



**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**.

Dublin Food Co-operative Society Limited,
Kilmainham Square,
Inchicore Road,
Dublin 8.

Department of Enterprise, Trade and Employment,
23 Kildare Street,
Dublin 2,
D02 TD30.

25th February 2022

To whom it may concern,

Dublin Food Co-operative Society Limited is a community-led consumer co-operative in Ireland operating since 1983 (a registered society since 1991). As a society with a distinctive co-operative ethos rooted in social and environmental impact, we receive regular calls for advice and support from prospective founders of purpose-driven start-ups seeking to utilise the co-operative model to build sustainable and ethical enterprises.

Therefore, we recognise not only the needs of established co-operatives such as ourselves, but also the challenges faced by new co-operatives.

Dublin Food Co-operative has a history as an independent co-operative society linked to a network of other purpose-driven co-operatives, many of whom are smaller co-operatives.

We wholeheartedly welcome the upcoming reform of the legislative basis for co-operatives.

We believe that the absence of a modernised Co-operatives Act has significantly held back the development of innovative, purpose-driven co-operatives and that

the Department has a once in a generation opportunity to correct this major policy omission of the last thirty years.

This modern legislation must not only create a level playing field for the co-operative model of enterprise and support the development of existing co-operative enterprise.

It should be ambitious about expanding co-operative enterprise in innovative and underdeveloped sectors of the indigenous economy.

There is also an opportunity to ensure alignment between the new Co-operative Act, and government policy on social enterprise, rural and regional development, and we would encourage the Department to ensure that the necessary infrastructure for social co-operatives is included in this legislation.

We look forward to seeing the General Scheme once published, and we hope that our submission is of assistance. We would be happy to engage further with the Department on any aspect of our response herein, as well as over the remainder of the review process.

Yours in Co-operation,

Sam Toland
Co-operative Secretary

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 the 18 months sufficient time for societies to register as co-operatives under the new legislation.

We would welcome the legislation setting out a set of model rules as a schedule to the Act, which we and other smaller societies could use as a basis for drafting our own rules in a timely and cost-effective fashion.

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 note that the legislation is general-purpose legislation for all types of co-operatives, and we understand that it will be appropriate for some co-operatives to have companies and other bodies corporate as members of their co-operative.

We would highlight by way of a contrary example that the Dublin Food Co-op is unlikely to find it desirable to have companies as members, and in fact we

would more likely explicitly exclude companies from membership in our Constitution (Rules).

We would therefore welcome that the legislation requires that membership of a company (or bodies corporate more generally) in a co-operative society must be explicitly provided for in its rules.

We would also suggest that where a co-operative has a combination of natural persons and legal persons (bodies corporate) that the legislation provides that bodies corporate cannot have additional voting power compared with natural persons, in order to protect the essential democratic ethos of a co-operative.

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:

Mission Lock

Dublin Food Co-op is a consumer food co-operative with a clear co-operative purpose to provide affordable, wholesome and sustainable food to its members and wider community.

This is an explicitly social and environmental purpose in itself, and in our Constitution we also enumerate a number of other social and environmental objects that support this core co-operative purpose.

We welcome the apparent approach in the new legislation of widening the remit of the co-operative legal model from purely economic purposes by allowing their formation for 'any lawful purpose'.

Dublin Food Co-op believes that for co-operatives like our own, it is essential that our social and environmental purposes are stated in our rules and that these are 'locked in' to ensure that stakeholders (members, supporters, funders etc.) can have confidence in our future direction.

We would therefore ask that the legislation incorporate an optional provision providing for societies that wish to have their social and environmental objects included in their constitution, and that these objects are unalterable by members at a General Meeting.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

Dublin Food Co-op is a 'common ownership' co-operative which means that all our assets are the common property of our members, and will not be distributed to our members on a wind-up.

While we understand that this mode of ownership will not be appropriate for all co-operatives, we firmly believe that in order to be a genuine co-operative working in line with co-operative principles and values, some proportion of the assets of the co-operative should be the common property of all members.

We therefore welcome the proposals found in the consultation document to require that all co-operatives build up a legal reserve that serves the common purpose of the co-operative and cannot be distributed to members in the future.

Dublin Food Co-op would recommend that the minimum requirements in terms of the treatment of this reserve, and most importantly the treatment of this surplus in the event of a dissolution, could be provided for in legislation and not left simply to the constitution of the co-operative.

As we've shared above, we are a 100% common ownership co-operative and therefore will not be largely impacted by these changes but would suggest that the legislation provide for a minimum level of reserve to be built up from trading surpluses, minimum annual contributions to the reserve (as a percentage of net surplus), require the co-operative to provide in its constitution for the use of the reserve and explicitly prohibit the distribution of this reserve to members.

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 believe the current provisions remain relevant to co-operative societies, and that developments in this area should mirror those for financial co-operatives outlined in the Credit Unions Acts.

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 believe that forming a co-operative should be as easy as possible whilst ensuring that its democratic character is protected from the first day of registration.

In our submission to the Private Members Bill in June 2019, we argued that 3 members was the appropriate minimum number of members to start a co-operative based on the approach in other countries and the fact that this was the minimum number of people to constitute a democratic collective.

We would suggest that the same principle applies to the board of directors, and would recommend that three directors be the minimum number regardless of the size of the co-operative, with the number of directors thereafter left to the constitution of the co-operative.

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 think that the existing rules around special resolutions remain relevant, and ensure that major decisions of the co-operative, and indeed concerning the very existence of the co-operative, should require extensive time and scrutiny by members before being resolved.

We are aware that the current modernised legislation in other countries like the United Kingdom retain the two-step special resolution for such matters.

We are not aware of any major movement in Ireland, or indeed the United Kingdom change the provisions concerning special resolutions.

