



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**.

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Department of Enterprise, Trade and Employment
23 Kildare Street,
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25th February 2022

To whom it may concern,

The Plunkett Foundation was established in 1919 by the great Irish co-operative pioneer Sir Horace Plunkett to help rural communities to take control of the issues affecting them through community-ownership. Sir Horace believed that rural communities didn't have to wait for someone else to make life better for them; they had the potential to do it themselves – with a little help.

Much of the early focus was to promote co-operative solutions to agricultural economies and, from 1926 onwards, the Foundation became a clearing house of information on agricultural co-operation in Ireland and much of the English-speaking world.

Today, the Plunkett Foundation continues to advocate community ownership as a solution to rural problems; from ongoing closures of local services such as the shop and the pub; the withdrawal of public services including transport and healthcare; through to declining employment and social opportunities for local people.

In response, the Plunkett Foundation supports communities to set up and run community businesses such as community shops, community-owned pubs, woodlands and farming enterprises. We do this by providing a comprehensive service including:

- a dedicated staffed advice line;
- a network of specialist business advisers, community ownership experts and mentors;
- facilitated study visits to inspiring examples of community businesses;
- a series of online tools and resources;
- networking events and training;
- purchasing benefits through membership.

We aim to help all communities who contact us, but as a charity, we specifically seek to support communities that are aiming to use a community business approach to alleviate poverty and address social exclusion and isolation.

We are a company limited by guarantee and a charity registered by the Charities Commission in England, Wales and Scotland. Our UK support services are delivered via a network of around 50 self-employed advisers.

Definition of Community Business

Although co-operative principles remain central to Plunkett Foundation activities, we have adopted the wider term of 'community business' to define the sector we support. The four key features of a community business are:

- **Locally rooted:** They are rooted in a particular geographical place and respond to its needs.
- **Trading for the benefit of the local community:** They are businesses and have a trading activity, such as rental of space or selling goods as a community shop.
- **Accountable to the local community:** They are accountable to local people through their legal structure and how they encourage local investment. Plunkett Foundation promotes the Community Benefit Society as a democratic and inclusive legal structure of the community businesses we support. Many of the groups supported by Plunkett also use share finance as a way of encouraging local ownership.
- **Broad community impact:** They benefit and impact their local community as a whole. They often morph into the hub of a neighborhood,

where all types of local groups gather, for example to access broadband or get training in vital life skills.

Across the UK Plunkett provides access to a model rules service, for groups wishing to use the Community Benefit Society as the legal form for their operations.

This model, based on the Cooperative Industrial Provident Society has democratic accountability at its core and ensures that all members of the society have equal say on the operations of the society by way of a “one-member-one-vote” operation. The membership of CBS organisation is made up of individuals that have purchased community shares in the organisation, either contributing to the start-up costs of a community business or investing in its ongoing operation once trading.

Whilst Plunkett Foundation has no current operation in Ireland, we are submitting a response to this Department of Enterprise, Trade and Employment led consultation on proposed legislation regarding Co-operative Societies, in Ireland to share our experiences from working with cooperative societies across the UK on those limited number of issues where we believe that our experience directly speaks to the proposals on which the Department is consulting.

We believe that the right legislative reforms to the co-operative legislation could facilitate the widespread adoption of the ‘community enterprise’ model across Ireland, and replicate the impact this has had on rural communities in the United Kingdom and elsewhere.

Yours in Co-operation,

Chris Cowcher, Head of Policy and Communications, Plunkett Foundation

Dave Boyle, Associate Adviser for the Plunkett Foundation

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:

Plunkett Foundation have no views on the proposed 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:

Plunkett Foundation have no firm views on the extension of categories to companies.

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:

Plunkett Foundation would recommend that the new legislation make express provision for a co-operative asset lock which allows those co-operatives with a primarily social and/or community purpose to reassure stakeholders about the distribution of reserves in the event of a wind up, while facilitating the raising of capital via share offers.

