



Public Consultation

on Reform and Modernisation of

Legislation regarding

Co-operative Societies

Response



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 the collation of responses.

Respondents have the opportunity to comment more generally in Question 12 should they wish.

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When responding please indicate whether you are providing views as an individual or representing the views of an organisation. - ***We are representing the views of Rethink Ireland, on behalf of Rethink Ireland's Awardees.***

Respondents are requested to return their completed templates by email to coopconsultation@enterprise.gov.ie by **5pm on Friday, 25 February 2022.**



Context

1. About Rethink Ireland

Rethink Ireland would like to thank the Minister for Enterprise Trade and Employment, Mr. Leo Varadkar, T.D., for the opportunity to take part in this consultation on the reform and modernisation of Ireland's legislations regarding Cooperative Societies.

Rethink Ireland (previously Social Innovation Fund Ireland) provides cash grants and business supports to not-for-profit organisations and social enterprises working in Irish communities across the country. These organisations are not just thinking differently, but are putting their ideas into practice and building a more equal and inclusive Ireland. Our mission is to support the best social innovations so that they can grow and maximise their impact across Ireland. Our vision is an Ireland that is more inclusive, equal, and sustainable because of social innovation.

2. Methods

We commend the Minister for the comprehensive nature of this review and encourage continued consultation with and centering on the views of cooperative societies in the development of any updated legislation.

The aim of this submission is to elevate and highlight the voices of these organisations and groups. We have gathered the insights of just some of the organisations we work with that are tirelessly working under cooperative principles in the areas of mental health, education, food, care, housing, and sustainable living.

It is not our intention to provide a full, comprehensive review of the Reform and Modernisation of Legislation regarding Co-operative Societies, but rather to highlight the collective observations of our Awardees and to support them with literature and research references. A particular emphasis was placed on the implications of this Bill for the social economy. The observations are those shared by Awardees, who have made them first-hand, rather than Rethink Ireland's. While these opinions were shared by our Awardees, they are aligned with our experience of working with and supporting the cooperative and social enterprise sector.



Our consultation process involved a survey which was filled out by 6 organisations and a further interview with 2 organisations. More details on the organisations that took part can be found in the Appendix.

3) Key Issues Identified

The key issues identified by our Awardees that we want to highlight in particular are:

1. The need to include optional provisions to accommodate the specific nature of social enterprise in this legislation.
2. The move towards facilitating access to finance was commended, however, there was a call to further open up the range of options, including fundraising and community shares.
3. The effort to facilitate starting out and setting up as cooperatives was highlighted as an important and positive feature while acknowledging that some of those moves might put cooperative principles at risk.
4. Membership criteria, e.g. in relation to audit exemptions, were seen critically in some cases, as some start-ups, in particular digital and social enterprise cooperatives, would start out with high numbers of members but no other resources.
5. A cooperative statutory asset lock was mentioned as a key clause to be included with the need for this to be optional and to ensure that investments are returned to members.

4) Background: Our Commitment to Social Enterprise

At Rethink Ireland, one of our key strategic aims is strengthening the social enterprise ecosystem in Ireland. Since 2016, we have provided over €9 million in cash grants and business supports to over 100 social enterprises across Ireland. Many have increased their traded revenue, developed their services and grown their impact statewide. These social enterprises have included cooperative societies and CLGs operating with setups similar to that of cooperative societies.

Over the past four years, we have delivered the Social Enterprise Development (SED) Fund in partnership with Local Authorities Ireland, supported by IPB and the Department of Rural and Community Development via the Dormant Accounts Fund. This Fund is currently recruiting for its 5th year of funding.



Further to this, we support four social enterprises through our Growth Fund, which provides match funding and uplifts for social enterprises that are ready to scale. In 2021, we also launched our 2-year Social Enterprise Start-Up Fund, to further help realise the enormous potential of the social enterprise sector. We see social enterprise as a mechanism for equitable, sustainable growth in business and the way forward for the economy.

