



Members' Consultation

Introduction

As part of the MC's ongoing ambition to improve its operational practices in accordance with good governance principles it is consulting members regarding a possible proposal to dissolve the Association and to transfer its operations to a Charitable Company (Limited By Guarantee). The key changes to our present set up which this would involve are set out in this consultation document and members, clubs, leagues and regions are invited to submit responses to these proposals. Three open meetings are planned across the country so that members will be able to be briefed on and to express their views about the proposals.

Starting at 2pm they will be at;

Novotel Nottingham, Bostocks Lane, NG10 4EP on 2nd September 2017.

Friends Meeting House, Euston Road, London, NW1 2BJ on 14th October 2017.

City of Bath PC, Charlcombe Lane Bath BA1 8DJ on 21st October 2017.

The consultation process will finish on 28 October 2017 following which the responses will be collated and the proposals finalised. The final proposal will be put to members by way of a ballot towards the end of the year. In this document a number of options are outlined and recommendations made. We would like you to let us have your views on these proposals. Please send your responses to ken.buchan@englishpetanque.org.uk by 28 October 2017.

Corporate Status

The Management Committee strongly feel that the time is long overdue for the Association to keep up with modern governance practices by adopting corporate status. The vast majority of the Sport National Governing Bodies which are signed up to the Sports Alliance and Recreation Alliance Code of Good Governance are limited companies. The EPA is one of only 3 that remain as unincorporated associations. The table below contrasts the attributes of both incorporated and unincorporated bodies:-

	Unincorporated Association	Limited Company
Personal Liability	<p>Individuals signing contracts have sole personal responsibility for any liability thereunder unless the contract is approved by the MC</p> <p>Committee members are jointly and individually personally responsible for any liability arising from a contract they have approved</p> <p>Members of the Association are at personal financial risk in the event of the Insolvency of the Association</p>	<p>Board Members are not personally liable under contracts entered into by the company or for debts incurred by the company (unless the liability arises through misfeasance, wrongful trading etc.)</p> <p>In the event of insolvency the liability of members is restricted to the amount of any unpaid shares (if any) or the amount of any guarantee (usually £1)</p>
Capacity to own Assets	<p>Unincorporated Associations cannot own any real estate or intellectual property. All such assets need to be held by individuals in trust for the Association and will need to be transferred by those individuals to others whenever they cease to be involved with or accountable to the Association.</p>	<p>Incorporated bodies can hold assets such as freehold or leasehold property in their own names and can also own intellectual property such as internet domain names, trademarks, copyright etc.</p>
Ability to enter into Contracts	<p>Unincorporated Associations cannot enter into contracts in their own name and must do so through individuals acting on their behalf as trustees. Such individuals may attract personal liability under such contracts (see above).</p>	<p>Incorporated bodies can enter into contracts such as insurance contracts, IT Service agreements, trading agreements, contracts of employment etc. in their own name</p>
Statutory Filing & other Requirements	<p>There are no statutory or other legal obligations for unincorporated organisations to comply with. In particular there is no obligation to file details of the organisation in any public register or to maintain proper accounting records</p>	<p>Under the Companies Legislation companies are required to file returns and accounts at Companies House, maintain proper accounting and statutory records and have their accounts audited, Failure to comply with these statutory requirements could result in fines and/or the company being struck off</p>
Director/ Committee Member duties.	<p>Management Committee members of an unincorporated association have common law obligations as fiduciaries to "act in the best interests of the organisation".</p>	<p>The duties of company directors are prescribed by the Companies Acts and include, but are not confined to, their common law fiduciary duties</p>

The Management Committee feels that the protection of limited liability is a necessary prerequisite to embarking upon any activity which carries a material financial risk. Projects of that nature might include the establishment of a boulodrome or hosting a significant international tournament such as the European Championships. Any major financial undertaking will require external sponsorship or financial support and we believe that corporate status will provide the badge of respectability which will give potential sponsors and grant giving agencies greater confidence in us as an organisation which is compliant with the governance requirements of company law. There is also the possibility of pétanque becoming an Olympic sport by 2024 which will intensify the pressure upon the Association to become fully compliant with the government's code of good governance. It is interesting to note that when skateboarding became an Olympic sport it had no recognised national governing body in this country and its leadership have since formed a limited company to act as such. The EPA becoming a corporate entity at this stage may even add credibility in this country to the Olympic bid.

