

April 2018

Articles of Association
Plain English Guide
British Mountaineering Council

June 2018 AGM

STRICTLY CONFIDENTIAL

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1. **BACKGROUND TO THE BRIEF**

- 1.1 Following the production of the substantial report by the BMC organisational review group (ORG) in November 2017 (and addendum in February 2018), we were asked to produce a revised set of Articles of Association for the BMC.
- 1.2 Notwithstanding the broad range of the recommendations made by the ORG in its reports, we were asked to produce a set of Articles of Association which, whilst not initially giving effect to all of those recommendations, achieved the following key objectives:
- 1.2.1 Provided a governance structure which was fit for purpose and compliant with the law;
 - 1.2.2 Ensured that the Board of Directors were legally responsible for the management and administration of the BMC and able to discharge their legal duties accordingly;
 - 1.2.3 That the Board of Directors were appropriately held to account by both the members of BMC and the National Council;
 - 1.2.4 The National Council's role was properly redefined to ensure the Board maintains legal responsibility (and therefore liability) for managing the affairs of the BMC and the role of the Councillors is clear;
 - 1.2.5 Implemented governance arrangements which would meet the appropriate good governance requirements in 2018.
 - 1.2.6 In achieving the above, met the requirements of Sport England's code of good governance.
- 1.3 At this stage, our brief was not to draft a set of Articles to incorporate all of the recommendations coming out of the ORG's reports. We understand that the Articles to be presented in June 2018, designed to meet the objectives set out above, will be regarded as "Phase 1" of the implementation plan, with a transitional period being put in place between the June 2018 AGM and the subsequent AGM to ensure that the BMC could take certain practical steps to incorporate further recommendations from the ORG's report during that time.
- 1.4 At the AGM in 2019, it is envisaged that a further revised set of Articles of Association will be presented to the members for approval which incorporate further recommendations from the ORG's report.
- 1.5 Therefore, NOT ALL of the ORG's recommendations will be reflected in this draft of the Articles of Association.
- 1.6 Nevertheless the changes that are recommended to come into force from June 2018 are designed to ensure that the governance arrangements are fit for purpose, reflective of best practice and provide a solid foundation for the BMC going forward.
- 1.7 The purpose of this note is to provide a user friendly, plain English guide to the provisions in the Articles.
- 1.8 Readers should note that two substantive versions of the Articles will be considered in this note. The first draft is, in our view, fit for purpose and meets all of the requirements set out in 1.2 above. Notwithstanding this, Sport England has requested certain changes to the draft Articles which go beyond those which we believe are required by law. At this moment, we await Sport England's confirmation of whether the draft Articles we have produced will be acceptable to it for future funding purposes.

2. **NEW ARTICLES OF ASSOCIATION**

2.1 Following Companies Act 2006, provisions which were previously contained in the Memorandum of Association are now deemed to form part of the Articles of Association.

2.2 Therefore, going forward the BMC will have "Articles of Association".

3. **INTERPRETATION**

3.1 As is common with documents of this nature, there are a long list of defined terms which appear throughout the Articles. Many of these will be familiar to you as they are contained and reflected in the existing Articles of Association.

3.2 Certain new definitions have been added to reflect certain new provisions.

4. **GUARANTEE OF THE MEMBERS**

4.1 The structure is that BMC remains a company limited by guarantee.

4.2 This means that the liability of the members is limited to a pre-defined amount. This amount is set out in clause 3 – Guarantee.

4.3 Essentially, the liability of the members (and former members) is limited to £1.

5. **OBJECTS – ARTICLE 4**

5.1 The objects mirror the BMC's current objects.

5.2 However, you will notice that they are slightly shorter than those contained in the current Memorandum. The reason for this is that certain provisions that were previously contained in the objects were in fact more similar to powers. These provisions have now been moved into clause 5 - below (which is the appropriate home for them).

6. **POWERS – ARTICLE 5**

6.1 It is very common for companies such as BMC to have a broad range of powers which **may** be exercised in furtherance of the objects.

6.2 These powers are permissive in nature and are intended to be broad ranging and flexible to cover all potential future activity.

6.3 However, you should note that the powers may only be exercised by the Company **in furtherance of the BMC's objects**.

7. **USE OF INCOME AND PROPERTY – ARTICLE 6**

7.1 The BMC is established on a not-for-profit basis. This does not mean that the BMC is not designed to make a profit – rather that the profits made by BMC should be ploughed back into achieving and delivering its objects.

