

## **Explanatory Note to the EGM to be held 28<sup>th</sup> January 2012**

The following explanatory note has been compiled in order to clarify the purpose of Special Resolution 2 at the forthcoming EGM. If members are in any way unsure or unclear as to the purpose or meaning of Special Resolution 1 or Special Resolution 2, or wish for clarification on any aspect regarding the EGM, please contact the Secretary on [secretary@wpcs.uk.com](mailto:secretary@wpcs.uk.com).

### **Special Resolution 2**

That the appointment of any Trustee appointed in breach of Article 15(a)(i) of the Charity's Articles of Association be ratified.

Immediately prior to the Society EGM that took place on 25<sup>th</sup> September 2009, the requirement for nominations of trustees to Council was on the basis of a proposal only (no seconder required). At the EGM held in September 2009, the following resolution was ratified by the WPCS membership:

*“Special Resolution to insert definition of “Scrutineer” in Article 1(a) and replace Articles 15(a), (b) and (c) of the Welsh Pony and Cob Society’s Articles of Association”*

The Notice for the September 2009 EGM clarified this resolution, as follows:

*That the current Articles of Association of the Company be amended by deleting Articles 15(a), (b) and (c) and inserting in their stead:*

*15(a) Until otherwise determined by the Charity in General Meeting, the following procedure shall be observed in every election of Trustees:*

- (i) At least eight weeks prior to the date determined for the Annual General Meeting, notification shall be despatched to Members by the Secretary of the intending election of members of the Council and inviting nominations to be duly proposed and seconded by Members of the Charity and to include thereon the assent in writing of the candidate.*
- (ii) With the notice convening the Annual General Meeting the Council shall cause to be sent to Members entitled to receive such notice a ballot paper in the form approved by the Council, containing the names of the candidates for election. Such ballot papers shall be returned to the Secretary by a date fixed by the Council.*
- (iii) No member may vote for more members than the number of vacancies and no Member may cast more than one vote for any one name. Any ballot paper which has not been correctly completed and returned to the Secretary by the date fixed by the council as aforesaid shall be rejected.*
- (iv) The Council shall appoint at least two scrutineers to inspect the votes cast by the ballot papers duly completed and such scrutineers shall report in writing at the Annual General Meeting the names of each candidate with the number of votes that*

*have been cast for each of them. Candidates up to the number of vacancies who shall receive most votes shall be declared elected and in the case of two or more candidates receiving an equal number of votes, the selection of the required number out of the candidates having such an equality shall be made by the drawing of lots at the meeting.*

*and by re-numbering Articles 15(d) and (e) as 15(b) and (c).*

This resolution noted the requirement for a seconder for nominations (Article 15(a)(i)) and was ratified by the membership. However, due to an administrative error, the form that sought nominations for trustees for the 2010 elections was not amended to include an option for a seconder and this form was also used for the 2011 elections. As Secretary at the time of the 2011 elections, I accept full responsibility for the latter omission.

Members of Council elected in 2009 *did not require a seconder* at the point of nomination (prior to amendments to the Articles at the September 2009 EGM). The trustees in question are:

- Lady Evans-Bevan
- Mr A. S. Everitt
- Mrs C. E. Reed
- Mrs E. A. Russell
- Mr C. Thomas

The term of office for these trustees ends at the AGM in March 2012.

At the 2010 elections, three nominations were received without seconders, at a time when seconders were required. These trustees are:

- Mr M. T. Daley
- Mrs K. A. Jones
- Mr D. M Waters

Two trustees were elected from the floor at the 2010 AGM to fill the 5 vacancies and these *were* seconded at the time of nomination. These trustees are:

- Mr N. Burton
- Mr R. G. Manchip

The term of office for these two trustees ends at the Society AGM in April 2013.

All five trustees elected in 2011 were proposed but not officially seconded at the point of nomination. These being:

- Mr C. R. Davies
- Mr D. Ll. Evans
- Mr I. J. R. Lloyd
- Mr D. D. Morgan
- Mrs J. E. S. Pearce

It is important to note that the eight trustees that were nominated without seconders, at a time when seconders were required, were elected by the membership at large and no member was disadvantaged by their election.

It is important to also note that these eight trustees have not been acting “illegally” during their term on Council. The Society’s solicitors have confirmed that these are defective appointments and not illegal and that the omission of a seconding on the nomination form is a technicality that needs to be addressed but does not invalidate the action of these trustees as directors. In reference, attention has been drawn to Section 161 of the Companies Act 2006 which states the following:

#### **Companies Act 2006**

##### **161 Validity of acts of directors**

(1) The acts of a person acting as director are valid notwithstanding that it is afterwards discovered –

- (a) that there was a defect in his appointment
- (b) that he was disqualified from holding office
- (c) that he had ceased to hold office
- (d) that he was not entitled to vote on the matter in question

(2) this applies even if the resolution for his appointment is void under Section 160 (appointment of directors of public company to be voted on individually)

Returning to Special Resolution 2 of the forthcoming EGM, it is asking members to vote to accept the nomination of the eight trustees who were elected without a formal seconder at the point of nomination as Society trustees. Despite not having their nominations seconded, all trustees were elected by an open process and all received multiple supportive votes from members that were collated and reported by the Scrutineers.

Article 15(a)(i) of the Society’s Articles of Association is the section that notes the need for a seconder (see above reference). Full copies of the Society’s Articles of Association can be obtained from the Society Website or by contacting the Society’s office.

If members do not vote to accept Special Resolution 2, the eight trustees in question will stand down from office at the EGM and 7 trustees will remain in office until the AGM on 31<sup>st</sup> March 2012. Whether Council can operate with less than 15 trustees depends on whether Special Resolution 1 is ratified or not by the members at the EGM.

At the AGM, 5 of these trustees’ terms of office will terminate, with 3 able to re-stand for election (Mrs C. E. Reed, Mrs E. A. Russell and Mr A. S. Everitt). Two existing trustees will automatically remain in office for a further year (Mr N. Burton and Mr R. G. Manchip), until 2013.

Depending on the outcome of the members' vote on Special Resolution 1 at the EGM, where the required minimum number of 15 trustees could change, it could be that a further election for trustees will need to take place after the AGM if Special Resolution 2 is not ratified.

Members are urged to direct any queries on the EGM to the office for accurate, factual advice.

Anna L . Prytherch  
*Principal Officer / Company Secretary*  
18<sup>th</sup> January 2012