

National Association of Building Co-operatives (NABCo)

Review of Industrial and Provident Societies Acts

Submission

1. INTRODUCTION

- 1.1** The National Association of Building Co-operatives (NABCo) was formed in 1973 and is the representative, promotion, information, training and development federation serving the Co-operative Housing Movement. The Association is jointly-owned by its affiliated co-operative housing societies.
- 1.2** The co-operative housing societies affiliated to the Association are engaged in the provision and/or management of housing accommodation with rental, equity-sharing and ownership forms of tenure, including the management and upkeep of housing estates, apartment buildings and related amenities. Some co-operative housing societies are also involved in neighbourhood social service activities, including the provision of pre-school child-care and family support services.
- 1.3** The Association, in addition to its national representative role, is actively involved in the organisation, planning and financing of new co-operative housing developments, the promotion of good governance in the management of co-operative housing societies and the delivery of quality housing services for members and their communities.
- 1.4** This includes the provision of information, advice, guidance and training services for new and affiliated housing co-operatives, together with other support services. The Association provides standard model rules, approved by the Registrar of Friendly Societies and based on the co-operative organisational principles, for the legal registration of bona-fide co-operative housing societies under the Industrial and Provident Societies Acts.

- 1.5** As the primary purpose of these co-operatives is the relief of housing needs and the provision of housing management services for member/users/residents, the generation of profit or surplus for distribution by way of dividend is not the main objective of their business activities. However, co-operative housing societies conduct their business affairs to ensure adequate financial resources are available to meet current and future commitments.
- 1.6** The Association welcomes the commencement of a review of the Industrial and Provident Societies legislation and is glad to make a submission in response to the Consultation Paper circulated by the Co-operative Legislation Unit, Department of Enterprise, Trade and Employment in April 2009.

Further information about the co-operative housing sector can be found on www.nabco.ie

2 DEFINITION AND IDENTITY OF CO-OPERATIVES

- 2.1 The Consultation Paper on the Industrial and Provident Societies Acts 1893 – 2005, issued by the Co-operative Legislation Unit of the Department, refers to the *Statement of Co-operative Identity* issued by the International Co-operative Alliance as defining a co-operative as an “autonomous association of persons united voluntary to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise”.
- 2.2 Co-operatives have a distinct motivation for their formation, purpose and conduct of their businesses which is widely recognised as being different from that of private or public limited companies. They also have a different membership involvement and motivation from that of voluntary, philanthropic organisations registered as companies or incorporated as trusts. This is signalled by the internationally agreed *co-operative values and principles*, as mentioned in the Department’s Consultation Paper, (see also appendix 1 attached to this submission).
- 2.3 The European Union has clearly recognised and supported the key characteristics of a co-operative in the text adopted for the Statute for a European Co-operative Society. While this is primarily concerned with facilitating the formation of cross-border co-operative businesses, it is also fair to point out that the co-operative business sectors, collectively, form the largest membership organisation in the European Union.
- 2.4 There is no recognition of the distinct characteristics of co-operatives in Irish Law, although for the purposes of section 4 of the Industrial and Provident Societies (Amendment) Act 1978, an agricultural co-operative society is defined as a “society the business of which is wholly or substantially agricultural and the majority of the members of which are mainly engaged in farming” and a fishing co-operative society is defined as meaning a “society the business of which is wholly or substantially related to fishing and the majority of the members of which are engaged in fishing and derive a substantial part of their livelihood from fishing”. The definitions used in Section 4 of the Act were for the particular purpose of distinguishing these types of societies from other societies by reference to the occupation of the members rather than for any broader purpose aimed at a legislative definition of co-operatives.

