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CO-OPERATIVE SOCIETIES

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

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PART 1: WHY DO WE NEED THIS REVIEW?

- In the period since the publication in 2004 of the Government White Paper, “Regulating Better”, a programme of regulatory review and reform has been underway in Ireland directed at improving the quality of regulation generally. A particular focus of the programme is on addressing the impact of regulation on enterprise, particularly small firms. In addition, the Government are committed to reducing administrative burdens on business, imposed by domestic regulation, by 25% by 2012. The co-operative sector is an important part of Irish business and it is appropriate that the regulatory system which applies particularly to it should be reviewed within the context of the Better Regulation Programme. The Industrial and Provident Societies Acts (IPSA) are the statutory system which regulates the formation and general operation of co-operative societies in Ireland.

- The principal Act of the Industrial and Provident Societies Acts is a statute which was enacted in 1893. Although amended since then, most recently in 2005, it is the provisions of the 1893 Act which form the main part of the legislative system applying to co-operatives in Ireland today. Aspects of the IPS legislation have been the subject of legislative review from time to time since 1922. That work addressed specific problems or difficulties such as those relating to borrowing powers for agricultural co-operatives, the need for changes in share capital limits and the need for controls on deposit-taking activities. The system as a whole, however, has not been subject to any comprehensive up-dating or overhaul since 1893.

- Preparatory work carried out by the Department for the present review suggests that there are a considerable number of matters concerning the

IPSA legislative system which merit review. One example is the area of financial reporting (returns, accounts and audit) in which regulatory obligations and costs imposed on co-operatives appear more demanding than those imposed on companies. Another is the important area of corporate governance for which the IPS Acts, reflecting the period from which they originate, make very little provision.

- The present review will also be relevant to decisions on the future of the Registry of Friendly Societies which is the office that administers the IPS Acts. The office comprises the statutory post of Registrar and eight staff. Since 2003, when responsibility for credit unions was transferred to the Financial Regulator, the Registrar post has been occupied on a part-time basis by the Registrar of Companies pending decisions on the future of the office. The Registry also administers the Friendly Societies Acts and the trade union registration and related provisions of the Trade Union Acts.
- The Companies Acts 1963 to 2006 are currently the subject of a major overhaul with the aim of replacing them by a single consolidation and reform Act. There is already some linkage between the IPS Acts and the Companies Acts particularly in relation to winding up, qualifications of auditors and provisions for the conversion of societies into companies (and vice versa). There may be merit in extending this to further areas such as registration of charges and examinership. In view of the connections between the two legislative systems it is particularly appropriate to review the IPS Acts at this time.
- A final consideration relates to the purpose of regulation itself. Why do we regulate anything? What purpose should regulation serve in the particular area of the formation and operation of business organisations using the co-operative model? Is it to facilitate, encourage and support the

establishment and operation of the businesses concerned so that they may contribute to economic growth and development and employment-creation? Is it also to provide appropriate levels of protection for the interests of relevant stakeholders in co-operative businesses such as members/shareholders, creditors and the public generally? The present review will enable us to determine whether purposes such as these are being achieved under the current IPSA arrangements and, if not, what changes to those arrangements are necessary or desirable.

PART 2: BACKGROUND

The Review

1. The Department's Statement of Strategy 2009-2011 includes a commitment "*to review the regulatory frameworks for friendly societies and industrial and provident societies and make whatever changes are necessary or desirable within the lifetime of this Statement of Strategy*". This consultation paper deals only with the legislation relating to industrial and provident societies; work on the review of the legislation relating to friendly societies is proceeding separately.
2. The objective of the review is to determine whether any changes to the present legislative (and administrative) arrangements are necessary or desirable and, if so, to submit appropriate recommendations to Government. This work, which is being carried out in close consultation with the co-operative movement, will seek to ensure that co-operatives in Ireland have a regulatory environment which supports their continuing growth and development and enhances their capacity to contribute to economic and social well being.
3. The scope of the present paper is confined to a general review of the functioning of the current IPS legislation. In relation to each area of subject-matter, the paper seeks to identify issues which require attention and puts questions in relation to those issues on which consultees may wish to focus. This in no way limits the scope of any comment or observation which consultees may wish to offer on any aspect of the legislation or of the review.

