

AN ADVISORY BOOKLET ON FORMING A SPORTS CLUB

A guide to a CLUB CONSTITUTION

sportscotland

and



CONTENTS

INTRODUCTION

DRAFTING A CLUB CONSTITUTION

FORMING A SPORTS CLUB

WHAT TO INCLUDE IN THE CONSTITUTION

SAMPLE CONSTITUTION

- Name
- Objects
- Membership
- Management
- General Meetings
- Finance and Accounts
- Bye-laws
- Dissolution

INTRODUCTION

This advisory booklet has been prepared in response to frequent requests received for advice on how clubs should properly form a constitution.

The advisory booklet has been prepared by Bowls Scotland with support from **sportscotland** and Harper Macleod LLP.

DRAFTING A CLUB CONSTITUTION

The Constitution should be a very simple document which aims to ensure the smooth working of a Club. The Sample Constitution in this booklet is one way of achieving this. This is a very basic version of a Constitution and as the Club grows new issues will arise which need to be formalised.

It is important to be aware that a Club formed using the Sample Constitution will be an unincorporated association with the Constitution essentially being a contract between the members regulating how the Club will be run and the rights and responsibilities of individual members. In a sports context it is common for clubs with a small membership to start off as an unincorporated association because the structure is cheap to set up and can be run with relative informality. That is not to say that a Club should always remain an unincorporated association; as a Club evolves it may become more appropriate for the Club to operate through a more formal structure such as a limited company.

Perhaps the overriding feature of an unincorporated association is that it has no legal identity separate from its members. Therefore there is no separate body with limited liability so when dealing with third parties a member will be treated as an individual and his/her membership of the Club gives him no particular protection. It is however common for office bearers and committee members to assume liability for debts owed to creditors and compensation owed to injured third parties although this will depend on the specific terms of the Club's Constitution.

For the above reasons the Sample Constitution is not intended for a Club which (i) owns significant assets, (ii) is or may be required to incur any material liabilities or risks that cannot be fully insured against or (iii) operates a professional sport.

FORMING A SPORTS CLUB

When it is proposed to form a Club, interested individuals should agree on the membership of a Steering Committee or Group. One of its first tasks will be to draft a constitution. Having prepared a draft, the Steering Committee should then seek opinions from the prospective members, by circulating copies of the draft and by calling a meeting when the draft can be discussed.

A second draft can be prepared and circulated in the light of the views expressed and a second meeting called for the purpose of adopting the Constitution formally and forming the Club. This is the Inaugural Meeting. When the Constitution is adopted the Executive Committee (i.e. office bearers and committee members) can be elected following the terms of the Constitution, subscription rates can be determined and the Club will then have been formed.

Moving forward and depending on the terms of the Constitution, responsibility for the day to day running and administration of the Club will usually be delegated to the Executive Committee who will ordinarily stand for election/re-election under the Constitution.

WHAT TO INCLUDE IN THE CONSTITUTION

The major aim of the Constitution is to state clearly how the Club's procedures should work. It will not cover all contingencies and the power of discretion in cases of dispute will normally lie with the Executive Committee or with a General Meeting. It is always advisable to have a well-designed constitution covering all activities of the Club. This should include clear provisions showing what matters can be determined by the Executive Committee, what is left to the Club in General Meetings, and the majority of votes needed for each body to take an effective decision.

To avoid a situation in which nothing can be done, the thresholds of the quorum necessary to constitute a meeting should be kept relatively low as long as all members are given reasonable notice of meetings to give them the opportunity to attend. Consideration also needs to be given to the majority needed for a decision to be taken and whether different levels of majority are required for different types of resolution. For example a resolution dealing with ordinary day to day business may simply require a bare majority of more than half the votes whereas a resolution proposing changes to the Constitution may require 66% of the votes to be passed.