3 NEED FOR NEW LEGISLATION TO RECOGNISE AND SUPPORT CO-OPERATIVE SOCIETIES

- 3.1** The Industrial and Provident Societies Acts have provided the means for various types of co-operative societies in Ireland to achieve legal registration and incorporation with limited liability status. The Acts have facilitated co-operative societies in adopting Rules (legal constitutions) which, while complying with the requirements of the Acts, have generally enabled them to proceed with the fulfillment of their objectives.
- 3.2** However, the principal Act dates back to 1893 and was itself a consolidating Act derived mainly from earlier legislation. The Act does not, in fact, refer to “co-operative” societies. Given the size and scope of the overall co-operative sector in Ireland and its potential for further expansion, it is appropriate to provide a modern legislative and regulatory framework suited to the 21st century. This should be aimed at supporting co-operatives in sustaining good governance standards, both in the public interest and in the interest of members themselves.
- 3.3** It is the view of the National Association of Building Co-operatives that there is a need for a modern Irish statute law which specifically recognises and supports co-operatives as a distinct form of business organisation or association and that this should take into account key characteristics of bona-fide co-operatives by reference to the International Co-operative Alliance’s statement of values and principles.
- 3.4** This should, preferably, take the form of a new Co-operative Societies Act. At the very least, any amendment of the existing Industrial and Provident Societies Acts should provide for a distinct category of “co-operative society” having regard to the statement of co-operative values and principles mentioned in Paragraph 3.3 above. Any such amending legislation should include within both its title and description or purpose a distinct reference to co-operatives. The current usage of the words “industrial” and “provident” in the 1893 Act provides for no recognition or understanding of the fact that the primary role of this legislation is in relation to co-operative societies.
- 3.5** New legislation should also, for completeness, deal with all aspects of the formation, registration and legal incorporation of co-operative societies, with appropriate good governance and administrative requirements, without the necessity of referring to legislation

such as the companies acts applicable to other types of business organisations, in order for co-operative societies to check or use statutory procedures which may be relevant to them.

NABCO Submission on Review of the Industrial and Provident Societies Legislation

Evaluation of the IPS Acts ~ Responses to Consultation Paper Questions

QUESTIONS

- Q1 Registration under the IPS Acts is confined to societies which carry on any “industries, businesses or trades”. Has this restricted the scope of activities which may be undertaken by societies?**
- Q2 Should societies which pursue other activities be permitted to register under the Acts? Give reasons for your views.**

It appears that the words used in the 1893 Act (Section 4) have been interpreted as meaning that Societies are permitted to provide a wide range of goods and services to members. However, the 1978 Act restricted the taking of deposits and banking is prohibited.

The terminology should be changed so that “a registered co-operative society may carry on any activities that are lawful”.

The issue of whether or not the activities are to be purely “economic” or are to be deemed “retail” or “wholesale”, as stated in the 1893 Act, should no longer arise in new legislation for co-operative societies, having regard to the definition of co-operatives quoted in Part 2, Paragraph 6 of the Consultation Paper and Paragraph 2.1 above.

The focus should be on the co-operative character of the Society to be registered, although, in general, there is an economic dimension to most activities undertaken by co-operatives, whether for profit or not-for-profit.

- Q3 How have the provisions in the Acts relating to transferability and (since 1978) non-withdrawability of shares operated in practice?**

Are any changes to these provisions considered necessary or desirable?

The non-withdrawability of shares is not considered a hindrance. This was a feature of co-operative housing society standard NABCo Rules prior to the 1978 Act and is seen as part of the shared responsibility which members undertake when forming or joining a co-operative society.

It may also be noted that as shares are not withdrawable they should not be classified as a liability (as appears on the AR19 Annual Return Form). These non-withdrawable shares are the equity invested by members in their co-operative society.

Control by management committees over the transfer of shares should also be retained in the legislation in order to ensure that the principle of member/user participation is protected as far as possible as a good co-operative governance practice.

Q4 Should there continue to be a statutory limit on individual shareholdings in societies or should this be left to individual societies to decide for themselves? In either event, please give reasons for your view.

The statutory limit should be discontinued.

It is primarily a matter for each co-operative society to determine its share capital requirements in the context of its objects and business purposes or plans. Changes in the limits prescribed by legislation may then involve Rule changes and consequential administration costs.

Q5 In the event of there continuing to be a statutory limit
(a) Should there be one single limit for all societies or different limits for different classes of society?
How should classes be defined for this purpose?
(b) What should the actual limits be?
(c) How should the limit(s) be updated? Should this be a matter for primary or secondary legislation? Should co-operative representative bodies have a role in this?

If there is to be a statutory limit, this should be in the form of one limit for all co-operative societies, irrespective of class or category.

If classes are to be defined then the current usage of the term “utility society” should be replaced by a classification system which, in the first instance, is related to the main activity undertaken by the co-operative society, e.g., co-operative housing society.

It may also be appropriate to distinguish between societies with shareholdings and turnover levels below certain thresholds and those societies which have a higher level of shareholding and turnover.

The current maximum level of the limits is satisfactory but if it is to be retained, this will have to be subject to review.

