



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

# Public Consultation on Reform and Modernisation of Legislation regarding Co-operative Societies

January 2022

## **Subject of the Public Consultation**

The Department of Enterprise, Trade and Employment is seeking the views of stakeholders on certain aspects being considered for inclusion in new Co-operative Societies legislation that is currently being finalised.

Previous consultation exercises were undertaken in 2009 and 2016 and the responses received have informed the work undertaken on the development of new law in this area. In the context of finalising proposals, the Department wishes to provide stakeholders with a further opportunity to provide views on a number of specific issues.

## **Background**

There is no specific legislation dealing with co-operatives in Ireland. The Industrial and Provident Societies (IPS) Acts 1893-2021 provide the statutory basis for the formation and general operation of industrial and provident societies and is the primary legislation within which co-operatives operate. The legislative framework is a largely Victorian era statutory code incorporating a number of antiquated provisions. Various piecemeal amendments have been introduced over more than 120 years but the fundamental requirements are as set out in the original Industrial and Provident Societies Act, 1893.

Currently, co-operatives can register and operate under the aforementioned IPS legislation or alternatively under the Companies Act 2014 (CA 2014). Co-operatives usually define themselves as such by reflecting the distinguishing features of the co-operative model in their rules, if registered as an industrial and provident society, or in their constitution, if registered as a company.

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 and falling to a low of 900 in 2015, and with a gradual increase in recent years. There are currently 960 Industrial and Provident Societies registered, comprised mainly of various agricultural co-operatives, group water schemes and housing co-operatives but also including societies involved in a wide range of other activities. The Registry of Friendly Societies is responsible for the assessment and registration of applications and any subsequent amendments to the rules of individual Industrial and Provident Societies.

## **Objective of New Legislation**

It has long been acknowledged that the IPS legislation is outdated, fragmented and lacking clarity / detail in a number of areas. The Department completed a comprehensive review of the existing statutory code. 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. Also, new legislation should aim to 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.

Stakeholders have also asked that the legislation provides a modern and effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland. The legislation will consolidate and modernise the existing provisions and introduce modern corporate governance, accounting, compliance, and reporting requirements. For consistency and ease of understanding, these provisions are generally similar in approach to the provisions of the CA 2014 but amended as appropriate recognising the distinctive characteristics of co-operatives. Having provisions for modern corporate governance, accounting, compliance, and reporting requirements not only protects stakeholders but also increases the attractiveness of co-operatives for investment.

The legislation will be substantive and complex in nature and likely to contain in the region of 250 heads. It will bring together, in a single statutory framework, existing provisions that are currently spread over a number of different Acts and introduce new provisions that will regulate co-operative societies in the future. It will preserve provisions which are still useful and expand and modernise other provisions to align them with the realities of the 21<sup>st</sup> century business and regulatory environment. It will also introduce new concepts, the most significant being that the co-operative model will receive specific legislative recognition and societies registering under the legislation will be required to adhere to the co-operative ethos.

While co-operatives are by nature very distinct from companies, they are a body corporate and there are many aspects of good practice set out in company law that are applicable to co-operatives, either directly or with adaptation. As a result, the structure of the legislation will reflect the lifecycle of a co-operative, an approach already adopted in the CA 2014. A summary of the various important parts of a possible Bill is set out at [Appendix 1](#).

Accordingly, it is intended that:

- the legislation will cross apply six parts of CA 2014, with amendments needed to adapt to the particular circumstances of co-operatives, relating to (i) Examinership and (ii) Winding up (both of these are already cross-applied in the current IPS Acts); (iii) Investigations; (iv) Compliance and Enforcement, (v) Receivers and (vi) Financial Statements. The cross-applications of these provisions, rather than being set out in full in the general scheme, will reduce unnecessary duplication, avoid the necessity of future amendments to co-operative law to reflect development of company law and help to make the legislation more compact, accessible and more widely understood by practitioners and the business community;
- the legislation will also generally replicate, with some amendments, provisions from other Parts of the CA 2014, particularly (i) Directors' Duties, (ii) Charges and Debentures and (iii) Functions of the Registrar. However, due to more extensive amendments

required, and in recognition that these provisions are more relevant to the ongoing activities of co-operatives, they are fully set out in the legislation, rather than cross-applied from the CA 2014;

