

## Advice for organisations in the Federation of Women's Institutes

### Coronavirus (Covid-19) – Information about your AGM or Annual Meeting

In light of Covid-19 and the requirements to ensure social distancing where possible, we expect that many Federations and Women's Institutes are considering whether they can still hold their Annual General Meetings or Annual Meetings (referred to as an “**AGM**” in this note) and what they can do if trustees are due to retire or be elected at these meetings.

This note sets out a summary of the steps that can be taken and considerations if you were due to hold an AGM in the coming months or have already missed your AGM deadline.

This note was first produced in April 2020, when it was hoped AGMs could be postponed until later in the year. We have now updated the note to reflect the fact that lock down is easing but uncertainty remains about holding physical meetings. This note also reflects new legislation enabling companies and CIOs to hold wholly virtual members meetings before 30 September 2020. This deadline may be extended by the government, but at the time of writing there has been no confirmation.

The legal position in some areas covered by this note, such as the holding of virtual meetings is not entirely clear cut. However the Charity Commission has confirmed that they will be understanding of trustees where it has not been possible to follow their constitution. It is key that whatever decision trustees make about holding your AGM you minute the reasons for following this option, showing that you have acted in the best interests of the charity and your members.

#### **1. General guidance for cancelling or postponing AGMs where notices have already been sent out to members**

**1.1** Technically, once a formal notice of an AGM has been issued, there is no ability for this to be withdrawn. However, in the current circumstances, the Charity Commission has confirmed that it understands that charities may have no choice but to decide to cancel or postpone their AGMs and other critical meetings.

**1.2** Given the changing government guidance, we suggest when scheduling a date you send a tentative 'save the date' saying this could be subject to change. We recommend then issuing the formal notice much nearer to the date of the meeting ensuring you meet the minimum notice requirements in your constitution.

#### **2. If you haven't sent out notices for your AGM yet**

**2.1** If notices haven't yet been sent out, you can use this note to help work out when best to hold the AGM.

**2.2** Once you have decided to hold it, we would advise holding off on sending out the notice until nearer the time and instead sending a 'save the date' (as set out in paragraph 1.2) above.

#### **3. Worried you have missed or may miss the deadline for holding your AGM?**

**3.1** In July the government introduced new temporary legislation<sup>1</sup> to cover CIOs and charitable companies. This provides that if you were due to hold your AGM between 26 March and 30

---

<sup>1</sup> The Corporate Insolvency and Governance Act 2020.

September, you are now able to validly hold your AGM at any point prior to 30 September even if this means missing the deadline in your constitution. The legislation also provides temporary flexibility about holding such meetings virtually explained in more detail below.

**3.2** Unfortunately this legislation doesn't apply to unincorporated associations, but the Charity Commission have confirmed that they will be understanding where charities have been unable to meet AGM deadlines due to the pandemic.

**3.3** Now that lockdown is easing, you need to consider if and when you should hold your AGM, taking into account your trustee terms in office and any other AGM business you need to cover.

**3.4** You are still expected to file documents with Companies House (if you are a company) and meet the Charity Commission's filing requirements, however there are new extensions to these deadlines explained in more detail in paragraph 12.

#### **4. What about holding your AGM as a virtual or hybrid meeting?**

**4.1** As lockdown continues more charities are considering using online platforms such as zoom for meetings. When it comes to AGMs, the law around holding virtual meetings is not clear cut and Federation and WI model constitutions don't explicitly provide for remote/virtual attendance.

**4.2** Currently, our advice is that if it is not possible to hold a physical meeting, it is safer to hold a hybrid meeting rather than a fully virtual AGM (unless you can use the enabling legislation before 30 September which applies only to charitable companies and CIOs; see below for more details).

**4.3** A hybrid meeting is where at least two people are in a physical location and others may join remotely in a way that they can both see and hear each other (eg by zoom). Thought needs to be given about how to enable people to speak and vote. For example, zoom has a function for secret ballots that will be helpful for WI's wanting to elect committee members.