7.2 The current memorandum of BMC contains a provision which is very similar to this, although the new Articles build on and update the existing provisions so that whilst the general principle is that members should not receive any benefit from the organisation, there are certain limited exceptions to this.

- 7.3 Whilst a not-for-profit company is not generally restricted from paying its Directors, BMC's current memorandum does place restrictions on benefits to Directors and we took the view that it was appropriate for these restrictions to be pulled into the new Articles of Association.
- 7.4 However, again, we have updated the provisions of the Articles such that Directors can be remunerated or receive a benefit but only in limited circumstances.
- 7.5 The circumstances in which members or Directors may receive benefits from the BMC are set out in Article 6.
- 7.6 You will see that this envisages that the only Director in a salaried post as a person in the employment of BMC would, at the moment, be the CEO as an Ex-officio Executive Director.
- 7.7 Notwithstanding this, Article 6 provides for Directors to be able to provide goods or services to the company in certain circumstances and to be paid for that. This is actually a very similar clause to what you would see were BMC a charity and reflects a shift in the law relating to not-for-profit entities that recognises that it may in certain circumstances be in the best interests of BMC to commission goods or services from a Director rather than commission them from a third party provider. Of course, this is subject to conflicts of interest being properly managed.

8. CONFLICTS OF INTEREST – ARTICLE 7

- 8.1 It is a legal duty under the Companies Act for Directors to avoid conflicts of interest and in circumstances where conflicts of interest are unavoidable, the Articles of a company must provide for those conflicts to be properly managed.
- 8.2 This Article provides that Directors who have an interest in matters relating to the business of the company must declare that potential interest and the situation must be managed accordingly.
- 8.3 First of all, the other Directors must authorise the conflict. Secondly, when a decision is made in relation to a transaction or arrangement where a Director has an interest, that Director must declare their interest and not take part in the discussion or the decision making process.
- 8.4 Article 7.6 nevertheless recognises that some circumstances may arise where, at first glance, a Director may have a conflict of interest but actually the circumstances are such that there is no real risk to the BMC from allowing the Director concerned to take part in the decision making process. This is the exception, rather than the norm.

9. MEMBERS – ARTICLES 9 & 10

- 9.1 The Articles relating to membership are very similar to what the BMC currently has, save that they are included together in one place in the document.
- 9.2 Therefore, the BMC still has the following classes of membership:
- 9.2.1 Individual members;
 - 9.2.2 Honorary members;
 - 9.2.3 Patrons;
 - 9.2.4 Club members; and
 - 9.2.5 Associate members.
- 9.3 The BMC also maintains the position of the Affiliated Clubs.
- 9.4 An addition to the current membership provisions new Article 9.10 provides the flexibility for the National Council to establish informal or supporter categories of members in addition to those

already established. Such members will not have voting rights but may nevertheless be interested in the work of the BMC and therefore be part of the organisation without necessarily being full voting members.

- 9.5 The provisions of Article 10 relating to the termination of membership are reflective of those under the BMC's current Articles. They also include an express right for the members to resign.
- 9.6 The Board also has a power, in extreme and rare circumstances, to remove a member where their actions or behaviour is contrary to the interests of the BMC or could damage its reputation.
- 9.7 Please note that Sport England has suggested that admission and termination of membership should be a matter for the Board, in consultation with National Council. We have questioned the legal basis for this position and await a response.

10. **GENERAL MEETINGS – ARTICLE 11**

- 10.1 Article 11 sets out that the BMC is obliged every year to have an AGM. Under company law there is no longer such thing as an Extraordinary General Meeting and therefore any other meetings of the BMC members shall be known as General Meetings.

Note: any provision throughout the Articles that requires a resolution of the Company, refers to a resolution of the voting members at a General Meeting.

11. **NOTICE OF GENERAL MEETINGS - ARTICLE 12**

- 12. The provisions relating to notice of General Meetings are based on the current Articles.
- 13. However, we have highlighted to the BMC that these provisions are in our view very onerous and go beyond by what is required by company law.
- 14. Therefore, it is envisaged that at the next AGM, steps will be taken to ensure that the process is a lot more simple and transparent. This will result in significant less administrative cost for the BMC whilst still ensuring compliance with company law.
- 15. In particular, it is envisaged that the time periods for giving notice will be reduced to bring them into line with company law.
- 16. In addition, the provision permitting voting members to requisition a General Meeting is significantly lower than the threshold required by Companies Act. We would suggest that this is reviewed and increased as part of Phase 2 of the implementation of the ORG's recommendations.
- 17. The Articles maintain the distinction between special and ordinary business.
- 18. Any business that is special business shall be decided by way of a poll vote. Article 13 sets out what will be considered ordinary business and special business and reflects the current Articles.

