

## **Co-operation & Mutuality Scotland response to the Draft Charities and Trustee Investments (Scotland) Bill.**

**Introduction:** CMS is the main umbrella organisation for the co-operative and mutual sector in Scotland, having been launched in June 2003 as the result of a merger between the Scottish Co-operative & Mutual Forum and the Scottish Sectional Board of Co-operatives UK.

CMS covers the full range of co-operative and mutual enterprises - namely, worker co-ops, employee owned businesses, housing co-ops, credit unions, other financial services, agriculture, fishing, community businesses and consumer co-ops. CMS is supported financially by Co-operatives UK the apex body for co-operative enterprise.

Co-operatives have to produce surpluses to be sustainable and fulfil their social goal(s). However there is always a voluntary element in membership and structures for representation.

Co-operatives do not see themselves as part of the voluntary sector – they have a trading focus – but their aims are linked.

CMS has 3 main aims: to be a strategic voice for co-operation and mutuality; to be a partner with government and others in developing and supporting new and existing co-operative and mutual enterprise and; to be an effective forum for co-operative and mutual enterprise.

CMS welcomes the opportunity to offer our comments upon the draft bill.

### **General Comments**

The proposed legislation has potential implications for parts of the co-operative enterprise sector in Scotland such as housing co-operatives, credit unions, and community co-operatives especially for Society's for the Benefit of the Community (Bencom) under the I&PS Act, which are currently eligible for charitable status. CMS recognise that charities come in a variety of legal forms, and that as long as the organisation concerned is carrying out charitable purposes and can satisfy the public benefit test, that the option for charitable status should be available.

Historically Co-ops and have been formed primarily for the benefit of their members. It is however an International Co-operative Alliance principle that co-operatives have concern for community. CMS is aware that various organisations are arguing for parts of the co-operative sector such as housing co-ops gain access to charitable status. CMS however, supports the arguments put forward by ABCUL and Co-operatives UK in their representations to the Charity Commission for England and Wales that co-ops are a distinct brand of organisations, and are not the same as charities. CMS would therefore not support the idea that these organisations should gain charitable status in terms of being branded as a charity. However, we would note that as many co-ops are in fact providing a public benefit by carrying our activities that fall into one or more of the new charitable heads, and therefore believe it should be considered how to ensure that these organisations are able to access some of the fiscal and other benefits normally restricted to registered charities only.

For example, in their submission to the Charity Commission for England and Wales ABCUL recommended that the Charity Commission formally recognise credit unions contribution to the alleviation of poverty. This would include published guidance which includes credit unions as a distinct legal entity able to receive support and benefits currently restricted to registered charities only. They go on to argue that this recognition of credit unions would provide clarity of approach to many organisations that recognise the good work carried out by credit unions but are unable to provide them with support as they are not registered charities. ABCUL argue

that credit unions should be recognised as a distinct legal structure – **non charity** but not for profit, contributing to the alleviation of poverty.

Another case in point is that of the housing co-op sector in Scotland. There are currently 10 fully mutual housing co-ops and a further 15 or so housing organisations run under co-operative principles. At present these are the only parts of the RSL sector that are excluded from charitable status. CMS is aware that the Scottish Federation of Housing Associations (SFHA) and Scottish Community Owned Housing Forum (SCOHF) are arguing that housing co-ops should become eligible for charitable status. CMS notes however that one of the main reasons for this position is the negative implications of Section 54 withdrawal which is adding financial burden to housing co-operatives who currently do not have the option to seek the fiscal benefits of charitable status available to other forms of RSL's such as housing associations and community based housing associations. CMS understands the position taken by SCOHF that it is unfair that housing co-ops are financially penalised because of their status as a housing co-op as opposed to another legal form. CMS therefore argues for a similar solution to that outlined above for credit unions. Essentially we would argue for a level playing field for housing co-operatives.