A Club operating as an unincorporated association is not a separate legal person so any contracts that are entered into will need to be entered into by one or more individuals on behalf of the Club, who will usually be members of the Executive Committee. It is therefore important for the Constitution to make clear the extent of the powers of the Executive Committee members to enter into contracts on behalf of the Club and the extent to which they have the authority to legally bind the members (and make the members potentially liable) under a contract.

To allow for detailed control of the Club's activities it may be necessary to have a set of Byelaws. The Sample Constitution on the following pages does not include suggestions for Byelaws because these would normally be very specific to the particular activities of the Club. With the above in mind, the formal Constitution of the Club should state the basic structure governing Management, Finance and the Club's democratic processes. Care should be taken to ensure that the Constitution and any Byelaws are compliant with all applicable legislation and do not contradict the rules and regulations of any governing body to which the Club is affiliated.

SAMPLE CONSTITUTION

The following pages provide a Sample Constitution for the proper formation of a sports Club, together with clause by clause Guidance Notes. This sample Constitution is intended for outline guidance. When you come to apply it to your own situation you might find it advisable to consult a lawyer to ensure that you have covered all the Club's specific areas of activity. Legal advice would be essential if the Club developed to the extent that it was employing staff, applying for a liquor licence, purchasing property, borrowing or incurring any material liabilities or risks, or if at any time changing circumstances, financial or otherwise, raised doubts about the relevance of the Constitution.

Some Clubs where their sport is now professional or where there are risks or potential liabilities emanating from for example large sponsorships, property transactions or risks with doping control matters, have taken the step of incorporating themselves as a company limited by guarantee to minimise many of their risks. This draft constitution therefore is not for such purposes and is intended to be straight forward.

Never forget to provide appropriate insurance cover for all the activities of the Club and its office-bearers.

1 NAME

The Club shall be called

(Hereinafter referred to as the Club) and it shall seek affiliation to and be bound by the rules of Bowls Scotland.

This clause is fairly self-explanatory but it would be advisable to check that no-one else in your sport or area has chosen the same name. The same applies to any abbreviated form of the name that the Club may wish to use.

The Club should seek to affiliate to Bowls Scotland and be bound by its rules to ensure opportunities are provided to participate in their competitions and coaching schemes, for example.

2 OBJECTS

2.1. The objects of the Club shall be to

.....
.....
.....

The Objects should be specified clearly and should define the Club's area of operation in geographical as well as sports terms, e.g. "to encourage the promotion and provide facilities for the practice of the sport of lawn bowls inand undertake other activities incidental or conducive to the furtherance of these objects".

2.2. The Club is committed to encouraging the highest ethical standards. All individuals involved in the Club should conduct themselves with integrity, transparency, accountability and in a fair and equitable manner.

The Club should formally adopt a positive approach to the ethics of sport and a statement along the lines set out in the sample constitution should provide a sensible basis to allow the Club members to enjoy their sport in an ethical framework.

3. MEMBERSHIP

3.1. The membership shall consist of the following categories:

.....
.....
.....

Included here would be a definition of the various categories of membership which would depend greatly on the type of Club involved, e.g. junior, senior, family, student, etc. Clubs should give consideration to the flexibility of their membership structure and carefully consider whether or not their categories of membership meet the needs of existing and potential members.

3.2. Members in each category shall pay Membership fees as fixed at each Annual General Meeting. The Club in General Meeting may also require Members to contribute to the funds of the Club by way of a special levy.

3.3. Any person seeking to join the Club shall submit an application to the Executive Committee. Members shall be admitted by the Executive Committee. Membership is open to all and no application for membership will be refused on other than reasonable grounds. There will be no discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

Any application form for membership should contain a clause whereby the applicant consents, for the purpose of the Data Protection Act, to the Club holding and processing the data on the form for the purposes of the Club.

Note – Clubs wishing to apply for sportscotland funding may be required to insert additional constitutional clarification including –

3.3 (above) extended to include the statement that no application for membership shall be refused on the grounds of political or other opinion, and the Standing Orders/Byelaws shall describe any reasonable grounds for refusing membership and any appeal process that will apply to refusal or removal of membership.

