



Consultation on Nominet's Articles of Association: Board response

Executive Summary

Introduction

At the 2022 AGM Andy Green, Nominet Chair committed to a review of Nominet's Articles of Association. The Board have undertaken this work and are now presenting Members with updated Articles that are clear, reflect the way Nominet works today and include a commitment that in future any significant changes in scope will be communicated to Members in advance.

A consultation ran from 7th June-9th August 2023, seeking feedback and input from Members and wider stakeholders. Respondents were able to provide feedback by completing the online consultation form which was accessible via the Nominet website.

Nominet facilitated three opportunities for Members to discuss the consultation directly with Board members. In addition, one Board member called a small number of Members, selected randomly, to raise awareness of the consultation. The consultation was also discussed on the Member Community.

This document provides the Board response to the [feedback received](#) and sets out a number of resulting changes made to the proposed Articles.

Consultation Feedback - summary

- Nominet received 20 responses in total; for comparison at time of writing Nominet has c. 2,225 Members.
- 19 were from Members
- 19 responses were via the online survey tool, one via email to the dedicated email address.
- Most respondents opted to view the proposed changes in detail. Two respondents indicated they were broadly supportive of the changes without reviewing the details
- Respondents did not have any concerns with sections 1, 1.2, 11 and 12. All other sections had at least one respondent indicating they had concerns and would not support the change as proposed
- A full report with all the responses received is available at <https://www.nominet.uk/articles/>



Board response – Summary

The Board would like to thank all Members who took an interest in the consultation and all stakeholders who took the time to provide feedback through the consultation form or by email.

The objective behind the changes is to modernize the organisation's constitutional documents, first developed when the company was founded in 1996, to reflect how Nominet operates today. The Board has also taken the opportunity to introduce a new article which commits the Board to informing Members in advance of any future changes in Nominet's scope.

If Members vote to accept these changes it will bring Nominet's Articles in line with current legislation, remove ambiguities, and provide a better foundation for the future.

The feedback has been valuable and led to a number of changes being made to the draft we consulted on.

These include:

A NEW COMMITMENT

The draft proposed Articles put to consultation included one significant change: a commitment to inform members of any change in scope of the company's activities. The proposed article 2 was added specifically to give Members greater confidence that in future, Nominet will be obliged to make Members aware – in advance - of any significant departures from the current scope of activities. Following your feedback, the wording of article 2 has been strengthened to make the future facing intent of this much clearer.

A HIGHER VOTING THRESHOLD

In response to some concern over the threshold required to update the Articles (with particular regard to some restricted clauses from our original Memorandum of Association), we have set a very high bar for this vote. It will require 90% support to pass, and we will set the voting cap at 3% of votes cast. Your Board are aware that this supermajority is very hard to achieve. However, it will ensure that any changes to our Articles command the overwhelming support of Members.

CLARIFICATIONS

We have made a number of clarifications in response to feedback, including: being clear that Members departing the Board wishing to remain Members of the company can do so, subject to payment of the usual fees; specifying that both legal and natural persons can be Members.

A detailed response to the feedback, along with the changes incorporated in the proposed Articles, can be found below.



The Board believe the updated version of the Articles of Association, reflecting Member feedback, is a much clearer document that will put the company on a strong and stable constitutional footing. We plan to put this revised version to a Member vote at the forthcoming AGM in October 2023.

FUTURE CHANGES

The updating of the Articles was focused on reflecting current practice. However, as part of the consultation, Members were asked for their views on whether other elements of Nominet's Constitution should be considered for future change. The suggestions submitted will be discussed at a forthcoming board meeting and the Board will update Members at the AGM.

On behalf of the Board, thank you to all Members who have given their time on this important matter.

Board response – per section

The information below sets out the proposed initial changes (June 2023), the Board's response to the [feedback](#) and the changes now incorporated in the proposed Articles.

Section 1: Interpretation

Changes proposed in draft 1

- *Remove the reference to the Companies Act 1985 and update to Companies Act 2006.*
- *Delete the 'communication' and 'electronic communication' interpretations which are now not used, and update the definition of 'writing' to include electronic communication.*
- *Insert the word 'former' before Memorandum.*
- *Delete the footnote*

Board response

We are grateful to stakeholders for suggesting further improvements to the text. This has helped us meet our objective of updating the Articles and making them easier to read.