- given that a co-operative society, similar to a company, is a body corporate with limited liability, the legislation will borrow heavily from the relevant parts of CA 2014 to give assurance to stakeholders in areas dealing with (i) Registration, (ii) Corporate Governance, (iii) Merger related activities, and (iv) Strike-off and Restoration – however, these provisions are also included in full in the legislation, with significant amendments made to reflect the unique nature of co-operative societies;
- the IPS Acts contain relatively few provisions relating to shares, share capital and related matters, which can diminish the attractiveness of co-operatives for new investment. A review of the rules of a sample of Irish co-operatives indicates that the rules on these matters vary significantly. While a number of provisions based on the CA 2014 may be appropriate, it is intended to be non-prescriptive so as to provide co-operatives with the flexibility to deal with these issues in their rules.

A review of the Register of Friendly Societies indicates that the vast majority of societies currently registered under the IPS legislation have a co-operative ethos and apply co-operative principles. Accordingly, it is intended to repeal the existing IPS legislation and provide a transition period for existing societies registered under the IPS legislation to either adopt the co-operative ethos / principles and register under the Co-operative Societies legislation; wind themselves up or pursue an alternative corporate structure (i.e. under Company Law). It is envisaged that existing Industrial and Provident Societies who do not avail of one of these options will, at the end of the transition period, be deemed to be dissolved.

## **Issues being addressed in the Consultation**

Notwithstanding the feedback of the previous consultation exercises in 2009 and 2016 and the Department's comprehensive review of the existing statutory code, there remain a number of considerations to be concluded before the Department can propose legislation.

### **Matters relating to Registration**

A number of significant changes to existing provisions in relation to registration are proposed.

Of most significance is the intention to provide, for the first time, a specific statutory basis for co-operatives that requires that entities registering and functioning under this legislation must have a co-operative identity. Many stakeholders have requested this over the years. Co-operatives registering under the legislation will be required to adhere to the co-operative ethos / principles (see [Appendix 2](#)) and to provide a declaration of compliance to the Registrar to this effect.

It is intended that existing Industrial and Provident Societies will have the option to either adopt the co-operative ethos and register under the co-operative society legislation, wind up or convert to another corporate form that also offers separate legal personality and limited liability (in situations where such societies do not wish to be a “co-operative” society). It is proposed that a transition period of 18 months, from the date of commencement of the legislation, will be provided to enable such societies to choose the most appropriate option.

Other proposed changes include -

- extending the scope of activity to cover registration for “any lawful purpose” rather than the current purposes of carrying on “any industries, businesses or trades”. This will facilitate the expansion of co-operative activity from largely economic to include social and cultural activity;
- reducing the minimum number of members required to form a co-operative from seven down to three, in order to create favourable conditions for encouraging a range of co-operative start-ups. This has been sought by many stakeholders and reflects the situation in many other jurisdictions; and
- expanding the categories of members who can set up co-operatives (the current legislation provides that a society cannot be registered if it does not consist of at least seven persons, or 2 registered societies). It is proposed to allow companies to become founding members of a co-operative society, which will include setting up co-operatives by companies only and various combinations of co-operatives, companies and natural persons to be founding members.

#### **Transition period**

##### **Question 1.**

Do you consider that the proposed transition period of 18 months is sufficient to enable existing industrial and provident societies to either register as co-operatives or pursue an alternative option? If not, please suggest an alternative timeframe and provide a supporting rationale.

#### **Expanding the categories of Members who can set up co-operative societies**

##### **Question 2.**

Please set out your views on the proposal to expand the categories of members who can form a co-operative society to include companies? If not in agreement, please set out your reasoning.