Co-operatives

4. Co-operative societies and organisations have been part of the economic and social scene in Ireland for over a century. They have played a prominent role in the agricultural sector and continue to do so, accounting for most of the €11.5 billion turnover attributable to the co-operative sector in 2005¹. Other sectors in which organisations using the co-operative model have made important contributions include housing, group water schemes and community development. This is exclusive of the major contributions made by building societies and credit unions which have their own separate legislation and, for that reason, are not included in the present review.

¹ Irish Co-operative Organisation Society -ICOS in Forfás, (November 2007) *Ireland's Co-operative Sector*. - Figure includes turnover of companies associated with co-operatives

5. In the EU there are 300,000 co-operatives providing 4.8 million jobs.² Worldwide, 800 million people are members of co-operatives providing 100 million jobs.³
6. In its “Statement of Co-operative Identity” the International Co-operative Alliance defines 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”. The ICA Statement also sets out values and principles of co-operatives (**See Annex I**).

The Industrial and Provident Societies Acts

7. In Ireland, co-operatives usually register as “industrial and provident societies” under the Industrial and Provident Societies Acts (IPS Acts). Registration under the IPS Acts confers incorporated status and limited liability on the registered body in the same way that the Companies Acts confer these on registered companies. The industrial and provident society, however, is a quite separate type of legal entity or person from that of the company. It is not a requirement for a co-operative to be registered under the IPS Acts. A co-operative could register as a company and some do so. Some larger co-operatives in the agricultural sector now use both legal forms in their group structures. The IPS Acts are administered by the Registrar of Friendly Societies.
8. The main primary legislation applying to industrial and provident societies spans the period 1893 to 2005 (**See Annex II**). The principal Act is the Industrial and Provident Societies Act, 1893, pre-dating the establishment of the State by some thirty years. That Act consolidated earlier enactments dating back originally to 1834. The first Industrial and Provident Societies Act dates from 1852. Some significant amendments to the Act of 1893 were made in 1913. Since independence there have been a number of further amendments to the 1893 Act. These relate mainly to borrowing powers and voting rights in agricultural co-operatives, limits on shareholdings in societies generally and the control of deposit-taking activities by a small number of societies. No legislation of a comprehensive nature modernising or overhauling the full statutory system has been enacted in the State during the period since 1922.

² Cooperatives Europe

³ International Co-operative Alliance (ICA)

9. Since its inception as a statutory form of organisation, the industrial and provident society has been closely identified with co-operatives and the co-operative movement. This is not obvious from the IPS Acts themselves, particularly the principal Act of 1893 in which the terms “co-operative” and “co-operative society” do not appear. Some of the later amending Acts do define certain categories of co-operative society but only for certain limited purposes. The general registration provisions of the IPS Acts are broadly drafted and do not seek to define what an industrial and provident society is or to distinguish it from a company. The identification with co-operatives is essentially a matter of historical record and registration practice commencing around the middle of the 19th century and continuing to the present day. As to the reasons why no more explicit identification of industrial and provident societies with co-operatives was made in the legislation itself, this may have been because there was no compelling necessity to do so. Each successive piece of legislation seems to have proceeded on the basis of addressing whatever problems or difficulties needed attention at the time.
10. In the post-1922 period, there was a significant divergence of legislative approach between Ireland and the UK. In 1939 the UK introduced the statutory concept of “bona fide co-operative society” as interpreted and applied by their Registrar (now Financial Services Authority). No such change was made in this jurisdiction. The current position in Ireland therefore is that the IPS Acts may be said to cater, in practice, for two categories of society:

- (a) Societies which are or consider themselves to be co-operatives

Such societies would usually use the term “co-operative” or “co-operative society” in their names and would be, for the most part, affiliated to a co-operative representative body such as the Irish Co-operative Organisation Society (ICOS) or the National Association of Building Co-operatives (NABCO) and have rules which follow the model rules adopted by those bodies.

