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An Comhchoiste um Fhiontar, Trádáil agus Fostaíocht

An Tuarascáil maidir leis an nGrinnscrúdú Réamhreachtach ar
Scéim Ghinearálta Bhille na gComharchumann, 2022

Aibreán, 2023

Joint Committee on Enterprise, Trade and Employment

Report on the Pre-Legislative Scrutiny of the General Scheme
of the Co-Operative Societies Bill, 2022

April, 2023



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[33/ETE/17]

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Réamhrá an Chathaoirligh/Chair's Foreword



In November 2022, The Minister of State for Trade Promotion, Digital and Company Regulation Dara Calleary T.D., referred the General Scheme of the Co-Operative Societies Bill, 2022 for pre-legislative scrutiny.

The Committee agreed to undertake pre-legislative scrutiny and has sought to scrutinise the proposed legislation, providing recommendations on areas where it believes changes or amendments are warranted. The Committee welcomes the introduction of the Co-operative Societies Bill and the time and consideration the Department has provided in reforming this important Bill.

The Bill will make it easier to set up and operate a co-operative society (co-operative) in Ireland. The Bill will modernise and consolidate existing legislation, some of which dates back to the 19th Century, and aims to ensure that there is an effective framework in place for the range of organisations using the co-operative model in Ireland.

The Committee made twenty-seven recommendations and identified nineteen key issues in the hope that they will assist the Minister for Enterprise, Trade and Employment in further improving this important piece of legislation. When this legislation proceeds, the Joint Committee requests that the recommendations and key issues raised in this report and identified during the pre-legislative scrutiny process are taken on board by the Government and implemented.

Among the issues identified by the Committee and witnesses for further examination include the re-establishment of the co-operative development unit, a more precise and inclusive definition of a co-operative, a statutory requirement of an asset lock, an optional requirement of a mission lock, the collation of disaggregated data on co-operatives and the provision of further resources to LEO's to support co-operatives in their establishment and growth.

The Joint Committee look forward to further engagement on the Bill and I hope that when enacted it will be an important and significant reform of the co-operative sector.

I wish to thank all stakeholders and the Department for their contributions and submissions to assist the Joint Committee in their analysis of the Bill.

I must thank Members of the Committee for their collaborative work in agreeing this report. I would also like to thank the Secretariat for its work on this report and all those who assisted the Joint Committee with its consideration of the Bill.

A handwritten signature in black ink, appearing to read 'Maurice Quinlivan', is displayed on a white rectangular background.

Deputy Maurice Quinlivan, T.D.,

Cathairleach to the Joint Committee on Enterprise, Trade and Employment

April 2023

Recommendations

The Committee welcomes the introduction of the Co-operative Societies Bill and the time and consideration the Department has provided in reforming this Bill. The Committee makes the following recommendations where it believes further consideration is warranted.

Key issue 1 - **Minimum numbers for establishment**

Recommendation 1

The Committee supports the reduction in the number of persons required to establish a co-operative from seven to three.

Key issue 2: **Worker Co-Ops/buy outs/CDU and succession planning**

Recommendation 2

CDU

The Committee recommends the re-establishment of the co-operative development unit (CDU) to provide independent advice, training, and support to co-operatives.

Recommendation 3

Buy out

The Committee recommends that further consideration be given to legislating for worker buy outs of businesses in cases of succession planning or administration.

Recommendation 4

Worker co-op

The Committee recommends that further consideration be given to the need for a legal definition of a worker co-op.

Key issue 3 – **Rule amendments and amalgamations**

Recommendation 5

The Committee recommends the current requirement for rule amendments be maintained as this has provided certainty and assurance to co-operative societies and the rules to which they adhere.

Recommendation 6

The Committee recommends that further consideration be given to whether a second meeting should only be required for rule changes where the 75% attendance threshold is met in the first meeting, save for in instances of dissolution.

Key issue 4 – Deposit taking

Recommendation 7

The Committee supports the removal of these burdensome restrictions on the ability of co-operatives to raise funds through a variety of different means.

Key issue 5 – Naming a co-op

Recommendation 8

The Committee recommends that the legislation should provide a more precise and inclusive definition of what constitutes a 'co-operative'. The Department of Enterprise, Trade and Employment should consult with relevant stakeholders and the wider public in doing so.

Key issue 7 – Ongoing engagement

Recommendation 9

The Committee calls for ongoing engagement with relevant stakeholders and advocates for a campaign of communications with, and support for, businesses

should be developed by the relevant Departments as a priority utilising established forums where possible to support the reform of this important legislation.

Key issue 8 – Head 199

Recommendation 10

The Committee recommends the register of beneficial ownership, CRO and Registry of Friendly societies be given greater staffing provisions and assistance to support the sharing of company information.

Key issue 9 – Asset locks and legal reserves

Recommendation 11

The Committee recommends the legal requirement for an asset lock, as is the case with Credit Unions and for all co-operatives.

Recommendation 12

The Committee recommends further evaluation of the proposal and scope to legal reserves be undertaken to examine the merits of the addition of this provision and any necessary levels or limits that may need to apply.

Key issue 10 – Audit exemption

Recommendation 13

The Committee welcomes the introduction of an audit exemption to ease the cost and administrative burden on SME's. Supports should be provided to co-operatives to enable them to do this effectively.

Recommendation 14

The Committee supports advising an audit at least once every five years and further advocates for consideration to be given to obliging companies, potentially over a certain period to publish data on audits for co-operatives.

Key issue 11 – Calling of a meeting by 10% with voting rights

Recommendation 15

The Committee recommends the maintenance of the current position that co-operatives should retain the right to customise the composition of the 10% condition where their members deem it appropriate to do so.

Key issue 12 – Removal and replacement of directors

Recommendation 16

The Committee advocates for further care and consideration with this provision. Enabling the removal of Directors by ordinary resolution with a simple majority would not reach the level of fairness currently applied across co-operatives currently requiring two thirds of persons present to vote for removal.

Recommendation 17

The Committee recommend and submit that further research be conducted into whether the legislation can be drafted to allow for alternative regulations on the filling of vacancies and removing of members.

Key issue 13 – Directors' fiduciary duties

Recommendation 18

The Committee recommends that further consideration is given to providing greater clarity in the legislation as to directors' fiduciary duties and responsibilities, particularly those that pertain to the unique set of potentially conflicting interests that may arise from a director contracting with the co-operative society.

Key issue 14 – One member one vote

Recommendation 19

The Committee recommends supporting the requirement for co-operatives to respect the principle of one member, one vote as it currently applies in this sector.

Key issue 15 – Companies Acts concepts

Recommendation 20

The Committee advocate that in scenarios such as under Head 169 where cross-referencing may make issues unduly difficult, Companies Acts provisions, where relevant and necessary as applicable to Societies, should appear directly inside the new legislation as co-operative society specific provisions.

Key issue 16 – Annual and Extraordinary General Meetings

Recommendation 21

The Committee suggests Head 107 be amended and provide further clarity for what business is permitted to be conducted at an annual general meeting, including the consideration and, if thought fit, passing of resolutions to amend the co-operative society's rules.

Recommendation 22

The Committee further recommends that current terminology be maintained and advocates the wording be examined under this head.

Key issue 17 – NACE

Recommendation 23

The Committee recommends that further consideration is given to ensuring an accurate means of reporting on the nature and scale of the cooperative sector in Ireland is developed. This will be vital for ensuring that any future legislative initiatives seeking to enable a more co-operative economy are evidence-based.

Key issue 18 – Mission lock

Recommendation 24

The Committee advocates for the inclusion of an optional 'mission lock' in the provisions of this legislation to provide certainty to stakeholders and would ensure that the co-operative model is an attractive legal form for community organisations and social enterprises.

Key issue 19 – Miscellaneous matters

Recommendation 25

The Committee recommends the Department of Enterprise, Trade and Employment should collect disaggregated data on co-operative structures with the purpose to:

- ensure the legislation is effectively and equitably implemented and to assess its impact in terms of achieving effective reform.
- assess the impact of the measures on businesses and provide them with targeted supports; and
- enable cooperation at Government level in monitoring the effectiveness of the reformed legislation and provide insight into any further reforms required.

Recommendation 26

The Committee recommends consideration be given to whether the draft legislation should ensure that members and external stakeholders can access electronically stored and conveyed documentation free of any fee or charge.

Recommendation 27

The Committee advocates LEO's be supported in terms of relevant training, capacity, upskilling and resourcing to facilitate the establishment and growth of co-operatives and further recommends that each LEO should have a minimum of one subject matter expert available in house to provide support.

Glossary

CCS	Centre for Co-operative Studies
CHI	Co-Operative Housing Ireland
CRO	Companies Registration Office
DETE	Department of Enterprise, Trade and Employment
EOT	Employee Ownership Trust
ILO	International Labour Organisation
IPS	Industrial and Provident Societies
ICOS	Irish Co-operative Organisation Society
LEO	Local Enterprise Office
NACE	Nomenclature of economic activity
RIA	Regulatory Impact Analysis
UCC	University College Cork

Introduction

The General Scheme of the Co-operative Societies Bill 2022 was referred to the Joint Committee on Enterprise, Trade and Employment on 16 November by the Minister of State for Trade Promotion, Digital and Company Regulation, Dara Calleary T.D, with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

The Committee commenced pre-legislative scrutiny on the Bill on 14 December. The Committee held two pre-legislative scrutiny meetings with stakeholders on the General Scheme and requested submissions from five additional stakeholders. Submissions were received from; Co-Op Alternatives, The Wheel, Rethink Ireland, Tirlán and from Mr Graham Nuttall, a former Independent Adviser on Employee Ownership to the UK Coalition Government.