The statutory regulations about directors' duties, and the requirements about filing, disclosure, and accounting records etc are sometimes viewed as a drawback of corporate status. The Management Committee believes however that members expect its management to behave with the utmost integrity and transparency. We believe that our processes comply with the accounting requirements of company law and that as a small company we would be exempt from the more costly aspects of statutory audits.

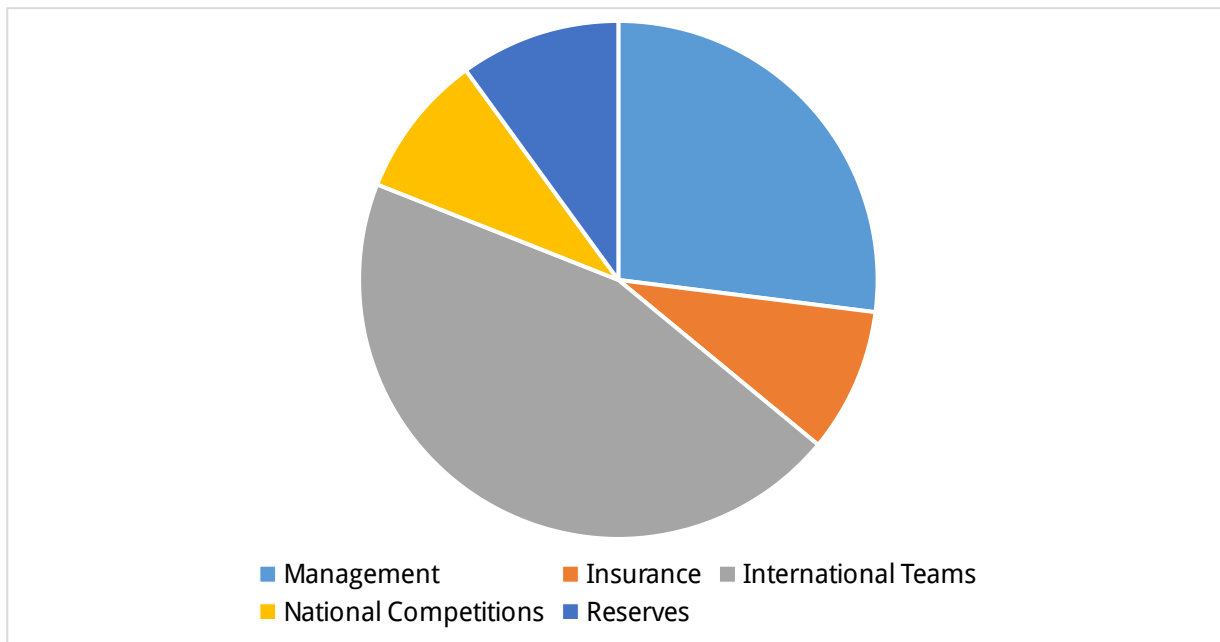
The Management Committee recommends that the Association be dissolved and that its operations be transferred to a company limited by guarantee.

QUESTION (1)

What are your views on the proposed incorporation of the Association?

