

**A GUIDE TO THE NATIONAL HOUSING FEDERATION'S
MODEL RULES 2015**

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2015****CONTENTS**

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1. Introduction and aims of the guide

This guide has been prepared to support the National Housing Federation model rules. It is not a substitute for the rules themselves but may be used as an introduction to the main points. Before adopting the rules formally, your organisation may wish to take specialist advice.

The Financial Conduct Authority, defined in section G14.16 of the rules as **the Registrar** has given the new rules its formal approval.

The aims of the guide are:

- to introduce the new rules
- to explain the reason for their preparation
- to highlight the key points
- to set out their format and style
- to discuss the optional choices

This guide is intended to be useful for those who want to understand the main issues, without the need to know the rules in depth. It is not intended to be a detailed explanation of each rule.

The National Housing Federation is happy to help with any further queries.

The main changes to the 2015 rules are:

- They are now fully compliant with, and make reference to, the Co-operative and Community Benefit Societies Act 2014.
- They specifically reflect and refer to certain provisions and requirements of the Housing and Regeneration Act 2008. This includes things such as a requirement to send a copy of the accounts to the Regulator within six months of the year end, a requirement not to amend the rules without the Regulator's consent where such consent is required under the Act, and an obligation to send copies of amended rules to the Regulator after registration by the Registrar.
- They reflect changes requested by the Registrar aimed at ensuring that the rules meet the requirements of section 14 of the Co-operative and Community Benefit Societies Act 2014 – these are included in rules A4, C2, C37 and C38.
- They take into consideration obligations under the Mental Health Discrimination Act 2013
- They strip out the detail around the functions of the board, the chair and the company secretary. These functions are included in this guide and, if applicable, are also set out in the 2015 National Housing Federation Code of Governance.
- They change the rules on the election of board members, including the maximum tenure on a board and time taken between retiring from the board after the maximum tenure and being re-elected.
- They update the borrowing powers in rule F12.
- Various interpretation of terms have been amended G14.

Associations do not have to adopt these rules in their entirety: there will be a number of areas where associations may not wish to adopt a proposed rule. Experience to date has shown that the model is meeting the needs of a large

number of Federation members, but for others some bespoke changes will be required in order to reflect their organisations.

Inevitably these rules include new provisions, the impact of which have not, and cannot yet have been tested by the courts. (It should be noted, however, that the same applied to previous Federation models).

2. Format and Style

The language, order and style of the rules are intended to help shareholders, board members and staff to understand their own organisation's constitution. Much of the substance of the new rules is unchanged from earlier versions.

3. Co-operative and Community Benefit Societies Act 2014

The Co-operative and Community Benefit Societies Act 2014 (**CCBSA**) came into force on 1 August 2014. This set of rules is compliant with the CCBSA. All associations that were classed as industrial and provident societies (co-operative societies and societies conducted for the benefit of the community) prior to the CCBSA coming into force are captured by the Act and are known as registered societies.

Any newly registered CCBSA (post 1 August 2014) will be referred to as a co-operative society or community benefit society.

A guidance on the CCBSA has been issued by the Registrar and is available at <http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/firm-guides/cooperative-and-community-benefit--societies>

The CCBSA did not impact on an association's charitable status and for societies that have charitable objects they continue to be classed as exempt charities meaning they are exempt from being directly regulated by and registered with the Charity Commission. However they are still charities and need to comply with general principles of charity law and guidance.

Guidance on exempt charities is given at the charity commission website <https://www.gov.uk/government/publications/exempt-charities-cc23/exempt-charities>

4. Part A – name, objects, not for profit and corporate status

Part A sets out the formal name of the association and its objects - its reason for existing.

The rules spell out that registered providers of social housing are 'not-for-profit' organisations. This means that no profits can be paid to the shareholding members but must be used to further the objects.

Reference to 'social housing' in the objects is as defined in sections 68 and 77 of the Housing and Regeneration Act 2008.

The Secretary of State may from time to time specify additional purposes or objects for registered housing providers, and where it does so it will not be necessary to amend the rules to reflect that.

Corporate status

A new rule A5 has been added to reflect the Housing and Regeneration Act 2008 and the Regulator's requirement that any change to an association's corporate status in which an association becomes a subsidiary of another organisation will require the Regulator's consent.

Charitable status

Charitable and non-charitable rules are printed in one document meaning they can be easily adapted for both charitable and non-charitable associations.