- 3.4. It shall be a condition of any person becoming a member of the Club that they accept and agree (and by applying to become a member they shall be deemed to have agreed) to be bound by the terms of this Constitution and any bye-laws from time to time adopted by the Club, in particular without prejudice to the foregoing generality, the requirement to conduct themselves in accordance with the Club's ethical framework and the bye-laws as to discipline set out therein.

It is likely that any court would consider this to be part of the commitment of joining a Club whether written into the Constitution or not but it is better to state clearly that this clause is part of the 'contract' of becoming a member.

4. MANAGEMENT

Control of any Club is usually delegated to a democratically elected committee which may be called the Executive Committee, Management Committee or Committee. The aim of this section should be to specify how this Committee should be formed and how they should look after the interests of the Club.

- 4.1. The affairs of the Club shall be conducted by an Executive Committee which shall consist of the Officers of the Club plus [X] ordinary committee members, all of whom shall be elected at the Annual General Meeting.

The detailed composition of the Committee will vary from Club to Club but it would be normal to specify how many members will be on the Committee. The club should carefully consider the positions required for the operation of the club and specify the requirements of each position in role descriptions.

- 4.2. The Officers of the Club who shall be honorary shall be the Chairperson, Vice-Chairperson, Treasurer and Secretary. If the post of any officer or ordinary committee member should fall vacant after such an election, the Executive Committee shall have the power to fill the vacancy until the succeeding Annual General Meeting.

Officers are members of the Club elected to fulfil specific basic responsibilities. It may be necessary to increase the number of officers if there are major tasks to be undertaken, e.g. Fixture Secretary.

- 4.3. All Executive Committee members must be members of the Club.

It may be necessary to be more specific if the Club has a variety of levels of membership.

- 4.4. Any property relating to the Club shall be held in the name of the said Officers as trustees *ex officiis* in trust for the members of the Club and the Officers shall further be entitled to sue and be sued on behalf of the Club as trustees *ex officiis*. In their capacity as trustees *ex officiis* the Officers shall all be entitled to be personally indemnified out of the funds of the Club where they are acting bona fide in their capacity as Officers of the Club.

If Clubs do have in particular, land which they own or lease, the title to that land or lease will require to be taken in this method. This requires legal advice.

- 4.5. The Executive Committee shall have full power to deal with all matters relating to the Club not reserved to a General Meeting in terms of this Constitution, including power to make public and enforce such byelaws as the Committee feel necessary to govern the activities of the Club [including bye-laws relating to discipline].

A clear statement should be made setting out the full range of the powers of the Executive Committee. The Club may find it helpful to have Bye-laws to cover matters which are really too detailed for inclusion in the Constitution e.g. clubhouse rules, club league rules, team selection, rules as to visitors, etc.

5. GENERAL MEETINGS

General Meetings are the means whereby the members of the Club exercise their democratic rights in conducting the Club's affairs.

- 5.1. Annual General Meeting

The Club shall hold an Annual General Meeting in the month of to:

- Approve the minutes of the previous year's AGM.
- Receive reports from the Chairperson and Honorary Secretary.
- Receive a report from the Honorary Treasurer and approve the Annual Accounts.
- Receive a report from those responsible for certifying the Club's accounts.
- Elect the Executive Committee.
- Appoint someone responsible for certifying the Club's accounts.
- Fix the subscription for the ensuing year.
- Consider changes to the Constitution.
- Review and consider any Bye-laws.
- Deal with other relevant business.

The Annual General Meeting usually fulfils the basic purposes of electing officers and other members of the Executive Committee, of reviewing the Accounts and of considering other matters of importance to the Club membership. It also considers changes to the Constitution.

- 5.2. Extraordinary General Meeting

An Extraordinary General Meeting shall be called by an application in writing to the Secretary supported by at least 10% of the members of the Club. The Executive Committee shall also have the power to call an Extraordinary General Meeting by decision of a simple majority of its members.

