



INCORPORATION PROPOSAL

Members' Consultation Responses - Report

Introduction

1. The Consultation Period was due to be completed on 28 October 2017 but by request was extended to 4th November to provide additional time for responses after the open meeting at Bath on 21st October. A total of 21 responses were received from members spread across 9 regions. Most of the responses were detailed and thoughtful. Regions which did not respond were East Midlands, Eastern, Isle of Wight, Kernow, Mercia, Northern and Sussex. Significantly these were mainly the smallest and/or most out flung regions. Open meetings were held at Nottingham and Bath but attracted attendances of only 1 and 3 respectively. The incorporation proposals were discussed at the joint MC and Regional Officers meeting on 9th September 2017 and again at the Assembly meeting on 14th October 2017, which was open to all members but was poorly attended by regional representatives or individual members. One of the respondents queried the strategy of holding consultation forums in distant locations and suggested that a better approach would have been for MC members to visit regional AGMs etc

Executive Summary

2. A detailed analysis of the responses is outlined below but the main conclusions and recommendations are as follows: -

2.1 Incorporation

There was virtually unanimous support for the proposal to transfer the Association's operations to a company limited by guarantee and no reason therefore to deviate from the proposed dissolution ballot. Some confusion / concern was expressed as to whether the protection of limited liability would extend to regional or club officials. It would be advisable therefore to ensure that the "key changes" document makes it clear that the protection of limited liability of members does not extend to debts incurred by regions or clubs.

2.2 Charitable Status

Whilst a substantial majority of those who responded to the consultation document support the proposal that the successor body to the EPA should be a charitable company, some opposition was voiced at the MC/Regional Officers' meeting on 9th September and again at the Assembly meeting on 14th October. The grounds for objection are that we may not be accepted as a charity and that even if we do the additional reporting responsibilities etc.

would be too burdensome. These objections are considered in some detail below, but they are not persuasive. The Charity Commission of Northern Ireland publish guidance in which they state that a charity advancing sport for the public benefit might be set up “**to act as a sport’s governing body, to administer, promote, foster and develop the game**”. This is a description which aptly mirrors our own purposes and even if there are any difficulties in any application to the Charity Commission we are informed by those who have gone through this process that the Charity Commission will be helpful in assisting us to overcome them. We are aware of the reporting requirements of the Charity Commission and whilst these are an additional burden to the requirements of the Companies Acts they are well within our capabilities and in no way outweigh the potential benefits of gift aid tax relief which could be as much as £12,500 p.a. Furthermore, many respondents see the additional statutory regulation relating to corporate charities as being an added protection for our members. In the circumstances there seems to be no good reason to disregard the wishes of the substantial majority of respondents who support the proposal to seek charitable status and it is recommended that we adhere to our proposal that any successor body to the EPA should be a charitable company limited by guarantee with the draft articles already circulated.

2.3 Objects

Most respondents were happy with the proposed main objects clause in the proposed articles but two respondents thought that it was too brief. It may therefore be prudent to amend the main objects clause to reflect the terminology of the NI Charity Commission guidance referred to in paragraph 8 below to “**The advancement of amateur sport for the public benefit by acting as the national governing body for the sport of pétanque in England, and to administer, promote foster and develop the sport in England**”. Several respondents mentioned the need to emphasise the sport’s suitability for and the need to make it accessible to disabled or disadvantaged groups. Objects of this nature are probably not appropriate for a charity which is dealing with the advancement of sport, but the sentiment ought to be reflected in the Rules relating to membership. A passage is therefore included in the Rules at 2.1.2 which reads “**Voting Membership shall be open to all residents of England and shall not be denied on the grounds of gender, race, colour, politics or disability**”. The objects may need further amendment as a result of any representations that may be made by the Charity Commission but for the moment it is recommended that no further changes are made to the objects clauses other than the amendment referred to above.

2.4 Sub Committees

One respondent makes the point that Board sub-committees should be composed entirely of directors. This view conforms to the provisions of 48(1) of the draft articles which gives the Board the power to create committees of 2 or more directors. A distinction must therefore be made between Board sub-committees (which the Board has unfettered discretion to create and control) and other management structures which include non-directors in their composition. Most respondents are happy for the Board to appoint sub-committees as and when required and that these should be accountable to the

Board. A significant minority however would like to see each committee have detailed terms of reference and duties of accountability set out in the articles or Rules. It is recommended therefore that the present provisions in the draft Rules be amended to provide more detailed terms of reference, composition and rules of accountability. Suggested revisions to the draft Rules are made at paragraphs 18 to 21 below for consideration by the MC. These amendments include 2 suggestions which I make personally. These are (a) that the Coaching and Umpiring Commissions should consist of all qualified coaches and umpires respectively rather than merely the "Regional" coaches and umpires and (b) each Commission should elect a small inner executive to share the administration duties so that these do not fall entirely upon the chairs of the Commissions. The full commission meetings should make a good forum for discussing performance plans etc but are not really suitable for managing operational tasks. I stress that I have not consulted the chairs of the respective commissions in preparing this report and their views will clearly be of prime importance in the consideration of the suggested revisions.

2.5 Regional Structure

Most respondents are happy with the proposal that the status of regions will remain much as it is at present. As non-voting members of the company they will continue to receive notice of general meetings, to attend those meetings and be entitled to submit proposals and nominations. It is evident however that there is a sense of frustration on the part of regions at not being sufficiently engaged in the overall policy direction of the Association and a preference has been expressed at recent forums for there to be biannual meetings of regional presidents with the MC/Board. Some amendments to our existing Assembly procedure should therefore be made to reflect that. It is recommended that Presidents should have a "card" vote reflecting the strength of their regional membership in order to offset the perceived unfairness of small regions having the same votes as larger regions. In their submission the Mercia region suggest that the MC/Board should meet at Regional Locations so that local members may become involved. I do not believe it would be appropriate for MC meetings to be opened up to non-MC members, but it would be constructive for the Board to hold one of its meetings at a regional location which could be followed by a joint meeting with the regional MC to discuss topics of mutual interest. I therefore commend that suggestion for the future consideration of the Board/MC

2.6 Board Composition

Reaction to the MC recommendation was mixed. Those that offered a different view favoured a smaller Board than that envisaged by the MC. Some respondents suggested that some key operational positions could be filled by non-directors. It is not recommended that any changes be made to the present proposals, but the size of the board should be kept under review. If (as is quite possible) there are continuing difficulties in filling Board vacancies future consideration should be given to reducing the number of elected directors and bringing the overall Board complement nearer to the maximum of 12 recommended by the Good Governance codes.

