

Charity Members Meetings A Coronavirus Guide

Offices are closed, we are not meeting face to face, but we still need to take decisions. On 20 May the Government published the Corporate Insolvency and Governance Bill 2020, a new Bill focusing on providing breathing space to organisations in financial difficulty during the crisis, but also including relaxed governance provisions for charitable companies, charitable incorporated organisations and mutuals that need or want to hold members' meetings in the midst of the lockdown.

The measures include a more flexible framework for the holding of members' meetings, such as an ability to hold meetings electronically even if not currently authorised under an organisation's governing document. Whilst these measures will be particularly helpful for organisations with upcoming AGMs or which need to pass members' resolutions in the coming months, they also provide a helpful opportunity for other organisations to amend their governing documents so that members' meetings can be held more flexibly in the future, particularly as the flexibility offered by the Bill will only last until 30 September (unless extended).

This guide highlights how charities can benefit from these measures, which are anticipated to come into force by the end of June, subject to successful passage of the Bill through Parliament.

Check your governing document

Charities must comply with their governing documents – however, those governing documents will be read as subject to the measures set out in the Bill once passed. So the first step is to review your governing document for any provisions about members' meetings and how these could be held:

1. Does your governing document require an AGM to be held? By when does your next AGM need to be held? Does your AGM need to be held in a physical location?

Many charitable company's and CIOs have a requirement in their governing document to hold an AGM each year. The governing document will typically set out a timescale within which an AGM is required to be held each year (often with no more than 15 months elapsing between each AGM, or within six months following the charity's financial year end).

2. Does your governing document contain powers of postponement or permit flexible approaches such as virtual meetings (e.g. using video conferencing facilities)?

If an AGM or general meeting has been scheduled and circumstances change before the date it is to be held, the trustees do not have an inherent power to postpone the meeting, unless permitted under their governing document.

3. What are your quorum requirements? Is there a requirement for only physical attendees to be counted in the quorum?
4. Does your governing document permit electronic circulation of notices, or electronic acceptance of a resolution, e.g. a member signifying their acceptance to a resolution over email, rather than physically signing a document?
5. Does your governing document permit you to change the location of your general meeting, once notice of the meeting has been sent to members?

Check your corporate authorisations

1. Are any authorisations granted at previous AGMs due to expire this year?

Even if you are not required to hold an AGM, are there resolutions which you will need members to pass in the next few months? Such as in relation to the appointment or reappointment of board members?

2. What if my governing document does not permit some or all of these flexibilities?

After much uncertainty for charities which need to hold a members' meeting during the lockdown, the Bill creates a more flexible framework in which meetings can be held, notwithstanding the requirements of their governing document. These measures aim to allow AGMs and other general meetings to be validly held, while the current restrictions on public gatherings remain in place and in the context of the potential for social distancing measures to continue indefinitely in the future.

These flexibilities will be available to companies (including charitable companies) and CIOs, and also a range of mutual organisations – including building societies, credit unions, friendly societies, co-operative societies, community benefit societies and other registered societies. The provisions do not currently apply to unincorporated charities.

What flexibilities are being introduced by the Bill?

The Bill includes the following flexibilities:

1. Extended period to hold AGMs: where an organisation is currently required to hold an AGM (under statute or under its governing rules) on a date falling between 26 March and 30 September (the Relevant Period), it will be able to hold that AGM validly at any point in that extended period.

This means that companies (including charitable companies), CIOs and mutuals which have postponed their AGMs since 26 March 2020, or would like to postpone an upcoming AGM, will be given until the end of September to validly hold those meetings and, in doing so, they can take advantage of the additional flexibilities provided by the Bill as to the manner in which meetings can be held.

2. Virtual meetings: Where a members' meeting is held during the Relevant Period (either because it has to be held or simply because an organisation chooses to hold a members' meeting in that period), companies (including charitable companies), CIOs and mutuals will be afforded the following flexibilities, even if their governing document does not currently permit them:

- the meeting does not need to be held in a particular place, for example if the governing document states that it must be held in a particular physical location.
- the meeting may be held and any votes may be permitted to be cast by electronic means or any other means.
- the meeting may be held without any number of those participating in the meeting being together at the same place.
- a member does not have a right to attend the meeting in person, participate in the meeting other than by voting, or to vote by any particular means.

These measures suggest that charities' quorum requirements may be able to be met with an entirely virtual meeting and there is full flexibility as to the virtual means chosen, e.g. video conferencing facilities.

The Government can expand on the detail of these flexibilities and make further provision in relation to notice requirements and transmission of documents ahead of meetings in secondary legislation.

Organisations will be afforded the flexibility they need to decide how best to run these general meetings, in line with the measures proposed. However, the Government advises in the Q&A that it will be important to keep shareholders or members adequately informed of the organisation's plans, for example if it intends to postpone the AGM or general meeting once the legislation is passed.

