



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

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

As set out in the Public Consultation paper, the Department of Enterprise, Trade and Employment is seeking views on a number of specific issues prior to finalising legislative proposals for the reform and modernisation of legislation regarding co-operative societies.

Please include your response in the space underneath each question and set out/ explain your views. Completing the template will assist with achieving a consistent approach in responses returned and facilitate collation of responses.

Respondents have the opportunity to comment more generally in Question 12 should they wish.

When responding please indicate whether you are providing views as an individual or representing the views of an organisation.

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Respondents are requested to return their completed templates by email to coopconsultation@enterprise.gov.ie by **5pm on Friday, 25 February 2022**.

Responses

Matters relating to Registration

Transition period

Question 1.

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

Response:

The NFGWS considers the proposed transition period of 18 months may be challenging and should be extended to a minimum of 2 years. It is difficult to predict at this point the number of group water scheme co-operatives that may require rule amendments to facilitate any proposed changes until the final wording requirements are known. The NFGWS has consistently promoted the use of the 'GWS Model Rules' produced by ICOS, it is unknown at this point if the latest version of the model rules will go far enough to satisfy the requirements of the proposed changes. In addition, many group water scheme co-operatives are still operating on older versions of co-operative rules that will require amendments.

There are currently 298 group water schemes registered as co-operatives nationally. 221 of these co-operatives are operating under a version of the GWS Model Rules post the year 2000. A total of 77 of these co-operatives are operating under rules developed pre the year 2000. Should a significant number of group water schemes require partial or whole rule amendments, the sector will require the assistance of the NFGWS and ICOS in organising and facilitating (in some cases) Special General Meetings to consider the appropriate amendments etc.

The NFGWS suggest that the Department continues to engage with ICOS and the NFGWS in advance of finalising the legislation. A revision of the GWS model rules is proposed over the coming months and may provide an opportunity to make amendments that may facilitate changes at this point.

Expanding the categories of members who can set up co-operative societies

Question 2.

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

Response:

The NFGWS has no difficulty with this proposal.

Content of rules

Question 3.

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

Response:

The NFGWS would recommend the inclusion of an 'Objects' clause to provide clarity on the purpose and objectives of the co-operative. Most group water scheme co-operatives would have this clause included in their rules and it helps provide members with protection and control over the objectives and functions of the co-operative. Should a co-operative ever wish to amend or change the objectives of the society, the members must be consulted and approve such a change.

Matters relating to Shares

Legal Reserve

Question 4.

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

Response:

In practice most group water scheme co-operatives would maintain a minimum reserve for financial stability. However careful consideration should be given before introducing provisions in legislation for a legal reserve to ensure that such a provision would not cause unintended consequences for societies that may decide to wind up or liquidate at some stage in the future. From a group water schemes perspective, while most schemes are intent on remaining private community owned assets, some schemes have and are considering being taken in charge by Irish Water. There are legal provisions for the requirements to be taken in charge which are detailed in the Water Services Act 2014. In advance of a group water scheme co-operative

being taken in charge, assets are disposed of in various ways by agreement of the members in advance of formal liquidation or wind up which should be respected and maintained.

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

Question 5.

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

Response:

This has not been a significant issue for the group water scheme co-operatives given each member is assigned only one €1 share in most situations. None the less, the NFGWS would welcome a more streamlined way of dealing with transfer of shareholding following the death of a member to ensure fluidity of membership and share transfer.

Matters relating to Corporate Governance

Minimum number of directors

Question 6.

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

Response:

The NFGWS would be concerned with this proposal and would be of the view that one director should not be permitted, even in small co-operatives situations. To ensure proper democratic corporate governance in all situations the NFGWS would strongly recommend a minimum of 3 directors for every co-operative which would help avoid situations where a single director has operational control the society. This would also improve transparency in both operations and decision making for all members of the co-operative.

Approval of Special Resolutions

Question 7.

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

Response:

The NFGWS would not be in favour of this proposal and instead would propose that the current existing arrangements remain in place, whereby in situations where the members present and voting at a special general meeting to consider a special resolution have a clear majority, but fail to achieve a 75% majority, have the option of holding a second confirmatory meeting where a simple majority is sufficient. This provision has proven to be extremely important for the group water scheme sector when progressing major decisions such as amalgamations and transfer of engagements. While a clear majority may be in favour of proceeding with a proposal, it can be challenging to achieve the 75% majority requirement in all situations. The requirement of the second meeting gives the membership a second opportunity to consider / reconsider the proposed resolution and in many cases has resulted in the 75% majority being achieved at the second meeting. In situations where there are clear majorities for the proposals at both meetings, this also provides a strong vote of confidence to the board to execute any proposed special resolution.

Matters relating to Financial Statements, Annual Returns and Audit

Audit exemption criteria

Question 8.

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

Response:

The NFGWS have no difficulty with the above proposal. Regulated group water schemes are required in any event to produce audited accounts as a condition of receiving financial support through operational subsidy from the state. Should this condition ever be revised in the future, the NFGWS believes the criteria for audit exemption as outlined would be sufficient to establish a balance between the financial burden on smaller group water schemes with <50 members to complete an audit, while upholding the importance and transparency of the auditing process for all members. It is estimated a total of 65 group water scheme co-operatives would potentially fall into this category.

Decisions regarding Audit Exemption

Question 9.

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

Response:

The NFGWS agrees with this proposal. While it might seem a low threshold requirement to give effect to an audit, we believe that 10% of members, is enough support to reverse an audit exemption decision given the importance of the auditing process for transparency and oversight reasons.

Abridged financial statement criteria

Question 10.

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

Response:

While the organisation would have no objection to this proposal, it is unlikely that many group water schemes would avail of this option as group water scheme co-operatives would have already gone through the full audit process. For reasons of transparency the NFGWS will continue to encourage group water scheme sector to file full financial statements on completion of an audit.

Certain exemptions in relation to financial statements

Question 11.

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

Response:

The NFGWS note that the thresholds proposed are the same as those for existing companies. While the organisation would have no objection in principle to this proposal, it would advise caution to ensure the transparent nature of co-operatives are upheld. It is unlikely that many group water schemes would avail of this option as group water scheme co-operatives would have already gone through the full audit process. For reasons of transparency the NFGWS will continue to encourage group water scheme to file the financial statements on completion of an audit.

Opportunity to provide additional observations

Question 12.

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

Response:

The NFGWS welcome the proposed legislation being further advanced and is happy to discuss the group water schemes co-operative sector in more detail with the Department at any stage in the future.

Freedom of Information Act 2014 and Publication of Submissions

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

General Data Protection Regulation

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

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

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

January 2022