



**An Roinn Fiontar,  
Trádála agus Fostaíochta**  
Department of Enterprise,  
Trade and Employment

# **Regulatory Impact Analysis**

## **General Scheme of a Co-operative Societies Bill 2022**

**July 2022**

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## 1. Summary of Regulatory Impact Analysis

| Summary of Regulatory Impact Analysis (RIA)   |   |
|---|---|
| <b>Department:</b> Enterprise, Trade and Employment   | <b>Title of legislation:</b> General Scheme of the Co-operative Societies Bill 2022 |
| <b>Stage:</b> Seeking Government approval to proceed to draft a Co-operative Societies Bill and publish the General Scheme  | <b>Date:</b> July 2022  |
| <b>Related Publications:</b><br><a href="#">General Scheme of the Co-operative Societies Bill 2022</a><br><a href="#">Reform and Modernisation of Legislation regarding Co-operative Societies: Policy response to issues raised in public consultation June 2022</a>   |   |
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| <b>Policy objectives being pursued</b><br><p>To provide a modern and effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland. This includes providing a specific legislative basis, for the first time, for the co-operative model, which takes due account of the distinct characteristics of co-operatives and placing the co-operative model on a comparably favourable and clear legal basis as the company law model, thereby creating a level playing field with companies and encouraging the consideration of the co-operative model as an attractive formation option.</p> |   |
| <b>Policy options considered:</b> <ol style="list-style-type: none"><li>1. Do nothing.</li><li>2. Amend the existing legislation in certain aspects.</li><li>3. Create a new comprehensive and modernised legislative basis for co-operatives and repeal the existing industrial and provident society legislation.</li></ol>   |   |
| <b>Preferred option:</b> Option 3.  |   |

## OPTIONS

|    | <b>Costs</b>   | <b>Benefits</b>  | <b>Impacts</b>  |
|----|--|--|---|
| 1. | No additional costs  | No benefits  | Societies continue to operate under outdated, unsatisfactory legal framework  |
| 2. | Minimal additional direct costs  | Facilitating the setting up of new societies by reducing the minimum numbers of members required; providing for audit and other exemptions for small societies; addressing the restrictions on raising of funds from the public.   | <p>Minimalist approach to reform</p> <p>Failure to provide a legislative basis for the co-operative ethos; failure to address lack of clarity and other weaknesses (e.g. corporate governance)</p> <p>Possible unintended consequences due to adding to already complex and fragmented legislative environment</p> <p>Failure to strengthen the governance, financial reporting, compliance and enforcement provisions and streamline several procedures to build trust in the co-operative model</p> <p>The legislation will continue to be unattractive for establishing viable and sustainable co-operatives which may have implications in terms of lost opportunities for further enterprise development and support for social and community services</p> |
| 3. | <p>One-off transitional requirements and related costs for existing industrial and provident societies; additional compliance requirements, appropriate to a modern corporate governance regime</p> <p>Some additional administrative costs for the Registrar relating to transition and establishing and maintaining Registers of co-operatives, charges and disqualified persons</p> | <p>The same benefits from Option 2 also apply to Option 3</p> <p>In addition, a modern and comprehensive regulatory framework for co-operatives, replacing the current archaic, fragmented and inadequate legislation</p> <p>Substantial increase in transparency and usability of the legislation by co-operative members, creditors, and the</p> | <p>Enhancing the diversity of the corporate landscape by making the co-operative model a more attractive option, thereby realising the full potential of the diverse range of organisations who subscribe to the co-operative ethos</p> <p>A more robust regulatory and governance regime with greater assurance provided to stakeholders (members, employees, creditors etc)</p> <p>Reduced administrative burden on smaller co-operatives who wish to avail</p>   |

|  |  |  |   |
|--|--|--|---|
|  | <p>Some additional costs related to Corporate Enforcement Authority functions on investigations and compliance and enforcement</p> | <p>accounting and legal profession.</p> <p>Improved access to finance as a result of removing outdated provisions on raising of funds; introducing provisions on a legal reserve and extending the debenture provisions to all types of co-operatives.</p> | <p>of exemptions in relation to audit and financial reporting</p> |
|--|--|--|---|

## 2. Description of Policy Context and Objectives

### *Context*

#### 2.1 *Co-operatives*

A co-operative is an association or body which is organised and which operates on the basis of co-operative principles, such as “democratic member control” (one member one vote). There is no specific legislation dealing with co-operatives in Ireland. At present, those entities who wish to follow the co-operative model primarily register and operate under the Industrial and Provident Societies (IPS) Acts 1893-2021 and reflect their co-operative ethos in their rules. As an alternative, entities can register and operate under the Companies Act 2014 and use the company constitution to reflect their co-operative ethos.

#### 2.2 *Existing Regulatory Framework*

The IPS legislation provides the statutory basis for the formation and general operation of industrial and provident societies, the majority of which are societies that aspire to the co-operative ethos. The legislation is outdated, fragmented, lacks clarity or detail in a number of areas and does not provide an attractive and modern corporate structure for those wishing to create entities operating under the co-operative model. The main Act dates from 1893 and various piecemeal amendments have been introduced over the intervening period, with the most recent substantive changes made in 2014. However, the fundamental requirements governing societies are as set out in the original Act. The legislation is either entirely silent or does not adequately address key elements of what would be expected in a modern corporate law environment.

2.3 The number of industrial and provident societies registered in Ireland has been relatively stable over the past decade - with a high of 1,063 registrations in 2010, falling to a low of 900 in 2015 and with a gradual increase in recent years. There are currently 967<sup>1</sup> industrial and provident societies registered, comprised mainly of a variety of agricultural activities, group water schemes and housing co-operatives - but also including societies involved in a wide range of other activities. The Registrar of Friendly Societies is responsible for the assessment and registration of applications and any subsequent amendments to the rules of individual societies.

### ***Policy objectives of the proposed legislation***

2.4 The current IPS legislation is not considered fit for purpose and is outdated, fragmented and lacks robust provisions in relation to corporate governance, financial reporting, compliance and enforcement. As a consequence, the current model is not considered as an attractive option for incorporation, in contrast to the modern environment available under company law. As a result, the IPS legislation will largely be repealed (subject to retaining the provisions relating to the Registrar’s duties to maintain the IPS Register, which are required in order to provide for the restoration to the Register of dissolved industrial and provident societies that wish to wind up in an orderly matter) and replaced with a modern legislative framework which takes due account of the distinct characteristics of co-operatives, provides for modern corporate governance, reporting and compliance requirements and will be suitable for the diverse range of entities using the co-operative model in Ireland. The legislation will also address a range of other issues including the functions and powers of the Registrar and matters relating to registration,

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<sup>1</sup> Register of Friendly Societies Annual Report 2021

amalgamation, transfer of engagements and conversions, strike-off and restoration; shares and share capital and raising of funds.