- (b) Other societies which comply with the registration requirements of the Acts.

Little is currently known as to why such societies should choose to register under the IPS Acts rather than the Companies Acts (other than that registration under the IPS Acts is legally open to any body meeting the registration requirements of those Acts).

11. The fact that Ireland has never had legislation which expressly defined the “co-operative” form of association or organisation has not, of course, prevented the formation and development of a strong and vibrant co-operative sector in this country. Essentially, co-operatives in Ireland define themselves mainly through the medium of their own voluntary rules and practices. While Ireland is not unique in its legislative approach, most countries tend to have legislation prescribing specifically for the co-operative model. The immediate focus of the present consultation is to identify any practical difficulties in the IPS Acts as they currently stand and to consider what action should be taken to deal with them. If, arising from the consultation, it is clear that new legislation of some kind will be required, consideration can then be given to broader legislative issues and options including whether the co-operative model should have specific legislative recognition and, if so, how best this might be achieved.

PART 3: INITIAL EVALUATION OF THE INDUSTRIAL AND PROVIDENT SOCIETIES ACTS

A. Societies which may be registered

12. The closest the Industrial and Provident Societies Acts come to defining an industrial and provident society is section 4 of the 1893 Act which is still in force in Ireland today. This confines registration under the Act to “a society for carrying on any industries, businesses, or trades specified in or authorised by its rules... .” This formulation which included “the business of banking” replaced an earlier one referring to “carrying on any labour, trade or handicraft” (IPSA 1876, 1862 and 1852).⁴ From each of these versions it is clear that registration under the IPS Acts is to be confined to societies which are engaged in economic activities i.e. activities normally carried out with a view to gain or profit. This is narrower than the position for companies which may be formed for “any lawful purpose” (Companies Act 1963, s.5).⁵ The position regarding banking is discussed at section C.

Questions

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

⁴ Fuller, Frank Baden. (1910) *The Law relating to Friendly Societies and Industrial and Provident Societies*. (3rd Ed.) London: Stevens. pp. 119 & 120.

⁵ Also relevant to the availability and use of the different statutory forms of association are the provisions of Section 376 of the Companies Act 1963 which prohibits the formation of companies, associations and partnerships consisting of more than twenty persons for the purpose of carrying on any business (other than banking) for gain, “unless it is registered as a company under this Act or is formed in pursuance of some other statute.” Section 13 of the Companies (Amendment) Act 1982 (as amended) also refers.

B. Share Capital

A society may issue shares which are transferable (or not).	1893, s.10 and second schedule
A society shall not issue withdrawable shares	1978, s.32
No member of a society (other than a member which is a society) may hold shares in excess of the statutory limit.	1893, s.4 and 2005, s. 85 & 86

13. The IPS Acts contain relatively little provision relating to shares, share capital and related matters. Essentially, all that the 1893 Act said on the subject was that the shares of a society could be “transferable” or “withdrawable” and that no member (other than a member which itself was a registered society) could have more than a certain amount in shares (then £200, equivalent to about €27,000 today). It was left to each society to decide whether its shares (or any of them) would be transferable or withdrawable and to provide accordingly in its rules. The terms “transferable” and “withdrawable” were not defined in the Act. In the case of the former term, there is a clear implication from the wording of item 7 of the Second Schedule to the 1893 Act that any transfer of shares requires the consent of the committee of management (board of directors) of the society (see Second Schedule to the 1893 Act set out in **Annex III**).
14. An important change in relation to withdrawability of shares was made by the 1978 Act. That Act prohibited the issue of “withdrawable shares” by all societies (S.32). The main purpose of the 1978 Act was to deal with the problem of unregulated deposit-taking activities by a small number of industrial and provident societies. Since a “withdrawable share” could in some circumstances be similar to a “deposit” it was considered necessary to prevent any possible use of withdrawable shares in the future in connection with deposit-taking activities (on which see further at C). The 1978 Act, like the Act of 1893, did not define the term “withdrawable” or distinguish it from the term “transferable”.
15. The current statutory limit on individual shareholdings is €150,000 or 1% of the total assets of the society, whichever is the greater.⁶ This limit was fixed in 2005 following consultation with relevant interests and in

