

# Coronavirus and general meetings

Correct as at 01 April 2020

SGBs may be wondering how to deal with governance issues, including the requirements to convene meetings, during the current coronavirus (Covid-19) pandemic. This may also affect clubs which are due to convene general meetings.

The main question is whether it is necessary to hold a general meeting. Under the Companies Act 2006, there is no statutory requirement for private companies to hold annual general meetings. However, many companies will be required to hold an annual general meeting under their articles of association. If your articles of association provide that the company "shall" hold an annual general meeting then this has the same effect as "must". This will also apply to clubs where their constitution prescribes that they will convene an annual general meeting.

## Difficulties in convening general meetings

The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (the "Regulations") came into force on 26 March 2020. Under Regulation 6 of the Regulations, no person may participate in a gathering in a public place of more than two people unless an exception to the general prohibition applies. In our view, none of the exceptions in the Regulations would apply to members of an SGB attending a general meeting.

This means that if an SGB proceeds to call a general meeting while the Regulations remain in force and more than two people attend, unless an exception applied, those people would be committing an offence under Regulation 8(1) of the Regulations.

So if your annual general meeting is due to take place during the next few months, what are your options?

## Virtual meetings

It may be possible to hold meetings virtually where this is envisaged under your articles of association or constitution.

The model articles of association under the Companies Act 2006 makes provision for company meetings to be held electronically and there is a specific provision to determine attendance at a meeting where two or more members are not in the same place.

However, if your company has disappplied these model articles of association then this provision will not apply – you will need to check your own articles of association in order to confirm if there are any provisions to hold meetings electronically. This will be the same for clubs and SGBs who are not incorporated as companies, the terms of your constitution will prescribe whether or not you may hold meetings electronically.

## Written resolutions

Under the Companies Act 2006, companies may pass members' resolutions by way of a written resolution rather than a resolution passed at a general meeting. Accordingly, where you need members' approval of a resolution but are unable to convene a general meeting, you may wish to consider whether this can be passed by way of a written resolution.

The main difference between passing a resolution at a general meeting and passing a written resolution is that the required percentages (50% for ordinary resolutions and 75% for special resolutions) are calculated with reference to the total membership of the company, rather than with reference only to the members actually voting at a general meeting.

This means that written resolutions may only be a viable option for SGBs and clubs with a smaller membership. Where your SGB only has member clubs, you will also need to consider whether those clubs will be able to exercise their vote if they need to seek approval of their own membership.

## Proxy voting

Members of companies may appoint a proxy to exercise votes on their behalf and this will also likely be an option for SGBs and clubs not incorporated as companies, where there are provisions for the appointment of proxies within their constitutions.

Under the Companies Act 2006, a person who is appointed as a proxy of a member in relation to the meeting will be deemed to be a "qualifying person" for the purposes of determining whether a quorum is in attendance at such meeting. That being said, if your articles of association or constitution expressly exclude proxies from being counted within the number of attendees for a quorum then this may not be an option for you.

Using proxy voting during this time will also be dependent on whether your articles of association or constitution limits the number of proxy votes that one person can represent and so it will depend on what your quorum is. For companies, if your articles of association do not prescribe a quorum then the position under the Companies Act 2006 is that two "qualifying persons" will constitute a quorum for meetings.

## Postponement

Where there is no viable alternative to holding an annual general meeting in person due to challenges surrounding Covid-19, you may need to consider whether the best approach is for the meeting to be postponed and convened at a later time.

There are unlikely to be any provisions with your articles of association or constitution that would make provision for the postponement of an annual general meeting, however, these are exceptional circumstances. Public health and safety will need to take precedence and SGBs should be mindful of guidance coming from the Scottish and UK Governments regarding special measures.

In the event that an annual general meeting is to be postponed, we would recommend that all members are issued with a notice informing them of such postponement and the reasons for this – i.e as a result of Covid-19 measures. In that notice, members should be advised of any associated implications, such as that any officers due to step down or be re-elected will remain in office until the postponed meeting is convened.

We would also recommend that a members' resolution is proposed for the annual general meeting when it is convened seeking their retrospective approval of the decision to postpone the meeting. This will allow any members' objections to be raised now so that you can consider how to handle these.

## Decisions required during this time

If there are any particular decisions required in the interim period before a general meeting can be convened, you will need to consider if these decisions would normally require approval of the members. If so, the notice to members suggested above should indicate what these decisions are and that the committee / board will seek members' retrospective approval at the postponed meeting.

## Get in touch

If you have any particular concerns regarding governance matters during this time, please contact us through the sportscotland expert resource legal helpline (0141 227 9333 or [sportscotlandinfo@harpermacleod.co.uk](mailto:sportscotlandinfo@harpermacleod.co.uk)).