

Governance Note

Due to the coronavirus (COVID-19) outbreak, we are now all required to stay at home except for very limited purposes, which are detailed [here](#). Meetings such as board meetings or AGMs are not categorised as essential by UK Government and at this current time will not be able to go ahead in physical form.

Given the latest statement from the UK Government, some of our clients have asked us how they can continue to act within their rules and what they should do about upcoming AGMs.

This briefing signposts you to useful information and resources relating to governance during the COVID-19 outbreak. We will update this briefing regularly as more resources and advice become available.

Many of the links in this document are to external websites. We share these in good faith but we have no control over their content or accuracy.

AGMs

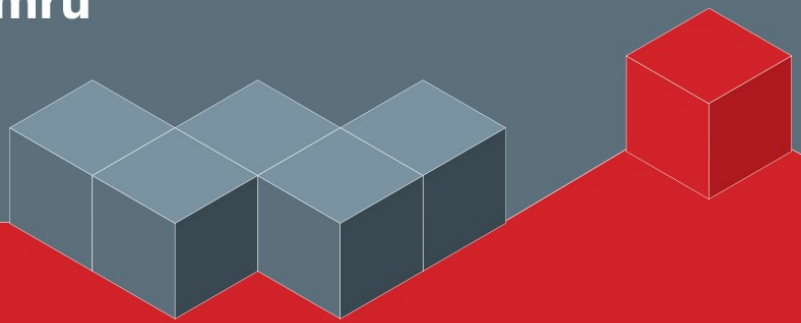
Under the Companies Act 2006, companies are no longer required to hold AGMs. However, it's common practice within the social business sector to retain AGMs in a company's Memorandum and Articles of Association.

Similarly, under the Co-operative and Community Benefit Societies Act 2014, there is no legislative requirement for societies to hold AGMs but, again, this may be a requirement within an individual society's rules.

These are unprecedented times and companies and societies that are required to hold upcoming AGMs may have to go about this slightly differently.

The first step is to check the **governing document** for your company/society. Is there a provision in there relating to holding an AGM? Does your governing document have any details about whether this has to be a physical meeting or whether it can be done by electronic means? By electronic means, we are usually talking about video conferencing, meetings using platforms such as Zoom (we have covered utilising digital communication [in another advice note](#)).

If you are unsure, you can always put a call in to us to help you identify what your company's/societies obligations are.



For those companies/societies that *do* have an obligation in their governing document to hold a physical AGM, which they currently cannot fulfil due to UK Government's latest statement on COVID-19, they will find there is a need to operate outside of their governing document. Technically any breach of a company's or society's rules means a member/s could take that company or society to court.

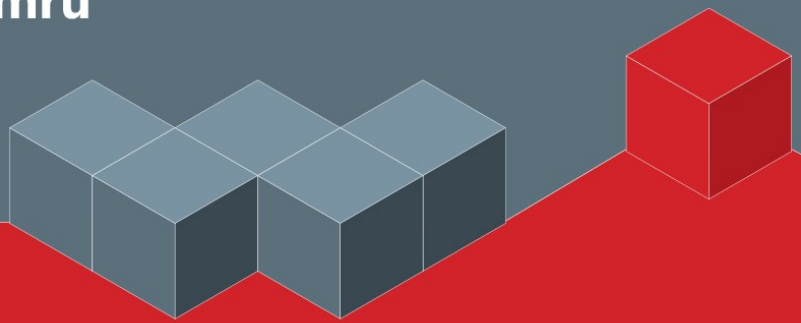
To mitigate against any challenge from the membership, there are steps a company/society can take now. Co-operatives UK have very helpfully outlined these – see the link below. In short this is about seeking the support/consent of members as early as possible with regards to holding AGMs by electronic means or the postponement of an AGM. It is also about minuting any board level decisions relating to this, ensuring there is a record of why decisions have been taken. These are unprecedented times and members on the whole should respond positively to such steps.

Co-operatives UK, the membership body for co-operatives, have covered this issue in one of their guidance notes here: <https://www.uk.coop/coronavirus-governance-advice-members> .

