



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](mailto:coopconsultation@enterprise.gov.ie) by **5pm on Friday, 25 February 2022**.

## 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:** 24 months may be a more helpful timeframe to allow for full consultation with members and registration.

#### 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 this provision might not be used that often in practice, occasions may occur when it is a beneficial option and we offer it a cautious welcome. The Public Consultation paper states that the intended legislation aims to take due account of the distinct characteristics of co-operatives and co-operatives will be required to have a co-operative identity. Such provisions would be important to mitigate against any potential risks associated with the proposal that companies only may set up a co-operative.

#### 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:** The 'object' of the co-operative should be included. That the scope of activity of the co-operative be extended to "any lawful activity" is welcomed but members should have information on and agree on the purpose of the co-operative.

Clarity may be required around “supplementary rules” and the manner in which they are adopted and registered.

## Matters relating to Shares

### Legal Reserve

#### Question 4.

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

**Response:** We are in broad agreement with the introduction of a legal reserve. The narrative in the Public Consultation document which suggests that any legal reserve be distributable only in accordance with the rules of the co-operative and at a level that the co-operative considers adequate is key here – it is important that members have control.

### 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:** The provisions are useful and worth retaining. They allow for a tangible, meaningful relationship between member and co-operative and as such demonstrate the value of co-operative membership.

## 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 do not agree with the proposal of one director for any co-operative, even in the case of three members. The proposal would seem to go against the idea of democratic control and accountability at the heart of co-operatives.



### **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:** No, while 75% is a high bar to be reached and, having reached that bar, one meeting would allow the co-operative to expedite its business in a timely manner, a second meeting allows for close and careful consideration of and reflection on important decisions.

## **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:** Yes. We do not hold a view on the specific figures suggested for the thresholds in relation to the criteria of balance sheet, turnover and number of employees but the introduction of provisions for audit exemptions for co-operatives is to be welcomed. However, we are unclear as to why the number of shareholding members should not exceed 50 for this proposal. The point about 'balance' in the accompanying narrative is unclear to us.

### **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:** Members should be able to avail of a reversal of any rule of their co-operative allowing for an audit exemption. However, the threshold of 10% of members may be too low. A simple majority may be a better threshold.



### **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, the introduction of a provision for the filing of abridged accounts for co-operatives which operate under specified thresholds in relation to the criteria as outlined in the consultation document in terms of balance sheet, turnover and number of employees is to be welcomed. However, we are unclear as to why the number of shareholding members should not exceed 50 for this proposal. Can a member request a full set of accounts?

### **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:** Yes, we are broadly in agreement with this approach.

## **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:** We welcome the broad approach being taken as outlined in the consultation document and appreciate the work that has gone into it. We hope that the principle of proportionality with regard to directors' duties will apply for the sector which is built on voluntary input. Adherence to co-operative ethos while allowing for meaningful control by members is a delicate balance to be achieved.

We look forward to the timely completion of the next stages of development of the proposed legislation and the opportunity to input into same.



## **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 25<sup>th</sup> 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**