2.7 Officer Roles

Most respondents regarded the role of President to be crucial but that he

should be responsible primarily for strategy, oversight and co-ordination whilst the Secretary concentrates on operational matters.

2.8 Terms of Office

Most respondents were happy with the six year terms of office proposed although a significant minority favoured longer overall terms of office and most codes of good governance recommend maximum terms of office of 8 or 9 years. However, account must be taken of the fact that there is no maximum term of office for directors appointed by the Board and this will give the Board the opportunity to retain those with valued skills. There will therefore be greater reliance on more regular changes in the elected directors to bring fresh blood into the Board. In accordance with a previous decision of the MC the proposed maximum term of office for the President has been removed from the draft articles. The draft articles provide for two 3-year terms for elected directors rather than three 2-year terms as originally envisaged, but no further changes are recommended.

Incorporation

3. The MC recommendation was that **“The Association be dissolved and that its operations be transferred to a company limited by guarantee”**. The MC’s recommendation was met with overwhelming support from the respondents. The following are some of the comments received: -

“Having been a member also of a number of unincorporated organisations I have been able to experience some of the difficulties set out in your table and I therefore have no difficulty in endorsing the MC’s recommendation”

“All were in favour of EPA operations being transferred to a limited company. We would request clarity as to whether the limited liability would include Regions and member clubs.”

One respondent strongly agreed with the incorporation proposal but the question of ‘Personal Liability’ was a major concern to their club members and they would therefore welcome any safeguards that could be of benefit to club officers. The respondent also welcomed the need to keep proper accounts and for them to be audited to the satisfaction of Companies House and as importantly, the membership.

“Fully agree MC should not have personal liability but also an obligation to submit to the financial requirements of being incorporated. Also suggests a more professional organisation”

“The arguments for incorporation are powerful so long as the members of EPA (all 2,800 or so of them) ultimately control the company and can at AGM/EGMs remove the board and or change the M & A of Association and the rule book.”

“A move towards a company limited by guarantee is essential especially bearing in mind that it will benefit from greater transparency as regards directors’ duties, accounts, disclosure etc.”

“Yes, incorporation as a charitable company, not a CIO. It gives protection to the officers and the time limits Companies House and Charity Commission impose are good discipline for the organisation.”

“It seems a no brainer to me and one wonders why the change wasn’t made before. Public scrutiny could be a down side, but I wouldn’t have thought the EPA would have anything to hide.”

“Agree – Corporate status would bring the governance of our sport into line with other UK sports (especially with regards to aspiring Olympics status), reduce/eliminate individuals’ financial responsibility”

“Agreed – EPA needs to be seen as a responsible body for governing our sport”

“We need to be a professional body and protect the interests of those holding office as a reward of their services”

“My view is that so long as transparency to members is a priority then I agree to the proposal”

4. There was one dissenting respondent who was concerned that directors of a limited company would not be held to account should anything go drastically wrong. If things “go drastically wrong” through no fault of the directors it is clearly unfair to expect them to recompense the company for any loss suffered but if the things that “go drastically wrong” are the consequences of misfeasance, breach of trust or criminality on the part of any or all the directors there are a range of statutory remedies which could result in civil or criminal liability. Several of the respondents see the additional statutory regulation to which directors are subject, to be beneficial to the organisation, and an added safeguard for members.

5. In the light of the near unanimous support for the proposal to seek corporate status for the association there is no good reason to deviate from the intended dissolution ballot. Two respondents sought clarification or expressed concern regarding the personal liability of regional or club officials. A similar concern was raised at the MC/Regional Officers’ meeting on 9th September. It would be desirable therefore to include a clarification in the “key changes” document that the proposed changes will not affect the liability of regional or club officials for any debts of their organisations. The only way in which the protection of limited liability can be extended to such persons is for the Regions and Clubs to seek corporate status or to be subsumed somehow into the national financial structure.

Charitable Status

6. A very substantial majority of the respondents supported the MC’s proposal to seek registration as a charity in the form of a limited company. Some of the comments expressed are as follows: -

One respondent club agreed that the formation of a company under the Companies Act 2006 was a safer option than seeking to form a CIO. They pointed out that many grass roots players do not believe that they receive sufficient benefit for their [EPA] subscriptions and that there is a complete lack of knowledge and understanding of how the [EPA] money is spent and the various international competitions the EPA is involved in.

“Agree that Limited Company with charitable status more appropriate. Any financial benefits should be for Regions clubs and members to develop the sport at grass roots.”

“We agree with the MC’s recommendation, it is the best way forward to secure a robust operational philosophy”

“We agree to seek charitable status as a private company – however if charity status is not granted then it should be a not-for-profit company.”

“Yes incorporation as a charitable company, not a CIO, if Charity Commission will accept. Covenants are helpful, VAT very marginal”

“We agree with the proposed adoption of a limited company which is also a charity. The uncertainty expressed about obtaining charitable status is one that should not deter us from becoming a limited company. Adoption of this status will ensure the highest level of governance because of the need to file documents to both Companies House and the Charities Commission.”