Procedural basis for scrutiny

Pre-Legislative consideration was conducted in accordance with Standing Order 173, which provides that the General Scheme of Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

The primary focus of these meetings was to allow for an engagement between the Members and stakeholders to discuss possible areas of the General Scheme which may need to be amended. This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

Date

Witnesses

Meeting 1 – 14 December 2022

Officials from the Department of Enterprise, Trade and Employment

- Mr John Shine, Principal Officer
- Ms Teodora Corcoran, Assistant Principal
- Ms Caroline Kiernan, Higher Executive Officer

Meeting 2 – 15 February 2023

Representatives from Centre for Co-operative Studies

- Dr Bridget Carroll
- Dr Olive McCarthy

Representatives from Irish Co-operative Organisation Society

- Mr TJ Flanagan, CEO
- Mr James Doyle, Legal and Governance Executive

Representatives from Co-operative Housing Ireland

- Mr Pearse O'Shiel, Chairperson
- Mr Pat Moyne, Director of Corporate Services

General Scheme

The Draft [General Scheme](#) is a substantial legislative initiative and represents significant reform of the legislation governing the co-operative sector. It is comprised of 271 heads, divided into 15 Parts.

The General Scheme represents significant reform of the legislation governing the co-operative sector, some of which dates to the 1890s. The proposed legislation provides a specific legislative basis for co-operative societies for the first time. It also consolidates and modernises existing provisions and introduces modern corporate governance, financial reporting, and compliance requirements, thereby making co-operatives more attractive to investors.

The General Scheme has been informed by extensive [consultation](#) and engagement with key stakeholders over the years (including public consultation exercises in 2009, 2016 and a more focused public consultation in early 2022). The Report of the previous Joint Committee on Business, Enterprise and Innovation on the Private Members' Industrial and Provident Societies (Amendment) Bill 2018 has also been considered.

The General Scheme is accompanied by a [Regulatory Impact Analysis](#). The General Scheme:

- is the most far-reaching legislative reform in this area for over 130 years;
- provides 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 ethos;
- consolidates and modernises existing provisions and introduces modern corporate governance, financial reporting, and compliance requirements, making co-operatives more attractive to investors;
- makes it easier to set-up and operate a co-operative society – for example, 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; and

- empowers co-operatives by providing them with the flexibility to reflect in their rules what best suits their own circumstances.

Background and Policy Context

Co-operatives are established to serve the interests of their members who range from consumers, producers, and workers, to the wider community. A co-operative is an association or body which is organised, and which operates based on co-operative principles, such as “democratic member control” (one member one vote). A widely used definition is “an association of persons united voluntarily to meet their common economic, social and cultural needs and who own jointly and control democratically their enterprise”.

In recognition of the significant diversity across the co-operative sector, the legislation seeks to provide as much flexibility as possible, thereby empowering co-operative societies to reflect in their rules what best suits their own circumstances.

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 as industrial and provident societies, 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 as companies; operate under the Companies Act 2014 and use the company constitution to reflect their co-operative ethos.

The number of industrial and provident societies registered in Ireland has been relatively stable over the past decade with 967 industrial and provident societies registered at the end of 2021.

In their evidence to the Committee, the Department emphasised they are very conscious of the proud history of the co-operative sector since the 1880s and the

invaluable role it has played in this country. The aim of the General Scheme is to build on this important legacy and provide a modern legislative framework to help the sector grow. In drafting the General Scheme, the Department, are particularly mindful of the diverse nature of the co-operative sector, which ranges from the sophisticated and very large to the very small and localised, from those with a successful commercial focus to others with a focus on community, culture and social enterprise, and from those comprised of producer, consumer, retail or worker members to those who provide services to members in areas such as advice, education, housing, water supply etc.

The Department note that the proposed General Scheme seeks to provide as much flexibility as possible, thereby empowering individual co-operative societies to reflect in their rules what best suits their own circumstances.

The General Scheme introduces a modern legal framework that will place the co-operative model on a more favourable and clearer legal basis. It will create a level playing field with the situation applying to companies and encourage the consideration of the co-operative model as an attractive formation option for entrepreneurs and for social and community activities. A modern legislative basis, including strong corporate governance requirements, will also provide confidence to stakeholders and help to encourage investment in co-operatives.

The Department note the ground-breaking nature in reforming this legislation, highlighting the importance of ensuring it is well understood, promoted and that people understand the potential for it over the next few years through the drafting process, enactment, and the transition phase. The Department is keen to continue engaging with all the relevant stakeholders.

Regulatory Impact analysis

The General Scheme was also accompanied by a [Regulatory Impact Analysis](#) [RIA]. This RIA explains the policy objectives of the proposed legislation and reasoning behind repealing most sections of the existing legislation.

The RIA states that 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.

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

Mr Nuttall notes importantly, given the typical nature of worker co-operatives, the Regulatory Impact Assessment confirms the proposed legislation does not place a disproportionate burden on small co-operatives and stated there are initiatives that will be of particular benefit to small and micro co-operatives.

The DETE public consultation

The Department of Enterprise, Trade and Employment sought the views of stakeholders on certain aspects being considered for inclusion in the co-operative societies legislation. The consultation was conducted from 28 January 2022 to 25 February 2022.

The Department received 42 responses to the consultation from a broad range of stakeholders. Submissions were sought in response to eleven specific issues set out in the consultation paper. The consultation also offered an opportunity for respondents to make general comments to inform the development of the legislation regarding co-operative societies

The Department has published a policy response in relation to the issues raised in the public consultation which is available [here](#).

Summary of Stakeholder meetings

Engagement with Stakeholders

During the Committee's pre-legislative scrutiny, several important points were raised. A summary of the key issues discussed and identified in evidence to the Committee is laid out here.

Co-Operative Housing Ireland (CHI) support the proposed legislation as it places an appropriate focus on preserving the internationally recognised principles and identity of co-operatives. This is crucial to ensuring that the co-operative model's unique, principle-based approach is not lost during this modernisation of corporate governance to align with best practice. They welcome that the legislation has sought to reduce the many administrative burdens that co-operatives must contend with that are not faced by companies and other bodies corporate.

The Centre for Co-operative Studies (CCS), a research-based unit in University College Cork warmly welcome the publication of the General Scheme of the Bill to make provision for the formation, operation, governance, and regulation of co-operative societies. The drafting of the General Scheme of the Bill aligns with international trends on co-operative legislative reform which have seen many countries, such as Australia, Japan, and the UK, drafting or enacting new co-

operative legislation, or significantly updating existing co-operative legislation, that reasserts the distinctive nature of co-operatives as member-owned businesses. The CCS commends the approach adopted which is balanced and seeks to accommodate a wide range of type and size co-operatives.

ICOS totally welcome the process of reforming the legislation and want to commend the Department on the huge amount of work that it has done. ICOS appreciate that they have been extraordinarily helpful and open. ICOS appreciate what they are trying to achieve, which is to make the co-operative model more modern, inclusive, and attractive and to simplify it in many respects.

However, ICOS also note a number of the measures that they are not happy with have the effect of impeding one of the key principles in the International Cooperative Alliance, which is independence and autonomy, and the autonomy of a co-operative to set its own rules around how it changes its rules in terms of rule amendment thresholds and such matters. They submit there is a little bit of a heavy hand on the special rule amendments, the regulation around mergers, and in relation to elements around the legal reserve.

Tirlán welcomes modernisation of the legislation. However, they respectfully submit that the new framework must be built on co-operative realities and practicalities. The General Scheme addresses matters relevant to co-operatives but, they suggest, it does so without taking due account of the workings of co-operatives and their stakeholders.

The Wheel expresses sincere support for the General Scheme, which they believe has the potential to facilitate a flourishing co-operative landscape in Ireland. The Wheel acknowledges and welcomes the introduction/amendment of several areas of the original Bill that will assist community and voluntary organisations who wish to become co-conditions that they believe will greatly benefit co-operatives.

Rethink Ireland commend the work gone into the Cooperative Societies Bill 2022 and the strides made in making co-operatives an attractive, modern form in alignment with company law while accommodating their specific nature and ethos.

Rethink contends that overall, the legislation is a welcome development which will facilitate the setting up and operations of an increasing number of co-operatives. Alignment with company law regarding financial reporting, audits and director requirements are welcomed. However, they argue that the proposed Bill fails to accommodate the specific needs of social enterprise in terms of regulatory safeguards. This includes first and foremost a legal foundation for an asset lock, mission lock and winding up clause. they suggest that such a development should build on the European approach towards social enterprise.

Co-operative Alternatives commend the Department of Enterprise, Trade and Employment for proposing new legislation that aims to support and grow the co-operative economy in Ireland. However, they believe that there is potential for improvement to maximize the legislation's potential to grow the co-operative economy more broadly, particularly not-for-profit, and social cooperatives.

Mr Nuttall welcomes the Bill as a measure to provide a modern regulatory framework for co-operatives and in particular worker co-operatives in Ireland.

Key issues

Key issue 1: Head 8 – Minimum number of individuals who may establish a co-operative

The General Scheme proposes a reduction in the minimum number of natural persons who may form a co-operative from seven to three.

In their evidence in public session, the Department stated that the principal motivation in this amendment is to make it easier to set up a co-operative. The Department considered a lot of feedback from stakeholders on this issue, much of it looking for the number to be reduced from seven down to three because they consider that seven is simply too high a bar for smaller social enterprises, farmers' markets and so on. The main motivation is to make it easier to operate a co-op. However, the Department noted there is absolutely nothing to stop a co-operative from having as many founding members as it wants to. For certain sectors and certain representative bodies, having that as a requirement of membership can apply.

Under current legislation, companies can become a member of a co-operative, just not from the get-go. This proposed General Scheme will now give a company the opportunity to become a member from the get-go.

The Department clarified that if any co-operative wants a higher threshold and decides that seven is appropriate, then it can put that into its model rules for its members to adopt. The General Scheme will provide that the minimum is three but if the nature of the activity or the sector is such that more might make sense, then each co-operative can be empowered to do that. The legislation aims to enable co-ops to reflect in their own rules whatever their own circumstances are.

The Department advocated the reduction would make an agreed middle ground. The Department also considered the position across Europe, where the common number of founding members is three.

CHI welcome and support the reduction in minimum numbers and consider them matters of importance to their member co-operatives. CHI further support the proposed legislation seeking to safeguard the essential democratic nature of co-operatives through the requirement for a minimum of three directors.

ICOS state co-operatives are established and sustained where scale and service needs combine. The co-operative principles are supportive of the scale theme, as are the challenges of economic and service delivery.

