

QUERIES/OBSERVATIONS ON PROPOSED NEW COMPANY ARTICLES FOR PETANQUE ENGLAND

NEW CLAUSE REFERENCE	QUERY/OBSERVATION
3. OBJECTS	The proposed objects (a) to (q) do not explicitly mention either the management/organisation/promotion of national competitions, tournaments and other competitive play (programme/fixtures) or the role that the NGB plays in finding or selecting representational teams in international competitions such as those organised by the CEP/FIPJP or at the Home Nations. Whilst it can be argued that this can be inferred from the more general objects it is somewhat strange for a sporting NGB's objects not to be explicit about this? A quick review of other companies linked to sporting NGB's shows that this is prominently stated. This is much more clearly stated in the existing Articles of the company (Clause 4.).
3. (j)	"....skilled in these skills. Slightly clumsy wording?"
4. DEFINITIONS	"Disciplinary Secretary". Is this a role that should feature in the Articles? Seems to be better placed/defined in a separate disciplinary procedure. I'm not sure that someone outside of the sport would have the necessary knowledge to make informed decisions. In specific cases that would benefit from external review, maybe an independent arbitrator could be involved? "Group Member". Not defined and difficult to assess without sight of the proposed Membership Regulations. Critical to see these alongside the proposed Articles. "Independent Director". The reference to "no material or pecuniary connection" to PE is not clear and, in my view, it is a mistake to appoint people who have no connection with the sport. "Membership Regulations". As above, need to be presented alongside the proposed Articles. "Non-Voting Group Members". No idea who these might be and why they need to feature. "Nominated Directors". Only nominated by the Voting Group Members? See below – individual members' rights should not be taken away in respect of nomination of Directors or voting on their appointment.

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4. DEFINITIONS	“Voting Group Members”. As above, Membership Regulations need to be presented alongside the proposed Articles. “Voting Members”. As above, Membership Regulations need to be presented alongside the proposed Articles. The removal of Individual Members’ rights to nominate and vote on the appointment of Directors should not be implemented as it undermines the fundamental membership basis of PE. See below.
11. MEMBERS OF PETANQUE ENGLAND	13. Individual Member - need to understand what is meant by the ‘full’ subscription i.e. does this exclude members who have paid reduced or promotional subscriptions. Same point as above about provision of Membership Regulations. 14. Group Members – need to understand who these are, but in any event, the justification for the creation of this class of member appears to be driven by taking away the rights of Individual Members to nominate and appoint Directors. The explanatory notes suggest the Group Members will be the Regions. This appears to be a hangover from the 20204 AGM when PE Directors suggested that the Individual Members’ rights should be removed and vested in clubs only. If the Group Members are to be the Regions, then this raises major questions as to the voting power of the regions. Will it be one region, one vote or will each region have votes based on the number of its members? If the former, it would appear iniquitous to give the same power to a small region as a large one. If the latter, power could be concentrated in very few hands and if these Group Members have proxy voting rights (it is assumed that legally they would have to enjoy such rights), it then is possible that one individual could attend the AGM and appoint Directors. It is a mistake to go down this route. There is nothing defective about ‘one member, one vote’ and Sport England’s “A Code for Sports Governance” in its Tier 1 guidance recognises the special nature of membership-based sports organisations. People potentially representing Group Members are Individual Members and their rights should be maintained there. At the 2024 AGM I also questioned how Clubs (or in this case Regions) would involve their members in decision-making. It would come down to officers taking the decisions. It is way better to avoid all of this and just leave rights with Individual Members. There is no need or

