



National Federation of Group Water Schemes

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SUBMISSION BY THE NATIONAL FEDERATION OF GROUP WATER SCHEMES

ON

THE CONSULTATION PAPER ON I.P.S. ACTS 1893-2005

Introduction

Any changes to the Industrial and Provident Societies Acts (IPS) 1893 to 2005 must retain and highlight the existence of the “**Co-operative**” as a distinct corporate form of business with its own identity and ethos. The Co-operative has certain separate values and principles from companies and these differences and it’s ethos have served the rural development and community activity for over a 100 years.

Brand and ethos:

The “**BRAND**” of the Co-operative must be preserved and strengthened, because:

- **it has served the rural development and community activity for over 100 years.**
- **this brand is instantly recognised by the rural community.**
- **the principle of “one man one vote” is recognised, understood and gives weight to equality.**
- **every member is equal to every other member.**
- **all of this is reinforced by the fact that no proxy voting is allowed under the Acts and this should remain unchanged.**

Any proposed legislative enactments, which may eventually be decided upon must not place the co-operative at a competitive disadvantage. As things stand the costs of registration, filing returns, making Rule amendments, audit costs and other compliance costs are higher than other corporate bodies.

The government and the various departments should be more pro-active in ensuring that their staff are aware of and understand the advantage of the co-operative model for certain forms of business, service and social organisations.

At present there is some linkage between the Companies Acts and the Co-op Acts and these are:

- a. In winding up,
- b. Auditor's qualification and
- c. Conversion of Societies into Companies

These links should remain unchanged.

Definition of “co-operative”

Still in the general comment area, the 1893 Act does not mention the word “co-operative” nor does it define it in any way.

The international co-operative alliance does define a co-operative as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.

Response to Consultation Document:

Turning to specific points and questions being asked in the consultation document, the following matters are of the utmost importance to all of the Group Water Schemes throughout the country. There are c 1,000 G.W.S. in the 26 counties.

Q1	Registration under the IPS Acts is confined to societies to carry on “industries, businesses or trades” Has this restricted the scope of activities which may be undertaken by societies?
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Answer

Not to any great extent – this does not need to be changed.

Should the group water schemes have a “special” individual place which specifically relates to the supply of domestic drinking water and farming requirements. The objects should be broad enough to encompass energy production by wind farms etc. and all other related matters. For example should co-ops have a co-op Table A like the Companies Table A.

Q2	Should societies, which pursue other activities, be permitted to register under the Acts? Give reasons for your views?
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Answer

Yes, as above but specifically and especially for water schemes.

Q3	Have the provision 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?
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Answer

The provisions in respect of the non-withdrawability of shares have not proved a hindrance to societies. Under International Accounting Standard 32, shares that are seen as withdrawable are classified as a liability rather than an equity.

The provisions contained in Clause 7 of the Second Schedule to the Act refers to the need **“for the consent of the committee”** to any share transfer. This provision has the benefit of giving boards and committees the option of adopting a transfer/transmission policy only to persons who are likely to use the services of the society. In the case of water schemes this would be specifically the householder who uses the water.

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?
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Answer

Whatever the historical reason for having a statutory limit on individual shareholding this does not seem to be problematic in today’s financial climate.

Q5	<p>If there is a statutory limit retained:</p> <p>a. Should there be one single limit for all societies or different limits for different classes. How should classes of society be defined for this purpose.</p> <p>b. What should the actual limit or limits be?</p> <p>c. Should the limit(s) be updated? Should it be a matter for primary or secondary legislation? Should co-operative representative bodies have a role in this?</p>
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Answer

If a limit is still imposed it should be by way of secondary legislation i.e. ministerial order and if it is retained then societies should have a say in its limit.

Q6	Should the restrictions on the raising of funds by societies, as summarised in paragraph 18-21 above be retained, varied, or removed.
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Answer

Restrictions on “other” co-ops i.e. non agricultural co-ops to raise loans by way of bank loans or money by way of share issue is limited to €12,700 in any one six month period, if this is to be exceeded then permission of the Registrar is required.

This restriction applies, as the Federation understands it, to Shareholding and Members Loan stock but **NOT** to Bank loans. Group water schemes would not be effected by this. However, the question has to be put, when moneys have to be raised from members to meet capital expenditure i.e. the 15% situation then would having a limit be a hindrance? If not then leave well enough alone but if it would effect the Group Water Schemes ability to raise funds then it should be addressed.

Q 7	Should exemption from the Bills of Sale Acts be extended to all societies and if so why?
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Answer

Yes, in order to facilitate the commerciality of co-ops.

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

The 1934 Agricultural Co-operative Societies (Debentures Act) provided inter alia for the creation of a public register of charges which facilitated lending secured on debentures for agricultural and fishing co-operatives but not for other types of co-operative. This facility for registering charges should be extended to all co-operative societies.

Q9	How are the financial reporting obligations as summarised in paragraph 24 above operating in practice?
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Answer

The Triennial Return should not be required for Group Water Schemes as the purpose of the Triennial Return was to ensure that no individual’s shareholding went over the legal limit. In practice for group water schemes this could not happen. There is a case here for updating the forms, layout etc. and to allow for Electronic returns.