In 2020, as members of the National Social Enterprise Policy Implementation Group, we undertook research together with the Department of Rural and Community Development into the understanding of legal forms for social enterprises and produced a report authored by Tanya Lalor and Dr. Gerard Doyle. This report was launched in October 2021 and can be found [here](#).

The conclusions and recommendations of the report include:

- The barriers experienced by social enterprises in Ireland related to legal form include lack of recognition, charitable status as criteria for certain funding streams, and difficulties in securing equity finance as CLGs.
- Those surveyed believed a dedicated legal form for social enterprises would lead to recognition of social enterprise as a legitimate form of organisation, establish the sector's credibility among funders, reduce compliance requirements and safeguard the social mission of social enterprises.
- The research indicates that a dedicated legal form would not be the sole means of ameliorating the recognition, policy, governance issues, and awareness of social enterprise, and could also potentially be a constraint to social enterprises.
- While a dedicated legal form might benefit the social enterprise sector, the successful pursuit of one would require a compelling argument, and a high threshold of necessity. The research found that the argument for a dedicated legal form at this point in time is not sufficiently compelling for two reasons: 1) the establishment of a dedicated legal form is not necessary to address the barriers identified, and 2) there is a significant divergence of opinion as to what form a dedicated legal form would take.

In 2021 we also began work on the multi-year *Financing Social Enterprise in Ireland – Models of Impact Investing and Readiness* project with Dublin City University and Community Finance Ireland. Its objective is to identify the finance practices most suitable to sustaining social enterprises at all stages of their development.



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:

While Awardees felt that 18 months were a tight timeline, they also agreed that a swift transition to the new framework was overall beneficial. They highlighted the need to provide model rules for smaller cooperatives to assist with the transition.

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:

While Awardees noted that these changes were beneficial to some cooperatives, they also voiced concerns over corporates being founding members of cooperatives, which they described as risking the ethos and image of cooperatives and their values, in particular from a social enterprise perspective. Safeguards and limitations, in particular in relation to voting powers were suggested to mitigate these concerns.



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 a supporting rationale for any such additions.

Response:

Concerns were voiced about the list of matters not including certain rules key to social enterprises, in particular when seeking funding. The suggested rules are as follows:

- **A mission lock/objects clause**, setting out the social or environmental purpose of the cooperative, giving members, funders, and the general public a guarantee of the continued social mission of the cooperative. Once applied, this mission lock can not be disapplied by the members.
- **A winding-up clause**: also called non-distributive capital surplus clause, this provision sets out that upon winding up, any surplus must not be distributed amongst the members but instead transferred to another cooperative which provides for such safeguards or a charity or social enterprise with a similar mission as the cooperative in question. As with a mission lock, this clause should be optional but once applied not open to removal by members' votes.
- **(Partial) profit non-distribution clause**: As with the previous rules, this rule should be optional but once applied must not be disapplied. Social enterprise per nature reinvests their profits into their mission, as set out by Ireland's first National Social Enterprise Policy. By allowing for such a lock, public trust can be further enhanced.



Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

Beyond the scope of our consultation.

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:

Beyond the scope of our consultation.

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:



Awardees were critical of cooperatives with only one director, as this was not aligned with the cooperative ethos. At the same time, they acknowledged the effort to facilitate the setting up of start-ups who may be looking to incorporate early on and, in particular where coming from a minority background, might not have a wider, suitable network to avail of at that stage.

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:

Beyond the scope of our consultation.

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:

Several Awardees voiced a concern that the membership criterion in this context was not suitable for an early-stage social enterprise or digital cooperatives, who would start with a large membership base but no other resources. They would thus fall outside the exemptions and struggle with high audit requirements from an early stage. A more considerate approach towards memberships was suggested.



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:

Beyond the scope of our consultation.

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:

Awardees saw this as favourable to start-ups and approved of bringing this in line with the criteria applicable to other legal forms. At the same time they agreed that this reduced transparency of financials and use of funds.

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:

Please refer to question 8 above.