Extraordinary General Meetings (EGM) may be called to change the Constitution or for other matters of importance between Annual General Meetings. It is recommended that 10% of the members be required to call an EGM.

- 5.3. Notices

At least 14 days' notice and the Agenda shall be given to all voting members of any General Meeting. No business shall be conducted unless fair notice thereof is contained in the Agenda.

This clause simply aims to ensure that the membership receives proper notification of all important matters.

5.4. Voting

- 5.4.1. With the exception of changes to the Constitution, decisions put to a vote shall be resolved by simple majority at General Meetings.
- 5.4.2. The Chairperson of the Club shall hold a deliberative as well as a casting vote at general and committee meetings, in each case at the time the meeting commences its business.

There is normally no need for any complicated voting procedures.

5.5. Quora

The quorum at General Meetings shall be 20% of the members and the quorum for Committee Meetings shall be 40% of the members.

A minimum quorum at a General Meeting would normally be 20 per cent of the voting membership. A larger quorum is appropriate for the Committee.

5.6. Changes to the Constitution

- 5.6.1. Any change to the Constitution shall require a two thirds' majority of those present, eligible to vote and voting at a General Meeting.
- 5.6.2. A proposal to change the Constitution must be submitted in writing to the Secretary who shall circulate the proposal to all members and allow seven days for submission of any amendments before calling a meeting in accordance with rule 5.3 above.
- 5.6.3. All proposals for changes to the Constitution shall be signed by two members eligible to vote at a General Meeting.

This section details the procedure for any changes to the Club's Constitution.

6. FINANCE AND ACCOUNTS

It is prudent for every Club to ensure that the handling of its financial affairs is done in an efficient manner and in a way which protects the individual Committee members responsible for the handling of money.

- 6.1. The financial year shall run from to each year.

The dates of the financial year will depend on a number of factors including the Club's season. Please ensure that the AGM date (in 5.1) leaves sufficient time for certification of the Accounts.

- 6.2. The Honorary Treasurer shall be responsible for the preparation of Annual Accounts of the Club.

This is essential for the financial control of the Club.

- 6.3. The Accounts shall be certified by an appropriate independent person elected annually at the Annual General Meeting.

An independent Auditor is essential to protect the interests of the Club's members. The Auditor should be a reasonably independent person and may be a Club member with a knowledge of accountancy and who is not a member of the Executive Committee.

- 6.4. All cheques drawn against the Club's funds shall be signed by the Treasurer and one other nominated office-bearer.

Normally cheques are signed by the elected officers of a Club. Often the requirement for signing cheques will be the Treasurer and one other officer but, for convenience, the Club may decide that the signature of the Treasurer is sufficient for the issue of cheques up to, say, £25. A bank

manager will be able to advise on the opening of bank accounts. In the same way that officers have a cheque signing function, they also are legally responsible for any negotiations necessary in the conduct of the Club's business. Full legal advice should be sought whenever necessary.

- 6.5. All members of the Club shall be jointly and severally responsible for the financial liabilities of the Club.

In the event of a Club defaulting on any financial transaction the members will be jointly and severally responsible, i.e. each member is liable for the full amount but can seek to recoup any excess payment from the others. This clause may require amendment if there is a category of member (e.g. juniors) who are to be excused liability. The Executive Committee will also need to ensure that appropriate insurance cover is maintained against anticipated risks associated with the activities and operation of the Club.

