

# Questions & Answers

These questions are also available [here](#)<sup>1</sup>.

As defined in our articles and for brevity collectively referred to as ' **Mountaineers** ' who engage in hill walking, rock climbing, ice climbing, ski mountaineering and mountaineering collectively referred to as '**Mountaineering** '.

## **In simple terms what are the proposals and how will they be implemented?**

1. There will be a special resolution (i.e. requires 75% of voting members to approve the motion) in order to update the Articles of Association to reflect the legal and good governance standards applicable in 2018 and to allow the continued recognition by Sport England crucial to our funded partners and important to the BMC more widely..
2. There will be an ordinary resolution (i.e. requires 50% of voting members to approve the motion) in order to agree the process and timelines by which the remaining recommendations by the ORG are reviewed and implemented as appropriate and to commit to delivering this key proposal, for the April 2019 AGM wherever possible.

Each of these are equally important parts of the move to ensure we meet the legal and good governance standards which are necessary, but also ensure that the BMC as a whole is able to develop and evolve in line with the wishes of the members.

## **Where are we now, and where are we going?**

The current articles have been accepted by most people as needing review for a number of years. This was discussed back in 2016 by the National Council [Need to confirm when first discussed by NC] but was clearly given emphasis by the Motion of No Confidence. The ORG was formed and reported in Nov 17, with their amended report issued in Mar 18.

Through 2017, various discussions were held with Sport England as we approached, and passed their compliance deadlines. In Feb 2018 the BMC were told that they needed to be compliant by Aug 18 as an absolute deadline.

At the Feb 18 NC meeting it was agreed that the National Council needed to "Produce a set of recommendations to take to a June AGM, taking legal advice on what is possible, to enable us to meet Sport England's requirements for continued funding" and in Mar 18 the Implementation Group TORs were agreed by the NC.

The current articles require that the BMC must hold an AGM in June, at the latest, and that matters for the AGM must be issued 60 days before the AGM. Therefore the proposals must be submitted by 30 Apr 18.

## **Is this a 'done deal'?**

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<sup>1</sup> <https://thebmc.zendesk.com/hc/en-us/categories/360000262914-Briefing-Paper>

NO. While the National Council are aware of other proposals to the ORG recommendations, the NC Implementation Group proposals, subject to member consultation, represent the approach we believe is best for the BMC at this time. These 2 draft proposals detail what the IG think is the best way for the BMC to move forwards whilst retaining stability and taking the necessary time to review and action the remainder of the ORG recommendations. Once we have received feedback from the Areas and Members we will update the proposals and issue to the Membership for voting at the AGM in June.

### **Are we going too quickly?**

Our own articles that require an AGM before the end of June), we are also constrained by Sport England who have imposed a time constraint on this process as if we don't get the articles right, in their opinion, by August then we will no longer be eligible for funding with all the issues that entails (see below). That is exactly why we have split the ORG recommendations to deal only with the immediate issues in June and take more time to consider and consult on the other recommendations. We did consider holding 2 General Meetings this year, but the cost to the BMC, and members, as well as the disruption to staff and volunteers, were not proportionate to the very small increase time it gave us to do anything.

We believe the proposals provide a sensible balance between the time constraints, and their implications, and taking the time to ensure we get this right.

### **What needs to change in the Articles and why are you recommending we meet Sport England's Tier 3 requirements?**

The articles were written in 1993 and have had minor amendments since then. Having taken independent legal advice<sup>2</sup> the National Council (NC) agreed, agreed in February 2018, that they needed rewriting to address the legal issues and ambiguities identified in the legal advice, and aim to meet the SE governance requirements. The draft articles were written by independent legal advisors to fully reflect the legal and good governance standards applicable in 2018 and represent what is appropriate legal and good governance requirements for an organisation of over 80,000 members and with an annual income of circa £2.9M<sup>3</sup>.

The BMC are currently a Tier 3 funded organisation by SE as per their statement below

*The tier decision for an organisation is dependent on a number of factors. These include: amount of funding; length of relationship with the partner; nature of the relationship with the partner and type of organisation. The amount of funding is one factor but certainly not the deciding factor. All of the National Governing Bodies who we've previously funded, and who we continue to fund, have been assessed as Tier 3 of the Code, regardless of their size or level of investment.*

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<sup>2</sup> APPENDIX: LEGAL FEEDBACK to the BMC Independent Organisational Review Group Report Nov 17

<sup>3</sup> BMC 2016 signed accounts (<https://www.thebmc.co.uk/Handlers/DownloadHandler.ashx?id=1448>)

Based on the additional governance requirements associated with Tier 3 funding there were a number of changes, beyond the changes which we believe are needed to the M&AA anyway. SE have stated these changes are necessary to meet their requirements and are detailed in the draft AoA.