⁶ Investment Funds, Companies and Miscellaneous Provisions Bill 2005, section 85.

response to representations from ICOS that the then-existing limits constrained the development of some cooperatives, particularly in the agricultural sector. The limit does not apply to a member which itself is an industrial and provident society but does apply to a member taking the form of any other type of body corporate, such as a company (1893, s.4 and s.42.) As the current limit is specified directly in primary legislation, any change in the limit will also require primary legislation.

16. The prescription by law of a maximum limit on individual shareholdings has been a consistent thread running through all IPS legislation since the very first IPS Act of 1852 which introduced a limit of £100 (about €12,400 today). It is also a clear distinguishing feature between IPS and Companies legislation. The rationale for having a statutory limit is not clear from available records examined so far. It may have been a kind of prudential safeguard to limit the scale of possible financial loss by persons involved in forming and running co-operative ventures who were expected to be people of modest means. Or it may have something to do with the co-operative idea of equal participation by members of co-operatives. Or it may have been to ensure that any advantages conferred under these Acts (relative to the Companies Acts) were confined to a limited population of organisations.
17. Curiously, there is no provision in the IPS Acts expressly requiring a society to have a share capital but this may be inferred from certain provisions of the 1893 Act, particularly section 4 (maximum limit on individual interest “in the shares of the society”) and items 5 and 7 of the Second Schedule – see **Annex III**. This conclusion is also supported by the provisions of section 4 in relation to the economic purpose of a society discussed at A above. It is certainly the practice of registered societies to have a share capital.

Questions

- Q 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?
- Q 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.
- Q 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.

C. Restrictions on Raising of Funds

18. The 1893 IPS Act expressly permitted the carrying on of “the business of banking” by registered industrial and provident societies (sections 4 and 19). Following the strengthening of bank licensing and supervision arrangements in Ireland in 1971, an issue emerged of unregulated deposit-taking or banking activities by a small number of industrial and provident societies. This led to the enactment of the 1978 IPS Act which introduced a wide range of measures mainly directed at the activities of these societies. These measures, set out in Part II of the Act, include a number of restrictions on the raising of funds by societies generally.

19. The 1978 IPS Act distinguishes between
- (i) agricultural co-operative societies (as defined), fishing co-operative societies (as defined), certain credit union related societies and societies certified as being entitled to be treated as agricultural co-operative societies and
 - (ii) other societies.
20. In the case of the first category, the Act did not directly apply restrictions on deposit-taking or related activities to these societies. It did however make reference in the statutory definitions of the agricultural and fishing co-operatives to “the acceptance of deposits and the making of loans” constituting only “an insubstantial part of the business” of the society or “are incidental to, or are intended to assist the carrying on or the development of, the societies’ principal business”. The effect of these definitions is to restrict, to some extent at least, the activities of societies in this category in relation to the acceptance of deposits and the making of loans.
21. In the case of the second category which is the generality of non-agricultural societies, the following restrictions were legislated for and are still in force :-
- (a) Absolute prohibition on acceptance of deposits (s.5(1)). The term “deposit” is not defined.
 - (b) Prohibition, except with the permission of the Registrar, on the raising of funds other than by way of bank loan, or share subscriptions of less than £10,000 (€12,700) in any period of six months (s.6). The practical effect of this provision is that a society requires the prior approval of the Registrar to raise share capital in excess of €12,700 in any period of six months or to raise funds in any other form (except bank loans) of any amount⁷.
 - (c) Prohibition, except with the permission of the Registrar after consultation with the Central Bank, on any advertising for funds (s.8).

⁷ Section 6(2) of the Act provides, “The Registrar shall not give permission under this section unless he is satisfied that it is in the interests of the public or of creditors of a society or of the orderly and proper regulation of the business of the society to do so.”

