



An Roinn Fiontar,
Trádála agus Fostaíochta
Department of Enterprise,
Trade and Employment

Public Consultation on Reform and Modernisation of Legislation regarding Co-operative Societies Response Template

As set out in the Public Consultation paper, the Department of Enterprise, Trade and Employment is seeking views on a number of specific issues prior to finalising legislative proposals for the reform and modernisation of legislation regarding co-operative societies.

Please include your response in the space underneath each question and set out/ explain your views. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

Respondents have the opportunity to comment more generally in Question 12 should they wish.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

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Respondents are requested to return their completed templates by email to coopconsultation@enterprise.gov.ie by **5pm on Friday, 25 February 2022**.

An Mheitheal Comhshaol Cooperative Limited

An Mheitheal Comhshaol Cooperative Limited, trading as An Mheitheal Rothar, is a Galway-based social sustainable enterprise incorporated in 2021 as a multi stakeholder cooperative.

We have a strong social and environmental ethos, and a commitment to cooperative principles. We currently employ seven people and due to some new government programme funding, by the end of 2022 we will have approximately 15 employees. We teach cycle mechanic skills to a further eight people, with two intakes per year.

As a multi stakeholder cooperative, we have three classes of members: workers, volunteers and community members. All our assets are essentially held in trust for the community.

We form part of a loose network of social cooperatives around the country, brought together by our shared commitment to cooperative values and our commitment to allowing local communities to .

We welcome the process to reform cooperative legislation in Ireland. The outdated legislation has been a major hindrance to us as we set up and grow our organisation.

www.bikeworkshops.ie

www.facebook.com/AnMheithealRothar

<https://www.linkedin.com/company/an-mheitheal-rothar>

<https://twitter.com/mheithealrothar>

Responses

Matters relating to Registration

Transition period

Question 1.

Do you consider that the proposed transition period of 18 months is sufficient to enable existing industrial and provident societies to either register as co-operatives or pursue an alternative option? If not, please suggest an alternative timeframe and provide a supporting rationale.

Response:

Yes this is sufficient.

Assistance for small cooperatives via a set of model rules that conform with the requirements of the new Act would speed and simplify this process.

Expanding the categories of members who can set up co-operative societies

Question 2.

Please set out your views on the proposal to expand the categories of members who can form a co-operative society to include companies? If not in agreement, please set out your reasoning.

Response:

While we are not against other entities as members of cooperatives, we would be keen that these entities be given the same voting rights as natural persons. We know that An Mheitheal Comhshaol would not want companies as members, but also that cooperative principles include "Voluntary and open membership". We would hate to see a situation where small cooperatives were forced to accept any corporation that wanted to join them in the same way as a natural person, as we feel this could lead to a hugely unequal situation and potentially derail their core objectives and application of cooperative principles. We therefore ask that the rules include provision for cooperatives to choose to specifically refuse membership to entities other than natural persons in their constitution, if the members so desire.

Secondary cooperatives (eg cooperatives whose members are cooperatives or CLGs etc), where membership is more than 50% non natural persons, should have to identify themselves as representing the interests of these groups and not those of natural persons.

Content of rules

Question 3.

Are there any other matters that should be included in the list of matters set out in legislation that must be dealt with by the rules of a co-operative society? Please provide supporting rationale for any such additions.

Response:

We welcome the “any lawful purpose” provisions for cooperative aims. However, as a social and environmentally focused cooperative, we would welcome an optional “mission lock” style provision enabling members to set the permanent aims and objectives at the time of incorporation such that these cannot be altered at a later date by a General Meeting of members.

Matters relating to Shares

Legal Reserve

Question 4.

Please set out your views on the proposed approach to the legal reserve.

Response:

Prior to incorporation, An Mheitheal Comhshaol was originally established as An Mheitheal Rothar, a voluntary association with a constitution.

As a start up we have grown quickly and have used loans from organisations such as the Western Development Commission to expand our operations. If we had had a minimum reserve requirement this might have significantly hampered our ability to grow quickly, be responsive to market conditions, provide jobs and deliver environmental and social benefits to our community.

In addition, where would this money come from? As a not for profit cooperative, we do not levy any kind of subscription on our members, who are mostly volunteer bike mechanics, community members and our workers; and it would be impossible for us to do so. Asking directors to provide reserves would make recruitment to our voluntary board extremely challenging.

Contributions to a reserve from traded income over time, such as a percentage, would however be doable. While this is sound financial practice, in the real world of startups, it would be not without challenges and opportunity cost. As such it would be good if this requirement could be delayed beyond the first two years of operation and a specified turnover, with those turning over less than €100,000 being exempt.

Nomination regarding transfer of property in the event of death of a member

Question 5.

Are the provisions on nomination regarding the transfer of property in the event of the death of a member considered useful and worth retaining in the proposed legislation? Please provide rationale in support of your response.

Response:

Not for profit and multi stakeholder cooperatives such as ours require their own provisions here. We take a symbolic €1 share from members only because it is required under current legislation. All our assets are effectively held in trust for the community and overseen by our voluntary board, who are also members.

Membership is generally initiated due to interest in our activities such as cycling, bike mechanics and circular economy. These interests are unfortunately not necessarily inherited by a person's heirs. While we would love people to inherit an obligation to spend time fixing bikes in a community bike workshop, this may not appeal to heirs.

Matters relating to Corporate Governance

Minimum number of directors

Question 6.

