



**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 consider the 18-month transition period sufficient time for societies to register as co-operatives and we have two further suggestions in relation to this question.
- There remains a risk that the re-registration process could be misused by those seeking to demutualize a society. **We recommend that, regardless of the decision in relation to special resolutions in the new legislation, the two-step process should be retained for any conversions by an existing society to a company or a voluntary wind up.**
- At The Wheel, we are frequently approached by individuals or groups seeking to set up community and voluntary organisations or social enterprises. Many of them wish to register as co-operatives as it aligns with the ethos of the community organising and social benefit.

We recommend that the legislation set out model rules for a community co-operative or social co-operative to utilize. This would have the added benefit of facilitating those of our members who are registered under the IPS legislation and wish to register as a co-operative society but perhaps don't have the financial resources to draft a new set of rules consistent with the needs of a community co-operative or social co-operative.

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:

- It is unlikely that the majority of community and voluntary organisations setting up as co-operatives would want to have companies as members. However, we note that the legislation is general purpose legislation for all types of co-operatives, and we understand that it will be appropriate for some co-operatives to have companies and other bodies corporate as members of their co-operative.
- **We would therefore welcome that the legislation requires that membership of the company (or bodies corporate more generally) in a co-operative society must be explicitly provided for in its rules.**
- **We would also suggest that where a co-operative as a combination of natural persons and legal persons (bodies corporate) that the legislation provides that bodies corporate cannot have additional voting power than natural persons, in order to protect the essential democratic ethos of a co-operative.**

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’.** This acknowledges the broad range of existing community co-operatives that undertake all manner of social and cultural activities. It will also help to encourage more community groups to utilise the co-operative model in future.
- However, for many community and voluntary organisations, charities, and social enterprises, having specific ‘objects’ is an essential part of their ethos and vital for securing the support of stakeholders, funders (both state and private) and the wider community. These types of co-operatives will wish to reassure their stakeholders that their purpose is ‘mission locked’ and cannot be changed in the future. State funding through the National Social Enterprise Scheme, for example, looks at whether an organisation’s objects have a social or environmental purpose and whether these are protected.

We recommend ensuring that a co-operative can inset objects clauses into their Rulebook which cannot be amended in future. This would provide certainty to stakeholders and would ensure that the co-operative model is an attractive legal form for community organisations and social enterprises. This would be an optional provision and may not suit every co-operative.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

- **We welcome the Department’s decision to put the legal reserve on a statutory basis and to provide for a minimum level of legal reserve.** The following rationale for a legal reserve resonates greatly with both The Wheel and our membership. It points to the unique ethos of the co-operative model and its role as a distinct model within the broader social and solidarity economy:

“[A legal reserve is] essentially used to safeguard the aims of the co-operative, provide financial stability, build solidarity and mitigate against asset stripping. In many cases, a person who ceases to be a member of the society cannot claim any part of the reserve”.

- **We recommend that the Department ensures that the minimum level of legal reserves set is meaningful,** with consideration given to established levels in other European countries. This minimum level should prevent the scenario whereby founders/members can set a token or nominal level for their annual contributions to the legal reserve, therefore making the provision ineffective as the stated policy objective. **We recommend that the legal reserve is not an upfront amount required at registration but must be built up from trading income.**
- **We also recommend that the legislation provides the full framework for how the legal reserve will function.**
- **Finally, we recommend introduction into the legislation of an optional ‘co-operative asset lock’.** The relationship between this co-operative asset lock and the legal reserve should be clarified in the legislation.

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 welcome attempts by the Department to make it more straightforward to form co-operatives in Ireland.** In many cases, community and voluntary organisations and social enterprises are required to incorporate before they receive state funding to provide valuable services and supports. The co-operative model should provide an alternative option for those organisations for whom it is appropriate and desirable.
- **However, we recommend setting the minimum director number at a higher level** to avoid potential abuse of the model by those seeking to set up shell co-operatives which are in effect private enterprises.

- **We recommend that three members is the appropriate minimum number of members to start a co-operative**, based on the approach in other countries and on the number of trustees required to set up a charity in Ireland. We would 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:

- We think that the existing rules around special resolutions remain relevant, and ensure that majority decisions of the co-operative nature, and indeed the very existence of the co-operative, should require extensive time and scrutiny by members before being resolved.
- We are aware that the current modernised legislation in other countries like the United Kingdom retain the two-step special resolution for such matters.

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 welcome the introduction of audit exemption into the legislation, as many new and small co-operatives are struggling without this.
- **However, we believe that the membership criteria would have a devastating impact on the ability of smaller, community-based co-operatives to avail of the audit exemption.** Many of The Wheel's members are smaller co-operatives that would easily meet the financial threshold but – due to their broad membership base within the communities they serve – would breach the membership criteria. Thus, the current approach would have the effect of excluding exactly the types of co-operatives that are most in need of the exemption.

