



## Basketball England Article Amendments – Proposed

### AGM 2023 Explanatory Notes

#### **(1) Interpretation of Independent**

Requirement: The definition of Independent is outlined in the UK Sport for Sports Governance

#### Proposed Solution:

Changes to the Interpretation section pages 2-4 :

- Removal of current definition of 'Appointed Director';
- Inclusion of a new definition of 'Independent' as follows:

***Means a person who is free from any close connection to the organisation and if, from the perspective of an objective outsider, they would be viewed as independent. A person may still be deemed to be 'independent' even if they are a member of the organisation and/or play the sport.***

***Examples of a 'close connection' include:***

- a) they are or have, within the last four years, been actively involved in the organisation's affairs e.g. as a representative of a specific interest group within the organisation such as a sporting discipline, a region or a home country;***
- b) they are or have, within the last four years, been an employee of the organisation; or***
- c) they have close family ties with any of the organisation's directors or senior employees***

- Revision of the current definition of 'Independent Director' to:

***Means a director of the Association who is Independent and appointed pursuant to Article 29.2;***

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#### **(2) Inclusion of interpreted definitions for the membership portal, Officiating Advisory Group and Senior Independent Director and removal of reference to the FIBA 2012 agreement.**

Requirement:

Modernisation of Articles to include new systems (Membership Portal), and terminology advised by The UK Code for Sports Governance (Senior Independent Director) and to remove reference to expired agreements (FIBA 2012).

#### Proposed Solution:

Interpretations Section pages 5-7

- Addition of new definition of the Membership Portal and subsequent inclusion of this terminology throughout the Articles (Articles 16 & 17)

### ***The Association's online membership portal***

- Addition of new definition of the Officiating Advisory Group:

### ***The Officiating Advisory Group appointed by the Board from time to time;***

- Addition of new definition of Senior Independent Director in line with the UK Code for Sports Governance (below) and subsequent addition of new terminology across Articles (Article 31):

***Means an Independent Director who is appointed as such by the Board, and whose responsibilities include:***

- a) providing a sounding board for the Chair;***
- b) serving as an intermediary for the other Directors when necessary;***
- c) acting as an alternative contact for stakeholders to share any concerns if the normal channels of the Chair or the organisation's management fail to resolve the matter or in cases where such contact is inappropriate; and leading on the process to appraise the Chair's performance;***

- Removal of current interpretation of FIBA 2012 agreement on page 7 and subsequent removal of other references throughout the Articles

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### **(3) Amendment to Article 8 regarding full members to include the Officiating Advisory Group and Honorary Officers**

Requirement: BE has received feedback over several years that Officials are not represented as part of our current voting structure. We operate on a one-club, one-vote basis for full voting members, which ultimately excludes officials who are not aligned with a particular club. This has also been raised by the Officiating Advisory Group. We are proposing that the Officials' vote is captured through the advisory group, who will receive two votes as a full voting member (the idea being that one vote represents referees and the other represents officials).

Similarly, The Association holds a list of 'Honorary Officers' who are mentioned in the miscellaneous section of the Articles, but are currently not included in the definition of a full member.

#### Current Article 8 :

*Full Members shall be any Organisation that applies for membership of the Association and which the Board deems suitable for admission as a Full Member. The criteria for suitability of a Full Member, including the minimum number of people a Full Member must have and the registration requirements for a Full Member, will be set out in the Association's Regulations.*

#### Proposed Article 8 :

***Full Members shall be any Organisation that applies for membership of the Association and which the Board deems suitable for admission as a Full Member. The criteria for suitability of a Full Member, including the minimum number of people a Full Member must have and the registration requirements for a Full Member, will be set out in the Association's Regulations. In addition, for the purpose of these Articles, Full Members include the Officiating Advisory Group and Honorary Officers maintained by the Association.***

Addition of Article 92 (Proceedings at General Meetings):

***The Officiating Advisory Group's representative who is present at a General Meeting shall have two votes on a poll.***

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**(4) Amendment of the number of Directors, configuration of elected and independent Directors, and adjustment to Director terms, to align with the UK Code for Sports Governance**

Requirement: Outlined by the UK Code for Sports Governance

Current Article 28

*The Board Shall Consist of no less than 6 and no more than 10 Directors*

Proposed Article 28

***The Board shall consist of no less than 6 and no more than 12 Directors. No individual shall be appointed as a Director until they have provided to the organisation a declaration of good character and a commitment to integrity.***

Current Article 29

*The Board shall include:*

- a) *Up to five Elected Directors, elected at an Annual General meeting in accordance with Article 40*
- b) *Up to three independent Directors and one Independent Chair, who shall be appointed by the Board in accordance with Article 30*

Proposed Article 29

***Subject to Article 33, the Board shall include:***

***29.1 up to five Elected Directors, elected at an Annual General Meeting in accordance with Article 40; and***

***29.2. Up to six Independent Directors and one Independent Chair who shall be appointed by the Board in accordance with Article 32***

Current Article 32

*32. In order to ensure that the Board contains an appropriate range and balance of skills, knowledge, equality and diversity to fulfil and discharge its responsibilities, the Board can if required to address a skills or diversity gap issue:*

- a) *convert one of the elected positions (as described in Article 29 (a)) to an appointed position. Any director so appointed shall serve for an initial term expiring upon the first Annual General Meeting after the date of their appointment extendable at the opinion of the Board for an additional term or terms not in total longer than six years. The position shall then revert back to an elected position unless further urgent requirements justify the extension of the conversion. The*

*decision to convert an elected position to an appointed position or to extend such a conversion can be made by the Board at any time prior to notice of a General Meeting being given.*