It is understood from the Registry that a small number of applications for permission to raise or advertise for funds are received and processed each year. Many of these are in connection with grants received from public authorities.

22. It should be observed that the restrictions on the raising of funds, as described above, were introduced for the particular purpose of ensuring the termination of undesirable banking-type activities by industrial and provident societies and to prevent any recurrence of those activities in the future. It may also be relevant to mention in connection with the subject of the raising of funds (including capital) that the IPS Acts contain no provisions analogous to those in the Companies Acts relating to the prohibition (subject to specific exceptions) of any invitation or offer to the public to subscribe for any shares or debentures or other securities of a private company⁸ or the more elaborate requirements applying to the raising of finance by public limited companies, involving the publication of a prospectus in accordance with requirements deriving from obligations based on EU Directives.⁹

Question

- Q 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.

D. Borrowing Powers

23. Unlike companies, industrial and provident societies were not exempted from the provisions of the Bills of Sale (Ireland) Acts 1879 to 1883. This meant in practice that societies could not raise debentures on floating charges. In the case of agricultural co-operatives, this difficulty was addressed by the Agricultural Co-Operative Societies (Debentures) Act 1934 which also provided for a register of charges kept by the Minister for Agriculture. As a result, agricultural co-operatives can issue debentures secured on both floating and fixed charges, a facility which is not available to other societies.

⁸ Section 33, Companies Act 1990, as amended most recently in 2005.

⁹ Part 5 Investment Funds, Companies and Miscellaneous Provisions Act 2005 and associated national transposing Regulations (SI 325/2005) and directly applicable EU Regulations (NO 809/2004).

Questions

- Q 7. Should exemption from the Bills of Sale Acts be extended to all societies and if so, why?
- Q 8. What arrangements should be made in relation to the registration of charges by societies?

E. Financial Reporting

24. The following is a summary of the main financial reporting obligations of societies under the IPS Acts.

Annual Return	(a)	Must be made in the form prescribed by the Registrar	1893, s.20
	(b)	Must be audited by a public auditor	1913, s.2
	(c)	Must be sent to the Registrar each year not later than 31 March	1893, s.14 (1)
	(d)	Must be made up to a date between 1 September and 31 January (or in the alternate, must be made up to 31 December)	1893, s.14 (2)(c) as inserted by 1913, s.3 (1)
Balance Sheets	(e)	Must be sent to the Registrar, together with the annual return ((c) above), "a copy of each balance sheet made during the period included in the return".	1913, s.3 (2)
Triennial Return	(f)	Must, "once at least in every three years", be sent to the Registrar, together with the annual return ((c) above), "a special return signed by the	1913, s.4

Annual Accounts	<p>auditor(s) showing the holding of each person in the society (whether in shares or loans)...”</p> <p>(g) Must cause to be laid before the AGM, “an income and expenditure account” and “a balance sheet”, each giving “a true and fair view” of the matters concerned.</p>	1978, s.30
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25. There are a number of observations which may be made in relation to these statutory provisions:
- i. Some of the provisions are unclear. It is not clear for instance, whether the accounts required to be laid before the AGM ((g) above) must also be audited or that they must be filed with the Registrar.
 - ii. Insofar as the annual accounts are required to be filed with the Registrar, this would seem to duplicate, to some extent at least, the requirement to file an annual return with the Registrar ((c) above). The annual return of an industrial and provident society (unlike that of a company) comprises in the main a set of accounts, the format of which are prescribed by the Registrar.
 - iii. It is not clear what purpose is served by the Triennial Return ((f) above). If the reason for introducing this statutory requirement was to facilitate enforcement of the shareholding limit, the question arises whether this objective could be achieved by other means (assuming that the statutory limit on shareholding is to continue – section B above refers).
 - iv. There are some indications that the auditing requirements may be causing difficulties for smaller societies. It is possible that these difficulties are contributing to the significant incidence of non-submission and late submission of annual returns, annual accounts and triennial returns by societies (which in turn is linked to the numbers of societies cancelled by the Registrar).
 - v. It has been suggested by co-operative representative bodies that the particular timing requirements referred to at (c) and (d) above have been a cause of practical difficulty for some co-operatives whose annual business cycle is not “in sync” with the dates prescribed by statute.

