Co-operative Alternatives submission to Pre-Legislative Scrutiny of the General Scheme of the Co-operative Societies Bill

17th February 2023

Introduction

Co-operative Alternatives is a leading co-operative development agency in Northern Ireland committed to fostering a strong co-op movement that operates in a fair, ethical, and just manner across the island of Ireland.

We offer high-quality support and expert knowledge to both emerging and established co-operatives in Northern Ireland, and have also worked with co-operatives in the Republic of Ireland due to our specialized knowledge of worker and community co-operatives.

We commend the Department of Enterprise, Trade and Employment for proposing new legislation that aims to support and grow the co-operative economy in Ireland. However, we believe that there is potential for improvement to maximize the legislation's potential to grow the co-operative economy more broadly, particularly not-for-profit and social co-operatives.

In this regard, would wish make the following recommendations for how the new legislation can maximise this potential:-

1. Introduce the right environment for 'Community Shares'
2. Introduce a statutory co-operative asset lock
3. Introduce higher minimum requirements for a 'legal reserve'
4. Reduce administrative costs associated with co-operatives
5. Provide an adequate framework for co-operative development
6. Consider additional measures required to maximise the growth of employee-owned businesses

Introduce the right environment for 'Community Shares'

Community Shares are essential to our work with starting and scaling co-operatives in the not-for-profit and community sectors.

Enterprises require capital to start, grow, and remain sustainable. Community Shares enable co-operatives with a social or community mission to secure investment from the very community they aim to benefit.

These community shareholders, typically ordinary people, invest in local enterprises that provide goods and services to meet local needs and expect only a fair and modest return on their investment, if any. Community Shares are non-transferrable shares in a co-operative with an asset lock.

During the past 10 years, we have raised start-up and growth capital for a variety of co-operatives though public share offers. The unique characteristics of shares in co-operatives, make this type of investments non-speculative. Community Shares are withdrawable, have a nominal value of £1 that could decrease but not increase and cannot be sold outside the co-operative (non-transferable). Members also abide by the principle 'one member, one vote' and not ‘one share, one vote’. Offers can also be done publicly, usually attracting geographical or community of interest.

This has been possible thanks to the combination of favourable legislative framework in the UK and an intensive programme of raising awareness and education about this financial tool, unique to co-operatives. These have been the contributory factors in the UK jurisdiction: 1) raising non-transferable shares are exempt from preparing costly and FCA approved prospectus, 2) the offers are also exempt from restriction on promotion of the investment if relates to withdrawable capital and finally, 3) non-transferable and withdrawable shares investment are not included within the regulated financial activities.

These exemptions embedded in legislation, namely under the Financial Services and Markets Act (2000), have facilitate share offers for co-operatives. It is in fact affordable and possible to easily prepare share offer documents and publicly promote them through the community.

The exemptions with the non-speculative nature of the shares, reassure citizens that their contribution to co-operatives close to their interests and beliefs, are committed to the success that eventually benefit them.

Community share offers, as we prefer to refer to, have been popular in community energy for the generation of renewable energy through wind turbines or solar panel, to establish/retain community shops, community farms or artisan industry like microbreweries. We have also used this tool to raise capital for growing sports clubs and/or refurbishing derelict buildings for community use.

Most recently, we have supported a community buy-out of a shop in the North West region which would otherwise have closed.

We applaud the decision by the Department of Enterprise, Trade and Employment to remove the prohibition on co-operative societies raising funds through publicly advertised co-operative share offers.

We further welcome that General Scheme will permit the reintroduction of withdrawable share capital, which is a key plank of the community shares model in the North, and has been prohibited in the South for a generation.

However, we note that the absence of a complementary optional co-operative asset lock means that the specific 'community share offer' model of financing for not-for-profit and social co-operatives is unlikely to be replicated in the same fashion as it has in Great Britain and Northern Ireland.

We recommend that the new co-operative legislation prioritize the creation of an environment for a 'community shares' ecosystem and provide for a co-operative asset lock to leverage the co-operative model for rural and economic development, and the protection of community assets in Ireland.

Introduce a statutory co-operative asset lock

We recommend the introduction of an optional statutory co-operative asset lock as a critical provision in the new legislation for co-operatives in Ireland. Our experience of working with start-up and scaling co-operatives across the island of Ireland reveals that a co-operative's rules concerning the treatment of reserves in the event of dissolution are critical to its development.

Co-operatives formed for the community or social benefit are eligible for a wider range of supports aimed at growing the social economy both from the national and European level.

However, the inconsistent application of eligibility criteria due to a lack of awareness around the nature of a co-operative and the lack of a standardised statutory 'co-operative asset lock' which stakeholders can rely on is problematic for these co-operatives accesses funds and supports on the same basis as other legal forms.