ICOS acknowledges there are several sectoral exceptions that might justify a lower threshold but respectfully submits that the seven-member minimum has served as a reasonable starting point for collective endeavour and should prevail in the statute. Co-operative societies typically thrive where market failure generates collectivism and loyalty. To mitigate this market failure and drive this collectivism, there needs to be some level of scale.

ICOS notes concern that the reduction in the minimum membership would detract founding members from the focus of securing the scale conditions necessary to nurture and benefit from those tried and trusted principles. ICOS calls for retention of the existing minimum threshold (seven) for individuals establishing a co-operative, whilst noting that they are open to discussion on exceptions where there is demonstrable evidence that service delivery can be met and sustained without scale.

The Centre for Co-Operative Studies welcome the proposal to reduce the current minimum number of seven persons to form a co-operative to three. They state there is some evidence that a requirement to have a minimum of seven members is high for those wishing to operate as a co-operative and it is likely to be higher than the average numbers involved in start-up companies and social enterprises.

Consequences of the requirement to have seven members at the outset for such co-operatives may include the potential for co-operatives to choose other models of incorporation which may not align with the co-operative ethos or practice or the ideals of the owners, as well as the use of proxy members.

The co-operatives unit of the ILO collates the minimum number of co-operative members required to register a co-operative across member states. Of these, the minimum number ranges from three to ten, with the following having a requirement of

three members: the UK, Canada, Italy, Spain, Germany, Finland, Japan, Belgium, Czechia, and Uruguay. Slovakia and Slovenia do not specify a minimum number. The General Scheme, as currently drafted, sets the minimum number at three, but individual co-operatives maintain the ability to set the minimum number at a higher level in their rules, if they so choose.

The CSS further expanded upon the reasoning for the number reduction dating back as far as 2019. Discussions at that time were between three and seven and we ended up at five as a compromise at that stage. In many countries there is a minimum of three. The idea behind that is to help organisations to get started.

CSS suggests that the current number of seven seems to be quite a large number for a group of individuals in a community who would like to do something in that community. It is interesting that while they might start with three, of course they need to have plans as to how they are going to grow from that. The General Scheme aims to try to make it as enabling as possible for groups to become established as co-operatives. CSS understands the feeling that seven is quite a lot and take on board all the points that are made about seven but given international practice and the principle of trying to support the establishment of more co-operatives in Ireland, the legislation aims to want to make it as easy and enabling as possible for groups to come together. The CSS had worker co-operatives in mind as one example where there will not be the large numbers that would exist for an agricultural producer or consumer co-operative.

The CSS expanded further that it might help more social enterprises to find the legal structure early on that might suit the way in which they wish to operate. The proposed legislation enables people to decide on their rules. It could be seven, if they feel seven is a more appropriate number. A bigger number again might be appropriate for different types of co-operatives. There should be flexibility in the legislation to allow types of co-operatives to decide that a larger number is more appropriate for that co-operative while leaving flexibility there for other groups that might find a smaller number to be appropriate.

Mr Nuttall notes the reduction in the number of founding members from seven to three. In practice, in the UK and in other countries, worker co-operatives are typically micro-businesses, formed as start-ups, and so the reduction in the number of founders should align the regulatory framework much better with the requirements of a typical worker co-operative.

Recommendation 1

The Committee supports the reduction in the number of persons required to establish a co-operative from seven to three.

Key issue 2: Workers Co-Ops, CDU, Buy outs and succession planning

In their evidence at the first pre-legislative scrutiny meeting, The Department stated the General Scheme will not specifically provide for workers co-operatives, the legislation is intended to be flexible and cater for a wide range of groups without providing specifics for any area and allowing adaption via the co-operative's own rules. This stance will allow and empower co-ops to provide for their members as they wish. The General Scheme aims to provide as much flexibility as possible, thereby empowering individual co-operative societies to make appropriate provision in their rules to reflect the nature of their operations and their own particular ethos.

CDU unit

Members were concerned that some co-operatives will be social enterprises and may require further help and support and whether the previous unit should be re-established. The previous Co-operative Development Unit [the CDU] was supportive in this area for members. The Department clarified that they are not currently considering setting up a standalone co-operative development unit. They are aware of the work done by the CDU, over a period of 14 or 15 years until it was disbanded in 2002. The Department do not see a particular need for it now. However, the Department do see the importance of support in general, awareness raising, working with representative bodies, and ensuring there is a good appreciation of the potential of the legislation.

The CCS explained that the CDU in Ireland was founded in the 1990s or thereabouts, at a time of very high unemployment. It was designed to support family businesses in transition and succession. In the 1990s the CDU was very much involved in trying to support family businesses that had issues with succession to convert to worker co-operatives. It was quite successful in this. Many co-operatives were formed at the time with the support and help of the CDU. The Centre for Co-operative Studies' view is that legislation is critical to the development of the co-operative movement, but it is only one part of the picture requiring the need to have other supports, including policy, for co-operatives to develop.

In their evidence in public session, the CCS state that there are different approaches in different countries. They gave the example of Glasgow City Council driving the co-operative development unit there. In other countries we have more co-operative-led approaches. The CCS noted that in the UK, there is a wide range of organisations, but Co-operatives UK is driven by the co-operatives themselves. In the US the National Cooperative Business Association is driven by the co-operatives. In Canada there is almost a two-tier approach in terms of the co-operatives themselves and the State.

There will be a need for much more education and training on the co-operative approach. If a co-operative development unit were to be established, there would need to some consideration as to whether it should come from the sector itself or whether it should be a more State-driven initiative.

In relation to a CDU, ICOS would welcome more involvement and support from the State. ICOS are not entirely convinced that the CDU would be the answer, but ICOS would certainly not turn down more involvement and more support from the State.

In their written submission, Rethink Ireland advocates that based on learnings from supporting social enterprises and increasing awareness within general society and a range of stakeholders, they know of the importance to equip those organisations and departments who should support co-operatives, with the necessary resources and

expertise to do so holistically, including micro-cooperatives and social enterprises operating as co-operatives.

Supports to cooperatives and work with relevant agencies could be undertaken by the CDU as discussed by the Joint Committee in December 2022 or alternatively by Enterprise Ireland. As was noted by the Committee, the focus of Enterprise Ireland does not always lie with such organisations, and they would therefore recommend a dedicated, specialised unit within Enterprise Ireland to take on this work.

This unit will face tasks such as providing model rules for different types of co-operatives looking to set up, facilitating the growth of the next generation of co-operatives, and educating potential investors in terms of financing options and benefits of investing in co-operatives. Furthermore, Rethink Ireland also emphasise the importance of supporting co-operatives directly after the law enters into force. A policy and ring-fenced funding for the sector are two key elements in this regard.

In their written submission, Co-operative Alternatives advocate for the presence of a specialised co-operative development body, like Co-operative Alternatives, they have facilitated the growth of co-operatives and involved new co-operatives in the sectors they support. Without specialist support for co-operatives and advisers with a keen understanding of the legislation, regulatory and registration processes, emerging co-operatives are often not appropriately advised and supported. Co-operative Alternatives urges the Committee to consider how this supportive and enabling environment can be created alongside the proposed legislation.

Co-operative Alternatives recommend the following potential options to overcome this:

- The establishment of a Co-operative Development Unit as part of Enterprise Ireland (or equivalent) able to provide independent and accurate advice, training, and support to cooperatives.
- The provision of funding to a Co-operative Development Unit through an open tender, independent of government and industry, to provide independent and accurate advice, training, and support to co-operatives.

- The introduction of a provision in this General Scheme requiring all co-operatives to provide a minimum proportion of their annual surplus to a national or regional co-operative federation for the purpose of providing independent and accurate advice, training, and support to co-operatives – this model is adopted by several jurisdictions most prominently Italy and is a meaningful expression of a co-operative's duties.

Scottish model

The Scottish Government provide the professional services involved in supporting businesses to educate and raise awareness and understanding as to how co-operatives work. The Scottish authorities see a co-operative development unit as being essential. The evidence was that once they set up such a unit and reached out to the professional classes supporting the relevant businesses, there was a substantial increase in the growth of co-operatives. Members queried the importance of awareness and support and if a dedicated unit would be better placed to provide this support and whether this was provided for within the scope of this legislation.

The Department agreed on the importance of educational awareness across all stakeholders, including advisers. The Department has stated they will also be engaging with professional bodies as they would not necessarily be aware of the co-operative model. Previously professional bodies would be directed based on company law. It is important, when the General Scheme progresses to the stage of enactment, that legal advisers, accountants and other professionals will be aware of the legislation and of the advantages of the co-op model and can then advise people accordingly.

The Department noted that they do not disagree about the importance of getting communication out. The question for the Department was whether a dedicated unit is needed. At this stage they do not see the necessity for such a unit, particularly being mindful of the fact that there is already a supportive network out there for business in

terms of Enterprise Ireland and the local enterprise offices. The approach is to leverage the existing network. Rather than focusing on creating a new unit, the important thing is to use whatever channels are available to get the information out there.

Worker buy-out/succession planning

Members raised concerns about succession and the absence of a best practice pathway. The French worker buy-out model was provided as an example and as was the laws in Italy, which are very supportive and distinctive in terms of co-operatives. The Committee queried the lack of a provision that will develop a succession model that would allow workers to buy out their companies.

The Department did consider the concerns and how they were addressed elsewhere across Europe. The proposed legislation is trying to provide for a broad church here; the intention is not legislating specifically for any sector or type of co-operative activity, whether it be worker co-operatives or social enterprises. The proposed legislation is broad and enabling in nature. It is also designed to offer advantages in the future. This is because it is focused on modernise matters and make the running of co-operatives far easier.

There is a long history of co-operatives involved in industry and all sorts of activities in many member states. The Department see potential for co-operatives in the social enterprise, entrepreneurial and business areas. The proposed legislation is intended to be able to facilitate that development.

The CCS understanding of the Act and interpretation of the General Scheme is that it is intended to accommodate all types of co-operatives. It is not specific to any type. They see no reason, particularly if the minimum number of members is reduced to three, that it would not support the development of worker co-operatives. The CCS considers that there are five or six different types of co-operatives and to call out one form over and above any other might be a bit unusual.

