

Our Ref: AMc/AGM 2020/Lett 7  
23 November 2020

**To: Secretaries of Full Member and Associate Clubs  
Secretaries of Associate Bodies  
Members of Scottish Rugby Council and Scottish Rugby Board  
Past Presidents**  
*Distribution by Email*



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Dear Sir/Madam

**Scottish Rugby Union  
Annual General Meeting 2020 – Stage 2**

The Council met for a supplementary Meeting on 22nd November 2020 to discuss the upcoming AGM Part 2, SGM and the associated paperwork.

**The Council reiterate to members that the Council has adopted a neutral stance to both AGM motions and they remain of the view that it is a matter for the membership to consider, discuss and ultimately approve or reject the motions.**

The AGM/SGM documentation circulated on Thursday 19 November was issued to provide the membership with information on the effect of the motions, if passed, and to assist the members in coming to an informed choice before deciding how to cast their vote. The Council had not had sight of the documentation ahead of it being released but had been briefed on the points raised in respect of the AGM motions at the time of those motions being submitted, when coming to their conclusion to adopt a neutral stance. The guidance note for the AGM motions draws members' attention to a handful of implications, as is usual practice when the Board and Council adopt a neutral stance on any motion but does not advise how members should vote.

In relation to the SGM, the Council noted that as additional information has been included as part of the SGM documentation, it would be beneficial for the Council Briefing Paper and Request for Endorsement from the Championship Committee (circulated to the Council on the 27<sup>th</sup> of March 2020) to be released to allow the membership to consider the feedback received at that stage in relation to the end of the 2019/20 season, ahead of the SGM. The paper has been included as an appendix to this letter.

The proposers of the motions will have the opportunity to speak to their motions at the AGM Part 2/SGM. The Council also draws the members' attention to the deadline for AGM Q & A being **12 noon, Tuesday 24<sup>th</sup> November 2020**. A question form was contained within the AGM 2020 Letter 6 and can be downloaded from the SRU website: <https://www.scottishrugby.org/about/annual-general-meeting>

In the meantime, the Council highlight that their stance on the AGM motions remains neutral.

Yours sincerely

**Ian Barr**

President

ATTACHMENTS



**COUNCIL BRIEFING PAPER  
& REQUEST FOR ENDORSEMENT**

Championship Committee Request : Covid-19 Response

## KEY POINTS OVERVIEW

On Friday 20<sup>th</sup> March the Scottish Rugby Board approved the closure of the 2019/20 domestic rugby Season. This closure recognised the earlier interim suspension of the Season (with effect from Sunday 15<sup>th</sup> March) and the developing Government and NHS advice on the Covid-19 virus. The related announcement indicated that it was hoped to make a decision as to the consequential impact of the early closure of the Season (on promotion/relegation, etc.) by 31<sup>st</sup> March 2020.

The subsequent process has involved:

- consideration of the relevant Rules / appropriate decision-making processes;
- the development and testing of multiple options in respect of the Premiership, National, Regional and Reserve Leagues; and
- consultation with appropriate parties (including the Rugby Development Department, Championship Committee/ Competition Committees and participating clubs) in respect of the options available.

Further detail in relation to each of these steps is provided in this paper.

As part of the process clubs were asked to identify their preference as to how the season should be closed. The response rate to this request was very good (118 responses). Of these responses:

- Overall just over 50% favoured declaring the Season as Null and Void. The next most popular suggestion (basing final league positions on those at the time of closedown) received significantly less support (less than 25%). The remaining 25% of responses were split over five other options; and
- Within the Premiership and National Leagues 45 out of the 46 clubs responded. Of these 23 out of 45 (51%) indicated a preference for a Null and Void Season. The next most popular choice (positions at the time of shutdown) received less 18% support.

On behalf of the Championship and Competitions Committees, the appointed Convenors have now written to request that they be given the authority to declare the Season Null and Void. Under the Bye-Laws / National Competition Rules the Board has the ability to grant them this power. However, it is recognised that this is a very significant step and prior to considering this matter the Board will rightly wish to be confident that such a request comes with the support of Council.

### Action and Request for Endorsement

Council Members are requested to:

1. Consider this paper carefully;
2. Contact Scottish Rugby's Head of Regulation should they have any queries (E: [graham.ireland@sru.org.uk](mailto:graham.ireland@sru.org.uk) ; M: 07764 178932); and
3. Confirm their support (or otherwise) for the proposal to the Council Secretary and copied to the President for 9.00 am on Monday 30<sup>th</sup> March .