Equally, a number of our members who considered the co-operative model ultimately decided against it on the basis of a lack of audit exemption and instead registered as CLGs.

- We do not believe that there is a one size fits all membership criteria suitable for every type of co-operative and therefore **recommend that the membership criteria be removed, and that financial thresholds be the sole determiner of the eligibility for an audit exemption.**

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 welcome the inclusion of criteria allowing members to seek an audit but, while 10% is reasonable for medium to large co-operatives, it is low for smaller co-operatives. **We recommend that the Department should consider the consequences of this further and suggest that financial thresholds be the sole determiner of the eligibility for an audit exemption as detailed above.**

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:

- We welcome these proposals, which are reasonable and in line with similar exemptions for companies. We would repeat our statements on the removal of any membership criteria.

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 believe that co-operatives should have access to similar exemptions to companies. We would repeat our statements on the removal of any membership criteria.

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:

Optional Asset Lock for Co-operatives

- **We recommend that the legislation provide for an optional ‘non-distributive capital surplus’ whereby on wind up, outstanding shares and share interest would be repaid to member shareholders and thereafter all remaining capital surplus would**

be transferred to another co-operative with a non-distributive capital surplus, or to a registered charity.

There has been a great surge in the social and solidarity economy in Ireland in recent years, with the social enterprise movement making great strides, culminating in the first *National Social Enterprise Policy* in 2019. The Wheel and several of our members have been closely involved in the development and implementation of this policy.

We have also seen a resurgence in interest and use of the co-operative model by community and voluntary organisations, and social enterprises, who see an appeal in its combination of social purpose, democratic ownership and the capacity for community investment.

We are very aware that the current legislation as it stands is not fit for purpose, and by introducing a number of relatively minor features into the new legislation, the co-operative model could be adopted by a range of organisations across the sector.

The key aspect of any social enterprise is ensuring that the surplus is applied to the social and/or environmental mission, and that in the event of a wind up that the accumulated surpluses continue to be applied to this mission (via transfer to another body) and are not distributed amongst the members.

As the co-operative model provides for investment from the members of the co-operative, and potentially other stakeholders, any asset lock must provide for those 'investors' to have their capital returned in the process of otherwise protecting this surplus.

Under the current IPS legislation, and likely in the new legislation, this could be left to a co-operative's rules. We are aware from both inside and outside our membership that many community and social co-operatives currently have similar rules in place.

However, this one issue can be determinative of whether a community or social co-operative will get support from key stakeholders (including financial support), and many stakeholders require legal certainty on this issue.

As a result, it is vital that, while many of the features of a social enterprise (voluntary board, restrictions on dividends etc.), can be left to an organisation's rules, **the treatment of the capital surplus in the event of wind up is sufficiently technical and demands legal certainty, meriting a specific optional provision in the legislation.**

Introduction of a 'non-distributive capital surplus' would provide stakeholders with a standardised and legally-secure provision, allowing them to judge whether a co-operative is meeting their requirements around the distribution of reserves on dissolution. This also acknowledges that the co-operative is based on the principle of members and the wider community providing the capital required by the co-operative.

This capital, and any share interested owed, should be returned on wind up, and thereafter the remaining surplus should be transferred to another co-operative with a 'non-distributive capital surplus'.

Removal of Restrictions on Raising Capital and Public Offering of Shares

- The Wheel notes the significant impact that co-operative share offerings have had on the growth of community and social enterprise in the United Kingdom and other places. **We welcome the Department's plans to remove some of the most onerous restrictions placed on co-operatives in the current legislation.**
- However, **the prohibition on the public offering of securities as outlined in the consultation document is disproportionate**, given the experience of jurisdictions such the United Kingdom.

Several of our have members have undertaken membership drives with a minimum investment required by members, which were publicly advertised. The proposed prohibition would appear to impact these kinds of membership drives and would place many co-operatives seeking to raise capital from their members and from the wider community in a very unclear legal position.

We recommend that the Department refrain from a prohibition on the public offering of securities and seeks to put in place a proportionate regulatory framework that acknowledges the distinct nature of a co-operative share offer and the low sums of money typically invested by the average member in such offers, while seeking to protect the public interest.

We would encourage the Department to consider adopting a similar regulatory model to the United Kingdom, which ensures that a minimum level of protection is in place for investors while facilitating the amazing growth of the community co-

operative sector, which has been particularly evident in the revitalization of towns and villages in rural areas.

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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