



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: If the consequence of failing to take action within the transition period is deemed dissolution (as opposed to deemed adoption of the new regime and a new model set of rules), then 18 months appears short. If, however, the consequence involved survival of the society in a new deemed form, then 18 months would be sufficient. We say this with the interests of creditors in mind because presumably dissolution would result in the assets of the industrial and provident society vesting in the State as per the situation where a company is struck off pursuant to the Companies Act. This would be detrimental to creditors (secured and unsecured) of the dissolved society.

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: This proposal makes sense to us as the co-operatives that we deal with (including their members in some cases) are generally very large and complex organisations.

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: No (assuming the required number of directors and other matters will be dealt with by the legislation itself).

Matters relating to Shares

Legal Reserve

Question 4.

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

Response: We view this as positive and we note that it is consistent with the co-operative principles of member economic participation and concern for community.

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: Yes, but there should be consideration of whether this would create inconsistencies in relation to how the interests of deceased natural person members and dissolved or struck off corporate members are treated, both from a legal and procedural perspective and from a tax perspective.

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: Yes. Our only thought on this is whether, in the interests of maintaining good corporate governance for smaller co-operatives, a middle threshold requiring at least two directors should apply perhaps somewhere between five members and ten.

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: Yes, we support this proposal as the procedure in the existing legislation is not user friendly and creates risk of it not being complied with correctly in all cases. We would also propose allowing for special resolutions to be passed by unanimous resolution in writing signed by all members.

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: Yes, we agree with the approach.

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: Yes, we agree with the proposal.

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: Yes, we agree with the proposal.

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: Yes, we agree with the proposal.

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:

- In replacing the committee of management with a board of directors, the requirement for at least one director to be resident in an EEA jurisdiction should apply as per the situation applicable to companies under the Companies Act.
- The position in relation to existing charges granted by societies and how these will be registered under the new regime will need to be considered. Presumably all existing liabilities and security interests will remain fully enforceable by the creditor. Will that be the case whether or not the society has diligently listed each and every existing charge (registered or not registered) in its registration application?

- We would recommend against simply extending the debenture regime applicable to "agricultural co-operative societies" under the 1934 Act to all societies as this would mean co-operatives would still be dependent on having received a certificate under Section 3 of the 1934 Act in order to have the power to grant debentures. In other words, there should be no need to refer back to the 1934 Act and the new charge regime should stand on its own legs per the procedure applicable to companies. We presume this is indeed the intention are making the point only for the avoidance of doubt.
- We would propose that the new legislation should expressly state that there is no requirement to create and register a specific or floating chattel mortgage under the Agricultural Credit Act, 1978 for a Debenture to be effective insofar as it affects "stock" within the meaning of that Act. This will be important to avoid legal practitioners feeling the need to continue to carry out such archaic registrations even with a new charge registration system under the new Act.
- We would also propose allowing for special resolutions to be passed by unanimous resolution in writing signed by all members.

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