## Background

The early close to the 2019/20 as a result of Covid-19 is an unprecedented event within Scottish Rugby. The requirement for an early shutdown prevented over 300 competitive matches from taking place and affected every league and almost every league playing club. By comparison the nearest analogous event – the Foot and Mouth outbreak of 2001 - left only 15 fixtures unplayed and affected only a similar number of clubs.

## National Competitions

It was clear from the outset that, in terms of the consequential impact on the various leagues in terms of promotion/relegation, etc., there would be no “right” solution. Every solution was likely to be problematic in some way – none was likely to be supported by everyone. It was therefore considered essential that the full range of options were explored, each potential option was sense checked and that, as far as possible, a broad consensus was reached across the game as to the most appropriate outcome.

### Options for Shutdown

In preparation for the shutdown multiple options for resolving the domestic leagues were explored by the Competitions team. Of these, ten were identified as being potentially practical solutions in order to resolve the Season. These options are further detailed in Appendix 1 to this paper.

In respect of the ten options:

- Three were predicated on a possible re-start to the season (being Options 1 to 3 in Appendix 1). These options were subsequently discarded as it became clear that the Covid-19 outbreak was likely to be prolonged, and further to the Board agreeing that the Season could not be restarted.
- Two of the options (Options 8 and 9) would, if implemented, have resulted in an amended format to the Premiership/National Leagues in 2020/21 (by, say, introducing an 11 team Premiership). These options were considered to run directly contrary to the amended Bye-Law introduced in 2018 (Bye-Law 14.2.3), which requires a three stage process before the “format” of these leagues can be amended (being consultation - Council Approval – General Meeting approval). In the current circumstances consideration at a General Meeting within a reasonable timeframe was not considered to be possible or lawful, taking account of current restrictions on gatherings
- Four options (Options 4,5, 7 and 10) involved mechanisms for deciding the outcome or implications of unplayed fixtures, etc. to arrive at a final league table with consequential promotion/relegation, etc. ***These options could each be effected through the Board providing powers to the Championship Committee under NCR 14.2 / 14.2.1.***
- The final option considered (Option 6) was to declare Season 2019/20 as being “Null and Void.” This is the outcome adopted by both the IRFU and the WRU in respect of their own domestic leagues (the RFU has still to make a decision on this). ***In a regulatory/governance sense this option requires a slightly different route, but still achievable should the Board make a determination in the best interests of the game under Bye-Law 15 using its underlying residual powers (and thus enable the Championship Committee to take this action under NCR 2.4).***

However, it was rightly recognised that invoking the residual powers under Bye-Law 15 was not something to be considered lightly, and should only be done where (i) the situation was deemed to be truly exceptional and (ii) further to an appropriate consultative process, including the involvement of the Council.

On the face of it, invoking Bye-Law 15 appears to be at odds with Bye-Law 14.2.3, which provides that the Council has the responsibility to *“determine the format of the national club competitions which are defined in the National Competition Rules’ Appendix 1 Premiership and National League Regulations, following prior consultation with and subsequent approval from the Clubs at an AGM or SGM.”*

However, the Board would not simply be utilising the powers granted to it within Bye-Law 15 on a whim – significant consultation has taken place as is further outlined below, thus fulfilling the “prior consultation” element of Bye-Law 14.2.3. In addition, the Scottish Rugby Council’s endorsement is now being sought prior to any final decision being made and then implemented.

In this instance it is clear that a decision needs to be made quickly. There is currently a Government prohibition on mass gatherings meaning that it is simply not possible to arrange an SGM as set out in Bye-Law 14.2.3. It is clear that a particularly niche set of circumstances has arisen, and not holding an SGM does not amount to an ‘over-riding’ of Bye-Law 14.2.3.

Instead, it is something very similar to the principle of “frustration” in contract law – whereby an event or chain of events makes it such that a provision is simply impossible to implement, either in part or in full. By adhering to Bye-Law 14.2.3 as far as possible in respect of the outcome affecting the Premiership and National 1-3 through the running of a consultation process, and acknowledging that simply ‘doing nothing’ is not an option, the Board would be displaying leadership and good governance practice by utilising its powers in a reasonable and proportionate manner under Bye-Law 15 during unprecedented circumstances. Whilst this course of action may still be open to criticism from those who do not agree with it, there are at least grounds to defend the Board’s ability to make such a decision pursuant to the Bye-Laws.

The ending of the Season at this point was considered to be a truly exceptional situation. An extensive consultation exercise with the Competition Committees and participating clubs was therefore undertaken in order to gauge their views.

## Consultative Process

In the light of the above, the Competitions team, the Championship Committee and Competitions Committees sought the views of participating clubs as to which of the various options they believed should be followed. This process was co-ordinated by Vicky Cox in her role as Competitions Manager.

