



Application of SME Test

General Scheme on Co-operative Societies Bill 2022

Screening question

Q. To what extent is the proposed legislation relevant for SMEs?

Not relevant Relevant Highly relevant

The following questions are relevant to consideration of the above question:

- Are SMEs within the scope of the legislative initiative?
- Does the initiative specifically target SMEs?
- Will SMEs be significantly impacted directly or indirectly by the initiative?
- Are SME impacts likely to be more substantial than on other companies, for example, in terms of adverse effects?

If 'Relevant' or 'Highly Relevant', please proceed to complete Sections 1-4.

1. Identification of affected businesses

Q1a: Please identify the types of SMEs that will be directly affected by the proposed legislation.

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A



Q1b: Please identify the types of SMEs that will be indirectly affected by proposed legislation (i.e. SMEs not in scope, but potentially affected indirectly, for instance through impacts on supply chain)

Micro (1-9 employees)

Small (10-49 employees)

Medium (50-249) employees

N/A

Q1c: Will the Regulatory Impact Assessment include an estimate of the numbers of micro, small and medium companies affected directly or indirectly by the legislation?

Yes No N/A

Q1d: Will the proposed legislation have a greater impact on SMEs in any particular economic sector?

Yes No

If Yes, please specify.

Q1e: Will the proposed legislation have a greater impact on SMEs in any particular region?

Yes No

If Yes, please specify.



2. Consultation

2.1 What consultation will take place to capture input from the SME community, particularly those potentially most impacted by this initiative?

Public consultation

Other (e.g. stakeholder meetings, targeted consultation)

N/A

If Other, please provide details:

2.2 Will the Regulatory Impact Assessment describe how the input received from the SME community has been taken into consideration?

Yes No

If no, please specify a reason:

While the RIA does not go into details on how the input received by SMEs is taken into consideration, references are made to the most important areas where SME stakeholders sought amendments to the legislation, such as providing for audit exemptions and reducing the minimum number of members to form a co-operative. The Policy Response Paper to the public consultation held in 2022 which will be published together with the RIA and the General Scheme of the Bill provides further information on the input received by SMEs (predominantly community co-operatives and social enterprises) and how it has been taken into consideration when developing the proposed legislation.



3. Assessment of the impacts on SMEs

Q3a What are the expected positive impacts of the legislation on SMEs (e.g. improved regulatory framework or working conditions, cost savings)?

- Modern regulatory framework providing clarity, certainty and adequate protection to stakeholders
- Cost savings by introducing audit exemptions and submitting abridged accounts for SMEs
- Facilitating the setting up of small co-operatives by reducing the minimum number of members who can form a co-operative
- Improving access to finance as a result of removing outdated provisions on raising of funds, introducing provisions on legal reserve and extending the debenture provisions to all types of co-operatives.
- Creating another avenue for rescuing viable SMEs who experience temporary difficulties by extending the provisions on the rescue process for small and micro companies (SCARP) to a micro and small co-operative societies.

Q3b Will the proposed legislation result in any of the following impacts for SMEs?

- Administrative costs, including the obligation to provide information on the activities or products of the company, including one-off and recurring administrative cost
- Other compliance costs, including the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards.
- Other impacts, including on business entry and exit; competition and competitiveness, whether proposed regulations might discourage, entrepreneurship or innovation; potential impact of any proposed exemption thresholds on business growth; impacts on SME population composition and location.

Yes No

Q3c If yes, please describe impacts, including whether any impacts will affect particular cohorts of SMEs differently, for example based on size (micro, small and medium), age of the business (e.g. start-up costs for new companies), economic sector and geographic location.



While definitive statistics are not available, the Department understands that the majority of existing industrial and provident societies are small. The proposed legislation will impact all entities which will be governed by that legislation, including micro and SME co-operatives. 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.

Existing Industrial and Provident Societies will face one-off costs related to the transition to a new corporate form (a co-operative or a company). There will also be some additional ongoing administrative requirements and related costs arising from the enhanced regime for corporate governance and financial reporting such as providing the following to the Registrar of Co-operative Societies and Trade Unions: a statement on the first directors and secretaries of the society; if necessary, a statement by a director if he/she had been disqualified under the law of another State; when amending the rules, a declaration stating that the cooperative society will continue to operate in accordance with the co-operative principles; information on any changes of directors; when submitting the annual return, a directors' report. Additional administrative costs will be placed on directors of co-operatives who will be required to: acknowledge their legal duties and obligations imposed by the legislation; disclose information on transactions between directors and their co-operative societies that involve a conflict of interest; disclose their interest in contracts made by the co-operative and account to their co-operative for gains made and indemnify their societies for losses caused as a result of their breach of duty, etc.