“We should take advantage of charity status as a limited company and seek the benefit of gift aid. I am assuming that the cost of legal advice before this would be more than covered by the gift aid received in the first year”

“With the information provided I feel we should seek charitable status and be a limited company”

7. Although there is majority support for seeking charitable status as a limited company there is a vocal minority who are opposed to seeking charitable status or who believe that it is not feasible. One regional officer spoke at length against the proposition both at the joint MC / Regional Officers’ meeting on 9th September and also at the Assembly meeting on 14th October. He had experience of a sports club for which charitable status had proved not to be viable and he believed that the EPA would experience similar difficulties. He also suggested that the additional reporting responsibilities etc. would be too burdensome for the EPA Officers. At the assembly meeting 2 other attendees also expressed doubts that the Association could qualify as a charity. One of those attendees subsequently made the following written submission.

“I was not convinced by the arguments or that any financial gain will outweigh red tape.

Also I think there is a misconception that the Subs can be considered a charitable donation. I think the Subs are the consideration in a contract between the members and the EPA. A member pays to get:-

- **Right to play in exclusive events**
- **Right to play for country**
- **For Sport to be developed**
- **To have coaches and umpires**

All these are tangible items which go beyond mere insurance cover

In principle I would object to my Sub being a donation and would not sign up to any declaration for HMRC

Charity Status would also conflict with the objectives of the 'Pétanque Development Trust' whose charitable objectives are not curtailed by being part of any membership. I think the membership issue of EPA will reduce the chance of getting Charity Status as to get that status it must be for the public Benefit. However, I am aware you are getting your own legal advice on these issues.

At the meeting last week, a person said they knew a person who wants to leave something in their Will for Pétanque. That is now the second person I have been made aware of who wants to leave money for our Sport. The legacy may only be for £100 or it could be the whole estate worth a million. We may be missing a trick by not promoting this Charitable Trust. When I get the first £5,000 I will register the Trust with the Charity Commission."

8. In the light of various assertions which are being made about the feasibility of obtaining charitable status and any subsequent operation as a charity (some of which is based upon misconceptions or misinformation) it is important for MC members to be aware of the current guidance issued by the Charity Commission. For an institution to be recognised as a charity it must be established for charitable purposes only. A charitable purpose is defined by the Charities Act 2011 as being one which falls within section 3(1) and which is for the public benefit. Section 3(1) lists 13 "purposes" including section 3(1)(g) "the advancement of amateur sport". Sport is defined as "sports or games which promote health by involving physical or mental skill or exertion". Pétanque is clearly a sport which involves physical skill and exertion and we can take comfort from the fact that it is recognised as a sport by Sport England. "Amateur" is not defined in the Charities Act but the Charity Commission regards "amateur" as being something where the participants are "not professional", a description which adequately fits the sport of pétanque in this country. Of greater difficulty will be the requirement to show that each of our proposed objects is for the "public benefit". The Charity Commission's publication "Charitable Status and Sport (RR11)" is considerably out of date as it has not been updated to reflect the provisions of the 2011 Act but the Charity Commission for Northern Ireland produced a guidance document in 2013 entitled "The Advancement of Sport" in which they state that **"a charity advancing amateur sport for the public benefit might be set up to.....act as a sport's governing body, to administer, promote, foster and develop the game"**

9. The respondent quoted above in paragraph 6 suggests that the membership issue of EPA will reduce the chance of getting charitable status. I believe that this view is overly pessimistic. The Charities Commission are quite happy to recognise charities which have a membership structure. The Charities Commission estimates that there are approximately 80,000 such charities. In the Charity Commission publication "Public Benefit: running a charity" (PB2) the following advice is given:-

"A charity must not be set up to provide benefit only to the organisation's members unless:

- ***A sufficient section of the public can access those benefits by becoming members***
- ***The membership structure is a suitable way of carrying out the charity's purposes for the public benefit***

All those who might benefit should be able to apply to join and there should be objective criteria for deciding membership."

Any membership subscription ought not to be so high that it effectively becomes a barrier to a significant section of the public seeking to become members. One of the motives in seeking to obtain charitable status is to obtain the benefit of "gift aid" tax concessions on membership subscriptions. Any fiscal benefit of being a charity is not something which is administered by the Charity Commission, it is a matter for HMRC. Although the respondent quoted above thinks that it is a misconception that our membership subscription can be considered a charitable donation we have obtained legal advice from Veale Wasbrough Vizards to the contrary, provided the subscription does not include the "personal insurance" benefit of about £1.72 (for which members would have to "opt in" separately). The question of seeking HMRC approval for a gift aid scheme does not form part of the dissolution proposal we intend to put to our members, but it will need to be addressed in detail in due course if the successor company successfully achieves charitable status.

10. Another concern raised is that if the association successfully achieves charitable status it might adversely affect the viability of the Pétanque Development Charitable trust. Clearly if Pétanque England were to become a registered charity it would give anyone so minded the opportunity to make a bequest in its favour. However, this is not our primary motive for seeking charitable status and it would be wrong to forego the possible benefits of gift aid etc simply because of the risk of possible prejudice to the trust.

11. As stated above doubts have been expressed that any financial gain resulting from charitable status would outweigh the red tape involved. It was also suggested that MC Officers may become overburdened by the requirements of Charity Commission regulation. Making an application to the Charity Commission for registration is a one-off exercise which among other things will include the submission of a business plan and a "public benefit" statement. Thereafter charities are required to submit an annual report and accounts which comply with the Charities Commission's Statement of Recommended Practice for Smaller Entities. The requirements of this SORP are more detailed than the fairly minimal requirements of company law for small companies but our treasurer is familiar with

the reporting standards and they are unlikely to present any undue difficulty. The additional requirements are well within the capabilities of our committee and clearly do not outweigh the potential recurring benefit of up to £12,500 p.a. The need to establish and maintain adequate systems of financial planning and control is not a peculiar requirement of charity law; it is essential for any members' organisation such as ours. One of the mandatory requirements of the government's code for sports governance is that "***The Board must actively plan and monitor the financial position and performance of the organisation against an annually approved budget and at least a four-year forecast.***"

12. Whilst there can be no guarantee that an application for charitable status will succeed there is no reason to assume that it will not. One respondent who is a trustee of a number of national and local charities has indicated that the Charity Commission is usually prepared to give helpful assistance in resolving any problem areas with registration applications. The objections raised by a small minority of respondents are not persuasive and in view of the substantial majority of respondents who support the proposal it is recommended that the proposed successor company should be a charitable company with articles of association which follow substantially the model articles of a charitable company issued by the Charity Commission.