	justification for the creation of this category of Member, it is fraught with problems, creates division and it should be omitted. 16. Non-Voting Group Members – no idea who these might be and what purpose is served by creating this category. The focus of PE should be to recruit Individual Members. 17. Reference to Article 25 (a) makes no sense. 22. This is very confusing. On the one hand it says that the Directors may make, vary and revoke regulations relating to membership, yet at 23. It also states that this is subject to the consent of the AGM. No need for 22 at all? Directors can put resolutions to the AGM on this. Membership rights are at the heart of PE and changes to them must have the consent of PE's Individual Members. 23a. Not sure why it is felt necessary to introduce this clause on increases to membership subscriptions above CPI or 5% if lower. The current practice of the Directors considering the need for membership subscription increases and putting that the AGM works perfectly well. 24. & 25. The inclusion of disciplinary processes in the Articles is not a good idea. Much better to have separate Codes of Conduct and a Disciplinary Procedure which picks up issues around conduct or instances where a member might be bringing PE into disrepute. Such processes should operate independently of the Board and not be transacted by it. Any Board Member or the Board collectively can make a complaint about an Individual Member which can be addressed through due and proper process. 26. The reference to Article 25 (b) makes no sense.
GENERAL MEETINGS	29. The concept of a physical, hybrid or virtual meeting is fine, but the practicalities of this are not easy. Careful planning, the application of robust technology and secure monitoring will be required. 29 (e). The reference to 25 (b) makes no sense.

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POSTAL/ELECTRONIC VOTING	36. The concept of a physical, hybrid or virtual meeting is fine, but the practicalities of this are not easy. Careful planning, the application of robust technology and secure monitoring will be required.
PROCEEDINGS AT GENERAL MEETINGS	38. The reduction of the quorum to 50 is understood as it will reduce the possibility of an inquorate meeting with all its cost and inconvenience, as long as it is understood that theoretically 26 members in person or by proxy can theoretically constitute a simple majority and 38 members in person or by proxy can theoretically pass a Special Resolution (e.g. change the Article of the company). These are tiny proportions of the overall membership of PE. 43. The powers here of the Chair of the meeting to unilaterally adjourn a meeting go beyond the powers of the existing Articles. There's no inherent power to adjourn a meeting for just any reason under the Companies Act so this clause should be omitted.
VOTES OF MEMBERS	52. The concept of limiting the number of proxies a Voting Member may hold to 5 (except the Chair which has no such limitation). I would need to understand the legal basis for doing this as my understanding of S. 324 of the Companies Act 2006 grants every shareholder (in this case member) the right to appoint a proxy of his/her choice. The member may not wish to give that proxy to the Chair and I am not aware that the right to appoint a proxy not of the member's choosing satisfies the Act. Please provide the legal justification for doing this.
PRESIDENT	58. It has been a long-standing and fundamental practice of the sport of pétanque that the President is nominated and elected by the members. It is a mistake to remove that and place it entirely in the gift of the Directors. The annual appointment does not have any justification. The head of PE should be appointed by its Individual Members. This is a person that represents all members and somebody that members can approach if need be. The President's term of office should be the same as the Directors, should have full voting rights on the Board and be subject to the same eight-year rule as proposed for Directors.
DIRECTORS	59. (b). It would be good to understand what this process might include. Would it be an independent process. What happens if a Director is not deemed to be performing to a satisfactory standard? Would this lead to a request to resign?
NUMBER OF DIRECTORS	60. Given that it is the intention to make the Chief Executive a Director, the number of Directors would be a maximum of 11, not 10.