For societies which are not established as charities, the wording [charitable object] in square brackets in rule A2.2 should be deleted and the wording [object which is connected with or incidental to the provision of housing] should be retained, with the square brackets removed from the wording.

The wording in [square brackets] in rules A2.1, D8.1, G11.1 and G13.1 should also be deleted.

Unless these are deleted the wording square brackets will form part of the rules.

For non-charitable societies the reference to 'any other object which is connected with or incidental to the provision of housing' is intended to reflect the requirements of section 115 of the Housing and Regeneration Act 2008.

5. Part B - powers

This section of the rules sets out the powers of the association, of the board and of the shareholding members.

Rule B1 gives the association the widest possible power to do what is necessary or expedient to achieve its objects, unless it is prohibited by the rules. An example would be borrowing more than its specified borrowing limit.

A number of express powers are also set out in rule B2. These express powers are largely unchanged largely from previous versions, but a new power is given at B2.7 which covers the giving of guarantees and entering into contracts of indemnity or suretyship etc.

Rules B4 and B5 make it clear that the business of the association shall be directed by the board. However, the board can delegate powers in accordance with rules D29 - D33.

Under rule B8 if an officer is delegated by the board to exercise the power of the association, then this will be binding on the association. Third parties can assume that the transaction was done properly and that the officer had the power to undertake it.

Under rule B9 people or companies working with the association in good faith do not have a responsibility to check if officers have powers delegated by the board.

6. Part C - shareholders and general meetings

Obligations of shareholders

Rule C1 specifies the nature of shareholders' obligations. It also forms part of the basis upon which the association is accountable to the wider community. It requires shareholders to act at all times in the interest of the association.

Shareholders

There is no substantive change to who can or cannot be a shareholder, although we have reflected the Mental Health Discrimination Act 2013 in rule C6.5.

The rules provide that employees cannot become shareholders and this is intended to avoid potential breaches of Section 122 of the Housing and Regeneration Act 2008. That section prohibits the payment of bonuses and the giving of gifts to shareholders, which can be problematic for employee shareholders.

A shareholder can be a person, body or nominee of an unincorporated body. Each shareholder cannot hold more than one share.

Becoming a shareholder

The board is required to have a policy and objectives for admitting new shareholders and must publish their policy. The policy and objectives may be reviewed at any time by the board.

A person or organisation wishing to become a shareholder shall:

- apply in writing
- give reasons for applying and how they meet any criteria set by the board pay £1 (refundable if the application is rejected)

The board must review all applications and it has the discretion to accept or reject applications in accordance with its published policies.

Generally, the issue of accountability is dealt with by requiring associations to produce written policies and to publish them. Whilst the rules import a requirement for there to be a policy, they set no obligation as to what that policy must be. It is for the board to choose such policies from time to time. For example, the ability of members of the public to become shareholders could at one end of the spectrum be wholly at the discretion of the board or at the other subject to rules as careful in specifying criteria as conditions for membership of the board itself

Issuing a share

Associations issue shares that have a nominal value (usually £1). If a shareholder dies, decides to give up the share, or the association expels the shareholder, then the association keeps the £1 and cancels the share.

Ending of shareholding

Rule C14.4 sets out the circumstances in which shareholders will cease to be shareholders. It also enables the easy removal of non-participating shareholders.

General meetings and annual general meetings

The rules refer to "General Meetings" meaning general meetings of shareholders. Some associations have co-terminous board/ shareholding structures meaning that their board comprises 100% of the shareholders. It is important that where a general meeting is called and held, for example the annual general meeting or a special general meeting called for a specific purpose, that the meeting is recorded and minuted as such, i.e. as a "general meetings of shareholders". Whilst the board members and shareholders may be the same people, decisions are being made by those people in their capacity as shareholders not board members.

Rule C17.4 permits special resolutions to be taken at AGMs without calling a separate special general meeting.

The business at an AGM includes:

- to receive the annual report;
- to appoint the auditor for the next year (if required by law);
- to elect board members;
- to carry out any other business already notified to shareholders.

Rule C17.1 lists the key contents of the annual report. The annual report can also include the values and aims of the association, the obligations of board members, the required skills, qualities and experience of board members, statement of compliance with codes of governance and conduct, information about how the organisation meets the VFM standard and the policy for admitting new shareholders.