If the statutory limit is to be retained, this should be dealt within secondary legislation rather than having a prescribed limit in primary legislation.

The co-operative representative bodies should be facilitated in making representations or submissions or by way of consultation in relation to any change.

Q6 Should the restriction on the raising of funds by societies, as summarised in Paragraphs 18-21 (of the Consultation Paper) be retained, varied, or removed. Give reasons for your views.

The fund-raising restriction in the 1978 Act had the particular purpose of bringing about the end of the business of deposit taking by certain societies during a five year period (to be adjusted at the discretion of the Minister) and also prohibited the taking of deposits by any society incorporated after the 4th October 1978. The holding of deposits in excess of €1,743.45 (converted figure from £25,000 in the Act) was also curtailed, but the agriculture, fishing and similar societies and credit unions (then subject to the IPS Acts) were exempted.

Co-operative housing societies and other societies were excluded from the exemption and except for the raising of funds by subscriptions for shares, not exceeding €2,700 in any period of six months or the borrowing of money from a bank, are required to apply to the Registrar of Friendly Societies for permission in writing to raise funds.

It is the view of the National Association of Building Co-operatives that the current restrictions on the raising of funds by co-operative societies should be substantially removed.

Presumably the main purpose of the legislation aimed at restricting and bringing to an end the business of deposit taking societies, as provided for in the 1978 Act, has now been achieved. The banking and financial services regulatory controls now in place should be adequate to prevent societies engaging in deposit taking or similar banking activities without specific compliance with these controls (regulations).

The requirement in Part II, Section 6 of the 1978 Act that permission must be sought in writing from the Registrar of Friendly Societies to raise shares in excess of €12,700 in any period of six months should be reviewed. The limit should be substantially raised or removed altogether.

The prohibition on any other raising of funds, apart from bank loans, by societies such as co-operative housing societies, means that they need to obtain permission from the Registrar to borrow money for housing purposes from a local authority under schemes funded by the Department of the Environment, Heritage and Local Government with the Housing Finance Agency.

The requirement for permission for the raising of funds by way of State or local authority grants or subsidies is not excluded from the wording in Section 6 of the 1978 Act. It also appears that this prohibition extends to the borrowing of money from a Building Society or a Credit Union or from another registered society, unless written permission has been obtained from the Registrar of Friendly Societies.

Subject to such requirements as may be deemed necessary for the protection of the public (similar to relevant provisions in the Companies Acts and EU directives but included in a new Co-operative Societies Act or an amended Act for completeness) and bearing in mind the purpose of raising shareholding finance from co-operative member/users, there does not appear to be any strong case for retaining the limits on raising shares within a prescribed time period (six months) for co-operative housing societies or other co-operative societies.

There also now seems to be no apparent justification for limiting lawful fund-raising by co-operative societies by way of prudent borrowing from whatever lending sources are available, or from public funding schemes, with a requirement that they must first obtain written permission from the Registrar of Friendly Societies for any such transaction.

In regard to the prohibition on societies accepting “deposits” as a means of raising funds, it is necessary to clarify in any new legislation the difference between the payment of a “deposit” to a co-operative housing society as a first instalment towards the acquisition cost of a dwelling as part of contract arrangement and the prohibition on the raising of deposits generally which was the primary purpose of Section 5 of the 1978 Act. Such a clarification should be limited to a deposit instalment or down-payment in respect of the particular dwelling which is the subject of a contract acquisition arrangement between the co-operative society and a member.

Q7 Should exemption from the Bills of Sale Acts be extended to all societies and if so, why?

An exemption should now be made applicable to co-operative societies so that debentures or floating charges can be raised in the same way as companies.

Q8 What arrangements should be made in relation to the registration of charges by societies?

The facility for registering charges should be extended to all co-operative societies and, perhaps, suitably administered by the Registrar of Friendly Societies, or by a single public office for recording all charges.

Q9 How are the financial reporting obligations as summarised in Paragraph 24 above (of the Consultation Paper) operating in practice?

Having regard to modern financial reporting arrangements the current Annual Return system can only be regarded as archaic. The return form requires the duplicate entry of information which is already available in the Financial Statements and Balance Sheet prepared by societies each year with an independent professional auditor's report.

It does not seem necessary or appropriate to have to file both the annual audited financial statements and balance sheet (audited accounts) as signed by the auditor and officers of the Society and also an annual return form which is also a set of accounts in a format prescribed by the Registrar.