19. **VOTING AT GENERAL MEETINGS**

- 19.1 Every voting member continues to have one vote under the new Articles – reflecting the current position. This is typical for a company limited by guarantee.
- 19.2 Members automatically have the right under company law to appoint a proxy - which may be any person - to attend and vote on their behalf.
- 19.3 The Articles maintain the position that associate members and affiliated clubs are not entitled to vote at General Meetings. Furthermore, voting members must be over the age of 18 and have paid their subscriptions due and payable when the notice of the General Meeting is issued in order to be eligible to vote.

- 19.4 Article 14.13 is new. This is to ensure that the BMC engages with voting members in a more extensive range of ways and encourages its voting members to have their say through a vote even if they cannot attend the General Meeting in person or do not wish to appoint a proxy. Therefore, in the future, the BMC hopes to engage members through providing them with a facility to vote electronically. We understand this will be discussed further to ensure it is appropriate for the BMC.
- 19.5 Article 15 provides a facility for members to pass resolutions in writing and reflects the current legal position. Where a matter is proposed to the members that would ordinarily be passed at a General Meeting, it may be passed by a written resolution of the members provided the number of those members who vote in favour of that resolution are the same as would be required to pass it at a General Meeting.
- 19.6 In light of the large numbers of members the BMC has, we imagine the use of this facility will be limited.
20. **NATIONAL COUNCIL – ARTICLE 16 & 17**
- 20.1 The ORG recommended that the National Council be renamed and restructured and its role redefined.
- 20.2 Our brief was that, for Phase 1, National Council would retain its name. Therefore, the name has not been changed to Members' Assembly.
- 20.3 The composition of National Council remains the same as under the current Articles – which reflects our brief.
- 20.4 However, **and fundamentally**, the role of the National Council has been redefined to ensure that its role is appropriate to its position and does not undermine the legal responsibility and accountability of the Board of Directors.
- 20.5 The National Council is the fundamental group of stakeholders within the BMC who hold the Board of Directors to account and act as an intermediary between it and the broader membership. The new Articles clarify that the National Council do not direct the affairs of the BMC, which is the legal responsibility of the Directors.
- 20.6 Article 16 sets out provisions around who shall be eligible to be on the National Council and also their terms of office. The Articles intentionally provide an element of synergy between the terms of office for Councillors and the terms of office for Directors, recognising that Councillors may be Directors and therefore it would seem odd to only allow councillors to serve for five years, whilst Directors may serve for up to nine years.
- 20.7 Article 16.11 specifically ensures that National Council is subject to the same provisions relating to management of conflict of interests that the Directors are subject to.
- 20.8 Article 16.17 provides a facility for National Council to take decisions by written resolution provided that at least three-quarters of councillors are in agreement to the proposal. This is intended to facilitate decision making but is the exception rather than the norm.
- 20.9 Article 16.19 provides that National Council may set up working parties or specialist groups to assist or advise in its work or carrying out its role.
- 20.10 However, please note that National Council no longer has the authority to set up committees and delegate powers to those committees in excess of the powers available to it under these Articles. Again, this reflects the legal position that the Directors of the company should have ultimate responsibility in relation to the management of the BMC and therefore should have oversight over committees who have functions/powers delegated to them. This position is emphasised in Sport England's code.

- 20.11 Article 17 fundamentally clarifies the role of the National Council under the new Articles. This is specifically designed to meet the requirements of Sport England, to reflect the position of the Board as the body with legal responsibility, but also fundamentally demonstrating that the National Council still has a role in holding the Board to account, a fundamental role in relation to determining membership (but see 9.7 above), acting as an intermediary conduit and forum between the Board and the membership and ensuring effective communications.
- 20.12 Article 17.5 importantly sets out that National Council shall be consulted upon or required to provide agreement to the Reserved Matters which are set out in the schedule to the Articles. These Reserved Matters are intended to be matters of such significant importance to the BMC that it is proper for the National Council to have adequate oversight in relation to them.
- 20.13 Please note that these provisions have been substantially negotiated with Sport England who are particularly concerned to ensure that the Directors are ultimately responsible for the setting the strategy of BMC and they only go so far as Sport England will permit. At this moment, Sport England suggests that the National Council should be consulted on matters only – its agreement to decisions should not be required. Again, we have asked for clarity of the legal basis for this.