The current statutory framework is silent on many of the provisions relating to the operation of the industrial and provident societies. As a result, these matters are dealt with, or not, in the rules of the societies. In order to achieve an appropriate balance between the need to protect co-

operative stakeholders and ensure that the legislation considers the diversity of entities using the co-operative model, it is proposed to take the following approach in the legislation –

- certain core elements will be specifically provided for in the legislation, for example provisions governing the name of a co-operative and the method for amending the rules;
- in other cases, the legislation will require certain matters to be dealt with in the society rules – this ensures that such matters are addressed but leaves to the individual society the detailed provisions – this is in recognition of the wide variety of entities using the co-operative model and the significant complexity in some cases and provides a level of flexibility as to how such issues will be addressed in the rules;
- on some matters, the legislation will remain silent and the individual co-operatives can address such issues in their rules, if they so wish.

It is intended that the rules delivered by the societies to the Registrar when registering as a new co-operative will be accompanied by a statement providing information on the first directors and secretaries of the society; a declaration that the requirements for registering the society have been complied with, that the particulars contained in the statement are correct and the purposes for which the society is formed; and if necessary, a statement by a director if he/she had been disqualified under the law of another State (these provisions largely mirror the company law provisions in this area). When amending the rules, the co-operative will be required to deliver to the Registrar a copy of the entire set of rules, as amended, and a declaration stating that the co-operative society will continue to operate in accordance with the co-operative principles.

It is intended that the legislation will require that the rules of a co-operative society shall address the following –

- (a) the co-operative society's name;
- (b) that it is a co-operative society limited by shares registered under this legislation;
- (c) that the liability of its members is limited;
- (d) that the co-operative society will carry on any activity on the basis of the co-operative principles provided for in a schedule of the legislation;
- (e) the conditions and procedure for admission of members;
- (f) the conditions and procedure for expulsion and suspension of members;
- (g) the conditions and procedure for cessation of membership;
- (h) the minimum number (which shall not be less than one) and nominal value of shares required to be taken by each subscriber to the rules;
- (i) the procedure for redeeming a member's shares;
- (j) the conditions and procedure for dealing with the estates of deceased members, the rights and liabilities of representatives of members under bankruptcy or members who can no longer be reasonably regarded as possessing an adequate decision-making capacity;
- (k) dispute resolution procedure for settling disputes between the co-operative and any of its members;
- (l) the mode of distribution of the surplus;
- (m) provisions relating to the legal reserve;
- (n) the procedure for the allotment of shares, the nominal value of each share and the rights and obligations regulating those shares;

- (o) if a co-operative society wishes to raise capital from non-user investor members, the rules shall expressly provide for non-user investor shares, and the terms attached to these shares shall be clearly stated;
- (p) the maximum interest, if any, in the shares of the co-operative society which any member may hold; and
- (q) if the co-operative society adopts supplemental rules, those rules.

#### **Content of rules**

##### **Question 3.**

Are there any other matters that should be included in the list of matters set out in legislation that must be dealt with by the rules of a co-operative society? Please provide supporting rationale for any such additions.

#### **Matters relating to Shares**

One of the features of a co-operative is that the membership is open, with new members joining and existing members leaving the co-operative, resulting in a fluid share capital. The nature of the share capital does not provide security for creditors. Many societies in other jurisdictions choose, or are obliged by their national legislation, to put in place a legal reserve which is essentially used to safeguard the aims of the co-operative, provide financial stability, build solidarity and mitigate against asset stripping. In many cases, a person who ceases to be a member of the society cannot claim any part of the reserve. It is considered that a definition of, and minimum requirements regarding, a legal reserve will enhance the co-operative ethos of the entities registered under the future legislation. It is proposed that the legal reserve will be distributable only in accordance with the rules of the co-operative society, will be identified separately in a co-operative society's accounts and 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.

#### **Legal Reserve**

##### **Question 4.**

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

The current 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. Property in excess of €15,000 will revert to be an asset of the estate of the deceased and distributed under the terms of the will or provisions of the Succession Act, as

appropriate. The Department wishes to ascertain whether the existing nomination provisions in this area are considered useful.

**Nomination regarding transfer of property in the event of death of a member**

**Question 5.**

Are the provisions on nomination regarding the transfer of property in the event of the death of a member considered useful and worth retaining in the proposed legislation? Please provide rationale in support of your response.