The proposed Articles have been changed to:

1. Remove the reference to the Companies Act 1985 and update to Companies Act 2006
2. Delete the 'communication' and 'electronic communication' interpretations which are now not used, and update the definition of 'writing' to include electronic communication
3. Update the definition of 'members' to include legal and natural persons
4. Remove the reference to 'former memorandum' and 'steering committee'
5. Delete the footnote
6. Delete the definition of 'the United Kingdom' as it is unnecessary
7. Add a definition for 'Chair'



Section 2: Public Purpose

Changes proposed in draft 1

- *The addition of a constitutional commitment from the Board to make Members aware at the AGM of any foreseen change in scope*

Board response

The Board want to take the opportunity, while updating the Articles, to make a firm commitment to Members that they will be informed in advance of any significant changes to the scope of Nominet's activities before they happen. This will help maintain the important alignment between the Board and the Membership.

Examples:

- Under this article, a plan for a significant investment in a business or line of business unrelated to the company's current activities would be considered a change of scope. For instance, had this commitment been in place in the past, the plans to purchase an enterprise cyber services business – such as CyGlass - would have been shared and discussed with Members in advance.
- An example of an activity which the Board would consider *within* the existing scope would be operating new registries and we would update Members of activity such as this in the usual way at the AGM or through Board reports.

The text of article 2 has been updated to make this explicit.

The proposed Articles have been changed to:

1. Redraft article 2: "The Board will inform the Membership in advance of any proposed significant change in scope, together with an explanation as to how this relates to the Company's objects for the public benefit."
2. Correct a missing full stop

Section 3: Objects

Changes proposed in draft 1

- *The references to clauses of the Memorandum have been replaced by revised references to the amended Articles*
- *The reference to the 'Steering Committee' and 'Council of Management' have been replaced with 'Membership' and 'Board'*



- *Amended references to articles numbers where these have changed*

Board response

Feedback on this section centred around the voting thresholds and caps required to pass the changes proposed, particularly with respect to the restricted clauses from the Memorandum of Association.

The Board has taken into account Member views on this issue and proposes using a 90% threshold – applying the higher bar for the objects clauses to the Articles as a whole. We are also proposing using a 3% cap for the vote. In combination, this approach means there is no dilution of member influence. While it is therefore harder for the revised Articles to pass, this approach ensures any change has the overwhelming support of Members.

We acknowledge that one clause of the former Memorandum states that it cannot be altered. The changes proposed are intentionally minor (e.g. numbering, updating terminology) and deliver the Board's objective to modernise the Articles and make them easier to read by updating the language.

Any future changes to articles 3, 5, 6 and 7 (formerly clauses in the Memorandum) will also require a 90% vote as set out in article 4.

The proposed Articles have been changed to:

1. Update article 4 with the correct terminology and article numbers
2. Adopt the suggestion to remove unnecessary additional words where there is a defined term e.g. replaced 'members of the company' with the defined term 'Members'

Section 4: Admission of Members

Changes proposed in draft 1

- *These changes make clear the current process for admission of Members. As a result, the proposed article 10 has been moved from 'Votes of Members' to this section. The reference to article 55 has been removed.*

Board response

Regarding free membership for Board directors: It is our longstanding practice at Nominet for all Board members to have free membership of the company while they are on the Board. We think the text clearly reflects this position.

Regarding membership being restricted to one corporate entity within a group of companies: For Article 10, we have not changed our position, but are using an updated reference. The provision replicates the wording of Article 19 with updated statutory reference: *"Not more than one member*



of any group of companies (as defined in Section 53 of the Companies Act 1989) may be a Member."

A Member is required to notify us of any changes that would affect their voting allocations (for example, following an acquisition of one Member by another). Nominet's compliance team receives reports from credit agencies regarding Membership changes to assist with monitoring this obligation. The quarterly publication of voting rights has also been helpful in ensuring this information is kept up to date.

