



## REPORT ON PROPOSED CHANGES TO REYC GOVERNANCE 2018

### BACKGROUND

1. REYC is currently an Excepted Charity set up as a Service Fund and has existed as such since 2011. This arrangement has served the Club well in the past and is common for Service Clubs, although many are now having to consider change for similar reasons to us.
2. There are two principal reasons why our current status is no longer considered fit for purpose:
  - a. **Liability of trustees.** As an unincorporated Club our yachts have to be owned by our trustees who have related personal liability for all activities related to their use. Our trustees also currently carry personal liability for any debts of the Club not covered by Club funds. Overall, these liabilities place an unreasonable burden on our trustees.
  - b. **Revenue ceiling.** Institutions with annual revenue greater than £100k are no longer eligible for Excepted Charity status and must adopt alternative governance arrangements. Whilst REYC has not yet reached the £100k threshold, we expect to exceed it shortly.
3. Accordingly a Governance Review was announced at the 2017 AGM and established under the Terms of Reference at Annex A, which are enclosed for those who may wish to read them and include the names of Review Team Members. Review team work has been under way for almost a year and is now at a point at which a clear recommendation on a way forward can be made to Club members in order to allow a vote to take place at the 2018 AGM.
4. During the course of our work we have been advised on legal aspects by Stone King LLP and on accountancy aspects by Knox Cropper. Both companies specialise in the not-for-profit sector and have provided valuable advice at no cost to the Club. We have also sought guidance from the Maritime and Coastguard Agency (MCA) and the Royal Yachting Association (RYA) where necessary to inform our work. Finally, in Nov 17 we briefed a wide cross section of senior members of the Club on our emergent thinking. Many who attended that briefing have held Trustee and Flag Officer appointments themselves and know the Club well. Their counsel has been invaluable and their recommendations have been taken into account in our final proposal.
5. This report summarises the work undertaken by the Review Team. It also provides background information in advance of a vote on whether to change the Club's governance arrangements to be held at the 2018 AGM on 19 Apr 18. There will be a short verbal briefing at the AGM and an opportunity for questions and discussion prior to the vote.

### DECIDING THE MOST APPROPRIATE OPTION FOR REYC

6. A long-list of potential options was drawn up as a basis for initial discussion. This was narrowed down to a short-list of 3, comprising Charitable Incorporated Organisation (CIO), Company Limited by Guarantee (CLG) and Company Limited by Guarantee with charitable status. These options all provide incorporated status for the Club which is the only mechanism by which ownership of and liability for our yachts can be transferred to a 'body corporate', thereby removing personal liability from our Trustees.

7. Subsequent legal advice rapidly narrowed these options down to a single practical way forward which would retain our charitable status and avoid unnecessary complexity at the point of registration/incorporation and in subsequent annual reporting. We have therefore focused our work on the CIO as the most appropriate option.

8. CIO is a relatively new form of legal entity established in 2013, designed for non-profit organisations and managed by the Charity Commission (CC). Critically, a CIO can enter into contracts and own assets in its own name, and its trustees and members have limited or no liability. There are 2 models of CIO – Foundation and Association – and we have opted for the latter as it most closely replicates current Club voting arrangements by retaining voting rights by all full members. In a Foundation model CIO only trustees have the right to vote and we do not feel this would be right for REYC. Our legal advice is that the CIO structure is now sufficiently well understood and tested for us to have confidence that it is suitable for REYC.

9. As communicated to members in Dec 17, we submitted our application to CC in mid-Jan 18. This was to take account of the considerable processing lead time within CC in the expectation that we would receive a response prior to the AGM. This will allow voting to be based on the fullest possible information. We had heard nothing from CC at the time of writing this report, but nor had we expected to. Further updates will be provided at the AGM verbal briefing.

## **OUR PROPOSED CIO CONSTITUTION**

10. The constitution of a CIO must be in a form specified by CC, and the draft of our new constitution, attached at Annex B, has been produced based on the CC model. The 3 critical aspects are Objects, Membership, and Governance.

11. **Objects (Purpose).** Our proposed Objects are at Clause 3 of Annex B. They have been carefully crafted to use CC wording whilst deviating as little as possible from the Club's current Object and incorporating as many 'hooks' as possible aimed at retaining existing arrangements.

12. **Membership.** Proposed membership of the CIO is at Clause 9 of Annex B. In summary, we are proposing that serving and ex-Royal Engineers should be eligible for full (voting) membership (Clause 9. (1)), a small change which simplifies the full membership criteria in Paragraph 7 of our current Rules. These are the only 'members' of concern to CC. All other existing classes of membership (Family members, Associate members, MOD civilians etc) are accommodated under Clause 9. (6) and will not be eligible to vote. This does not change current voting arrangements in any way.

13. **Governance structure.** Our aim has been to establish a new Board of Trustees that can focus on the strategic leadership of the Club in its new legal form, allowing the Main Committee to focus on operational management. The governance structure we propose meets CC requirements in full and is shown at Annex C.

## **WHAT WILL THIS MEAN FOR THE CLUB AND FOR YOU AS MEMBERS?**

14. **Day to day activities.** For the majority of REYC members of all categories there will be no discernible change in how they participate in and are supported in sailing of any discipline. There will be some changes for those who run the Club at Main Committee level and at the level of Offshore, Inshore and Regions sub-committees, but those involved have already been briefed on what these will entail. The most significant change at the top of the governance structure will be the formalisation of a Board of Trustees. It will set the strategic direction for the Club and provide guidance to the Main Committee which will report to the

Board. Full REYC members will be eligible to elect trustees to the Board and Club officers to the Main Committee.