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:

Dublin Food Co-op is of the scale and complexity that our directors and members believe that the financial and capacity burden of a statutory audit on our co-operative is justified in terms of the increased financial control and transparency that it provides for members.

Despite this, we are aware of many other co-operatives in Ireland (particularly new co-operatives) who are suffocating under the lack of an audit exemption

equivalent to companies, and we have made this very point in our submission in 2019.

We therefore welcome the introduction of such an audit exemption into the new Co-operatives Act.

However, the introduction of a membership criteria above which the audit exemption can no longer be applied would have the effect of excluding virtually all community-based co-operatives from the exemption regardless of their financial activities.

Dublin Food Co-op does not believe that this is the intended policy outcome.

The community co-operative model is based on broad membership and support from the wider community and any new community co-operative will first and foremost be focused on growing its membership above 50 at the earliest opportunity.

This could be a number of years before they begin to trade, let alone reach any significant rate of turnover.

We believe that the audit exemption is intended to remove the burden of an audit from exactly this type of smaller co-operative, and **we would recommend that the membership criteria be removed in its entirety.**

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:

Dublin Food Co-op is unlikely to wish to avail of the exemption, despite potentially meeting the proposed financial thresholds for an audit exemption.

In fact, the members of the co-operative may wish to ensure that no such exemption can be sought without the full support of the members.

We therefore welcome the requirement that the power to seek audit exemptions be provided for in the co-operatives constitution, which would give our members peace of mind that any change in policy would require a change to our own Constitution first.

We welcome the capability of members to seek an audit and we think that 10% is reasonable for a co-operative of our scale. But we would suggest that in much smaller co-operatives this might be setting the level very low, and that the Department should consider the consequences of this further.

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:

Dublin Food Co-op believes that the membership criteria should be removed, but otherwise that co-operatives should have access to similar exceptions 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:

Dublin Food Co-op believes that co-operatives should have access to similar exceptions 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:

Constitution

We believe that the terms 'rules' and 'rulebook' are antiquated and confusing to members, and that using the term 'constitution' would better express the essential democratic nature of the co-operative in more accessible language.

We refer to our own 'rules' as our 'Constitution'.

We would suggest that the Department give consideration to using the term 'constitution' in the new Co-operatives Act.

The term is already used for the governing document of the undemocratic company legal form.

Prohibition of 'Public Offering of Securities'

Dublin Food Co-op welcomes the proposed removal of restrictions on the raising of funds by co-operatives.

The amount of bureaucracy that co-operatives need to navigate to raise capital in the ordinary course of trade is incredible, and means that democratic co-operative enterprises don't operate on a level playing field to investor-oriented firms.

We note with concern the intention of the legislation to prohibit the 'public offering of securities' by co-operatives in all cases.

Co-operatives are both private and public in nature, with features similar to both private and public companies.

A co-operative's essentially public nature is summed up in the very first co-operative principle, **open** and voluntary membership - which means that we must have clear and transparent membership criteria and that anyone meeting those criteria must be admitted to membership provided they subscribe to our rules and can make the minimum necessary investment.

While some co-operatives raise capital explicitly from 'non-user investor members', either formally or informally, the vast majority of co-operatives will not only seek new members but will publicly advertise the minimum investment (shares or loans) that a member must make in the co-operative as a condition of membership.

Dublin Food Co-op would suggest that common and low-risk 'public membership offers' should not be threatened, directly or indirectly, by this legislation.

Dublin Food Co-op would recommend that the Department consider very carefully any language limiting the public offering of securities so as not to exclude long-standing fundraising by co-operatives that has not demonstrated any specific risk to those investing in co-operatives.

Dublin Food Co-op would recommend that the Department ensure that the seeking of finance from members of the wider community (non-user investor members) is not effectively rendered impossible as a result of unclear or unnecessarily broad prohibitions on the public offering of securities by co-operatives.

Co-operative Asset Lock

Dublin Food Co-op is a 'common ownership' co-operative, which as previously stated, means that our assets remain the common property of all members and that our reserves are not distributed to members on dissolution, but are transferred to another 'common ownership' co-operative.

However, the terminology and operation of 'co-operative asset locks' is hugely varied across the sector and therefore co-operatives are currently at a major disadvantage when seeking support and funding associated with developing the 'social economy', 'social enterprise' or 'community enterprise'.

European, State and non-State stakeholders that provide development supports and funding within these sectors require specific legal requirements in relation to the treatment of reserves in the event of dissolution.

Co-operatives such as ourselves have been able to satisfy these stakeholders when seeking supports, but in each case, we were initially turned down for these supports and had to ultimately press our case quite significantly before the stakeholder in question would review our constitution, and reassure themselves that our constitution met their requirements in this regard.

Dublin Food Co-op is aware of many such cases where less experienced and confident founders, when confronted with a firm no by a stakeholder, do not have the capacity to assertively seek reconsideration of their case.

Dublin Food Co-op would appeal to the Department to offer an optional 'co-operative asset lock', which any co-operative wishing to provide such legal certainty to stakeholders could apply to their constitution.

This would provide stakeholders with a standardised and legally secure provision, against which they can judge whether a co-operative is meeting their requirements concerning the distribution of reserves on dissolution.

The terminology adopted across the co-operative sector is that of a 'non-distributive capital surplus' which acknowledges that, distinct from other legal forms adopted by social enterprises, the co-operative model is based on the principle of members and the wider community providing the capital required by the co-operative.

This capital, and any share interest owed, should be first returned on wind up, and thereafter the remaining surplus should be transferred to another co-operative with a 'non-distributive capital surplus'.

Dublin Food Co-op wishes to underline once more the importance of this particular provision, which would enhance that the co-operative legal form and ensure it remains the 'gold standard model' for social enterprise in Ireland.

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