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.

In the areas where it is considered that the general provisions place disproportionately higher burden on micro and small co-operatives or are considered a barrier for establishing and operating such co-operatives alternative arrangements have been proposed for SMEs. This is also an inherent aspect of the approach being taken to place co-operatives on a level playing with companies. Provisions that will be of particular benefit to small co-operatives include:

- 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
- the proposed legislation provides for reduced information requirements on micro co-operatives in relation to their financial statements, including but not limited to exemptions from the obligation to prepare a directors' report for every financial year, disclose the remuneration of directors, provide information on payments to third parties for services of directors, provide information on the number of people employed in the entity and disclose information on remuneration for audit related



work. This and the provisions on audit exemptions and abridged accounts 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.

4. Assessment of alternative options and mitigating measures

4a Has the regulatory impact assessment provided evidence that the proposed legislation will result in a relatively higher compliance burden for micro, small and/or medium sized enterprises, compared to large companies

Yes No

The proposed legislation has been developed taking the impact on SMEs into consideration from the start of the process, therefore where disproportionate compliance burden for micro and SMEs were identified, alternative measures were proposed for these cohorts.

4b Has there been consideration of any measures to mitigate against the regulatory impact on SMEs?

Yes No

Please provide details.

Please see reply to Q3c.



4c If mitigating measures have been included, has the Regulatory Impact Assessment included a consideration of any risks associated with flexible alternatives being considered for SMEs, including potential impacts on business growth in the event of a threshold exemption?

Yes No N/A

The RIA indicates that the proposed mitigating measures on audit exemptions are not applicable to co-operatives, unless the co-operative expressly provides for such exemptions in its rules and the provisions could be reversed if a small proportion of the members wishes so.



Guide to using the SME Test

Purpose of the SME Test

In summary, the main objective of the Test is not to avoid regulating smaller businesses, but instead, to ensure the ease of use, understanding and application of regulation for SMEs.

Navigating the legal environment and complying with regulations can be more difficult for SMEs. Since regulations can bring about fixed costs, these costs can be more difficult to bear for SMEs because of the size of the firm and the resources constraints that they sometimes face (i.e. limited access to finance, information asymmetry, etc.). In designing regulations, policymakers need to be aware of the impact of regulatory costs on businesses and citizens and the disproportionate burden they can have on small to medium-sized enterprises and micro businesses.

The SME test is a regulatory impact assessment tool that seeks to help policy-makers to consider the perspective of SMEs when making regulations, by identifying the relevant SMEs groups that are affected, enabling engagement and consultations with them and estimating the positive and negative impacts that regulations will have on those groups. The SME test also helps to identify disproportionate impacts on SMEs, and allows policy makers to propose alternative policy options or mitigating measures to minimise impacts. In other words, it facilitates regulators to consider alternative solutions and propose adaptable schemes in order to ensure that the regulatory environment allows SMEs to operate, grow and scale-up.

When to conduct the SME Test

The SME test should be applied at the early stages of the regulatory impact assessment process, when the policy problem is being identified and discussed, and potential alternative solutions are being considered. An SME perspective should be included at this stage, among other things, to determine if for the solutions to the identified policy problem (i.e. a change in behaviour of) SMEs are relevant, and if so, are there alternative means are to realise this.

Conducting the SME Test



1. Identification of affected businesses

The SME Test must take in account that the burden of regulation can vary greatly from a micro business (1-9) to a medium sized business (50- 249). The costs, in terms of time and money, can differ as a micro business is often reliant on the entrepreneur or owner/manager to adhere to the relevant regulations. Larger SMEs tend to have the economies of scale to better absorb new regulatory compliance requirements.

In addition, there may be greater impacts on SMEs in particular sectors or geographical regions. Therefore, consideration should be given to the following questions: Are all businesses affected? Are all sizes of SMEs affected? Is it sector or region specific? How many businesses will be required to comply?

