



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**.

Ardee Business Park
Unit 16
Ardee
Co. Louth

Department of Enterprise, Trade and Employment
23 Kildare Street
Dublin 2
3rd March 2022

To whom it may concern,

Ulster Community Investment Trust t/a Community Finance Ireland is a social finance provider which has operated on an all-island basis since 1995.

We operate as a society registered in Northern Ireland and operate in the Republic through our southern subsidiary Ulster Community Investment Trust Ireland t/a Community Finance Ireland.

Since 2001, the Community Finance Ireland Group has been actively involved in the provision of affordable social finance to all not-for-profit taking entities who can evidence social impact and demonstrate repayment capacity.

This includes a diverse range of co-operative societies, both farmer-led and community-led, including the Western Forestry Co-operative, Loughmore Community Co-operative, Urban Co-op and Dublin Food Co-op.

Whilst to date our product offering has centred on short term bridging finance, or longer term lending of up to €500k over 15 years, (mostly unsecured), we are cognisant that this somewhat conventional approach to financing the co-operative sector does not meet the needs of the entirety of a market which trades in social impact.

We are most keen to promote the modernisation of the Co-operatives Act with a view to encouraging the development of a new wave of start-up co-operatives with clear social purposes and that this modernised legislation provides suitable methods from them to raise finance in a sustainable and responsible manner.

We hope that our submission is of assistance, and would be happy to engage further with the Department where deemed appropriate at a later point.

Kind Regards,

Dónal Traynor

Group CEO

Community Finance Ireland Group

communityfinanceireland.com

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:

Community Finance Ireland does not have a submission on this question.

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:

Community Finance Ireland would welcome provision in the new legislation for membership by companies and other bodies corporate in co-operative societies.

This would provide maximum flexibility for social finance providers and impact investors organised as companies and other bodies corporate to invest in start-up co-operatives.

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:

Community Finance Ireland does not have a submission on this question.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

Community Finance Ireland does not have a submission on this question.

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:

Community Finance Ireland does not have a submission on this question.

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:

Community Finance Ireland does not have a submission on this question.

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:

Community Finance Ireland does not have a submission on this question.

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:

Community Finance Ireland welcomes the long overdue extension of the audit exemption to co-operative societies in Ireland.

Community Finance Ireland notes the proposed financial thresholds are much lower than those applicable to companies registered under the Companies Acts, and much lower than equivalent legislation for co-operatives in Northern Ireland.

Community Finance Ireland would recommend that the approach used during the introduction of this reform in the United Kingdom be followed here.

This would involve the thresholds being set at a lower level than those applicable to companies, with decennial review by the Department and the capacity of the Minister to raise the thresholds subject to this review.

Community Finance Ireland notes that over a ten year period, the financial thresholds for audit exemption for co-operatives went from a similarly low level to parity with companies.

Community Finance Ireland wishes to recommend that the membership criteria for accessing an audit exemption be reconsidered.

Community Finance Ireland has a significant client base from the community, voluntary and social enterprise sector and we are acutely aware that any community-led organisation will have a membership size far in excess of its financial metrics.

Community Finance Ireland would alert the Department to the risk that by setting a membership threshold it is excluding the vast majority of community co-operatives and social co-operatives from the audit exemption, including start-up and non-trading co-operatives.

Community Finance Ireland would recommend that the membership criteria be removed, and that the audit exemption is based on the financial and employee thresholds similar to companies.

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:

Community Finance Ireland does not believe it is necessary to provide for eligibility for audit exemptions in the rules of a co-operative.

Community Finance Ireland would welcome provision for members to require that a statutory audit takes place.

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:

Community Finance Ireland welcomes the extension of similar extensions to co-operatives, with similar thresholds set.

Community Finance Ireland would direct the Department to its answer in relation to the membership threshold.

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:

Community Finance Ireland welcomes the extension of similar extensions to co-operatives, with similar thresholds set.

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:

Raising Funds

Community Finance Ireland wish to welcome the proposed removal of limits on raising capital from purely private sources including existing members and finance providers.

Community Finance Ireland are aware that the current administrative restrictions are very burdensome on our co-operative clients, who face additional administration to draw down finance from us which is not faced by non-co-operative clients.

Community Finance Ireland would strongly encourage the Department to reconsider its proposed blanket prohibition on the public offering of securities by co-operatives.

Co-operatives have specific financing needs due to their democratic and fundamentally not-for-profit nature, which does not prioritise returning profits to shareholders but prioritises meeting member and/or social needs.

Community Finance Ireland has experience working with co-operatives in Northern Ireland that have been able to access finance through 'public offers' which include the public offering of shares to prospective non-user investor members and loan note offers to the supporters of the co-operative.

Community Finance Ireland believes that these models, appropriately regulated, would facilitate innovative new financing models for co-operative social enterprise in Ireland.

Community Finance Ireland would recommend that the Department refrain from a blanket prohibition on the public offering of securities by co-operatives, and consider legislating for specific circumstances in which public offerings can be made.

Community Finance Ireland would urge the Department to consider the experience north of the border, and across the Irish Sea, where suitable and proportionate exemptions for community oriented co-operatives has led to a flourishing of these types of co-operatives in both Northern Ireland and Great Britain.

Community Finance Ireland believes that these types of share offers could form an important part of the funding mix for asset acquisition by community co-operatives, which would also include longer term finance from social lenders such as ourselves.

Asset Lock

Community Finance Ireland would welcome the statutory provision of an asset lock for co-operatives that wish to avail of it.

Community Finance Ireland, and other stakeholders in our sector, may require co-operatives availing of certain financial products or supports to demonstrate their 'not-for-profit' or 'social enterprise' status.

The National Social Enterprise Policy produced by the Department of Rural and Community Development sets out a number of criteria for defining a social enterprise, and while we believe this is subject to further development, the continued application of the assets of the co-operative to its social objectives in the event of a dissolution is a central aspect.

Community Finance Ireland would request that the Department give consideration to an optional co-operative asset lock, which would provide relevant co-operatives with a standardised and legally certain mechanism to demonstrate that their assets will continue to be applied to their social objectives in the event of a dissolution and not distributed to members.

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