21. ELECTED OFFICERS – ARTICLE 18

- 21.1 Article 18 relates to the position of the Elected Officers.
- 21.2 The composition of the Elected Officers remains the same, however we have brought the terms of office into line with those of Councillors and those of the Directors. Therefore, Elected Officers may serve for up to three terms of three years subject to a maximum of nine consecutive years. No person may be re-appointed into the role until they have been out of office for at least four years.

22. BOARD OF DIRECTORS – ARTICLE 19

- 22.1 These provisions have fundamentally changed.
- 22.2 Under the previous Articles of Association, the Executive Committee formed the Board of Directors but those Articles did not provide the Executive Committee with the legal responsibility relevant and necessary for managing the Company.
- 22.3 The new Articles provide that the number of Directors shall be between five and twelve (twelve is the limit recommended by Sport England and largely reflects good governance).
- 22.4 The new Articles also incorporate a transitional period. This recognises that it would be very difficult to have carried out the selection and interview process necessary for ensuring that the Director roles going forward could be filled by June 2018. This means that under 19.2 the Directors in office at the June 2018 AGM will continue in office for a transitional period lasting until the AGM in 2019. However, during that transitional period, the BMC will of course be taking action. These actions are set out in schedule 2 of the Articles.
- 22.5 Following the transitional period and after the AGM next year, the provisions of 19.3 in relation to Board composition will apply.
- 22.6 These provide that the Board of Directors shall comprise:
- 22.6.1 The President in an ex-officio capacity;
 - 22.6.2 Up to three Directors appointed by National Council, one of which may represent affiliated clubs;
 - 22.6.3 The Ex-officio Executive Director who is the Chief Executive; and

- 22.6.4 Up to seven independent Directors co-opted by the Directors following a recommendation from the Nominations Committee. These persons shall be independent Directors and therefore should have no connection with councillors or be employees or officers of the company

(Note that the Articles do not expressly require a Director from Mountaineering Scotland, or a Director nominated by a Partners' Assembly, but such changes may be considered as part of the next round of changes, if in the best interests of BMC).

- 22.7 Please note that there are limits on the number of Directors who may represent National Council, such to meet the requirements of Sport England. In any event, as a matter of good governance, you would want to ensure that the number of member representative directors was balanced against the independent (and other) directors.
- 22.8 As is the position now, the independent Directors should be co-opted in light of their skills and expertise and in light of any gaps on the Board at any particular time. The independent Directors are appointed by the Board following recruitment by the Nominations Committee.
- 22.9 A key requirement of Sport England is that the Chair is an independent Director. Recognising that the recruitment of a new Chair will not have happened by June AGM, Article 19.7 provides that a Chair will be appointed by the Board following a nomination from the Nominations Committee during the transitional period and that person's appointment will be subject to the approval of the voting members at the next AGM. However, until that time, that person will act as Chair of the BMC.
- 22.10 After the transitional period, the Board will appoint the Chair from amongst the independent Directors subject to the approval of the voting members at the AGM. It is a key requirement of Sport England that it is the Board who has responsibility for appointing the Chair. If the voting members do not approve the appointment made by the Board then Article 19.7.2 provides that the Board may appoint another independent Director to be Chair subject to the approval of the voting members again, or appoint a person to act as Chair until a suitable Chair is approved by the voting members at another AGM.
- 22.11 Article 19.8 reflects a key requirement of Sport England that the Board shall appoint one of the independent Directors to be a Senior Independent Director. That person will support the Chair of the Board. It is relatively common in any event for a Board to also have a Vice Chair.

23. **TERMS OF OFFICE OF DIRECTORS – ARTICLE 20**

- 23.1 These provisions reflect key requirements of Sport England that a Director shall not be able to serve in office for more than nine consecutive years. Terms of office within that period do not extend beyond three years. Therefore Directors of the BMC, with the exception of the Ex-officio Chief Executive Director, shall serve up to three terms of three years.
- 23.2 Please note Article 20.5 which reflects the legal position that the BMC's members may under company law remove a Director from office following the procedure under that legislation.
- 23.3 Having terms of office reflects good governance. It means you can review and refresh the Board and also gives people the opportunity to stand down.

24. **POWERS AND DUTIES OF THE DIRECTORS – ARTICLE 21**

- 24.1 This Article is fundamental to the position that Directors have legal responsibility for the management of the company. They have the authority to exercise the powers of the company in furtherance of its objects, save where there is a reservation of power at law to the members or under the Articles to the members or the National Council.
- 24.2 Article 21.3 provides that when making decisions in relation to Reserved Matters, National Council should be consulted or the agreement of National Council sought as appropriate.

