



Applying for in principle approval to make constitutional changes

Purpose

1. This note sets out our regulatory expectations and requirements for RSLs seeking in principle approval to constitutional change. It aims to:
 - streamline and simplify the in principle approval stage of the consent process;
 - help RSLs and their governing bodies to consider constitutional change; and
 - help RSLs to plan for constitutional change.

Background

2. Our guidance on 'Procedures for the Scottish Housing Regulator's Consent to Rule Amendments or Changes in Constitution' ([SHR 04](#)) sets out the overall process RSLs should follow when making constitutional changes. And, our [Joint Briefing Note with the Office of the Scottish Charity Regulator \(OSCR\)](#) provides constitutional change guidance to charitable RSLs and RSLs who want to become charities. This supplementary advice note should be read alongside these documents.
3. The constitutional change process has a number of key stages and these are shown in Table 1 (page 2) of this advice note. We engage with RSLs at two key stages in the constitutional change process; when RSLs seek our in principle approval and then when they seek our formal consent. Most of our engagement occurs at the in principle approval stage.

In Principle Approval Process

4. Table 1 sets out the steps an RSL must follow to obtain the necessary approval from its members, and to obtain consent from the regulator and statutory bodies to its proposed constitutional changes. RSLs must complete each step in the process before moving on to the next step. This advice note focuses on Steps 1-3 of the table.
5. The Scottish Federation of Housing Associations (SFHA) has produced a set of Charitable Model Rules (2009) which we have endorsed. We expect RSLs which are societies registered with the Financial Services Authority (FSA) to look at the provisions of the Model Rules when considering any constitutional amendments. The [Model Rules and supporting guidance](#) are available from the SFHA and SFHA members can discuss any proposed constitutional changes with the SFHA.
6. When we receive a complete application for constitutional change we will respond within our published timescale of eight working days. We may need to ask for more information about complex constitutional changes, and it may take longer to approve the changes. RSLs should take these timescales into account when making their plans for constitutional change.

Table 1: Regulatory consent flowchart**STEP 1: Governing body decision**

- RSL governing body considers and takes advice on proposed constitutional change.
- RSL governing body agrees proposals.

STEP 2: OSCR approval (where appropriate)

- Charitable RSL seeking to change its charitable objects, or RSL wanting to adopt charitable status, seeks consent from OSCR.

STEP 3: SHR in principle approval

- RSL seeks SHR in principle approval.
- When RSL provides required information, SHR grants in principle approval.

STEP 4: RSL membership/shareholder approval

- RSL seeks the approval of its members/shareholders as appropriate.
- Members/shareholders approve the proposal.

STEP 5: SHR formal consent

- RSL seeks SHR formal consent.
- SHR grants formal consent.

STEP 6: Financial Services Authority (FSA)/ Companies House (CH) registration

- SHR notifies FSA/ RSL notifies CH as appropriate.
- FSA/CH registers the constitutional change.

STEP 1: GOVERNING BODY DECISION

7. In accordance with our regulatory code of governance, we expect RSLs to be satisfied that their constitution continues to be effective and to keep their constitution under review. It is the responsibility of the RSL's governing body to satisfy itself that any proposed constitutional changes are in the best interests of the RSL and are in line with legal and regulatory requirements.
8. We expect RSL officers to give their governing body time and support for detailed discussions about constitutional change proposals. Governing bodies should receive adequate information, including draft(s) of the proposed new constitution with all changes highlighted. And detailed written report(s) on the rationale for each proposed change unless they are minor. The report(s) should give full consideration to the benefits and risks attached to each change and should include:
 - details of the anticipated benefits attached to each of the proposed changes;
 - details of any potential risks associated with each of the proposed changes and how these would be managed;
 - if the RSL is in a group structure then any information relevant to this, for example, its relationship with its parent;
 - details of any relevant legal advice received in relation to the proposed changes; and
 - details of any other relevant specialist advice received, for example, advice on complex financial issues.

9. The governing body must take the formal decision to pursue constitutional change. If an RSL is applying to make changes which are not in line with the Model Rules (2009) then a copy of the governing body report(s) about the proposed changes must be submitted with the constitutional change application form at Appendix 1. The report(s) should cover all of the issues set out above and should give full consideration to the risks and benefits attached to each of the proposed changes. We will only accept this information in the form of governing body report(s).

STEP 2: OSCR IN PRINCIPLE CONSENT (WHERE RELEVANT)

10. Where an RSL requires OSCR's in principle consent it must apply to OSCR for this before applying to SHR for in principle approval. OSCR will respond to applications to change charitable objects within 28 days. And, it may take up to three months to make a decision on applications to become charitable. RSLs should take these timescales into account when making plans for constitutional change. Please refer to our [Joint Briefing Note with the Office of the Scottish Charity Regulator \(OSCR\)](#) for more detailed information on applying for OSCR's in principle consent.
11. RSLs should also check if they require consent from any other bodies. And this should be received before seeking our in principle approval.

STEP 3: SHR IN PRINCIPLE APPROVAL

12. Once Steps 1 and 2 have been completed, RSLs can then apply to us for our in principle approval for constitutional change. All RSLs must complete the application form for in principle approval, set out in Appendix 1 and send it to:
 - **RegisterAdmin@scottishhousingregulator.gsi.gov.uk** or
 - The Scottish Housing Regulator, Highlander House, 58 Waterloo Street, Glasgow G2 7DA.
13. The application form must be completed in full. Please note that incomplete applications will be returned to the RSL.

STEPS 4 – 6

14. SHR and the SFHA have already produced detailed guidance on Steps 4-6 and it is not the intention of this briefing note to replicate this guidance. Each RSL should refer to the following for:
 - Step 4: its constitution and take legal advice on seeking members/shareholders approval as appropriate.
 - Steps 5 and 6: the detailed guidance set out in [\(SHR 04\)](#) and the [Joint Briefing Note with the Office of the Scottish Charity Regulator \(OSCR\)](#)

The Scottish Housing Regulator
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