

**Opening statement to the Joint Committee on Enterprise, Trade
and Employment on the Pre-legislative Scrutiny of the
General Scheme of the Co-operative Societies Bill 2022**

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1. The Centre for Co-operative Studies, founded in 1980, is a university research centre based at University College Cork which promotes education, training, independent research and consultancy in all aspects of co-operative organisation, social enterprise and local development. Drs McCarthy and Carroll, who have prepared this opening statement and are present here today, research and teach in the areas of co-operative organisation/business across a range of sectors including agriculture and credit unions.
2. We wish to thank the Chair and the Committee for the invitation to discuss the General Scheme of the Co-operative Societies Bill 2022 today. In this opening statement, we intend to comment specifically on the overall intent and thrust of the General Scheme of Bill, and then to focus on a number of key provisions that we deem worthy of specific attention and, in some cases, further discussion.
3. We 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 distinctive nature of co-operatives vis-à-vis other business models requires distinctive legislation. 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 (Birchall and Simmons, 2010). Enactment of legislation specific to co-operatives in Ireland will help to preserve the integrity of the co-operative form and make the model more attractive to individuals and groups by addressing deficiencies in the existing legislative framework and introduce a modern approach to corporate governance, financial reporting and compliance. It is also likely to make the co-operative model more visible and attractive to entities seeking a suitable legal structure within which to carry out their activities. This may include social enterprises, which currently lack any distinct legal form in Ireland. Co-operative legislation will support the socio-economic value that co-operatives can deliver by giving greater legitimacy, legal certainty and visibility to the model.
4. The General Scheme of the Co-operative Societies Bill 2022 addresses ILO (the International Labour Organization of the UN) Recommendation 2002 (no. 193) which recommends that “cooperatives should be treated... on terms no less favourable than those accorded to other forms of enterprise and social organization”; that “governments should provide a supportive policy and legal framework consistent with the nature and function of cooperatives and guided by the cooperative values and principles” and “establish an institutional framework with the purpose of allowing for the registration of cooperatives in as rapid, simple, affordable and efficient a manner as possible”.

We will now address a number of key provisions in the General Scheme of the Bill.

5. Head 1 and Head 2: We welcome the use of the term “co-operative” in the title and content of the General Scheme of the Bill and the use of the internationally agreed definition of co-operatives as adopted by the ILO and the International Co-operative Alliance (ICA).
6. Head 8: We welcome the proposal to reduce the current minimum number of seven persons to form a co-operative to three. 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 (Gavin, Moroney, Carroll & Ward, 2014; McMahon, 2019) and it is likely to be higher than the average numbers involved in start-up companies and social enterprises in Ireland. Consequences of the requirement to have seven members at the outset for such co-operatives may include (a) potential co-operatives choosing other models of incorporation which may not align with the co-operative ethos or practice or the ideals of the owners and (b) 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, the Czech Republic and Uruguay. Slovakia and Slovenia do not specify a minimum number (Centre for Co-operative Studies, 2019). The General Scheme of the Co-operative Societies Bill 2022, 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.
7. Head 9: We welcome the broadened provision for co-operative societies to “...carry on any activity...”. Equally welcome, as called for in many submissions to the public consultation, is that this activity be “...on the basis of the co-operative principles...”. The co-operative principles are based on the distinctive ethos and values of co-operatives and act as guidelines by which co-operatives put their values into practice (ICA, 2015).
8. Head 18 and Head 19: We welcome the stipulation that the name of a co-operative society shall include the term co-operative/co-op/comharchumann/comhar and that bodies/individuals that are not registered as co-operatives may not use these terms in their registered name or in their trading name. This should apply to all entities, including those registered before the commencement of the Bill.
9. Head 50: We endorse the concept of the introduction of legal reserve provision and that the manner in which 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 (Henrÿ, 2012). The presence of reserves introduces considerations around the use of an asset lock. The purpose of an asset lock 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 (Co-operatives UK, 2022). The asset lock requires any such assets to be used for purposes deemed appropriate by the co-operative, such as public or community benefit. The General Scheme of the Co-

operative Societies Bill 2022 affords flexibility to co-operatives to decide how reserves are treated in the rules.

10. Head 96 and Head 97: We welcome the flexibility afforded to the holding of AGMs virtually or in person or both. This may 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.
11. Head 111: We welcome that a special resolution to wind up a co-operative society requires 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.
12. Head 169: We welcome the provision for an audit exemption for smaller co-operatives. An audit requirement can be a costly and administrative burden on small societies and may act as a deterrent to some smaller organisations, including social enterprises, to registering as a co-operative.
13. Head 14 and Head 244: In its statement to be delivered with its rules to the Registrar, a co-operative society must refer to the European Union's NACE system for the classification of economic activity for the purposes of statistics on co-operatives. An issue of concern to us is the availability and standard of data on co-operatives for the purpose of research and analysis (Centre for Co-operative Studies, 2009). We would 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.
14. We conclude by commending the approach being taken in the General Scheme of the Bill - that of a 'general' law which is balanced in its approach and seeks to accommodate a wide range of type and size co-operatives. We acknowledge and commend the very considerable work that has been expended on the General Scheme of the Bill and related consultations. We reflect that there have been calls over many years to update the legislation; getting it 'over the line' now would be a very positive step and we urge legislators to do so.

References

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