Objects

13. There were no objections to the successor company's proposed main objects clause "***The advancement of amateur sport by promoting the sport of pétanque for the benefit of the residents of England***" although there were some suggestions for additional purposes:-

"The suggested main objective goes some way to being satisfactory, but I am concerned about the use of the word "Promotion" which only partially reflects what we do, and which can be limiting to some future activities. Having said that I have difficulty in finding a better word. I believe the Charity Commission would be willing to advise on appropriate objectives and it may be sensible to approach them"

"We felt that we could support the main objective but would want to ensure that the EPA took responsibility for ALL players, rather than just elite players (the main focus now, we feel) and that not all funds were directed towards elite players. Community and "grass roots" players should be included".

"It seems quite impossible to disagree with the brief outline of the objects but frankly this should be much broader in order to both satisfy the Charity Commission and the membership. For example, the reference to 'residents of England' should be more detailed, youth, ethnic minorities for example, people with disabilities, equal opportunities, diversity?"

"Happy with the wording of the proposal and regarding other objectives perhaps:

- **One covering each of the activities of any sub-committees the board decide on**
- **Production of a rolling development plan (no more than 5 years) against which progress of the Association can be monitored (and reported on to the membership)**

Probably at too detailed a level but something covering proactive communication out to members – what is expected from clubs, regions and at national level (email being the most cost effective)”

“We agree with the main object but suggest a secondary object could include the promotion of the health and social benefits of pétanque across a diverse range of age, gender, ethnic backgrounds and disability”

“Agree that a suitable main clause should be carefully worded as it has to appertain to all residents of England (I assume) and not subject to the usual religious ethnic etc requirements”

“We agree with the thrust of the stated main objects clause. Subordinate objectives could include: -

- **Organising competitions and supporting participation in representative events**
- **Co-ordinating the playing and development of the sport**
- **Instruction in the sport**
- **Promoting public awareness of the sport**
- **Inclusiveness, equality and diversity, safety etc.”**

“Could the main objects clause include something to stress the suitability of pétanque as a sport for all ages, abilities and the disabled”

“Agree with proposal, include support for regions and clubs to demonstrate the company’s support on a national basis”

“Add ‘as the Sport’s National Governing Body’ to main clause.

14. A number of respondents mention the need to emphasise the sports suitability for and accessibility to disabled or disadvantaged groups etc. It is difficult to include this as a specific objective in a charity which is formed for the advancement of sport rather than to support disadvantaged groups. However, it is evident that our respondents want it to be clearly understood that it is a sport for all and it would therefore be appropriate to make this clear in the draft Rules relating to members. Our constitution used to say that membership would not be denied to anyone on the grounds of gender, race, religion etc but in more recent versions it simply says that **“Membership shall comply with the Association’s equity policy”** In view of the strength of feeling about this matter the original wording **“membership... shall not be denied to any person on the grounds of gender, race, religion, colour or disability”** has been restored to the draft rules at 2.1.2. Two respondents thought that the “main” objects clause was too brief. It might be prudent therefore to expand

this to reflect the NI Charity Commission guidance referred to in paragraph 8 above. It is recommended therefore that the main objects clause in the draft articles be amended to read **“The advancement of amateur sport for the public benefit by acting as the national governing body for the sport of pétanque in England, and to administer, promote foster and develop the sport in England”**. Most of the other suggestions for additional objects are in fact included in the draft Articles which have already been approved by the MC. It is possible that the objects clause may need to be further amended as a result of any suggestions from the Charity Commission in due course but for the purposes of the ballot it is recommended that the articles remain as they are currently drafted subject to the amendment detailed above.

Sub Committees

15. Most respondents agreed that the Board should have the flexibility to appoint sub-committees as and when required and that these should be accountable to the Board, but a significant minority believed that their composition and terms of reference should be fixed by the articles or the Rules. Comments included the following: -

“There is a clear need of sub committees, but I believe their terms of reference need to be clearly defined in the constitution and that there is a danger in providing too much flexibility. I am therefore opposed to the recommendation in respect of the issue of flexibility of the sub committees.”

“Sub-committees should be appointed and controlled by EPA management, not international bodies. EPA should be responsible for umpiring and coaching decisions nationally”

“The management Committee should be flexible enough to create sub-committees provided that those decisions are ratified at the next/following AGM.”

“Agree with sub-committees mentioned and would include finance. Sub committees to report on their respective areas against the development plan and budget.”

“We agree with the MC’s view. In order to maintain a coherent regime for any future sub-committees, we feel that they should be governed by this same philosophy”.

“We agree with the general view that the MC should have the discretion to form sub-committees as needed for the purpose of achieving the aims of the organisation. Possible sub-committees could include PR & Publicity (external); Fundraising & Income generation; Internal Communications (Engaging with Regions & Members).”

“Let us hope that the reorganisation of Umpires/Coaches really does take a long hard look at why very few Coaches and Umpires are known to the Clubs in the region. So yes, we need someone to promote this area of pétanque”

“Sub-committees should be formed under the articles of association and their remit clearly defined. I don’t think that the Board should have complete control over the sub-committee selection that is best left to the umpires and coaches, but the board should be able to determine the make-up and size of them.”

“With regard to sub-committees, PR and fundraising (eg: applying for grants etc), are two areas where specific skills are needed, and are functions which could appropriately be delegated by the main Board, in addition to other matters.”

