



Review of the Industrial and Provident Societies Acts 1893-2014
Co-operative Housing Ireland Submission

February 2017

Executive summary

Co-operative Housing Ireland welcomes the opportunity to offer initial observations on the proposed review of the Industrial and Provident Societies Acts 1893-2014. Our key recommendations are that:

- The **Statement on Co-operative Identity** be incorporated into, or reflected in, any new legislation (pg. 5)
- A **separate legislative framework for co-operatives**, as distinct from companies, be retained (pg. 6)
- A **single, consolidated piece of legislation** be passed to replace all of the existing Industrial and Provident Societies Acts (pg. 7)
- The term '**co-operative society**' be used in place of Industrial and Provident Society (pg. 7)
- The **Registrar be retained** within the CRO and renamed Registrar of Co-operative Societies (pg. 8)
- Co-operatives should be allowed to **form for “any lawful purpose”** (pg. 8)
- The **minimum number of members be lowered** from seven (pg. 8)
- It should be possible to **make returns to the Registrar online** and to publish reports on a co-operative's website (pg. 9)
- The **duties of directors** be generally transposed from the Companies Act 2014 (pg. 9)
- The language on '**insane and lunatic**' members be entirely removed (pg. 10)
- Efforts are made beyond the review of the legislation to **promote the co-operative way of doing business** (pg. 10)

Co-operative Housing Ireland would welcome further engagement on this issue and is happy to discuss any of the recommendations in this submission.

About us

Co-operative Housing Ireland is Ireland's national federation for the co-operative housing movement. Since our foundation as the National Association of Building Co-operatives (NABCO) in 1973, we have supported the delivery of more than 5,500 homes for Irish families. Home ownership co-operatives have built 3,500 homes and, as an Approved Housing Body (AHB), we continue to manage 2,000 homes through a network of democratically controlled local co-operatives.

The Society is a representative body for eleven current affiliated member co-operatives and supports the development of new self-help co-operative organisations. Co-operative Housing Ireland provides specialist advice on the formation of new co-operatives and the delivery of housing projects. The Society provides a model set of Rules for new co-operatives and assists in the registration process.

Co-operative Housing Ireland is a leading national representative voice for the co-operative movement. The Society is a member of the Community and Voluntary Pillar of Social Partnership and engages on a bilateral level with a number of government departments. It is also a nominating body for elections to the Administrative Panel of Seanad Éireann.

The Society is Ireland's only full member of the International Co-operative Alliance, the global apex organisation for co-operatives. The Alliance represents more than 100 million co-operative workers and over 1 billion co-operative members. The Alliance also maintains the international Statement on the Co-operative Identity. Through the Alliance, Co-operative Housing Ireland is a member of Cooperatives Europe and Co-operative Housing International.

Defining Co-operatives

Co-operatives are a global self-help movement united in a shared set of values and principles. The Statement on the Co-operative Identity defines a co-operative as:

A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically-controlled enterprise.

The Statement also sets out the values of co-operatives and the seven co-operative principles.

Values

Co-operatives are based on the values of **self-help, self-responsibility, democracy, equality, equity** and **solidarity**. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

The co-operative principles are guidelines by which co-operatives put their values into practice.

1. Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2. Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4. Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5. Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

6. Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7. Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

We recommend that the Statement on Co-operative Identity be incorporated into the legislation, or otherwise that the values and principles enumerated in it should inform the approach to the legislative review.

The Co-operative Movement

Co-operative movements emerged throughout Europe from the end of the eighteenth century in response to the upheavals of the industrial revolution and informed by the ideals of the Enlightenment. In Great Britain, philosophers such as Robert Owen championed utopian social movements and inspired the creation of enterprises such as the Rochdale Society of Equitable Pioneers while in continental Europe Raiffeisen Banks emerged as co-operative credit providers in response to restrictive credit conditions.

Ireland also has a long history of co-operative effort both in terms of the intellectual development of the movement under academics such as William Thompson and early practical experiments such as the Ralahine Commune in County Clare. Irish co-operatives were aimed at bringing people of limited means together to deliver more than could be achieved through individual effort.

Ireland's agricultural co-operatives, spearheaded by Horace Plunkett at the end of the 19th century, continue to be a driving force in employment and exports. Co-operative financial services, provided through the credit union movement, are accessed by a majority of the population. Co-operative housing has been provided through the Industrial and Provident Society model for a century and many voluntary and community groups continue to access the co-operative form.