Q10	Are the financial reporting obligations causing difficulties for societies or any category of society?
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Answer

There are difficulties for smaller societies and the return requirements should be modified for smaller societies below a certain level of turnover or number of shareholders.

It should be specified that the returns do not have to be made on 31 March each year but within a six month period after the financial year end of the co-op. or as most Co-ops. financial year would end on 31/12 then a revised date of 30th., June.

Audit Exceptions should be allowed for, where membership of a society is small for example twenty five shareholders in a group water scheme.

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

The freedom which corporate governance gives to the co-op is not abused and has been beneficial in allowing co-ops expand. This should remain unchanged. Co-ops should continue to be allowed to change and amend their Rules and regulate their own internal affairs in a democratic way as they currently do.

Q13	Are any changes to these provisions necessary or desirable and outline the
Q14	types of changes, which you would like to see giving reasons for these suggestions.

Answer

The shares of societies are subject to the restrictions which apply to the shares of registered companies. There is no such concept as “authorised share capital” and the directors are usually given absolute discretion as to how many or how few shares they wish to issue. A difference in this regard from companies which has proved useful is that the total amount of capital in the co-op is not fixed and there is no constraint on it on increasing (that is inviting new members in) or decreasing (cancelling old memberships). The Act contains no restrictions as to the right to voting. The standard ICOS mode Rules provide for “one man one vote” except in the case of secondary or federal co-operatives where formal “weighted voting” is more usually the norm and no voting by proxy is allowed (corporates may appoint a delegate). Another matter which should be retained is the stipulation that certain

eligibility criteria for membership of the Society must remain in place. Even though not specified in the Act, most model rules make provision in regard to the expulsion of members and the circumstances in which a member may have their shareholding cancelled (debt, no longer using the co-operative service, no longer resident in the co-operative catchment area or no longer paying for the service provided).

Q15	How much use is made in societies of these provisions?
Q16	Are the powers conferred on committees by the IPS Acts regarding the property of members appropriate today?

Answer

The nomination, intestate and insanity rules should be all retained as they are used by the co-operatives and are a distinct difference between co-ops and companies.

Q17	Do you wish to offer views or observations on? a. Any other provisions of the IPS Acts b. Whether any 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
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Answer

There is a need for a provision in the Act that will ensure that all societies have access to examinership. The current charges for filing returns and registering new societies and rule changes is much higher than similar charges for companies Acts and this is a disincentive to persons seeking to determine what corporate form they should use for their business.

While the Act of 1893 may have been predominately intended for the registration of co-operatives the low recognition factor arising from the use of the words “industrial” and “provident” and the absence of the word co-operative in the Act suggest that the use of a new title such as co-operative society act would be more appropriate. The title co-operative society should also be used in all names of co-operatives registered.

At this time, there is no time period specified within which the registrar has to permit or refuse registration and there is no requirement that the Registrar explain refusal to register a society. This should be altered and a specific time period should be applied with an explanation given for the refusal to register a society.

A new Act or alterations to the current acts should reinstate the principle that when two co-ops amalgamate and each one absorbs all the assets and liabilities of each other to form a new co-operative then automatically the first two co-ops are no longer legally in existence. This used to be the situation until very recently when challenged by the Registrar of Friendly Societies and it now leaves a mess to be cleared up to write off at some considerable cost the two “old” societies.

When a society's registration has been cancelled it has no option but to apply to the High Court for restoration. However, there is an administrative remedy which allows a company to re-register itself within the first year after its registration has been cancelled. This should apply to Co-operatives as well.

Shareholding/Membership:

The question of shareholder/membership is one which does cause some difficulty. Under the Acts,

An application form must be completed by every person wishing to become a shareholder/member. Under the Co-operative's own rules this application would have to be sanctioned by the Committee (Board of Directors). In practise Group Water Schemes may not always have had application forms completed for every person (connection) who use the Scheme. The fact that every user of the scheme has paid an initial membership fee (this is taken out of the first year's user fee), is using the Scheme to draw on an essential service, is billed annually in respect of the cost of that service, & whose name and address is known to the Committee and who has been sanctioned or recognised by the Committee as a member, could now unfortunately or unwittingly be excluded from share register due to the non signing of an application form seems extreme.

It might also be noted that many of our group water schemes were established in the early to mid seventies(1970s), when there was very little emphasis placed on " the paperwork" but rather on collecting the necessary capital membership contributions, getting the pipes into the ground and getting the water flowing onto farms etc. All of the persons(connections) are De facto members, as they have acted as and been taken as members.

This loophole should be closed in any Legislative change by including a provision in the proposed new Act, in simple or similar terms as set out below:

“ All persons, including former Trustees and Special founding members who use the Group Water Scheme services and have fully paid up their membership and Annual Service charge as at the date of enactment of this (new) Act are deemed to be Shareholders/Members of that Group Water Scheme.”

Sean Clerkin

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30th June 2009.