- 2.5 Existing industrial and provident societies will be provided with a transition period in which to register as a co-operative society, adopt an alternative corporate structure or wind themselves up. Maintaining the *status quo* is not envisaged and it is intended that any societies remaining on the Register at the end of the transition period will be dissolved.
- 2.6 The proposed legislation encompasses a wide range of issues identified as part of the review of the existing IPS legislation and is informed by responses to public consultations (most recently in early 2022 and previously in 2009 and 2016) and bilateral engagement with stakeholders. The Department also consulted closely with the Registrar of Friendly Societies. The proposed legislation is also informed by the Report on the Private Members' Industrial and Provident Societies (Amendment) Bill 2018, prepared by the then legislation Joint Committee on Business, Enterprise and Innovation.
- 2.7 A strong theme running through the various engagements with stakeholders over the years has been the desire to provide a specific legislative basis for the co-operative model, which takes due account of the distinct characteristics of co-operatives. The legislation will provide a specific legislative basis for co-operative societies for the first time, with societies registering under the legislation being required to adhere to the co-operative principles.
- 2.8 The existing IPS legislation compares unfavourably with the modern and consolidated legislation governing companies. The proposed legislation aims to facilitate the diverse range of entities using the co-operative model and will place the co-operative model on a comparably favourable and clear legal basis as the company law model, thereby creating a level playing field with companies and encouraging the consideration of the co-operative model as an attractive formation option.
- 2.9 Among the significant provisions of the proposed legislation are the following :
  - Providing a specific legislative basis for co-operative societies for the first time
  - Providing a transition period for existing industrial and provident societies to either register as co-operative societies or convert to an alternative corporate structure
  - Updating and modernising across a range of areas including the functions and powers of the Registrar; registration, amalgamation, transfer of engagements and conversions; strike-off and restoration; shares, share capital and raising of funds
  - Introducing modern provisions relating to corporate governance, directors' duties (including enshrining the directors' fiduciary duties in the legislation), financial reporting; investigations; compliance and enforcement (including restriction and disqualification of directors)
  - Making it easier to set-up and operate a co-operative society – by reducing the minimum number of founding members (from seven to three); expanding the categories of founding members to include bodies corporate; providing for audit exemptions for smaller co-operatives; providing for virtual and hybrid participation at general meetings
  - Setting out specific legislative provisions for certain key matters; and requiring that certain other matters be dealt with in the society rules (but not being prescriptive on how, in recognition of the significant diversity across the co-operative sector and the importance of decision making remaining with members).

### **3. Identification of policy options**

### ***Option 1: Do nothing***

- 3.1 This option maintains a legislative basis that is outdated, fragmented and lacks clarity or detail in a number of areas, including in relation to corporate governance. The current legislation compares unfavourably to the modernised and consolidated company law legislation and is not an attractive corporate option for those wishing to create entities operating under the co-operative model. Maintaining the *status quo* does not address the issues raised by stakeholders over a considerable period of time. Accordingly, this option is not considered viable.

### ***Option 2: Make some targeted changes to the current legislation***

- 3.2 This option seeks to address the main issues raised by stakeholders, within the parameters of the current legislation, including reducing the minimum number of members to form a co-operative; providing for registration for “any lawful purpose”; providing for audit exemptions for small co-operatives; addressing the issues posed by the prohibition on raising funds from the public; providing for administrative restoration of recently cancelled societies. The powers of the Registrar are also being enhanced and outdated language is updated. Providing for these issues requires extensive legislative change across the existing fragmented legislation and retrofitting a range of new provisions onto the main legislation dating from the 1890’s.
- 3.3 This option does not address required modernisation across a variety of areas including Directors’ Duties; Amalgamation, Transfer of Engagements and Conversion; Examinership and SCARP; Receivers and Winding up. In addition, this option does not provide for a strengthened corporate governance regime and much needed reform relating to financial reporting, charges and debentures, investigations, compliance and enforcement.
- 3.4 These targeted changes represent a minimalist approach to reform, focusing on some quick wins, and will contribute somewhat to reducing the administrative burden on entities operating under the IPS legislation. However, the legislation will remain outdated and lacking in many aspects.

### ***Option 3: Create a modern and comprehensive legislative basis for the co-operative sector***

- 3.5 A complete overhaul of the existing statutory code provides an opportunity to introduce a modern and consolidated legal basis for the co-operative model. The outdated IPS legislation will largely be repealed and replaced with a modern legislative framework which provides a specific legislative basis for co-operative societies and will be suitable for the diverse range of entities using the co-operative model in Ireland. Existing provisions will be updated and modernised across a range of areas including the functions and powers of the Registrar; registration of co-operatives; matters relating to amalgamation, strike-off and restoration; shares, share capital and the raising of funds. The legislation will also introduce modern provisions relating to corporate governance; directors’ duties; financial reporting; investigations, compliance and enforcement. Existing industrial and provident societies will be provided with a transition period in which to register as a co-operative society; adopt an alternative corporate structure or wind up.
- 3.6 This option will also address the issues identified in Option 2 in a more coherent and efficient manner.

### ***Conclusion***

3.7 Option 3 is the preferred option.

## 4. Analysis of costs, benefits and impacts

As the proposal to create a modern consolidated statutory code under Option 3 is comprehensive and complex in nature, an analysis of the options available; summary of stakeholder views; and costs and benefits are dealt with out under each Part of the General Scheme. Option 3 involves comprehensive reform of the existing regime and under each Part, includes the minimalist changes envisaged in Option 2 – this is not explicitly set out in each case in the interests of avoiding unnecessary duplication.

In addition to the specific costs and benefits detailed under each Part, section 5 addresses more general impacts of the proposed legislation relating to National competitiveness, socially excluded / vulnerable groups etc.

### 4.1 *Part 1 - Preliminary and General*

4.1.1 **Option 1:** the current law provides very few definitions and general interpretation provisions and those that are provided are outdated.

**Option 2:** outdated language is removed / modernised.

**Option 3:** this option will put in place modern definitions and interpretations which will serve the other parts of the legislative framework. Gaps in definitions in the current law will be addressed. It also provides for the repeal of the existing Industrial and Provident Society legislation (subject to retaining the provisions relating to the Registrar’s duties to maintain the IPS Register) at the end of a transition period.

#### *Summary of Stakeholders Views*

4.1.2 Submissions by stakeholders are supportive of modernisation.

#### *Costs and Benefits*

4.1.3 No additional costs are envisaged.

### 4.2 *Part 2 - Registration*

4.2.1 **Option 1:** the current law sets out provisions governing the registration of industrial and provident societies, which include the following features: a society may carry on “any industries, businesses or trades”; a minimum of 7 persons are required to form a society; a body corporate can be a member but not a founding member of a society; while industrial and provident societies are required to have the word “limited” in their name, this does not extend to the Irish word “teoranta”.

**Option 2:** addresses some core issues raised by stakeholders - reducing to 3 the minimum number of members required to form an industrial and provident society; extending the scope of the legislation to cover registration for “any lawful purpose”; expanding the categories of members who can set up an industrial and provident society to include bodies corporate.