The legislation also contains some arcane provisions, dealing with situations where a member dies intestate or has restricted decision-making capacity, which it is not proposed to retain in the new legislation.

**Matters relating to Corporate Governance**

In order to reflect the co-operative principle of democratic membership control, which encourages the members to actively participate in setting co-operative policies and decision making, it is proposed that there must be at least 1 director, for very small co-operatives of less than 10 members, and at least 3 directors where the membership is 10 and over. In an effort to increase transparency, and similar to provisions under the CA 2014, it is intended that the register of directors and secretaries will contain the name, date of birth, PPSN, residential address, nationality, business occupation and particulars of any other directorships of bodies corporate.

**Minimum number of directors**

**Question 6.**

Do you support the proposal in relation to the minimum number of directors (at least one director for co-operatives with less than 10 members and at least three directors for larger co-operatives)? Please provide a rationale in support of your response.

The current procedure for passing a special resolution varies depending on the issue being approved. Special Resolutions relating to amalgamation, transfer of engagements or change of name require approval by at least 75% of the members entitled to vote who attend the meeting or vote by proxy (where allowed by the rules) - if the majority is less than 75%, then a subsequent general meeting is required and a simple majority will suffice. Special resolutions for a conversion of a society into a company or the voluntary winding up of a society always involves a two-step process, requiring the approval of at least 75% of the members entitled to vote who attend the meeting or vote by proxy and the decision is then confirmed by a majority of the members (or proxies, where allowed by the rules) at a subsequent general meeting.

The two-meeting process for passing a special resolution is considered cumbersome and a more streamlined procedure is proposed, involving a single-meeting and a 75% majority of the members entitled to vote who attend the meeting or vote by proxy (where allowed by the rules).<sup>1</sup>

#### **Approval of Special Resolutions**

##### **Question 7.**

Do you support the proposal to provide for a single general meeting for the consideration of special resolutions, subject to the approval of at least 75% of members entitled to vote at the meeting? Please provide a rationale in support of your response.

#### **Matters relating to Financial Statements, Annual Returns and Audit**

It is proposed to introduce provisions for audit exemption and the production of abridged accounts for co-operatives who operate under specified thresholds in relation to turnover / balance sheet / no. of employees. Currently all societies must produce audited accounts irrespective of size.

Audited accounts enhance transparency and provide certainty and reassurance to members, creditors and the general public regarding the state of affairs of a co-operative society. However, the auditing of accounts represents a significant financial outlay for small co-operatives. The responses to the public consultations of 2009 and 2016 indicated an overwhelming support for introducing audit exemptions for co-operatives. Many jurisdictions across Europe have provided audit exemptions to small co-operatives. It is considered that audit exemptions, similar to what is available to small companies under company law, will substantially reduce the administrative and financial burden on small co-operatives. However, given the nature of co-operatives, it is considered that lower thresholds are appropriate and that an additional criterion should be introduced.

Accordingly, it is proposed that, in order to avail of the audit exemption, in the first instance a co-operative society shall be required to satisfy two of the following criteria:

- Balance sheet does not exceed €1m
- Turnover does not exceed €2m
- Number of employees does not exceed 50

---

<sup>1</sup> A similar approach was taken when updating the Credit Union legislation in 2012, with the previous two-meeting process replaced with a single meeting requiring a 75% majority to approve a special resolution.

and if these are satisfied, the co-operative society would also be required to satisfy the following criterion:

- Number of shareholding members does not exceed 50.

The purpose of the minimum number of shareholders criterion is to provide a balance between reducing the financial burden on the co-operative while ensuring the protection of the members whose livelihood depends on the proper functioning of the co-operative.

#### **Audit exemption criteria**

##### **Question 8.**

Do you agree with the approach set out in relation to eligibility for audit exemption and the proposed thresholds? If not, please set out your proposal, together with a rationale for same.

Being mindful of the assurance provided to members of a co-operative society from the audit of accounts, it is proposed that a co-operative society meeting the threshold requirements will be able to avail of an audit exemption only if this is permitted by its rules. It is also proposed that the audit exemption will remain in place unless 10% of the members, entitled to vote at a general meeting, decide that they do not wish the audit exemption to be available for a financial year.

