



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:

18 months seems like a reasonable amount of time to enable the transition of existing IPSs to register as a co-operative society or pursue an alternation structure.

I think it is important that those organisations that wish to operate as a co-operative need to make that clear and therefore legal registration is a useful tool to prevent anyone trading under the title of co-operative while not behaving as one.

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:

I have a reservation that would be related to the fact that such a step might transform a popular understanding of what constitutes a co-operative in a way that might undermine the integrity of the definition. A co-operative is a democratic entity whereby each member has one vote. I'm not convinced that this should extend to the viewing a corporate entity as a member (and a corporate entity that itself might not be in possession of a democratic structure. I would question the rationale behind such a legal precedent. Would it be a way to create a more palatable corporate body to engage in, for example, the development of public housing?

If it is deemed necessary, perhaps one important qualification would be to legally protect the co-operative legal definition by insisting that any company that wanted to create a co-

operative with other companies, must have a co-operative legal structure, i.e. a co-operative constitution/rulebook.

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:

N/A

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

The need to keep a legal reserve is an important feature of the co-operative society and should link back to the statement of co-operative principles and identity (<https://www.ica.coop/en/cooperatives/cooperative-identity>). One of the challenges that the co-operative sector faces is often that people are not wholly aware of what the co-operative model is or how it might be a useful vehicle to address the social and economic challenges facing communities across the country (and internationally).

One of the co-operative movement's principles is educational: 'Cooperatives 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.'

I believe that the reform of legislation could help with the movement's pursuit of this important goal and that a certain percentage of a co-operatives surplus should be earmarked with the objective of promoting awareness, understanding, and the development of co-operatives. In Italy, co-operative legislation helps the sector achieve this by obliging co-operatives to earmark 30% of profits towards the legal reserve. Moreover, 3% of all co-operative profits are obliged to be placed into a mutual fund with the aim promoting and financing the development of new co-operatives (Co-operatives Europe, 2019). Something similar should be considered for the Irish legislation.

As we look to a post-pandemic recovery, the role of co-operatives in generating employment and work, as well as arresting the dissolution of SMEs, could be vitally important. Therefore co-operative development, and the use of legal reserves, can help to ensure there is a sustainable and equitable recovery.

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:

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:

I believe that regardless of membership numbers, a minimum of three directors should be recommended. This is to ensure that a co-operative maintains its identity as a democratic entity, and this reflects the practice in other countries.

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:

n/a

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:

I support the audit exemption proposal. It creates barriers to new the establishment of new co-operatives, and can stifle important new societies such as community co-operatives.

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:

I support the provision of an audit exemption in co-operative rules. It seems reasonable that members should be able to reverse that exemption decision in a democratic organisation.

While a threshold of 10% of members entitled to vote at a general meeting might be a practical figure to meet this criteria, I note that in a smaller co-operative, this might be too low.

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:

I believe that co-operatives should be able to access similar exemptions to companies.

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:

I believe that co-operatives should be able to access similar exemptions to companies.

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:

Co-operative finance: CUs and a Co-operative Bank

I note that one of the most significant and substantial sectors of the co-operative economy in Ireland is the credit union sector. I believe that CUs could play a much more expansive role in delivering social needs and goods for Irish society around renewable energy, co-operative housing, supporting the co-operative economy. As it stands, current regulations introduced since the financial crisis have tied the hands of CUs and hampered their ability to pursue the principles of 'Concern for the Community' and 'Co-operation among co-operatives'. The relationship between financial, productive, and consumer co-operatives can create important

synergies that result in more employment, high quality jobs, and other positive social outcomes related to quality of life. This has been demonstrated in the Basque country where the Mondragon Corporation provides a successful example of co-ordination between different sectors. I believe in Ireland that an examination of regulations around the CU sector need to reviewed and there needs to be a greater delineation in the treatment of the CU sector and the banking sector.

Moreover, the establishment of a co-operative bank to act as a member-owned institution could add another important institution to Ireland's banking sector that would add resilience to the sector while also helping to co-ordinate and direct development funds to enhance Irish economic capacity. In Northern Ireland, there already plans at an advanced stage to establish the Northern Mutual to drive regional development and to reinvigorate the presence of banks on the high street. I am of the view that the Department of Finance should consider the entry of a co-operative bank into the Irish financial sector.

Finally, I hope that the legislation looks beyond the agricultural co-operative sector to think about ways in which the Irish co-operative movement might be able to fulfil its remit across a range of different activities. Historically agriculture has been the core of co-operative activity in Ireland, but I think it is important that any new legislation also reflects the diversity of forms co-operatives can take (e.g. worker co-operatives, energy co-operatives, community co-operatives). If there is to be a meaningful and just transition to a new sustainable economic paradigm, then co-operatives have an important role to play.

A conference organised and run by a group of Irish co-operative stakeholders took place last year under the theme 'Rebuild Better Together'. The conference was the official Irish event for International Co-operatives Day, which is endorsed by the International Co-operative Alliance. The discussion touched on many issues (including some of the co-operative financial aspects) that might be of interest to legislators and that is available here: <https://cooperativehousing.ie/rebuild-better-together/>

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