“Sub-committees should be set up, responsible to and report to the board”

“It is agreed that the Board/Management Committee should have the power to appoint sub-committees to perform designated functions. Further, the Board/Management Committee must be given appropriate actions if the sub-committee do not meet their remits. We agree that there should be separate sub-committees for coaching and umpiring. The favoured National Performance Panel and Events group seem grandiose. We feel that both functions should be run by sub-committees. This would then lead to a simple structure to a main board for strategic issues and 4 (possibly more) sub-committees for operational issues”

“Chairs of the Umpiring and Coaching sub-committees should be appointed by the MC but the members of those committees elected by the regions”

“As I understand it, directors of a company sit on the Management Board or Trustee Board, as appropriate. Membership of any ensuing sub-committees would be restricted to company directors; in which case there would need to be sufficient directors to fulfil these commitments or else the delegation of operational matters would have to be conducted by ‘other means’ ”

“These sub-committees should be formed of coaches and very experienced players with long international playing careers. These sub-committees should be controlled with quarterly meetings. The sub-committees and the board of directors should be present at these meetings. These sub-committees should be formed by a vote from the members once candidates have put themselves forward. The sub-committees should be responsible for taking control of a National Calendar where at least one weekend of every month (e.g. the first or last weekend of every month) is kept open for national competitions only and no other competitions are allowed on these days. All other events should be arranged on the other weekends available in that month. This will help with numbers entering national events which will help the advancement of the sport to Olympic level. The sub-committees will be responsible for the development of NYS and inviting any contacts they may have over the years to take part in National events. Competitions can be run as Opens with international team’s points being excluded from GBs. The sub-committees should be heavily involved in the selection of players for international events”

16. One respondent makes the point that membership of Board sub-committees must be restricted to company directors. This is consistent with article 48(1) of the proposed articles which reads “***The directors may delegate any of their powers or functions to a committee of two or more directors, but the terms of any delegation must be recorded in the minute book***”. Most respondents are happy with the MCs recommendation that the Board should have the flexibility of creating sub-committees as and when required but a significant minority would prefer the terms of reference and composition of any such sub-committees to be ultimately controlled by the members. Many respondents emphasise that sub-committees should not be autonomous or responsible to international bodies but should be responsible and accountable to the Board. It is recommended therefore that any Board sub-committee set up to deal with strategic or policy matters such as business planning, governance review etc should consist entirely of board members and be created entirely at the discretion of the Board but that any management structure dealing with operational matters and involving participants who are not directors should be prescribed by the Rules. To avoid confusion any such management structures should not be described as sub-committees.

17. In keeping with the general wish that operational committees should be accountable to the Board, the Rules should prescribe the composition, organisational operation, detailed terms of reference and reporting obligations for each such committee. In any committee a balance must be struck between operational efficiency and the need for diversity. Our existing Umpiring, Coaching and Playing Commissions consist of regional representatives and this is a rather unwieldy body to undertake basic operational matters. I have not consulted the National Umpire or National Coach in the preparation of this report, but I suspect that the bulk of the administrative and organisational work involved in delivering the Umpiring and Coaching programmes falls upon their shoulders, perhaps with the assistance of voluntary help from some of the senior umpires and coaches. My suggestion therefore is that the Umpiring and Coaching Commissions should consist of all the qualified umpires and coaches respectively and that they should meet once (or twice) a year for the purposes of reviewing past performance, discussing future plans, receiving technical updates and electing a small executive committee to assist the chairs of the respective commissions. These propositions are outlined in some detail below and comments, particularly from those within the umpiring and coaching disciplines, would be most appreciated.

18. The umpiring commission will comprise a chair appointed by the Board and [the Regional Umpires of each Region] [all the qualified umpires].

The umpiring commission shall be responsible for: -

- Training, examination and assessment of umpires
- Continued training, monitoring and technical education of umpires
- Dissemination of rules advice to members including the delivery of rules awareness courses
- Recruitment of umpiring candidates
- Provision of umpires at National events

The umpiring commission shall meet at least once in every calendar year for the purposes of:-

- Reviewing past performance
- Planning future programmes
- Receiving technical updates
- Electing four of their number who with the chair of the commission will form an executive committee responsible for administrative and organisational matters

The chair of the umpiring commission shall be responsible for:-

- Advising the board on all policy matters relating to umpiring
- At the commencement of each calendar year submitting a business plan for the approval of the Board for that year
- Submitting a report to the Board for each calendar year on activities carried out
- Submitting minutes of all meetings of the commission and executive committee to the Board

19. The coaching commission will comprise a chair appointed by the Board and [the Regional Coaches of each Region] [all the qualified coaches].

The coaching commission shall be responsible for: -

- Training, examination and assessment of coaches
- Continued training, monitoring and technical education of coaches
- Dissemination of coaching advice to members including the delivery of coaching courses
- Recruitment of coaches
- Provision of coaches at National coaching events

The coaching commission shall meet at least once in every calendar year for the purposes of: -

- Reviewing past performance
- Planning future programmes
- Receiving technical updates
- Electing four of their number who with the chair of the commission will form an executive committee responsible for administrative and organisational matters

The chair of the coaching commission shall be responsible for:-

- Advising the board on all policy matters relating to coaching
- At the commencement of each calendar year submitting a business plan for the approval of the Board for that year
- Submitting a report to the Board for each calendar year on activities carried out
- Submitting minutes of all meetings of the commission and executive committee to the Board

20. The Events Committee will comprise a chair appointed by the Board and a representative appointed by each Region

The Events Committee shall be responsible for: -

- The compilation and maintenance of the competition organisers manual and software
- Training and assessment of competition organisers
- Recruitment of competition organisers
- Provision of competition organisers at National Competitions
- Planning and organising national championship competitions
- Planning and organising the club team tournament
- Planning and organising the inter-regional championships.
- Planning and organising national “open” competitions
- Maintaining a calendar of national events

The events committee shall meet at least once in every calendar year for the purposes of: -

- Reviewing past performance
- Planning future programmes
- Electing four of their number who with the chair of the commission will form an executive committee responsible for administrative and organisational matters

The chair of the events committee shall be responsible for:-

- Advising the board on all policy matters relating to playing events
- Before the commencement of each calendar year submitting a draft calendar of events for that year for the approval of the Board
- Submitting a report to the Board for each calendar year on activities carried out
- Submitting minutes of all meetings of the committee and executive committee to the Board

21. The National Performance Panel will comprise a chair appointed by the Board, the chair of the Coaching Commission and such other persons as may be appointed at the discretion of the Board.

