

Gloucester City Council

Meeting:	Cabinet	Date:	11th April 2018
Subject:	GCH Governance Structure & Rule Amendment		
Report Of:	Cabinet Member for Housing and Planning		
Wards Affected:	All		
Key Decision:	Yes	Budget/Policy Framework:	No
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Appendices:	1. Anthony Collins (solicitors to GCH), report on the amended Rules EXEMPT under paragraph 5 of schedule 12A to the Local Government Act 1972 (as amended)		
	2. Draft Amended Rules		
	3. Draft Written Special Resolution		

FOR GENERAL RELEASE

1.0 Purpose of Report

1.1 This report seeks approval to amend the Rules of Gloucester City Homes to:

- Adopt the NHF Model Rules 2015 (“2015 Model Rules”), which is purely about bringing the rules up to date; and
- Implement the requirements of the Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 (the “Regulations”); The purpose of the Regulations is to reduce the level of influence local authorities may exert over private registered providers of social housing (“RPs”) through Board appointment and Membership/Shareholding voting rights. This would mean a reduction of Board nominees from 3 to 2. It will also mean a cancellation of the council’s share but because all Board Directors will hold one share, the council’s two nominees will hold one share each.

2.0 Recommendations

2.1 Cabinet is asked to **RESOLVE**:

- (1) That the GCH Rule amendments as set out in Appendix 2 be approved; and
- (2) Note that the GCH Rule amendments will then be approved by the council shareholder representative through a written special resolution prior to the changes in legislation in May 2018.

3.0 Background and Key Issues

- 3.1 On 16 November 2017, The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 (the “Regulations”) came into force following formal approval by Parliament.
- 3.2 The Regulations reduce the influence local authorities have over private registered providers of social housing. It restricts the percentage level of local authority nominations to the Board of a private registered provider to a maximum of 24% and removes a local authority’s ability to hold voting rights as a member/shareholder of a private registered provider. Private Registered Providers (“PRPs”), such as GCH, are expected to amend their constitutions to give effect to the Regulations on or before 16 May 2018 (“the appointed day”).
- 3.3 Very shortly after the announcement, Office for National Statistics (“ONS”) also announced that PRPs were to be re-classified as private bodies. ONS had concluded that registered providers of social housing in England are private, market producers and as such they are now reclassified as ‘private non-financial corporations’.
- 3.4 This reverses the previous ONS decision in September 2015 to reclassify housing associations as ‘public non-financial corporations’. Deregulatory provisions aimed at reversing the earlier Office of National Statistics’ decision to reclassify housing associations as ‘public non-financial corporations’ were introduced in the Housing and Planning Act 2016. Section 93 of the Act allowed for regulations to be made to reduce local authority influence over private registered providers (PRPs).
- 3.5 The Regulations largely reflected what was anticipated, but also went further in removing all rights for local authorities in their capacity as company members or shareholders of PRPs. The Regulations override any contractual arrangements a PRP may have and will apply irrespective of any conflicting provisions in its constitution or LSVT Transfer documentation.
- 3.6 **Key provisions**

Local authority nominations cannot exceed 24% of the total number of board members

- Any attempts to subsequently exceed 24% (by way of appointment etc.) will be invalid.
- A PRP must remove a sufficient number of local authority board members to meet this requirement; if the local authority does not inform the PRP which board members it would like to remove, the rest of the board can select who to remove by way of majority vote.

The presence of local authority officers is no longer required to achieve quorum at board meetings

- Any provision within a PRP’s constitution requiring the presence of a local authority Board Member for a Board meeting to be quorate will no longer have effect.

No more local authority voting rights as members

- A local authority that is a company member or shareholder will cease to hold or exercise any local authority voting rights in that capacity.
- PRPs are required to amend constitutions to re-assign the votes pro-rata among the remaining voting membership. If the PRP does not amend its constitution, then the voting rights will be deemed to be re-assigned in this way.

- This provision only applies to PRPs where the local authority itself is a member/shareholder; it does not affect the voting rights of local authority nominees/appointees who are individual members/shareholders (any voting rights offered to such a class of shareholder remain unaffected).