**Option 3:** this option retains the concept of registration of societies, their rules and amendments to these rules with a Registrar; with an appeal to Court in the case of refusal by the Registrar to register a society, rules or amendment of rules. A number of existing provisions

are being enhanced, based on provisions in company law, relating to how entities can make contracts; the common seal; requirements relating to displaying the name of the society and relating to the registered office being in the State. Significant changes include :

- providing co-operatives with a legal identity and requiring them to adhere to the internationally accepted co-operative principles;
- reserving the words “co-operative society”, “comharchuman” and their abbreviations to societies registered under this legislation and providing for the use of the word “teoranta”;
- providing explicitly that an amendment of the rules of co-operatives requires a special resolution;
- making procedures for amending rules more efficient, by removing the requirement for a witnessed declaration for rule amendments and introducing a requirement that a copy of the entire set of rules, as amended, is delivered to the Registrar.

When applying to the Registrar for registration as a new co-operative, the rules submitted must be accompanied by a declaration that the society will adhere to the co-operative principles; a statement providing information on the first directors and secretaries of the society (and, if relevant, a statement by a director if he/she is disqualified under the law of another State); the purposes for which the society is formed; a declaration that the requirements for registering the society have been complied with.

The current legislation provides a minimum set of matters that need to be addressed in the rules of societies. The proposed legislation expands on the matters that need to be addressed in the rules of the co-operatives without being prescriptive on the details, thereby providing co-operatives with the flexibility to agree rules appropriate to their own particular circumstances. In addition to these matters, co-operatives will also be free to include additional rules which reflect the nature of their operation or particular ethos, as long as these are not in breach of the proposed legislation.

#### *Summary of Stakeholders Views*

- 4.2.2 There is widespread support for legislating for the “co-operative” form of organisation; reducing the minimum number of founding members; extending the scope of activities to cover any lawful activity and expanding the categories of founding members of co-operatives to include companies and, more generally, bodies corporate.

#### *Costs and Benefits*

- 4.2.3 The new provisions will make it easier to set-up and operate co-operatives and thereby make the co-operative model a more attractive option than at present – this includes provisions on reducing the minimum number of members<sup>2</sup>; expanding founding members to include bodies corporate (which has the potential to improve access to finance and encourage collaboration between a larger range of stakeholders). The co-operative model will be protected by requiring confirmation that the co-operative principles will be adhered to and reserving the words “co-operative society”, “comharchuman” and their abbreviations. In addition, providing

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<sup>2</sup> A trend of reducing the minimum number of founding members is observed across Europe where the current average number is 3 members and a number of countries with successful co-operative movements require a minimum of 2 or 3 persons, to set up a co-operative (International Handbook of Co-operative Law, 2013)

information on the directors/secretaries (and statements on disqualification, if relevant) will provide transparency both to members and other stakeholders.

- 4.2.4 Streamlining the current procedures for amending rules will reduce the administrative and financial burden imposed on both co-operatives and the Registrar.

### **4.3 Part 3 – Shares, Legal Reserve and Nominations**

- 4.3.1 **Option 1:** the original IPS Act of 1893 contains very little detail relating to shares and share capital, resulting in matters relating to shares being generally determined by the rules of the registered societies. Additional provisions on shares and related matters were introduced in the Industrial and Provident Societies (Amendment) Act 1978, including restrictions in relation to the raising of funds<sup>3</sup> to prevent unregulated deposit-taking.

The existing legislation has provisions allowing a member of an industrial and provident society to nominate a person or persons to whom that member's property in the society (to a maximum of €15,000) may be transferred on the death of the member, outside the terms of any will or the rules of succession. The legislation also contains some arcane provisions, dealing with situations where a member dies intestate or has restricted decision-making capacity.

**Option 2:** repeals the archaic provisions on intestacy and insanity and the restrictions on raising of funds contained in the 1978 Act so that the EU Prospectus Regulation<sup>4</sup> will apply to all industrial and provident societies.

**Option 3:** In addition to the measures under Option 2, the proposals will bring clarity to the situation on deposit taking, that has applied since 1978, by expressly prohibiting a co-operative from carrying on the activity of a credit institution. The proposals will also provide a definition of, and minimum requirements for, a legal reserve.

#### *Summary of Stakeholders Views*

- 4.3.2 Stakeholders considered that the current provisions were cumbersome and not justified and supported proposals to modernise the regime relating to the raising of capital. Stakeholders provided mixed views on introducing a specific provision on a legal reserve with some questioning the need to legislate on the issue while others advocated for more specific provisions. Some stakeholders considered the provisions on nomination, in the case of death of a member, useful and worth retaining.

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<sup>3</sup> Under the existing legislation, there are specific provisions relating to non-agricultural Industrial and Provident Societies regarding the raising of funds from members; from institutions other than banks and public bodies; and from the general public. Approval is required from the Registrar in cases other than by way of subscriptions for shares where the aggregate sum being raised does not exceed €30,000 in any six-month period. Applications to the RFS in this regard are relatively uncommon with only a handful per year. A society wishing to advertise to the public to raise funds also requires the permission of the RFS (following consultation with the Central Bank). There are no records on file indicating that any such applications have been received in recent years. The above requirements do not apply to agricultural Industrial and Provident Societies.

<sup>4</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC

## *Costs and Benefits*

- 4.3.3 The concept of a legal reserve for co-operatives exists in other jurisdictions and is intended to safeguard the aims of the co-operative, provide financial stability, build solidarity and mitigate against asset stripping. The proposed legislation will require the creation of a legal reserve which should be at a level that the co-operative society considers adequate having regard to the nature, scale, complexity and risk profile of its business. However, the Department is mindful of the wide variety of co-operatives in Ireland in terms of scale, types of activity, commercial or voluntary focus etc. and is keen to ensure that the legislation facilitates this diversity and does not unduly fetter co-operatives. Accordingly, it is not intended that the legislation will be prescriptive on the operation of the legal reserve - however co-operatives will have the flexibility to include specific requirements on a legal reserve in their rules, if they so wish.
- 4.3.4 Retaining the provisions on nomination, in the case of death of a member, will contribute to strengthening the value of co-operative membership and aid generational renewal. The current provisions in the IPS legislation on intestacy and insanity, which give certain powers to the society's committee of management, are considered inappropriate as these matters are generally governed by the provisions of the Succession Act 1965 and the Assisted Decision-Making (Capacity) Act 2015. Removing these provisions will reduce the administrative burden on the directors of co-operatives.

## **4.4 Part 4 - Corporate Governance**

4.4.1 **Option 1:** the current statutory framework has few provisions on corporate governance. It is largely a matter for each Society to address governance issues in its rules, if it so wishes.

**Option 2:** provides for a minimum of 3 directors and that directors and secretaries shall be a minimum of 18 years of age.