The CSS stated in public session that France and other countries have supported the use of the co-operative structure to save businesses. There is potential there. That model has been looked at in many countries and supported in different ways. They suggest there needs to be a range of support and information.

Co-Operative Alternatives note in their written submission that the General Scheme provides for the conversion of companies to societies and would therefore not provide any barrier to the conversion from a private company to an employee-owned co-operative.

Mr Nuttall recommended the Committee agree to investigate the employee ownership trust model as an alternative form of employee ownership for Ireland. The UK's experience is that employee ownership can be grown rapidly by promoting other forms of employee ownership and especially the employee trust model, as well as the worker co-operative. This is because business succession is the main source of new employee-owned companies. The employee trust model works well as an alternative to a trade sale, management buy-out or closing a business.

Mr Nuttall submits, the Employee ownership trust (EOT) is an idea that works in other countries. America has officially recognised the EOT model, Australia has its first EOT, Canada is introducing EOT legislation and Denmark is considering creating an EOT equivalent.

Recommendation 2

CDU

The Committee recommends the re-establishment of the co-operative development unit (CDU) to provide independent advice, training, and support to co-operatives.

Recommendation 3

Buy out

The Committee recommends that further consideration be given to legislating for worker buy outs of businesses in cases of succession planning or administration.

Recommendation 4

Worker co-op

The Committee recommends that further consideration be given to the need for a legal definition of a worker co-op.

Key issue 3: Rule amendments (Head 22 & 111(3))

Under Head 22 and 111(3) of the proposed legislation, these Heads prescribe that a Society's rules could be amended only with the approval of 75% of members present, entitled and voting.

Members were concerned at the pros and cons for such an amendment. A concern arises in this percentage requirement in comparison to have that simple majority for these decisions on potential amalgamations to be pushed through because there may not be sufficient attendance for voting. The voting delegates would have a vote in such a decision.

This amendment exceeds the prevailing "two-thirds" requirement. On the amendment of rules of society by special resolution, the General Scheme proposes that, for a co-operative to amend or alter its rules, the support of 75% of members present, entitled and voting would be required. Currently co-operative societies determine their rule amendment thresholds in their rules, it is not set out for them in law.

In their written submission, Tirlán outlined that under current law a co-op such as Tirlán can, through its members, determine the threshold of majority support required for the Co-op's constitution ("Rules") to be changed. The Rules apply the industry standard, that being that the Rules may be changed only with two-thirds support of members voting in a general meeting.

Tirlán believe that Co-ops should be at liberty to continue to apply the "two-thirds" threshold. They advocate that this will provide a pragmatic and fair balance given the relative importance and range of matters that are impacted (e.g., a representative structure review). To look at it from another angle this would reduce the 'blocking minority' to a very low (and possibly disproportionately attainable) threshold.

Amalgamations

The current law requires that an amalgamation can take place once 75% of the members present and entitled to vote support the resolution. Where a majority of less

than 75% support the proposal a second meeting is required. If at that second meeting a further simple majority (>50%) approve the amalgamation, then that Society can proceed to amalgamate.

The new bill would require each amalgamating society to achieve 75% support of members (present, entitled and voting) in one meeting and then also require that a further meeting approves the amalgamation proposal by more than 50%.

Tirlán believe the existing legal mechanism works very well for co-operatives. Amalgamation is an important decision for any co-op to take. It can also require expediency depending on the circumstances. The unintended consequences of requiring a second meeting are a serious concern and they recommend that the status quo should be retained.

ICOS advocate for the retention of the widely practised two-thirds threshold, suggesting it strikes the correct balance between sufficiency of mandate and realising effective reform. ICOS call for the retention of co-operative autonomy to determine the threshold or alternatively to insert the two-thirds threshold in statute, as opposed to the proposed approval thresholds for amalgamations and transfers of engagement. In their view the General Scheme proposes a worrying overhaul of the current procedures concerning how societies may consolidate.

ICOS further state that the current law considering amalgamations does not require a second meeting where 75% has been secured. For reasons concerning the securing of a sizeable mandate and moving with efficiency to deliver on the will of members, ICOS submits that the current standard works. They submit that the proposed change could have serious unintended consequences in the context of service users and their livelihoods. The current legislation also allows for two or more co-operatives to consolidate where they each attain simple majority support, on the caveat that in those circumstances a second "confirmatory" meeting approves the proposal, at above 50%. ICOS members have grave concerns about this development and call for the retention of the current mechanisms in the new framework.

In their evidence, ICOS contend the current legal provision is that if you want to merge, you have a special general meeting at which members who are entitled to vote attend, and once you have a quorum, if you get 75% of those present and

voting, the merger happens. If you fall short of the 75% but have a simple majority, , you must come back again in a fortnight and get a simple majority again. They note that this has existed for the 100 years that co-operatives have been doing mergers. It is an understanding people are comfortable with.

Every ICOS co-op rule book has a provision for arbitration. If a member is unhappy with something they come to ICOS for arbitration. Members understand it is either 75% the first day or if you get a simple majority, you come back a second day to get a simple majority again. The General Scheme proposes that even if you get 75% the first day you must come back for a second vote a fortnight later to get a simple majority. They note that the fear of ICOS members is you may not get the people out the second day and members are saying the status quo works, that is, get 75% the first day and you are through. ICOS questioned the need to change what they contend is a well understood provision.

ICOS submits that any new legislation should either devolve to the co-operative the power to set its own majority threshold for rule amendments or alternatively, prescribe a threshold of two-thirds of members, present and entitled and voting.

The CCS support the sentiment in the Bill, to protect members and especially their livelihoods and to have a second opportunity to have their views heard. From that point of view, they submit this section of the Bill needs very careful consideration with a view to the sentiment or principle of protecting members and in ensuring no members are left feeling disenfranchised. It is about ensuring there is a second opportunity for them to come back, have their views heard and make their votes count as well.

Under Head 111, The CCS, welcome a special resolution to wind up a co-operative society requiring a 75% majority vote at a first meeting and confirmation of the vote by a simple majority at a second meeting of the co-operative society. This allows for close and careful consideration of, and reflection on, such an important decision.

Recommendation 5

The Committee recommends the current requirement for rule amendments be maintained as this has provided certainty and assurance to co-operative societies and the rules to which they adhere.

Recommendation 6

The Committee recommends that further consideration be given to whether a second meeting should only be required for rule changes where the 75% attendance threshold is met in the first meeting, save for in instances of dissolution.

Key issue 4: Deposit taking, raising funds and community shares

Deposit taking

In their evidence in public session the Department clarified that in the 1970s, co-operatives were prohibited from engaging in deposit taking, apart from agricultural or fishing co-operatives that could do it, albeit not as their main activity. The Department therefore are repealing the 1978 legislation, but this is what we are putting in the new legislation. The idea is that they cannot engage in deposit taking as a co-operative cannot act as a bank. They must be using the services and should not be engaging in the financial sphere.

The Department further clarified that credit unions are co-operatives but since the 1960s they have operated under their own legislation. They note that the proposed General Scheme does not have anything to do with credit unions and will not impact on their operation in any way.

Raising funds

CHI welcome the removal of the antiquated and burdensome restrictions on the ability of co-operatives to raise funds from both their members and the wider community, as it represents an exciting opportunity for co-operatives in Ireland to thrive in more capital-intensive areas of development, including housing.

Community shares

Co-operative Alternatives advocate for community shares. Community shares are essential to their work with starting and scaling co-operatives in the not-for-profit and community sectors. Enterprises require capital to start, grow, and remain sustainable. Community shares enable co-operatives with a social or community mission to secure investment from the very community they aim to benefit. These community shareholders, typically ordinary people, invest in local enterprises that provide goods and services to meet local needs and expect only a fair and modest return on their investment, if any. Community shares are non-transferrable shares in a co-operative with an asset lock.

The unique characteristics of shares in co-operatives, make this type of investments non-speculative. Community shares are withdrawable, have a nominal value of £1 that could decrease but not increase and cannot be sold outside the cooperative (non-transferable). Members also abide by the principle 'one member, one vote' and not 'one share, one vote'.

For the Co-Operative Alternatives, this has been possible thanks to the combination of a favourable legislative framework in the UK and an intensive programme of raising awareness and education about this financial tool, unique to co-operatives.

Co-Operative Alternatives welcome the decision by the Department to remove the prohibition on co-operative societies raising funds through publicly advertised co-operative share offers. They further welcome that the General Scheme will permit the reintroduction of withdrawable share capital, which is a key plank of the community shares model in Northern Ireland.

However, they note that the absence of a complementary optional co-operative asset lock means that the specific 'community share offer' model of financing for not-for-profit and social co-operatives is unlikely to be replicated in the same fashion as it has in Great Britain and Northern Ireland.

They recommend that the new co-operative legislation prioritise the creation of an environment for a 'community shares' ecosystem and provide for a co-operative asset lock to leverage the co-operative model for rural and economic development, and the protection of community assets in Ireland.

Recommendation 7

The Committee supports the removal of these burdensome restrictions on the ability of co-operatives to raise funds through a variety of different means.

Key issue 5: naming of a co-operative

Currently co-operatives must have "limited" in their name. The word "co-operative" does not feature because there is no legislation for co-operatives. There is for industrial and providence societies. Therefore, the Department are providing that the word "co-operative" or abbreviations in Irish or co-op in English will be reserved for societies that are registered under this legislation. This comes from the concern of some stakeholders that companies might have co-op in their name, but they would be cosmetic co-ops, in that it would be in the name and people would have the feel-good factor that they are dealing with a co-op but, it would be a company.

In the General Scheme it is therefore proposed that the name "co-op" would be reserved for entities under this legislation, and they would have to have either the word "co-operative" or one of its abbreviations in the name.

The Centre for Co-operative Studies state under Heads 1 and 2, that CCS welcome the use of the term "co-operative" in the title and content, vis-à-vis the Industrial and Provident Societies Acts, and the use of the internationally agreed definition of "co-operatives" as adopted by the ILO and the International Co-operative Alliance [the ICA].