- vi. It is for consideration whether retention of the concept of “public auditor”, (1893, s.72), is necessary or desirable in view of the harmonisation of qualifications of public auditors and company auditors provided for under the Companies Acts.¹⁰

Questions

- Q 9. How are the financial reporting obligations as summarised in paragraph 24 above operating in practice?
- Q 10. Are they causing difficulties for societies or any categories of society? If so, please describe the difficulties concerned.
- Q 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.

F. Corporate Governance

26. The term “corporate governance” is used here to refer to matters relating to the general manner in which industrial and provident societies govern or regulate themselves. These include the making and amending of rules, the distribution of powers and responsibilities within the society, the appointment and control of the committee of management (board of directors), the duties of members of the committee of management (directors) and the rights of members including voting rights.
27. As is to be expected from legislation dating from the late 19th century, the IPS Acts leave a good deal in this area to the responsibility of individual societies and their rules. The 1893 Act does enumerate a list of the matters which rules must provide for (**see Annex III**) but does not seek to prescribe the content of these rules. Governance matters in respect of which little or no substantive provision is made in the Acts include the amending of rules, powers and duties of the committee of

¹⁰ Companies Act 1990, s.187 (as amended).

management (board of directors) and other officers and voting rights of members.¹¹

28. What is the position regarding governance matters “on the ground”? In addressing this question, a distinction needs to be drawn between societies which are or consider themselves to be co-operatives and other societies. In the case of the former, anecdotal evidence suggests that current arrangements are working reasonably well. While the Department and Registry do receive occasional complaints on the subject from members of societies these do not suggest the existence of widespread unease with the governance of these societies. A significant contributor to this position is, no doubt, the important role played by co-operative representative bodies and their model rules which are approved by the Registrar. In the case of the latter type of society (i.e. societies other than co-operatives), the position is unclear and would require further examination.

Questions

- Q 12. How are the provisions of the IPS Acts in relation to governance operating in practice?
- Q 13. Are any changes to those provisions necessary or desirable? If so, give reasons for your views.
- Q 14. Outline the type of changes which you would like to see giving reasons for each suggestion.

¹¹ A possible exception in the case of voting rights is section 51 of the 1893 Act which appears to require “one member - one vote” on special resolutions (based on the *Irish Life* case - *Irish Permanent Building Society and Timothy Bolger v Seamus Cauldwell (sued as Registrar of Building Societies), Irish Life Building Society, Irish Life Assurance Co Ltd, Robert Willis and Others* [1981] I.L.R.M. 242)

G. Transmission of members' property

Nomination	A member may nominate a person or persons to whom his property in the society ¹² may be transferred on his death.	1893, s.25, 26 1913, s.5
Intestacy	Where a member dies intestate, the committee may distribute his property in the society ¹³ to the persons appearing to be entitled by law to receive the same.	1893, s.27
Insanity	Where a member of a society is insane, his property in the society may be paid to whoever the committee judges proper to receive the same on his behalf.	1893, s.29 1913, s.7

29. These statutory arrangements, which are also included in the Friendly Societies Acts, are one of the features distinguishing IPS legislation from Companies legislation. Under the latter, transfer of deceased members' shares is allowed only to the personal representative. The IPS Acts provided an administratively simple mechanism to access a member's property in times of difficulty. The rationale for these provisions is linked to the general policy underlying the legislation which was to facilitate and simplify the operation of co-operative societies. As is the case for individual shareholding limits, changes in the nomination and intestacy limits require primary legislation.