Private companies, on the other hand, have their origins in joint stock enterprises, aimed at limiting the liability of individuals speculating in international trade. Co-operatives are therefore categorically different than companies both in their origin and their ethos. The distinctive treatment of co-operatives in Irish law is a valuable recognition of this distinction and we strongly recommend that this be preserved.

Legal Form

The Statement on Co-operative Identity sets out the criteria for assessing whether a particular entity is a co-operative or not. There is no common international legal entity that is explicitly recognised as defining or belonging to the co-operative form. This is a consequence of historical factors, the variety of legal and political systems in countries where co-operatives operate, and varying levels of enthusiasm for co-operatives and the democratic principles that underpin them.

Differing legal approaches to co-operatives includes countries such as Greece, Italy, and Malta where support for co-operatives forms part of the nation's constitution. At the other extreme, Denmark, Belgium, and Sweden have no specific legal form for co-operatives and the taxation system is the framework by which the model is recognised. The European Union has itself recognised the distinctive contribution of the co-operative model through the creation of the European Co-operative Society.

The legal framework most analogous to Ireland is the United Kingdom. Both jurisdictions shared the same principal 1893 Act for many years and the Industrial and Provident Society was the common form for establishing co-operatives. The UK has recently carried out a comprehensive review of their legislation and enacted the Co-operative and Community Benefit Societies Act 2014. As a modernising piece of legislation, there are many features of this Act that could be usefully modelled in Ireland's new legislative framework.

The view of Co-operative Housing Ireland, however, is that the co-operative form – like the company – is sufficiently flexible to encompass both for- and not-for-profit business activities. We do not support creating two classes of 'co-operative' and 'community benefit' societies in the Irish context.

The Industrial and Provident Societies Acts

The Industrial and Provident Societies Acts cover a period from 1893 to 2014. The 1893 Act is itself a piece of consolidating legislation for the Industrial and Provident Societies Acts of 1852 – 1876. All of these Acts were passed when Ireland was part of the United Kingdom and contain obsolete references to Scots law and provisions in relation to feudal tenure. Revisions of the Act that have followed have tended to be minor and piecemeal such that, relative to the statutory framework for

Companies, the current Industrial and Provident Societies framework is now extremely outdated.

We recommend that a single new piece of consolidating legislation be developed to modernise the provisions relating to this area. A number of specific proposed provisions are included below.

Co-operatives

The terminology of 'Industrial and Provident Societies' that informs the current legislative framework for co-operatives in Ireland dates to the 1893 Act. This Act had its origins in the early co-operative experiments in places such as Rochdale. The terminology has never been truly appropriate to Ireland where agricultural co-operatives have had the preeminent role in the sector and where community-based or voluntary co-operatives now form a significant part of new registrations.

We recommend that the language of the Act be changed to remove 'Industrial and Provident Society' and replace it with 'Co-operative Society'. Societies registered under the Act can continue to be identified as '*Name* Society Limited'.

We do not propose that the use of the term 'co-operative' should be limited to societies registered under the Act, however. Whether an entity is a co-operative or not is determined by adherence to the Statement on the Co-operative Identity and is independent of any given legislative regime.

Within the Act we propose that a standard orthography for the word co-operative should be adopted – i.e. 'Co-operative' and 'co-operative', and not 'Co-Operative', 'cooperative', or any other variation. This standardised approach is adopted uniformly throughout the UK legislation. Similarly, a standardised approach to the Irish language should also be adopted – i.e. 'comharchumann' and not 'comhar cumann', etc.

Registrar

The current system for registering new Industrial and Provident Societies is through the Registrar of Friendly Societies. The Registrar operates as a distinct service alongside the Companies Registration Office, sharing accommodation, services etc. There is considerable value to the separate establishment of the Registrar. This includes the clear visible distinction between co-operatives and companies that the Registrar provides as well as the potential to monitor the development of the movement through the Registrar's annual reports. The service that is offered by the Registrar in practical terms is also flexible, efficient, and fair.

Co-operative Housing Ireland maintains a set of model Rules that meets the requirements of the Industrial and Provident Societies Acts. New societies adopting these Rules and registering through Co-operative Housing Ireland can currently access a reduced registration fee. This is a useful system that we would hope to see maintained in a revised framework.

We recommend that a separate Registrar be retained for co-operative societies, continuing to operate alongside the Companies Registration Office. As friendly societies may no longer be registered, however, the name of the Registrar is now an anachronism. We recommend that it be renamed the Registrar of Co-operative Societies.