We submit that not having included the option for an asset lock in the current General Scheme, has curtailed the capacity of community co-operatives, most of which are not-for-profit enterprises, to hold assets in perpetuity for the benefit of communities at large rather than individual members.

Asset locks play a critical role in a variety of community-based initiated co-operatives.

For instance, they are essential for housing co-operatives that aim to provide affordable and social rent.

In addition, the emerging community energy sector benefits greatly from asset locks, as they enable these capital-intensive enterprises to rely on community investors without any speculative aims.

Moreover, asset locks are a crucial component of community buy-outs for local services such as shops and community halls. They provide reassurance to community investors that no one will unfairly benefit from an increase in the underlying value of the asset and prevent the assets from being raided. Therefore, asset locks are an essential tool for protecting the interests of communities and ensuring the long-term sustainability of their initiatives.

We propose that the new legislation for co-operatives in Ireland makes provision for an optional co-operative asset lock to ensure that the reserves of a co-operative with an asset lock are transferred to another co-operative or charitable organization with such an asset lock in the event of dissolution.

We emphasize that such an asset lock should ensure that member’s capital and outstanding share interest are returned, as this capital belongs to the members and is not the common property of the co-operative.

The combination of the public offering of shares and an optional co-operative asset lock provided for in legislation would provide the ideal environment for replicating the successes of community financing of co-operatives in Ireland.

Introduce higher minimum requirements for a 'legal reserve'

We welcome the proposed introduction of the concept of 'legal reserve' into co-operative legislation in Ireland.

However, we believe that the current proposal for implementing this concept does not provide sufficient prescription to ensure that co-operatives set a meaningful level of contribution to the reserve.

We maintain that the principle that some of the capital of the co-operative remains the common property of all the members, and is not distributable to the members, is an essential part of the co-operative model.

This principle is included in the International Co-operative Alliance Co-operative Principle 3.

Co-operative Alternatives would recommend that the legislation be aligned with European co-operative norms in regard to the requirement and maintenance indivisible reserve.

This would involve the legislation setting out minimum levels of contribution, and placing some limits on the distribution of this reserve to members in the event of a winding up.

Reducing administrative costs associated with co-operatives

We welcome the exemption from the requirement of auditors for co-operatives within the turnover and asset limits indicated in the General Scheme. We agreed that this requirement should be reflected in the Rules of the Society.

The General Scheme could reflect in law the option for the members to call for a vote on the auditors, if deemed necessary.

We would equally welcome the abolition of fees currently charged when accessing co-operative public records from the public registry and a reduction of any fee for registration purposes.

At present registering a co-operative is still considerably more expensive than registering a company, even when well established Model Rules are adopted by a co-operative. The cost of registering a co-operative should be no greater than registering a company.

Provide an adequate framework for co-operative development

The proposed legislation under consideration today is an important foundational statute to remove archaic and unnecessary barriers to the registration and administration of co-operatives.

However, we believe that legislative changes such as this are not enough to create a supportive environment for the growth of the co-operative sector in Ireland. Our experience in the North of Ireland indicates that the presence of a specialised co-operative development body, like Co-operative Alternatives, have facilitated the growth of co-operatives and involved new constituencies in the sector.

Without specialist support for co-operatives and advisers with a keen understanding of the legislation, regulatory and registration processes, emerging co-operatives are often not appropriately advised and supported.

Co-operative Alternatives urges the committee to consider how this supportive and enabling environment can be created alongside the proposed legislation.

The potential options would include:

a. The establishment of a Co-operative Development Unit as part of Enterprise Ireland (or equivalent) able to provide independent and accurate advice, training and support to co-operatives;
b. The provision of funding to a Co-operative Development Unit through an open tender, independent of government and industry, to provide independent and accurate advice, training and support to co-operatives;
c. The introduction of a provision in this General Scheme requiring all co-operatives to provide a minimum proportion of their annual surplus to a national or regional co-operative federation for the purpose of providing independent and accurate advice, training and support to co-operatives – this model is adopted by a number of jurisdictions most prominently Italy and is a meaningful expression of a co-operative's duties under Principle 6;

Consider additional measures required to maximise the growth of employee-owned businesses

The General Scheme provides for the conversion of companies to societies, and would therefore not provide any barrier in itself to the conversion from a private company to an employee-owned co-operative.

However, from our experience, the success of any conversion is dependent on tailored tax provisions to ensure that the conversion is efficient for both the seller and the purchasing employees.

We would recommend that the committee give further consideration to how these tax provisions might be introduced.