With respect to why we should continue as a Tier 3 organisation, there are 4 specific reasons this recommendation is made:

1. The BMC is the representative body for hill walking, climbing and mountaineering in England and Wales and it is also recognised by Sport England as the National Governing Body (NGB, their terminology not ours) in England. This status gives the BMC a level of authority and respect when engaging with government and national organisations including conservation and land ownership bodies, and other statutory agencies. This authority is critical in our ability to effectively act as a representative body for members on issues such as access; note the lack of Welsh NGB status conversely limits our ability to engage similarly with the Welsh Assembly and exert the wider influence that would bring us (which is recognised in Recommendation 25 of the ORG).
2. The BMC is best placed to be the umbrella body for mountaineering. This is recognised in the Sport England's "whole sport bid" which includes 4 other climbing and mountaineering organisations. NGB status and its tier 3 governance requirements ensure that the BMC can partner with, apply for, and channel funding to the funded partners; Mountain Training UK (MTUK), Mountain Training England (MTE), Association of British Climbing Walls (ABC), and ABC Training Trust (NICAS and NIBAS schemes). Whilst these partners have been temporarily funded directly from Sport England, if the BMC is unable to meet tier 3 governance requirements, then the funded partners will lose access to coordinated bid funding from SE. They consider this funding as critical to their operations. Consequently, they believe, it's highly likely the funded partners would need to partner with, or create, an alternative tier 3 body, in order to access this coordinated "whole sport" funding. Critically this would lead to the 'decoupling' of training and the instructors delivering it, a significant route of new participants, from the BMC, its history and its ethos.
3. Whilst the BMC will have to substitute reducing government funding over the next 3 years, currently it forms a significant part of the BMC funding (likely £550-680k over the next 3 years); in addition our funded partners expect circa £400k over the same period). Loss of Sport England funding at this stage would put significant strain on the BMCs ability to carry out many of the uncontentious activities it currently does including access, equity, youth and competitions work. Also, given the current government funding constraints, it is unclear whether the BMC would be able to regain funding if it was lost at this time. By implementing the AoA changes now the BMC can retain funding at this time; thus reduce the potential turmoil and pressure; whilst allowing that any future decision by members to withdraw from the constraints imposed by government funding to be managed.
4. UK Sport also uses the same governance criteria as Sport England. Funding for the 2020 Olympic programme would not be impacted (it is being routed via the English Institute of Sport) but failure to comply with the requirements of the Governance Code would remove the possibility of future Olympic related funding coming to the BMC.

## **Can we not just gain NGB status for competitions and Training?**

The simple answer is probably not and definitely not in the timelines available.

Firstly the largest single element of BMC potential SE funding is for supporting our hillwalking strategy which would not be covered by such a body.

Secondly the definition of Sport used by Sport England is “Sport means all forms of physical activity which, through casual or organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competition at all levels”<sup>4</sup>. It is considered highly unlikely that Sport England would accept a Tier 3 compliant sub body for a part of the ‘sport’ controlled or owned by a non-compliant BMC overseeing the rest of the ‘sport’. From a reputational point of view as well, if we were thought to be manipulating our corporate structure simply to avoid having to comply with SE’s Code of Good governance then it could be detrimental to our standing with other sporting bodies and the wider community.

## **So what will happen if we lose SE funding?**

To be clear the loss of influence and reputation, and the effects on the Funded Partners, are by far the larger issues, however....

That is impossible to predict accurately as it would need consultation with the Staff, Exec, NC and others. Having said that we know that we expect £550-680k over the next 3 years (with an additional circa £400K going to our funded partners). While we have not yet decided what all of the £600K will fund, partly because of the uncertainty, we do know that some of that funding is ‘ring fenced’ or planned to fund:

1. the development of the BMC Hill Walking strategy.
2. some specific roles in the staff; Hill walking, Equity, Clubs & Youth.
3. the Youth Climbing (Development) Squad.

All these activities would need to be reviewed and either stopped, reduced and/or funded from elsewhere, with significant impact particularly on our funded partners.