The National Performance Panel shall be responsible for: -

- The Selection of England representative teams
- The coaching and development of elite players
- The appointment, training and monitoring of England team managers
- Organising travel and accommodation for England teams at international events.

The National Performance Panel shall meet at least once each calendar year for the purpose of:-

- Reviewing past performance
- Planning future activities

The chair of the National Performance Panel shall be responsible for:-

- Advising the Board on all policy matters relating to England representational competitions.
- Submitting a plan of activities for each year to the Board for its approval.
- Submitting a report to the Board at the conclusion of each year on past performance and activities.
- Submitting minutes or notes of all meetings of the Panel or of any sub-groups and submitting these to the Board.

Regional Structure

22. A substantial majority of respondents agreed with the MC's proposal that the Regional Structure should remain much as it is with Regions, Leagues and Clubs becoming non-voting members of the company. Some of the views of respondents are as follows: -

“Agreed that the Region structure should remain much as it is now, but much improved communication is needed from EPA to individual members and Regions. There should be no ‘secret’ decisions. Regions and Clubs must FEEL ‘integral, important and essential’ ”

“We agree with the MC's proposal. It is essential that Regions are given a voice in respect to suggestions, ideas, clarification issues and (to a degree) governance oversight. It appears that this will be the case, therefore no further clarification is needed”

“The organisation of regions etc should remain as it is at present, but they should not have a vote as it is unfair for small regions to have the same voting power as large regions.”

“I would anticipate that the Regions will remain the initial point of contact for new and existing members, and will continue to provide the main environment for playing experience, as well as local competitiveness. Within the proposed new legal framework for the EPA, Regional leadership may have to adapt to new ways of collaborating, but I believe that the benefits will outweigh any short-term challenges of transition”

“It is important to stop a “them and us” mentality arising. The obvious solution is for the ‘Regional Presidents’ to have voting rights/full membership of the Board/Management Committee. However, care will have to be taken to ensure the Board/ Management Committee does not become unwieldy. Also, care should be taken to enshrine the rights of Regions to receive notices of general meetings and the power to table proposals”

“Regions and clubs, as bodies, would not be eligible for directorship so would have to be akin to shareholders in order to be able to vote at general meetings”.

“I have for a long time believed that a system should be in place for teams to qualify through their Regional qualifier system onto National events. So, like we have the inter Regionals currently, players would be encouraged to play in the Regions they live in. Once players are into a National squad then players would mix with other players from different regions. The ‘Region’ structure should remain much as it is already with Regions, Leagues and Clubs becoming non-voting members of the company.”

23. In August the MC received a statement from Mercia Pétanque Association which was circulated to all MC members. This was not specifically a response to the consultation proposals, but its contents are relevant particularly where they concern the role of Regions. The following are some extracts from the document: -

“it is clear that there is a high level of frustration at regional level. In our opinion, the regional representatives feel out of the loop with initiatives at national level and generally feel under appreciated. Furthermore, the regions are dealing with the requirements of all their clubs and players that range from those that play purely for recreation through to the fiercely competitive regional squad players, we are trying to fulfil all their desires and ambitions and are well placed to add value to the Association as a whole if asked to contribute. In order to achieve that we need a forum where we can discuss ideas and frustrations, where we can become part of the decision-making process and not just a vehicle for implementing the MC’s will. We agree with Martin Hughes and Tony Mann that initially it would probably need 1 or 2 meetings of regional representatives with members of the MC to discuss and plan the way forward. This will give everyone the opportunity to get to know the MC member responsible for any given area and will act as a future point of reference for us all when seeking advice or giving or needing assistance.”

“We remember receiving emails stating that the MC would be holding management meetings around the country in order to give regions the opportunity to attend, these never happened, and as consequence of there being very few opportunities to meet with the MC, we feel isolated and marginalised”

“As a new region, we may have expected to be asked ‘how are things going’ and ‘is there any help you need’, fortunately we are very resourceful and have established our own path to regional stability. We don’t know whether the association has resources available that could have made our journey easier, but none were offered.”

24. The frustrations felt by regions that they are undervalued and not part of the decision-making process is not new but to address them we firstly need to recognise a few truths. In any organisation decisions can only be sensibly made by those who have the responsibility for putting those decisions into practice with the limited financial and human resources available. Furthermore, in the case of the MC those

decisions are made by members who are subject to the code of conduct relating to MC members, their common law fiduciary duties, and in compliance with the various requirements of good governance. If we adopt corporate charitable status the Board will be subject to a raft of new statutory duties.

The first principle of the government's code for Sport Governance is "**Organisations shall have a clear and appropriate governance structure, led by a Board which is collectively responsible for the long-term success of the organisation and exclusively vested with the power to lead it. The Board shall be properly constituted, and shall operate effectively.**"

The fifth principle of the Sport and Recreation Alliance's Code of Good Governance is "**The Board needs to be conscious of the standards to which it should be operating, and of its role in exercising appropriate and effective control of the organisation. Legal compliance is wide ranging and requires more than just compliance with any single act. The board should go beyond legal compliance and aim to operate according to the highest standards of good practice. The Board must also be aware of regulatory requirements and potential risks, which may be specific to the sport and recreation activity which it governs.**"