**Option 3:** the current light touch<sup>5</sup> corporate governance regime is not considered fit for purpose and does not adequately protect the interests of societies and their members, or third parties. The current regime is outdated and in stark contrast to the comprehensive provisions under company law, which provide considerable assurance in relation to the company corporate form. A variety of enhancements are proposed to deliver a comprehensive governance regime for co-operatives, in line with the provisions for companies under company law. These include provisions relating to :

- the appointment, removal, rotation and meeting of directors, vacation of office and maintenance of registers of directors and secretaries
- the holding of general meetings, including the timeframe, location, who can convene a meeting, and persons entitled to notice of a meeting. Flexibility in relation to the holding of meetings in person, virtually or in hybrid form is provided
- the definition of "special" resolution is being updated; where the decisions have a significant impact, but do not change the fundamental nature of the co-operative, the process will be streamlined to one meeting requiring a 75% majority of the members present and entitled to vote. Where the decisions will alter the fundamental nature of the

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<sup>5</sup> It is acknowledged that this does not necessarily mean that there are poor corporate governance practices in place, but rather than much is left up to individual societies to make adequate provision in their rules. In some situations, considerable support/guidance is available from umbrella organisations, including providing model rules.

co-operative (such as amalgamation, transfer of engagements, conversion to a company or voluntary winding up) a two-stage process is provided for - after the resolution is passed at the first meeting, it will be required to be confirmed by a simple majority at a second general meeting.

- Providing for “one member one vote”, in accordance with the co-operative principles, and allowing for proxy voting - with flexibility available to co-operatives to provide otherwise in their own rules.

It is also proposed to include in the legislation several “standard provisions” which remove the necessity for co-operatives to address certain matters in their rules. However, should a co-operative find that such provisions are not suitable to its particular circumstances, it can include in its rules alternative provisions in these areas (e.g. rotation of Directors), provided that such provisions are not in conflict with any other provisions of the legislation.

In terms of protection for minorities, remedies to members in case of oppression will be introduced. Provisions are proposed on the manner in which registers, minutes and such documents must be kept, along with how they may be stored electronically. The practicalities of inspection of registers, provision of copies of information and service of notices of meetings are addressed.

The language is being modernised with references to “a committee of management” replaced by “a board of directors” and provision made for “officers of the co-operative society”.

#### *Summary of Stakeholders Views*

- 4.4.2 There was stakeholder support for reform in this area with some expressing the view that the current governance provisions do not provide appropriate levels of protection to the various stakeholders of the co-operative model such as members, creditors and the public generally. There was significant stakeholder support for providing for a minimum of three directors. There were mixed views on the proposals for streamlining the process for passing a special resolution to one meeting, generally stakeholders supported a two-step process for decisions which could alter the fundamental nature of the co-operative.

#### *Costs and benefits*

- 4.4.3 It is considered that Option 2 will lead to insignificant, if any, additional cost for co-operatives.

Under Option 3, the cost implications will generally vary from co-operative to co-operative. Many co-operatives will not be significantly affected as they already have a good corporate governance regime in place and may use model rules supplied by umbrella organisations. However, there will be an additional administrative requirement on those whose governance arrangements currently fall short of what is proposed. Societies will also be required, for the first time, to keep a register of directors and secretaries and notify the Registrar of any changes.

Strengthened modern governance provisions will provide clarity and certainty regarding the rules applying to co-operatives, thus making the co-operative model an attractive option for doing business and providing reassurance to stakeholders.

Provisions such as “one member one vote” and the requirement for at least 3 directors to be appointed will strengthen the co-operative ethos of the entities that will be registered under the legislation. The provisions dealing with circumstances where a director acts in a manner oppressive to one or more members will provide an additional avenue to minority members to seek a remedy.

The legislation will include “standard provisions” on a range of issues, such as rotation of directors, meetings of directors, managing and alternate directors but co-operatives will have the flexibility to reflect their own particular requirements and ethos on such issues, if they so wish, by including in their own rules. However, those co-operatives who choose to operate in accordance with such standard provisions are not required to address such matters in their rules.

The two mechanisms for passing of a special resolution, depending on the issue under consideration at the general meeting, will provide an appropriate balance between allowing sufficient opportunity for consideration of proposals altering the fundamental nature of the co-operative and streamlining the decision-making process in other situations.

#### **4.5 Part 5 - Duties of Directors and Other Officers**

4.5.1 **Option 1:** similar to the situation as outlined in relation to corporate governance, the IPS Acts set out relatively few specific provisions on the duties of the “committee of management”. This is, in the main, left to the societies themselves to set out, or not, in their rules.

**Option 3:** the common law principles developed by the Courts in relation to the fiduciary duties of directors of corporate bodies will be enshrined in the legislation. Issues relating to the role and responsibilities of company directors have been legislated for in the Companies Act 2014 and are now also being addressed in relation to societies. This includes expressly providing for directors’ fiduciary duties; including provisions regarding “shadow directors” and “de facto directors”; setting out the duties of a secretary of a co-operative; requiring directors and secretaries to acknowledge their legal duties and obligations imposed by the legislation; introducing provisions addressing conflicts of interest by Directors.

#### *Summary of Stakeholders Views*

4.5.2 Stakeholders did not indicate any objections to the proposed approach.

#### *Costs and Benefits*

4.5.3 Those societies already adopting best practice in this area will have addressed these issues in their own rules. For others, some additional effort will be required to ensure that there are appropriate arrangements in place to meet governance norms.

The fiduciary duties already apply to co-operative directors, under common law, so the relevant provisions merely place these duties on a statutory basis. Many of the provisions in this Part deal with circumstances rarely encountered by co-operatives, such as disclosing interest in shares and debentures, or directors providing loans to societies, and it is not expected that the provisions will create significant administrative burden. However, it is important that the legislation includes appropriate provisions should a co-operative need to deal with such issues.

The changes in the legislation which will increase clarity and transparency in relation to directors’ and other officers’ responsibilities, encourage enforcement and compliance with these duties and will serve to provide a balance between the power of directors and the rights of members, creditors and the general public. Approximating the provisions on co-operative directors with the provisions already applying to company directors, will provide reassurance on the co-operative model and create a level playing field with companies.

#### **4.6 Part 6 - Financial statements, annual returns and audit**

4.6.1 **Option 1:** the existing legislation sets out relatively few specific rules on financial reporting, annual returns and audit and those that do exist are spread over a number of Acts. The committee of management must lay before the society's AGM an income and expenditure account and a balance sheet. Every registered society is required to submit to the Registrar an annual audited financial return, no later than 31 Oct (where the financial year ended between 1 Jan and 30 June) or 30 Apr (where the financial year ended between 1 July and 31 Dec of preceding year).

**Option 2:** provides for audit exemptions for small industrial and provident societies, which are similar to the criteria used in company law but with different thresholds to reflect the nature of co-operatives; and provisions allowing for the reversal of the decision to avail of the exemption.

**Option 3:** financial reporting generally has evolved very considerably, and the applicable requirements need to be set out in more detail than at present. It is intended that the company law provisions applying modern concepts and language are cross applied, with some modifications to reflect the co-operative ethos. Modern and detailed provisions are proposed regarding the accounting records to be kept by co-operatives, the financial statements to be prepared, the periodic returns to be made to the Registrar and the auditing of the financial statements of co-operatives.

