

Moving the SOA to Limited Company Status



Pre-AGM Consultation

Background

I have now reported in Score Magazine several times about the work we have been progressing in planning to move the SOA to limited company status. At this point, we expect that the SOA executive will formally make a proposal to the AGM in May that the SOA should move to limited company status.

Ahead of the formal proposals, this document lays out the February draft of the expected proposals. This will allow the membership to comment in good time so that proposals can be fine-tuned if necessary. It should also be noted, that these detailed proposals are currently the responsibility of the sub-committee working to develop the changes. At this stage they have not been endorsed either by the SOA Executive or by the lawyers of **sportscotland** with whom we are working to make these proposals. However, contact has been maintained with the SOA Executive and **sportscotland** throughout the process.

Reasons for the Change

The SOA Executive has been undertaking the *Modern sport* process (Score, Nov-Dec 2006) which aims to reviewing the governance and management needed for an effective sports organization. At the workshop held in February 2006, which was attended by the Executive, the professional staff and club representatives (all SOA clubs were invited), one of the key issues identified was the incorporation of the SOA into a company limited by guarantee.

The SOA can be described as a “member” organisation. There are two standard models for such an organisation. It can be either a

- voluntary organisation, or a
- company limited by guarantee.

Advantages of a voluntary organisation

- there are no formal registration requirements to create a voluntary association
- there are no detailed statutory procedures to be followed in relation to members’ meetings etc. Subject to some very general rules laid down by case law, the procedures for AGMs will all be contained in the constitution itself without any need to worry about wider legal requirements
- it is a much less intimidating structure for those considering whether to join as members or stand for election to the management committee

Disadvantages of a voluntary association

- for most legal purposes, a voluntary association is not regarded by the law as having any legal existence separate from its members.
- In practical terms, that means that leases and other formal contracts have to be entered into in the names of (normally) the main office bearers (e.g. chair, secretary, treasurer)
- there is a significant risk that members of the SOA Executive or SOA members could be personally liable for debts if the organisation were unable to meet its
- a voluntary association, because it is a more informal structure, may be seen as “less professional” in the eyes of potential funding bodies

Currently the SOA is a voluntary member organisation. There are advantages and disadvantages of each model (see boxes)

One significant advantage of incorporation is better protection for the members and the Executive in the unlikely event that matters go substantially wrong. There are several strands of protection to minimise such an eventuality. These include

- the adoption and implementation of good procedures,
- insurance, and
- incorporation.

None of them on their own are foolproof. For example, you cannot insure against an organisation running out of money. While problems may be unlikely, the British Athletics Federation (a limited company) went into liquidation following the events surrounding the suspension of Dianne Modahl for allegedly taking drugs. (She was later cleared). On a smaller scale, the SCVO reports a case where a court ordered the people who had signed a photocopier lease to pay out of their own funds to meet the outstanding sums due to the equipment leasing company, even though it was clearly stated in the photocopier lease that they were signing “for and on behalf of” the voluntary association concerned.

Advantages of being a company limited by guarantee

- limited liability - in terms of a clause contained in the Memorandum and Articles (part of the company’s constitution) each of the members undertakes (“guarantees”) to pay up to a nominal sum (normally £1) towards the company’s debts if it goes into liquidation. The members’ liability is therefore **limited** to the sum which they **guarantee** to pay, hence the name “company limited by guarantee”
- the company is a clear legal entity, separate from the people involved in it - and can therefore hold property, enter into leases and other contracts, employ people, etc in its own name. That, in turn, introduces an important element of continuity since none of these would be affected even if the whole board were replaced by a new set of people
- a company is generally regarded by funding bodies and public agencies as a more “stable” structure than a voluntary association
- volunteers are more willing to come forward to a better structured and protected organisation

Disadvantages of being a company limited by guarantee

- there is an ongoing requirement to notify a change in directors, a change in the company secretary, or a change in the registered office, to a Companies House. Similarly, annual accounts and annual returns have to be filed with Companies House
- there are various statutory requirements which have to be followed in relation to members’ meetings etc and various principles of company law which must be adhered to in the “Memorandum and Articles” (the constitution)

However – these disadvantages should not be overstated. The Six Day Company currently successfully operates as a limited company,

Name of the New Company

It is intended that the new company will be called the Scottish Orienteering Association (and referred to below as the “new SOA” to distinguish it from the current organisation – the

“existing SOA”. Registration of the name “Scottish Orienteering Organisation” at Companies House will require two special dispensations.