It is not therefore acceptable for a forum of regional presidents, who are not subject to or even cognizant of their fiduciary duties, to have the power to impose their views on a properly constituted Board. A tier 3 requirement of the government's code of sport governance is "**The Board of the organisation shall be the ultimate decision-making body and accordingly exercise all of the powers of the organisation**" That said it is imperative that the Board takes full account of the views of regions. The third principle of the government's code for Sport Governance is "**Organisations shall be transparent and accountable, engaging effectively with stakeholders and nurturing internal democracy**". If individual regional presidents are frustrated because the Board is not acting in accordance with their personal views, their only remedy is to stand for election to the Board so that they can become a member of the decision taking body. If, however a regional president is articulating a view which is commonly held throughout his region, the Board has a duty to take it seriously. Another Tier 3 requirement of the government's code for Sport Governance is "**A council shall not be able to override the Board, but may have reasonable rights to consultation and constructive challenge**". This encapsulates the philosophy upon which our existing "Assembly" structure is founded. However, the regions have indicated that they prefer the consultative forum to comprise Regional Presidents meeting twice a year rather than the present Assembly. It is recommended therefore that the Assembly provisions are amended to reflect this desire. To keep the assembly to a manageable size which will enable all attendees to participate it is suggested that only Regional Presidents (or their nominees) be entitled to attend. In order to accommodate the point made above regarding the unfairness of small regions having equal voting rights to large regions it is suggested that each Regional President shall be given one vote for each one hundred members or part thereof in their respective regions.

25. In paragraph 22 reference is made to the possibility of holding management meetings at different regional locations so that local members may attend. Recent experience with regard to the open meetings held for the purposes of discussing the

incorporation proposals shows that very few members are likely to attend such meetings. However bilateral meetings between the Board and a Regional Management Committee might prove to be more constructive. A possible format would be for the Board to hold one of its regular meetings in the morning at a regional location followed by a joint meeting with the Regional MC in the afternoon. Such meetings might help the Regional MC to feel valued and inclusive. The agenda items for any such joint meeting could cover what steps the region is taking to deliver the objectives of the company and consideration of any resources the board could provide to assist.

Board Composition

26. The MC proposal to fix the composition of the Board at 10 elected and 6 appointed directors met with a mixed response. About half the respondents agreed with the MC proposals but the remaining half offered various alternatives. The comments included: -

“A large Board tends to be unwieldy and it is often difficult to get a good consensus on actions that need to be put in place. I am therefore opposed to having 16 Board members and would prefer there to be a limit of 12 members. It may be possible for the Board to co-opt extra members if there is a specific difficulty in dealing with, say, specialist matters. I would recommend that a majority should be elected members, say, 8 in the case of a Board of 12”

“We would like to see some Regional Presidents on the Board. We believe directors should be elected, others with specific expertise (non-voting) could be appointed as required, possibly for specific projects or a limited time”

“Our view is that the size of the Board is acceptable but should be arrived at by election. Half of these should be women ‘where practically possible’. With no appointees. The number should include the President and Secretary”

“The composition of the Board will be the biggest challenge. A need for the right skill sets with the object of running a successful business rather than just a sports organisation. It needs to be tight for decision making, perhaps no more than 6 elected. Costs also become an issue to get people with the right skill sets into the right posts”

“I’ve no real feel for how the MC has been managed in recent years so don’t really have a view. I’d accept the recommendation if there was a further review of how things have progressed in (say) 5 years”

“We feel effort should be made to reduce the Board to a max of 12 in line with the recommended guidelines. Operational roles do not necessarily need to be part of the Board hence you can still have additional people sharing the workload who are not part of the Board. At least half of the Board should be elected, and the rest appointed”

“Here in Luton, we have many Asian families and I can only count one who plays in the Region! This Sport should be open to all races. You may argue

that it is. But we need someone on the National Committee whose speciality is inclusion. To help spread the word. Someone who will be able to make a successful link to other cultures”

“The Board should be appointed by the members as with most commercial and financial organisations. The initial Board could be a leftover from what we have at present but should be slowly reduced in size. 16 is far too many and should be reduced to a dozen or less and how you get 30% of the board members from the female members I wish you good luck. You can always appoint non-executive directors as required but remember that they have no vote but should be subject to the same rules etc as full Board members. Very often they are past full directors who are retained for their experience.

“Enough directors to operate, not too few, not too many, which becomes unwieldy. I suggest Articles of Association of the Company should specify not less than 12 nor more than 16. 75% elected, 25% appointed”

“We are in agreement that those who are to perform the key operational roles should be appointed on ability rather than selected by election. Therefore, we agree that the key operational roles of Secretary and Treasurer should be appointed by the main board following a recruitment process. Similarly, the chairs of the 4 sub-committees should be appointed to their roles and be members of the main board. That makes a total of 6 appointed officers. The President should be elected. As we feel that the main board should be no more than 12 people in total that leaves 5 further to be elected. This should allow for the flexibility to meet gender quotas etc.”

“Board meetings should be headed by a Chairperson not a President. The number of directors must reflect the need to fulfil any commitments to fill sub-committees”

“I believe 13 or 15 Board members would be about right. If it was 13 Board members I would like to see seven elected and six appointed as a split. If it was 15 Board members I would like to see eight elected and seven appointed as a split. The Board should have at least three members of the sub-committees and also be composed of the President, Vice President, Treasurer and Secretary too”.

27. There is no marked consensus among those who offer different proposals to the MC recommendation and consequently there is no real justification for varying the MC proposals. However, a significant number of respondents would prefer to see the size of the Board reduced to about 12. This is the maximum number envisaged by the government’s code for Sport Governance and also the Sport and Recreation Alliance’s code of good governance. The MC currently has a notional complement of 17 but in recent years it has failed to fill all of the elected positions and its actual operating strength has remained at about 12 or even less. If past experience is anything to go by it is possible that future elected positions will remain unfilled. If so it may be appropriate to review the situation in a few years’ time in order to reduce the maximum size of the Board. Some respondents suggest that operational posts could be appointed without the office holders being voting members of the Board.