The CCS further support Heads 18 and 19 and welcome the stipulation that the name of a co-operative society shall include the term co-operative or co-op, or comharchumann or comhar, and that bodies or individuals not registered as co-operatives may not use these terms in their registered name or trading name. This

should apply to all entities, including those registered before the commencement of the legislation.

In their written submission, CHI express support for the reservation of the term ‘co-operative’ for bona fide co-operatives registered under the proposed legislation.

However, they also raised the issue with the Committee of the use of the term ‘co-operative’, in good faith, by unincorporated associations.

Many co-operatives begin life as an unincorporated association with their members adopting a set of rules that meet the international definition of a co-operative and subscribe to the internationally defined co-operative principles. Indeed, many bona fide co-operatives remain of a scale that they stay and intend to remain unincorporated associations for the duration of their activities.

CHI therefore recommend that the Committee consider whether unincorporated associations should be permitted to use the term co-operative and its variants (not including ‘co-operative society’ or ‘cooperative society’) and what safeguards could be put in place to avoid the use of the term in bad faith.

Recommendation 8

The Committee recommends that the legislation should provide a more precise and inclusive definition of what constitutes a ‘co-operative’. The Department of Enterprise, Trade and Employment should consult with relevant stakeholders and the wider public in doing so.

Key issue 6: Head 257 – transition provisions

Members sought clarity under this head and the conversion of industrial and providence society to company.

The Department provides that at the end of the transition period, the old legislation will be largely repealed. Any entity that has registered as an industrial and providence society will have a choice to convert to a co-operative or to another corporate model, such as the company model, by the end of the transition period if they do not intend to subscribe to the co-operative ethos and principles. They will also have the option to wind up or if they do not do any of those provisions, they will be dissolved at the end of the transition period.

The Department explained further that transition happens now but at a low level. An unknown number of companies espouse the co-operative model, and it is difficult to determine an exact number. There are approximately 260,000 companies on the Companies Register.

Under Head 257, the Department estimate that many companies will convert to co-operatives under this proposed General Scheme. They will move under the co-operative legislation, which is designed specifically for co-operatives, and which will have many of the advantages of company law, such as audit exemption and the stronger corporate governance regime.

The Department aims to ensure companies are aware that there will be a transition period and that during this period there will have to be choices to make as whether to register as a co-operative under the new legislation or convert to a company. Companies may also decide to wind up their operations. If they choose not to do anything, however, after a process, they will be dissolved from the register.

The Department estimated that there are around 960 industrial and provident societies on the register. The number has been trending upwards slightly over the past few years. There was a high of something over 1,000 in the past 10 to 15 years. The sector is relatively moribund, the concerns arise as not all those industrial and provident societies are co-operatives and not all of them espouse the co-operative ethos. The majority would, and this would have necessitated examination of the rules of the co-operatives that are on the register. Having analysed those, the

Department's sense is that somewhere in the region of 800 industrial and provident societies would consider themselves to be co-operatives. The remainder operate under the legislation but do not espouse the co-operative ethos. There is also an unknown number of co-operatives operating under company law.

In their evidence in public session, the Department stated that there are approximately 206,000 on the companies register. There are a certain number of those that operate as co-operatives, but the overall figure cannot be accurately measured as assessing if they have the word "co-operative" in their names does not really give a great sense of whether they are co-operatives. As a result, there is no hard data in that regard.

The Department further expanded that in the context of potential for the sector, there is significant potential, but it is ultimately a question of providing the facilitative and supportive environment and then ensuring that it is well understood. It is ultimately a matter for entrepreneurs or those in the social enterprise space to decide. There will be a certain element of displacement. There will be those who might have been attracted or, in the past, went down the company law model route, who will now decide to operate under co-operatives legislation.

In their evidence in public session ICOS state the additional administrative burdens upon smaller co-operatives as there will then be a transition process by which every existing industrial and provident society, IPS, will have to register as a co-operative society under the new Act. Each will need a new rule book that complies with the new Act and that will take a lot of meetings and work. They submit that this is a huge burden that large societies can handle but for small ones it will be very onerous.

Allowing existing industrial and provident societies to convert to a co-operative society with a single 75% special resolution

The procedure for an industrial and provident society to convert to a co-operative society before the end of the transition period requires a 'special resolution' under section 51 of the Industrial and Provident Societies Act 1893-2022.

The original purpose of the two-meeting special resolution provided for under section 51 and largely retained for amalgamations, transfers of engagement and conversions to a company under the Co-operatives Societies Bill was to ensure that thoughtful consideration was given to these matters and to reduce the risk of opportunistic attempts to demutualise a co-operative without the full and informed consent of its members.

However, CHI would argue that this two-meeting special resolution is inappropriate and unnecessarily burdensome for a bona fide co-operative simply seeking to re-register under the proposed legislation.

CHI recommend that consideration be given to replacing the requirement for a special resolution under section 51 of the Industrial and Provident Societies Act with a special resolution under Head 111 of the Bill (75% of members voting at a single meeting). As an industrial and provident society converting to a company during the transition period continues to present the same risks as before, CHI recommend that a special resolution under section 51 be retained in this case.

ICOS believes that these changes will, in the long term, have far reaching implications for a significant number of producers and service users dependent on the continued existence of a co-operative in their working and personal lives.

Having said that, the decision to consolidate is a significant structural decision. A balance needs to be struck. The legislation needs to be optimal on the meeting and voting threshold requirements. ICOS has assisted numerous co-operatives with amalgamation and transfer decisions across a range of sectors and over many years. In our view, the current statutory thresholds achieve the correct balance.

Where the voting members of each society consider the terms of a proposed consolidation and then proceed to endorse that proposal at 75% of the votes cast,

there should be no concerns on scrutiny or on mandate. The overwhelming decision of the informed, service using and voting membership should render a second meeting superfluous – the consolidation should be allowed to proceed without delay.

ICOS submits in the instance of a mandatory second meeting, even where the 75% threshold is met in the first meeting, risks the decision of the 75% majority in the first meeting being overruled by a smaller (50%) but more active proportion of the electorate in the second meeting.

In their written submission ICOS wished to formally record:

- support for the continuation of the status quo; and
- genuine concerns that the changes outlined in the General Scheme will have undesirable (albeit unintended) consequences for co-operatives and the livelihoods of their members.

Key issue 7: ongoing engagement with stakeholders

Members highlighted the importance of awareness, information and education about the transition, the possibilities, and the advantages when the legislative changes occurs.

The Department addressed Members concerns here giving assurances they will have a key role in this scope. The Department to date, have had ongoing dialogue with some of the key stakeholders and will continue that dialogue. The Department are keen to ensure the legislation is well understood and that people have sufficient time to make decisions on the best route for themselves.

The Department assured Members they will engage with the development agencies, representative bodies and directly with the co-op movement, the co-operative industrial and providence societies. Officials further explained they can communicate through the channels the Registrar has to get that information out. The General Scheme is ground-breaking legislation, and it is important to ensure it is well understood, people recognise its potential and that they are aware of the timeframes because the status quo is not an option.

Data

Mr Nuttall notes it will be important to keep track of the success of this legislation in growing the number of co- operatives of different types, not just the overall total.

The proposed registration scheme should therefore enable the continued differentiation between types of co-operatives. For continuity purposes when analysing data, it would help to maintain the category classification used by the Registrar of Friendly Societies. He suggests the draft legislation should be amended to include a regulatory framework to ensure the continued detailed reporting of co-operatives data.

Recommendation 9

The Committee calls for ongoing engagement with relevant stakeholders and advocates for a campaign of communications with, and support for, businesses should be developed by the relevant Departments as a priority utilising established forums where possible to support the reform of this important legislation.

Key issue 8: Head 199 – Companies becoming co-ops with charitable status

Members were concerned on the charitable status of co-ops and the Charities Regulator.

The Department has had engagement with the Department of Rural and Community Development on both the charities aspect and social enterprise. The corporate models that charities use can vary. Some of them are co-operatives. They adhere to the co-operative requirements. In addition, there are specific requirements relating to the Charities Regulator.

In a company context, a co-operative application is made to the Companies Registration Office, CRO, while in the context of a co-operative, it is registered as a co-operative. There is a unitary office with separate statutory functions. At present, the CRO and the Registry of Friendly Societies are headed by the same individual, but they are two statutory offices. The applicant needs to satisfy the Registrar that the co-operative ethos is being fulfilled. The applicant submits its rules to the Registrar, who then registers the co-operative, which then operates on that basis.

Enforcement

The regulator in this sector is the Registrar of Friendly Societies, the registrar of co-operatives will have similar powers to the Companies Registration Office, but it will come within the remit of the Corporate Enforcement Authority from a compliance and

enforcement perspective. The Department confirmed there will be access to the small company administrative rescue process.

The Department clarified into the future the registrar of co-operatives will be similar in that it will be a separate statutory office but will be a sibling of the CRO in the sense that it will be the same physical building and the same individual will be the Registrar, like the way it is now. There will be a separate registrar function, but the individual will be the same.

Members queried the staffing and resourcing capacity in the Registry of Friendly Societies area. The Department explained the current smaller staffing level reflects the fact that there are only approximately 950 industrial and provident societies. They all make their annual returns, but there is not a whole lot happening in that area. Clearly, if the activity in that area is significantly increased, that would need to be looked at in the context of ensuring appropriate resources.

Prevention of money laundering

Members queried the relevant heads in relation to the prevention of money laundering. Officials explained companies and industrial and provident societies are required to provide information on beneficial ownership, so there is a third office within this area. There is the CRO, the Registry of Friendly Societies and the register of beneficial ownership.

The register of beneficial ownership has registration information on any company and any industrial and provident society and there is a requirement to file ownership details. The Department acknowledged that this is in place and will continue.

Recommendation 10

The Committee recommends the register of beneficial ownership, CRO and Registry of Friendly societies be given greater staffing provisions and assistance to support the sharing of company information.

Key issue 9: Asset locks and legal reserves

Asset locks

Members were concerned at the Department's decision not to provide for an asset lock within the scope of this General Scheme. An asset lock is usually provided for as a means of ensuring that they are not subject to management capture and management buy-out and are already in place for the credit union movement.