- (i) The right to use the reserved name “Scottish” in the company title. This will be achieved with the support of sportsScotland showing that we are the governing body for orienteering in Scotland.
- (ii) The dispensation from having to use “Limited” in the company title – so that we are the “Scottish Orienteering Association” rather than the “Scottish Orienteering Association Limited”. A crucial part is that the new organisation does not distribute profits to its members. With this proviso, many sports governing organisations – not least BOF – have managed to obtain exemption from the use of Limited in the company name.
- (iii) We will still be allowed to call ourselves “Scottish Orienteering” even though we are registered as the “Scottish Orienteering Association”. This is useful for publicity and marketing (compare our logo at the top of this article)
- (iv) There are various legal requirements that we put our Companies House Registration Number, and our registered address at the foot of all correspondence.

Proposed Process

The formal process of moving to the new SOA will begin at the AGM. A three-part resolution will be tabled in which:

- members instruct the Executive to create the new SOA – a company limited by guarantee,
- members instruct the Executive to transfer the assets and liabilities of the existing SOA to the new SOA at an appropriate time
- members instruct the Executive to wind up the existing SOA after the transfer is complete.

There are timing issues to be considered. Because of forthcoming detailed changes to company law, it is proposed that incorporation of the new SOA should occur rapidly after the AGM. However, the transfer may take longer. Given that the existing SOA currently operates its finances on a calendar basis, a convenient time for the change-over would be the end of the financial year. This would eliminate the need to draw up part year accounts. In the interim period, the new SOA would be a dormant, “non-trading” company.

Some of the other matters that will need to be attended to

- we will need to tell BOF that the new SOA will represent orienteering in Scotland
- insurance policies will need to be reviewed
- contracts for insurance, professional officer contracts and leases will need to be transferred
- there will be a need to set up new bank accounts, and organize various signing authorities
- various “money laundering” processes will need to be adhered to

Draft New Constitution

The “Memorandum and Articles” effectively form the constitution for a company limited by guarantee. One of the main tasks of the group looking at the incorporation has been to draw up proposed M&A for the new SOA. These effectively form a governance structure as shown in the diagram below.

The M&A have to be consistent with the principles of UK Company Law – and certain requirements are laid down in Company Law. In sporting terms, the SOA currently looks to BOF and then to the IOF for the adoption of orienteering rules.

In its turn the SOA can then adopt a number of subsidiary documents which govern the sport in Scotland. These include:

- Rules Any Scottish variations of orienteering rules in Scotland. These could include rules for specific competitions such as the Scottish champs.
- policies The SOA has adopted a range of procedures – such as child protection or data protection.
- Bye-laws Such as the ones expanding the rules in the Memorandum and Articles about membership.

These Rules, policies and Bye-laws are then binding on the SOA membership.

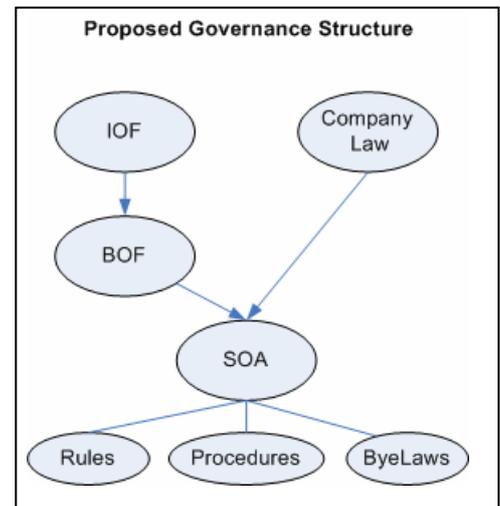
The February draft of the new Memorandum and Articles are published alongside this paper, together with draft 0.3 of the Bye-laws.

Further work to be carried out

There are still a number of matters which need to be considered further.

One example is “discipline”. A draft Bye-law to consider disciplinary matters has yet to be considered.