Vicky has advised that 118 pieces of feedback were received. Of these **around 50% favoured 2019/20 being considered a “Null & Void” season**, with the next most favoured option (using the league positions at the time of shutdown) only garnering around 25% support. Support for each of the other options was significantly lower.

Perhaps the most problematic area in this complex decision-making process involves the Premiership and National Leagues (i.e. those leagues directly affected by the 2018 change to Bye-Law 14.2.3). Of the 46 Premiership/National League Clubs 45 provided feedback. This was analysed as follows:

<b>Premiership/National League Feedback:</b>	<b>Prem.</b>	<b>N1</b>	<b>N2</b>	<b>N3</b>	<b>Total</b>
Null & Void Season	5	5	8	5	23
Current Standings	0	4	1	3	8
Average points per match played	2	1	2	2	7
Award 2 points per unplayed fixture	2	0	0	0	2
Treat earlier games as double headers	0	0	0	0	0
Others e.g. re-start the Season	0	2	1	2	5
	<b>9</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>45</b>
No response	1	0	0	0	1
	<b>10</b>	<b>12</b>	<b>12</b>	<b>12</b>	<b>46</b>

Therefore, in respect of each of the four Premier/National League divisions **the Null and Void option was the most frequent option**. Overall 50% of Premier/National League clubs were in favour of this option, with the next most popular option (Current Standings) achieving less than 20% support. These results were broadly consistent with the wider input received.

## Views of the Championship Committee / Competition Committees

Further to the club input discussions have been held with the appointed Competition Committee Convenors in order to fully understand the views of the Committees. Whilst the Championship Convenor, Dougie Belmore has been involved in these conversations he asked George Clark (Reserve League Committee Chair to take a lead (Dougie being involved in crisis management operations with his employer as a result of Covid-19).

On behalf of the Convenors, George has summarised their position in writing (Appendix 2). In this he states: *“Our clear agreed position, following extensive consultation with Championship Committee representatives of the clubs in the Premiership, National Leagues, Regional Leagues and Reserve Leagues is that Season 2019/20 should be declared null and void. Given a number of alternative options, the majority of clubs whose views have been canvassed by those representatives favour that outcome.”*

## View of the Rugby Development Department

The feedback provided by the participating clubs and the Competition Committees has been discussed by the Competitions team and the management group within the Rugby Development Department. In summary, both groups are supportive of the proposition that 2019/20 be declared Null and Void.

In this regard the Director of Rugby Development has commented:

*“There has been an inordinate amount of work by various parties including the clubs, Council, Regional and Championship Committees and our own staff, there is no consensus to conclude this situation.*

*This is a really difficult decision given the number of games that have been played – whatever decision we come to we will never please everyone, therefore we are writing to suggest that we go with the recommendation of the*

*Championship Committee and the majority of the clubs to have a ‘null and void’ decision. I know that the Board will wish to reflect carefully on this but, given that this is what the Championship Committee has requested, and what the majority of clubs have asked for, we believe that it would be prudent of the Board to respect that decision.”*

### **Regulatory and Governance Position**

The decision to end the Season before its natural conclusion has widespread implications for the participating clubs, particularly those at or near the top and bottom of leagues. The consequential decisions now being made around awarding / not awarding titles, enabling/cancelling promotion and relegation, etc. are likely to be (for some at least) controversial. These decisions will also attract a considerable degree of media interest. It is therefore important for Scottish Rugby to carefully think through the implications of the various courses of action.

In summary, both alternative courses i.e. either taking steps to establish a final league table (Options 4, 5, 7 and 10) or to call the season as being Null and Void (Option 8) are technically achievable (see Appendix 3 for further detail). The former – taking steps to produce a final table – is more straightforward from a regulatory/governance perspective, but not a course of action which appears to be supported by the Convenors, Competitions Committees, Rugby Development Department and, most importantly, the participating Clubs.

The alternative – of calling the Season Null and Void – appears to have the support of a large number of clubs, and is supported by the Convenors, the Competition Committees and the Rugby Development Department. It would also be consistent with the decisions made by both the IRFU and the WRU in respect of their own domestic competitions. To implement this decision would involve adhering to Bye-Law 14.2.3 as far as is possible, whilst acknowledging that the calling of an SGM is impossible owing to newly implemented laws around mass gatherings. The Board would therefore need to use the exceptional powers granted to it under Bye-Law 15 in order to move things forward in a way that it considers to be best in the circumstances.

Whilst the Board has the power to respond to the request from the Championship Committee, whichever course of action is to be adopted, prior to making this decision the Board also wishes to ensure it has the support of the Scottish Rugby Council.

