



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**.

To whom it may concern,

I am writing on behalf of the Nevin Economic research Institute.

We welcome the upcoming reform of the legislative basis for co-operatives. This represents an opportunity to correct an unfortunate, but significant omission which has curtailed the potential growth of cooperatives over the past 30 years.

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

This new legislation should create a level playing field for the co- operative model of enterprise and support the development of existing co- operative enterprise. The legislation should also create the environment for expanding co-operative enterprise in the indigenous economy.

We would also encourage the Department to ensure that the necessary infrastructure for social co-operatives is included in the legislation.

Yours sincerely,
Ciarán Nugent

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 to time for societies to register as co-operatives.

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 support the general nature of the legislation for all types of co-operatives. In some cases it is appropriate for some co-operatives to have companies and other bodies corporate as members of their co-operative and we have no objections to this. However, we believe that the legislation requires that membership of corporate bodies in a co-operative should be explicitly set out in its rules. We would also suggest that in co-operatives with a combination of natural persons and corporate bodies that the legislation states that corporate bodies cannot have disproportionate voting power relative to members (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:

Mission Lock

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’.

Co-operatives that are set up for other reasons beyond pure economic purposes (social or environmental for instance), it is essential that these are stated in a co-operatives rules and ‘locked in’ to ensure that stakeholders (members, supporters, funders etc.) can have confidence in the co-ops future direction. The legislation should therefore provide for an option for societies to have their social and environmental purpose/purposes included in their constitution, in a way that is 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:

We believe that some proportion of the assets of the co-operative should be the common property of all members.

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

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 3 members is the appropriate minimum number to start a co-operative based on the approach in other countries and the fact that this is the minimum number of people to constitute a democratic collective.

We 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:

The existing rules around special resolutions are appropriate, and ensure that majority decisions of the co-operative require extensive time and scrutiny by members before being resolved.

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:

We understand that many co-operatives in Ireland are suffocating under the lack of an audit exemption equivalent to companies.

We therefore welcome the introduction of such an audit exemption into the new Co-operatives Act. However, the introduction of a membership criteria would have the effect of excluding many community-based co-operatives from the exemption regardless of their financial activities. 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:

We would suggest that for smaller co-operatives 10% might be on the low side, 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:

It is our position 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:

It is our position that co-operatives should have access to 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:

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