Questions

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

¹²To a maximum of €15,000 under Sec 85, Investment Funds, Companies and Miscellaneous Provisions Act 2005

¹³To a maximum of €10,000, *ibid.*

H. Other Matters

30. In addition to the matters discussed above there are a number of other provisions in the IPS Acts on which consultees may wish to offer views or observations. These provisions include the following:

Statutory Provision	Matter	Summary Description
1893, s. 5(1)	Membership	Society must consist of seven persons at least
1893, s.9	Cancellation	Grounds for cancellation of society including: <ul style="list-style-type: none"> ▪ for ceasing to exist or function ▪ at the request of the society ▪ for violation of any provision of the Acts and related procedures including restoration to the register by the High Court.
1893, s.49	Disputes	Rules may provide for arbitration of disputes including by Registrar.
1893, s. 51 – 57	Amalgamation and other matters	Power of society to change name, amalgamate with or transfer its engagements to another society, convert into company and power of company to convert into society.
1893, s. 58 1978, s. 19	Winding Up	Application of Winding Up provisions of Companies Acts
1893, s. 62-70	Enforcement	Offences and Penalties
1893, s.73	Fees	Power of Minister to prescribe fees

31. The Companies Acts make provision for a number of statutory mechanisms which are not provided for under the IPS Acts. Examples are Examinership and Registration of Charges. Consultees may wish to

offer views on whether any of these mechanisms should be made available to industrial and provident societies.

Question

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

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

I. Public Enforcement

- 32. The main public authority functions provided for by the IPS Acts are vested in the Registrar of Friendly Societies. This is a statutory post originally created under an Act of 1846. Political responsibility for this office and for certain related functions are vested in the Minister for Enterprise, Trade and Employment (previously the Minister for Finance).
- 33. The current work of the Registry in relation to industrial and provident societies mainly comprises the enforcement of the provisions relating to returns and accounts, registration of new societies, registration of rule amendments of existing societies, cancellation of societies, registration of amalgamations and other transactions and the maintenance of a public office for inspection of documents by the public. Provision is also made by statute for certain other functions of the Registrar, such as investigations at the request of members and arbitration of disputes but these functions rarely arise in practice. The Registry also administer the Friendly Societies Acts and the registration and connected functions provided for under the Trade Union Acts.
- 34. The general enforcement model provided for under the IPS Acts reflects the era from which these Acts came. It is a very much less developed model than that provided for under the Companies Acts. Those Acts confer extensive regulatory and enforcement functions and powers on three separate statutory bodies, the Registrar of Companies, the Director of Corporate Enforcement and the Irish Auditing and Accounting Supervisory Authority (IAASA). Looking to the future, decisions on

what type of enforcement model would be appropriate for societies and what institutional arrangements would be necessary for implementing them will depend on the policy approach that emerges from this consultation. Other relevant considerations will include quality of customer service, costs and the Principles of Better Regulation set out in the Government White Paper of January 2004.

PART 4: NEXT STEPS

35. The material set out in Part Three has been prepared following a preliminary examination of the Industrial and Provident Societies Acts 1893-2005. The public consultation process now being initiated will lead to a fuller and more comprehensive evaluation of the legislation. That will include a definitive identification of the strengths and weaknesses of the current legislation and of any problems in it which are militating against, or not conducive to, the full use and development of the co-operative form of business organisation in Ireland.
36. The IPS legislation has provided the statutory legal framework for the vast majority of co-operative organisations in Ireland for over a century. That framework, particularly by facilitating statutory incorporation, establishing a public register service and certain other supports, has made a positive contribution to the development of co-operatives and the co-operative model in Ireland. That contribution has been made notwithstanding the general absence in the legislation of provisions seeking to define co-operatives or to prescribe matters pertaining to co-operative principles.
37. The main body of IPS legislation dates from the Victorian age and it must be questioned whether such legislation can be expected to serve, for much longer, the needs of the co-operative sector. The material set out in Part Three, taken as a whole, does suggest the need for legislative modernisation.