The proposed Articles have been changed to:

1. Include article 10 in this section
2. Remove article 55
3. Replace 'membership' with the defined term 'Membership' in article 9.2
4. Introduce an additional article to make it clear that 'Both legal and natural persons may be Members'

Section 5: Retirement of Members

Changes proposed in draft 1

- *These are minor wording changes which set out the circumstances under which membership terminates. These have not changed, but wording has been updated for clarity.*

Board response

The company's custom and practice has been that individuals who had been Members prior to election to the Board would continue as a Member after leaving the Board. They would not have been charged the annual £100 subscription fee whilst they held a board seat, but provided they indicate to the Company Secretary that they wish to retain their Membership in a personal capacity after stepping down from the Board this has been agreed to. We have amended the proposed text to make this clear.

The proposed Articles have been changed to:

1. Redraft article 13: 'A Board member's Membership shall terminate on their ceasing to be a member of the Board, unless they were a Member prior to joining the Board and they opt to retain their Membership (with payment of ongoing subscription fees.)'
2. Amend the definition of 'Members' in article 1 to apply to natural and legal persons which subsequently makes 14.1 and 14.2 clearer

Section 6: Membership subscription fees

Changes proposed in draft 1



- *Introduced a new section to include all clauses relating to Membership subscription fees. The proposed changes remove the requirement for the Membership fees to be related to commercial involvement in .UK and a new Subscriptions bye-law has been drafted. Also removed is the requirement for the Board to conduct a ballot with Members to seek views on options for changes to Membership fees. However, any changes to Membership fees will still have to be put to a Member vote.*

Board response

Regarding challenges to the legitimacy of the current practice of charging a flat fee for Membership: The Board believes that reflecting in the Articles the longstanding practice – adopted by both the Company and Members since 1997 – will be in the best interests of the Company and its Members.

We are currently applying to set aside a default judgement from a small claims court from a Member disputing the legitimacy of Membership fees paid since 2019. We are confident that our application to set aside the default judgement (the automatic result of us not receiving notice of the claim and therefore not having the opportunity to put forward our case) will be successful.

The change to the Articles aims to reflect our longstanding position and would resolve the current tension between the wording of the articles and our practice since 1997. We believe this would be to the advantage of the company and of Members and reduce the potential for time-consuming and costly legal proceedings.

No changes to the text originally proposed.

Section 7: Liability of members

Changes proposed in draft 1

- *We have incorporated the relevant wording from the Memorandum into the Articles.*

Board response

Where possible and appropriate, we have adopted the latest Model Articles for a Company Limited By Guarantee, issued in 2018. The further changes to this section reflect that wording.

The proposed Articles have been changed to:

1. Adopt the wording of the latest Model Articles for a Company Limited by Guarantee

Section 8: General meetings and new sections relating to the general meeting procedures



Changes proposed in draft 1

- *Matters around our AGM are governed by company law. We've used the latest Model Articles (last updated in 2018) that are relevant to us, changing wording that in some places originates from 1996.*

Board response to consultation feedback:

Regarding feedback querying the meaning of the proposed wording:

The new Article 25 follows the standard wording in the Model Articles. The wording "in a position to communicate to all those attending the meeting" is intended to include remote/hybrid meeting formats.

Section 301 of the Companies Act 2006 states that in order for a resolution to be validly passed at a general meeting, notice of the meeting and of the resolution needs to be given. Nominet will always comply with this statutory requirement.

With respect to the suggestions of replacing "the meeting" with "Members", where possible and appropriate, we have adopted the latest Model Articles for a Company Limited By Guarantee, issued in 2018 and we believe we should continue with this wording for these provisions. We understand that "the meeting" in this context would mean Members present at the meeting either remotely or in person.

We have included a capitalised definition 'Chair' for the chair of the Board to make articles 31 and 32 easier to read.

The proposed Articles have been changed to:

1. Update the wording to use the latest Model Articles (last updated in 2018)
2. Capitalise 'Members'
3. Include a capitalised definition "Chair" for the chair of the Board in articles 31 and 32



Section 9: Votes of members

Changes proposed in draft 1

- *We propose removing any text which is either not required, has been moved into a different section or is reflected in the Voting Rights bye-law.*

Board response

In relation to the legitimacy of the current Voting Rights, whilst we appreciate that there are other views, we believe the correct approach will be to use the existing Voting Rights for any general meeting votes. We will continue to provide a breakdown of the numbers of Members who cast their votes on an individual basis.

