



Brief Guide to Constitutional changes made under emergency powers (March 2019) v8

This is Doc 3 of a series of documents (Doc1, Doc2, Doc3, Doc4) which presents the Membership with the changes to the BKA Constitution (2015) made by the 2019 NC. These changes are effective immediately under Emergency Powers granted at the July 2018 AGM, but will be presented at the July 2019 AGM for member ratification/or not.

Doc 1 = BKA Constitution 2019 CHANGES SHOWN

Doc 2 = BKA Constitution 2019 CHANGES NOT SHOWN with changes not shown i.e. all amendments “Accepted” to enable members to read the doc without the tracked changes.

Doc 3 = This is a guide to the 2019 changes made to the 2015 BKA constitution. Only a few Articles of the 2015 Constitution have been amended, so I have included this document to point members to where the major changes have been made and why we have made the change (unless it is reasonably self-evident).

Now, it is possible that I have missed a change. This is not deliberate. It’s hard to say what is a “minor” or “major” change to bring to your attention - I guess it depends on the reader’s interpretation. Clearly, there is no intention to conceal changes - just my error in omitting something here (if any) - since Doc1 of the series has the tracked changes. Please let me know of anything major and I will include it in an updated document etc.

My apologies if we have missed anything. Errors can easily be corrected when pointed out etc.

Doc 4 = A general guide to the BKA Constitution i.e. What do the Articles attempt to cover.

This document refers to “Doc1 - DRAFT BKA Constitution 2019 CHANGES SHOWN” which details the amendments to the BKA Constitution adopted by the NC under Emergency Powers. Whilst the amendments are effective immediately, they will be presented for ratification by the Membership at the July ’19 AGM.

Introduction: At the AGM, the Membership granted emergency powers to reform some aspects of the Constitution which, in their view, required immediate changes to deal with gaps or ambiguities in the current version, and to help ensure the viability of the Association in the future.

In February 2019, the NC adopted changes intended to give effect to the wishes of the Membership where practicable, and to make some technical changes which may make the provisions of the Constitution more effective.

SIGNIFICANT AMENDMENTS:

Article 2 (Objects):

- 2.3 Wording concerning commitment to democracy and posts being open to all members removed¹

Article 3:

- ‘non-voting’ removed in provision on appointment of subcommittees²

Article 6:

- Removal of ‘subject to the agreement of each individual’³

Article 7 (membership):

- Adds the explicit right to stand for office (unless suspended)⁴
Spells out the responsibilities of members, and what shall constitute misconduct for a member. ⁵
- Clarifies the position of university dojo
- Clarifies the position on services provided to non-members
- ‘as shall be amended from time to time’; technical change to make it clear that all members are bound by on-going rule changes.
- Visibility of records is subject to any exceptions contained in the Constitution, the law, or matters where confidentiality has been agreed with third parties⁶

Article 9 (financial):

- Replaces the mentions of ‘profit’ with ‘surplus’ and ‘accounts’ with ‘financial records’ for a more accurate reflection of the Associations activities, and other minor changes of wording which are self-evident.
- Specifically states that Bu shall not charge each other interest on any loans.

Article 10 (members suspension etc):

- Definition of freedom of expression added⁷
- Definition of freedom of Association added
- Inclusion of ‘bail’ in section relating to being charged with an offence⁸

¹ This is because it has been covered elsewhere in the Constitution.

² There is no particular reason to restrict powers of subcommittees in the Constitution and the previous wording was ambiguous

³ The DRC necessarily works on the basis that Reps should be able to contact each other and such agreement is therefore an intrinsic part of the role.

⁴ In the 2017 version there is no explicit mention of the right to stand for office, although it does say in the ‘objects’ clause (Article 2.3) that the Association will ensure that all members have equal access to posts. This provision just makes it clear that this is the right of all adult members.

⁵ |All members of the BKA have a responsibility to behave in a way which promotes the values of the Association as stated in its Objects clause (article 2), and to consider the effects of their actions on the Association itself. This addition to article 7 is an attempt to redress the balance of emphasis on members’ rights, to reflect this principle. It also makes significant breach of these duties a disciplinary offence, and hopefully may assist in dealing with any instances of abuse on social media, an issue which has concerned many of the membership for some time.

⁶ There may be situations where the BKA owe a duty of confidentiality to others. See also Bye-law 20.

⁷ Refers to freedom of ‘expression’ rather than ‘speech’; to clarify that includes written material. This is in line with the wording in Article 2.

⁸ This is to extend the current provision to the period between arrest/police investigation and formal charge.

- Expansion/ clarification of circumstances in which the member can be suspended: this now includes gross misconduct and persistent poor conduct ignoring warnings⁹
- Inclusion of ‘likelihood of injury to the interests of the Association’¹⁰
- Suspension of member now goes directly to the AGM or an EGM and the membership; there are provisions for a right of reply in advance of the meeting and a time limited right to address the meeting (subject to voting by the members present).
- ‘Properly constituted voting procedure removed’¹¹
- Footnote 14 to the Constitution amended to make provision for reinstatement of a Member on acquittal/ dropping of charges, being subject to any findings of a civil court¹²
- The wording ‘nothing...shall override the legal rights of members’ removed¹³

Article 11 (officers, suspension etc):

- Removal of automatic suspension of officers on request by the BuEC or DRC¹⁴
- 60 day time limit for automatic re-instatement of suspended officer has been removed¹⁵
- Suspension appeal or expulsion proceedings go to AGM with a statement / 15 minute time allocation
- Removal of right to appeal to NCAC¹⁶
- Members may now bring a motion of disqualification against an officer¹⁷

Article 13 (complaints):

- Pre-amble concerning limits of expectations on a voluntary organization, flexibility of time limits etc
- Failure to comply with sanctions may now be gross misconduct¹⁸
- Changes in procedure: timing of evidence
- simple cases may be determined ‘on paper’ as opposed to by face to face hearing¹⁹
- Expanded range of sanctions and penalties²⁰
- Fines removed as a possible sanction
- The provision of false information in a complaint now constitutes gross

⁹ this is intended to allow a member to be dealt with, who has an accumulation of small offences but is a persistent offender. To arrive at the point of suspension the Member would have to have persistently transgressed for some time.