### **The Endorsement of the Council**

**In order to support the decision-making process Council members are invited to:**

- **Consider the contents of this paper carefully;**
- **Confirm if they support the Championship Committee request that the 2019/20 Season be considered Null & Void, with the Board requested to approve the necessary consequential steps.**

**In doing so Council members should provide their responses to the Council Secretary (Angela McCracken) and copied to the President, and are requested to do so by 9.00 am on Monday 30<sup>th</sup> March. Scottish Rugby’s Head of Regulation, Graham Ireland, is available to assist with queries as to any points of detail.**

## Appendix 1 : Season Closure Options

No.	Option Considered	Status	Commentary
1.	Restart the 2019/20 season on 18 April 2020.		It has been determined that the season can't / won't be restarting.
2.	Restart the 2019/20 season on 02 May 2020.		It has been determined that the season can't / won't be restarting.
3.	"Play-Offs" for top 4 and bottom 4 to determine promotion and relegation.		It has been determined that the season can't / won't be restarting.
4.	Accept all Leagues as incomplete and apply promotion, relegation and final placings as they are at 16.03.2020		Can be achieved through the operation of NCR 14.2 / 14.2.1
5.	Take an average over the season of points over matches played and award a finishing total on this basis with promotion and relegation.		Can be achieved through the operation of NCR 14.2 / 14.2.1
6.	Declare the 2019/20 season complete with no promotion or relegation from any league.		Can be achieved through the exercise of Bye-Law 15 / NCR 2.4
7.	Count earlier fixtures as double headers for all remaining fixtures. For those fixtures that are yet to be played as Double Headers award a draw (2pt).		Can be achieved through the operation of NCR 14.2 / 14.2.1
8.	Promote 1 team to Premiership, no relegation; promote 2 teams from National 2 and 3 with no relegation - cancel Cup Competition (i.e. in 2020/21 Premiership 11 Team League; National 1 13 Team League; National 2 12 Team League; National 3 13 Team League ; etc).		This solution would alter the "format" of the Premiership / National Leagues and hence is constrained by the Bye-Law change introduced in 2018.
9.	Where promotion has been secured prior to the domestic season being suspended, honour promotion otherwise no promotion or relegation.		This solution would alter the "format" of the Premiership / National Leagues and hence is constrained by the Bye-Law change introduced in 2018.
10.	Award 2 points to each Club for all games outstanding .		Can be achieved through the operation of NCR 14.2 / 14.2.1

## Appendix 2 : Position Statement from Appointed Convenors

### PRIVATE AND CONFIDENTIAL

**From:** George Clark

**Sent:** 25 March 2020 14:32

**To:** Vicky Cox

**Cc:** Dougie Belmore (West Region); Neil Crooks; Heather Lockhart (Women's)

**Subject:** End of Season

Dear Vicky and others,

I refer to our conference call earlier this afternoon.

Our clear agreed position, following extensive consultation with Championship Committee representatives of the clubs in the Premiership, National Leagues, Regional Leagues and Reserve Leagues is that Season 2019/20 should be declared null and void. Given a number of alternative options, the majority of clubs whose views have been canvassed by those representatives favour that outcome.

I fully appreciate the desire of the Board, in making a very difficult call, to endeavour to comply with the Bye-Laws and attention has been drawn to Bye-Law 14.2.3, which states that it is the responsibility of the Scottish Rugby Council to determine the format of the national club competitions, but that is "following prior consultation with and subsequent approval from the Clubs at an AGM or SGM". It is quite clear that the intention of that Bye-Law is to prevent any changes to the format of these competitions without full consultation and approval at an AGM or SGM and also to prevent groups of clubs from seeking to push through changes which did not have the approval of the Council, representing the clubs as a whole. That is not possible in the situation that we face. We cannot have an SGM, so the Council cannot make the call.

There is, however, an argument that what we are advocating does not in any event constitute a change to the format. We will still have the same leagues and the same sizes of leagues. We are simply responding to an extraordinary situation that nobody could possibly have foreseen. Promotion and relegation will still happen as per the NCRs at the end of Season 2020/21.

I would suggest that it is for the Board to exercise the power vested in it by NCR 2.4 "to rectify any error or omission in the Rules and the Regulations in such manner as it sees fit". That clears the way for the Board to make the decision that the majority of clubs seem to favour and that we believe to be the outcome that is fairest to all.

If there is a gap in regulation, it has to be filled by the Board, in accordance with its power under NCR2.4 and also under Bye-Law 15 to perform the management of the game of rugby football. That must include the power to act in extraordinary and unforeseeable situations and to make decisions based on what the Board believe is in the best interests of Scottish rugby.

Kind regards,

George.