



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](mailto: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:

Yes however in the case of the football clubs who are registered as IPS some very specific circumstances prevail which should be taken account when considering the change of legal form of either by way of wording of the legislation or at the very least clear communication between the Oireachtas/relevant Minister and the Football Association of Ireland/UEFA (outlined in point 2 below):

1. Generally speaking, and not limited to football clubs, it is important that clarity is provided as to how exactly the new registration or alternative options process is going to take place. Under current legislation a special resolution followed by an ordinary resolution is required to convert/transfer the engagements of an IPS – this is arguably a very high threshold as things stand. Will this be required here? How will the transition to a Co-Op work in terms of shareholder/member input. If entities choose not to become Co-Ops but pursue alternative options what sort of approval mechanism will be required. It is submitted that a default position of converting to a Co-Op with minimal procedural requirements should be pursued

2. **Football Club Specific** - A significant number of League of Ireland football clubs operate as IPS. In order for clubs to play in the League of Ireland and in European competition clubs must obtain a licence in order to compete from the Independent Club Licencing body affiliated to the Football Association of Ireland. The club licencing process set out a series of standards and criteria that clubs must obtain to be granted a licence. The two relevant criteria which might be impacted here are financial (dealt with elsewhere) and more importantly legal.

The legal form of a company must be consistent and cannot change during a football season (which typically runs from February to November in League of Ireland). Furthermore, if a club has qualified for Europe there is a general, albeit rebuttable, presumption that any club which has changed its legal form to a new entity is excluded from European competition for a period of three years. Accordingly, it is important that clarity is provided that any change in legal entity is not a 'new' company per se but rather a continuation of the existing company in a successor

legal form. The existing legislation and RFS guidance is somewhat difficult here where at times expressions like 'new company' are used.

Ideally the legislation would clarify this or at the very least some engagement would take place between the Department/Oireachtas and the Football Association of Ireland which could clarify the matter concerning the transition process.

### **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:**

Careful consideration should be given to how companies can apply to set up co-operatives. Important that the key Co-Op ethos form a part of this and that there is a commitment to taking individual members on board and a failure to do so should result the dissolution of a company established Co-Op. Need to avoid the creation of 'shelf Co-Ops', 'astroturfing' or 'Co-Op washing'.

### **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:**

Provision for trading names of the Co-Op to be included in the Rules of the Co-Op to avoid any doubt (and to ensure that members are fully aware of what the proposed trading name is). At present it is possible to register trading names for Co-Operatives however in doing so there is a risk that the public and democratic nature of a Co-Op might be obscured.

## Matters relating to Shares

### Legal Reserve

#### Question 4.

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

#### Response:

Although generally a good ideal important that it does not become a hindrance to the establishment of Co-Ops in future.

### 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:

Supportive and a useful provision. The community nature and ethos of Co-Ops means that members have a vested (and usually not driven by financial reasons) interest in ensuring that the Co-Op continues to advance its goals. This cannot always be achieved by way of standard probate or in the case of an intestacy and provision to transfer shares in event of death is a useful tool in this regard.

## 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:**

Yes, good corporate Governance and in line with 2014 Companies Act. Important however as the Co-Op grows that there is scope to add directors and that this happens at clearly defined points eg either the following AGM where the number of members exceeds 10 or at an SGM called once the threshold is reached.

Also worth exploring how Directors could be temporarily co-opted pending a AGM/SGM.

**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:**

**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:**

Yes, sensible and in line with 2014 Companies Act however as noted previously some organisations will be required by outside regulators to prepare audited accounts in any event eg football clubs as part of the club licencing.

**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:**

Yes, important step and not dissimilar to minority petitions under the 2014 Companies Act. Important that Co-Ops, given their democratic nature have the trust of members. Such a provision gives even a minority of members a chance to request accounts and generally improves transparency.

### **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, agree. Sensible and serves as an incentive to establish a Co-Op

### **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, agree. Sensible and serves as an incentive to establish a Co-Op

## **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:**

##### **Committee/Directors**

Important that Committee Members are clearly redefined as Directors (using that language). Present situation and the lack of clarity around what duties exactly apply to Committee members and whether that is any different to Director's Duties is undesirable. While the proposals in that regard are welcome it is important that the language is clear and unambiguous concerning who the people are who make decisions for the company are and what role they are fulfilling -the Committee language is unhelpful in this regard.



### **Examinership**

Important that a new provision on Co-Op specific Examinership is provided rather than carrying over the existing system.

Part 4 of the 2014 IPS Act was commenced on 1 July 2015. It applied the 1990 Companies (Amendment) Act to IPS instead of applying the Examinership provisions the 2014 Companies Act. The 2014 Companies Act repealed the entire 1990 Companies (Amendment) Act when the 2014 Companies Act was commenced on 1 June 2015. This means that Examinership right now is only available to IPS thanks to a saving clause in the 2014 Companies Act which carried over procedures. This is unnecessarily complex and should be resolved.

Although it might be more properly a matter for consideration for the Courts it is noteworthy that in a number of high profile Examinership cases in the past concerning football clubs (Branvard Ltd t/a Shamrock Rovers *Unreported High Court 12 April 2005* and Cork City FC Investment Limited t/a Cork City FC *Unreported High Court 16 October 2008*) and other community enterprises the value to the community and the preservation of jobs in the community (Re Traffic Group Ltd 2008 3 IR 253) were referred to by the Court in approving an Examinership. It perhaps might be of value to consider whether a differing standard for Examinerships in Co-Ops compared to Ltds and DACs should be considered.

### **An Ghaeilge**

Important that any changes to legislation or procedure happen bilingually and that there is no delay at any stage of the process in putting Irish language materials forward. IPS and Co-Ops are of particular importance to Irish speakers and in Gaeltacht regions. The State has clear constitutional and legal duties to ensure that a full service can be provided in the Irish language. It would be far better to simultaneously draft legislation bilingually rather than to draft in English and then publish in Irish at a later stage.

## **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**