

## Advice for federations and WIs within the National Federation of Women's Institutes

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

#### Note from NFWI:

We are aware that the ongoing Covid-19 restrictions are continuing to create practical challenges for WIs and federations in terms of completing their annual governance requirements. Based on the changing position with regard to national and regional restrictions and the changing legislative environment, this note is the latest NFWI guidance and replaces the April 20 and July 20 guidance.

#### 1. Overview

- 1.1 WIs and federations which are structured as “unincorporated associations” (i.e. which use the pink model constitution) are required by their constitution to have an Annual Meeting at some point in the calendar year<sup>1</sup>. If they have not done so already, they should have a meeting in 2020 if they can do so safely and in accordance with the national law and the regional law subsisting in their region. If they do not have such a meeting, this will be a technical breach of their constitution. Whilst the Charity Commission has expressed that it will be understanding of this, charities must still show that they have made every effort to deliver their meeting where possible.
- 1.2 Federations which are structured as CIOs or CLGs (i.e. which use the blue, or cream model constitutions) are normally required to have an AGM in each year and within fifteen months of the previous one (which they held in 2019). Emergency legislation introduced over the summer (called “CIGA”) extended this, so a meeting due after 26 March did not have to be held until 30 September, but this deadline has now passed. These federations should still consider holding a general meeting before 30 December, because although the CIGA legislation has not been fully extended, some parts of CIGA are still in force, and these allow them a great deal of flexibility to decide how to hold general meetings until that date (including, for example, holding the meeting virtually).

#### 2. Background to this note

- 2.1 This note is an updated version of our ‘July20’ guidance (last issued on 29 July 2020) concerning how federations and WIs should address the requirements for Annual General Meetings or Annual Meetings (referred to as “AGMs” in this note) in their governing documents, amidst the Covid-19 pandemic.
- 2.2 This note sets out a summary of the steps that can be taken and considerations if you have not yet held an AGM this calendar year.
- 2.3 This note was first produced in April 2020, when it was hoped that AGMs could be postponed until later in the year, and updated in July 2020 to reflect (i) the fact that lockdown was easing but uncertainty remained about holding physical meetings and (ii) new

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<sup>1</sup> Additionally, a new WI is required to have an Annual Meeting within 15 months of establishment.

legislation<sup>2</sup> (known as “CIGA”) enabling companies and CIOs to hold wholly virtual members meetings before 30 September 2020. We have now further updated it to reflect that the flexibilities allowing “virtual” AGMs of companies and CIOs in CIGA (but not the provisions extending the deadline for holding AGMs) have been extended until 30 December 2020.

2.4 The legal position in some areas covered by this note, such as the lawfulness of holding virtual meetings (outside of CIGA) is not entirely clear cut. In the early days of the pandemic, the Charity Commission confirmed that it would be understanding where charities were unable to follow their constitution. However, it appears that restrictions on assembly and movement, and other effects of the pandemic, will continue for some time and this guidance should not be relied upon beyond 2020. **Please note that NFWI will issue a revised note in January 2021 once an announcement has been made regarding any further legislative changes.**

2.5 It is key that, whatever decision you as 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. This is because, for example, 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.

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

3.1 Once a formal notice of an AGM has been issued, it cannot be withdrawn. However, in the early days of the pandemic, the Charity Commission confirmed that it understood that charities may have no choice but to decide to cancel or postpone their AGMs and other critical meetings due to the unexpected nature of the lockdown.

3.2 Given the rapidly changing law and government guidance, we suggest when scheduling a date you send a tentative ‘**save the date**’ saying this could be subject to change as opposed to formal notice. We recommend then issuing the formal notice much nearer to the date of the meeting, ensuring you then give the formal notice in time to meet the minimum notice requirements in your constitution. This is general advice for those with meetings in 2020 but particularly those who have meetings due in early 2021 as the law is susceptible to rapid change at this time; and it may not be until January 2021 that clear guidance on the legal format for meetings held in the New Year is available.

### **4. If you haven’t sent out notices for your AGM yet**

4.1 If notices haven’t yet been sent out, we would advise giving the minimum period of notice set out in your governing document, and in the mean-time sending a ‘save the date’ (as set out in paragraph 3.2 above).

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

5.1 The emergency legislation – CIGA – meant that federations structured as CIOs and charitable companies, who were due to hold their AGMs between 26 March and 30

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<sup>2</sup> The Corporate Insolvency and Governance Act 2020.