2. Consultation

Policymakers should consider whether early consultation with SME representative bodies, sectoral groups or relevant Agencies is required.

As per Department of Public Expenditure and Reform guidelines, consultation can be formal or informal, but it is important to document the feedback received from stakeholders.

As SMEs do not have access to the same resources as larger companies, allow for a longer timeframe for their opportunity to submit their feedback.

Consultation methods could include the following:

- Online public consultation
- Consultation with SME representative bodies
- Notifications of consultation to database of interested stakeholders
- Interviews and panels with experts
- Webinars
- Roundtables
- Physical meetings

As with engagement and consultations with any other type of stakeholders, engagement with SMEs should not end when their insights are gathered. The most important aspect is that these insights are taken into account to inform the regulatory assessment process, particularly when assessing the potential impacts, designing mitigating measures and developing the final regulation.

3. Measurement of the impact on SMEs



As is the case of with Regulatory Impact Assessments, an effective SME test should consider all relevant direct and indirect costs, benefits and other impacts that might arise from different regulatory options, to enable meaningful comparisons. Policy makers should assess how those costs, benefits and other impacts could affect the various groups of SMEs previously identified, and not only SMEs as a sole group.

Given that SMEs are heterogeneous, the same regulation might even impact various SMEs in different forms, since impacts might depend on factors such as the size, age of the firm (since younger firms may not survive high entry or incorporation costs), the sector it operates, etc. These differences may be disproportionate, and not justifiable when balanced against the overall benefits of the regulatory option. This justifies a more granular assessment of the costs, benefits and other impacts.

Also, policy makers should be aware that SMEs can be affected not only by regulations that are directed at them, but also by how regulations impact their suppliers and customers, as SMEs often depend to some degree on a limited customer and product base.

The benefits of new legislation may be offset by various regulatory impacts which may be disproportionately felt by SMEs in comparison with larger companies, including:

- Compliance costs which can take the form of the obligation to pay fees or duties; and costs created by the obligation to adapt the nature of the product/service and/or production/service delivery process to meet economic, social or environmental standards;
- Administrative costs can be created by the obligation to provide information on the activities or products of the company including one-off and recurring administrative costs.

In addition, consideration should be given to the following elements:

- Possible impacts on barriers to entry,
- Competition in the market and market structure, for example in terms of possibilities for SMEs to enter markets;
- Possible impact on innovation.

4. Assessment of alternative options and mitigating measures



If the application of the SME Test shows that SMEs are not disproportionately affected, it is likely that no SME-specific measures or modified policy options are required to assist SMEs nor to achieve the intended policy goals. The SME Test then shows that the proposed regulation has accounted, or does not need to account for, SMEs in particular.

If the assessment shows that SMEs are going to be disproportionately affected, it may be appropriate to include mitigating measures, including exemptions, to make the proposed legislation more aligned with the capacity and needs of the SME sector.

This may involve striking a balance between efforts to reduce the regulatory burden for SMEs and the realisation of the original policy objective behind the proposed legislation.

Examples of mitigating measures include

- Exemption for certain SME cohorts (e.g. micros) from the legislation
- Simplification of administrative procedures and use of plain English;
- Reduction of information requirements;
- Less onerous or less frequent inspection regimes for small businesses;
- Provision of longer transitions periods to SMEs so that they can have more time to allocate resources when dealing with regulations;
- Lower administrative fees;
- Access to financing or lower interest rates in order to comply with the regulation;
- Training and assistance with compliance;
- Requirement for SMEs to have only to register for a certain activity rather than having to be fully licensed;
- One-stop shops.

There may be instances where mitigating measures such as exemptions are not the optimum solution. For instance, it must be borne in mind that such measures may aim to support SMEs but in practice may act as a barrier to growth, as they may discourage SMEs from growing above the threshold levels at which such exemptions and special regimes expire. Regulatory exemptions may also exclude them from mechanisms that may embed positive aspects, such as changes in behaviours and practices and access to learning and training.

In addition, adopting an exemption regime or mitigating measures for SMEs will also entail costs that will range from how the regulation is implemented, to the creation of different groups of compliant parties, to special inspection or licencing regimes, to the set up and implementation of different measures for SMEs. All of these costs should be considered as part of the costs of the proposed regulation when assessing it, and contrasted with the benefits the regulation and measure would create.



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