#### **Decisions regarding Audit Exemption**

##### **Question 9.**

Do you support the proposal to require eligible co-operatives to provide for audit exemption in their rules? Do you support the proposal that a decision to avail of audit exemption can be reversed if supported by at least 10% of the members, entitled to vote at a general meeting? Please provide a rationale in support of your responses.

The CA 2014 provides small companies (including micro companies) with the option to file abridged financial statements, rather than full financial statements, with the Registrar. It is proposed that a similar option will be available to co-operative societies.

Accordingly, to qualify in relation to a financial year, it is proposed that a co-operative needs to fulfil 2 of the following requirements:

- Balance sheet does not exceed €1m
- Turnover does not exceed €2m
- Number of employees does not exceed 50

and if these are satisfied, the co-operative society would also be required to satisfy the following criterion:

- Number of shareholding members does not exceed 50.

**Abridged financial statement criteria**

**Question 10.**

Do you agree with the proposal to provide for the filing of abridged financial statements with the Registrar in relation to small co-operatives and, if so, the eligibility thresholds set out? If not, please set out your proposal, together with a rationale for same.

Micro companies can avail of a number of exemptions in relation to their financial statements, including but not limited to 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 company and disclose information on remuneration for audit related work.

It is proposed to take a similar approach in relation to small co-operatives, whereby co-operatives can avail of certain exemptions in relation to their financial statements if they fulfil 2 of the following requirements:

- Balance sheet does not exceed €350,000
- Turnover does not exceed €700,000
- Number of employees does not exceed 10.

**Certain exemptions in relation to financial statements**

**Question 11.**

Do you agree with the proposal to provide for certain exemptions in relation to financial statements for small co-operatives and, if so, the eligibility thresholds set out? If not, please set out your proposal, together with a rationale for same.

**Opportunity to provide additional observations**

**Question 12.**

Please provide any additional comments you may wish to make to inform the completion of the legislation regarding Co-operative Societies.

## **Deadline for Submissions**

The deadline for submissions is **5pm on Friday, 25<sup>th</sup> February 2022**.

Submissions should be sent by email, using the accompanying Response Template, to [coopconsultation@enterprise.gov.ie](mailto:coopconsultation@enterprise.gov.ie).

## **Freedom of Information Act 2014 and Publication of Submissions**

The Department will make public on its website all submissions received under this consultation. Your attention is also drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act 2014. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before publishing or otherwise disclosing it.

## **General Data Protection Regulation**

Respondents should note that the General Data Protection Regulation (“GDPR”) entered into force in Ireland on 25<sup>th</sup> May 2018 and it is intended to give individuals more control over their personal data. The key principles under the Regulation are as follows:

- Lawfulness, fairness and transparency;
- Purpose limitation;
- Data minimisation;
- Accuracy;
- Storage limitation;
- Integrity and confidentiality;
- Accountability.

The Department of Enterprise, Trade and Employment is subject to the provisions of the Regulation in relation to personal data collected by it from 25<sup>th</sup> May 2018. Any personal information which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 to 2018.

**January 2022**

## Appendix 1

### Matters relating to Registration

This part of the legislation will contain provisions governing registration of co-operative societies. It will preserve the notion of registration of societies and registration of their rules and amendments to such rules by the Registrar; retain the provision of an appeal to Court for refusal to register a society and contain enhanced / new provisions in a number of areas. A registered co-operative society will continue to be a body corporate, with limited liability.

### Matters relating to Shares

The IPS legislation contains relatively little provision relating to shares, share capital and related matters which are usually addressed in the rules of the society. The provisions in the Companies Act, 2014 (CA 2014) are of limited relevance due to the different function of shares in a co-operative society compared to those in a company<sup>2</sup>. Given the varying and complex arrangements in place across co-operatives (e.g. in relation to the distribution of any surplus, redeeming of shares on expulsion of members and maximum shareholding by a member), the approach being taken is that the specifics are best addressed in the rules of the co-operatives. The legislation will address some baseline issues including what represents a share and its value, lien on shares, transfer of shares (subject to the directors' approval) etc. but will allow co-operatives the flexibility to deviate from these provisions if provided for in their rules.