Co-ops as already stated have concern for community; they are also democratic businesses controlled by their members who act in a voluntary capacity. In the case of housing co-ops membership of a housing co-operative is linked to the resources (i.e number of houses), rather than being restricted artificially by other means. CMS believes that housing co-ops should be recognised for their contribution to the provision of accommodation to those in need of it by reason of age, ill-health, disability, financial hardship or other disadvantage but that it would be inappropriate to be branded as a charity. Instead we would argue that they should be recognised as a distinct form of housing solution – **non charity** – not for profit, contribution to the provision of accommodation, thereby enabling them to receive support and benefits currently only available to housing associations registered as charities.

### **Charitable Purposes**

CMS welcomes the proposed extension of categories of charitable purposes. This will likely bring the potential benefits of charitable status to many who have in the past been excluded. CMS is keen to see that there is no divergence of purposes from the proposals for England and Wales as we believe that alignment across the UK would be particularly desirable on this issue.

As already mentioned we understand the view expressed by SCOHF, that the extension of charitable purposes means that the activities of housing co-operatives fulfil several of the charitable purposes the main one being the provision of accommodation to those in need of it by reason of age, ill-health, disability, financial hardship or other disadvantage. However, as already noted charitable status is primarily being sought in order to alleviate the financial difficulties associated with the withdrawal of section 54 grant support.

### **Public Benefit Test**

CMS acknowledges the broad consensus that charities are established to provide benefit to the public and therefore welcomes the provisions laid out in the Bill for a test of public benefit for eligibility for charitable status. CMS however believes it is crucial that the Bill includes clear criteria for public benefit which will help secure greater public confidence in charities. CMS believes that clear criteria would provide an effective system of accountability. CMS supports the position outlined by SCVO that the Act should include one statement of principle and four criteria which it believes together would provide a robust framework for the Regulator to work within in determining eligibility for charitable status.

In summary, the Bill should state that only those organisations which have as their overriding purpose and effect the provision of a public benefit should be eligible for Scottish charitable status: that a benefit to the public must be a benefit accessible to the public as a whole or to

disadvantaged sections of the public or to individuals to develop an exceptional talent which otherwise would be neglected; that the benefit must be a net benefit for the public after any disbenefits have been taken into account; that the benefit must be either a direct benefit to the intended beneficiaries or a benefit to organisations which provide a direct benefit; and that the benefit should not be subject to charges or any other condition of access which effectively exclude(s) a significant section of its intended beneficiaries.

### **Burden of Regulation**

CMS broadly welcomes the proposals to establish the Office of the Scottish Charity Regulation (OSCR) as an independent statutory regulator integrating the role of the various existing agencies with a regulatory role. However, we are inclined to support the concerns raised by the Scottish Federation of Housing Associations regarding the burden of regulation that will be exercised of RSL's who are already subject to quite a high degree of regulation and supervision including quarterly and annual financial submissions amongst others. We support their calls for the inclusion of the "principle regulator" concept.

### **Trading**

CMS notes the Cabinet Office Strategy Unit report (2002) recommendations that charity law should be amended to allow charities to undertake all trading within the charity without the need for a trading company. CMS is disappointed that charity trading has not been addressed in either the Scottish or Westminster bills. We acknowledge that the recommendations of the Strategy Unit report were not unequivocally welcomed, however, we feel that it is a missed opportunity and that the debate on the simplification of charity trading should be continued.

### **Stewards vs trustees**

The draft Bill proposes the term "charity steward" to describe those involved in running charities. An alternative, "charity trustee" is widely used elsewhere in the UK. It has been argued, on the grounds of public understanding and alignment with elsewhere in the UK, that the latter term is preferable and there is no substantive legal reason for not using it. CMS therefore strongly recommends that the term charity trustee is adopted.

### **Advice vs Regulator role**

CMS welcomes the restrictions of OSCR's advice role in the Bill to advice on compliance with the act rather than advice on wider issues of charity and voluntary sector good governance.

### **Equalities**

CMS adds it's support to the suggestions that the Bill should include a section on equal opportunities similar to section 59 of the Local Government in Scotland Act 2003. Section 59 requires that when local authorities (amongst others) are "discharging functions under (the) Act" they do so "in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements". In section 59 "equal opportunities" and "equal opportunity requirements" have the same meanings as in Section L2 of Part II of Schedule 5 to the Scotland Act 1998 (c.46).