



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.

<b>Name(s):</b>	Tiziana O'Hara
<b>Organisation:</b>	Co-operative Alternatives
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<b>Telephone number:</b>	

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**.

Unit 140,  
North City Business Centre,  
2 Duncairn Gardens,  
Belfast,  
BT15 2GG.

Department of Enterprise, Trade and Employment  
23 Kildare Street,  
Dublin 2,  
D02 TD30,  
Ireland.

25<sup>th</sup> February 2022

Dear Sir/Madam,

Co-operative Alternatives aims to develop and support a strong co-op movement connected across the island of Ireland and doing business in a fair, just and ethical way.

We are Northern Ireland's leading co-operative development agency offering high quality support and expert knowledge to existing and emerging co-operatives.

We greatly welcome progress on reform of the industrial and provident societies legislation, and believe it represents an opportunity for the island of Ireland to become a renewed centre of the widespread utilisation of the model for local economic development.

We hope that the Department will welcome our experience in working with existing and emerging co-operatives across the island, and in particular our work advising co-operatives with utilising 'community share offers' to finance their development and growth.

We will look to engaging with you in the future, and welcome any further questions you might have on any of the questions below.

Yours in Co-operation,

Tiziana O'Hara

Co-founder

Co-operative Alternatives

## 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:

Co-operative Alternatives believe that the transition period might be too short for smaller co-operatives to manage given the time and cost of undertaking a complete rule amendment.

#### 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:

Co-operative Alternatives would welcome recognition of the capacity of any body corporate to become a member of a co-operative, subject to that co-operatives rules.

Co-operative Alternatives acknowledges the risks to the democratic ethos of a co-operative where a co-operative is formed of natural and legal persons, and would recommend that the legislation provide safeguards to mitigate this risk.

**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:**

Co-operative Alternatives has no specific recommendations here.

## Matters relating to Shares

### Legal Reserve

#### Question 4.

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

#### Response:

Co-operative Alternatives believes that the principle that some of the capital of the co-operative remains the common property of all the members, and is not distributable to the members, is an essential part of the co-operative model.

This is included in the International Co-operative Alliance Co-operative Principle 3.

Co-operative legislation in many European jurisdictions provide for an indivisible reserve, and a minimum annual contribution to this reserve from the annual profits of the co-operative.

Co-operative Alternatives would recommend that the legislation be aligned with European co-operative norms in regard to the requirement and maintenance indivisible reserve.

### 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:

Co-operative Alternatives consider the provisions on nomination regarding the transfer of property in the event of death useful and worth retaining. As per recent changes brought forward in NI, we would suggest increasing those limits to 20,000 euros. The above provision is beneficial to the majority of members who often do not have big estates or

other assets and count on a quick and non expensive transfer to their nominees in case of death.

## 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:

Co-operative Alternatives would recommend that three directors be the minimum number for any co-operative on the basis of protecting the essential democratic nature of a co-operative, and the value that a deliberative approach brings to the governance of a co-operative.

Co-operative Alternatives would suggest that by setting the minimum at three directors this would mitigate the risk of male fides co-operatives, where an individual would utilise the model for an enterprise without any genuine democratic, co-operative character.

### **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:**

Co-operative Alternatives works with co-operatives registered under the Co-operative and Community Benefit Societies Act as applied to Northern Ireland.

This legislation is a successor to the Industrial and Provident Societies Act.

Co-operative Alternatives has found that this two-step special resolution process, which has been preserved in Northern Irish co-operative legislation, continues to fulfil its purpose of ensure that existential changes to the co-operative (transfer of engagements, amalgamations, conversion to a company and dissolution) must be thoughtfully considered by members.

Co-operative Alternatives would recommend the retention of the two-step special resolution in the cases highlighted.

### **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:**



Co-operatives Alternatives is an all-island co-operative development body. While our primary area of operation is Northern Ireland, we have advised and worked with founders and co-operatives in the Republic of Ireland due to our specialised knowledge of worker and community co-operatives.