The combination of an asset lock and raising capital via share offers has been at the root of the growth of the community co-operative sector in the United Kingdom and other jurisdictions.

Plunkett Foundation would recommend that the full operation of a 'non-distributive capital surplus', the co-operative's reserves minus member share capital and share interest, be provided for clearly in legislation and that co-operatives could adopt this provision in their rules, as appropriate.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

Plunkett Foundation wish to express no view on the proposed legal reserve 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:

Plunkett Foundation wish to express no view on the proposed legal reserve at this time.

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:

Plunkett Foundation wish to express no view on the proposed legal reserve at this time.

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:

Plunkett Foundation wish to express no view on the proposed legal reserve at this time.

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:

Plunkett Foundation notes that the Department proposes a threshold of 50 members to trigger the requirement of a co-operative society to undertake a statutory audit.

Plunkett Foundation recognises the important policy goal being sought by this to liberate smaller co-operatives societies from the burden of undertaking an audit, but we would argue that the development of community-based co-operatives could be disadvantaged by the proposed membership threshold.

In our experience – and we know this is shared in other jurisdictions such as Australia and the USA – community-based co-operatives often have more difficult journeys to trading.

They are often built around an asset – a community shop or pub, for example – where the process of galvanising the community, engaging potential members, building membership and capital, and developing the business plan can be long and arduous.

This is partly because the co-operative often starts life as an entirely volunteer-driven enterprise, and secondly, because the circumstances that determine whether the co-operative can make significant progress to reach trading point are not entirely within their own hands. In our experience, groups can be formed and incorporated, and can quickly achieve 50 members, but this in itself does not attest to readiness to trade.

They might need to achieve a much higher concentration of members in a given community where they propose to start before this critical mass changes the local dynamics decisively in favour of the co-operative's growth.

As a result, many organisations would be in the invidious position of being required to undertake an audit and incur the costs of such, when they don't have any trading activity to speak of as yet.

We would suggest two alternative policies that might achieve the goals of lessening the burden whilst ensuring co-operatives undertake the audits required to reassure members of the soundness of the business and the probity of its officers.

One option is to have a turnover cap below which a co-operative is not required to have an audit at all should its annual turnover be below a threshold set by either the legislation or perhaps by the Minister after a quinquennial or decennial review, to ensure that the cap can rise with inflation.

The equivalent sum in the UK is around €107,000. This would ensure that non-trading or very small turnover co-operatives were freed from the burden.

Once over this limit though, the policy as outlined in the consultation could apply.

This could be achieved by a sworn and notarised statement from the Society Secretary that the turnover was below the cap set, combined with an accountants report verifying that the co-operative's income was below the level of the cap.

As this would merely require an accountant to verify the co-operatives income in the year by reference to cash handled and bank reconciliations, the lower threshold of activity required and the greater pool of available people to undertake it (because there are many more qualified accountants than statutory auditors) would keep costs low.

The only caveat we would suggest is that the accountants who undertake to produce the report would have to not have been a serving Director at any time through the year of account under consideration.

Alternatively, if the legislation were to allow for differential development speeds, a co-operative society could declare itself non-trading or dormant. This could be utilised for three consecutive years upon formation, where the audit rules were waived, and no report were required whatsoever, provided that the co-operative had a turnover of less than some specified sum.

If it began trading, it would cease to qualify for this and would be required to undertake an audit.

However, if after three years it was no closer to trading, it might be a useful policy to concentrate the mind of the members as to whether it made more sense to wind the co-operative up at that juncture than continue.

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:

Plunkett Foundation would ask that the Department consider our answer to question 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:

Plunkett Foundation would ask that the Department consider our answer to 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:

Plunkett Foundation would ask that the Department consider our answer to question 8.

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:

Plunkett Foundation notes that there are no proposals to open up the possibility of capital raising by co-operatives in the new legislation.

