

# SocialEconomy

A quarterly bulletin of information for charities,  
voluntary organisations and social enterprises

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## Charities...

# Public benefit and amateur sport



The Charity Commission opened a public consultation on the advancement of amateur sport as a charitable aim on 28 February 2011. The Commission's consultation focuses on when it is appropriate for organisations to adopt the advancement of amateur sports or games as a charitable aim and what can be done by charities to advance that aim for the public benefit.

To read the consultation questions, please see <http://www.charity-commission.gov.uk/library/guidance/pbaas.pdf>

Following the consultation, which closes on 31 May 2011, the Commission will prepare guidance on advancing amateur sports or games, taking into account the responses and submissions received. A summary of the responses will be published with the new guidance later this year. The Commission has also published the reports for the four latest reviews of amateur sports where it has given its opinion as to whether or not the organisation is being administered for the public benefit and these are available on the website. They are:

- **Wigan Leisure and Culture Trust (registered charity no.1105278)** - which is a charity and the trustees are administering it for the public benefit.
- **Tintagel Memorial Playing Fields Association (registered charity no.1088744)** - which is a charity and the trustees are administering it for the public benefit.
- **Birmingham City FC Football in the Community (registered charity no.1086631)** - which is a charity and the trustees are administering it for the public benefit.
- **The Radlett Lawn Tennis and Squash Club (registered charity no.1117605)** - which is a charity, established for a recognised charitable purpose and being capable of being for the public benefit. In this case, the Commission decided that the trustees are not currently administering the charity for the public benefit because the level at which fees are set has the effect of restricting access to people who are able to pay the fees. The trustees now have three months to confirm their intention to address these matters and a further nine months to provide a plan for agreement with the Charity Commission.



## A new direction for the Charity Commission

**The Government decision to cut the Charity Commission budget by more than a third has led to much soul searching at the Commission (they call it 'clarification of focus'). Who are they? What are they here for? Their conclusion is that they are charity regulators, and that they should therefore regulate.**

In practice, this means a move away from the Commission's dual purpose approach of both advising and regulating charities. They are likely to continue to produce generic guidance, but the Commission is looking to pass its responsibility for provision of one-to-one advice to umbrella bodies and to introduce a system of peer review to help charities identify and address areas of risk themselves.

The Commission is likely to focus on the highest risk areas and the areas where their involvement will have the highest impact. This may mean the introduction of a

system of self-certification in some areas, and the raising of consent thresholds in others.

This does not mean that the registration process will be easier, as the Commission intends to continue to test charitable purposes at registration robustly. Borderline applications are likely to be rejected early on if they do not meet the requirements for registration, as the Commission is considering discontinuing the practice of working with such organisations to refine their application.

Final decisions over Commission strategy have not yet been made, but the Commission aims to phase in the changes from May with a view to having the new strategy and structure fully in place from 1 October 2011. Expect further consultation as they seek to refine their identified priorities into a detailed strategy.

## Registration & De-registration

### Excepted charities – registration

For excepted charities with an annual income of less than £100,000, the exception from registration has been extended until 2012 to allow time for a review of the Charities Act 2006 to take place this year.

### Exempt charities – De-registration

The Department for Education (DfE) announced on 30 March

their proposals for the Secretary of State for Education to become the Principal Regulator to promote compliance with charity law by the governing bodies of foundation and voluntary schools, academy trusts and sixth form college corporations. If Parliament approves the proposals, the DfE will undertake day-to-day oversight for foundation and voluntary schools, and the Young People's Learning Agency (and then its

successor, the Education Funding Agency) will oversee Academies and sixth form colleges. Once principal regulators have been found, these categories of charity can be made exempt. The aim is for these changes to take effect later this year.

For the 'second tranche' of exempt charities (RSLs, IPSs and Further Education Colleges), we understand the timetable has not

been set, but the Office for Civil Society believe it is unlikely to be before September or October 2011. The Charity Commission has indicated that it is possible that the registration of IPSs will now be tied in with the timetable for conversions of incorporated charities to CIOs, so that the CIO model would be available for IPSs when they have to register. It is unlikely to be very attractive for them.

## Charitable Incorporated Organisation (CIO)

**CIOs are still not available, but it is hoped that the regulations to bring them into being will be laid before Parliament before the summer recess. They will initially be available only for new charities or for the incorporation of unincorporated charities, with the conversion of existing incorporated charities**

**expected to follow. The Charity Commission has published two model CIO constitutions, together with accompanying guidance, available on the Charity Commission website.**

The models are for a CIO association with members, and a CIO foundation model for a

grant making charity. The Charity Commission take the view that the CIO model will be most suitable for small to medium sized organisations which employ staff or enter into contracts. There is no provision for a register of charges with the Charity Commission so it is unlikely that this model will be appropriate

for charities which have property which they use for trading.

The CIO is still of benefit to small unincorporated associations with few assets, but perhaps not at all to medium sized charities unless they are grantmaking foundations.