Charitable Status

Most of us belong to the Association because we share a passion for pétanque and support the Association's vision of increasing participation in the sport and improving standards. As members we enjoy the opportunities provided by the Association to play pétanque both locally and with others in the wider pétanque community throughout the country. The Association also provides opportunities for its members to volunteer to perform a wide range of tasks at all levels of the Association and to enjoy the sense of worth and satisfaction in so doing. . Despite these intangible benefits which are enjoyed by members, questions are still raised from time to time as to whether individuals receive sufficient benefit in return for their subscription. In truth the only benefit received by most members which has any monetary value is the per capita cost of the insurance cover. The reality is that apart from administrative costs the subscriptions paid by members are used mainly to provide financial support to our players who represent us internationally and for elite player development. The pie chart below shows how our subscriptions were applied last year.



The Management Committee feels that we should recognise that our annual subscriptions mainly take the form of a donation towards the costs of achieving our shared objectives of spreading the sport and improving standards and that it would be appropriate therefore for our organisation to adopt charitable status so that proper expression is given to those values. These are some of the advantages of charitable status:-

- Income tax may be recovered on some or all of the annual subscriptions under the "gift aid" provisions.
- A charitable company will be exempt from corporation tax and capital gains tax
- Rate relief on any premises
- VAT exemption on some purchases
- The availability of various tax incentives to encourage individuals and businesses to donate to charity
- Access to funding. Charitable status will make the organisation more attractive to sponsors and grant giving bodies
- The positive image charitable status brings to the organisation

The 3 main corporate vehicles for charitable status are CASCs (Community Amateur Sports Clubs), CIOs (Charitable Incorporated Organisations) and Limited Companies. CASCs are as their name suggests more suited to local sports clubs particularly if they own or lease premises. CIOs are a relatively recent invention and to register as such we would have to adopt the model constitution or a version which is as close to it as circumstances dictate. CIOs do not have to register at Companies House and consequently annual returns etc need only be filed with The Charity Commission. A Limited Company which is also a charity will be required to file documents both with the Charity Commission and Companies House. The company will be subject to the statutory requirements of the Companies Acts as well as the Charity Acts. The memorandum and articles will need to be in a form acceptable to the Charity Commission. We could run into recognition difficulties if we try to register with too many variations from the model constitutions. The Management Committee considers that seeking charitable status by forming a private limited company under the Companies Act 2006 is a safer option than seeking to form a CIO. It is not certain that we can obtain charitable status but in that event the Limited Company can still take over the activities of the Association. Registration with the Charity Commissioners is not the only hurdle. In order to benefit from the "gift aid" tax provisions we would also need to be recognised as a charity by HM Revenue & Customs. We have obtained legal advice that this is feasible and at present subscription levels this could produce extra income of £12,500

The Management Committee recommends that the Association seeks registration as a charity in the form of a Limited Company.

QUESTION (2)

What are your views on the proposal to seek charitable status and also on the form any such charity should take?

Governance Structure

Whichever governance vehicle is ultimately adopted various options need to be considered and choices made. Your views are therefore sought on the following points.

Objects

If we agree that it is desirable to seek charitable status we will need to frame the objects clause so that it is compliant with the Charities Act. Subject to legal advice a suitable main objects clause could be **"The advancement of amateur sport by promoting the sport of pétanque for the benefit of the residents of England"**. Various other objects will need to be included (e.g. acting as the sport's National Governing Body) so that the full range of our activities is covered (provided they are all consistent with the main charitable purpose).

QUESTION (3)

Do you agree with the proposed main objects clause and what other objects would you wish to see included?

Sub Committees

Governance documents normally empower the Board to appoint sub-committees to which it can delegate specific powers and responsibilities. Sometimes the governing document will identify one or more sub-committees to which specific functions are ascribed. Our existing constitution specifies three "Commissions", a Playing Commission, an Umpiring Commission and a Coaching Commission. The Playing Commission has not worked effectively since it was formed and the Management Committee are of the view that it should be replaced with a more flexible operational structure which can be varied as circumstances change without requiring the formality of constitutional amendment. The alternative playing structure favoured by the MC is the subject of a separate consultation exercise but in essence it involves the formation of two new groups

- a National Performance Panel responsible for the management of player squads and the performance of EPA representative teams and
- an Events group responsible for the organisation and operation of events.