The legislation will set out provisions on approval and signing of statutory financial statements by the board of directors and the content of the directors' report, the approval and signing of the directors' report and the obligation to lay it before the members in a general meeting.

Providing for a lighter regime for small co-operatives, who will be allowed to submit abridged financial statements, is also proposed. It is intended that micro-entities may avail of several exemptions in relation to their financial statements, such as exemptions from the obligation to prepare a directors' report for every financial year and disclose the remuneration of directors, etc.

#### *Summary of Stakeholders Views*

4.6.2 There was support for modernising and standardising the financial and reporting requirements - in particular, regarding the introduction of audit exemptions for smaller entities; providing for abridged financial statements; and providing micro co-operatives with various exemptions, similar to those available to micro companies, in relation to their financial statements. Some stakeholders requested additional time for filing annual returns and flexibility to change the financial year end (similar to provisions under company law).

#### *Costs and Benefits*

4.6.3 A review of a sample of annual returns to the Register indicated that Irish co-operatives registered as industrial and provident societies generally adhere to current accounting standards. As a consequence, it is considered that the new regime will not affect the majority of co-operatives to a significant extent in terms of the adherence to specific accounting standards. However, there will be additional administrative requirements on those co-operatives who do not already prepare the information linked to director's reports, disclose the remuneration of directors, provide information on payments to third parties for services of directors, etc.

4.6.4 The outdated and fragmented provisions on accounts, accounting records and audit will be replaced with updated provisions, which will provide for reporting in accordance with modern

standards, and place co-operatives on a similar footing to the basic type of limited liability companies (e.g. in relation to financial statements, directors' reports, annual returns and audit).

- 4.6.5 The provisions for audit exemptions and a less onerous reporting regime for smaller co-operatives will substantially reduce the administrative and financial burden on many co-operative societies. Simultaneously, by introducing a safeguard which will allow an easy procedure for reversing the decision to avail of an audit exemption, an appropriate balance will be achieved between reducing the burdens on smaller societies while ensuring the protection of stakeholders, including the members, whose livelihoods depends on the proper functioning of the society.
- 4.6.6 The new regime will encourage filing on time (with penalties for late filing), enhance transparency, make the co-operative model more attractive to creditors and lending institutions, and provide better protection for members.

#### **4.7 Part 7 - Charges and debentures**

- 4.7.1 **Option 1:** unlike companies, industrial and provident societies were not exempted from the provisions of the Bills of Sale (Ireland) Acts 1879 to 1883 – as a result, these entities could not raise debentures on floating charges. This difficulty was subsequently addressed, but only for certified agricultural co-operatives, who were allowed to raise such debentures by the Agricultural Co-Operative Societies (Debentures) Act 1934. Such debentures are recorded on a register of charges maintained by the Department of Agriculture, Food and the Marine.

**Option 3:** it is proposed that the provisions on charges and debentures applicable to companies will be extended to the whole co-operative sector. The provisions will allow co-operatives to issue debentures secured with fixed or floating charges and require the co-operative to register such charges with the Registrar. Information relating to the charges will be made freely available to the public. Priority will be determined by reference to the date of registration with the Registrar. The proposal will introduce two separate procedures for the registration of charges, similarly to provisions under the Companies Act, where -

- a one-stage procedure is available where particulars of all charges created must be delivered to the Registrar within 21 days of their creation, or
- an alternative two-stage procedure is provided for which requires that an initial notice is sent to the Registrar stating the intention of the co-operative to create a charge; and this is then followed up by a more detailed notification within 21 days of the creation of the charge. The purpose of the two-stage procedure is to grant priority from the date of the initial notice, ensuring that there is no risk of charges losing priority during the “registration gap” between creation and registration of the charge.

An industrial and provident society which issued debentures and converts to a co-operative society will be required to register existing charges with the Registrar.

#### *Summary of Stakeholders Views*

- 4.7.2 Stakeholders requested that the option for raising debentures on floating charges is extended to all co-operatives. In addition, stakeholders expressed support for aligning the provisions for co-operatives with those applying to companies under company law.

## *Costs and Benefits*

- 4.7.3 The new regime will place an administrative requirement on the Registrar to create and maintain a Register of Charges, similar to the Register already operated for companies. It is expected that there will be an insignificant additional administrative cost on co-operatives to register debentures on floating charges.
- 4.7.4 Introducing modern charges and debenture provisions will improve the societies' access to finance, allow co-operatives across all sectors to be treated on equal footing with companies. A modern, up to date Register of Charges will provide transparency to financial providers and encourage them to extend loans more readily to co-operatives.
- 4.7.5 The registration of charges with the Registrar and making such information freely available to the public will be in the interests of commercial certainty and efficiency: unless a prospective lender knows precisely what charges already exist over a co-operative's property, they will be discouraged from lending because of the risk that all of the co-operative's assets are already heavily mortgaged. The principal consequence of non-registration is that the charge is void against liquidators and creditors, and the secured creditor's loan becomes an unsecured loan without priority. In addition, the two-step procedure for registration of charges aims at encouraging lenders to be more willing to advance funds as they will be able to achieve an enhanced security priority to a co-operative's assets.

## **4.8 Part 8 - Amalgamation, Transfer of Engagements and Conversions**

4.8.1 **Option 1:** the current legislation provides for amalgamations, transfer of engagements and conversions of societies to companies and vice versa. Currently, the legislation allows:

- two or more industrial and provident societies to amalgamate to form a new society; two or more societies to amalgamate into one of the societies; a society to amalgamate with a company
- an industrial and provident society may transfer part or all of its engagements to another society or a company
- an industrial and provident society may convert into a company and a company may convert into a society.

The legislation on amalgamations, transfer of engagements and conversions has undergone very few changes since originally drafted over a century ago and some of the concepts are outdated, others lack clarity and detail. Examples include:

- "amalgamation" and "transfer of engagement" may describe the same process, namely where two or more societies amalgamate but instead of creating a new successor society, one of the societies survives and all assets, liabilities and members are transferred into that society
- where existing societies amalgamate to create a new society, the law does not require a dissolution of the original societies
- where a society amalgamates with a company, the procedure to follow is not clear
- in partial transfers, there is lack of clarity on whether a creditor can seek to enforce a claim against the transferee society exclusively or has a choice between the transferor and transferee
- the legislation does not set out the obligations of the committee of management in relation to the amalgamations, transfers of engagements or conversions.

In the period 2004-2021, there were 34 amalgamations of industrial and provident societies, 29 conversions of societies into companies and 4 conversions of companies into societies registered with the RFS. Transfers of engagements have not been commonly used in recent years, with only 5 transfers executed in the above period, none of them partial transfers.

**Option 3:** providing modernised provisions on amalgamations, transfer of engagements and conversions, based on aspects of the Credit Union Act 1997 and the Companies Act 2014, as appropriate. Following the approach used in the credit union legislation, it is proposed that amalgamations will proceed on the basis of forming a new society, with the original societies being dissolved.

