



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**.

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:

We consider that two years would be preferable given that there will be a requirement to consult with members, hold EGM's and in some cases seek permission from the Charities Regulator. Therefore, with notice periods for meetings and awaiting approvals from regulators, the longer period of two years would be beneficial.

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:

We agree with this proposal.

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 have no opinion on this matter.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

We agree that a legal reserve should be established, and we are proposing that a part of it should be indivisible. This would be consistent with EU Law (Council Regulation (EC) No 1435/2003 on the Statute for a European Co-Operative Society makes reference to a reserve. Article 5(4) of that statute requires that the rules of a European co-operative society contain specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve and article 65 sets out the rules on a legal 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:

We consider this to be a useful provision and it should be retained in the proposed legislation. We are also in agreement with the limit of up to €15,000.

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 would propose that no matter what size the co-operative is, there should always be a minimum of three directors. This will support good governance.

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:

We agree with this proposal which should make the process less burdensome and more efficient.

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:

An audit exemption is available to certain private companies while there is currently no equivalent provision within the co-operative legislation. The benefits of an audit exemption in terms of reduced costs and administrative burden may be equally applicable to small co-operatives and small companies. In terms of measuring this cost relative to the benefit, ultimately, the value in audited financial information should be assessed from the stakeholder's perspective.

In terms of balancing costs and the need for transparency we would recommend that if there is an option to have only one director, then there should not be an option for an audit exemption.

Otherwise, we are in agreement with the approach set out in relation to eligibility for audit exemption and the proposed thresholds.

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 would not support the requirement for an eligible co-operative to provide for an audit exemption in their rules – this is an unnecessary administrative burden.

We support the proposal that 10% of the members may decide that they do not wish to have an audit exemption to be available for a financial year as it is an appropriate safeguard to have in place.

It is worth noting that a CLG can avail of an audit exemption but that any one member may object to same.

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:

It is proposed to permit the filing of abridged financial statements but in our view, this seems to run counter to the spirit of the co-operative ethos. It is hard to understand the logic for this, given that charities, with a somewhat similar governance requirement, are strongly discouraged from filing abridged financial statements by the Charities Regulator. However, we understand that there is a need for balance between cost and the provision of information, in particular for co-ops of less than 50 members or wherever policy makers determine the public interest line should be and therefore the proposal may be appropriate for small co-operatives.

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:

The proposal to permit small co-operatives to use the micro companies regime is not one that we would support. The micro companies regime is for entities that have minimal outside interests and therefore the regime is wholly inappropriate for co-ops. As discussed in question 10, the Charities Regulator have strongly discouraged abridged financial statements and we believe that this a similar approach should be adopted for co-operatives. However, again as outlined in question 10, we understand that there is a need for balance between cost and the provision of information, in particular for co-ops of less than 50 members or wherever policy makers determine the public interest line should be.

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:

In responding to this consultation CCAB-I consulted within the Chartered Accountants Institute (Advocacy & Voice and Practice Consulting) and with a co-operative externally, and also with CPA Ireland, and with ACCA who consulted internally and externally with a number of co-operatives which included a number of community groups with business interests. CCAB-I also received feedback from some of the Audit and Assurance Technical Committee. We endeavoured to consult our members more widely, but a very short consultation period was provided and a wider consultation was not possible given the time frame. As a result, we feel our knowledge of the spread of types of co-ops and their financial and member size(s) is somewhat limited. For example, we understand that currently there are just under 1,000 co-ops registered in Ireland, but we gleaned that information and the types of co-ops from the public consultation document issued by the Department.

We did not answer question three in the consultation as it was considered not to be within CCAB-I expertise.

We replied to the other questions following conferral with others described above and also drawing on existing expertise within CCAB-I including expertise on company legislation and on audit, accounts and exemptions under company law. Our response should be viewed with an awareness of the above factors and of the short length of time to engage with CCAB-I member firms which might have had expertise with co-ops.

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