

## The Fell Runners Association

### Progress towards incorporation – update for members after the 4 September 2011 Committee Meeting

The purpose of this summary note is to provide members of The Fell Runners Association with an update on progress towards incorporation. Formal resolutions to deal with the transfer and necessary later dissolution of the Association will be put to members at the AGM in October.

In this note the term Association refers to the unincorporated body as currently constituted. The expression “FRA” refers to the proposed new corporate body.

#### Rationale

As outlined in the Summer edition of *The Fellrunner*, the committee of the Association believes that it is unreasonable, unfair and unnecessary for each member of the committee, all of whom are volunteers, to be wholly responsible for all the debts and liabilities of the Association, by virtue of the legal principle of joint and several liability.

The move to incorporate is to primarily address this risk, to protect the assets of the Association within a shell of limited liability, to be clear that members themselves have no liability to the body beyond a nominal £1.00 each and to allow the Association to enter into contracts and other relationships in its own right, something it currently has to do, having no separate legal status, via individual members of its committee.

#### Mechanism

The mechanism to achieve this will be a transfer of all the operations and affairs of the Association (including all its assets and liabilities) to a new company limited by guarantee, The Fell Runners Association Limited (FRA). The FRA will have common members with the Association. On completion of the transfer, the committee members of the Association elected at the AGM in October will become the committee of the FRA.

To do this in practice will require certain resolutions to be passed at the AGM of the Association scheduled for Saturday 8 October 2011. The terms of those resolutions are set out below, and will also appear in the formal notice of the meeting to be published on the Association’s website:

1. *To approve the entry into by the Association of an agreement (the "**Transfer Agreement**") under the terms of which the Association will transfer all of its operations and affairs, assets and liabilities, to a newly incorporated company limited by guarantee (with common officers and members with the Association) to be called *The Fell Runners Association Limited*.*

2. *To give authority to the executive committee to agree the specific terms of the Transfer Agreement on behalf of the Association, and to authorise any member of the executive committee to sign the Transfer Agreement on behalf of the Association.*
3. *Subject to the passing of resolutions 1 and 2 above, and on completion of the Transfer Agreement, under the authority of rule 12 of the Association's constitution, to dissolve the Association.*

In almost every way, members should notice little change to the way the FRA operates after incorporation.

### Membership

Membership renewals will be sent out in the usual way later this year. As a safety net, article 5 of the new articles of association of the FRA provides for all members of the Association to become members of the FRA immediately after completion of the formal legal transfer referred to above.

### Insurance

Having taken advice from UKA and its brokers, there will be no interruption in the UKA insurance umbrella.

### Delegated authority from UKA

UKA have confirmed that the delegated authority which the Association has from it in connection with the management of fell running will apply equally to the FRA.

### Contracts with third parties

A list of contracts with third parties has been prepared so that these third parties can be notified of the switch after it has taken place.

### Banking arrangements

Discussions are in hand with our bankers to ensure there will be no interruption to our banking arrangements.

### Draft articles of association

*Generally* – those who are familiar with the constitution of the Association will find the bulk of its provisions mirrored in this document. The new articles are longer than the current constitution as they deal with a number of matters required by company law which are not applicable to the unincorporated association. The notes that follow focus on some fundamental issues and items that are new because of the switch to corporate form. Not every article gives cause for comment.

*Liability of members* – the limit of liability on a winding up of the FRA for any member is the sum of £1.00. This basic principle is established in article 2.

*Objects* – these are set out in article 3 and are carried forward from the old constitution. Article 3 (b) has been reworded to reflect the need to consider environmental and other impacts as the sport moves forward.

*Members* – article 5 ensures continuity of membership between the two bodies. Article 8 provides for membership to lapse if subscriptions are not paid within 6 months of the due date. If the level of subscriptions is to be increased this will be decided at the relevant AGM (article 9).

*AGMs* – article 10 confirms that an AGM will be held in each year before 30 November. Notice will be published in *The Fellrunner* and via the website as currently (article 12). The quorum for an AGM or an EGM remains at 20 members (article 13).