In our experience in the UK, the ability of co-operatives to easily and cheaply raise capital from supportive members of their communities has been a central feature in the rebirth of the community cooperative sector and has enabled a variety of public policy goals to be achieved.

This is particularly the case in rural communities where the economic case for providing certain trading outlets is marginal, but the social and cultural benefits from the provision of the trade are manifold.

Essentially, where there are services or assets historically provided by the private sector but which retain a public character, community co-operative ownership is a valuable mechanism to ensure that the enterprise can still be undertaken.

In these sectors, there is no tradition of or demand for state provision, but in increasingly straightened economic times, reliance on a business to provide a living for its owners can be too much to bear for these marginal trades.

We do not propose to go into the detail of the UK's specific legislation suffice to note that issuing withdrawal capital to co-operatives not engaged in deposit-taking is exempted from the 2001 Financial Services and Markets Act, which enshrined into UK law various EU Directives on financial services.

The sale of transferable shares to the public by co-operatives is on the same footing as all other corporate forms (which is to say subject to prospectus and other requirements), but withdrawable shares can be offered to the public without recourse to regulatory regime on public offerings.

The maximum permitted investment in withdrawable capital is €120,000, a rise from the lower cap of €24,000 per investor in place up to 2014.

We recognise that withdrawable capital is the same as used by financial actors such as building societies and credit unions, but the UK regulatory regime has successfully focused on directly regulating banking and quasi-banking activity, as opposed the specific legal forms or capital classes.

As a result, banking activity is regulated by dint of banking regulation, and societies engaged in deposit taking – as opposed to productive utilisation of capital in the course of their trading activity – are captured.

We see the trend in the UK – known as Community Shares – replicated in other states; similar activity has been noted across the European continent, and in the USA, Canada, New Zealand and Australia.

The social trend driving this is the ability of crowdfunding platforms to enable lots of investors to invest smaller sums to help capitalise enterprises as opposed to the previously dominant paradigm of a small number of investors providing large sums of money.

The experience in the UK is instructive.

Many co-operatives who have raised significant capital have done so using the Crowdfunder.co.uk platform, and their data is instructive here.

Analysing over 24,000 separate investments, they found the mean average was €572 per person, whilst the modal was €118 and median was €135.

These were invested across 64 different co-operatives raising capital, raising an average of €212,000 from their capital raising drives.

Of those share issues, the average number of people who invested as little as they were allowed (i.e., the minimum investment amount the co-operative mandated was also the sum they invested individually) was 36%, but this rose to 44% when the minimum was €120 or less, and when the minimum investment was €120 exactly, it rose to 60%.

What this tells us is that the modal figure of €120 across the 24K,000 investors is an affordable price point. Where this sum is offered, the majority of investors saw it as an amount that represented the maximum they were prepared to invest. Where co-operatives offer a lower entry price than €120, a third of those investing still gravitate to that €120 mark, even though they were technically able to invest less.

The conclusion we draw is that people do not invest more than they want to. They are sensible, clear-eyed and rational about how much to invest. Those who can afford more, invest more. People who cannot afford so much don't invest much.

There is no evidence whatsoever of mis-selling nor have any complaints been made to our knowledge in any of the share issues that have taken place since 2010, when this form of capital raising started to become popular once more thanks to a pilot programme sponsored by the UK government.

That pilot created the Community Shares Unit (run by Locality, Cooperatives UK and Plunkett Foundation), which continues to promote good practice, self-regulation and research into community capital raising. Their most recent market survey demonstrated that investors invest overwhelmingly on the **social and cultural** benefits the co-operative will hopefully provide, rather than any personal financial interest they might receive.

The final point we would make is that just as the internet is playing a crucial role in driving this behaviour by making it easier for projects seeking capital investment from larger numbers of patient investors to find those investors, the same technology makes it easier for this to happen across borders – attracting investment to support the cooperatives aims from a much wider “community of interest”.

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