## Advertising

**Are you complying with the law on advertising? From 1 March 2011, charities will have to comply with the Committee of Advertising Practice's Code on Advertising, as well as the Advertising Standards Authority (ASA)'s codes. The**

**codes extend to charities' websites and social networking sites (e.g. Facebook and Twitter). One of the key principles of the codes is that advertising must be responsible and must not mislead or offend.**

The new ASA remit focuses specifically on marketing and advertising, and in particular on any marketing communications which ask for donations. The extended remit will not cover website pages, social networking

pages, etc. which promote causes or campaigns but do not ask for a donation. Trustees of charities which engage in online marketing and requests for donations may wish to read 'Extending the Digital Remit of the CAP Code'.

## Managing charity assets and resources



**There is less money around nowadays, so it is even more important that charity resources are not only properly managed but also seen to be properly managed. Charities with a history of poor financial management or poor governance structures may find it difficult to persuade donors and grant-makers to give to their cause. The Charity Commission has recently published an updated version of its guidance on managing charity assets and resources, which is available from the Charity Commission website at <http://www.charity-commission.gov.uk/Library/guidance/cc25text.pdf>. Well worth a read for all charity trustees.**

## Employment...

### CRB checks

**In June 2010 the Government announced it was halting registration with the Vetting and Barring Scheme (VBS) and reviewing the scheme. This has now been done and the Government has announced provisions to revise its vetting and barring arrangements.**

The key changes, which will be included in the Protection of Freedoms Bill, will be:

- the merging of the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA) to form a streamlined new body providing a "proportionate" barring and criminal records checking service;
- a large reduction in the number of positions requiring checks to just those working most closely and regularly with children and vulnerable adults;
- portability of criminal records checks between jobs;

- an end to the requirement for those working or volunteering with vulnerable groups to register with the VBS and then be continuously monitored by the ISA; and
- stopping employers who knowingly request criminal records checks on individuals when they are not entitled to them.

The Bill is expected to become law by early 2012 and the new regime will be introduced "as soon as possible" after this. Until then, the safeguarding requirements which came into force in October 2009 continue to apply.

The fee for an enhanced CRB check was increased to £44 with effect from 6 April this year. The fee for a standard CRB check will remain at £26. CRB checks on volunteers will continue to be provided free of charge.



## Employment law round up

### Age Regulations

The default retirement age of 65 has been abolished, as from 6 April 2011. Any dismissal occurring where notice of intended retirement was issued on or before 5 April 2011 will be capable of being a fair dismissal and will not amount to age discrimination if it takes effect before 1 October 2011. Thereafter, retirement will cease to be a potentially fair reason for dismissal.

An exception has been made for group risk insured benefits. Employers are entitled to refuse to provide such benefits to employees over the age of 65, with that age rising in line with the state pension age.

It will still be possible to retire people compulsorily but only where this can be objectively justified as an effective and proportionate means of pursuing a legitimate aim. It remains to be seen how the courts will interpret this.

### Statutory payment rates

On 3 April, the standard weekly rates increased to £128.73 (statutory maternity/paternity/adoption pay), £81.60 (statutory sick pay), £128.73 (maternity allowance), and the weekly earnings thresholds rose to £102 (statutory maternity/paternity/adoption pay and statutory sick pay). The earnings threshold for maternity allowance remains at £30.

### Additional paternity leave

The husband, partner (including same-sex relationships) or civil partner of a mother who gives birth on or after 3 April 2011, and adoptive parents who are notified that they have been matched with a child for adoption on or after that date, will be entitled to additional paternity leave of up to 26 weeks. Once the mother or adopter has returned to work, additional paternity leave can be taken between 20 weeks and one year after the child is born or placed for adoption.

### Flexible working

Originally, 6 April was to have been the date when parents of children under 18 years of age would have been entitled to request flexible working patterns. In order to reduce red tape for employers, this has now been abandoned. The right continues to exist only for parents of children under 17 (or under 18 where the child is disabled).

### Time off for training

Again, 6 April was to be the date when all employees would have the right to request time off for training. The legislation to extend this right

to all employees was revoked, meaning that it only applies to employees working for companies with at least 250 employees.

### Equality Act 2010 protection for volunteers

Although no specific mention is made of volunteers in the Equality Act 2010, the Equality and Human Rights Commission has published guidance suggesting that organisations that provide volunteering opportunities are "providing a service" to the public and that volunteers are therefore "service users". As service users, volunteers would be protected from discrimination under the Equality Act 2010.

Organisations should develop policies which state that, while there is no intention to create any contractual relationship with volunteers, as a matter of respect and dignity, volunteers can expect to be treated fairly and inclusively wherever reasonable.

Staff should be trained to recognise discrimination, so as to minimise the risk of complaints. Accurate staff training records will help an organisation to demonstrate that it has taken steps to comply with its obligations under the Equality Act 2010.

### Volunteering

Iain Duncan Smith, Secretary of State for Work and Pensions, has launched an initiative to encourage jobseekers to find volunteering and training opportunities. Advisers from The Prince's Trust and other voluntary organisations will go in to Jobcentre Plus offices to facilitate this. This programme was rolled out nationally in April.

### Bribery Act 2010

The Bribery Act 2010 will come into force on 1 July 2011. The Ministry of Justice has published revised guidance about procedures which relevant commercial organisations can put in place to prevent persons associated with them from bribing.

