Stronger Charities.
Stronger Communities.

THE WHEEL'S SUBMISSION ON THE CO-OPERATIVE SOCIETIES BILL 2022

February 2023

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Introduction

About the Charity, Community and Voluntary, and Social Enterprise Sector in Ireland

Independent, community-based, voluntary organisations have long played a key role in supporting and advocating with and for people and communities in Ireland. Indeed, it is often through the initiative and advocacy of self-organising communities that many community, health and social care services have been initiated.

Community and voluntary organisations are involved in every community in the country, providing health and social supports, services and advocacy on behalf of people with disabilities, older people, young people, children, people experiencing poverty and disadvantage, and people at every stage of their lives.

Since 2020, the COVID-19 pandemic has demonstrated the extent to which we rely on the community and voluntary sector, especially in difficult times. These organisations played a key part in sustaining communities during the crisis, demonstrating their core role as part of Ireland's public service infrastructure. They restructured services to deliver remotely, responded to the need for socially-distanced and safe provision, cut costs, redirected resources to priority areas and designed new service responses targeted at meeting emergent need.

The community and voluntary sector constitutes a significant social economy within the broader economy. It comprises almost 35,000 community, voluntary and charitable organisations; involves over 86,481 volunteer directors and trustees; directly employs 165,000 people; and manages income of €14.2bn per year. These organisations raise over half of this income (more than €8.3bn) themselves, majorly subsidising the cost of public services in Ireland. Indecon Economic Consultants (in a report published by the Charities Regulator in 2018) estimate that the total direct, indirect, and induced value of the work of Ireland's charities exceed €24bn per annum and supports 289,000 employees.

About The Wheel

The Wheel is Ireland's national association of community and voluntary organisations, charities and social enterprises. We are the representative body for this vibrant and diverse sector and, together with our members, we shape and promote conditions in which people and their communities thrive.

We passionately believe that community and voluntary action improves and enriches communities and society. Our simple but ambitious mission is to make Ireland a fair and just place for all by strengthening the capacity and capability of community and voluntary organisations, charities and social enterprises to play their part. We do this by representing these organisations, supporting these organisations to do their work, and promoting the importance of the voluntarism and community values that power these organisations. The Wheel has more than 2,000 members and provides support services and representation on behalf of these members relating to matters that reflect their collective interests.

The Co-operative Societies Bill and the Community and Voluntary Sector

At The Wheel, we are frequently approached by individuals or groups seeking to set up community and voluntary organisations or social enterprises. Many of them wish to register as co-operatives as it aligns with the ethos of the community organising and social benefit.

The majority of these organisations are small, rely on voluntary trustees and have limited capacity for carrying out regulatory and compliance requirements. Currently, they face many challenges in the process of establishing themselves as co-operatives, including a complex legal landscape and several prohibitive aspects within the current legislation.

We welcome the timely review of this legislation, which provides and important opportunity to facilitate a flourishing co-operative landscape in Ireland. International and historical Irish precedents have demonstrated the societal benefits that the co-operative model can bring.

In particular, we welcome several of the amendments made in the Bill that will greatly benefit the community and voluntary sector and were highlighted in The Wheel's initial submission on the Bill. These include:

- Removing the membership limit for audit exemption
- Removing the blanket prohibition on public/community shares

This submission comprises two main recommendations that we believe will enhance the legislation further:

- Introduction into the legislation of an optional 'co-operative asset lock'
- Introduction into the legislation of an optional 'co-operative mission lock' to ensure that a co-operative can inset objects clauses into their Rulebook which cannot be amended in future.

Recommendations

1. Optional Asset Lock for Co-operatives

We recommend that the legislation provide for an optional 'non-distributive capital surplus' whereby on wind up, outstanding shares and share interest would be repaid to member shareholders and thereafter all remaining capital surplus would be transferred to another co-operative with a non-distributive capital surplus, or to a registered charity.

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

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

We welcome many of the changes made to the current legislation and believe it could be further improved by introducing a number of relatively minor features. These changes would support adoption of the co-operative model by a range of organisations across the community and voluntary and social enterprise sector.

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

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

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

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

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

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

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

This optional provision will not be availed of by all co-operatives, but we believe from our experience within the sector that a significant number of co-operatives with a community/social/not-for-profit ethos will avail of such a provision.

Therefore, given the broad applicability of such a provision, and the potential it has to expand the scope and development of social co-operatives through accessing national and European supports not otherwise available, we believe it should be introduced as part of the new co-operative legislation.

2. Mission Lock

We welcome the apparent approach in the new legislation of widening the remit of the co-operative legal model from purely economic purposes by allowing their formation for 'any lawful purpose'. This acknowledges the broad range of existing community co-operatives that undertake all manner of social and cultural activities. It will also help to encourage more community groups to utilise the co-operative model in future.

However, for many community and voluntary organisations, charities, and social enterprises, having specific 'objects' is an essential part of their ethos and vital for securing the support of stakeholders, funders (both state and private) and the wider community. These types of co-operatives will wish to reassure their stakeholders that their purpose is 'mission locked' and cannot be changed in the future. State funding through the National Social Enterprise Scheme, for example, looks at whether an organisation's objects have a social or environmental purpose and whether these are protected.

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

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