



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 feel that the provisions proposed for the reversal of strike off (suspensions) of co-operatives should be made available retrospectively to co-operatives who fail to meet the requirements of the transition period.

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 believe the extension of the scope of activity of co-operatives to cover 'any lawful purpose' would be a positive and welcome development.

We welcome the proposal to reduce the number of members required to form a co-operative to 3 and believe that this will be a very positive development.

We do not understand the motivations of the proposal to extend the category of members of co-operatives to include companies and we are unclear as to how principles 1 and 2 of Annex 2 in particular would be applicable or applied to members who are not natural persons.

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 feel the matters set out to be addressed by the rules of a society are sufficient.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

We believe that the continuation of the provision for a reserve of the share capital of a co-operative is positive for the reasons presented in footnote 2 and that the limitations on the distribution of such reserve are prudent.

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 do not see how the provision of additional rules regarding the transfer of property of a deceased person beyond the existing Succession Act or a legal will is required, except possibly to allow for a proviso in the rules of a society that an amount of a deceased members property be absorbed into the reserve or applied to the aims of the society and the proposed maximum, subject to future review, seems a reasonable limit.

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 the minimum number of directors should be 3 in all cases. Although in a small co-operative most administrative officer functions may be performed by a single individual, a board of at least 3 members will assist with oversight and stability as well as providing a level of support to the active director if that is the situation which arises.

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:

The question does not accurately reflect the proposal, cf that a special resolution be accepted by 75% of those entitled to vote AND in attendance at the general meeting. We would be in favour of the proposal thusly stated.

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:

The provision of audit exemption would be extremely welcome. It would also be useful for the exemption criteria to be subject to review and perhaps related in an equitable manner to the exemption enjoyed by small commercial companies.

The maximum number of shareholders however may not be a fair criterion, particularly in light of the earlier proposal to extend the scope of activity of co-operatives which may result in social or other non-commercial undertakings with a large membership but limited resources. Consideration of an alternate mechanism to provide the protection of those whose livelihood depends on the co-operative should be considered, e.g. a process for application by a co-operative, meeting all criteria except membership numbers, for audit exemption.

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 agree with the proposals for audit exemption, excepting the criteria of membership numbers as outlined under Q.8 with the proviso that the balance sheet and turnover criteria be subject to review, again as outlined under Q.8

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:

We would agree with the proposal in relation to abridged financial statements, again subject to the provisos outlined under Q.8

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:

We would agree with the exemptions proposed for small co-operatives, particularly as the exemptions are enjoyed by commercial micro-companies of similar size and this equality of treatment will remove one possible barrier against such future endeavours being formed as a co-operative where the structure and ethos might be more suited.

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:

We feel that the proposal under Annex 1 relating to the prohibition on offering shares to the public may act as an impediment to the growth of co-operatives whose appeal may be wide ranging. Since co-operative membership is generally based on the purchase of a share (or more than one) in the co-operative, any prohibition on an invitation to the public to subscribe may be more onerous than is perhaps intended. Further to this we feel that the continuation of the existing requirements to seek the permission of the Registrar for the raising of significant share capital would provide the intended protections to the public, albeit with a higher capital limit perhaps.

We agree that the express provision of the fiduciary responsibilities of directors and additional clarity around the role of directors and other officers of co-operatives is beneficial.

The clarifications and alignment with modern company law of such issues as financial statements, charges, transfers, amalgamations, examinership, winding up and striking off, etc are all overdue and welcome.

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