Although the AGM has a special purpose and there are a number of set activities which must be performed, it is regarded as a general meeting. All the rules that apply to general meetings also apply to AGMs.

The rules now make clear that notice of general meetings can be given electronically, e.g. by email.

Representatives and nominees

Two new rules have been added in rule C37 and C38 to address the claims of the representatives of deceased shareholders, nominees and of the trustees of the property of bankrupt shareholders. Under these rules no shareholder has a right to property of the association and in the event of death their share automatically becomes the property of the association. It is therefore unlikely that representatives of a deceased shareholder, nominee or trustees in bankruptcy would make such a claim. Nevertheless section 14 of the CCBSA requires the rules to include provisions addressing these issues. The Registrar specifically asked for wording on these issues to be included.

The board of an association is responsible for directing the activities of the association. There are key functions of the board that will either be set out in a code of governance or elsewhere in writing. Previous versions of the rules set out those functions but we have taken these functions out of the 2015 rules. This will now be for the board to decide, but for those associations that have adopted the NHF Code of Governance 2015, that Code sets out a list of functions.

Board composition

The board size at rule D2 covers a range between 5 and 12 members. The maximum includes co-optees and it is for the board to determine the actual size of the board. Employees must always be in the minority on the board and also in a minority for the purpose of the quorum.

D7 includes the circumstances in which a person cannot remain or become a board member, committee member or co-optee. It includes not attending three consecutive meetings of the board, ceasing to be a resident (if elected specifically as a 'resident' board member), and being in serious breach of tenancy agreement, again applying to a board member who is also a resident. The rule also encompasses (at rule D7.6) compliance with the Mental Health Discrimination Act 2013.

Board members' obligations

Rule D4 sets out the obligation of board members to sign an agreement as to the obligations that they have as board members in relation to their association. Failure to sign that agreement within a month of being elected or appointed automatically disqualifies them as board members. We have included some flexibility here so that the board can dis-apply this rule. This is important if the timing of a board member's election to the board means that they cannot attend the board meeting directly after the AGM.

Failure to perform those obligations provides a clear rationale for deciding whether or not a meeting should be called to dismiss a board member (see rule D8).

Co-optees

The board has the power to appoint up to five co-optees who may bring specific skills or knowledge to the board. Co-optees are usually brought onto the board to fill a specific gap.

Co-optees are not board members for the purposes of the rules, and they simply hold the status given to them in the rules.

They can act like board members in many respects except they cannot be part of decisions about elections of officers or matters relating to shareholders.

They cannot be counted towards a quorum.

They cannot attest seals unless specifically authorised.

Terms of office and election to the board

Rules D10 – D14 have been revised extensively to reflect best practice and the NHF Code of Governance 2015 in appointing/electing board members for a fixed term of office, setting a maximum number of terms board members can serve on a board and appointing/electing on the basis of skills and competencies needed for the board which the board has identified. Election procedures are left to each individual board or association, if other shareholders are to be involved, to decide as well as selection criteria. It is designed to be as non-prescriptive as possible.

The rules do impose a total board tenure limit of nine years unless the board is of the opinion that it is in the best interest of the association for someone to serve a longer term. D13.2 restricts eligibility for reappointment or re-election of board members who have served a total of nine years (plus any agreed extension) to a wait of one full term of office. This will usually be a period of three years.

We have taken out the rule whereby an open election can result in a rather undignified popularity contest with those elected and not elected subject to the glare of an audience. The re written rule allows for some board control in this process.

There is now less prescriptive election procedure. This should be left to each association.

Quorum

The rule sets the base quorum at three but has left flexibility in the rules for the board to determine. Executive board members (those board members who are also employees of the association) must be in a minority when forming a quorum.

Board members' interests

This section has been revised extensively to reflect the good practice contained in current codes of conduct and governance. This section sets out permitted interests, payments and benefits. It is also appropriate for associations that are charitable.

The Charity Commission's view of the law for charities is that failure to act properly where there is a conflict of interest is a breach of the board member's legal responsibility. A transaction affected by a conflict of interest, where the board members have not acted properly, *could* be challenged. In some circumstances the transaction may be unsafe and capable of being invalidated or in the worst case may be void from the start.

Rule D23 emphasises the need for associations to exercise judgement in the decisions to pay board members remuneration and expenses and ensure these are reasonable and proper. This is in line with charity law and the Regulator's preference. Associations are also expected to have some independent element in the decision making process regarding remuneration. This can range from use of recognised publications with data, discussions with other organisations on what is paid in the sector and recommendations by external consultants.