Based on available information, the Department understands that a number of the options currently available have been rarely used, if at all, in recent decades, and it is not intended to provide for the following in the new legislation: amalgamations between co-operatives and companies; partial transfers of engagements; transfer of engagements from a society to a company.

The legislation will include provisions on full transfers to other societies. However, the transferor co-operative will be required to transfer fully not only its liabilities but also all assets and be dissolved on completion of the process (in line with the approach adopted in the Credit Union Act 1997). The options of a society converting into a company and vice versa will be also retained.

This option also envisages a requirement, similar to the requirement set out in the company legislation, that the directors of the co-operative will prepare a directors' explanatory report which will at least explain the terms of the amalgamation, transfer of engagements or conversion and the legal and economic grounds for, and implications of, the terms. An expert's report will also be prepared to examine and report on the terms. These reports need not be prepared where the members agree they are not required.

#### *Summary of Stakeholders Views*

- 4.8.2 Bilateral engagements with stakeholders and liaison with the Registrar of Friendly Societies indicated dissatisfaction with the current arrangements, which are considered to be outdated and lacking in clarity.

#### *Costs and Benefits*

- 4.8.3 Option 3 will require the preparation of a directors' explanatory report and an expert report in the case of an amalgamation or a transfer of engagements (where the members may join the transferee co-operative). These reports will increase transparency and assist in the decision making by members. However, the members have the option of not requiring such reports if they so decide. It is understood that some societies already have the requirement for such reports in their rules.
- 4.8.4 The proposal will streamline the legislation by repealing provisions on obsolete or rarely used types of activities, e.g. amalgamating a society with, and transferring engagements to a company; and partial transfers. The removal of the option for partially transferring engagements will also prevent potential asset stripping from the transferor society and allow the Registrar to strike off societies that have, in reality, ceased to exist but remain on the register.

#### **4.9 Part 9 – Examinership and SCARP; Part 10 – Receivers and Winding up; Part 12 - Investigations, Compliance and Enforcement**

4.9.1 **Option 1:** provisions of company law relating to winding up and examinership were extended to industrial and provident societies:

- the winding up provisions of company law have been extended, with minor modifications, via the Industrial and Provident Societies (Amendment) Act 1978.
- the company law provisions on examinership were extended, with minor modifications, via the Friendly Societies and Industrial and Provident Societies (Miscellaneous Provisions) Act 2014.

The company law provisions regarding receivers have not been extended to industrial and provident societies. The provisions of the Companies (Rescue Process for Small and Micro Companies) Act 2021 have also not been extended to registered societies.

In terms of inspections and investigations, the current statutory code provides for the inspection of the books and affairs of an industrial and provident societies, following an application to the Registrar from a certain proportion of the members. The Registrar may appoint an accountant or actuary to inspect the books, or with the consent of the Minister, either appoint an inspector to examine and report on the affairs of a society or call a special meeting of the society.

In relation to compliance and enforcement, the IPS Acts set out the offences, penalties and grounds for legal proceedings.

**Option 3:** in addition to the already cross applied provisions on Examinership and Winding up in the current IPS Acts, the proposed legislation will cross apply, with minor modifications to account for the co-operative ethos, those aspects of the Companies Act 2014 dealing with: Small Companies Administrative Rescue Process (SCARP); Receivers; Investigations; Compliance and Enforcement.

Although the company law provisions on examinership apply to industrial and provident societies, none have availed of that procedure so far. SCARP which mirrors elements of examinership, but in a simplified administrative context, is considered a quicker and cheaper option and will be extended to co-operatives.

The proposed legislation on receivers will set out the notifications and information that must be provided once a receiver is appointed; describe the contents of the statement as to the affairs of the co-operative required to be submitted to the receiver; set out the powers and duties of receivers and provide for the disqualification, resignation and removal of receivers. It is also proposed that the provisions on dissolution by an instrument of dissolution will be repealed and the winding up provisions of company law will apply to all co-operatives.

The cross-application of the Companies Act investigations provisions will give the Corporate Enforcement Authority (CEA) a range of powers in this area. The CEA may give a direction to a co-operative to produce its books or documents in order to determine *inter alia* whether an inspector should be appointed to investigate the co-operative society or if the affairs of the society have been conducted with the intent to defraud its members or creditors. Investigations by the CEA may precede more detailed investigations involving the appointment of an inspector ordered by the Court. The applications for investigation by Court appointed inspectors shall be made to the High Court, or in respect of small and medium co-operative societies to the Circuit Court.

In relation to compliance and enforcement, directors of an insolvent co-operative may be restricted for five years by the court and may only be a director of a co-operative or company that has been adequately capitalised by their members or shareholders. A director may also be disqualified from being appointed or acting as a director or other officer, statutory auditor, receiver, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of any company or co-operative, for such a period as directed by the court or automatically for five years if convicted on indictment for an offence under the legislation. A disqualified director may apply for relief to the court from a disqualification order. The Registrar will maintain a public register of disqualified and restricted directors.

There will be provision for both restriction and disqualification undertakings to be given by directors, which will facilitate the saving of both cost and Court time; for dealing with enforcement in relation to disqualification and restriction orders; and a register of disqualified persons will be created.

Provisions are made for offences generally and the taking of summary prosecutions by the CEA or the DPP. Some specific offences may be summarily prosecuted by the Registrar. Provisions will be made for enforcement of offences such as trading under a misleading name and additional general offences (destruction, mutilation or falsification of documents relating to the property or affairs of the co-operative).

The company law four-tier categorisation of offences will apply.

The cross application of the above provisions, rather than being set out in full in the proposed legislation, will reduce unnecessary duplication and avoid the necessity of future amendments to co-operative law to reflect further enhancement of company law. As a result, the proposed co-operative legislation will be more compact and more accessible for stakeholders.

### *Summary of Stakeholders Views*

4.9.2 Stakeholders did not engage on these issues to any significant extent.

### *Costs and Benefits*

4.9.3 As pointed out in the RIA<sup>6</sup> prepared in conjunction with the General Scheme for the Companies (Small Companies Administrative Rescue Process and Miscellaneous Provisions) Bill 2021 “discussions with practitioners on the Company Law Review Group indicate costs ranging from €80,000 - €120,000 for the average examinership”, which could well be the reason why the examinership is not an attractive option for small societies. For comparison, SCARP is estimated to cost in the region of €20,000 - €50,000, dependent on creditor engagement and the number of Court applications required by a particular company. It is considered that SCARP is a cost-efficient option for viable but insolvent small companies, therefore the process will also benefit small co-operatives by providing the option to restructure and survive bankruptcy. The related cost could be outweighed by the long-term benefits associated with resolving the solvency issues and staying in business.

4.9.4 The modern provisions being introduced in the areas of investigations, compliance and enforcement will significantly strengthen the current regime as well as bringing clarity in relation to obligations. This will be of benefit to co-operatives and their stakeholders by

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<sup>6</sup> [RIA-General-Scheme-SCARP.pdf \(enterprise.gov.ie\)](#)

providing reassurance that there is a robust regime in place with consequences for non-compliance.