¹⁰ this allows the NC to take early action to deal with a situation before damage is actually done to the Association

¹¹ There are none currently and if this changes the Constitution can be amended

¹² Civil courts operate on a ‘balance of probabilities’ not ‘beyond reasonable doubt’, so it is possible to be acquitted but subject to a civil court finding of fact that you did the act complained of.

¹³ This is because this is largely the de facto legal position anyway and therefore the wording is not needed

¹⁴ Suspension of officers should not be automatic or mandatory, due to the potential for disruption; the appropriate committee should be able to examine the case

¹⁵ There are practical problems with quorums for EGMs and in some circumstances (criminal proceedings) they would not be concluded within 60 days. The 60 day time limit is therefore impractical and may lead to difficulties.

¹⁶ The NCAC is composed of members of the NC and therefore appeal direct to the membership is more appropriate

¹⁷ This allows a greater range of sanctions which can be brought by members, apart from censure or removal from office and would disqualify the former officer from holding any post.

¹⁸ It is in the members’ interests that complaints committee sanctions should be enforceable.

¹⁹ This should speed up cases and reduce the case load in the event of multiple complaints, or where there are practical problems with holding a face to face hearing.

²⁰ To allow for more flexibility in applying an appropriate level of sanction in any given case

misconduct

Article 14 (elections):

- Additional information on nominations to be published
- Clarification of acceptance of nominations from floor
- No candidate can be appointed unelected by majority vote- unopposed candidate must attain majority²¹

Article 15 (communications):

- Communication with the membership must be by email or website not solely social media²²
- Removal of words ‘the Chair’²³

Article 17 (AGMs):

- Removal of prescriptive provisions on order of running

Article 24 (Interpretation of the Constitution):

- A breach of the Constitution should be rectified where possible and does not constitute a precedent
- Amendments agreed by an AGM or EGM will take effect from the date of that meeting even if the written Constitution is not immediately updated

Article 25 (Dissolution):

On dissolution the funds to be redistributed will be ring-fenced by Bu, and held in trust for successor organisations recognised by FIK

New numbering on appendices.

Appendix 1:

- Duties of care of officers towards members are listed²⁴
- Continuing duty of co-operation of officers at the end of their term

Appendix 2:

- Powers of Chair to act in an emergency ²⁵
- Powers of Chair to write to members raising concerns
- Duties of treasurer concerning publication of financial records
- Duties of Deputy treasurer
- Duties of new co-opted posts: E&D, Insurance, Webmaster, Anti-doping, Data protection officers

²¹ Ensures all elected officers retain the electoral legitimacy of a majority mandate. If not, a temporary officer will be co-opted, but their status will be clear.

²² Failure to comply will nullify the meeting/policy decision

²³ This wording seems to have been included in the 2015 Constitution in error

²⁴ These exist in ‘common law’ in any event but are now formally set out in the Constitution.

²⁵ There is already an implied power for the Chair to act in the interests of the Association in an emergency, but this provision covers the Chair more effectively because it makes this explicit. There may be situations where it is necessary for the Chair to take emergency actions; he or she should consult the NC where practicable, but if not then he/she should be able to act effectively. It will be necessary to keep the NC informed of actions as soon as possible thereafter and to seek ratification of any decisions made.

Appendix 5:

- Quorum for EGMs changed to the same as for AGM- to 5% from 20%.

Appendix 6:

- 'Auditors' changed to 'external financial advisers'²⁶
- Clarification of annual oversight of financial records

Bye-laws

2:

- BuEC cannot vary expenses policies
- Amending details of responsibilities to approve expenses claims
- Visibility of financial records to members
- All officers and members shall explicitly accept that as a condition of receipt of expenses or monies from the Association, all members shall have the right to examine expenses and monies paid by or received by the Association and the Associations bank statements, except for personal details specified in law²⁷

Bye-law 11:

- Extension of indemnity for officers²⁸

Bye-law 15

- Code of conduct for mixed practices

Bye-law 18:

- Sports UK code of conduct: deleted as this is covered by other codes of conduct and is in any event outdated.

Bye-law 19:

Becomes bye-law18

- Details of communication policy
- Non-confidentiality of emails as standard
- BKA shall maintain social media presence
- Maintenance of 'in-house' debating forum- members retain liability

Bye-law 19:

Right to free expression of members; but the consequent effects on the Association may be taken into account

Bye-law 20 :

²⁶ Clarifies the position decided at the 2018 AGM in respect of the appropriate level of external oversight of finances

²⁷ This has always been the practice of the Association until 2016 and transparency to the Membership remains an important principle.

²⁸ . This acts to limit personal liability to situations where there has been a significant or serious breach of the Constitution such as acting outside of powers or in "bad faith".

Disclosure of data and documents will be the maximum possible but subject to any relevant laws.