Activities

The 1893 Act specifies that a society can be registered for “carrying on any industries, businesses or trades”. This is a potentially restrictive definition that does not reflect the wide array of activities that are, or can be, undertaken by co-operatives across a range of sectors including voluntary and charitable effort. The Companies Act 2014 states that a company “may be formed for any lawful purpose” and we recommend that the same form of words is applied to co-operative legislation.

Members

The legislation currently specifies that no society may be registered that “does not consist of seven persons at least”. This in contrast to the legislative framework for companies which permits the creation of entities with as few as one member. While co-operatives, by definition, require the participation of more than one person, our experience has been that the current number of minimum members is too high. A practical example would be a home-ownership co-operative of five households seeking to form to provide for their own housing needs. In order to meet the criteria for registration, seven persons from the group must take and hold shares. This creates an immediate imbalance between households in cases where votes are required for decision making. Meeting the minimum number of members requires smaller groups to consider creating categories of member with different voting rights, even for very straightforward projects.

We recommend lowering the number of minimum members of a society from seven to two. Alternatively, the provisions in the UK Co-operative and Community Benefit Societies Act may be considered. That Act specifies that co-operatives must consist of at least three members or two members where both are registered societies.

Returns

Co-operative Housing Ireland was pleased to see the removal of the requirement to submit triennial returns under the Industrial and Provident Societies Act 2014. A further review of the legislation should provide for further efficiencies to be introduced. In particular, it would be welcome if annual returns could be filed online. The deadline for filing annual returns should be revised. The current limit of three months is out of line with the practice in the UK where co-operatives are required to file returns within seven months. We recommend the adoption of the same standard for Ireland.

The current legislation includes a number of requirements for the issuing and display of annual returns. In particular, there is a requirement that the auditors' report (which could run to several pages) be 'hung up in a conspicuous place' at the society's registered office. We recommend that this requirement be removed for societies that publish their annual returns and audit reports on their websites and that this should also be regarded as meeting the duty to issue copies of such reports on demand.

Directors

The Industrial and Provident Societies Acts are relatively silent in relation to the duties of directors. In the meantime, there have been significant developments in this area both within the Companies Act and at common law. While it is often presumed that the same standards apply to directors of Industrial and Provident Societies as apply to directors of companies, we would welcome this being clarified in the legislation.

The Companies Act 2014 includes a director's duty to employees and a duty to appoint a secretary with the necessary skills. Section 228 also sets a helpful summary of the principal fiduciary duties of directors of a company. All of these duties would usefully be transposed into the new legislation.

Different requirements arise for companies in relation to the naming of directors than is the case for Industrial and Provident Societies. For example, companies are required to notify the CRO of changes in directors and to list the names and nationalities of directors on corporate letterhead. Within co-operatives there may be larger numbers of directors than in companies and the turnover may also be significant, with elections typically taking place at each AGM. For this reason we do not propose transposing these same requirements to co-operatives as long as a list of directors is provided to the RFS with each annual return and if the list of directors is published on the co-operative's website.

Insane and Lunatic Members

Section 29 of the 1893 Act includes provision for the treatment of the property of 'insane or lunatic' members. Consequently, the standard *Form A* of the Registrar requires that this issue be dealt with in all new registrations.

The language in this section is now extremely outdated and offensive. The terms insane and lunatic have no clinical application and it is questionable whether they continue to be justiciable. We recommend that this section be reviewed with a view to ending the use of these terms. The Assisted Decision Making and Capacity Act 2015 provides a legislative framework for persons who may require assistance in exercising their decision making capacity. We recommend that the ethos of that Act should inform the review of this area of the legislation.

Beyond the Acts

Co-operative Housing Ireland has considerable experience of engaging with groups contemplating meeting their housing need through the co-operative model. That experience would suggest that the legislation for Industrial and Provident Societies and the form of the Rules is rarely the obstacle that prevents groups from incorporating through the Registry of Friendly Societies. Rather, it is a lack of awareness of the form among enterprise development agencies, finance providers, and the general public that makes a company a more attractive option.

We would suggest that a review of the legislation provides an excellent opportunity to raise awareness of the co-operative form. This will clearly be the case among legislators and, through them, the general public. A campaign should also be developed to raise awareness of co-operatives among, for example, Local Enterprise Offices, the LEADER programme, SICAP and partnership groups, and other state agencies providing support to new enterprises.

Further consultation

Co-operative Housing Ireland is grateful for the opportunity to provide these initial observations on the proposed review of Industrial and Provident Society legislation. We would value the opportunity for further engagement on the legislation as it progresses. We are available to meet with members of the Oireachtas to participate in pre-legislative scrutiny on the heads of any proposed bill, and would welcome the opportunity to do so.