

**Responses to Consultation Paper on the  
Industrial and Provident Societies Acts 1893 – 2005**

1. 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?

The terms “industries, business, or trades” are rather broad. At first blush, they would appear to encompass many, if not all the various enterprises societies might wish to pursue. That said, there are a few societies that are prevented from forming as IPSs, including charities, organisations within the social economy, and other organisations that do not distribute profits. These organisations are noticeably excluded.

So too are membership groups that do not have an arguable business purpose, but still are formed to assist in the marketing or referring of work to businesses which are members of the group. Another group that is not specifically mentioned are workers societies. However, a society formed of worker members would most likely have a purpose related to industry, business, or trades.

2. Should societies which pursue other activities be permitted to register under the Acts? Give reasons for your views.

Yes, societies which pursue charitable, or educational, or activities related to the social economy should be permitted to register under the Acts because they could benefit from the membership structures afforded by societies in group decision-making. Registering as a society would allow for easier operation for a charity than a company limited by guarantee, for instance, since membership in a society is defined by the society, and not by share ownership.

Another category of societies which have activities related to worker ownership of an industry, business, trade, including restaurants, factories, recycling centers and other environmental industries, and other activities should be permitted to register under the Acts. Allowing for a worker cooperative society could provide an alternative option for small business enterprises to raise capital and form a viable concern.

3. 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?

My sense is that transferability is essential, especially in the event of the demise of a member, so that societies do not face difficulty being able to continue to achieve quorum sufficient to carry on the business of the society.

The trouble with non-withdrawability of shares is that it can tie up capital if a member seeks to leave the society. It is my sense that withdrawability is important to promote continued voluntary participation in the society, which is a key principle for cooperatives.

4. 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.

Statutory limits on individual shareholdings in societies should be left to individual societies to decide since each society has different capital needs. If the reason for forming a cooperative is to sell shares through public offering, it does not make sense to limit the amount of shares any member can own as long as each member is given equal voting rights.

Another option is to have unlimited individual shareholding for one *class* of shareholders with limited voting rights. This allows societies to raise capital from members who have the ability to contribute more capital, but are willing to accept more limited voting rights consistent with cooperative ownership of one-member, one-vote. This type of shareholding is permitted in many other jurisdictions, including the European Cooperative Society Statute, and in several states in the U.S.

5. 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 of society be defined for this purpose?

- (b) What should the actual limit or limits be?

- (c) How should the limit(s) be up-dated? Should this be a matter for primary or secondary legislation? Should co-operative representative bodies have a role in this? Please give reasons for your views.

There should not be a continuing statutory limit for the reasons stated above in the response to question 4.

6. Should the restrictions on the raising of funds by societies, as summarised in paragraphs 18-21 above be retained, varied or removed? Give reasons for your views.

Yes, restrictions on raising funds by societies should be removed. However, any society which takes deposits, or providing financial services, should be regulated by the applicable banking or credit union laws and supervised by the Financial Regulator such that abusive or improper lending or financial service activities are avoided.

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

Yes, societies should be exempted from the Bills of Sale Act because it is discriminatory against societies to prevent them from giving security interests on floating charges and other personal property and otherwise raise capital through security.

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

Societies should be allowed to register charges with the Companies Registration Office just as companies do. They have similar needs regarding capital as companies and should be treated similarly.

9. How are the financial reporting obligations as summarised in paragraph 24 above operating in practice?

Admittedly, I am not part of a society and have not had to comply with financial reporting requirements. One observation I can make is that the Registrar for Friendly Societies should endeavor to provide more public information about trends in society performance, and offer guidance for new societies seeking to form in terms of complying with existing laws. I do not find the Registrar's available resources very helpful.

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

As mentioned above, resources and information for start-up societies about the registration and operation process is very sparse, so too are professionals who understand the unique needs of cooperative societies in reporting, operating, and complying with applicable laws.

11. 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.

Increase available information for complying with the law for start-up cooperative societies, and keep reporting requirements to a minimum for groups below a certain annual turnover.

12. How are the provisions of the IPS Acts in relation to governance operating in practice?

The Acts should allow for specific types of societies made up of worker owners. The Acts are currently deficient in this regard.

13. Are any changes to those provisions necessary or desirable? If so, give reasons for your views.

There should be a minimum number of members required to form a society, but this number should be low, perhaps two or three. Allowing for two members would permit two existing societies to form a new entity for a joint project or for a society to more easily form a subsidiary society if necessary.

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

- 1) Enact a worker co-operative society structure to permit worker members from more easily organizing their workplaces in a more democratic manner.
- 2) Reduce member number to 2 or 3 to allow for smaller start-ups to get formed easier, and existing societies to form alliances between one another but maintain a co-operative structure.

15. How much use is made in societies of these provisions?

The current laws seem to make sense, however, as I have not had experience with how societies currently operate I cannot offer additional comments.

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

The current laws seem to make sense, however, as I have not had experience with how societies currently operate I cannot offer additional comments.

17. Do you wish to offer views or observations on:

- (a) any other provisions of the IPS Acts

Protecting the use of the word “co-operative” in the legal name of co-operatives is very important. Restricting the use of the word “co-operative” or the abbreviation “co-op” has implications that affect the co-operative as a brand. Protecting the co-operative brand and ensuring a competitive for co-operative businesses is important so that consumers know when they are trading with a co-operative. Restricting the name can ensure that co-operatives are seen as different in the marketplace and treated accordingly.

It is therefore important for the Acts to restrict the use of the word “co-operative” and the abbreviation “co-op” in the legal names of entities to only entities that register under the IPS Acts.

- (b) whether any of the mechanisms of the Companies Acts not currently available to industrial and provident societies should be made available to them

Exemption from the Bills of Sale Acts is key for new co-operative growth, especially for capital intensive co-ops for the reasons stated above in responses to questions 6, 7 and 8.

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

Responses of Edward W De Barbieri  
30 June 2009

The government should seriously consider including a worker cooperative statute to allow for Mondragon-style co-operatives to operate according to a system of internal capital accounts, similar to the laws in place in Massachusetts and other states in the U.S. A worker co-operative statute could allow for increased job retention and the democratisation of workplaces and wealth, especially in the current economic crisis when plants are closing (as in the recent closing of the Waterford crystal factory).