### Age Discrimination

The Government has published a consultation on new proposals on age discrimination in the provision of services and public functions. The proposals are due to come into effect from April 2012, and apply to Great Britain, but not Northern Ireland. The consultation closes on 25 May 2011. For further information and to respond, please see: [http://www.equalities.gov.uk/equality\\_act\\_2010/age\\_consultation\\_2011.aspx](http://www.equalities.gov.uk/equality_act_2010/age_consultation_2011.aspx)

# Government...



## Public Sector Mutuals learning from the Chinese

**The Government is moving slowly forward with encouraging mutual organisations in the public sector. It has announced 21 pilots who are being advised on how they might transition to the private sector through a social enterprise form of organisation. The Cabinet Office is leading on this. It will be interesting to see whether this Government has any greater success than the previous Government's efforts to create social enterprises in the health sector. There is a £10 million support programme to assist the process.**

Of course public sector mutuals, as a term used by the Government, is a misnomer. The organisations are neither public sector nor often mutual. They are not state enterprises but private enterprises and the mutuality could occur only if all employees had an equal vote in decision-making as members of the organisation.

We have discussed the mutual sector in a number of previous articles pointing out the benign neglect approach of HM Treasury, as the responsible ministry for mutuals, over some decades, in comparison with the Department of Business

which has successfully updated a number of business forms. A free transfer is definitely required here.

So far as public sector mutuals are concerned, the Chinese perhaps show the way with their state owned private enterprises where the managers have had to learn to act within a market whilst remaining in state ownership, before the private sector is permitted to invest. Perhaps the Department of Business could develop a new legal form – a “public sector mutual” to be the state alternative to the company and which remains in the public sector.

## Transformation through employee engagement

**Transformation through employee engagement is the title of a joint publication of the Involvement and Participation Association (IPA) and the CBI. The IPA is a long established think tank on employee engagement with membership from both employers and trade unions. They were the organisation behind Investors in People, the learning and training scheme for employers and employees.**

The joint publications offers a number of case studies of private sector organisations which provide public services, often through taking on public sector staff who are driving up improvement in the delivery of services through employee engagement. The case studies include Eaga, formerly in the voluntary sector and recently acquired by Carillion plc; Serco and Circle – which is starting to manage the workforce of hospitals. [www.ipa-involve.com](http://www.ipa-involve.com)



## CICs hit by Government tax avoidance schemes

**The Government's tax blunderbuss has been at work again in the Finance Bill, this time seeking to prevent disguised remuneration. This is remuneration which is designed to provide a benefit to higher paid employees (with reduced or no taxation for the employee) through the use**

**of mechanisms such as the employee benefit trust.**

The employee benefit trust has been used in that way, but it has also been very effective as a mechanism for succession of companies to employee ownership and putting in place genuine

long term reward schemes for employees. The new rules to be introduced by the Finance Bill will not attach to rewards offered through Share Incentive Plans – the statutory all employee share scheme which can be introduced into a share capital CIC.

Social enterprises established as companies limited by guarantee and CICs will be caught in the disguised remuneration net if they seek to use employee benefit trusts to provide incentives to senior management employees.

# Environment...

## New Co-operative Energy Provider

**The Midcounties Co-operative, one of the largest consumer co-operatives in the UK, has launched Co-Operative Energy, a new domestic energy business offering gas and electricity supplies to households in the UK.**

The new supplier has pledged its support to renewable energy and aims to ensure that the carbon generated by its electricity supplies will be less than half the national

average for energy delivered to homes by 2012. Co-operative Energy expects its electricity will eventually be derived from 20% renewable sources, 30% nuclear sources and 50% from natural gas supplies, against a national average percentage for renewable energy supplies of only 6.6%.

Co-operative Energy has criticised the complicated pricing system operated by existing energy

suppliers, with over 4,000 different tariffs currently available to UK consumers. In contrast, the co-operative will operate a single monthly standing charge and unit rate, irrespective of the amount of energy consumed. The launch is well-timed in the context of Ofgem's recent criticism of the complexity of energy pricing in the initial findings of its Retail Market Review, published in March 2011. As co-operative members,

energy users will also have the opportunity to accrue points and dividends in respect of their energy usage, as well as participating in the democratic running of the organisation.

For further details, please see the Co-operative Energy website at: [www.cooperativeenergy.coop](http://www.cooperativeenergy.coop)



## A community fund protocol for wind farms

**Some 15 or so years after it was first mooted, the wind farm industry has developed a common protocol for community benefits from wind farms.**

Trade association, Renewables UK, commits member firms to negotiate community benefit plans when developing plans for onshore wind farms greater than

5MW in size – four to five large turbines. Payments are to be set at a minimum of £1,000 a year for each megawatt produced. The scheme has been endorsed by the National Association of Local Councils which represent parish and town councils.

The Renewable Energy Foundation advises that the minimum payment

represents around 0.5 per cent of an average wind farm's total annual income – not a particularly large amount. In some respects the protocol is endorsing current industry practice, – but now it is out in the public domain, a debate can be had over its sufficiency. (Planning 25 February 2011).

### Contributors

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