The Department addressed the issue, noting they were aware of the situation and concerns relating to asset locks, further stating that some areas of the co-operative sector are very keen on having asset locks. That is facilitated by their being able to provide for that in their rules, if they so wish. There are some co-ops that simply have no interest in an asset lock and that would regard it as a considerable restraint on their activity. The Department believe in a broad church approach and for those co-ops that want to have an asset lock to try to future-proof themselves, they can absolutely do that within their rules. It is a democratic decision of the members to provide for an asset lock, if they so wish, and to provide whatever protections they want around that.

Co-Operative Alternatives advocate for the provision of an optional statutory co-operative asset lock as an important provision of this draft legislation. They believe the experience of working with start-up and scaling co-operatives across the island of Ireland reveals that a co-operative's rules concerning the treatment of reserves in the event of dissolution are critical to its development.

Asset locks play a critical role in a variety of community-based initiated co-operatives. However, the inconsistent application of eligibility criteria due to a lack of awareness around the nature of a co-operative and the lack of a standardised statutory 'co-operative asset lock' which stakeholders can rely on is problematic for these co-operatives in order accesses funds and supports on the same basis as other legal forms of companies.

Co-Operative Alternatives attest that the combination of the public offering of shares and an optional co-operative asset lock provided for in legislation would provide the ideal environment for replicating the successes of community financing of co-operatives in Ireland.

CHI have concerns with the lack of a statutory provision for an asset lock. Community, social and not-for-profit co-operatives, along with their support organisations, have strongly advocated for the inclusion of optional provisions for a statutory co-operative asset lock. This would allow communities to utilise the co-operative model more readily in rural and community development, and to draw down national and European funding targeted at growing the social and solidarity economy. A co-operative asset lock would serve as a safeguard for stakeholders, ensuring that assets acquired through the co-operative remain within the community, and that they cannot be sold for individual gain.

The CHI perspective looks at it as being an optional facility within the rules that would be introduced to protect the co-operative from itself and to stop members' assets from being stripped as personal gains. In other words, you would retain the earnings within the co-operative for the objects of the co-operative rather than for personal gain. CHI see it as being an optional thing, but it would be to protect the co-operative from itself. The provision of an asset lock as an optional facility within the rules that would be introduced to protect the co-operative from itself and to stop members' assets from being stripped as personal gains. You would thus retain the earnings within the co-operative for the objects of the co-operative rather than for personal gain.

ICOS see no benefit in the context of the couple of hundred co-operatives in their network because to be fair their co-operatives are commercial entities that come together to achieve scale to do their business, whether they are farmers, service providers or otherwise. Although ICOS do not believe it would be appropriate for their members, that does not mean it is not suitable for other sectors. ICOS expand further that the issue is that provision of an asset lock cuts across the autonomy of the members to do what they like with their business. In principle, ICOS would like members to have the power to decide. A co-operative is set up by the members, for the members.

The CCS welcome the legal reserve and the flexibility of co-operatives to decide how reserves are treated in the rules. They note that while there are arguments about the asset lock, and the potential to be stripped and so forth, co-operatives are autonomous organisations. Therefore, giving them the autonomy and flexibility to decide how reserves are used is, in their view, a positive step.

CHI advocated that many co-operatives are not for profit organisations. It is important in a not-for-profit environment, as opposed to a for-profit environment, that the assets are protected. CHI contend the provision be optional but that there would be something there they could adopt. As well as looking at their rules, CHI provide model rules for other housing co-ops that want to become established. CHI would like to have something like that available, backed by legislation, which they could put into the rules. They suggest if you are going down this route of being a not-for-profit and you are building these houses for community purposes, that such a provision would be available to them to use.

The Wheel advocate for an optional asset lock for co-operatives, they 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.

They suggest the introduction of "non-distributive capital surpluses 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."

The Wheel submit that this optional provision will not be availed of by all co-operatives, but they believe from their 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 to expand the scope and development of social co-operatives through accessing national and European supports not otherwise available, they believe it should be introduced as part of the new co-operative legislation.

Rethink Ireland also advocate for an asset lock/winding-up clause: also called non-distributive capital surplus clause, this provision sets out that upon winding up, any surplus must not be distributed amongst the members but instead transferred to another cooperative which provides for such safeguards or a charity or social enterprise with a similar mission as the cooperative in question. As with a mission lock, this clause should be optional but once applied not open to removal by members' votes.

Rethink further advocates for the inclusion of a (Partial) profit non-distribution clause. As with the previous rules, this rule should be optional but once applied must not be disapplied. Social enterprises by their nature reinvests their profits into their mission, as set out by Ireland's first National Social Enterprise Policy. By allowing for such a lock, public trust can be further enhanced.

These clauses are core for funders like Rethink Ireland in their due diligence and ensuring that their funding is indeed secured in being used solely for the intended social purpose. If this option does not exist, social enterprise co-operatives will continue to face a disadvantage to registered charities. In the absence of a regulator overseeing any changes to constitutions, such a clause should not be open to change by resolution, also known as an entrenched rule.

Legal reserve (Head 50)

Under Head 50, legal reserve, the General Scheme proposes compulsory reservation of funds of the society. In their opening statement, CHI welcome and support the introduction of a legal reserve for all co-operatives.

Tirlán note that the General Scheme would compel co-ops to reserve funds for non-distribution or distribution solely in specified circumstances. There is no equivalent requirement under the existing (Industrial and Provident Societies) legislation. There is no duty on comparable companies to do this.

Tirlán further comment and query the basis for this proposal. Co-ops and their members already apply strong rule book safeguards on profit distribution. These

include Board control on redemption of shares and both Board and general meeting control on the issuing of dividends. Tirlán believes this head fails to take account of these practices. In their place it proposes something that raises serious questions around the use of those funds and what level of fund reserve would be deemed adequate.

ICOS expressed serious concern for the purpose, necessity, and scope for confusion of this measure. ICOS enquired as to the basis for such a high level of financial regulation when it does not apply to companies doing similar business. They suggest that due regard has not been afforded to the prevailing and successful means by which members determine that funds are to be reserved. The actual limitations to be imposed on funds that would be reserved has not been addressed in the General Scheme and this gives rise to grave concerns that co-operative autonomy could be restrained.

In their evidence in public session, ICOS stated further, the General Scheme requirement that a society would determine the "adequacy" of the reserves is open to interpretation. ICOS believes this Head 50, would generate confusion in respect of compliance and could discourage producers or service users from choosing the co-operative model. ICOS notes the shift to a compulsory reserve from an optional mechanism in the 2022 public consultation.

Under Head 50, The Centre for Co-operative Studies endorse the concept of the introduction of legal reserve provision and that the way it is operated is determined in the rules of a society. Good practice also suggests that legislation should require the establishment of other reserves, including reserves for education and development purposes. The presence of reserves introduces considerations around the use of an asset lock. The purpose of this is to ensure that any retained surplus or residual value cannot be appropriated for private benefit of members, removing the scope for members to make speculative capital gains resulting from the dissolution, disposal, or conversion of the society into a company. The asset lock requires any such assets to be used for purposes deemed appropriate by the co-operative, such as public or

community benefit. This General Scheme affords flexibility to co-operatives to decide how reserves are treated in the rules.

Co-operative Alternatives welcome the proposed introduction of the concept of a 'legal reserve' into co-operative legislation in Ireland under Head 50. However, they believe that the current proposal for implementing this concept does not provide sufficient prescription to ensure that co-operatives set a meaningful level of contribution to the reserve.

Co-operative Alternatives maintain that the principle that some of the capital of the co-operative remains the common property of all the members, and is not distributable to the members, is an essential part of the co-operative model.

Co-operative Alternatives recommend that the legislation be aligned with European co-operative norms regarding the requirement and maintenance indivisible reserve. This would involve the legislation setting out minimum levels of contribution and placing some limits on the distribution of this reserve to members in the event of a winding up.

Recommendation 11

The Committee recommends the legal requirement for an asset lock, as is the case with Credit Unions and for all co-operatives.

Recommendation 12

The Committee recommends further evaluation of the proposal and scope to legal reserves be undertaken to examine the merits of the addition of this provision and any necessary levels or limits that may need to apply.

Key issue 10: Audit Exemption (Head 169)

Under Head 169 Audit Exemptions, the proposed General Scheme introduces an audit exemption for small co-operatives. CHI welcome and support audit exemptions being introduced on an equivalent basis and consider them matters of importance to their member co-operatives.

ICOS has long called for the introduction of an audit exemption under this Head and support this positive development. The cost of the financial audit can be burdensome in relative terms for small community focused co-operatives. However, the General Scheme proposal, in Head 169, falls short of devising a solution that safeguards the unique member stakeholder imperatives in a co-operative. ICOS have grave concerns about the unintended consequences of introducing what is otherwise a very positive concept for co-operative application.

ICOS state that the fundamental concern is that the proposal does not provide for member approval of an application for audit exemption. An ICOS preference is that audit exemption could be applied for if the members at the general meeting approved it. ICOS do not believe societies should be able to continue without having an audit and therefore recommend there should be an audit perhaps at least once every five years.

ICOS express their support for an audit exemption due to the expensive nature of audits on smaller co-operatives. It is important to note, the auditor works for the members. The auditor is the friend of the members who, on their behalf, audits the books of the society.

Under Head 169, the CCS believe this meets with almost universal approval, notwithstanding ICOS having some concerns around it, as well as perhaps some other bodies. The CCS welcome the provision for an audit exemption for smaller co-operatives as this requirement can be a costly and administrative burden on them.

The CSS stated further that the audit requirement can be costly, and it can be an administrative burden but there are clear benefits to having audited accounts

regarding transparency and trust and in assessing elements of performance of the co-operative. Retaining the requirement for annual returns and audited accounts while allowing specific societies to apply for an audit exemption and coming up with a formula as to how often that needs to be done, would be a sensible approach.

Co-operative Alternatives welcome the exemption from the requirement of auditors for co-operatives within the turnover and asset limits indicated in the General Scheme. They agree that this requirement should be reflected in the Rules of the Society. The General Scheme could reflect in law the option for the members to call for a vote on the auditors, if deemed necessary.