*Proxies* – because the FRA will be a company, the law relating to the appointment of proxies will apply. This will mean that at any meeting of the members a member will be able to appoint the Chairman of the meeting, another member or a nominated third party to cast their votes for them, provided they use the appropriate form supplied and return this within the time specified, a few days before the relevant meeting. Proxy forms will be circulated with notices of members meetings after incorporation. As a result of this, the old rule providing for postal voting has been removed as the proxy rules are essentially a postal voting system by another name (article 15).

*AGM business* – AGMs will remain formal meetings to deal with the business specified in article 16. The post-AGM general discussion is enshrined within the articles at the end of article 16.

*Votes of members* – article 20 confirms the principle of one member, one vote. Article 19 contains language about polling. It would be open to the Chairman under this article to specify that voting on certain resolutions be by way of secret ballot. This method has been used for voting on various resolutions in the past.

*Executive Committee* – article 22 records the composition of the committee which mirrors the current situation in terms of committee post numbers and titles. As currently, there is provision for the election of 4 member and 4 club representatives. Article 24 ensures that the committee elected at the AGM of the Association in October 2011 will automatically take office as the committee of the FRA until the first AGM of the new body. Article 25 confirms that the committee term of office remains at 1 year.

Article 37 confirms that the management of the FRA falls to the elected committee and article 38 sets out some specific powers that mirror the current arrangements.

Article 38 sets out in more detail the role of the committee. Again these provisions are taken from the current constitution. The committee will be responsible for drawing up rules, bye-laws and regulations for the sport. Under the current constitution, any changes of such nature were then subject to confirmation at an AGM. This requirement will be removed, on the basis that it is the committee that is elected to manage the affairs of the FRA and these aspects fall squarely into the category of management. The committee is accountable to the membership as indicated below.

Article 41 confirms that committee members can be paid reasonable expenses of performing their duties but otherwise shall be paid no remuneration. The committee continue to be volunteers.

Article 47 confirms that, as now, any member may attend a meeting of the committee as an observer.

***Member control/committee accountability*** – ultimately, it is the members who own the net assets of the FRA and who have control of it. This control, committee accountability and the right of members to contribute to the affairs of the FRA, comes via the following provisions:

- **The general power of members to cast their vote on resolutions put to a meeting of the members.**
- **Article 11 – which confirms that if members requisition a general meeting in accordance with the legislation, the committee must do so within 8 weeks.**
- **The arrangements provided for in article 16 to allow members to express views on any aspect of the sport in the open discussion session which follows each AGM.**
- **The annual election of members of the committee at AGMs as provided for in article 22.**
- **The right for any member to attend any committee meeting as an observer and to speak at such meeting under article 47.**
- **The right for 5% of the members to convene a general meeting of the members under article 48.**

*Conflict of interests* – articles 56 to 58 contain arrangements to deal with any conflict of interests which might arise.

*Accounts* – accounts will be prepared in accordance with the Companies Act 2006 (article 60) and will be presented to members for approval at the AGM (article 16).

*Dissolution* – as at present dissolution of the FRA can only be triggered by a specific resolution passed by a 75% majority of those who attend and vote in favour of such a resolution. As presently, on dissolution any surplus assets remaining after payment of all debts and liabilities belongs to and will be distributed equally between the members (article 66).

### Summary and conclusion

By its nature, this document has had to be presented in lengthy legal terms but in essence the FRA of the future will continue to serve the members in **exactly** the same way as present but under a different legal framework.

The committee of the Association believes that incorporation is both a logical and essential step for the FRA to take in an increasingly complex world. This step will provide a legal framework which is fit for purpose for the foreseeable future and which provides the protection of limited liability for members and especially

committee members, both the committee of today and those who might volunteer for service in the future.

The committee urges members to vote in favour of the three relevant resolutions at the forthcoming AGM.

Any member with questions about the proposal is invited to speak with any committee member in the period prior to the AGM of the Association in October.

**Morgan Williams**

**Assistant Secretary, on behalf of the Executive Committee**

**8 September 2011**