

Council – 9th April 2018

Walsall housing group governance changes

Service: Money Home Job

Wards: All

1. Summary

In November 2017, Statutory instrument 1102 – ‘The Regulation Of Social Housing (Influence Of Local Authorities) (England) Regulations 2017’ (the ‘Regulations’ - **Appendix A**) was published, which effectively means that Walsall Council will no longer be able to be a voting Member of whg. This report informs Council of the requirements of the Regulations, and seeks approval to amend whg’s Articles of Association (‘the Articles’) in order to comply with the Regulations.

2. Recommendations

- 2.1 That Council notes the various changes to the constitution and governance of whg which are being made by the Regulations and which therefore need to be reflected in whg’s Articles.
- 2.2 That Council notes that the Regulations effectively obligate the Council to give its consent to the requisite changes to the Articles of whg.
- 2.3 That Council, in order to comply with the current requirement in whg’s constitution, gives its consent for whg to amend its Articles to reflect the requirements of the Regulations

3. Report detail

- 3.1 On 11 January 2016 Council agreed to a number of changes to whg’s governance structure. The Council agreed that it would no longer appoint board members to whg’s board. The council relinquished its majority voting (golden) share but retained a single voting share. This means that the Council has a single vote at whg General Meetings (one vote out of 11, the other voting Members being the current board members, other than the whg Chief Executive who is a non-voting board member).

- 3.2 On 15 November 2017 the government published the Regulations, which will come into force on 16th May 2018. These are otherwise referred to as the 'golden share regulations' and are part of the measures introduced by the government that contribute to reversing the Office of National Statistics' decision to reclassify housing associations as 'public non-financial corporations'.
- 3.3 The Regulations mean that from 16 May 2018 the Council can no longer be a voting Member of whg. In addition, it restricts the number of Board members who are Local Authority officers. This will not affect whg as its board members are no longer appointed by the Council, instead all board members are appointed by whg for their skills and experience as agreed by Council on 11 January 2016. A more detailed summary of the Regulations is contained below:
- **Regulation 3**
The effect of regulation 3 is to restrict the number of Board members who are Local Authority officers to 24% of the Board members. Where this threshold is exceeded the Local Authority must nominate the local authority officers who are to be removed by 16 May 2018, failing which the other Board members may by a majority decision to select the Local Authority officers who are to be removed.
 - **Regulation 4**
The effect of regulation 4 is that any requirement for a Local Authority to be present at a Board meeting in order for the meeting to be quorate, will have no effect from 16 May 2018 onwards.
 - **Regulation 5**
The effect of regulation 5 is to abolish any voting rights that any Local Authority has in Board meetings and requires each registered provider (housing association) to amend its constitution by 16 May 2018 in order to assign such voting rights pro-rata to the other voting members of the Board, failing which there is a deemed assigned with effect from the said date.
 - **Regulation 6(1)**
The effect of regulation 6(1) is that any provision in the constitution of a registered provider which requires a resolution to be approved otherwise than by a majority vote by the Board, shall be deemed from 16 May 2018 to refer to at least 75% of the votes cast unless the constitution specifies a lower percentage, in which case the lower percentage shall apply.
 - **Regulation 6(3)**
The effect of regulation 6(3) is that if there is any provision in the constitution of a registered provider which requires the consent of a Local Authority to be given to permit any change in the constitution of a registered provider, then the provision will cease to apply with effect from 16 May 2018.
- 3.4 The new Regulations mean that as the Council can no longer be a voting Member, whg will need to amend the Articles to reflect this. This will be considered at whg's General Meeting on 24 May 2018. All the current Members (including the Council) will be entitled to attend and vote at the General Meeting. The changes needed to the Articles relate mainly to removing reference to the Council in the section on Admission of Members, which currently says:

‘A Member of the Company is a person or corporate body whose name and address is entered in the register of Members. Save for any person who is an employee of the Group, the Board Members from time to time and the Council shall be the Members.’

4. Council priorities

whg assist the Council in delivering its priorities, in particular apprentices and employment; healthy homes that help children have the best possible start; building sustainable and resilient communities linking through to the Locality partnerships model. Good governance in accordance with any relevant legislation is essential for whg to continue to help the Council deliver its priorities.

5. Risk management

- 5.1 As the Council will no longer be represented as a voting member at whg general meetings, it will not be able to directly influence the debate at these meetings. To mitigate this risk, it is important that the Council and whg continue to work closely together in partnership.
- 5.2 The constitutional changes which are recommended in this report are effectively mandatory in order to comply with the Regulation. Were the Council to decline to agree the proposed changes, this would be overridden in any event when the Regulations come into force on 16 May 2018 so that the changes would still take effect. This would risk damage to the working partnership with whg. It would also potentially cause reputational damage to both the Council and whg, with whg’s regulator.

6. Financial implications

There are no financial implications associated with this report

7. Legal implications

- 7.1 The Council’s consent is required to any proposed changes to the Articles, both as Council Member in accordance with the Articles and also in accordance with the 6th Schedule Part 2 of the housing stock Transfer Agreement dated 22nd March 2003.
- 7.2 If any changes are agreed, the Council, in its capacity as a member of whg, shall vote in favour of the amendment at the relevant General Meeting of whg. If not agreed, WHG may not make the amendments to the Articles without potentially being in breach of the covenants that apply by virtue of the 6th Schedule Part 2 of the housing stock Transfer Agreement. However, if the changes are not agreed by Council, then they will be deemed to come into effect anyway on 16th May 2018 in accordance with the overriding requirements of the Regulations.

8. Property implications

There are no property implications associated with this report.

9. Health and wellbeing implications

There are no health and wellbeing implications associated with this report.

10. Staffing implications

There are no staffing implications associated with this report.

11. Equality implications

There are no equality implications associated with this report.

12. Consultation

There has been no specific consultation exercise in relation to this report.

Background papers

- 2003 Housing Stock Transfer Agreement
- Council Report – 11th January 2016 ‘Walsall Housing Group governance proposals’

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