Do you support the proposal in relation to the minimum number of directors (at least one director for co-operatives with less than 10 members and at least three directors for larger co-operatives)? Please provide a rationale in support of your response.

Response:

We feel that the proposal for single director cooperatives is counterintuitive in the extreme. A minimum three directors would be more appropriate striking a balance between ease of formation of a small cooperative and ensuring cooperation actually occurs.

Approval of Special Resolutions

Question 7.

Do you support the proposal to provide for a single general meeting for the consideration of special resolutions, subject to the approval of at least 75% of members entitled to vote at the meeting? Please provide a rationale in support of your response.

Response:

Yes we are broadly supportive of this. The 75% requirement underlines the cooperative ethos.

Matters relating to Financial Statements, Annual Returns and Audit

Audit exemption criteria

Question 8.

Do you agree with the approach set out in relation to eligibility for audit exemption and the proposed thresholds? If not, please set out your proposal, together with a rationale for same.

Response:

While we are pleased that audit exemptions have been proposed, we feel that the 50 member threshold would be an issue for community based and not for profit cooperatives like our own, which have large numbers of members but generally low income relative to member numbers. We would therefore prefer if the exemptions were focused on turnover of traded income. We specify traded income because any state or philanthropic funding generally comes with its own financial reporting requirements and cannot be reallocated.

Decisions regarding Audit Exemption

Question 9.

Do you support the proposal to require eligible co-operatives to provide for audit exemption in their rules? Do you support the proposal that a decision to avail of audit exemption can be reversed if supported by at least 10% of the members, entitled to vote at a general meeting? Please provide a rationale in support of your responses.

Response:

We do, with the caveat that traded income should be specified. As a not for profit cooperative, programme funding could potentially make up a proportion of our income, and this comes with its own financial reporting requirements. We would not want to see a situation where a cooperative with a very small traded income and few members is forced into an expensive audit for a small percentage of total income. Perhaps a % of traded income amendment could be added, for example “if supported by 10% of members, and where traded income forms more than 10% of total income”.

Abridged financial statement criteria

Question 10.

Do you agree with the proposal to provide for the filing of abridged financial statements with the Registrar in relation to small co-operatives and, if so, the eligibility thresholds set out? If not, please set out your proposal, together with a rationale for same.

Response:

Yes we do but again, as a not for profit community based cooperative, we would not use member numbers as the determinant. We feel the requirements and exemptions should be similar as those for companies.

Certain exemptions in relation to financial statements

Question 11.

Do you agree with the proposal to provide for certain exemptions in relation to financial statements for small co-operatives and, if so, the eligibility thresholds set out? If not, please set out your proposal, together with a rationale for same.

Response:

We believe cooperatives should have access to similar provisions as companies.

Opportunity to provide additional observations

Question 12.

Please provide any additional comments you may wish to make to inform the completion of the legislation regarding Co-operative Societies.

Response:

Ireland has a long and proud tradition of cooperatives and An Mheitheal Comhshaol Cooperative Limited are delighted to be part of this tradition, while finding new ways of applying it to meet the social and environmental challenges facing our community.

The old legislation is very much focused on traditional cooperatives such as those producing agricultural products, with little provision for the wonderful new ecosystem of cooperatives currently springing up in communities around the country. These include multi stakeholder cooperatives and not for profit cooperatives, as well as those focused on housing, food, social outcomes and other vital elements of community life.

As a not for profit multi stakeholder cooperative, our journey towards providing jobs, social and environment outcomes and useful economic activity would have been much easier if there were some kind of model rules for cooperatives that also met the rules for the Charities Regulator to register us as a charity. As it was, we had to mash together two very different sets of rules when designing our constitution, and still have not registered as a charity because of the fear that the double reporting requirements would mean an impossible administrative burden. Some kind of hybrid structure which met both sets of rules and dovetailed both sets of governance requirements would be truly helpful.

Alternatively, a designated charity or social enterprise status for not for profit cooperatives under this legislation could work, with specific audit requirements, filing requirements, directors' obligations and potentially tax treatment for such cooperatives. Supported by model rules, this could provide a much less onerous and complex path to incorporation for organisations such as ours.

We would also like to see some measures adopted from UK best practice around allowing community cooperatives to access funding. For example the Community Share (for more business-like models) and Community Benefit Share (for more socially focused models) used in the UK would allow mission driven cooperatives to raise funds, and access to modern forms of fundraising like crowdfunding, which could be vital in allowing communities to gather the funds required to deliver community determined solutions to local issues.

At this time, when the EU and Ireland are part of a shift towards recognising the essential value provided by social enterprise, we feel this is a golden opportunity to align cooperative legislation with social enterprise policy and assist cooperatives to deliver solutions to the issues they face in their local communities.

Finally, we welcome the opportunity to see outdated language such as "insane" and "lunatic" removed from cooperative legislation. This language does not reflect our current understanding of mental health. Equally, while a person doesn't have to be insane to try to set up a community based, not for profit, social enterprise multi stakeholder cooperative fit to meet the needs of our modern communities under the 1893 legislation, it certainly helps.

Freedom of Information Act 2014 and Publication of Submissions

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

General Data Protection Regulation

Respondents should note that the General Data Protection Regulation ('GDPR') entered into force in Ireland on 25th May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose limitation;
- Data minimisation;
- Accuracy;
- Storage limitation;
- Integrity and confidentiality;
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25 May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

January 2022