

# Articles of Association

## Introduction

Why are we changing our articles?

- a) The Companies Act 2006 (CA2006) is now fully implemented and changes are required to the existing British Orienteering Memorandum and Articles of Association as a consequence.
- b) There are a number of conflicts and potential conflicts between the current Articles and CA2006, these are addressed within the new draft Articles.
- c) Any significant future changes to our Articles may require a re-write and by updating the current Articles we are preparing for future change.
- d) The change is an opportunity to review the Articles in entirety; we have been unable to ascertain when such a review was last completed.
- e) It is an opportunity to update the format and presentation of the Articles which have been modified and added to many times without a complete review taking place.

The current Memorandum and Articles of Association were initially adopted in January 1982 and it is a tribute to the four members Clive Allen, Ian McMillan, Michael Forrest and David Whittaker who worked on them that the Memorandum and Articles have continued to meet the purposes of British Orienteering through to this point, some 30 years.

As a consequence of the Companies Act 2006 the following changes are either required or are opportune:

- a) Memorandum – no longer required, the important aspects of the Memorandum are moved into the Articles.
- b) Notice period for General Meeting is now a minimum of 14 days although we are unlikely to use this
- c) Chair's casting vote at General Meetings is not seen as appropriate and the right of the Chair to use a casting vote has been removed.
- d) Written resolutions – rules for making them have changed
- e) The use of proxies has been changed and there is now for instance a right for the holders of proxies to vote in a poll by a show of hands. Also the maximum notice that can be demanded for appointing a proxy is now 48 hours, whereas as our current Articles require 4 days
- f) Electronic media can now be used to send notices etc.

The leading firm of solicitors that deal with sporting issues in the UK is Farrer & Co LLP of London. Farrer & Co partner with the Sports & Recreation Alliance (the old Central Council of Physical Recreation or CCPR) as advisors and have prepared template Articles of Association for National Governing Bodies of Sport to use. This template is available free of cost to British Orienteering as a benefit of membership of the SRA. The use of the template has significant advantages including the saving of several thousand pounds of solicitor fees and in providing an example of good practice from which to work.

Once the review had commenced it became clear that there were two ways to progress the review of the Articles:

- a) Start from the current Articles and make changes to them to align the Articles with the CA2006
- b) Start from the template Articles of Association as prepared by Farrer & Co and modify them to include the significant aspects of our current Articles.

After discussion it was agreed that the review should adopt the second option and that British Orienteering should take the opportunity to modernise the presentation of the Articles.

The review has therefore started with the template Articles. Whilst the template Articles look considerably different to the current articles, it is largely as a consequence of them being presented and ordered in a different way.

The documentation provided to Conference attendees at this stage includes:

- a) This introduction and overview which highlights significant changes.
- b) A clean copy of the new draft Articles adapted from the Farrer & Co template Articles. This shows the Articles as they will be presented to the AGM and Companies House if adopted.
- c) A copy of the new draft Articles showing the adaptations made from the Farrer & Co template Articles. This copy shows where deviations from the template Articles have been made. You can therefore see what is considered good practice and where modifications have been made to align the template Articles with the current Articles.
- d) A document containing the new draft Articles and the current Memorandum and Articles of Association that is cross referenced for ease of comparison.

### Overview of the new draft Articles of Association

The changes in presentation and format to the Articles are significant. However the intention of the review is that the draft Articles replicate the current Articles except for the changes identified below. In some cases, although the principles in our current Articles have not been changed, changes have been spelled out in more detail.

It is inevitable in completing such a significant task that errors have been introduced into the new draft. Please inform us of any errors you believe exist so that we can confirm if they are errors or are intentional changes that require further explanation.

Significant changes include:

- a) The term 'Company' has been adopted throughout the articles to accurately and factually describe British Orienteering Federation Limited.
- b) The number of 'Defined Terms' in Article 1 has been significantly increased to clarify more of the terms used in the Articles. Several of the additional terms including 'independent director' and 'non-executive director' are not used later in the Articles but have been included as they may potentially be used at a future time.
- c) Article 3 'Objects': The 'objects' of British Orienteering have been simplified without narrowing their scope, updated and added into the Articles.
- d) Article 4 'Powers': The 'powers' have been simplified, updated and added into the Articles. In particular the powers of the company, the Board and the directors are more detailed.
- e) Article 8 defines the manner in which committees, sub committees and working parties are appointed and how the Board's powers may be delegated to them.
- f) Article 13 determines Board composition and quorum in greater detail.
- g) Article 15, the Chair's right to use a casting vote has been rescinded. This is in line with current good practice and means with any proposal the status quo remains unless there is a majority for change.
- h) Article 16 deals with 'Conflict of Interest' thoroughly which is in members' interest.
- i) Articles 22 and 23 determine the remuneration and expenses of directors. This clarifies the status quo and provides additional protection to the membership.
- j) Article 29 refers to 'Casual Vacancy', a term used to refer to any director vacancy created between AGMs and maintains the status quo.
- k) Article 34.1 refers to notice of 70 'clear' days to hold a general meeting. The 'clear' is a change to the current articles but does clarify the situation.

- l) Article 48 clarifies the use of modern technology to inform members of general meetings etc. This clause more tightly specifies how members living overseas are communicated with.
- m) Articles 50 and 51 bring up to date matters relating to the indemnity of directors and the insurance protection given to directors.
- n) Article 52 'Rules' is extremely important. Any change to the Articles of Association requires a vote of 75% or more of the voting membership. The Rules are a part of the Articles that only require a vote of 50% or more of the voting membership to change. Therefore there is an argument that such matters as membership categories which may change from time to time are better placed within Article 52 'Rules' rather than be in the main body of the Articles.

Significant queries for membership discussion include:

1. 'British Orienteering Federation' is the current company name, should the opportunity to change the company name to 'British Orienteering' be discussed? The current trading name for the company is 'British Orienteering'.
2. Categories of membership, should these lie within Article 52 'Rules', as in the current draft or within the main articles? If in the Rules section a simple majority is required to alter them rather than 75%.
3. Constituent Association (Article 31.3.1), should these be listed, in which case it will take a 75% vote to change the list; or is it more appropriate to add the list to Article 52 Rules where a 50% vote for change is required; or should the list be omitted (as in the current draft)?
4. Associate membership, the current membership category of 'Associate' is poorly defined in the current Articles, rarely used, and has few benefits. Should this category of membership exist and if so how should it be defined and what benefits should accrue? It is currently removed from the draft.
5. Members requesting a general meeting; Article 34.2 is a change. In the current Articles, 3 Constituent Associations can request a general meeting be called. However Constituent Associations are not members and members have a right to call a general meeting. The new Article provides this right to the members.
6. Written Resolutions: it is normal practice in companies to allow written resolutions to be used and the Companies Act 2006 significantly changes the way such written resolutions are dealt with. 'Written resolution' is the term used when a resolution is sent to voting members who vote on it by postal or electronic means rather than at a general meeting. Written resolutions are not permitted in the current articles and the facility to allow them has therefore been removed in this new draft from the template Articles. Is this your wish?