

Registering an Industrial and Provident Society in Northern Ireland

NOTES FOR GUIDANCE

These notes are for information only. They are not a full statement of legal obligations under the relevant legislation. It does not contain all the information you may need. The society may wish to seek legal advice on how to comply with the legislation.

A table of the main forms referred to and the most commonly used, is included at the end of this guidance together with links to the online versions available on the Registry website.

1.0 Industrial and Provident Societies

- 1.1 Many different types of organisation may register as industrial and provident societies under the Industrial and Provident Societies Act (Northern Ireland) 1969. However any such societies may also be subject to different and additional legislation and be entitled to different privileges, depending on the nature of their business. For example, clubs may be subject to licensing regulations, and housing associations subject to housing legislation. Housing associations registered with the Department for Social Development should co-ordinate their application for registration as an industrial and provident society with that Department.
- 1.2 Depending on its activities, an industrial and provident society may also be subject to the requirements of the Financial Services and Markets Act 2000 and advice should be sought as appropriate from the Financial Services Authority before applying for registration under the Industrial and Provident Societies Act.
- 1.3 You should therefore ensure that at all times the society is aware of and complies with any special legislation or regulations applying to its business. You can do this by contacting the relevant authorities or by obtaining legal advice.
- 1.4 Two of the main benefits or privileges of registration as an industrial and provident society are:
 - Limited liability – this means the personal liability of a society's members is limited to the amount of their unpaid share capital.
 - Corporate body status, with perpetual succession – unless steps are taken to terminate its registration under the 1969 Act, it will continue to exist even if its membership changes. Also, the society can act, sue and be sued, and own property, land and other assets in its own name without the need for trustees.

1.5 It is outside the scope of these notes to provide a complete list of all the other effects and privileges of registration, but the following are important:

- The rules are a binding contract between a society and all its members.
- Contracts on behalf of the society can be made, varied or discharged in the same manner as between private individuals.
- Debts due to the society from members are recoverable through a court of law. The society has a lien on a member's share for any debt due by the member and may set off any sum credited on the shares in or towards payment of the debt.
- Although the society enjoys the benefits of limited liability, the officers of the society are liable for prosecution if they are in breach of their duties under the Act.

2.0 Qualification/Eligibility for Registration

2.1 A society qualifies for registration as an industrial and provident society if it is a society for carrying on any industry, business or trade; and it is either:

- a bona fide co-operative; or
- its business will be run for the benefit of the community (that is, people other than its own members).

3.0 Bona Fide Co-operative Societies

3.1 Such societies are formed primarily to benefit their own members, who will participate in the business of the society.

3.2 To satisfy us that it will be a bona fide co-operative, a society will normally have to fulfil the following conditions, the first four of which also reflect the International Co-operative Alliance's Statement on the Co-operative Identity:

- Community of interest - There should be a common economic, social or cultural need or interest among all members of the co-operative.
- Conduct of business - The business will be run for the mutual benefit of the members, so that the benefit members obtain will stem principally from their participation in the business. Participation may vary according to the nature of the business and may consist of:
 - buying from or selling to the society;
 - using the services or amenities provided by it; or
 - supplying services to carry out its business.

- **Section 1(3) of the 1969 Act states that a society may not be a bona fide co-operative if it carries on business with the object of making profits mainly for paying interest, dividends or bonuses on money invested with or lent to it, or to any other person.**
- **Control** - Control of the society lies with all members. It is exercised by them equally and should not be based, for example, on the amount of money each member has put into the society. In general, the principle of 'one member, one vote' should apply. Officers of the society should generally be elected by the members who may also vote to remove them from office.
- **Interest on share and loan capital** - Where part of the business capital is the common property of the co-operative, members should receive only limited compensation (if any) on any share or loan capital which they subscribe. Interest on share and loan capital must not be more than a rate necessary to obtain and retain enough capital to run the business.
- **Profits** - If the rules of the society allow profits to be distributed, they must be distributed among the members in line with those rules. Each member should receive an amount that reflects the extent to which they have traded with the society or taken part in its business. For example, in a retail trading society or an agricultural marketing society, profits might be distributed among members as a dividend or bonus on purchases from or sales to the society. In other societies (for example, social clubs) profits are not usually distributed among individual members but members benefit through cheaper prices or improvements in the amenities available.
- **Restriction on membership** - There should normally be open membership. This should not be restricted artificially to increase the value of the rights and interests of current members, but there may be grounds for restricting membership in certain circumstances, which do not offend co-operative principles. For example, the membership of a club might be limited by the size of its premises, or the membership of a self-build housing society by the number of houses that could be built on a particular site.