There are also issues that need to be considered in respect of the relationship between BOF and the SOA. In the case (which we trust would be hypothetical) of an orienteer caught misusing drugs, questions of potential double jurisdiction and double jeopardy arise. Would the issue be dealt with by BOF or the SOA? Currently orienteering events and competitions held in Scotland up to and including Level 3 (badge events) and distinctively Scottish events such as the Scottish Championships are the responsibility of the SOA. It would be very unfortunate if someone could be banned for a doping offence in Scotland and still be free to



compete in England. However, there are potential differences in requirements in Scotland as compared to England which need to be considered.

Further consideration will be given to the clauses on conflict of interest. These need to be compared to the SOA's current procedures.

Changes to the Constitution

The February draft of the Memorandum and Articles are attached as a separate document. Some comments on the differences between the current constitution and the proposals in the February draft of Memorandum and Articles in the Appendix below.

Questions to consider

Comments and questions are welcome on any aspect of the February draft Memorandum and Articles, and the draft Bye-laws. However, by inspection of the table of differences between the current Constitution shows some specific areas of difference on which members may choose to comment:

Membership. The rules on membership have been updated to reflect our understanding of the SOA's implementation of the new BOF membership scheme. However, additional changes have been made – the separation of voting rights from Senior/Junior status. Given that the SOA has had to respond this year late to the BOF proposals, should all changes to the membership structure have to be approved in advance at an AGM. Or, would a review of the changes at the following AGM be sufficient. [There is a standing item on the AGM Agenda for the review of all Bye-law changes. This would force a review at the next AGM].

Rotation of Directors In accordance with good practice adopted elsewhere, there are proposals for three year terms for the Directors (Executive members in old parlance) – with provisions to have one-third of the Board retire each year, and maximum terms of office. The aims here are to provide continuity of expertise, but continue to promote new people onto the governing Board.

A range of smaller changes

For example, there are some differences in the procedures and timescales for calling the AGM, and electing office bearers.

How to comment

By email to: David Nicol secretary@fvo.org.uk. Please return comments/questions back to me by email at secretary@fvo.org.uk – as soon as possible, and in any event by Sunday 18th March to allow time for comments to be considered. The formal proposal to change the constitution must be made by the end of March this year

Appendix

Some differences between existing Constitution and draft Memorandum and Articles

The attached tables try to provide an informal road map to compare the existing Constitution and the draft Memorandum and Articles. They do not provide a detailed analysis of the new and the old clauses – but provide a guide as to how matters have been updated and changed.

Appendix.

New Reference	Existing Reference	Comments
<i>Memorandum of Association</i>	<i>Existing Constitution</i>	
1. Name	1. Title	Same: Our name: Scottish Orienteering Association.
2. Registered Office	-	New: Location of offices – Scotland
3. Objects / 4. Power	2. Purpose	Similar in Intent: The objects and power of a company limited by guarantee are deliberately drawn widely. They are seen as “enabling” clauses, rather than prescriptive clauses of matters which the SOA <u>must</u> do. (Compare the similar clauses in the BOF Memorandum and Articles which are referred to in the existing Constitution)
5. Income		New – says that income must be used for the purposes of orienteering
6. Liability / 7. Guarantee	-	New – these are the crucial new clauses in the company structure which protect the membership in the event that the SOA goes into liquidation However, there is now no equivalent of clause 3(b) in the existing constitution whereby members indemnify the Executive, office bearers, officers, officials and employees of acts and omissions made in good faith.
8. Winding up of SOA	13. Dissolution	Similar in Intent: Both say that if we wind up the SOA, the existing members do not get a share of the assets. The new constitution goes further and proposes a mechanism for putting assets into trust for a new orienteering governing body.

