



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:

Energy Co-operatives Ireland believe that the proposed transition period is reasonable.

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:

Energy Co-operatives Ireland welcomes the legislation allowing anybody corporate to become a member and investor in a co-operative, subject to the legislation ensuring that the voting power of such bodies corporate is limited to protect the democratic nature of a co-operative.

Energy Co-operatives Ireland would recommend that member in a co-operative by a body corporate must be provided for in the co-operative's rules.

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:

Energy Co-operatives Ireland believes that the content of rules outlined in the proposals are appropriate.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

Energy Co-operatives Ireland welcomes mandatory provisions in relation to 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:

Energy Co-operatives Ireland would welcome the retention of the current provisions in relation to the transfer of property on death.

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:

Energy Co-operatives Ireland would recommend that a requirement for a minimum of three directors for a co-operative of any size. However, we believe that a co-operative should have at least seven members as is the case currently. This strikes the right balance between the ease of adopting the model and protecting its democratic ethos.

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:

Energy Co-operatives Ireland would welcome the retention of the current provisions related to 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:

Energy Co-operatives Ireland welcomes the proposed introduction of an audit exemption for small co-operatives. The current lack of an audit exemption places a tremendous burden on new energy co-operatives that may go many years without generating any significant income or accumulating meaningful assets.

The gestation period for an energy co-operative is considerable given the nature of securing the necessary stakeholder commitment, permissions, land and finance needed to move from business plan through to implementation.

The incorporation of the energy co-operative at an early stage is important in order to build stakeholder commitment, demonstrate seriousness of the proposed project and to begin seeking and drawing down supports from national and European sources.

Energy co-operatives are by their nature broad-based with a large supportive membership often key to their success.

Energy co-operatives will seek members at an early 'proving' stage in the development of project from amongst their primary stakeholders (prospective consumers and/or suppliers) to demonstrate the commitment of the wider community to the project.

This leads to energy co-operatives large memberships and very little financial activity for many years, all of which is currently subject to expensive and time consuming audits.

Energy Co-operatives Ireland would recommend that the membership criteria be removed completely, as it would exclude many early stage and smaller energy co-operatives from the audit exemption on the basis of large memberships.

Energy Co-operatives Ireland would question whether the financial thresholds set out in the proposals are disproportionately low, and should be brought into alignment with those imposed on companies.

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:

Energy Co-operatives Ireland would welcome the requirement that the capacity to apply an audit exemption be set out in the rules of a co-operative.

Energy Co-operatives Ireland would welcome the ability of a minority of members to petition for the reversal of an audit exemption but would recommend that the level of support required be set at 25%.

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:

Energy Co-operatives Ireland would welcome the ability of co-operatives to file abridged financial statements but would recommend that the financial thresholds are brought into line with those applied to companies, and that the membership criteria be removed.

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:

Energy Co-operatives Ireland would welcome the equivalent treatment of co-operatives in relation to certain exemptions to financial statements but would recommend that the financial thresholds are brought into line with those applied 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:

Public Offering of Securities

Energy Co-operatives Ireland welcomes the proposed repeal of arduous administrative requirements related to place a tremendous burden on co-operatives seeking access to additional finance for investment or working capital.

Energy Co-operatives Ireland has serious reservations about the proposed complete prohibition on the public offering of securities by co-operatives, and would ask that the Department seriously reconsider their proposals here.

In seeking to reduce a perceived risk to the public interest - a complete prohibition of the public offering of securities would continue to exclude co-operatives from a vital source of finance and could have myriad unintended consequences in terms of co-operatives soliciting new members where membership is coupled to an investment in the co-operative.

We would recommend that the Department accept that co-operatives will seek investment from outside their existing membership (in many cases those investors become non-user investor members in the co-operative), and that similar but adapted provisions to companies in relation to the public offering of securities should included (both equity and debt).

Energy Co-operatives Ireland believes that the existing regulation of public offering of securities, with adequate adaption to co-operatives, would protect the public interest in the same manner as it is protected in relation to private and public limited companies.

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