Votes of the board other than by way of a majority will only require a 75% majority vote in favour

- If a PRP has local authority nominees on the board, then any provision within its constitution that requires a board resolution be approved other than by a majority of the Board (i.e. unanimous decisions) will be amended to require approval by at least 75% of the votes cast (or a lower percentage if specified in the constitution.)

Any requirement for local authority consent to constitutional changes will cease to have effect

- Any requirement for the Council's consent to constitutional changes in the Rules will no longer apply, and the Regulations will also override any contractual obligations insofar as they conflict.

The Regulations do not apply to arm's-length management organisations

- The Regulations do not affect non-profit PRPs wholly owned by local authorities.

3.7 Following Government approval of The Regulations, there is a six month period during which Providers must amend their constitutions to comply with the regulations will follow. At the end of that period, if the constitution is unchanged the local authority's voting rights are apportioned pro rata to the other shareholders/members of the RP. If the local authority and the individual council appointees to the board have not taken action to reduce the number of appointees by the end of this period, the other board members can select the appointees to stand down to achieve compliance with the 24% maximum. Amendments to GCH's Rules are therefore required to comply with the regulations.

Proposed Amendments to GCH's Rules

3.8 A report on the rule amendments to GCH Board by GCH lawyers, Anthony Collins is provided at **Appendix 1 (exempt)**. This highlights the proposed changes and the reasons for doing this. In particular:

- Removal of the council's shareholding interest
- Reduction of the number of Council Board Members from 3 to 2

3.9 Appendix 2 and 3 set out the:

- Draft amended rules, and
- Draft written special resolution.

4.0 Asset Based Community Development (ABCD) Considerations

4.1 Not applicable.

5.0 Alternative Options Considered

5.1 Not applicable.

6.0 Reasons for Recommendations

6.1 The recommendations are made to:

- Ensure the GCC's and GCH's governance arrangements do not conflict with the Influence of Local Authorities) (England) Regulations 2017.
- Ensure GCH's continued compliance with the Governance and Financial Viability Standard requirement to comply with all relevant law.
- Provide the best possible governance arrangements following best practice within the 2015 model NHF Rules.
- Provide clarification that the appointment of the GCH Chair and any Vice-chair is determined through a policy set by the GCH Board.

7.0 Future Work and Conclusions

7.1 Following GCC approval at its meeting, the Rule amendment will require final ratification by shareholders, including the GCC shareholder, through a written resolution (draft written special resolution provided within Appendix 3).

7.2 GCH will ensure that its own internal processes are followed, including:

- Notification to its lender, RBS, of the Rule amendments (legal advice is that lender consent is not required)
- Seeking Financial Conduct Authority (FCA, which is GCH's Registrar) consent to the Rule change (HCA consent will not be required, but they will need to be informed).

8.0 Financial Implications

8.1 None.

(Financial Services have been consulted in the preparation of this report.)

9.0 Legal Implications

9.1 The amendments to the GCH Rules implement the requirements of the Social Housing (Influence of Local Authorities) (England) Regulations 2017. These Regulations override any contractual obligations protecting the Council's position in the LSVT Transfer documentation.

9.2 Furthermore GCH lawyers have advised that GCH /the Council cannot be (successfully) challenged for doing no more than complying with the law, especially since the Government's response, in legislation, to the ONS's reclassification of Housing Associations not only post-dates the stock transfer but also was not in contemplation when the Transfer Agreement was completed.

9.3 The GCH lawyers have further confirmed that although the council will have its share cancelled and cannot vote as a shareholder, the council's 2 Board nominees will hold one share each as individuals and can vote as shareholders.

(One Legal have been consulted in the preparation of this report.)

10.0 Risk & Opportunity Management Implications

10.1 No adverse risks are identified as the new arrangements will see the council will have its share cancelled and being unable to vote as a shareholder, however the council's 2 Board nominees will hold one share each as individuals and can vote as shareholders.

11.0 People Impact Assessment (PIA):

Not applicable

12.0 Other Corporate Implications

Community Safety

12.1 Not applicable

Sustainability

12.2 Not applicable

Staffing & Trade Union

12.3 Not applicable

Background Documents:

The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017

HCA Governance & Financial Viability Standard

HCA Governance & Viability Financial Standard Code of Practice

NHF Code of Governance "Promoting board excellence for housing associations (2015 edition)