- 4.9.5 There will be some additional administrative costs for the Registrar in relation to the creation and maintenance of a Register of Disqualified and Restricted Persons. There will also be some resource implications for the CEA due to the expansion of their remit to cover co-operative societies. However, based on RFS experience with current societies and the relatively small number of societies, when compared to the much larger number of companies, this is not expected to be significant.

#### **4.10 Part 11 - Strike off and restoration**

- 4.10.1 **Option 1:** the current legislation provides that the Registrar can cancel a society on a number of grounds: where the minimum number of members has been reduced below 7; where the society has ceased to exist or function or where it has suspended its business for a period of not less than six months, at the request of the society; on proof that it exists for an illegal purpose or if it has been wound up by the Court. The Registrar has the power to suspend a society for a period of time - however, it is not specified what actions the society needs to take to reverse the suspension. A suspended society loses the privileges of a registered society (limited liability status). The cancellation or suspension can be appealed to the court. There is no time limit for submitting an application for restoration of a cancelled society.

**Option 2:** provides for an administrative process for the restoration to the Register of a society which has been cancelled within the previous 12 months.

**Option 3:** the proposals will provide for strike-off of co-operatives from, and restoration to, the Register, based on the provisions of the Companies Act 2014. The existing concept of “cancellation” will be replaced by “strike off” and it will be explicitly provided for that once a co-operative is struck off the register it will be dissolved. The legislation will distinguish between voluntary and involuntary strike off and will provide clear grounds on which the Registrar can strike off a co-operative from the Registrar, such as failure to file an annual return or operating below the minimum membership required by the legislation.

The existing regime provides for suspension of a society for non-compliance – this will not be retained but co-operatives will have the opportunity to address non-compliance on certain grounds before facing strike off, e.g. submitting outstanding annual returns to the Registrar or ensuring that the co-operative has at least three members. Provision is being made for a new Gazette, to be published by the Registrar, containing notices of the intention to strike off and notices confirming strike off of co-operatives.

In addition to the administrative procedure for restoration proposed under Option 2, it is proposed that the restoration on application to Court could be made within 20 years of the date of dissolution.

#### *Summary of Stakeholders Views*

- 4.10.2 Stakeholders had expressed support for introducing an administrative provision for restoration of societies who have been recently cancelled.

#### *Costs and Benefits*

- 4.10.3 The proposed administrative procedure for restoration which features under both options is less expensive and time-consuming compared to the existing Court procedure.

- 4.10.4 The proposals will streamline the provisions relating to the cancellation and restoration and provide clarity on the required procedures to be followed and the functions of the Registrar and the Courts. Introducing provisions for a clear process which allows non-compliant co-operatives with an opportunity to take corrective action while remaining on the Register is considered a more appropriate approach than the current regime which results in suspension from the Register, thereby losing limited liability status.
- 4.10.5 The existing concept of “cancellation”, which does not necessarily lead to a dissolution of a society, will be replaced by “strike off” and the explicit provision that once struck off the register a co-operative will be dissolved will close a gap in the current legislation. Another legislative gap being closed is limiting the time for the restoration on application to the court to 20 years from the date of dissolution rather than current indefinite period for the restoration.
- 4.10.6 The provisions that the Registrar shall publish in the Gazette a notice of the intention to strike off a co-operative will increase transparency and accessibility. The publication of the notice of strike off in the Gazette is a less expensive alternative to the current requirement for the notice to be published in *Iris Oifigiúil* and a local newspaper.

#### **4.11 Part 13 - Functions of the Registrar**

4.11.1 **Option 1:** the provisions regarding the duties of the Registrar precede the original IPS legislation and date from the Friendly Societies Act 1875, with no major changes made to these duties in the intervening period. The main function of the Registrar is to assess and register applications and any subsequent amendment of rules of the societies, and to ensure that registered societies meet their statutory obligations with regard to filing returns. The Registrar has a number of enforcement mechanisms available to be used against non-compliant co-operatives, albeit in circumstances where the powers in relation to investigations and inspections are limited.

**Option 2:** addresses a variety of administrative and technical issues requested by the Registrar including providing for electronic filing of documents; the authentication of documents; admissibility of certified copies.

**Option 3:** fully modernise and align the powers and duties of the Registrar with the powers and duties of the Registrar of Companies.

The Registrar of Friendly Societies has functions in relation to three entity types, all operating under their own specific legislation - industrial and provident societies (mainly co-operatives); friendly societies; and trade unions (which include employee unions, employer associations and trade associations). The functions of the Registrar in relation to friendly societies and trade unions are largely unaffected by the proposed legislation, other than in relation to a number of technical amendments to improve efficiency. However, arising from the Friendly Societies and Industrial & Provident Societies (Miscellaneous Provisions) Act 2014 it is no longer possible to register a new friendly society and the Registrar functions relate to those friendly societies registered before this and which remain on the Register. In the circumstances, it is proposed to rename the Registrar of Friendly Societies as the Registrar of Co-operative Societies and Trade Unions. It is also proposed that the Registrar regularly publishes (electronically) a Gazette.

#### *Summary of Stakeholders Views*

4.11.2 There was stakeholder support for changing the name of the Registrar to reflect the fact that the Registrar will have functions in relation to co-operatives.

#### *Costs and Benefits*

4.11.3 The proposals will improve administrative efficiency within the office. In particular, providing for electronic filing will reduce manual input and improve processing times. Option 3 will provide for consistency in terms of powers available to the Registrar, whether dealing with co-operatives or companies. The new title of the Registrar of Co-operative Societies and Trade Unions will enhance the visibility of the co-operative sector and better reflect the current reality where friendly societies are no longer being registered.

### **4.12 Part 14 - Transitional Provisions**

4.12.1 These provisions only arise in the context of Option 3 and relate to options available for existing industrial and provident societies. As outlined previously in section 2.5, maintaining the *status quo* is not envisaged for existing industrial and provident societies. It is proposed that only entities who have a co-operative identity will be registered and function under the legislation. Such societies are required to adopt the co-operative principles and convert to a co-operative society using the procedure outlined in this Part. Those societies who do not intend to become co-operatives will have the option to wind up voluntarily or convert to a company. A transition period of 30 months will be available, from the date of commencement of the legislation, to enable existing societies to choose the option most appropriate to their needs and make the necessary arrangements. Those societies who do not pursue any of the above options will, at the end of the transition period, be dissolved. Provisions are also set out regarding the treatment of any charges and debentures of existing societies and the provision of closing accounts by the existing industrial and provident societies converted to a co-operative or a company.

#### *Summary of Stakeholders Views*

4.12.2 Stakeholders were in favour of a transition period with some raising concern that the initial proposal for an 18-month transition period might not be sufficient given the need for discussion and approval of the chosen option and subsequent administrative requirements (including changes and application to the Registrar).