3.3 We may cancel a society's registration if at any time it appears that the society no longer complies with the conditions of registration.

4.0 Benefit of the Community Societies

4.1 We will normally expect a benefit of the society to fulfil these conditions:

- **Conduct of business** - The business must be run primarily for the benefit of people who are not members of the society, and must also be in the interests of the community at large. It will usually be charitable or philanthropic in character.
- **Interest on share and loan capital** - It is unusual for a benefit of the community society to issue more than nominal share capital (for example,

one £1 share per member). Where it does issue more than nominal share capital or where members make loans to the society, or both, any interest paid must not be more than a reasonable rate necessary to obtain and retain enough capital to run the business.

- Profits and assets - The society's rules must not allow either profits or the society's assets to be distributed to the members. Profits must generally be used to further the objects of the society by being ploughed back into the business. Where profits are used in part for another purpose, that purpose should be similar to the main object of the society, for example for philanthropic or charitable purposes. The rules must specify the beneficiary or beneficiaries, if any.
- Where the rules of the society allow assets to be sold, the proceeds of the sale should be used to further the society's business activities only.
- Dissolution - The society's rules must not allow its assets to be distributed to its members on dissolution. The rules should state that on dissolution the assets should be transferred, for example, to some other body with similar objects. If no such body exists, the rules should state that the assets must then be used for similar charitable or philanthropic purposes.
- Corporate and constitutional changes by registered housing associations may require the approval of the Department for Social Development.

4.2 Every industrial and provident society must also satisfy the following conditions:

- It must have at least **three** members, unless it consists of **two** registered societies.
- The rules of the society must include all the matters required by Schedule 1 of the 1969 Act (these are set out in the application form).
- The proposed name of the society must not be undesirable. As a general rule any proposed name must not be either identical to, or extremely similar to, any existing society, charity or company name. There are also certain words (for example, with a royal connection) for which you may need special permission. We are happy to give comments on whether a proposed name may be suitable or available, before receiving a formal application for registration. But we cannot reserve a name before registration, or guarantee that it will still be available at registration.

5.0 Financial Costs of Registration

5.1 Before applying to register an industrial and provident society, you will need to consider not only the initial start-up costs but also the potential costs of running a society. You should make sure that money is available to meet these commitments. It might be useful to consider costs under the following broad headings:

- registration fee for registration;
- sponsoring body fee(s) (where appropriate); and
- annual running costs, accountant's fees, annual audit fee (where appropriate).

6.0 Information Required for Registration

6.1 Full proposed name of society

- You must give the full proposed name, please do not use abbreviations. You should check whether the name you propose to use as a registered society is both available and acceptable. We would not permit a society converting from a company to be registered with a name containing the word 'company'.
- When considering a society's name we will want to be satisfied that, among other things, it will not confuse those dealing with the society, nor, by the choice of name, make undue claims as to the pre-eminence of the society.

6.2 Rules under Schedule 1 to the Industrial and Provident Societies Act (NI) 1969

- Sponsoring bodies – Societies applying for registration under the 1969 Act may do so through a sponsoring body. Each sponsoring body provides model rules suitable for the type of society which it represents.
- If a society does not wish to go through one of the sponsoring bodies or there is no relevant body, the first step towards registration, before putting the proposal or the proposed new rules to members, is to check with the Registry that the society may, in principle, be registered as an industrial and provident society.