7. CESSATION OF MEMBERSHIP

- 7.1. Any member may resign his/her membership by giving notice in writing to that effect to the Secretary.
- 7.2. Every such notice must, unless otherwise expressed, be deemed to take effect as from (date) next following its receipt provided that any member giving such notice after (date) in any year must pay his/her subscription for the following year.
- 7.3. If any member:
 - 7.3.1. is convicted on indictment of any criminal offence, or
 - 7.3.2. is adjudged as bankrupt, or
 - 7.3.3. makes a composition or arrangement with his/her creditors under the provisions of any statute, or
 - 7.3.4. has a trustee appointed for the benefit of his/her creditors, or
 - 7.3.5. is no longer capable of looking after his/her affairs

he/she immediately ceases to be a member of the Club but the Executive Committee may, in its discretion, reinstate him/her.

- 7.4. If at any time the Executive Committee considers that the interests of the Club require it they must invite a member to withdraw from the Club, by a letter specifying the time before which the withdrawal should be made.
- 7.5. If the member concerned does not withdraw the Executive Committee must submit the question of his/her expulsion to a special general meeting to be held within [6 weeks] after the date of the letter.
- 7.6. Not less than [4] weeks' notice of the meeting must be given to the members.
- 7.7. The Secretary must inform the member in question of the time and place of the meeting and the nature of the complaints against him in sufficient time to afford him a proper opportunity of offering his/her explanation.
- 7.8. At the meeting the member must be allowed to offer an explanation of his/her conduct verbally or in writing and if after that two-thirds of the members present vote for his/her expulsion he will immediately cease to be a member of the Club.
- 7.9. The voting at any such special general meeting must be by ballot if not less than 5 members present at that meeting so demand.

- 7.10. The Executive Committee may exclude from the Club until the special general meeting is held any member whose withdrawal has been requested.
- 7.11. On ceasing to be a member of the Club a person forfeits all right to and claim upon the Club and its property and funds.

This section deals with the circumstances in which a member may cease to be a member including as a result of resignation, a change in the member's circumstances and cessation at the instigation of the Executive Committee. In the latter case the bye laws should set out the grounds under which the Executive Committee may seek to terminate a member's membership.

If the Club wishes to adopt an abbreviated form it could instead replace section 7 above with the following:

"Any member's membership may be terminated by the Executive Committee in any of the circumstances and in accordance with the procedure as set out in the Byelaws/Member Code of Conduct/Discipline Procedure"

If this abbreviated form of words is used it is essential that the Byelaws/Member Code of Conduct/Discipline Procedure include an appropriate statement of grounds and a procedure for terminating a member's membership.

8. INTERPRETATION

- 8.1. The Executive Committee is the sole authority for the interpretation of this Constitution and any bye laws made by it from time to time.
- 8.2. The decision of the Executive Committee upon any question of interpretation or upon any matter affecting the Club and not provided for by this Constitution or by any bye laws is final and binding on the members.
- 8.3. The headings to this Constitution are for ease of reference only and are not to be taken into account in their interpretation.
- 8.4. Where the context so requires or admits, the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa.

9. DISSOLUTION

- 9.1. The Club is a non-profit making organisation. All profits and surpluses will be used to maintain or improve or develop the Club's facilities or to carry out the objects of the Association to which it is affiliated. No profit or surplus will be distributed other than to another non-profit making body on a winding-up or dissolution of the Club.
- 9.2. If, upon the winding up or dissolution of the Club there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall be transferred to some other organisation or organisations having objects similar to the objects of the Club, such organisation or organisations to be determined by the members of the Club by Resolution passed at a General meeting or in the absence of such a resolution (or that the extent to which it cannot be given effect) to the Association to which the Club is affiliated.

Procedures covering the dissolution of the Club must be settled. In the event of funds remaining after debts have been settled. Club members may wish to specify that such funds should be given to some associated organisation e.g. the governing body of the sport concerned or other local community club. The wording given in the Sample Constitution must be considered to be a basic minimum requirement and it seeks to avoid the possibility of losing the current favourable treatment of Club subscriptions from a VAT point of view, and also to comply with current Lottery conditions.

Further information on a Club Constitution, or any other sports-related topic, is available from Bowls Scotland (www.bowlsscotland.com) or sportscotland (<http://www.sportscotland.org.uk>).