To deal with unregulated deposit taking by societies, legislative change was introduced in 1978 which prohibited the acceptance of deposits (with the exception of few categories of societies, including agricultural and fishing societies in certain limited circumstances). It is proposed to retain that prohibition, so that future co-operative societies cannot carry on the activity of a credit institution.

Under current legislation, with the exception of bank loans / funding from public bodies / share subscriptions of less than €30,000 in any period of six months, societies seeking funding from other sources require the permission of the Registrar. It is not proposed to retain these provisions

---

<sup>2</sup> A co-operative is very different from a company, when it comes to share capital and the rights of membership. Under company law, shares determine how the enterprise is owned and controlled, based on the principle of one-share-one-vote. It is "permanent capital" because the company is under no obligation to refund share capital, which provides reassurance to creditors. In contrast, voting rights in a society are normally attached to membership rather than share capital, with most societies adopting the co-operative principle of one-member-one-vote. As the membership in a co-operative is open, the share capital is variable. Many societies choose to have a reserve which provides financial stability, builds solidarity and sustainability for future generations and can act as a disincentive to those seeking to take over its assets (the reserve prevents any residual assets being distributed to members or subscribers in the event of the enterprise being wound-up). The co-operative principles indicate that members usually receive limited compensation, if any, on capital subscribed as a condition of membership, i.e. distributing profits in the form of dividend on share capital is limited. Surpluses, if not used by the co-operative for building reserves or developing the co-operative, generally benefits members in proportion to their transactions with the co-operative.

in the new legislation. In line with similar restrictions under the Companies Act, and as a measure to provide financial protection for the public, it is proposed to prohibit co-operative societies from seeking funds from the public (co-operatives will not be allowed to make any invitation to the public to subscribe or offer to the public any shares, debentures or other securities of the society).

## **Matters relating to Corporate Governance**

The current statutory framework has few provisions on corporate governance and does not provide appropriate levels of protection to the various stakeholders such as members, creditors and the public generally. The legislation will regulate the way in which the day-to-day activities of the co-operative society are conducted and proposes a number of changes, most of them in line with CA 2014, to deliver a comprehensive system of governance provisions, including requirements regarding appointing, removal, rotation and meetings of directors, detailed provisions on conducting general meetings and protection of minority members.

The legislation will also provide for the co-operative principle of “one-member-one-vote” and allow for proxy voting - with flexibility available to co-operatives to provide otherwise in their own rules.

Flexibility in relation to the holding of meeting in person, virtually or in hybrid form will be provided.

It is also proposed to include in the legislation several “standard provisions” which may remove the necessity for co-operatives to address certain matters in their rules, thereby helping to reduce the administrative burden, particularly for new co-operatives. Examples of such provisions are in relation to conducting meetings and voting of the directors, rotation of directors and appointment of proxies. However, should a co-operative find that such provisions are not suitable to its model, it can include in its rules provisions appropriate to its circumstances, provided that such provisions are not in conflict with any other provisions of the legislation. The legislative provisions where co-operatives have freedom to devise their own rules will be indicated with “save where the rules of the co-operative society provide otherwise”.

In terms of protection for minorities, remedies to members in case of oppression will be introduced.

The language will be modernised and the “committee of management” will be replaced by a “board of directors”. References to a treasurer and manager will be removed and references to “officers of the co-operative society” will be introduced.

## **Matters relating to Duties of Directors**

The IPS Acts do not provide a comprehensive list of directors’/officers’ duties, rather this is left to the discretion of the society and set out in the rules. The legislation will largely follow the modern provisions on directors’ duties contained in CA 2014, adapted to reflect features of the co-operative model.

The common law principles regarding directors' fiduciary duties were enshrined in company law in CA 2014. These common law principles are also applicable to directors of co-operatives and it is proposed that they will be expressly provided for in the legislation.