One of our Social Business Wales business advisers, who also chairs a charitable trust, has the following comments to make on the issues around holding AGMs:

“Clearly the best option would be to hold your AGM remotely by one of the many video conferencing facilities now available. However, this would require every member to have access to the facility and for the internet to be strong enough to carry the link to each and every member. If a few, or one, member(s) are unable to participate in this way you risk the purity of the democratic processes on which your rules are based. I would suggest that the following would be a reasonable approach:

- Contact all your members, ideally by email, to ask if they are prepared to hold the meeting in this way – if your rules specifically allow this then this step can be skipped
- If all members agree then arrangements can be made and notice served in the usual way. All correspondence will be electronic.
- If your rules do not allow for this, or if some members do not agree, then other arrangements will need to be made
- Even if everyone approves this approach, there is a real possibility that, given the pressure on the internet at the moment, it may not work well in practice. For example, the image may buffer and audio can be intermittent.
- In either of the above scenarios I would suggest that the only realistic course of action would be to postpone (not cancel) the meeting, advising the relevant authorising body accordingly.
- Then hold a physical meeting in the usual way as soon as restrictions allow.”



Conducting members' meetings by electronic means

We would once again reiterate the advice that it is best to consult members early on how comfortable and able they are to use electronic means. By seeking members' feedback, you are effectively gaining implied consent, which can mitigate against any future risk of objection by a member later on. You could conduct a quick poll or survey to see how many members are able to contribute via electronic means. If members are unable, then you could ask them if they would prefer to postpone.

Quorum, voting and proxy voting

It is also a good idea to consider what other provisions your company's/society's rules make. When Wales starts to relax lockdown rules, social distancing is likely to remain in force, which will mean we will still need to think differently about how we conduct an AGM. We are not there yet, but here are some thoughts on this, as and when things are relaxed. Is there any mention of how the AGM can be conducted within your rules? Is there provision for proxy voting or are your rules silent on this? The right to proxy voting is written into the Company Act 2006, so even if your company's rules are silent on this, members have a right to nominate a proxy. This could allow much fewer members in the room (remember, the chair will also need to determine whether the meeting is quorate).

For societies, there is no statutory right to proxy voting in the legislation, so if it is not in a society's rules, it is unlikely that this tool can be used. However, if it is in the rules, again, this could be a useful tool.

Board elections

It is worth remembering that board elections can (and do) also happen via electronic or even postal ballot, so if there is a reason you need to hold your election now, but would like to postpone the AGM, you could still forge ahead with the election (assuming your rules permit this, and all the paperwork is correct/nomination forms processed according to your rules), with the results being declared at the AGM when you are able to hold it. If lockdown rules are relaxed in the coming weeks and months, but social distancing remains, this AGM could be much smaller, as most members will have exercised their vote in the election beforehand.

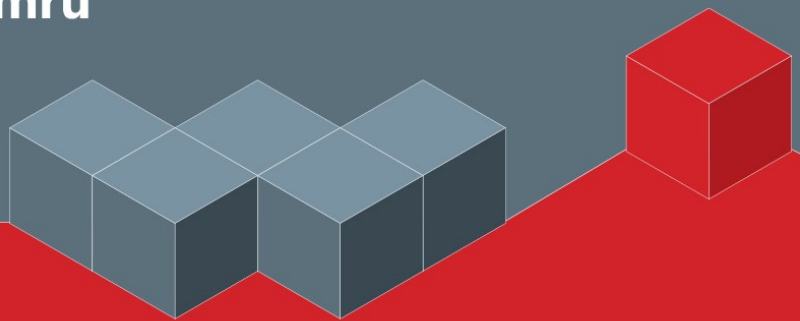
Annual Returns

Our guidance would be to try and prepare accounts as normal and to stick to returns deadlines. However, there may be some situations where this simply won't be possible due to COVID-19 business interruption or restriction.

Companies House

It is important to keep up to date with Companies House returns, but if your company is struggling due to COVID-19 then Companies House have provided details of how you can apply for an extension to your accounts filing deadline –





see link below. It is very important that you apply for this if you think you will miss your returns date, otherwise an automatic fine will be incurred.