*b) Provided that the director concerned is independent, co-opt to fill one of the independent positions (as described in Article 29(b)). Any director so appointed shall serve for an initial term expiring upon the first Annual General Meeting after the date of their appointment extendable at the opinion of the Board for an additional term or terms not in total longer than six years. At the end of their initial term, Appointed Directors are eligible for re-appointment; however, no Appointed Director shall serve longer than six years.*

*c) Co-opt an additional director at any time for an initial term of one year, extendable at the opinion of the Board for an additional term or term not in total longer than six years, provided that at all times at least 25% of the Board is independent and provided that the total number of directors does not exceed ten.*

#### Proposed Article 33

**33. In order to ensure that the Board contains an appropriate range and balance of skills, knowledge, equality and diversity to fulfil and discharge its responsibilities, the Board can if required to address a skills or diversity gap issue:**

**33.1 convert one of the elected positions (as described in Article 29.1) to an appointed position (as described in Article 29.2). Any director so appointed shall serve for an initial term expiring upon the first Annual General Meeting after the date of their appointment extendable at the opinion of the Board for an additional term of up to three years. The position shall then revert back to an elected position unless further urgent requirements justify the extension of the conversion at the end of the initial three year term. With the appointed Director being eligible for a further three year term as independent. The decision to convert an elected position to an appointed position or to extend such a conversion can be made by the Board at any time prior to notice of a General Meeting being given.**

**33.2 provided that the director concerned is independent, co-opt to fill one of the independent positions (as described in Article 29.2). Any director so appointed shall serve for an initial term expiring upon the first Annual General Meeting after the date of their appointment extendable at the opinion of the Board for an additional term of up to three years. At the end of their initial term, Independent Directors are eligible for re-appointment for a further three year term.**

#### Current Article 33

*Subject to Article 60, the Elected Directors shall serve an initial term expiring upon the third Annual General Meeting after the date of their election. At the end of their initial term, Elected Directors are eligible for re-election; however, no Elected Director shall serve longer than two consecutive terms or be reappointed to the board.*

#### Proposed Article 34

**Subject to Article 60, the Elected Directors shall serve an initial term expiring upon the third Annual General Meeting after the date of their election. At the end of their initial term, Elected Directors are eligible for re-election; however, no Elected Director shall serve longer than two consecutive terms except for in exceptional circumstances (for example to assist succession planning), an Elected Director may hold office for a further year. Following the initial maximum term, an Elected Director cannot be reappointed to the Board.**

#### Current Article 34

*Subject to Article 60, Appointed Directors shall serve an initial term expiring on the third anniversary of their appointment. At the end of their initial term, Appointed Directors are eligible for re-appointment; however, no Appointed Director shall serve longer than two consecutive terms be re-appointed to the board within four years of the termination of their previous service.*

Proposed Article 35

***Subject to Article 60, Independent Directors shall serve an initial term expiring on the third anniversary of their appointment. At the end of their initial term, Independent Directors are eligible for re-appointment; however, no Independent Director shall serve longer than two consecutive terms except for in exceptional circumstances (for example to assist succession planning), an Independent Director may hold office for a further year. Following the initial maximum term, an Independent Director cannot be re-appointed to the Board within four years of the termination of their previous service.***

Inclusions of Articles 36-37:

**36. *The Chair shall serve an initial term expiring upon the sixth Annual General Meeting after their appointment.***

**37. *In the event a Director is:***

***37.1 subsequently appointed as the Chair following a period of serving as a Director on the Board; or***

***37.2 appointed to a senior position within their sport's international federation while serving as a Director,***

***that Director may continue to serve on the Board for the period of such appointment, subject to a maximum term of six years on the Board inclusive of their term prior to such appointment.***

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**(5) Management of Conflicts of Interest**

Requirement: to consider the management of conflicts of interest on recommendation by Sport England.

Proposed Solution:

Addition of Article 50.4:

***[Whenever a member of the Board declares an interest because of a duty of loyalty owed to another organisation, body or person or otherwise or a conflict of interest is otherwise identified, the other members of the Board may authorise the Director to have that interest, provided that the member of the Board who has declared an interest]:***

...

**50.4 is not to be counted in the quorum during those discussions and does not vote on any decision relating to matters over which the conflict of interest applies.**

Amendment to Article 51:

Current Article 48:

*If authorisation is granted by the other members of the Board, the other members of the Board may, subject to article 50 allow the member of the Board who declared the interest to remain in the meeting for the item concerned and to be counted in the quorum and vote on the issue.*

Proposed Article 51:

***If authorisation is granted by the other members of the Board, the other members of the Board may, subject to article 50 allow the member of the Board who declared the interest to remain in the meeting for the item concerned and to be counted in the quorum and vote on the issue. (but for the avoidance of doubt, the member of the Board may not participate, be counted in the quorum or vote where there is a conflict of interest).***

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#### **(6) Amendment to Miscellaneous Provisions Relating to the Board (page 29)**

Requirement: To outline miscellaneous provisions relating to the board without duplication

Proposed Solution:

- Remove clause 112 due to duplication in line with slight adjustment to clause 130 for clarity.

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#### **(7) Amendment to Dissolutions Section (Page 33)**

Requirement: To outline the process for dissolution

Proposed Solution:

Addition of Article 136.4 to allow net assets to be distributed to wider basketball organisations:

***136. [The Full Members may at any time before, and in expectation of, its dissolution resolve that any net assets of the Association after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the Association be applied or transferred in any of the following ways]:***

....

***136.1 any relevant basketball organisation as Members shall decide.***