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 would like to use this space to re-emphasize the hope that the proposed legislation can offer a valuable **alternative legal form for social enterprise**. While social enterprises are businesses, they have particular features, such as reinvesting profits and a social mission, that warrant certain optional rules being set out and safeguarded in legislation. If the clauses outlined under Question 3 were included in the Act, this would be a milestone for the social enterprise sector and offer a viable alternative to the charitable status which, as also mentioned in the background section, does not suit every social enterprise (for further information on this please also see the Social Enterprise Legal Form Research Report).

Secondly, several Awardees spoke about the importance of making **finance** available to cooperatives and increasing their attractiveness for investments. They commended the move towards opening up all sectors of activity for cooperatives amongst other factors in this context. However, they also expressed concerns about the proposed legislation prohibiting the public offering of securities, which would negatively impact the fundraising potential of cooperatives. Others emphasised the need to make community shares and equity-based investment available to cooperatives. These approaches could be balanced with an asset lock provision as a safeguard for funders.

Overall, Awardees were appreciative of the proposed legislation and its approach, in particular its aim of covering the entire spectrum of cooperatives. They argued that to do so, certain **exemptions and considerations for social enterprise, small and digital cooperatives** need to be made, which are the emerging new generation of cooperatives. Finally, those Awardees operating under different legal forms with cooperative principles were hopeful that the proposed legislation will empower them to change to a cooperative form altogether.



Annex: Our Awardees included in this consultation

The following past or present Awardees were included in the consultation process as they are either operating as cooperatives or with cooperative principles under a different legal form.

An Áit Éile:

An Áit Éile is a Solidarity Cooperative of creatives and Experts-by-Experience. Their partnership is based on the transformative potential of lived experience, and their current collaboration, Community Coproduction Network West, aims to empower people to reimagine mental health care.

Biochar

The Biochar Coop helps farmers and rural dwellers meet Ireland's Agriculture Greenhouse Gases (GHGs) targets, avoid EU fines and reduce rural carbon taxes. Using biochar in farming reduces GHGs in the short term, sequesters carbon in the soil long-term, and creates on and off-farm jobs.

Dublin Food Co-operative Society Limited:

The Dublin Food Co-op is a not-for-profit organisation that addresses the lack of accessible, affordable education on food sustainability and how co-operatives can be organised to sustain their local communities. Operating out of a shop in Kilmainham, it has almost 3,000 members and has created a co-operative environment in which to learn and share together.

Irish Islands Marine Resource Organisation Co-operative Limited:

The Irish Islands Marine Resource Organisation (IIMRO) represents Irish island communities to address the many challenges facing their fishing livelihood. The IIMRO-Abalobi project tackles the market collapse for small-scale fishers caused by COVID-19 with technology that makes fully traceable, sustainably caught seafood from Irish island communities available directly to consumers.

Ó Cualann Housing Alliance:

Ó Cualann Cohousing Alliance builds quality homes and offers them to those who could not afford to buy their own home on the open market. Their goal is to develop and support fully-integrated communities, to deliver well-designed, top-quality, energy efficient homes at an affordable price, and to ensure its co-operative model for affordable housing can be replicated and scaled across the country. Ó Cualann is committed to building communities and



believes that integrated, affordable housing can have a transformative effect on wider social issues in Ireland.

The Great Care Co-op:

The Great Care Co-op is Ireland's first carer-owned home care co-operative. Set up and designed by migrant women with over 70 years' collective experience in the sector, it emerged from almost two decades of advocacy work at the Migrant Rights Centre Ireland. With its equality and human rights emphasis, the Co-op channels profit back into the organisation where it is invested in worker training, pensions, and a top-class service to its clients.

The Urban Co-op

The Urban Coop works on improving community wellness. They provide wholesome food at affordable prices and are operated by the community for the community. Their aim is to create a sustainable Limerick. Membership is open to everyone. They provide a platform for social connection and the opportunity to enhance lives through access to wholesome food.

Síolta Chroí:

Síolta Chroí is a not-for-profit co-operative based in Carrickmacross Monaghan. Their aim is to restore Ireland's ecosystems and communities. They do this through 1) education focused on regenerative cultures; 2) exploring resilient and regenerative food systems, and 3) carrying out ecosystem restoration work.



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.

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