## **How have the Articles been written (AKA how much influence was given to Sport England)?**

The changes proposed are fundamentally about implementing the legal requirements of the Companies Act and good governance. That said on 17 Feb 18 the NC voted unanimously to “Produce a set of recommendations to take to a June AGM, taking legal advice on what is possible, to enable us to meet Sport England’s requirements for continued funding”<sup>5</sup> so it was clear that SE approval of the new articles was also required.

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<sup>4</sup> Council of Europe’s 1992 European Sports Charter (as revised in 2001)

<sup>5</sup> Para 5.1.8 of NC Minutes 17 Feb 2018.

The new Articles were initially drafted by independent lawyers with a brief to ensure they comply with company law and good governance best practice.

These changes primarily addressed the issue of ensuring legal liability for all BMC activity is clearly with the Directors as required by law, and hence covered by our liability insurance..

After the Articles were drafted, and in order to address the NC vote, a series of meetings were held with Sport England. The changes are shown in the proposed AoA which are required by Sport England in order to comply with their code.

### **Have the Sport England required changes removed member accountability or influence?**

Implementing an Independent Chair earlier than our original proposal and including a Senior Independent Director do not, in our opinion, have any material effect on the accountability of the Board to members.

While the Reserved Matter of Strategy does cede some control to the Board from National Council and members we believe the facts that:

- the objects and articles can only be changed through a General Meeting (Article 33.1);
- There is the ability to vote off Directors (Articles 12.5 and 20.5); and
- The articles include a mediation processes (Articles 21.3-21.5), which ultimately requires a vote at a General Meeting if it cannot be agreed;

provide effective controls and safeguards for members.

It should also be noted that the Board currently is made up of mountaineers and this will continue in the future. We believe this is the ultimate safeguard to ensure the BMC remains focussed on the activity we all love.

### **Is this “handing control to Sport England?**

Absolutely not, where there are changes of ‘control’ it is between the National Council and the Board, both of whom comprise fellow members of the BMC.

The majority of changes are about transferring the legal responsibilities for decisions to the Board where they are legally accountable for the outcomes. The changes specifically required by Sport England are clearly identified and if members wanted to withdraw the BMC from recognition by Sport England these clauses could be removed to leave a set of Articles which would still reflect the legal and good governance standards applicable in 2018.

It should be noted however that in line with the ORG recommendations there remain a number of potential changes to the articles that will be reviewed as part of Proposal 2 for implementation by special resolution(s) in April 2019.

### **How are the decision making bodies held accountable, and to account, by members?**

The first control is the Objects of the BMC defined in the Article 1. These state what the BMC is for and are unable to be changed without a General Meeting. This is unchanged from the current articles.

The Reserved Matters then provide a list of key issues that are subject to scrutiny by the National Council and members and if necessary a vote at a General Meeting. This is an additional control added to the new articles (21.3-21.5).

The Board meeting minutes will be published on the BMC website to ensure transparency. This is an additional safeguard added to the new articles (23.15).

Finally any Director can be removed at an AGM, or by calling a special General Meeting as described below.

### **But we are handing the power to the Directors now so how can we ensure they won't go 'off track' in the next year?**

During the Transition Period the Directors you elect at the Jun 18 AGM will stay in post. In Apr 19 the Stage 2 outputs will be in place or proposed for your vote. These will have been developed in consultation with members and we hope will therefore provide you with the checks and balances that will ensure you can trust, or have the controls, (depending on your view) to ensure the Board are accountable to the members through better methods than the 'nuclear option' of voting off directors.

### **What will Board look like if the proposal is agreed?**

During the Transition Period the Board of Directors composition will be as per the current BMC Executive, with the addition of an Independent Chair, once appointed. A total of 12 people.

- Independent Chair once appointed
- the Elected Officers;
  - a President;
  - not more than 3 Vice-Presidents; (the intent is to keep this at the current 2 VPs during transition to ensure 12 person limit not exceeded)
  - a Treasurer
- the CEO;
- three Independent Directors; and
- not more than three other persons as National Council shall from time to time appoint

Note: Sport England have accepted this Board structure for the transition period, despite it not complying with their requirement 1.4

After the Transition Period, the Board of Directors composition will be 12 people:

- Independent Chair, co-opted by the Directors and approved at the AGM.
- The President (ex officio)

- Up to 3 Directors appointed by National Council, one of whom may represent Affiliated Clubs.
- The ex officio Executive Director
- Up to 6 additional Directors co-opted by the Directors. 3 Directors will be independent and the composition of the remainder will be part of a proposal to the next 2019 AGM.

### **How are the Board accountable to members?**

The Companies Act and Sport England Code of Sports Governance both require “All directors must act in the best interests of the organisation, and in a manner consistent with their legal duties”. So first of all they have a legal duty.