We are acutely aware that the current legislative framework for co-operatives in the Republic of Ireland is unfit for purpose, and extraordinarily challenging for founders seeking to utilise the model.

The absence of an audit exemption has been regularly identified as a key obstacle to the use of the model by start-up co-operatives, and Co-operative Alternatives welcomes the proposed exemption being extended to co-operatives.

Co-operative Alternatives wishes to highlight with the Department however that the membership threshold, as proposed, would very negatively impact the kind of co-operatives that we routinely work with and advise on both sides of the border.

Community co-operatives in particular focus on attracting a large membership from their intended community of service far in advance of trading, in order to demonstrate a commitment from the community to the co-operative and the establish a pool of prospective investors in a future share offer.

The membership criteria as proposed, would likely remove such co-operatives from eligibility before they have even started trading.

In line with this, some smaller community co-operatives once they begin to trade may never hit large turnover or accumulate significant assets, but would retain large memberships and therefore be ineligible for an audit exemption despite being of the scale that a company would be eligible.

Co-operative Alternatives would recommend that the membership criteria for audit exemption be removed.

We would also recommend that the financial thresholds would be kept under periodic review, and adjusted based on inflation and other factors by ministerial order.

### **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:**

Co-operative Alternatives supports the proposal to provide for audit exemption in the co-operative's rules, since this is the most well-known governing document by the members. We also believe that the proposal about when the exemption could be reversed, could be clearer and expressed in terms of a percentage of votes cast rather than members.

### **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, Co-operative Alternatives agrees with the proposal. Please see our response to question 8.

### **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, Co-operative Alternatives agrees with the proposal. Please see our response to question 8.

## **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:**

#### **Community Shares**

Our work with starting and scaling co-operatives typically involves assisting those co-operatives with assessing and planning the financing of their next business plans.

Most enterprises need capital to start, to grow, and to be sustainable. This finance has to come from somewhere, and Community Shares enables this investment to come from the very community which an enterprise intends to benefit.

These community shareholders, ordinary people, invest in local enterprises to provide goods and services to meet local needs and only expect a fair and modest return on their investment, if any.

Community Shares are defined as non-transferrable shares in a co-operative with an asset lock in its rules.

Co-operative Alternatives would like to submit that the public offering of shares, in line with proportionate standards and regulations, is an essential part of the co-operative financing model and should be reflected in the new legislation in Ireland.

We have worked with dozens of co-operative share offers, assisting co-operatives with drafting their share offer documents and working with legal supports to define their share capital in their rules.

We know first-hand the essential nature of these share offers in the foundation and scaling of co-operatives, and would submit that our most successful clients would not have got off the ground without a public share offer.

Co-operative Alternatives would advise that the Department reconsider its intention to prohibit the public offering of shares by co-operatives, and ensure that particularly 'community share offers' are exempted from any such prohibition or prospectus requirements.

Co-operative Alternatives would recommend that co-operative share offers are regulated in a similar fashion to those of public limited companies, to ensure a level playing field between companies and co-operatives in terms of access to capital.

### **Co-operative Asset Lock**

Co-operative Alternatives knows from its experience working with start-up and scaling co-operatives across the island of Ireland that a co-operative's provisions in relation to the treatment of reserves in the event of a dissolution can be critical to its development.

Co-operatives formed for a community or social benefit are in principle eligible for a wider range of supports aimed at growing the social economy, and many of our client co-operatives have been able to avail of such supports.

However, Co-operative Alternatives has much experience of inconsistent application of eligibility criteria due to a lack of awareness around the nature of a co-operative, and the lack of a standard 'co-operative asset lock' which stakeholders can rely on.

Co-operative Alternatives would recommend that the new legislation for co-operatives in Ireland makes provision for a co-operative asset lock which ensures that the reserves of a co-operative are transferred to another co-operative with such an asset lock in the event of a dissolution. We would highlight that such an asset lock would need to ensure that member capital and outstanding share interest be returned, as this capital belongs to the members and is not the common property of the co-operative.

## **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**