A new rule D23.4 has been added to make specific reference to Section 122 of the Housing and Regeneration Act 2008 which prohibits certain payments, bonuses and gifts to people who are shareholders.

Meeting of the board

The rules provide that the board should meet at least three times each year but there is no maximum number. Written notice must be given seven days before the meeting to all board members and co-optees. This can be given electronically.

Delegation

The board may delegate certain powers to committees and employees - this should be in writing and reviewed on a regular basis. Rules D29 - D33 set out how the committees will work.

8. Part E – Chair, vice chair, chief executive, secretary and other officers

This section is about individuals and their responsibilities.

Chair

In rules E1-E5 the appointment process and role of the chair and vice chair in relation to the association, and in particular the wider obligations are specified. The chair's ability to implement these obligations is obviously heavily dependent upon others, so their role is limited therefore to seeking to achieve them. The chair of the association must be a shareholder and a board member, and cannot be an employee.

The chair's responsibilities have been removed from the rules. The rules are no longer prescriptive about responsibilities and it is for each board to determine what those are. As a guide the responsibilities may include:

- to ensure that the board's business and the association's general meetings are conducted efficiently;
- that all board members are given the opportunity to express their views;
- that a constructive working relationship is established with, and support provided to, the chief executive (if any);
- that the board delegates sufficient authority to its committees, the chair, the chief executive (if any), and others to enable the business of the association to be carried on effectively between board meetings;
- that the board receives professional advice when needed;
- that the association is represented as required;
- that the association's affairs are conducted in accordance with generally accepted codes of performance and propriety; and
- that there is a clear division of responsibilities between the board and the paid staff.

Chief executive

The association may have a chief executive and the board is responsible for appointing that person on a contract of employment which clearly sets out his or her duties.

Secretary

The association's board must appoint a secretary. For most associations that person will be an employee. Whilst they must attend meetings, they are not able to exercise a vote (unless they are also a board member). The responsibilities for secretaries have been removed from the rules but should be set out in writing in a separate document agreed by the board. As a guide these would usually include:

- to call and attend all board and association meetings;
- to keep the minutes of these meetings;
- to keep all registers and books required by the board;
- to make the required returns to the registrar and to the Regulator;
- to hold the association's seal;
- to ensure that the board operates within its rules.

Rule E8 gives organisations the facility for other people to carry out specific tasks on behalf of the association. Those tasks will be determined by the board, whether they are staff or board members. Rule E9 uses the term 'officer' in a similar way to the somewhat old fashioned term 'servant of the board' in company law.

9. Part F - Financial control and audit**Finance**

This section deals with areas of financial control, including auditing, and there are no fundamental changes to previous models. However, rule F13 (borrowing power) has been updated.

Auditor

If required by law to do so, associations must appoint an auditor to act in each financial year. An appointed auditor must be qualified as set out in Section 91 of the CCBSA.

An auditor:

- cannot be an officer or an employee of the association;
- must be appointed at a general meeting;
- must be willing to act as the auditor;
- must be qualified and capable of acting;
- must report their findings in the format outlined in the CCBSA.

F11 rule states that accounts and annual return need to be provided to the Regulator within a set time frame. This compliant with section 128 of the Housing and Regeneration Act 2008.

Reports

The board has responsibility to ensure all accounting records are maintained and that a revenue account and balance sheet are produced for auditing by the auditor (if such auditing is required in law).

Borrowings

The amount that an association may borrow is identified in the rules F12 – F14 and will be the sum of money agreed by the board. When arranging terms for loans the board needs to ensure that the total borrowing does not exceed the amount set out in the rules and that loan interest rates are reasonable.

Investment

Rule F5 includes a wide investment power and includes a power to borrower money for investment purposes.

10. Part G - Miscellaneous and statutory**Odds and ends**

This is a catch-all section and covers a number of areas including:

- the name and registered office address;
- disputes;
- minutes;
- rule amendments;
- dissolution of the association;
- interpretation of terms.

11. Part O - Optional clauses

With the exception of the optional clauses for charitable/non-charitable associations, the 2015 model rules do not contain any further optional provisions whereas previous model rules did. The optional provisions have been removed because in our experience associations will usually adopt more bespoke provisions and/or take specific legal advice on the drafting of rules in circumstances where the previous options applied.