Under the new organisation the Management Committee would like to reorganise the Umpiring and Coaching Commissions into sub committees of the board with the chairs being appointed by the Board and the members as at present being nominated by regions. Under the existing Constitution the MC has no control over the composition of the commissions, who should lead them or what their terms of reference or objectives are. The chairs of the Commissions become members of the MC by virtue of their office but the MC has very limited powers to persuade the Commissions to achieve outcomes that contribute to the Association's overriding objectives and there is no mechanism whereby the MC can intervene if any of the Commissions are failing. The MC is very appreciative of the work currently being performed by the Umpiring and Coaching Commissions but these disciplines are of crucial importance to the well being of

the sport in this country and the MC has a duty to assess and address the risk of the commissions failing to generate the number and quality of umpires and coaches that are needed to sustain the sport. The MC believes that this risk is best addressed by the Umpiring and Coaching Commissions becoming properly constituted board sub committees formed either by the MC or the Articles of Association.

The Management Committee is of the view that generally speaking the delegation of operational matters through sub-committees or by other means should be as flexible as possible and is best left to the discretion of the board.. The Management Committee also believes that a successor company should have Umpiring and Coaching sub-committees appointed by the Board.

QUESTION (4)

Which activities do you consider ought to be carried out by board sub-committees and by what means should such sub-committees be formed and controlled?

Individual Members

It is envisaged that Individual Members will enjoy a similar relationship with the organisation as they do now and that they will be defined much as they are in the existing constitution. Individuals will be members of the company with the right and responsibilities to vote for the President and elect Members of the Board. The AGM of the members will remain as the primary source of authority.

Regions, Leagues and Clubs

Regions, Leagues & Clubs are an integral, important and essential part of the organisation and this new structure will maintain their role in decision making and responsibility through a similar relationship to the organisation as they do now and that they will be defined much as they are in the existing constitution. It is envisaged that they will be admitted as non-voting members of the company with the right to receive notice of general meetings and the power to table proposals. Admission of Regions, Leagues and Clubs as members will be in accordance with rules formulated by the board which will correspond with the existing criteria for the recognition of Regions and the registration of leagues and clubs.

PROPOSAL.

The "Region" Structure will remain much as it is with Regions Leagues & Clubs becoming non-voting members of the company.

QUESTION (5)

How do you see the Regions operating within a corporate structure?

Board Composition

Before considering these matters it is important to reflect upon the primary function of the board (or as we have it at the moment The Management Committee). In the days of the British Pétanque Association decisions were taken ostensibly by the Council of Presidents and put into effect by the elected officers ("The Executive Committee") although in practice most decisions were of necessity taken by the Executive. This position was replicated to an extent when the EPA was formed with the "Executive Committee" being replaced with a more representational Management Committee and the Council of Presidents being replaced with "a Congress of Regions". This system however was also imperfect because on occasions proposals were put forward by clubs or regions having narrow sectional interests which

resulted in courses of action which were either not in the best interests of all members or which were ill conceived and impractical to implement. Gradually the decision making powers of Congress were removed and the position we now have is that the Management Committee is the primary decision-making body in the organisation, with overall responsibility for promoting the organisation's interests but that there are forums such as the Assemblies and social media which provide opportunities for the MC to engage with regional representatives and members generally.