Specific guidance from Companies House on filing and late returns due to coronavirus: <https://www.gov.uk/government/news/coronavirus-if-your-company-cannot-file-accounts-with-companies-house-on-time>

Companies House have also issued some general advice to companies, detailing how you can continue to file and how their team will be working during the COVID-19 outbreak: <https://www.gov.uk/guidance/coronavirus-guidance-for-companies-house-customers-employees-and-suppliers>

Update (9th April 2020) – Companies House have issued a notice to say there are delays to processing paper forms. They ask people to use online services where possible but where not, they are working on a solution.

Businesses impacted by Covid19 can apply now for an immediate 3 month extension https://beta.companieshouse.gov.uk/extensions?_ga=2.234769625.690888286.1585564098-1247673890.1582625672

Financial Conduct Authority

Co-operatives UK have some advice on FCA filing. This should be easier to do, given that accounts and returns can be filed before they are presented to members and then can be confirmed by members when the Society is able to do so: <https://www.uk.coop/coronavirus-governance-advice-members>.

The FCA have released a statement in relation to late returns:

"...we recognise that some societies will still experience difficulties in submitting any required returns to us on time. Whilst we ask societies to take steps to submit their returns to us as soon as reasonably practicable, we have decided that we will not take any action where returns due up until 30 June 2020 are delayed by up to three months. We will review this position again in June 2020.

The full statement and details of this can be found on Co-operatives UK's governance section on their website: <https://www.uk.coop/coronavirus/governance-members>

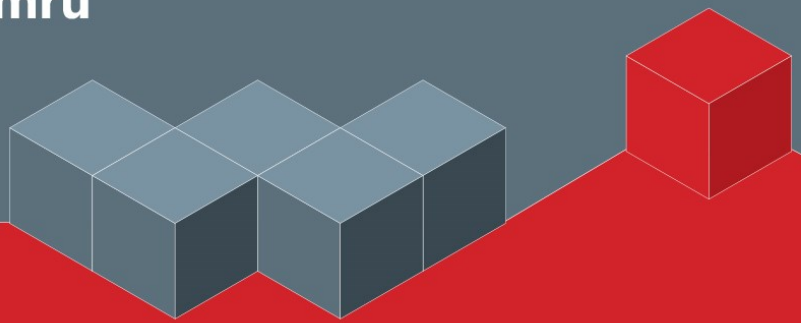
Details of FCA filing can be found here: <https://www.fca.org.uk/firms/annual-returns-accounts-mutual-societies>

Busnes Cymdeithasol Cymru

Social Business Wales

Yn fentrus gadarnhaol

Positively enterprising



If you are having any issues and you need further guidance on governance you can contact us at Social Business Wales. If you are a member of Co-operatives UK you can also contact their Advice Team: advice@uk.coop.

Charity Commission

The Charity Commission have released guidance for charities in relation to governance and COVID-19 related issues. This includes advice on postponement of AGMs and whether to use electronic means (video/teleconferencing).

Again, the key message is to record any decisions in relation to cancellation, postponement or using alternative ways to hold the meeting and to ensure you can demonstrate good governance.

Here is their guidance: <https://www.gov.uk/government/news/coronavirus-covid-19-guidance-for-the-charity-sector>

If your charity is unlikely to meet its filing date due to COVID-19, call the Charity Commission and let them know: Charity Commission Contact Centre: 0300 066 9197 (Monday-Friday 9am-5pm)

Board /committee meetings

Board or committee meetings can ordinarily be conducted by electronic means, this is in the legislation for companies and societies – unless there is something specific written into your company or society rules that overrides this. Times are very different for us all right now, including the way we work and meet (virtually), but it is important to keep to formal minutes for these meetings – ensuring all decision-making is recorded.

Events are moving quickly and we are working as a team to develop specific tools, advice and resources that will become accessible in the coming days and weeks so please watch out for our email updates and check on our websites <http://wales.coop/covid-19> and <https://businesswales.gov.wales/socialbusinesswales/> regularly too.

If you want to talk to one of our Business Advisers give us a call on 0300 111 5050 or e-mail sbwenquiries@wales.coop **and we can arrange a call back.**