WORLD SAILING NEW CONSTITUTION
COMMENTARY

INTRODUCTION

This commentary accompanies the draft New Constitution and should be read alongside it. It is intended as a high-level guide to the New Constitution and does not cover all areas governed by the New Constitution.

The New Constitution has been prepared based on the Governance Proposal (which was approved by the EGM) and has been reviewed and approved by the Governance Sub-committee of the Board ("GSC"). Where a particular drafting area is not mentioned by the Governance Proposal, the GSC has decided the appropriate way forward in a manner consistent with the Proposal.

This commentary does not repeat all the intended changes to World Sailing's governance which were approved under the Governance Proposal. The reader should read the Proposal approved by the EGM alongside this commentary for an explanation of the reasons for certain changes.

It is accepted the New Constitution is longer than the current one. That is due to three main reasons:

1) A number of items that were in the Regulations have now been transferred to the Constitution to put similar provisions in a single place. This has substantially reduced the length of the Regulations and so decreases the need to read both documents together.

2) Rather than have long, dense paragraphs of text covering multiple topics, shorter and more concise paragraphs dealing with one topic at a time are used to make it easier to read and easier for non-English speakers.

3) As a consequence, it will be easier to amend and keep up to date in the future (decreasing the chances of amendments having unintended consequences).

CONTINENTS & REGIONS

All wording and references to Continents and Regions will be clarified and finalised with the Continental Associations and other Regional representatives before 7 October. The Board has already decided that there should be a Commission of this grouping to advise the Board directly and work will continue to finalise this, and related, concepts.

MEMORANDUM OF ASSOCIATION

The Memorandum contains the objects of the Federation and these have not been amended in substance from the present objects. Clauses 1.5 and 1.6 are new and are required under the Companies Act 2006.

1. OFFICE

The registered office of the company must be on the Island under Isle of Man law.

2. LANGUAGE

Article 2.1 repeats the position under the current Constitution and Regulations. Article 2.2 has been added as required by the Governance Proposal.

3. MEMBERSHIP

The categories of membership are the same as at present, but "Recognised Organisations" is a new name for the current Affiliate Members.

4. MEMBER NATIONAL AUTHORITIES

The requirements for membership are the same as at present.

5. ASSOCIATE MEMBERSHIP

The requirements for membership are the same as at present.

6. CONTINENTAL ASSOCIATIONS

The requirements for membership are the same as at present.

7. WORLD SAILING CLASS ASSOCIATIONS

The requirements for membership are the same as at present.

8. RECOGNISED ORGANISATIONS

The requirements for membership are the same as at present.

9. HONORARY MEMBERS & TITLES

There is no change from the power of the GA to award honorary membership and titles. The GA and the Board have in addition been given the express power to remove an honorary membership or title.

10. RIGHTS AND PRIVILEGES OF MEMBERSHIP

The rights and privileges of membership are the same as at present, except that the right to make a Proposal has been expanded to all Members.

11. OBLIGATIONS OF MEMBERSHIP

The obligations of membership are the same as at present, except that there is an additional obligation that MNAs must properly carry out their duties as an MNA under the Racing Rules of Sailing.

12. SUSPENSION OF MEMBERSHIP

The existing power to suspend membership (of a Member) have been expanded to include breaches of a provision of the Constitution or Regulations (or obligations imposed under them), acting in a manner which is contrary to the objects of the Federation, or if the Member becomes insolvent (or similar).

Suspensions are decided by the General Assembly acting on the recommendation of the Board (but the Board may still directly suspend a member for financial arrears older than 30 days).

13. CANCELLATION OF MEMBERSHIP

The existing powers and grounds under which membership can be cancelled (i.e. the Member expelled) are the same as at present. The power of an existing Member to challenge the membership of another Member is preserved.

14. SUBSCRIPTIONS

The setting of the subscriptions is as per the Governance Proposal. Of note, a Member which has not paid its subscriptions on time for two years in a row will lose the right to attend/vote at that year's General Assembly. Payment subsequently on time in the next year will reinstate the Member's rights.

15. THE GENERAL ASSEMBLY

General Meetings (the legal meetings of MNAs) are now always known as "the General Assembly". Previously only the AGM held in an election year was a General Assembly.

16. GENERAL ASSEMBLY: CONVENING AND NOTICE

The Board decides where/when GA meetings are held. The GA has the power, if it wishes, to set criteria for the location of its meetings. The annual meeting must be held in the last three months of the calendar year.

GAs are called by decision of the Board or on demand by at least 10% of MNAs (this is a requirement of Isle of Man law). The notice period for all GAs is now 21 clear days.