#### *Costs and Benefits*

4.12.3 All existing industrial and provident societies will be required to make a choice as to their future corporate structure, as a consequence of the proposed legislation. Those who have a co-operative ethos can register as co-operative societies. Other societies can pursue an alternative option (e.g. convert to a company) or choose to wind up. Industrial and provident societies will incur one-off costs associated with familiarisation with the legislation and may require professional advice on the most appropriate option for their particular circumstances.

4.12.4 Existing societies that do not avail of the option to either convert to a co-operative, to a company or wind up will, at the end of the transition period, be deemed to be dissolved. The alternative would be a parallel regime whereby such societies would continue to operate under IPS legislation (which would need to be substantially amended to address various shortcomings) and those adhering to the co-operative ethos would operate under the new co-operative legislation. This is not considered an optimal approach.

- 4.12.5 There will also be costs associated with implementing whatever option is chosen, whether converting to a co-operative society or to a company or winding-up. Those societies converting to a co-operative society will need to review their rules and make any changes required to ensure compliance with the new regulatory requirements.
- 4.12.6 It is expected that the majority of existing societies will seek to register as co-operatives and some existing companies, who adhere to the co-operative principles will also seek to convert to co-operative societies. Accordingly, there will be an additional administrative burden on the Registrar, who will need to process such applications during the transitions period and one-off costs related to the creation of new Registers – Register of Co-operative Societies; Register of Charges; Register of Disqualified and Restricted Persons.
- 4.12.7 Societies who subscribe to the co-operative ethos and principles will be registered on the new Co-operative Societies Register, thus ensuring that the Register contains only genuine co-operatives which will enhance the visibility and trust in the co-operative model.

#### **4.13 Amendments to other Acts**

These provisions only arise in the context of Option 3 and relate to relatively minor updating of other legislation.

### **5. Other Impacts**

- 5.1 As indicated previously, the specific costs and benefits have been addressed above under each Part of the General Scheme. However, more generally, other impacts of the proposed legislation are summarised below.

#### *National Competitiveness*

- 5.2 The co-operative model in Ireland is underused, particularly when compared with other countries. It is considered that there is considerable potential in utilising the co-operative model to promote entrepreneurship, generate employment and support a range of social enterprises and community activity.

A significant disincentive to a more vigorous use of the co-operative model is the archaic nature of the IPS legislation. By placing the co-operative model on a modernised and clear legal basis and providing co-operatives with legal identity for the first time, the proposed legislation will encourage the consideration of the co-operative model as an alternative and attractive corporate form.

The new legislation will also provide clarity and certainty to co-operatives and their members and to other stakeholders including employees, creditors and professional advisors. The cross-application, with appropriate modifications, to aspects of the Companies Act 2014 will also help to make the legislation more accessible and more widely understood by practitioners and the business community.

Extending the facility for issuing debentures on floating charges to all types of co-operatives, repealing the outdated provisions regarding raising of funds and introducing provisions on a legal reserve will also help to improve access to finance, increase the attractiveness of the co-operative model for investment and ensure that opportunities for growth can be availed across the whole co-operative sector.

*Socially excluded or vulnerable groups including gender equality, poverty, people with disabilities and rural communities*

5.3 Co-operatives operate on the basis of 7 co-operative principles, one of which is *Concern for Community*, and by nature many co-operatives are community orientated. In rural areas and small communities, the co-operative model has the potential to deliver important services – particularly in areas where businesses with a more commercial focus may not be engaging. A modernised legal framework will contribute towards realising the potential of co-operatives in promoting local development, developing community services and projects and supporting a range of voluntary activity.

*The Environment*

5.4 No particular impacts have been identified.

*Significant policy change in an economic market including impacts on competition and consumers*

5.5 No particular impacts have been identified.

*North-South, East-West*

5.6 No particular impacts have been identified.

*The rights of citizens/human rights*

5.7 No particular impacts have been identified.

*Compliance burden on third parties e.g., citizens and business*

5.8 No particular impacts have been identified.

*SME Test*

5.9 The SME test is a regulatory impact assessment tool which seeks to help policymakers consider the perspective of SMEs when developing legislation / regulations. It also helps to identify any disproportionate impacts on SMEs and consider alternative policy options or mitigating measures to minimise such impacts.

5.10 While definitive statistics are not available, the Department understands that the majority of existing industrial and provident societies are small. The Department did not find that the proposed legislation places a disproportionate burden on small societies. In fact, a number of the initiatives being introduced are specifically intended to benefit these entities.

5.11 As outlined under *Transitional Provisions*, there will be one-off costs related to the transition to a new corporate form. There will also be some additional ongoing administrative requirements and related costs arising from the enhanced regime for corporate governance and financial reporting. However, it is considered that the benefits associated with a modern, consolidated and fit for purpose legislative framework and the greater assurance provided for all stakeholders justify the envisaged compliance costs.

5.12 An inherent aspect of the approach being taken is to place co-operatives on a level playing with companies. In this regard, there are a number of initiatives that will be of particular benefit to small co-operatives :

- a significant aspect of the proposals is the desire to facilitate the setting up and subsequent operation of small co-operatives. In this context, the minimum number of members required to form a co-operative will be reduced to three.
- the proposed legislation will provide for audit exemption and abridged accounts for small co-operatives and a number of exemptions in relation to financial statements for micro

co-operatives. This will place small co-operatives on a similar footing to small companies, who can currently avail of similar provisions under company law.

- the proposed legislation envisages that small co-operative societies will be treated more favourably than large co-operatives in some other areas. They will be able to apply to the Circuit Court to appoint an examiner or an inspector to investigate the affairs of the co-operative, which is a less expensive and time-consuming process compared to the High Court route available to large entities. It is also proposed that the provisions on the rescue process for small and micro companies (SCARP) will be extended to micro and small co-operative societies, thus creating another avenue for rescuing viable entities who experience temporary difficulties.

## **6. Consultation**

As part of the reform of the legislation governing co-operatives in Ireland, the Department held public consultations in 2009 and 2016. The responses to these consultations have informed the work undertaken on the development of the general scheme. In the context of finalising the legislative proposals, the Department provided stakeholders with a further opportunity to submit views on a number of specific issues in a further public consultation held in early 2022<sup>7</sup>.

During the drafting of the proposed legislation, the Department has consulted bilaterally with a range of stakeholders on specific Parts of the General Scheme, including umbrella organisations, accountants, legal practitioners and representatives of the co-operative movement. The Department has also conducted meetings with relevant Government Departments, Offices and Agencies to discuss the scope of the proposed legislation in the areas of interest to these stakeholders.

## **7. Enforcement and Compliance**

The General Scheme includes a variety of provisions relating to enforcement and compliance and these are addressed in the relevant Parts at section 4 of this document.

## **8. Review**

The impact of the new legislation will be kept under review, and as part of the formal review mechanism, a post-enactment report will be completed 12 months after enactment.

## **9. Publication**

The Department is publishing on its website, the General Scheme, this Regulatory Impact Analysis and the Policy Response to issues raised in the Public Consultation (conducted in early 2022).

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<sup>7</sup> [Public consultation on Reform and Modernisation of Legislation regarding Co-operative Societies](#)