Directors and secretaries will be required to acknowledge their legal duties and obligations imposed by the legislation. Provisions relating to transactions between directors and their co-operative societies that involve a conflict of interest will be set out. A prohibition will be put in place on loans, quasi-loans and credit transactions made by co-operative societies in favour of their directors or persons connected with directors.

It is intended that the directors will be obliged to disclose their interest in contracts made by the co-operative society and will have liability to account to their co-operative societies for gains made and indemnify their societies for losses caused as a result of their breach of duty not to use corporate property and opportunities for their own purposes. However, the Court will have the power to grant relief from the liability where it is satisfied that a director has acted honestly and reasonably. The legislation will also provide for the disclosure of interests in shares and debentures.

### **Matters relating to Financial Statements, Annual Returns and Audit**

The relevant provisions of the IPS legislation relating to accounts, accounting records and the audit of those accounts are outdated in terms of language and concepts and are scattered throughout different pieces of the legislation. Financial reporting generally has evolved very considerably since 1978 when the last substantial changes to the accounting provisions were made. The proposed approach is to largely cross-apply many of the provisions of company law, with some customisation to reflect the particular nature of co-operatives.

It is proposed that a term "financial year" is introduced, and to provide co-operatives with the option to change their financial year end date by notice given to the Registrar. The first annual return date of a new co-operative will be the date 6 months after the date of its registration, while in each subsequent year it shall be the anniversary of its first annual return date. However, subject to some conditions, co-operatives will have the flexibility to alter the annual return date to a date falling within the period of 6 months following the existing annual return date.

### **Matters relating to Charges and Debentures**

It is proposed that the legislation will contain provisions regarding debentures and charges, and most importantly the regime for registration of co-operative society's charges and debentures, and the prioritisation between such charges and debentures.

Unlike companies, industrial and provident societies were not exempted from the provisions of the Bills of Sale (Ireland) Acts 1879 to 1883. This meant in practice that co-operative societies could not raise debentures on floating charges. In the case of agricultural co-operatives, this difficulty was addressed by the Agricultural Co-Operative Societies (Debentures) Act 1934 which provided that agricultural co-operatives, certified by the Minister for Agriculture, may issue

debentures to any authorised lender. Such debentures are registered with the Department of Agriculture, Food and the Marine on a Register of Charges by Agricultural Co-operatives.

Following examination of the issue, including consideration of responses to the previous public consultations of 2009 and 2016 and bilateral engagement with stakeholders, it is intended to extend the facility for raising debentures and registering charges to all types of co-operative societies, thereby placing non-agricultural co-operatives on an equal footing with agricultural co-operatives as well as with companies. It is proposed that a new single Register of Charges for co-operatives, similar to the one operating for companies should be established under the auspices of the Department and administered by the Registrar.

The provisions will be based on the provisions contained in Part 7 of the CA 2014 but will also take account of current provisions in the Bills of Sale (Ireland) Acts 1879 to 1883 and the Agricultural Co-Operative Societies (Debentures) Act 1934 relating to charges by co-operatives.

### **Matters relating to Receivers**

Part 8 of the CA 2014 confers statutory powers and obligations on receivers. The legislation will set out the notifications and information that must be provided once a receiver is appointed. It will describe the contents of the statement as to the affairs of the company required to be submitted to the receiver. The provisions will set out the powers and duties of receivers and provide for the disqualification, resignation and removal of receivers. Conferring statutory powers on receivers is intended to alleviate many of the problems which may arise from poorly drafted debentures, therefore the company law provisions will be cross-applied in the new legislation.

### **Matters relating to Transfers of Engagements, Amalgamations and Conversions**

The current legislative provisions in this area are minimal, unclear in places and open to interpretation and ambiguity. The Department is aware of examples where an “amalgamation” and “transfer of engagement” are used to describe the same process, namely where two or more societies amalgamate but instead of creating a new society as their successor, one of the societies survives and all assets, liabilities and members are transferred into that society. It is proposed to allow transferor and amalgamating societies to continue their existence after the procedure of a transfer or amalgamation is completed, which on occasions results in shell societies who do not have intention to recommence activities.