Proposals to be considered at the annual meeting of the GA must be received by 1 August.

17. GENERAL ASSEMBLY: POWERS

The powers of the GA are set out in the Article and are an increase on the current powers as the Governance Proposal notes. All decisions are now made by a simple majority (except for a decision to amend the Constitution or to dissolve/wind-up the Federation, which continue to require a 75% majority).

The GA continues to have the power to review/amend changes to the Regulations, but the process requires a specific Proposal and the GA must now consider recommendations before exercising its power.

A decision of the GA which is not within its powers is not binding but acts as advice to the Board as an indication of the wishes of the membership.

18. GENERAL ASSEMBLY: ATTENDANCE

Delegates to the GA must be appointed by a certificate of appointment signed by the MNA. This must be delivered 48 hours before the meeting starts (an increase on the current 24 hours). Delegates must continue to be a national or resident of the country they represent and, additionally, must now be members of the MNA they represent.

If a Delegate has been properly appointed, and if their certificate of appointment allows, a Delegate may now appoint an Alternate if they cannot attend due to an emergency or for other good reason accepted by the President. The Alternate must still meet the requirements of being a Delegate (nationality, residence etc.).

Delegates may attend, speak and vote at the GA in person or remotely. The Board must make available reasonable facilities for remote attendance.

19. GENERAL ASSEMBLY: QUORUM

Having reflected on attendance at the recent EGM (which was held entirely remotely), the GSC has agreed it is appropriate to reduce the proposed new quorum number from 50 to 40. This is an increase on the current 30.

20. GENERAL ASSEMBLY: CHAIR, PROCEDURES & VOTING

The procedures for a GA remain the same as now (and are governed by Isle of Man company law). Meetings must be open to observers from all Members and translation to French and Spanish must be arranged by the Board if it considers there is a significant need to do so and it is financially viable.

21. THE BOARD

The board of directors continues to be a non-executive board (meaning the Board does not direct the management of the Federation, which is the role of the CEO).

All decisions which are not otherwise allocated to the GA or Council or another body in the Constitution are reserved to the Board.

22. THE BOARD: ROLE AND POWERS

Article 22.1 sets out the legal duties of a company director under Isle of Man law. The GSC considers it is best practice to set these out in the Constitution so there is no doubt for those who are, or seeking to be, a director.

The powers of the Board are set out in Article 22.3 and replicate the Governance Proposal.

As at present, the powers of the Board must be exercised either at a properly convened meeting, by written resolution, or under a delegation of authority which the Board has previously agreed to.

23. THE BOARD: MEMBERSHIP

The composition of the Board remains the same. For the President and Vice Presidents, there must be an equal number of male and female members and only one of them can be ordinarily resident in each country (these restrictions do not apply to the Chair of the Athletes' Committee).

24. THE BOARD: TERMS OF OFFICE

The terms of office for Board members remains the same as at present. Previous terms under the current Constitution will count under the New Constitution.

Article 24.6 explains what happens if there is a vacancy in the office of President or a Vice President. Under the current Constitution, the Board can fill this vacancy in any way it wishes. This is no longer the case – the General Assembly must be asked to fill the vacancy (but the Board may appoint one of the Vice Presidents as Acting President in the meantime).

25. THE BOARD: BOARD SUB-COMMITTEES

The Board may continue to appoint Sub-committees, but it is mandatory for there to be an Audit Sub-committee with an independent chair (who must be recommended for appointment by the Nominations Panel).

26. THE BOARD: PROCEDURES

The procedures for the Board are the same as at present, except that the CEO must now convene a Board meeting when any two directors instruct him to do so (at present only the President can call a meeting but the Board can always pass a written resolution without the President putting it to a vote).

27. THE PRESIDENT

This Article explains the duties of the President (which are not explained in the current Constitution).

28. THE CHIEF EXECUTIVE OFFICER

This Article explains the duties of the CEO. It is now set out that the CEO must apply the Constitution and Regulations before a decision of the Board. A fuller and more modern list of the CEO's responsibilities are set out in Article 28.3.

29. COUNCIL

Article 29 sets out the role of Council in accordance with the Governance Proposal. In particular, Council remains responsible for policy decisions and decisions concerning the Olympic events and equipment.

Council must either accept recommendations made to it, or reject them and require a new recommendation to be made.

Article 29.4 repeats the current Constitution provision that Group Council members must place the views of their Group before Council, but then must vote in what they consider to be the best interests of the sport overall.