Co-operative Alternatives would additionally welcome the abolition of fees currently charged when accessing cooperative public records from the public registry and a reduction of any fee for registration purposes. At present registering a co-operative is still considerably more expensive than registering a company, even when well established Model Rules are adopted by a co-operative. The cost of registering a co-operative should be no greater than registering a company.

In their evidence in public session, CHI would happy that the members themselves would elect whether to install it and a threshold could be reasonably low. A suggestion of perhaps 20% of the members would determine how long it should be.

Recommendation 13

The Committee welcomes the introduction of an audit exemption to ease the cost and administrative burden on SME's. Supports should be provided to co-operatives to enable them to do this effectively.

Recommendation 14

The Committee supports advising an audit at least once every five years and further advocates for consideration to be given to obliging companies, potentially over a certain period to publish data on audits for co-operatives.

Key issue 11: Requisition of a meeting by 10% of members with voting rights (Head 99)

Under current law a co-op's members can design how meetings can be requisitioned (or called) by ordinary members. The General Scheme brings in a flat threshold whereby 10% of members could demand a Special General Meeting to be held.

Like many other co-operatives Tirlán's Rules prescribe a maximum on the number of such members who can petition from one electoral area. They submit that there exists sensible reasons why a co-op and its members should have autonomy to prescribe such a condition.

Tirlán believe that this obligation would remove the sensible nuance explained above and could risk unintended governance consequences.

The General Scheme would confer rights on shareholders to requisition general meetings of the Society. Two distinct mechanisms are outlined in the Scheme. ICOS notes that the mechanism whereby 10% of members carrying voting rights can compel the directors to convene a general meeting broadly reflects a default provision of the ICOS model rules.

Many ICOS affiliated co-operatives require that amongst the 10% of members signing the requisition a minimum level of diversity (e.g., by geographic district) must be secured. Where this has been installed in the rules, the members of the society have factored in local or other factors peculiar and (above all) relevant to that co-operative's membership.

As currently drafted (Head 99) would apply a threshold of 10% of voting right members for the purposes of calling a special general meeting "notwithstanding anything in the rules". This would amount to a statutory prohibition on the current legitimate right of co-operative members to determine requisition conditions appropriate to their needs.

ICOS submits that co-operatives should retain the right to customise the composition of the 10% condition where their members deem it appropriate to do so.

Recommendation 15

The Committee recommends the maintenance of the current position that co-operatives should retain the right to customise the composition of the 10% condition where their members deem it appropriate to do so.

Key issue 12: Removal and replacement of directors (Head 66 and 67)

The General Scheme would introduce a process by which a co-operative director could be removed from office by the membership (Head 67). Under the General Scheme, members would have the right to serve notice of such a resolution and the director concerned would have the right to respond with representations. The General Scheme also provides that where the resolution is successful, the resulting vacancy “may be filled at the meeting at which he or she is removed”.

In ICOS experience, most co-operative society rule books provide for the removal of directors by the membership (or their elected representatives) outside of scheduled rotation and retirement. Furthermore, where a right of removal exists the rules will provide for fairness with the rules stipulating that the director may make written representations within a specified period.

The General Scheme would enable members to remove a director on an “ordinary resolution”, defined under the General Scheme as a simple majority. The relevant provision (Head 67.1) suggests that this right and threshold would apply “notwithstanding anything” in the society’s rules.

The ICOS model rules apply a higher threshold - two thirds of persons present, entitled and voting - to be met before a director can be removed. The logic for this higher bar is to achieve a balance between the representative rights of members - critical in a co-operative - with due regard to the demanding, and at times unforgiving, responsibilities of directing the affairs of an incorporated entity.

The General Scheme proposes (Head 67.9) that where a director is removed under the mechanism, he/she can be replaced immediately in that same meeting.

This head is noted with concern from ICOS, as they note the members' right to electoral representation on the board drives member control of the co-operative's services. They also highlight that it is the responsibility of members to make the right election decision. Outside of standard election cycles the decision to remove (and to replace) a director should, in ICOS experience, be taken with a greater degree of care. Accordingly, where a director has been removed from office the casual vacancy is filled at a subsequent meeting.

ICOS advocates for legislation permitting a co-operative to provide in its rules that the resulting vacancy would be filled at a meeting designated for that important purpose.

ICOS further states that under the General Scheme a co-operative would be required to maintain a minimum number of directors. ICOS recommend and submit that legislation can be drafted to allow for alternative regulations on the filling of vacancies.

Recommendation 16

The Committee advocates for further care and consideration with this provision. Enabling the removal of Directors by ordinary resolution with a simple majority would not reach the level of fairness currently applied across co-operatives currently requiring two thirds of persons present to vote for removal.

Recommendation 17

The Committee recommend and submit that further research be conducted into whether the legislation can be drafted to allow for alternative regulations on the filling of vacancies and removing of members.

Key issue 13: Directors' fiduciary duties (Head 83, 130 and 131)

Under existing law, a co-op can design checks and balances on directors and on their removal from office mid-term. Tirlán applies the two-thirds threshold applied by other ICOS affiliated co-ops. They believe this strikes the correct balance between ensuring board stability (for instance in taking tough decisions) and keeping directors cognisant and respectful of the members' interests - a key co-op principle.

The proposed General Scheme would allow for members to remove a director in a general meeting on a simple (50%) majority resolution. Tirlán believe that this lowering of the threshold could cause Board and Society instability.

The fiduciary duties of directors would be put on a statutory footing under the General Scheme. Co-operative boards feature individuals having a direct trading relationship with the business. In a company this would be deemed a conflict. In a co-operative it is fundamental. The legislation should, in Tirlán's view, recognise this co-operative feature within the wider and, of course, appropriate application of director duties.

The Department stated that fundamentally, a co-operative is a body corporate with limited liability. That comes with significant obligations on the directors. A director of a co-operative will have very similar responsibilities, including fiduciary responsibilities, as a director of a company. This is not a corporate-light environment as limited liability is a privilege that comes with obligations.

ICOS welcomes the inclusion of a provision noting that "No director of a co-operative society or intending such director shall be disqualified by his or her office from contracting with the co-operative society either with regard to his or her tenure of any such other office or place of profit or as vendor, purchaser or otherwise."

ICOS believe there is a justification for further assurance and recognition in the statute of the unique set of conflicting interests and responsibilities that a co-operative director necessarily holds in a properly functioning co-operative society. As with audit exemption this is an area where design of the statute should, in ICOS's opinion, properly address the model.

This clarity is important against the backdrop of an increased compliance burden on a sector dependent on voluntary directors. While the voluntary nature of the sector's leadership will never be offered as an excuse to have more lenient governance standards relative to the nature of the activity being undertaken, it is reasonable to expect that a greater level of clarity and certainty regarding these individuals' legal duties would be offered.

Recommendation 18

The Committee recommends that further consideration is given to providing greater clarity in the legislation as to directors' fiduciary duties and responsibilities, particularly those that pertain to the unique set of potentially conflicting interests that may arise from a director contracting with the co-operative society.

Key issue 14: One member – one vote

Members raised concerns about the principle of ‘one member, one vote’ regardless of size and whether this was provided for within proposed legislation.

The Department do not explicitly state this in the proposed legislation that they have one member, one vote, unless the rules provide otherwise. The reasoning for this is the concern is that with, geographically, a widely spread co-op, there will be only a few members coming from one area and many from another, so they would have to have a better representation at the co-op. This stance was expressed by umbrella organisations. The Department are, therefore, encouraging that everybody has one vote but allowing, where the activity requires it, for divergence from that.

The Department suggest that in each concern that has been expressed, it is a matter of trying to facilitate and to empower the co-ops themselves. The General Scheme will provide that it is up to the members to be as prescriptive or not as they want to be in respect of a lot of matters. They may want to be very prescriptive, in which case they will put it into their rules; in other situations, they may be completely silent on a matter.

In their evidence, CHI stated their support for the requirement for co-operatives to respect the principle of one member, one vote.

Recommendation 19

The Committee recommends supporting the requirement for co-operatives to respect the principle of one member, one vote as it currently applies in this sector.

Key issue 15: Companies Acts concepts and the cross-application of provisions (Heads 1, 988,169)

Members were concerned at the cross application of some provisions between the Companies Act and this legislation. The cross over may provide ambiguity that may need to be addressed.

ICOS expressed concern in relation to the Companies Acts concepts and the cross-application of provisions. The General Scheme cross-applies several procedures – for example, on liquidation and audit exemption – from the Companies Acts, with necessary modifications. ICOS submit that co-operatives and their members deserve specific and accessible legislation, in a dedicated Act. ICOS suggest these procedures should be installed with modification in the Bill.

ICOS note the criteria for audit exemption in Head 169 being a key example, where cross-referencing will make it unduly difficult for a co-operative society officer to establish with certainty what their duties are under such provisions. It is worth noting that the co-operative societies that this particular provision applies to will be smaller co-operative societies without a well-funded secretariat that can dedicate time to analysing cross references in two substantial pieces of legislation. In addition, a provision of this nature will be relied upon or considered annually by the prudent co-operative officer.

In their written submission ICOS strongly advocate that in scenarios such as this, Companies Acts provisions, where relevant and necessary as applicable to Societies, should appear directly inside the new legislation as co-operative society specific provisions.

Recommendation 20

The Committee advocate that in scenarios such as under Head 169 where cross-referencing may make issues unduly difficult, Companies Acts provisions, where

relevant and necessary as applicable to Societies, should appear directly inside the new legislation as co-operative society specific provisions.

Key issue 16: Annual and Extraordinary General Meetings

ICOS expressed concern that proposed General Scheme removes several co-operative concepts that members are very familiar with, such as that of a special general meeting, with new terms synonymous with companies, such as the term "extraordinary general meeting". Co-operative members are used to terminology around special general meetings. Member familiarity and co-operative culture should be enhanced, not undermined, especially where the gains of this proposed homogenisation are not apparent. ICOS calls for the retention of these terms as per the current law and practice.

ICOS also note the use of Company associated terms in the General Scheme in place of terms currently understood and practised by co-operative members. They contend that co-operatives are not companies and there are legal and cultural reasons for maintaining that distinction.