The text in relation to more than one company in any group of companies being a Member which was previously in Article 19 is now set out in Article 10 with updated statutory references.

Long standing practice at Nominet has meant that control of the Voting Rights ultimately resides with the Board, subject to consultation with the Members. Paid for domains under management (DUM) has been calculated by taking a Member's total DUM and subtracting any invoiced but unpaid domains; domains which have been registered at a discount as part of a promotion are considered as "paid for".

This initiative to update the Articles takes the status quo and current practice and reflects that in the proposed document (rather than seeking to make substantial changes in this area).

Some of the issues raised in the consultation feedback, concerning changes to the Voting Rights, or calculation of paid DUM is complex. The Board will consider feedback on this and other future changes and report back to members.

The proposed Articles have been changed to:

1. Remove text that is not required, has been moved into a different section or is reflected in the Voting Rights bye-law
2. Replace '...may be capped...' with '...will be capped...' in article 59. This change clarifies the established practice regarding voting.

Section 10: The Board

Changes proposed in draft 1

- *Additional wording to set out clearly the composition of the Board. Introduced a procedure for the Board to appoint its Chair. Removed gender specific language.*

The feedback has been considered and we have decided no further changes to the text are necessary except for one minor change to remove the words 'of the Board' as they are unnecessary.



Section 11: Directors' Interests

Changes proposed in draft 1

- *Wording replaced with the latest Model Articles for a Private Company Limited by Guarantee issued in September 2018.*

The feedback has been considered and we have decided no changes to the text are necessary except for the capitalisation of 'Chair'.

Section 12: Proceedings of the directors

Changes proposed in draft 1

- *'Chairman' changed to 'Chair' and other gender specific terms removed.*

The feedback has been considered and we have decided no further changes to the text are necessary.

Section 13: Unanimous decisions

Changes proposed in draft 1

- *This is a new section to enable the Board to make decisions by email, in between meetings, so long as all eligible (e.g. non-conflicted) Board directors are in agreement.*

Board response

This article is normal practice and is not intended to allow decisions to be made through 'the back door'. It is to enable decisions to be taken between formal meetings of the Board, as on occasion there are external deadlines for projects and contract bids which would be missed if approval had to be deferred until the next meeting.

Under Nominet's scheme of delegation, certain approvals cannot be made solely by the executive staff and require Board sign off. These decisions need to be unanimous, and a formal record of any such decisions will be documented in the next meeting of the Board and communicated to Members in the usual way via the Board report.

Therefore, we believe the current consultation text is still appropriate to put forward to the Member vote at the AGM and as such have not proposed any further changes.



Section 14: Bye-Laws

Changes proposed in draft 1

- *The existing wording has been changed to refer to specific articles. The templates for the membership application and the proxy form have been removed. References to previously deleted articles have also been removed. Gender specific language has been updated.*

The feedback has been considered and we have decided no changes to the text are necessary.

Section 15: any other views

- *Do you have any general feedback or other views that you would like to provide that has not been covered in this consultation?*

Respondents answering this question were mostly concerned about using weighted voting for these article changes and whether one member one vote could be used instead. The Board have responded to these concerns in Section 9: Votes of Members.

Section 16: Future change

- *Please tell us if there are any other elements of Nominet's Constitution you would like the Board to consider in the future.*

Board response

We are grateful to all stakeholders who took valuable time to provide their views on the changes they would like to see the Board consider in the future. There were a wide range of views expressed with no clear consensus on any one issue. The Board will take time to consider and discuss the input and commit to report back to the Members with an update on our thinking at the AGM.

Thank-you

The Board would like to reiterate its thanks to all stakeholders who provided input to this consultation. This has been a valuable exercise where your suggestions and feedback have helped us make further improvements and we hope you can see this reflected in the revised [Articles](#) post consultation.

A resolution to adopt the new Articles will be put to a Member vote at the 2023 AGM and will require a 90% vote in favour, with a 3% cap to be successful. Members fulfil an important role in Nominet's governance and we encourage all Members to participate in the forthcoming AGM and Non-Executive Director Elections. If you have any questions or feedback on the consultation or this document please get in touch with us via email to articles@nominet.uk.