Officer Roles

28. Comments regarding the roles of Officers include the following: -

“I believe the posts of Treasurer, Chief Executive Officer etc should be advisors to the Board and not members of it. This would be particularly important if we were to move to a situation when we might remunerate post holders who then became employees”

“The current Presidential role definition is adequate. Operational duties should be delegated while President maintains an overview”

“The role of the President (chair) is of paramount importance. The President (chair) is both ‘pinnacle’ and ‘pivotal’ to any organisation. The job of President (chair) is to ensure that the Board acts within its remit between AGMs and is therefore answerable to the members at the AGM”.

“The secretary needs to be a strong character able to make decisions without reference. Could be seen as the most pivotal role in the organisation”

“No knowledge of the definition of the roles now but would be happy for this to take place for ALL roles. Refining these should be an ongoing basis as roles develop and enable a clear understanding for individuals being elected via whichever method chosen.”

“We agree that day to day duties should be delegated where possible to an Operational Sub-Committee”

“No comment, but chairman (President usually non-executive, a reward for past service!) should co-ordinate, secretary works to chairman/Board, within decisions and policy”

“Ideally the President should not be involved in the day to day running of the Company but should concentrate on the strategic and representational tasks. Any administrative and operational tasks should be undertaken by the relevant appointed officer. This will probably require a degree of delegation and careful writing of terms of reference”

“President and Secretary should be able to delegate responsibility as they see fit”

“I don’t subscribe to President and Vice-President offices and I think that a Chief Executive effectively runs the day to day business of a company.”

“I believe the Secretary role should remain as is currently. I do think the view on redefining the Presidential role is vital as I have stated many times this year that our President should not be responsible for running of tournaments and chasing up players for piste allocation etc”

29. There is no real consensus about the roles of the President and the Secretary but on balance most respondents agree that the President role should be one of strategical oversight and co-ordination whilst the Secretary concentrates on operational matters. This view is echoed by the various codes of good governance. The government's code for sports governance states that "**The roles of chair and chief executive shall not be exercised by the same individual and the division shall be established in writing and agreed by the Board**". The Sport & Recreation Alliance code of good governance states "**The chair is responsible for the leadership of the Board, making sure it is effective and setting its agenda. The Board shall appoint a chief executive to lead the day to day operations of the organisation, manage the staff and volunteers. The roles of chief executive and chair must be exercised by different individuals**". As the Association is now moving towards corporate status it is perhaps appropriate for the Secretary position to be relabelled as Chief Executive. The term Secretary is usually thought of as the administrator of a club or society rather than a limited company and the title chief executive is more readily understood by outside organisations we may have dealings with.

Terms of Office

30. The recommendation of the MC was that the elected directors and president serve for a period of 2 years and that they be limited to 3 consecutive terms of office. Most respondents agreed with that proposition but there were three who disagreed. Comments from respondents were: -

"We feel this is too restrictive – EPA could lose vital skills/experience or be left with unfilled vacancies. We propose 'after 3 consecutive terms, directors and president can only continue in office if there is no other candidate and must stand for election annually'. EPA would need to encourage 'shadowing' and sharing of skills to allow succession planning and smooth operation in the event of sudden absences."

"The election of the President should be for a 2/3-year period and voted on by the whole of the membership"

"Happy with this although it may be necessary to extend (level of authority to approve to be decided) if a suitable individual cannot be found for any key roles (perhaps to be defined)."

"The idea of 'refreshing regularly' is good for a fully commercial operation. Our situation is slightly different however. It is the nature of our sport that when we have an individual who is dedicated and qualified to a high degree we should hold on to them with both hands. To this end we would suggest the following: -"

- ***The President is not subject to any limitation regarding tenure of office. "If it ain't broke don't fix it". Continuity of office is a good thing with regard to interfacing with the outside world, i.e. joint venture partners, and stake holders of all kinds. There is a built in 'challenge' potential***

within the Board member's charter and this would give the levity required when election time comes around.

- *We agree with the MC recommendations for all other elected directors”*

“All directors should have a period in office after which they must stand for re-election and after an agreed number of periods of office must stand down”.

“Regarding the length of term for directors, I wonder if two years is too short, as it may take a certain time for each to ‘find their feet’ in a new role. Would 3 years be acceptable, with perhaps a two-year term limit (i.e. still no more than a six-year continuous period of service overall)”

“2 years and 3 terms would seem to me too much change within the organisation. Charity Commission seems to work with 4-year terms. I suggest 4-year terms with a maximum of 3. If half the original board were appointed for 2 years and half for 4 years, then every 2 years half the board would be elected or re-elected. Appointed members would follow this pattern as well”.

“To give the President the opportunity to ‘make his or hers mark’ we feel that they should be elected for 3 years with the opportunity of one further term of office of 3 years. Similar periods of office should apply to the elected officers”.

“After 3 consecutive terms of office, could a person become a director again after a break of 2 years”

“I would recommend that elected directors and the President serve for a period of 2 years and that they are unlimited to consecutive terms of office”

31. Although most respondents support the MCs view on maximum 6-year periods of office, 3 respondents favour longer maximum periods. The government code for Sports Governance states that with a few exceptions directors should serve for a maximum of either (a) 4 terms of 2 years (b) 2 terms of 4 years or (c) 3 terms of 3 years. The Sport & Recreation Alliance Code of Good Governance suggests 2 terms of 4 years or 3 terms of 3 years. Although the codes of good governance and the minority view of respondents is that maximum periods of office should be in the region of 8 or 9 years rather than the 6 years envisaged it should be remembered that the proposed maximum periods of office apply only to directors elected by members and not directors appointed by the Board. It will therefore be open to the Board to re-appoint without restriction those directors with special skills or qualifications which will be of continuing benefit to the company. The Board will therefore be more reliant upon changes in the elected directors in order to experience “refreshment” of views. Consequently, it is not recommended that any change be made to the draft articles of Pétanque England which provides for a maximum period of 2 consecutive 3-year terms. At the last MC meeting it was agreed that there should be no restriction on the number of consecutive terms of office for the President and that is now reflected in the draft articles.

KEN BUCHAN

November 24th 2017