6.3 Contact details for communications about this application

- Please ensure you include the postcode and a contact telephone number and an email address. This will make it easier for us to contact you if we require further information.

6.4 The time taken to determine each application is significantly affected by the quality of the application submitted and whether it is complete. As we need to examine each carefully, please ensure any application is submitted in good time to resolve any problems that may arise, particularly if you have a preferred registration date in mind.

- 6.5 You must attach two printed copies of the proposed society's rules, both of which are signed at the end by three members and by the Secretary of the society.
- 6.6 The responsibility lies with each society to ensure that its own rules cover all that is required by law for the activities it proposes to carry on and you should seek legal advice if necessary. In addition, the rules should reflect the society's character and the way it wishes to organise itself. So for example bona fide co-operative societies are controlled by their members and so their rules should reflect the intentions and wishes of the members.
- 6.7 It is also the responsibility of each society to ensure its rules are prudent, fair, clear and well drafted. By this we mean that the rules and sub-sections are suitably and sequentially numbered and that any internal cross referencing to other rules or sub-sections is correct. The language used should be modern, clear, and capable of being understood by all members.
- 6.8 Our role is to register rules that are acceptable under the 1969 Act and to reject those that are not. It is not our role to advise whether a rule is in a society's best interests. That is for the society's members and its professional advisers to decide.
- 6.9 The same people must sign both the rulebooks and the application form, and the signatures must be originals.
- 6.10 The rule book pages should be no larger than A4 size, with a margin on each page at least two centimetres wide so that we can scan the rules on to the society's public record file.
- 6.11 Date of society's financial year end.
- A newly registered society must have an accounting period of at least 6 months.
 - No society's accounting period may extend beyond 18 months.
- 6.12 The fee for an application based on model rules is £200 and for all other applications is £535. Payment should be made by cheque to 'DfE'.

7.0 Ongoing Obligations of Registration

- 7.1 Once registered, among other things, a society must:
- be run strictly in accordance with its registered rules and the wider legislative obligations referred at paragraph 1.0;
 - where and when necessary, apply to amend its rules or to change its name, as no amendment is valid until it has been registered by us;
 - give notice of any change of its registered office;

- keep proper books of account and maintain satisfactory systems of control of its books, cash holdings and all receipts and payments;
- submit an annual return every year, by the due date, accompanied as appropriate by a set of accounts;

8.0 Amendment of Registered Rules

- 8.1 Section 9 of the Industrial and Provident Societies Act (Northern Ireland) 1969 provides for how industrial and provident societies may amend their rules for all matters except for a change of registered office and a change of name. (These latter two changes are subject to separate and different procedures.) The manner in which the proposed changes are put to and approved by the membership must be in accordance with the society's rules and the requirements of the 1969 Act. Two copies of the amendment(s) or substitute rules signed by three members and the secretary must accompany the application for registration of the amendment.
- 8.2 The Registry will examine the wording of the proposed rule change(s) to check for compliance with 1969 Act. Registration and acknowledgement of a rule change does not and cannot be taken as indicative of the fitness for purpose of any society rule in terms of corporate governance, the carrying on of any industry, trade or business, or its compliance with any other statutory obligation (including the Financial Services and Markets Act 2000). Responsibility for these matters rests firmly with the society, its directors and officers, and its professional legal, financial and other advisers.
- 8.3 A change in the situation of a society's registered office may be notified on the prescribed form (IPI) and must be signed by the secretary.
- 8.4 A change of a society's name must be done by a resolution for that specific purpose and be passed at a general meeting of the society after the giving of such notice as is required by its rules for a change of name resolution. If the society's rules do not make special provision as to the notice period for a change of name resolution, the period of notice given must be the same as that for a resolution to amend a rule.
- 8.5 No amendment of a rule is valid until it is formally registered and acknowledged.

Further information and guidance on the qualifications and eligibility for registration as an industrial and provident society and on the registration process and post-registration events and obligations may be obtained by telephoning the Registry on 028 9052 9599 or by e-mail to registry.info@economy-ni.gov.uk.