



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 do not have any particular view on this question.

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:

As a start-up platform co-operative that is in the early stage of development, we are seeking investment and support from a wide range of stakeholders including through State and European agencies.

We would ask that the Department broaden the categories of members to include any body corporate including but not limited to companies, credit unions, statutory corporations and local authorities.

We accept that the admission to membership of bodies corporate that are not themselves democratically organised presents a risk to the democratic nature of a co-operative, and we would suggest that this risk is dealt with through the provisions related to regulating user and non-user members within a co-operative.

Where a body corporate is a user member, they would have unrestricted rights as a user member of the co-operative. For example, in our co-operative, a community farm may take the form of a CLG, or a small farmer may organise his enterprise as a LTD.

Where a body corporate is a non-user investor member, they would have restricted rights as a non-user investor member. For example, if Enterprise Ireland or the Western Development Commission provides investment capital for the expansion of our business under an approved scheme and is issued shares as part of this scheme, they would have more restricted voting rights as a non-user investor member.

We would recommend that the Department set an upper limit on the amount of voting power non-user members could have, and limit the percentage of board seats that can be elected by non-user investor members.

As a solidarity co-operative, comprised of different stakeholder groups (consumers, producers and employees), we see a major role for 'community members' and 'investor members' who are supporting the development of the co-operative by subscribing for shares in the co-operative.

At present, the Department and the Minister have made public statements that the Department does not seek to preference any particular legal form but the reality on the ground is that co-operatives are routinely excluded from enterprise supports based on legal form and explicitly providing for statutory corporations to invest in co-operatives would increase the number of enterprise supports available to start-up and scaling co-operatives like ourselves.

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 don't have any specific recommendations to make for this question.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

We don't have any specific views we wish to share at this time.

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 have no firm opinion on this question.

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 three directors are the minimum number of directors needed to ensure that meetings are taking place in a democratic manner.

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 would have concerns about making it easier and more straightforward for directors to push through attempts to demutualisation of a co-operative, and would support the legislation continuing to put multiple steps in the way of such attempts.

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 have serious concerns about the membership criteria that is currently being proposed.

We are planning a membership drive in 2022 in order to raise some of the capital required to invest in the next stage of our development, and would expect to recruit a large number of members who have each subscribed for a small number of shares each.

This would mean that our overall turnover and balance sheet will not have increased by much, but our membership numbers will have increased dramatically and we will overshoot the membership criteria currently proposed.

This would nullify the intention of the exemption which is to reduce the burden of an audit on start-up co-operatives, and will continue to have a chilling effect on start-up co-operatives and new registrations as a result.

We would ask that the membership criteria be removed entirely, and would recommend that the financial threshold be brought more closely into line with those for companies.

We accept that they should be lower, but the currently proposed thresholds are extremely low and could be argued place an unreasonable burden on start-up and scaling co-operatives and in effect provide companies with an unfair competitive advantage.

We are operating in a sector where well-capitalised investor-oriented firms are competing with us, and putting a much greater burden on co-operatives is not providing a level playing field.

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 have no strong views on this, but would suggest that 10% of members is a very low threshold for smaller co-operatives.

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:

Please see our response in relation to the membership criteria in question 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 have no strong views on this question.

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:

Asset Lock

As a 'not-for-profit' co-operative, our financing strategy is dependent on accessing seed capital from development supports aimed that innovation within the social economy.

We have made a number of funding submissions to National and European innovation funds, and are in the process of preparing more this year.

The nature of our 'not-for-profit' status is a regular feature of our submissions, and different stakeholders have expressed issues with the absence of a statutorily defined 'asset lock' which we are subscribed to.

We would ask that the Department provide for such a 'co-operative asset lock' in line with other countries in European, in order to provide us and other co-operative start-ups with the tools to satisfy national and European funders as to our 'not-for-profit' status.

Share Issues

We were happy to note that the proposed new legislation would dispense with a lot of the bureaucratic conditions on raising capital, but were subsequently disappointed that the new legislation proposed to prohibit the public offering of shares.

Our financing model is depending on securing National and European innovation funding, however, we intended on doing a 'community share offer' in the coming year or two.

While very burdensome to organise given the opaque process to get permission from the Registrar of Friendly Societies, we have been reassured by other co-operatives we have spoken to that while the permission can take some time to arrive and that we will have to present business plans and other documentation explaining our offer, that such community share offers have been successfully approved by the Registrar.

We therefore would suit that the proposed changes are actually a retrograde step in terms of co-operative access to finance.

We would ask that the Department reconsider its complete prohibition of public offering of shares and consider adopting an approach more in line with other European countries.

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