**4.4** When planning meetings, trustees should think about how best to engage with members and facilitate attendance, this may be different for different WIs and Federations.

#### **5. Advice for charitable companies and CIOs on arrangements for holding virtual AGMs between 26 March and 30 September**

**5.1** As well as extending deadlines, the government's temporary legislation also introduces flexibility for charitable companies and CIOs in relation to how they hold AGMs. This only applies to AGMs of charitable companies and CIOs which are held between 26 March and 30 September and means that they do not need to be held at a particular place – it can be a wholly virtual meeting.

**5.2** The meeting may be held, and votes cast, by electronic means or any other means. This means, for example, a meeting can be held using virtual meeting software such as zoom or by telephone conference.

**5.3** A member's rights in relation to the meeting are amended as follows:

- (a) a member does not have a right to attend in person;

- (b) a member retains any rights they have to vote at the meeting, but the trustees can decide how voting will be organised (for example you could insist on only proxy voting or an online ballot); and
  - (c) a member has no other rights to participate in the meeting, meaning that they can only participate using the methods of participation which the trustees choose to offer.
- 5.4** You may of course still wish to have a meeting where some members attend a physical location.
- 5.5** If you do wish use this legislation to hold a wholly virtual AGM or otherwise limit how members participate it is still important to consider how best to engage and communicate with members. For example, ensuring there is clear information about how to vote and considering holding a physical meeting when it is possible to do so safely.
- 6. Can I still hold a wholly virtual AGM after 30 September 2020?**
- 6.1** The legislation for holding wholly remote AGMs is only applicable to charitable companies and CIOs until 30 September. After this date, it is safer to hold a hybrid meeting (as described below).
- 7. The option of a hybrid meeting now or after 30 September**
- 7.1** Now and after 30 September, it is possible to hold a 'hybrid' meeting where some members are present in a physical location and others attend remotely even without specific provisions to do this in your constitution. This applies to all Federations and WIs.
- 7.2** A hybrid meeting is possible even where there are no express provisions about this in the constitution, so long as everyone can see and hear each other, and provided there is nothing to the contrary in the constitution. This means you could have a small number attending in a physical location with other members attending by zoom.
- 7.3** Federations and WIs do not have any express provisions for remote attendance in their constitutions and so NFWI is considering if changes should be made to the constitutions and the process for doing this.
- 8. Do we have to hold an AGM this year?**
- 8.1** The Charity Commission understands that Coronavirus is having a major impact on charity's and some may have no choice but to decide to cancel or postpone their AGMs.
- 9.** However, ideally you should start to think about ways to hold an AGM and consider when is the most appropriate time. You may want to wait until later in the year, in the hopes that larger gatherings are allowed. Alternatively you might decide to proceed sooner with a hybrid meeting or (if applicable) use the new legislation to hold a fully virtual meeting before the end of September. If larger physical meetings continue to be restricted for the rest of the year, you still have the option to hold a hybrid meeting.
- 10.** You should consider, what business you need to cover, the difficulties with not proceeding with the AGM, what will be best for your specific membership group and the trustees capacity to hold meetings in different ways. If there are still good reasons to cancel or

postpone the AGM, you should record this decision to demonstrate good governance of your charity.

**11. What if you have a number of Trustees due to retire as well as newly elected trustees due to take office at the AGM?**

***Federations***

**11.1** Some of your trustees may be due to retire at the AGM. Where this is the case trustees are elected before the AGM, so if this hasn't already happened, you can go ahead with your usual nomination and election process online or by post.

**11.2** Once the election process is complete, they can take office at the AGM if you are able to hold one in any of the ways set out above. If you have had to delay the AGM you may have already gone ahead with the appointments by agreement with the retiring trustees and notified the members. However, note that our view is that retiring trustees will be deemed to retire on the last day that the AGM could have been held. Your constitution will have a deadline for holding your AGM<sup>2</sup> but as explained above, for charitable companies and CIOs under the new legislation any AGM deadline is now extended until 30 September 2020.