The annual return for co-operative societies should be simplified and clarified to provide the necessary up-to-date basic information about the society, its registered address and officers etc.

The Triennial Return appears to be required as a means to check that the shareholding financial limits are not being exceeded. If the statutory limits are removed then it does not appear that a Triennial Return will be required.

However, it may be appropriate that the Annual Return should include a certified statement to the effect that the *register of shareholders* is in place. If a shareholding financial limit is retained this certified statement in the annual return form rather than using a Triennial Return form could also confirm that the financial limit has not been exceeded.

Q10 Are they causing difficulties for societies or any categories of society? If so, please describe the difficulties concerned.

The statutory deadline for submission of Annual Returns by the 31st March, three months after the end of the accounting year at 31st December, is a regular source of difficulty as regards compliance.

Smaller societies, which may have quite simple and limited financial transactions each year, find the statutory annual audit requirements expensive and onerous having regard to their financial resources.

Q11 Do you think that any changes should be made to the present arrangements? If so, please indicate the changes, which you would like to see and give reasons for each suggestion.

The latest date for the submission of annual returns should be related to a co-operative society's accounting year and not exceed six months after the end of accounting year date; e.g., if the accounting year ends on the 31st December then the annual return with the audited financial statements should be submitted not later than six months thereafter.

This would set a clear, understandable and manageable time limit for compliance by societies and their auditors.

If the size and financial turnover of a society is relatively small, there should be the option of an exemption from full independent professional audit requirements.

Unless the size and financial turnover of a society is relatively small, any ambiguity about the statutory requirement that audited financial statements, balance sheet and an Auditor's Report shall be presented at an Annual General Meeting and that these are the annual financial statements (audited accounts) submitted to the Registrar should be removed.

Q12 How are the provisions of the IPS Acts in relation to governance working in practice?

The current legislation is not over prescriptive and facilitates the adoption of good governance practices and procedures for their internal management by co-operative societies. In the case of co-operative housing societies this involves the adoption of approved standard model Rules prepared by NABCo and formally registered for the purpose of legal incorporation under the Acts by each society. This enables a society to proceed with the regulation of internal operations for the conduct of its

business affairs under the democratic control of a management committee (board of directors) representing the shareholding members.

The introduction of burdensome additional regulatory requirements for what are relatively small or medium sized co-operative business organisations would not be welcomed by members and does appear to be an essential requirement in the public interest.

Corporate Governance

Q13 Are any changes to these provisions necessary or desirable? If so, give reasons for your view.

Q14 Outline the types of changes which you would like to see giving reasons for each suggestion.

The principle 1893 Act facilitates the adoption of Rules by co-operative societies which, although required to meet or include the requirements of Schedule II of the Act to achieve registration, enables them to proceed with their internal management and business affairs in a flexible way to fulfill their objectives.

There is no evidence of ongoing or widespread governance issues or problems of any size or significance in co-operative societies using the model rules and guidance provided by the co-operative representative bodies (ICOS and NABCo).

Schedule II of the Act sets out a list of compliance criteria for the registration of a Society, which together with standard provisions in the approved model rules issued by the co-operative representative bodies, provide a framework for good governance.

Particular co-operative criteria, provided for in model rules, indicate, in general terms, that membership is open to persons who are willing to accept the responsibilities of membership, contribute to the achievement of the objects of the society and can benefit from its activities or services, with voting on the basis of one member one vote, except where provision is made in the rules for weighted voting such as may be exercised by delegates in federated co-operative societies. Proxy voting is not permitted in primary co-operatives and only by delegates in federal co-operatives.

An important concept in a co-operative society is that there is no fixed or authorised share capital. The management committee has discretion as to how many shares they wish to issue and there is no legislative restriction on the admission of new members.

It is the view of the National Association of Building Co-operatives that an updated version of the criteria as listed in Schedule II of the 1893 Act should continue and be included in any new legislation for co-operative societies with the proviso that their rules should be based on the recognised co-operative principles as regards membership, democratic representation on management committees and voting.

Transmission of Members' Property

Q15 How much is made in societies of these provisions?

Q16 Are the powers conferred on committees in the IPS Acts regarding the property of members appropriate today? What arrangements might be made for their continuance or otherwise.

In the event of intestacy any distribution of property held by a deceased member in a society would now require clear evidence of entitlement to be provided by claimants. While provision for the nomination of a person by a member during his/her lifetime exists, there has not been much usage of this procedure.