Given this pivotal role, the quality and composition of the Management Committee / Board needs to be spot on. In order to do this it is desirable that the principles of good governance should be adopted as far as it is possible. One of the principles of good governance is that the board should adequately reflect the community served by the organisation and the diversity of society. The government's code of good governance for sport which is now compulsory for those seeking government funding goes further by requiring at least 30% of boards to be female. Recently British Cycling were obliged to introduce good governance reforms in order to protect its £43M government funding. The code of good governance also expects board members to be chosen on the basis of their competence, ability, quality, leadership, integrity and experience. In advice issued recently by the Sport and Recreation Alliance's Governance Officer it is suggested that diverse groups are able to make better decisions through better diversity of thought but that a group of people with the same experiences and the same backgrounds are likely to fall foul of "groupthink", where decisions are made without any challenge or consideration of alternatives, leading to poorer quality decisions and with a higher risk of unconsidered negative outcomes. It follows from all of this that we need to move towards a system of appointing those who are to perform key operational roles on the basis of their abilities rather than filling those positions with people who are elected. The code of good governance suggests that the board should be big enough to encompass the diversity of opinions but not too big that effective decision making is compromised. The code recommends a board size of between 10 to 12. The average board size of Sport National Governing Bodies is 12. However the Association currently has a Management Committee of 17 members (if all vacancies were filled) comprising 6 elected officers, 3 appointed officers and 8 elected members. Having to undertake a "specific job" is not a requirement for those seeking election to the Board and it is good thing for there to be a number of non-executive directors who are free from the operational hierarchy. However as a voluntary organisation the Association has been significantly dependent upon MC members volunteering to perform operational roles in their spare time and it is therefore advisable that roles be distributed among several Board members if none is to be overloaded. Consequently the MC feels that it would be unwise at present to reduce the maximum size of the board significantly.

Under the proposed board structure it is envisaged that key operational positions such as Secretary and Treasurer will be appointed by the board following a recruitment process whereby interested persons will be invited to submit details of their skills and experience. The positions of chairs of the Coaching and Umpiring Sub Committees may also be appointed in this way. The power of the board to appoint directors will not necessarily be confined to the appointment of directors to fill specialist operational roles. It may be also be used to appoint non-executive directors to redress a gender imbalance or to increase the diversity of the board e.g. by introducing younger members. Not all "officer appointments" will be directors who are appointed by the board. Some officer positions may be allocated by the board to the elected directors. Although there is a need for the MC to have the power to make board appointments to fill key operational roles and to redress gender imbalance it is of the view that there should be a majority of elected board members. The MC is of the view that the President should remain as a position elected by members but that the vice president should be elected by the Board from among its own number.

RECOMENDATION

That the maximum number of board members should be 16 of which 10 (including the President) should be elected and 6 appointed by the Board.

QUESTION (6)

How many directors do you consider should be on the board and what split should there be between elected and appointed directors.

Officer Roles

The Articles of Association will normally specify officers who become board members by reason of their office. This usually comprises, President, Vice-President, Chief Executive, Secretary and Treasurer. Traditionally the EPA "Chief Executive" role has been undertaken by the President with the assistance of the Secretary and whilst there is no intention to change that practice currently the code of good governance expects the roles of chair and chief executive to be distinct and clearly defined. The Management Committee are aware that it is extremely difficult to find a person of the right calibre who has the time and energy to fulfil all of the requirements of the current President role would like to explore ways in which some of the administrative duties of the President role can be delegated to other officers leaving the President freer to focus on leadership and strategy.

QUESTION (7)

What are your views about redefining Presidential and Secretary roles?

Terms of Office

The Articles normally specify the term of office of elected directors and whether they can stand for re-election. The code of good governance recommends that maximum periods of office are set so that the board is refreshed regularly.

The Management Committee recommend that elected directors and the president serve for a period of 2 years and that they are limited to three consecutive terms of office.

QUESTION (8)

What should be the terms of office for the president and the elected directors and how many consecutive terms of office should they be restricted to?

Consultation

Although the Management Committee is the primary decision –making body in the organisation they are not there simply to promote their own ideas or vested interests. They must act in the best interests of the organisation and to do that they must understand and appreciate what it is that most members want the organisation to do. It is very important therefore for you to respond to this consultation even if you broadly support the recommendations made. If however you have any concerns it is also important that we know what they are. Please make your views known by email to ken.buchan@englishpetanque.org.uk but remember to do so before

28th October 2017