**11.2.1** Where it is not possible to hold the AGM before the retirements are deemed to have taken place you should still announce the election results by contacting the members and letting them know who has been elected, who is retiring and on what date. You should explain that this is being announced in this way as the AGM has been postponed.

***Officers of the Federations***

**11.3** The appointment of Officers of the Federation is determined by the Board of Trustees and appointments can be made at any time. Therefore these appointments are not affected by the cancellation of the AGM.

**11.4** Where the retirements of Officers are due to take place at the AGM<sup>3</sup> and the AGM is cancelled or postponed, our view is that they will vacate office on the last day on which the AGM could have been held.

**11.5** Again, the Board of Trustees may prefer to deal with this earlier and instead agree that the handover will happen on the date when you would have held your AGM. Either way, make sure the trustees minute this decision.

***Women's Institutes (WIs)***

**11.6** Elected Committee Members and the President are elected at the AGM, by secret ballot.

**11.7** WIs should consider the pros and cons of holding a hybrid meeting. Some WI's may already be operating by zoom, in which case a hybrid meeting should be easier to organise. Other WI's may have concerns about their ability to properly engage with members in this way. Ideally it would be good to plan for a hybrid meeting, but if you decide not to hold an AGM it is important to minute why this was in the best interests of the charity and the members.

---

<sup>2</sup> For CIOs and companies you have to hold them once each calendar year and not more than 15 months can elapse between one meeting and the next. For unincorporated federations you have to hold the AGM each year, but trustee terms in office are a year meaning it will usually be held every 12 months at around the same time.

<sup>3</sup> Note – the retirements of Officers at an AGM only applies to incorporated Federations.

This is because not holding an AGM is a technical breach of your constitution and whilst the Charity Commission is sympathetic to organisations that can't meet the requirements of their constitution during the pandemic they will still expect trustees to consider if it is possible to do so.

**11.8** If you decide it is not practical to hold an AGM, and so you are not able to hold the usual secret ballot, we would recommend that trustees (including Officers) remain in office until the next AGM can be held.

**11.9** We understand that this will mean trustees remaining in office longer than usual, but given the circumstances this may be unavoidable. If you have trustees who want to step down this year then the committee can fill a vacancy (except where the vacancy is that of President as this is a member appointment) and the person appointed to fill the vacancy serves until the next AGM.

## **12. Other business that was due to take place at the AGM**

**12.1** If your accounts and financial reports were due to be presented to the members at the AGM, it is important that these are still circulated to the members. If you are a company this should be done ahead of filing them with Companies House. You may wish to consider sending these to the members electronically if the AGM is cancelled or postponed.

**12.2** You should use your best endeavours to finalise your annual accounts and reports and send these to the Charity Commission (and Companies House where required) on time. However, where the current situation impacts on the completion of annual returns and accounts, you can apply for a 3 month extension with Companies House. The Charity Commission has advised that charities which are due to submit an Annual Return imminently, but feel unable to do so, can email them to request an extension. Charities with an imminent filing date should call them on 0300 066 9197.

**12.3** None of the model constitutions require auditors to be reappointed at the AGM each year, although many of you may, by custom, usually do this. If you are not able to hold your AGM then the auditors will remain in post for another year. If you are a company and the trustees appointed the auditors in the last year, technically they do need to be reappointed by the members. We think in the current circumstances that it is very unlikely that auditors will raise any issues, but we would suggest you check in with them to make sure they are happy to remain in post on the basis you ratify their appointment at the next AGM you are able to hold.

**Prepared by Bates Wells based on wording of the relevant model constitutions**

**[www.bateswells.co.uk](http://www.bateswells.co.uk)**

**29 July 2020**