The focus of co-operative housing societies is on having members in need of housing or re-housing who are willing to accept the responsibilities of membership, to participate in the co-operative and can benefit from the housing service / accommodation provided. Therefore, unless the inheritor of shares is actually going to be a member/user, the amount equivalent to the shares (at par value as provided for in the co-operative housing society rules) is usually paid off to him/her and the share register adjusted accordingly.

Q17 Do you wish to offer views or observations on

(a) Any other provisions of the IPA Acts

(b) Whether any of the mechanisms of the Companies Act not currently available to industrial and provident societies should be made available to them.

(c) Any other matters relevant to this review of the IPS Acts

New legislation for co-operatives should provide for access to Examinership.

The provisions relating to the appointment of actuaries and inspectors should be reviewed having regard to the development of modern practices in this regard. There may be a need to consider modern enforcement and supervisory arrangements in relation to the conduct of directors, in a proportionate way, as constituting the management committees of co-operative societies.

There is a need to review and update or even delete various references in the Acts and also in official forms used in order to take account of modern developments in legislation, regulations and reporting requirements. For example, references to illegitimacy (Section 27 of the 1893 Act), lunacy (title of Section 29 of the 1893 Act) should be reviewed.

The introduction of new legislation would provide the means to finally delete the references dating from 1893 to the United Kingdom including the Channel Islands etc., in a new Irish statute for co-operative societies would be welcomed.

Consideration should be given to the control of the use of the word co-operative in the registration of names so as to confine its usage to a society registered under a new Co-operative Societies Act or an amendment version of the IPS Acts providing for a distinct category of “co-operative societies” as recommended in Paragraph 3.4 above.

Provision should be made for a suitable administrative procedure for dealing with the restoration of societies which have had their registration cancelled, as an alternative to having to apply to the Court.

Share transactions involving transfers at par value should be deemed to be exempt from the requirement for stamping.

As it is the view of the National Association of Building Co-operatives that a co-operative is a group or association of persons acting together to meet a common need, the requirement that there be seven persons as subscribers to register a co-operative society (as distinct from the facility for a small number to form a private enterprise company) should be retained as making good sense of the concept of a business association functioning in the distinct form of a co-operative.

The formation of a co-operative to carry on any lawful purpose should also include banking, subject to such requirements and controls as may be required by the regulatory authority for banking and financial services. In this regard the purpose of the 1978 Act in dealing with unregulated deposit taking and lending by societies other than co-operatives, appears to have largely superseded by regulatory developments since then.

The filing fees for registration of new societies, rule amendments and other charges are higher than those charged to companies. The levels of fees charged to co-operative societies should be reviewed to achieve a reasonable level of equity and similarity in this regard as between co-operative societies and companies.

CONCLUSION

The age and the lack of a direct reference to a "co-operative" society in the principle Industrial and Provident Societies Act of 1893 have not in, themselves, prevented the organisation and development of co-operative sectors in Ireland. The 1893 Legislation has facilitated the legal incorporation of co-operative societies primarily formed at the self-help and joint-effort initiative of the members.

However, there is good evidence that in those many countries where co-operatives have had distinct public policy support and specific legislative recognition, both a more widespread awareness of the potential and the consequential development of successful co-operative economic and social business sectors has emerged.

The National Association of Building Co-operatives welcomes the governmental commitment to replacement of legislation dating from before the foundation of the State with new Irish statutes. The replacement of the 1893 Industrial and Provident Societies Act (and subsequent amending legislation) with a modern Irish legislative code for co-operatives would, therefore, be a timely and appropriate updating of Irish statute law.

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Many Co-operative Movements have links with the International Co-operative Alliance (ICA), the independent non-governmental association of co-operative organisations founded in 1895 and based in Geneva, Switzerland.

The ICA statement of the values and principles upon which co-operative organisations base their objects, roles and activities was updated and revised in 1995 and is as follows:-

Values

Co-operatives are based on the values of self-help, responsibility, democracy, equality and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others.

Principles

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

Open and Voluntary membership

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

Democratic Member Control

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

Member Economic Participation

Members contribute equitably to and democratically control the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any of the

following purposes : developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible: benefiting members in proportion to their transactions with the co-operative: and supporting other activities approved by the membership.

Autonomy and Independence

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

Education, Training and Information

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

Co-operation among Co-operatives

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

Concern for Community

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