Any Director can be removed by the membership; at an AGM or by 100 members requiring the calling of a General Meeting as defined in Articles 12.5 and 20.5.

In addition, The President and Independent Chair are elected by members at the BMC AGM and can be removed by the members. The National Council members are elected at Area AGMs, and can be removed by Areas.

### **How do the Board represent members?**

The Independent Directors are unpaid volunteers, as are all Directors except the CEO, they are unlikely to volunteer for a post where they have no interest in the activity. The independence of an Independent Director relates to their not having served on the Staff, Board or National Council for at least 4 years (Article 19.3.4) NOT their independence from ‘mountaineering’, it is highly unlikely that they won’t already be members of the BMC and even less likely they would not have a clear interest in mountaineering.

It is recognised the Area Meetings are, currently not well attended in relation to the membership in the area as a whole, but this does not mean their appointments are not legitimate as representatives of the members. Stage 2 is looking at how to improve their accountability through better area participation via electronic and other methods.

### **Are the Directors paid?**

The Independent Directors, President and National Council directors are all unpaid volunteers. The only Director who is paid is the CEO who is a member of the BMC staff.

### **What about the rest of the recommendations?**

Proposal 2 provides the commitment to review the ORG Recommendations not covered by Proposal 1 and includes the proposed timelines and pathways for the recommendations to be reviewed, proposals made and finally those proposals accepted (or not) and implemented.

### **What happens at the next AGM if this goes through? Do we need another 75% vote?**

It would be highly likely that at the next AGM there would be requirements to change the articles to reflect the outputs from Proposal 2.

### **Why do we need electronic voting?**

The AGM and area meetings structure as currently constituted can only ever allow a select few of the members to participate; many members don't attend as they are limited by time, geographical or cost constraints. Digital participation, in addition to the current attendance and proxy voting systems, will allow participation by the widest cross section of the members.

The increasing digital maturity of both the membership and the technology means that member participation via electronic systems is now a viable option.

### **What's the difference between Electronic voting, and proxy voting, if we can vote by proxy electronically already?**

Proxy voting is conducted before the AGM is held, as such the votes are made based on pre-issued papers, and the discussions at the AGM do not influence the votes. Allowing electronic voting by members provides opportunities to vote themselves, not via proxy, and without time restrictions on proxy submissions; potentially up to the point the vote is taken at the AGM. For example the AGM could be live streamed and votes cast electronically after the debates, and while the voting is happening at the AGM itself. Obviously this depends on us identifying the appropriate systems to support such a scenario, and the change solely allows for that possibility of electronic voting it does not mandate that it must be used.

### **Why aren't you publishing 'alternative visions'?**

The IG proposals are what the NC believe are the right proposals for the BMC, subject to members comments.

### **What about area policies?**

The authorities for areas issuing policies in the old articles (Article 48.2) are unchanged in the new articles (Article 28.8.2) , therefore there are no changes to areas ability to issue policies within their authority, e.g. local bolting policies.

### **Why increase the number of members required to raise a resolution from 25 to 100?**

The 1993 articles were drafted when the BMC was circa 20000 members. We are now 80000 members so this is percentage wise, no change. The companies act sets the limit of 5% of members (circa 8000 in our case) which is clearly very high, but equally our 25 is very low.

It is therefore proposed that increasing the number required in line with our current membership size, and aligning the numbers required to raise a motion with the number



required to call a general meeting was a sensible compromise requiring just 0.1% of members to raise a resolution.

**Can you clarify the 1/3rd of Board members being member elected; and it's implications?**

Article 19.3.2 says

- Up to 3 Directors appointed by National Council, one of whom may represent Affiliated Clubs, provided that the total number of Directors appointed by National Council, together with the President, shall not at any time exceed one third of the total number of Directors from time to time in office;

Article 19.9 says

- In the event that the number of Directors appointed by National Council, together with the President, exceeds one third of the total number of Directors from time to time, either one of the Directors appointed by National Council shall abstain from voting for such period (as determined by National Council) or steps shall be taken by the Directors to promptly co-opt Director(s) to ensure the relevant ratios required by this Article 19 are maintained.

These rules apply to the number of Directors elected/appointed to the board, NOT the number attending any particular meeting. So for a meeting as long as a quorum is reached the Directors 'origin' is irrelevant.

If a Director left the board suddenly, and without a successor plan, then an NC member would need to abstain from voting until the board was returned to it's full strength.