September, were able to validly hold their AGM at any point prior to 30 September even if this meant missing the deadline in their constitution.

5.2 This period has now expired. As stated above, the Charity Commission has confirmed that it will be understanding where charities have been unable to meet AGM deadlines due to the pandemic. However, given the uncertainties, you need to consider whether you should hold your AGM this year, taking into account your trustee terms in office and any other AGM business you need to cover.

5.3 CIGA allows companies and CIOs a great deal of flexibility with regard to the method they use to hold their meetings, currently up until 30 December (see paragraph 7 below).

5.4 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 extensions to these deadlines explained in more detail in paragraph 11.

## **6. WIs and unincorporated federations: what about holding your AGM as a virtual or hybrid meeting?**

6.1 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 at present explicitly provide for remote/virtual attendance.

6.2 If it is not possible to hold a physical meeting, it is safer for WIs and unincorporated federations to hold a hybrid meeting rather than a fully virtual AGM (appreciating that such a hybrid meeting may not be possible or lawful in particular areas, or during periods of full national lockdown). Whilst the NFWI continue to explore whether an exemption can be relied upon to allow for these meetings to take place despite the wider restrictions on gatherings, its view is that this cannot be relied upon at the current time.

6.3 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 (e.g. 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 may be helpful for WIs wanting to elect committee members.

6.4 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.

## **7. Advice for federations structured as a charitable company or CIO, on arrangements for holding virtual AGMs between 26 March and 30 December**

7.1 The emergency law, CIGA, 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 December and means that they do not need to be held at a particular place – it can be a wholly virtual meeting.

7.2 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.

- 7.3 A member's rights in relation to the meeting are changed 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.

7.4 You may of course still wish to have a meeting where some members attend a physical location.

7.5 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.

## **8. Can CIOs and CLGs still hold a wholly virtual AGM after 30 December 2020?**

8.1 The legislation for holding wholly remote AGMs is only applicable to charitable companies and CIOs until 30 December<sup>3</sup>. After this date, unless the deadline is further extended, it is safer to hold a hybrid meeting (as described below) as there is no guarantee that wholly virtual meetings will be permitted beyond this date.

## **9. Do we have to hold an AGM this year?**

9.1 The Charity Commission understands that coronavirus is having a major impact on charities and some may have no choice but to decide to cancel or postpone their AGMs.

9.2 However, ideally you should start to think about ways to hold an AGM this year and consider when is the most appropriate time.

9.3 If you are a charitable company or a CIO, until 30 December you will be able to hold a wholly virtual general meeting without any legal ambiguity or need to physically meet – and, given the flexibilities that are currently afforded of them, this is an option that trustees should strongly consider.

9.4 If you are not a charitable company or CIO, you might decide to proceed with a hybrid meeting. Even if larger physical meetings continue to be restricted next year, you still have the option to hold a hybrid meeting.

9.5 You should also 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.

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<sup>3</sup> It is not clear at this stage whether the legislation may be further extended.

**10. 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***

- 10.1 Some of your trustees may be due to retire at the AGM. Where this is the case, the election process takes place before the AGM, so if this hasn't already happened (and on the basis that you are still within the deadline to hold your AGM – i.e. (i) the deadline stated in your constitution or, (ii) for companies and CIOs, 30 September if the deadline in your constitution is between 26 March and 30 September), you can go ahead with your usual nomination and election process online or by post.
- 10.2 Once the election process is complete, the trustees 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 trustees due to retire at the AGM 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>4</sup> but as explained above, for charitable companies and CIOs under the new legislation any AGM deadline (between 26 March and 30 September 2020) was extended until 30 September 2020.
- 10.3 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***

- 10.4 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.
- 10.5 Where the retirements of Officers are due to take place at the AGM 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.
- 10.6 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)***

- 10.7 Elected Committee Members and the President are elected at the AGM, by secret ballot.
- 10.8 WIs should consider the pros and cons of holding a hybrid meeting. Some WIs may already be operating by Zoom, in which case a hybrid meeting should be easier to organise. Whilst we appreciate that some WIs may have concerns about their ability to properly engage members in this way, ideally it would be good to plan for a hybrid meeting. If you decide not

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<sup>4</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.

to hold an AGM it is important to minute why this was in the best interests of the charity and the members. 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.

- 10.9 If you have made every effort to hold the usual secret ballot in the year, in practice trustees (including Officers) would remain in office until the next AGM can be held.
- 10.10 If this occurs and 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.