In addition, the concept of a “partial transfer of engagements” creates uncertainty as to whether the creditor enforces its claim against the transferee exclusively or has a choice between the transferor and transferee. Transfers of engagements have not been commonly used in recent years, with only 5 transfers executed in the period 2004-2020, none of them partial transfers.

It is not proposed to preserve the concept of a “partial transfer” of engagements in the new legislation. It is intended that provisions on full transfers to other societies will be made -

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. It is also proposed that the Credit Union Act 1997 approach to amalgamations, which results in the creation of a new entity with a separate registration number and with all amalgamating entities being dissolved, will be replicated in relation to amalgamations of co-operative societies. The options of a society converting into a company, and vice versa, which are commonly used will be preserved.

### **Matters relating to Examinership**

The current IPS legislation provides, since 2014, for the provisions on examinership to be cross-applied from company law. A similar approach will be followed in the proposed legislation, with minimal amendments made to reflect the particular nature of co-operatives.

### **Matters relating to Winding up**

Similar to the Examinership provisions, the Winding up provisions have been cross-applied from company law (since 1978). A similar approach will be followed in the proposed legislation, with minimal amendments made to reflect the particular nature of co-operatives.

### **Matters relating to Strike-off and restoration**

This Part of the legislation will deal with strike-off from, and restoration of co-operatives to, the Register, based on the modern provisions of the Companies Act 2014. The existing concept of “cancellation”, which does not necessarily lead to a dissolution of the society, will be replaced by “strike off” and it will be explicitly provided that once a co-operative is struck off the register it will be dissolved, thus closing a gap in the current legislation.

It is intended to streamline the statutory provisions in this area and present them in a more accessible way to ensure clarity on the procedures to be followed and the functions of the Registrar and the Courts. The legislation will distinguish between voluntary and involuntary strike off and will provide clear grounds on which the Registrar could strike a co-operative society off the Registrar, such as failure to file an annual return or operating below the minimum membership required by the legislation.

While the current legislation gives the Registrar the power to suspend a registered society, it does not specify what actions the society needs to take to reverse the suspension. Instead of provisions on suspending the society, it is intended that the legislation will provide that a co-operative society can rectify the issue in relation to which it is facing strike off and avert strike off by taking remedial action, as specified by the Registrar e.g. submitting outstanding annual returns to the Registrar or delivering evidence that the co-operative society has the minimum number of members as required by the legislation.

The provisions for the restoration of a co-operative society that has been struck off will also be amended. In addition to applying to the Court for restoration, it is proposed to provide for an alternative administrative process for a co-operative society who has been struck off in the previous 12 months.

It will also be provided that the restoration on application to Court can be made within 20 years of the date of dissolution; currently the legislation does not specify any time limit.

### **Matters relating to Investigations, Compliance and Enforcement**

The provisions on these matters in the current legislation are outdated and are not fit for purpose. The proposed approach is to also cross-apply the relevant company law provisions.

### **Matters relating to the Functions of the Registrar**

The provisions concerning the duties of the Registrar of Friendly Societies precede the original IPS legislation and date from the Friendly Societies Act 1875, with no major changes to these duties in the intervening 147 years. The legislation aims to modernise and align the powers and duties of the Registrar with the powers and duties of the Registrar of Companies as set out in the comprehensive provisions of CA 2014. The legislation will also provide for the Registrar to regularly publish (electronically) a Co-operative Society Gazette, similar to the CRO Gazette.

## Co-operative Principles<sup>3</sup>

The co-operative principles are guidelines by which co-operatives put their values into practice.

### 1. Voluntary and Open Membership

Co-operatives are voluntary organisations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

### 2. Democratic Member Control

Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.

### 3. Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

### 4. Autonomy and Independence

Co-operatives are autonomous, self-help organisations controlled by their members. If they enter into agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

### 5. Education, Training, and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public - particularly young people and opinion leaders - about the nature and benefits of co-operation.

### 6. Cooperation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

### 7. Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members.

---

<sup>3</sup> adopted as part of the Statement on the Co-operative Identity, Values and Principles by the General Assembly of the International Co-operative Alliance in 1995 <https://www.ica.coop/en/cooperatives/cooperative-identity>