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BOARD	61. This changes the current balance of the Board to a situation where there will be five “Nominated Directors” (nominated by and voted upon by Voting Group Members only – something which should not be progressed) and six Directors (Independent Members plus Chief Executive) voted upon by the Board. This is a move that should not be contemplated, a majority of the Board, five members plus a President), should be nominated by and directly elected by Individual Members. Sport England’s “A Code for Sports Governance” in its Tier 1 guidance make no mention of a requirement to appoint “Independent Members” in the way these proposed Articles suggest, and they may be a misnomer as in reality these are “Board Appointed Members”. What does “Independent” mean? Is it an individual from outside of the sport? If it is decided by the Board that the governance of PE will be improved by bringing in Directors from outside of the sport then that can be discussed and agreed, should such individuals be identified. My reading of the Sport England documentation is that all PE Board Directors could be in fact directly nominated and appointed by Individual Members and PE would be compliant (although I am not advocating that). 62. This creates a situation where the Chair can only be an individual that has been appointed by the Board. Whilst it is accepted that there might be a Board Member who is best placed to be the Chair of the Board (this may not be automatically the President), the Chair should be appointed without restriction on whether they are “Nominated” or “Independent” Directors.
NOMINATED DIRECTORS	As set out above, these Directors should be nominated and appointed by all Individual Members and not restricted to Voting Group Members.
ELECTIONS TO THE BOARD	65. We had a situation at the 2024 AGM where Directors nominated and voted upon by the Board were erroneously presented to the wider membership to be elected. Elections to the Board in this section can only apply to “Nominated Directors” who should probably be better and more clearly described as “Member-appointed Directors”.

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INDEPENDENT DIRECTORS	67. As discussed above, these are “Board-appointed Directors”, to describe then as “Independent” gives the impression that they are recruited from outside of the sport and in actual fact could conceivably not even be members of PE. Given that these Directors are appointed by the Board and no-one else, the proposed Articles then allow for these Directors to be removed by the Board by a simple majority. Whilst on the face of it, that seems reasonable, I would like to be assured that this process can avoid S168 of the Companies Act (2006) and that there are no other potential problems with unfair or wrongful dismissal if the Director being removed does not accept his/her removal. On co-option, I am assuming that this can only be done if there is a vacancy within the maximum allotted “Independent Directors”.
DELEGATION OF DIRECTORS’ POWERS AND COMMITTEES	68. This is a dangerous area without very clear schedules of delegation. PE has operated an Executive Committee for some time and when I was a Board Director, the powers of delegation were never clearly defined. This raises issues about decisions being made by a smaller group of Directors that may create joint and several liability for all Directors.
APPOINTMENT AND RETIREMENT OF DIRECTORS	69. I won’t repeat the points made above about “Voting Group Members”, but it seems to me that this mixes up “Nominated Directors” and “Independent Directors”. As “Independent Directors” are appointed by the Board, I cannot see how there is any role for the Voting Group Members (or the Individual Members as I would like to see it) here in passing an ordinary resolution and how S168 CA06 can apply to an Independent Director (as discussed at 67. above).
DISQUALIFICATION AND REMOVAL OF DIRECTORS	72. (g) Does this clause imply that only “Nominated Directors” need to be Members of PE? 72. (h). Similar to points above regarding S168 CA06 rights of Directors. Surely it follows that “Nominated Directors” cannot be removed simply by a request to resign by all Directors? They would have to be subject to a resolution at a General Meeting and given the opportunity to state their case.
DIRECTORS’ APPOINTMENTS & INTERESTS	It’s not clear why this new provision allowing for Directors to be remunerated up to a maximum amount of 15 hours per week (with no limit on hourly rates) has been included. Further information would be helpful.

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PROCEEDINGS OF DIRECTORS	82. Taking away Directors' voting rights at an AGM unless they are a Voting Group Member is presumably based on the move to remove Individual Members' nominating and voting rights, but even if that is the case, why are they also excluded from voting on matters outside of nominating and appointing Directors? 91. What is the purpose of this?
CHIEF EXECUTIVE	96. Whilst the ambition of appointing a paid Chief Executive is to be welcomed (even though the organisation is not in a position to do so financially at present), his/her appointment as a Board Director is not appropriate. Personally, I have served as a Board Director and Trustee of two separate multi-million-pound charities that had members and were Companies Limited by Guarantee. No employee was ever made a Board Director. The Chief Executives and other staff attended Board Meetings and reported. The effect of this would be to give a majority to Board appointed Directors and the majority should be maintained with Individual Member elected Directors (including the President).
MINUTES	100. In Requirement 2 ("Structure") of Sport England's Code of Governance for Tie 1, it states that "If you are a membership organisation, you may want to publish the minute or a summary" of governing committee meetings.

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