30. COUNCIL: MEMBERSHIP

The composition of Council remains unchanged from at present. Alternates may continue to be appointed, but it is now a requirement that the Alternate must be national or ordinary resident of the Group and must be a member of an MNA in that Group.

31. COUNCIL: GROUP APPOINTMENTS & REMOVALS

The procedures for appointing and removing Group Council members remain unchanged. It is now a requirement that a Group Council member must be national or ordinary resident of the Group and must be a member of an MNA in that Group. This applies throughout their term.

32. COUNCIL: TERMS OF OFFICE

The term of office of a Council member remains unchanged, but Council members can now only serve three terms of office (i.e. 12 years). Terms of office under the current Constitution will count but Appendix A (the transitional provisions) will provide that if a Council member reaches their maximum number of terms at the end of 2024, they may still be appointed for one further term of 4 years (i.e. to the end of 2028).

33. COUNCIL: PROCEDURES

Council will meet quarterly – once in person and three times remotely (provided there is sufficient business). Any five members of Council may require that a Council meeting be held. The GSC has concluded that remote attendance is inappropriate for the in-person meeting (if a member cannot attend, an Alternate should be appointed).

The quorum for a Council meeting remains 12 members. Meetings must be open to observers from all Members.

34. THE ROLE OF COMMITTEES, SUB-COMMITTEES AND COMMISSIONS

Article 34 sets out the main duties of Committees, Sub-committees and Commissions. In particular, it remains the position that the role of these bodies is to advise and make recommendations to their parent body (unless they are expressly authorised by the Constitution, Regulations, or their terms of reference to make decisions).

35. COMMITTEES

Article 35 sets out the various Committees reporting to Council and to the Board.

Each Committee has a brief description of its terms of reference, which will be supplemented by a separate full and detailed terms of reference prepared by the Committee and approved by its reporting body. The GSC considers it unnecessary and inefficient to set out the full terms of reference in the Constitution. The full terms of reference can expand on the detail in the Article, but must be consistent with it.

36. SUB-COMMITTEES

Article 36 sets out the Sub-committees.

Each. Sub-committee has a brief description of its terms of reference, which will be supplemented by a separate full and detailed terms of reference prepared by the Sub-committee and approved by its reporting body. The GSC considers it unnecessary and inefficient to set out the full terms of reference in the Constitution. The full terms of reference can expand on the detail in the Article, but must be consistent with it.

37. COMMITTEES & SUB-COMMITTEES: COMPOSITION & TERMS OF OFFICE

The procedure for nominating and appointing committee members is set out in Article 50.

Members may be removed by Council (on the recommendation of the Board) if they do not actively participate or there is other good reason to do so. Chairs of Committees and Sub-committees are now required to report to the Board every two years on members' attendance and participation.

The term of office of Committee and Sub-committee members remains unchanged. However, there is a maximum of four consecutive terms of office (i.e. 16 years) on any one Committee or Sub-committee. This applies to terms served under the current Constitution, however Council may appoint a member for additional terms if the Board recommends there are exceptional circumstances. In addition, the limit on terms of office only applies to a single Committee – appointment to another Committee or a break in service will reset the clock.

38. COMMITTEES & SUB-COMMITTEES: TERMS OF REFERENCE & PROCEDURES

Committees and Sub-committees must review their terms of reference every 4 years with any amendments approved by their reporting body no later than 31 December in the year prior to the next round of committee appointments.

Each Committee and Sub-committee must prepare an annual work plan for approval by the Board which details the activities it will carry out in that year. The work plan must be aligned with the overall World Sailing Strategy.

Article 38.4 confirms that the RRC, ERSC and OOC have authority to make and amend the Racing Rules of Sailing, Equipment Rules and Offshore Special Regulations respectively. Any changes made can be rejected by the Board within 14 days of being notified of them.

Article 38.6 sets the requirement that Committees and Sub-committees cannot make recommendations to another body at the Annual Conference (except in exceptional circumstances). Instead, they should work throughout the year – meeting remotely if necessary – to ensure that Council and the Board have recommendations in good time for their own meetings.

39. COMMISSIONS

There is no change to the current role and composition of Commissions.

40. EQUITY, DIVERSITY AND INCLUSIVITY FORUM

The Forum (which takes over from the Women's Forum) will remain an annual event which complements the year-round work of the E, D & I Committee. The Forum will elect its Council representative (and in 2024 and 2028 this remains the female members of the Forum electing a female representative).

41. WORKING GROUPS

Working Groups are the new name for working parties. They can now be established by Sub-committees and the Forum (rather than just the main committees as at present).

