations is required.
- 3.7 Once agreement in principle has been received from Scottish Homes, an RSL should seek approval to the amendments from the membership at the special general meeting referred to in 3.3 above. It is suggested that the proposal at the special general meeting be couched in terms such as:

“That the proposed rule changes be adopted subject to alterations which might be required by the Registry of Friendly Societies, so long as such alterations do not change the essential meaning of the document”.

This will cater for any minor changes which the Registry of Friendly Societies may require after formal application for the rule change has been lodged and avoid the need for a further special general meeting to adopt these alterations.

• Statutory RSLs that are not members of the SFHA should correspond directly with Scottish Homes and the Registry of Friendly Societies.

- 3.8 Following the special general meeting which, by the required majority, has agreed the rule change, the RSL should prepare the paperwork required to apply for consent to the new rules, i.e.
- Form E (complete amendment) or Form F (partial amendment) and Form G (obtainable from the SFHA or Registry of Friendly Societies).
 - **In the case of a complete amendment:**
Four copies of the new rule book, one marked "A", which should correspond verbatim to the draft version which Scottish Homes approved in principle under 3.6 above; all being signed with original signatures by 3 members and the Secretary of the RSL. The front cover of these rules books should be marked 'all previous rules rescinded'.
 - **In the case of a partial amendment:**
Four printed copies of the amendment, one marked "A", which should correspond verbatim to the version which was agreed to in principle by Scottish Homes under 3.6 above, all being signed with original signatures by 3 members and the secretary of the RSL
AND
a printed copy of the RSL's rules which is marked to show where the amendments occur and what they are.
 - a cheque, made payable to the SFHA, for the appropriate Registry of Friendly Societies' fee (See para. 4 below)
- 3.9 The RSL should submit all papers comprising the application to the SFHA which will submit the application to Scottish Homes.
- 3.10 Following granting of the consent in writing by Scottish Homes to the RSL, Scottish Homes will simultaneously arrange for the Registry of Friendly Societies to register the rule amendment. The Registry of Friendly Societies will issue Form H (acknowledgement of registration of the rule amendment) to the RSL.
- 3.11 The RSL should carefully preserve Scottish Homes' consent and Form H with its rules. Copies of both documents will be filed on the RSL's public file which Scottish Homes maintains as part of its Register of RSLs.

• Statutory RSLs that are not members of the SFHA should correspond directly with Scottish Homes and make cheques for the registration fee payable to the "Registrar of Friendly Societies".

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4 REGISTRY OF FRIENDLY SOCIETIES FEES

- 4.1 Fees payable to the Registry of Friendly Societies are determined by statute. The Treasury, at 1st April each year, under powers given to it in Industrial and Provident Society legislation, reviews the fee level for rule amendments.
- 4.2 Where an RSL is adopting rules for first registration or obtaining a complete rule amendment, it can obtain a reduction on the statutory fee by having their Registry of Friendly Societies' application endorsed by the organisation which promotes the rule model (e.g. SFHA). The SFHA charge an administration fee, currently £25, for this service.

5 RULE AMENDMENTS – CONTRACTUAL RSLs

- 5.1 The “rules” of Contractual RSLs are contained within their Memorandum and Articles of Association. Scottish Homes have produced model Memorandum of Association and Articles of Association for adoption by this type of RSL. These have been drafted to mirror, as far as is possible, the terms of the SFHA model rules for statutory RSLs. Any variation to these models must receive the written consent of Scottish Homes, prior to any registration with the Registrar of Companies.
- 5.2 A resolution to amend an RSL's Memorandum or Articles of Association must be passed at a special general meeting of the RSL of which requisite notice has been given specifying the intended amendment.
- 5.3 Prior to calling the required special general meeting, RSLs should send draft proposals on any proposed amendments to Registration and Supervision, Scottish Homes. Where applicable, a copy of the existing Memorandum or Articles of Association should be supplied marked to show where the amendments occur and what they are.
- 5.4 Provided that the proposals are acceptable to Scottish Homes it will provide the RSL with written agreement in principle.

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- 5.5 Following the special general meeting which, by the required majority, has agreed the amendments, the RSL should submit to Scottish Homes, Registration & Supervision:
- two copies of the amended Memorandum of Association and/or Articles of Association, which should correspond verbatim to the version which was agreed to in principle by Scottish Homes under 5.4 above, both being signed with original signatures by 3 members and the secretary of the RSL. The front cover of these documents should be marked "Supersedes Memorandum of Association/Articles of Association dated dd/mm/yyyy".
 - a further copy of the amended Memorandum of Association and/or Articles of Association which is marked to show where the amendments occur and what they are
- 5.6 If the amendments are approved, Scottish Homes will grant consent in writing to the RSL.
- 5.7 Amendments to the Memorandum or Articles of Association should be registered with the Registrar of Companies where required by the Companies Acts.
- 5.8 The RSL should carefully preserve Scottish Homes' consent, a copy of which will be filed on the RSL's public file which Scottish Homes maintains as part of its Register of RSLs.