15. **Management of Club financial accounts.** Becoming a CIO provides an opportunity to simplify the management of our financial accounts and banking arrangements. Whilst details are still being finalised, we anticipate opening a single not-for-profit business account to replace the existing system in which we have 3 separate accounts; 2 managed by regimental accountants and the other managed as a civilian bank account, with little 'join-up' between them. This will ease the burden on those managing Club finances by providing access to many of the facilities currently enjoyed with personal banking and will also remove the burden on those regiments currently providing accounting support. We will also need accountancy support for the Club's Hon Treasurer and, again, options are being finalised. As a CIO we will be obliged to comply with the Statement of Recommended Practice for Accounting and Reporting by Charities, which will require a Trustees' Report to accompany an annual submission of our accounts to CC. Our income is insufficient to require full audit, but our accounts will require independent examination prior to annual submission. As now, accounts will be subject to AGM scrutiny and a vote by members.

16. **Other financial aspects.**

a. **VAT.** Our VAT status will not be affected by a change in our legal status. We are currently outside the VAT regime.

b. **Corporation Tax.** Charities are not subject to Corporation Tax (CT) provided their income is used in furtherance of their objects, and our trading income, which would be subject to CT, is well below the threshold at which it would be charged.

c. **Gift Aid.** We are registered for Gift Aid on Hulls Fund subscriptions and this will continue as a CIO.

d. **Legacies.** As our charitable status will continue there will be no change to donor tax status with regard to legacies left to the Club.

17. **Royal title.** We will be allowed to retain the Royal title in the Club name.

18. **Coding and Management of Offshore Vessels.** Apart from Hebe, which was gifted to the Club, our offshore yachts are currently registered on Part 1 of the UK Ship Register and coded as Small Commercial Vessels. The proposed new governance structure will not impact on these arrangements, but it will allow the yachts to be owned, registered and managed corporately by the Club rather than by named individuals, with the Board of Trustees sharing overall responsibility for all aspects of yacht management. The Rear Commodore (Offshore) will be appointed corporate Managing Agent, under whom the Offshore Committee will be able to manage registration and coding of the yachts as well as continuing with their present responsibilities for the long-term and day-to-day management of the Offshore Fleet. This is portrayed in the proposed governance model at Annex C.

19. **Management of Inshore Vessels.** The Club's dinghy, sailboard and kite surfing assets will come under an appropriately strengthened management regime under the Rear Commodore (Inshore).

20. **Rules and Bylaws.** Once our proposed constitution has been agreed by CC we will re-write our Rules and Bylaws to suit Club needs, ensuring that they complement and do not contradict the constitution. This process has already started and the intention is that revised Rules and Bylaws will be subject to a members' vote at AGM 2019.

## **IMPLEMENTATION ARRANGEMENTS**

21. **Co-existence of current Club and CIO.** Assuming members vote in favour of our recommendation, there will be a period in 2018 during which the current Club will exist in

parallel with the CIO. The CIO cannot be formed until it has been approved by CC, and the existing Club cannot be dissolved until its assets and commitments have been transferred to the CIO, which will take time. For those involved in managing REYC this will be a busy period, but other members should see little difference. The Club will continue to be known as The Royal Engineer Yacht Club throughout the transition and in both its old and new forms.

22. **Transfer of assets.** Transfer of assets from the existing REYC to the new CIO must be done under legal arrangements using a Deed of Transfer. This is in hand with our legal advisers and stock taking activity is already under way to ensure we are fully prepared.

## **TIMINGS**

23. We anticipate the following timeline which differs slightly from that shown in the Terms of Reference (Annex A) for reasons discovered during the course of the review.

- a. 19 Apr 18. Presentation at 2018 AGM and vote on resolution to form a CIO.
- b. Apr 18. Likely further dialogue with CC leading to approved constitution.
- c. May 18 (approx). CC approve formation of CIO.
- d. May-Oct 18. Parallel existence of existing REYC and CIO.
  - Notification to members of final changes to constitution required by CC (these are expected to be minor, but anything of significance may require a further vote at EGM).
  - Transfer of assets from existing REYC to CIO.
  - Completion of new Rules, Bylaws, accounting and banking arrangements, Gift Aid arrangements etc.
  - Existing REYC 'dissolved' once transfer complete.
- e. 1 Dec 18. New financial year for CIO starts, chosen to allow sufficient time to audit accounts and prepare for subsequent AGM.
- f. AGM 19.
  - Report on implementation of new arrangements.
  - Re-election of Trustees and Club officials.
  - Vote on 'old' REYC accounts up to point of transfer.
  - Vote on initial CIO accounts.
  - Formal approval of revised Rules and Bylaws.

## **RECOMMENDATION AND RESOLUTION**

24. The Review Team has examined every aspect of this proposed change to the structure of REYC. We firmly believe our recommendation to form a CIO represents the best course of action for the Club and will provide a solid foundation for the years ahead. The resolution on which you will be invited to vote is at Annex D and we commend it to you.



R C Hendicott  
Col (Retd)  
Honorary Rear Commodore and Review Team Leader

Annexes (attached as separate documents):

- A. Review TORs
- B. Proposed CIO constitution for REYC
- C. Proposed REYC governance model
- D. AGM 2018 Resolution

Note: clauses in Annex B referenced in this brief are highlighted in **yellow** in the Annex.