The Board must approve the appointment of Working Groups in order to (1) ensure they are working efficiently and not duplicating other areas of work in World Sailing (2) ensure redundant Working Groups are dissolved once their task is finished and (3) ensure that Members have the opportunity to put people forward for membership. It is envisaged that the Board may delegate authority for its approval to the Vice President responsible for working with that particular Committee/Sub-committee.

42. NOMINATIONS PANEL

The Nominations Panel undertakes the functions set out in Article 42.1. Its membership is five independent members (one of whom must be chair) and three Board members (who do not vote).

43. ELECTIONS PANEL

The Elections Panel undertakes the same role as the present Election Committee. Its membership has been limited to three members (rather than the present maximum of five allowed).

44. INVESTIGATIONS PANEL

The role of the Investigations Panel is set out at Article 44.1. Whilst its Chair must be legally qualified, the other members do not need to be lawyers but must have relevant expertise in its work.

The Panel reports overall to the Board and Chair of the Disciplinary Tribunal, but its decisions are made independently of these bodies.

45. DISCIPLINARY TRIBUNAL

The Article sets out the composition and powers of the independent Disciplinary Tribunal.

It contains also the right of appeal provisions which explain when a case may be taken from World Sailing to the CAS and when the right of appeal lies internally. Where there is an internal appeal only, the grounds of appeal are limited to reviewing the original decision for an error of law (i.e. not a full rehearing of the case).

46. OMBUDSMAN

Article 46 sets out the role and powers of the new Ombudsman. The Ombudsman will primarily provide an investigative and non-adversarial mediation role in resolving disputes before they become too advanced. The Ombudsman will also be empowered to issue reports about how decision-making has been conducted (but not comment on the merits of decisions).

47. ELECTIONS: GENERAL

The election procedure remains substantively the same, except that only one MNA nomination is required to be nominated (at present five MNAs must support a candidate). This change has been made to meet the ASOIF Governance Standards.

MNAs are now only permitted to nominate one candidate for President and one for Vice President. This will remove the ability of MNAs to nominate multiple people for the same role.

48. ELECTION OF THE PRESIDENT

The procedure for electing the President remains the same as at present.

49. ELECTION OF DIRECTORS (VICE PRESIDENTS)

The procedure for electing the Vice Presidents remains the same as at present, but modified to take into account the new rule that only one of the President and Vice Presidents may be ordinarily resident from each country.

50. APPOINTMENTS TO COMMITTEES AND SUB-COMMITTEES

Nominations and appointments to Committees and Sub-committees follows the new rules in the Governance Proposal. Nominations must still be received by 1 August but the Board may re-open the nominations if it considers it has insufficient numbers of candidates from either gender to meet the gender requirements.

In the event a vacancy arises mid-term, the Board is able to open a new nominations process and seek fresh nominations, rather than the current position where it must work from the nominations list submitted at the start of the term.

51. SPECIAL APPOINTMENTS

This Article preserves the existing cross-appointment rights on various Committees and sets out the new appointment rights in respect of new Committees.

52. PROTECTIVE SUSPENSIONS

This Article replicates the current powers in the Constitution to suspend Council and Committee members. However, the voting percentage for decisions has been lowered to a simple majority in order to be consistent with most other decisions made in Constitution.

53. TRANSPARENCY

This Article sets out the information which World Sailing must publish and keep up to date in order to promote transparency of governance.

54. DISTRIBUTION

There are no substantive changes to the current provisions of the Constitution.

55. ACCOUNTS AND COMPANY RECORDS

There are no substantive changes to the current provisions of the Constitution.

56. THE SEAL

There are no substantive changes to the current provisions of the Constitution.

57. INDEMNITY

There are no substantive changes to the current provisions of the Constitution.

58. NOTICES

The rules on the giving and receiving of notice have been updated in line with modern standards.

59. WINDING UP

There are no substantive changes to the current provisions of the Constitution.

60. GOVERNING LAW

There are no substantive changes to the current provisions of the Constitution.

61. EXHAUSTION OF REMEDIES

There are no substantive changes to the current provisions of the Constitution.

62. VOTING & INTERPRETATION

This Article contains the rules on voting (at all levels) and avoid repeating the rules under earlier sections. The rules are substantively the same as at present, but the drafting error in the current Constitution which allows a minority to members to force a secret vote without a full vote of the body first has been corrected.

63. DEFINITIONS

No comment.

64. TRANSITIONAL PROVISIONS

Appendix A contains the provisions which will apply as World Sailing moves to the new Constitution arrangements. In particular, it explains how the Regulations will continue to be reviewed and updated in 2023 and 2024.