Making a response to this consultation paper

38. This consultation paper has been prepared to assist and inform those who wish to make a submission on the review of the Industrial and Provident Societies Acts 1893 – 2005. Responses should be made in writing and are invited on any of the issues raised in this paper along with any additional comments you would like to make. Your attention is drawn to the fact that information provided to the Department may be disclosed in response to a request under the Freedom of Information Act. Therefore, should you consider that any information you provide is commercially sensitive, please identify same, and specify the reason for its sensitivity. The Department will consult with you regarding information identified by you as sensitive before making a decision on any Freedom of Information request. Any personal information which you volunteer to this Department will be treated with the highest standards of security and

confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2003.

39. Submissions should be marked “IPS Legislation Review‘ and sent by email to cooplaw@entemp.ie or by post to the address below, not later than **30th June 2009**.

IPS Legislation Review
Co-operative Legislation Unit
Department of Enterprise, Trade and Employment
Earlsfort Centre
Lower Hatch Street
Dublin 2

Tel: 01 631 2655/2615

For further information please see the Department webpage:
www.entemp.ie/commerce/cooplw

ANNEX I

ICA Statement of Co-operative Identity

Definition

A co-operative is 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.

Values

Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity 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.

1st Principle: Voluntary and Open 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.

2nd Principle: 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.

3rd Principle: 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 or all 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.

4th Principle: 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.

5th Principle: 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 and benefits of co-operation.

6th Principle: Co-operation among Co-operatives

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

7th Principle: Concern for Community

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

ANNEX II

Main Primary Legislation applying to Industrial & Provident Societies

- Industrial and Provident Societies Act 1893
- Industrial and Provident Societies (Amendment) Act 1913
- Agricultural Co-operative Societies (Debentures) Act 1934
- Industrial and Provident Societies (Amendment) Act 1971
- Industrial and Provident Societies (Amendment) Act 1978
- Competition Act 2002 (Section 51)
- Investment Fund, Companies and Miscellaneous Provisions Act 2005 (Section 85-86)

ANNEX III

Text of Second Schedule to the Industrial and Provident Societies Act, 1893

“MATTERS TO BE PROVIDED FOR BY THE RULES OF SOCIETIES REGISTERED UNDER THIS ACT

1. Object, name and registered office of the society.
2. Terms of admission of the members, including any society or company investing funds in the society under the provisions of this Act.
3. Mode of holding meetings, scale and right of voting, and of making, altering, or rescinding rules.
4. The appointment and removal of a committee of management, by whatever name, of managers or other officers, and their respective powers and remuneration.
5. Determination of the amount of interest, not exceeding [*two hundred pounds sterling*]ⁱ, in the shares of the society which any member other than a registered society may hold.
6. Determination whether the society may contract loans or receive money on deposit subject to the provisions of this Act from members or others; and, if so, under what conditions, on what security, and to what limits of amount.
7. Determination whether the shares or any of them shall be transferable; and provision for the form of transfer and registration of the shares, and for the consent of the committee thereto; [*determination whether the shares or any of them shall be withdrawable, and provision for the mode of withdrawal and for payment of the balance due thereon on withdrawing from the society.*]ⁱⁱ
8. Provision for the audit of accounts and for the appointment of auditors or a public auditor.
9. Determination whether and how members may withdraw from the society, and provision for the claims of the representatives of deceased members, or the trustees of the property of bankrupt members, and for the payment of nominees.

10. Mode of application of profits.
11. Provision for the custody and use of the seal of the society.
12. Determination whether, and by what authority, and in what manner, any part of the capital may be invested.”

ⁱ This amount was specified in section 4 (a) of the 1893 Act. It was altered on a number of occasions since then commencing with the Credit Union Act 1966 and most recently in the Investment Funds, Companies and Miscellaneous Provisions Act 2005 which specified the amount of “€150,000 or an amount equal to 1 per cent of the total assets of the society, whichever is the greater” (section 85).

ⁱⁱ Section 32 of the Industrial and Provident Societies (Amendment) Act 1978 provided as follows “A society which is not a credit union or which is not a society to which, by virtue of section 3(4) of the Credit Union Act, 1966 section 3(3) of that Act does not apply, shall not issue withdrawable shares.”