Flexibility of Annual General Meetings

Regarding Heads 96 and 97, the CCS welcome the flexibility afforded to the holding of annual general meetings, AGMs, virtually or in person or both. This might help to reduce the costs of holding an AGM and increase attendance. The introduction of the ability to cast a vote before or during the AGM is also welcome, allowing for more inclusive voting. Both measures align with increasing the democratic accountability of the co-operative to its members.

In their written submission CHI request that the Committee consider the construction of Head 107, which sets out the business to be conducted at an annual general meeting.

CHI recommend that the Head make explicit what other business is expressly permitted to be conducted at an annual general meeting, including the consideration and, if thought fit, passing of resolutions to amend the co-operative society's rules.

Currently, the Industrial and Provident Societies Act 1893-2022 requires the calling of a 'special general meeting' to consider amendments to the co-operative's rules,

which has been interpreted across the sector as prohibiting the consideration of amendments at annual general meetings.

This requirement introduces a barrier to societies dealing with rule amendments at the mandatory annual general meeting. It often necessitates the calling and conducting of a separate special general meeting before or after an annual general meeting. This involves the duplication of a lot of administrative procedures.

CHI request that the Committee consider this matter and recommend that the Bill provide clarity on whether rule amendments, amongst other matters, may be considered at annual general meetings alongside the prescribed business.

Personal representatives right to attend and vote at General meetings (head 101)

The General Scheme proposes that the personal representatives of deceased members would have the right to attend and vote at general meetings.

Co-operatives are designed with service to the fore. In their written submission ICOS explained society rule books and their purpose. Society rule books typically restrict some key decisions to active members. Rule books also stipulate that on death the successor to the title of the shares (i.e., under the will or rules of intestacy) will receive the monetary equivalent of the shares but has no right to become a member unless s/he meets the conditions for, and have been admitted to, membership. This important architecture would be compromised were persons being neither members nor holding a service use interest in the co-operative permitted to attend and participate in meeting decisions.

Recommendation 21

The Committee suggests Head 107 be amended and provide further clarity for what business is permitted to be conducted at an annual general meeting, including the consideration and, if thought fit, passing of resolutions to amend the co-operative society's rules.

Recommendation 22

The Committee further recommends that current terminology be maintained and advocates the wording be examined under this head.

Key issue 17: Heads 14 and 244 NACE

Under these heads, a co-operative society must refer to the European Union's nomenclature of economic activities [NACE], system for the classification of economic activity for the purposes of statistics on co-operatives.

The CCS note an issue of concern to is the availability and standard of data on co-operatives for the purpose of research and analysis. The CCS suggest consideration of a co-operative-specific system of classification by the Registrar and reporting on a wider range of statistics, including, and not limited to, number of members, number of employees and total assets.

CHI welcome the introduction of NACE classification to co-operative societies. As the NACE system is one based solely on an economic classification, they asked that the Committee consider whether an additional co-operative specific system of classification should be maintained and improved in the draft legislation.

The current legislation and secondary legislation provide for a classification based on sector (agricultural co-operative society) or governance (worker co-operative society). However, it is widely acknowledged that the current system of collecting and maintaining these classifications is not fit for purpose.

CHI would submit that ensuring an accurate representation of the nature and scale of the cooperative sector in Ireland is vital for ensuring that any future legislative initiatives seeking to enable a more co-operative economy are evidence-based.

CHI would recommend to the Committee that any provisions introduced to classify co-operatives in the manner set out above would include a mechanism for a co-operative to self-report at registration and to confirm/amend its classification in each annual return.

Recommendation 23

The Committee recommends that further consideration is given to ensuring an accurate means of reporting on the nature and scale of the cooperative sector in Ireland is developed. This will be vital for ensuring that any future legislative initiatives seeking to enable a more co-operative economy are evidence-based.

Key issue 18: Mission Lock

The Wheel welcome the 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 the 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.

The Wheel 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.

Rethink Ireland also advocate for the inclusion of a 'mission lock'. Providing a mission lock/objects clause, this provision would set out the social or environmental purpose of the cooperative, giving members, funders, and the public a guarantee of the continued social mission of the cooperative. Once applied, this mission lock cannot be disapplied by the members.

Further issues of note

Rethink Ireland do not recommend the use of abridged accounts for co-operatives. The charities sector has learned the hard way that permitting abridged accounts is a

hindrance to data gathering and holds back the sector's development as a result. This is a matter of discussion for the Charities Bill currently under consideration by the Oireachtas, and under discussion at policy level by the National Advisory Group on the development of a Philanthropy Policy, both of which are steered by the Department of Rural and Community Development.

Recommendation 24

The Committee advocates for the inclusion of an optional 'mission lock' in the provisions of this legislation to provide certainty to stakeholders and would ensure that the co-operative model is an attractive legal form for community organisations and social enterprises.

Key issue 19: Miscellaneous matters

Registers and interests

In their written submission Tirlán submitted concerns under this heading. The General Scheme would require directors to disclose various interests. While it may be that for many co-op directors the actual filings will be minimal this introduces a burden on persons putting themselves forward with commendable volunteer motivations.

On director interests and share register duties, due regard does not appear to have been given to the cultural and operational nuances of a co-op. Co-ops discharge their governance obligations and will do so under the new legislation, but those obligations need to be designed with the realities of how a co-op and its stakeholders operate.

Publicly available registry records free for members and external stakeholders

The draft legislation provides for charging a fee to examine and access documents filed with the Register by a co-operative society. This includes documents which are stored electronically and are conveyed purely in an electronic manner.

CHI would like to advocate that the Committee consider whether the draft legislation should ensure that members and external stakeholders can access electronically

stored and conveyed documentation free of any fee or charge. This would ensure that all members of a co-operative can access documentation filed by their co-operative and would reduce the cost of members holding their co-operative accountable.

Schedule 2 – concern for community

In Schedule 2, the final co-operative principle listed is 'concern for community'. The relevant head states: "Cooperatives work for the sustainable development of their communities through policies approved by their members." Members queried the unexplored potential contained in this section and this key element should be highlighted further.

The Department believes it is fair to say that most co-operatives would like to think they are in this space to a greater or lesser extent. For some of them, it may simply be that they are a channel for what is produced, but even that is supportive of the community in the context of providing jobs and employment, funds circulating, etc. It can go much further in the context of social enterprises, community development, home help services, meals on wheels and a variety of similar issues.

Supports for LEO's to provide support

Members raised concerns whether the local enterprise offices are well equipped to promote and support this legislation. In reference to group water schemes and housing co-ops as an example, a local enterprise office is going to be a more accessible point of contact. Members queried the capacity of the local enterprise offices to deal with the sort of issues that make co-operatives unique to face the new challenges and suggested that further capacity may be needed in the local enterprise office network if they are to facilitate the growth of co-operatives.

The Department stated upskilling will be essential across the piece, not just in terms of the enterprise development agencies but also among professional advisers, whether they be accountants or lawyers. Officials had engagement with colleagues in the Department of Rural and Community Development, which has policy

responsibility in respect of social enterprise and that model will also be available. There will be a variety of supports, including soft advice, in place.

Recommendation 25

The Committee recommends the Department of Enterprise, Trade and Employment should collect disaggregated data on co-operative structures with the purpose to:

- ensure the legislation is effectively and equitably implemented and to assess its impact in terms of achieving effective reform.
- assess the impact of the measures on businesses and provide them with targeted supports; and
- enable cooperation at Government level in monitoring the effectiveness of the reformed legislation and provide insight into any further reforms required.

Recommendation 26

The Committee recommends consideration be given to whether the draft legislation should ensure that members and external stakeholders can access electronically stored and conveyed documentation free of any fee or charge.

Recommendation 27

The Committee advocates LEO's be supported in terms of relevant training, capacity, upskilling and resourcing to facilitate the establishment and growth of co-operatives and further recommends that each LEO should have a minimum of one subject matter expert available in house to provide support.

APPENDIX 1- Membership of the Joint Committee

Deputies

Maurice Quinlivan (SF)	Cathaoirleach
Richard Bruton (FG)	
Francis Noel Duffy (GP)	
Joe Flaherty (FF)	
Paul Murphy (S-PBP)	
James O'Connor (FF)	
Louise O'Reilly (SF)	
Matt Shanahan (Ind)	
David Stanton (FG)	

Senators

Garret Ahearn (FG)
Ollie Crowe (FF)
Róisín Garvey (GP)
Paul Gavan (SF)
Marie Sherlock (Lab)

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 8 September 2020.
2. Deputy Maurice Quinlivan was appointed as Chair on 8 September 2020.
3. Senators appointed to the Committee by order of the Seanad on 25 September 2020.
4. Deputy James 'O Connor replaced Deputy Niamh Smyth on 26 November 2020.
5. Deputy Mick Barry replaced Deputy Paul Murphy on 28 March 2023.

APPENDIX 2-Terms of Reference of The Joint Committee

a) Scope and Context of Activities of Committees (*derived from Standing Orders – DSO 84, SSO 70*)

- 1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
- 2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;
- 3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;
- 4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (i) a member of the Government or a Minister of State, or
- (ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- 5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

b) Functions of Departmental Committees (*derived from Standing Orders – DSO 84A and SSO 70A*)

- (1) The Select Committee shall consider and report to the Dáil on-

- (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
- (b) European Union matters within the remit of the relevant Department or Departments.

- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

- (a) Bills,

- (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency, and effectiveness in the use of public moneys, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:
- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by The Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or
Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other members of the European Parliament.
- (8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Appendix 3- Reference links

- [The Draft General Scheme](#)
- [Regulatory Impact Analysis](#)

The PLS meetings

Meeting 1- with the Department on 14 December 2022

- [Transcript](#) –
- [Opening Statement](#)
- [Video](#)

Meeting 2 – with stakeholders on 15 February 2023

- [Transcript](#)
- [Video](#)

Representatives from Centre for Co-operative Studies

- [Opening Statement](#)

Representatives from Irish Co-operative Organisation Society

- [Opening Statement](#)

Representatives from Co-operative Housing Ireland

- [Opening Statement](#)

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