New Reference	Existing Reference	Comments
Articles of Association	Existing Constitution	
1. Preliminary	-	New. Some legal boiler plating and definitions used in the body of the text
2. Membership / Voting	3(a) Hon Presidents/ Vice Presidents 4. Membership 5. Voting	<p>Updated. The new membership provisions have to be read in conjunction with the Membership Bye-Law (see below in point 4.1 of the new Articles why we split material between the Memorandum and Articles and Bye-Laws).</p> <p>The provisions have been updated in two respects: (i) to take account of the new BOF membership scheme which was implemented from the start of 2007 (ii) to extend voting rights to older juniors. Company law structure in Scotland makes it convenient to allow people over the age of 16 to fully participate in the governance of the SOA. In this day and age, it seems strange to exclude “Juniors” (who could either be aged up to twenty, or be older and be bona-fide students) to be excluded from fully participating in the governance of orienteering in Scotland. See also the note re membership classes below this table.</p>
3. Membership Fees	7(a) Finance	Same: Membership Fees for the next year set at the AGM.
4.1 Memorandum and Articles	12. Alteration to the Constitution	New Provision More Stringent. Existing provision is for change by a simple majority – the new requirements (which come from Company Law) require a three-quarters majority for a change. Hence the splitting of some material into Bye-Laws.
4.2 Memorandum and Articles	10. Bye-Laws	<p>Updated: The existing Constitution calls for “Bye-Laws” and automatically brings into force Bye-Laws made under Codes of Conduct of BOF.</p> <p>The new Articles similarly allow for</p>

		<ul style="list-style-type: none"> (i) Bye-Laws , but also (ii) policies (eg the child protection policy and drugs policies which are explicitly mentioned), and (iii) Rules – under which any SOA variations to the “rules of the sport” would be made – for example, any special provisions for the Scottish Championships.
5.1 General Meetings	8. AGMs	Same: AGM by 30 th June each year
5.2 General Meetings	9. EGMs	Same: EGMs can be called by 10% of the membership
5.3 / 5.4 Notice	11. Notice	<p>More Stringent: Longer notice periods required.</p> <ul style="list-style-type: none"> (i) Eight Weeks ahead of proposed business from members (no current equivalent) (ii) Six weeks nominations for the Board (no equivalent) (iii) Changes to the Memorandum and Articles – 8 weeks (up from 6 weeks), with an iterative process for changes to the proposed changes to be made (iv) Three weeks notice of the meeting (up from two weeks)
5.5 Quorum	-	New Twenty voting members
5.6 – 5.8 Election of Directors	3. Management	<p>Updated: New proposal in Memorandum and Articles is for President, Secretary and Treasurer and up to Nine Other Directors. This is not as specific as existing constitution (but proposals for improving the governance of the SOA are put forward by Donald Grassie elsewhere).</p> <p>New: That there should be three year terms of office, with a maximum term of six years as an “ordinary” Director, and clauses to try to achieve the retirement of a third of the directors each year. The aim is to promote continuity, while limiting the terms in office of various of the office bearers.</p>
5.9 Qualified Accountant	-	New provision for audit of accounts

5.10 Business of AGM	11(c), 11(d) Notice	Updated: Standard Agenda for AGM including matters called for in existing constitution such as accounts
5.11 – 5.13 Procedure at AGM	-	New
6. Board of Directors	3(b), 3(c), 3(d) Management	Updated. See previous comments under election of Directors, and new proposals re governance.
7. Powers and Duties of the Board	3(b) Management 3(d)	Updated. Board is accountable for running the SOA, in the way that the Executive currently is. There is now a minimum requirement to hold meetings four times per year (up from the current minimum requirement of three times per year). In practice, meetings are more frequent than either minimum requirement.
8. Resignation of Board Members	-	New provisions
9. Committees	3(d)	Updated Rights of the Board to appoint committees and working parties. Responsibility remains with the board.
10. Conflicts of Interest	3(f) Management	Updated

New Reference	Existing Reference	Comments
<i>No New Equivalent</i>	<i>Existing Constitution</i>	
	3(e) Management - Areas	See comments above about new governance structure
	6. Contracts	Contracts / Investments in SOA are currently in the name of the Officers of the SOA. The new SOA will have its own “legal personality” – and can directly enter into contracts, own property etc in its own name

A note on the proposed membership classes.

This draft constitution separates two concepts

- (i) what you pay, and
- (ii) your rights as a member.

If you have joined individually, what you pay as a member is defined by whether you are a “Senior” or a “Junior”.

Your rights as a member to participate in the governance of the SOA depends on your age – in this categorization if you join individually, you are either an “Individual” member or a “Youth” member.

		Class of membership – affects (i) do you put up the £1 guarantee, and (ii) do you get to vote	
		“Individual” (16 and over)	“Youth” (under 16)
Age for payment of membership fees	Senior - ie 21 and over (but excluding students)	✓	n/a
	Junior – ie * under 20 * full time students	✓	✓