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

- 11.1 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 charitable 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.
- 11.2 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. Many companies have received automatic extensions to their filing deadlines at 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 (include your charity name and charity registration number when you email to [filingextension@charitycommission.gov.uk](mailto:filingextension@charitycommission.gov.uk)). Charities with an imminent filing date should call them on 0300 066 9197.
- 11.3 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**

**Final note from NFWI to WIs and unincorporated federations**

During the preparation of this note, following the announcement of the areas of CIGA that have been extended, both Wales and England have experienced further changes to the law and government guidance on gatherings, including the beginning of the new period of formal lockdown in England. This may make even hybrid meetings challenging for all but the minority of WIs and federations (e.g. where two members are resident in the same household or have formed a support bubble). We appreciate this poses significant practical challenges to you if you were planning to hold your AGM as a hybrid meeting in November.

In this case you should assess the options and risks set out in this note, including delaying your AGM further and holding a wholly virtual meeting, considering the business which you need to conduct at the meeting. In addition, if prior to receipt of this note you have during November delivered a wholly virtual meeting in place of a hybrid meeting then you do not need to be concerned about this. You took a pragmatic approach to delivering your governance requirements and made (and minuted) a decision based on the current information available at the time. You may however wish to file this revised note with your next Committee/Board minutes so that you have a record of the changes to the legislation and the NFWI position should you be required to go back to it at any point in the future.

As stated above, as the law and guidance changes at a rapid rate to respond to the ever-changing situation created by the pandemic, we as an organisation are also required to be agile to respond accordingly. We appreciate how challenging this is for you and therefore commit to ensuring we provide information as soon as it becomes available. However, please do not hesitate to contact us directly if you would like to discuss a specific situation.

Please note, that although Federations and WIs do not currently have any express provisions for remote attendance in their constitutions, NFWI is considering if changes should be made to the constitutions for the future and the process for doing this. Further information will be circulated shortly with regard to these proposed changes.

## Summary

When considering how to meet your constitutional requirements with regard to your AGM in 2020 the following should be taken into consideration:

### ***Incorporated federations (CIOs/CLGs)***

- You are legally required to hold an AGM in each calendar year and within 15 months of your last one. This legal requirement is unchanged.
- The 'CIGA' legislation allows for you to deliver your AGM either in a wholly virtual format or as a hybrid meeting. These rules currently apply until 30 December 2020. Unless the legislation is extended beyond December 2020 there is no guarantee that wholly virtual meetings will subsequently be permissible.
- If your AGM is due between now and December 2020 you should aim to deliver this as a hybrid meeting (where practical considerations and regional government restrictions allow) or a wholly virtual meeting.
- For AGMs due after December 2020, if the formal notice has not already been distributed, you should send members a 'Save the Date' only to allow you to plan the method for delivering this meeting once the legal position is clearer. You should however ensure that the formal notice is then given in accordance with the deadline in your constitution / articles. Further guidance will be distributed by NFWI in January 2021.
- Whatever decisions are made regarding timing and method for your AGM, these should be fully documented in your Board minutes along with the rationale for the option chosen.
- Please refer to the detailed guidance above for specific information on the delivery of the different elements of the AGM, eg. voting.

### ***Unincorporated federations and WIs***

- You are legally required to hold an AGM within the calendar year (and in the case of WIs, within fifteen months of the WI's formation). This legal requirement is unchanged.
- The 'CIGA' legislation (the relevant elements of which currently apply until 30 December 2020) covers 'incorporated' charities and so cannot be applied directly to your charity. However, the principles are relevant when considering how to make a pragmatic decision about your governance requirements.
- If your AGM is due between now and December 2020 you should aim to deliver this as a hybrid meeting (where practical considerations and government restrictions allow) as this is safer than holding a wholly virtual meeting.
- For AGMs due after December 2020, if the formal notice has not already been distributed, you should send members a 'Save the Date' only to allow you to plan the method for delivering this meeting once the legal position is clearer. You should however ensure that the formal notice period is then given in accordance with the deadline in your constitution. Further guidance will be distributed by NFWI in January 2021.



- Whatever decisions are made regarding timing and method for your AGM, these should be fully documented in your Board minutes along with the rationale for the option chosen.
- Please refer to the detailed guidance above for specific information on the delivery of the different elements of the AGM, eg. voting.

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