- 24.3 It is recognised that the business of BMC should be able to continue during any period in relation to which the views of National Council are being sought. The Articles also need to provide for the unlikely event that National Council do not agree to a proposal put forward by the Board of Directors.
- 24.4 The Articles suggest that in these rare occasions where National Council does not agree with a proposal of the Board, then the matter shall be resolved between the President and the Chair and in the absence of resolution, it would be taken the wider membership at a General Meeting. The view of Sport England is that the Board of Directors must maintain ultimate responsibility for that decision.
25. **DISQUALIFICATION OF DIRECTORS – ARTICLE 22**
- 25.1 These provisions set out the circumstances in which a Director's office shall come to an end.
- 25.2 Please note that these are relatively standard for not-for-profit companies. We have also included Article 22.1.9 which provides that if a person is not qualified to act as a charity trustee he or she would not be qualified to act as a Director of BMC notwithstanding it is not a charity. We suggest this represents good practice.
26. **PROCEEDINGS OF THE DIRECTORS – ARTICLE 23**
- 26.1 The quorum for Directors' meetings is five and that shall include an independent Director and a Director appointed by National Council to ensure an element of balanced views.
- 26.2 Article 23.4 enables the Directors to delegate their powers to individual Directors or committees and to set out terms of reference governing the scope of that delegation. The Articles also provide that the Director shall establish a Finance Committee (which should include the audit function) and a Nominations Committee (both required by Sport England) together with any other specialist committees with the approval of the National Council.
- 26.3 It is important that these committees report to and are accountable to the Board who has ultimate legal responsibility (and liability) for the actions of those committees.
- 26.4 Article 23.14 provides that minutes of meetings shall be made available to National Council and to members on request, subject to obligations of confidentiality. They shall also be published on the website.
- 26.5 The Directors under Article 23.15 will publish a summary of key themes and discussion points on the Company's website.
27. **PATRONS – ARTICLE 26**
- 27.1 National Council retains the authority to appoint Patrons under Article 9, but Article 26 provides the Board, in consultation with National Council, with the power to remove a Patron in the event that his actions or conduct is detrimental to the BMC or its reputation. We believe this is fundamentally important in the rare occasion where the actions of a Patron may have a detrimental effect on BMC's reputation.
28. **CHIEF EXECUTIVE AND VERY SENIOR STAFF – ARTICLE 27**
- 28.1 Article 27 provides that the Board shall appoint the Chief Executive and the Finance Director (and any other person designated by them to be a member of the senior team). The Board then holds such persons to account.
- 28.2 Otherwise, all staff are appointed by the Chief Executive Officer and they report to him/her.
- 28.3 Sport England's view is that only the Chief Executive should be appointed by the Board.

29. AREA MEETINGS – ARTICLE 28

29.1 The provisions relating to Area Meetings broadly reflect the current Articles.

29.2 Readers ought to note that the term of office of Area Reps has been extended to bring them into line with the terms of office for Directors and National Councillors and this provides that Area Representatives may serve for no more than nine consecutive years. This is the maximum and obviously people may serve shorter periods if they wish.

30. NOTICES – ARTICLE 31

30.1 This provision standardises the giving of notices, confirms how the BMC may give and receive notice and importantly permits notice to be given by electronic means where electronic addresses have been provided for that purpose. Notice may continue to be given via the BMC's official magazine.

31. INDEMNITY AND INSURANCE

31.1 Directors and officers of the Company are entitled to be indemnified in relation to their management of the Company, but only to the extent permitted by law (and where they have acted properly and in accordance with their duties).

31.2 Article 32 expressly permits the purchase of insurance for Directors and officers of the Company.

31.3 Please note that, where the Directors and officers have acted properly, primary liability for loss falls on the Company itself, not the Directors personally.

32. ALTERATIONS TO THESE ARTICLES - ARTICLE 33

32.1 The Articles of Association may only be amended by a resolution of at least 75% of the voting members present and voting at a general meeting.

33. RESERVED MATTERS - SCHEDULE 1

33.1 These set out the provisions relating to decisions of the Directors that can not be made without either consulting with or seeking the approval of National Council (but see comments above).

34. ARRANGEMENTS FOR THE TRANSITIONAL PERIOD – SCHEDULE 2

34.1 These set out what will happen between the AGM in June and the subsequent General Meeting of the BMC.