Given the present uncertainties, the Government is making the flexibilities available throughout "AGM season" – the period within which the majority of companies and other bodies plan to hold their AGMs. The framework for both postponement of AGMs and the flexible holding of members' meetings could also be extended through secondary legislation so that it could continue to be available for any period up to 5 April 2021.

What are the implications of the new Bill for your charity?

The new flexibilities in relation to members meetings could be helpful whether or not you still need to hold an AGM this year:

1. If you have already held an AGM during lockdown – Given its retrospective effect, the Bill could validate AGMs and other general meetings which have already taken place, even if not held in line with the governing document (e.g. virtually, despite there being no constitutional provision for virtual meetings) and could also validate any resolutions passed at those meetings. However, your organisation will need to comply with rules governing members' meetings which are not addressed / superseded by the Bill.
2. If you need to hold an AGM this year – it will be possible to take advantage of the greater flexibility offered by the measures outlined above, such as flexibility to postpone or to hold the meeting virtually.
3. If you are not required to hold an AGM – it may nonetheless be advisable to take advantage of the temporary flexibility provided by the Bill – such as if there are resolutions which you will need members to pass in the next few months (e.g. in relation to appointment or reappointment of board members).

4. Importantly, even if your organisation does not have any business that will need to be passed at a general meeting this year – it will often be advisable to consider using the flexibilities available until 30 September to amend your governing document to ensure that your organisation has the flexibility to hold virtual and hybrid meetings after September. The measures introduced by the Bill will not apply after 30 September, unless extended by Government. For that reason, Government advice in a Q&A, issued pre-publication of the Bill, is that in the longer-term, companies and other bodies should review their governing documents or other rules to determine whether these need to be amended to ensure that AGMs can be run more flexibly in the future.

Holding your general meeting – guidance

1. Engaging Members

The measures will not prevent a member from exercising their right to vote on resolutions or other matters brought before the meeting and charities are expected to make reasonable efforts to provide the usual degree of engagement and challenge.

The Government noted in the Q&A, that it intends to publish guidance at the earliest opportunity on what it would consider to be best practice here. For example, Government advice is that “companies and other bodies have many channels available to them to engage with members. The use of conference calls, video calls, and email questions etc. can all help. Shareholders or members should be encouraged to send in their questions prior to the meeting. Where possible these should be dealt with at, or prior to the meeting or failing that as soon as possible once the meeting has ended.”

You may wish to dedicate a page on your website for members to obtain general information and updates on the AGM or other general meeting. A Q&A section for members to ask questions might also be a helpful way to answer any frequently asked questions. These questions and responses to them at the meeting could be included in the minutes.

2. Changing the Date and Time

If your AGM needs to be held by a date falling outside of the Relevant Period, check your governing document to see if it allows for postponement of the meeting. If a meeting needs to be held by a certain date, the governing document may allow the charity to adjourn the meeting to another date. If the charity intends to postpone the AGM in this manner, it could let members know through its website or via email if the charity has authority to do so. Note that the Bill includes power for further measures to be made dealing with how notice and other documents relating to meetings may be given, which could include further flexibility around notice periods or sending documents electronically.

Additionally, other practical issues will need considering including, for example, the cancellation policy of the venue at which the AGM was to be held. This may require re-negotiation based on how the Government’s advice changes over time.

3. What if the Bill is not passed by June or does not contain all of the proposed flexibilities my charity needs?

The Charity Commission has [said that](#):

- Its approach to regulation during the pandemic will be: “as flexible and pragmatic as possible in the public interest, whilst helping trustees to be aware of and think about the wider or longer impact of their decisions on their charity.”

- “Coronavirus is having a major impact on charity events and the government’s health advice may lead to some charities having no choice but to decide to cancel or postpone their AGMs and other critical meetings. If as trustees, you decide it is necessary to do so, you should record this decision to demonstrate good governance of your charity. This is particularly important if it is not possible to hold your AGM which may make it difficult for you to finalise your annual reports and accounts.”

Whilst charities may well be in a position where they need to hold a meeting or make decisions without being able to fully comply with their governing documents, and therefore be in breach, there are a range of options available to organisations in this position and affected charities should seek bespoke advice.

For example, charities may be able to amend their governing documents to enable greater flexibility now, before the Bill comes into force. Your organisation may also be able to make members’ decisions by written resolution, without the need for a meeting.

It is particularly important to consider whether authorisations granted at your last AGM remain valid if this year’s is postponed.

However your charity moves forward in this difficult time, always ensure that you minute your decisions with great care when taking the most difficult decisions. Set out the matters taken into account, other options considered, and the reasons for taking your decision. Circulate the draft minutes as quickly as possible.

If you have any questions, please get in touch with your usual Bates Wells contact, or

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