

**EXPLANATORY MEMORANDUM TO
THE EUROPEAN COOPERATIVE SOCIETY (INVOLVEMENT OF EMPLOYEES)
REGULATIONS 2006**

2006 No. 2059

1. This explanatory memorandum has been prepared jointly by Her Majesty's Treasury and the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The European Cooperative Society Regulations give effect in the UK to Council Regulation 1435/2003 (the "EC Regulation"). The EC Regulation creates a new form of cooperative, known as the European Cooperative Society (the "SCE"). SCEs can operate across the European Economic Area on the basis of registration in one Member State, thereby potentially broadening access to European markets for cooperatives which adopt this new form.

2.2 The European Cooperative Society (Involvement of Employees) Regulations implement Council Directive 2003/72/EC (the "EC Directive"). The Regulations guarantee clearly specified levels of participation and involvement for employees of this new form of cooperative.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The European Cooperative Society Regulations give effect to the EC Regulation whilst the European Cooperative Society (Involvement of Employees) Regulations implement the EC Directive. Both sets of Regulations are made under section 2(2) of the European Communities Act 1972 and will come into force on 18 August 2006 (the date on which the EC Regulation and EC Directive come into force).

4.2 A transposition note relating to the EC Directive is attached.

5. Extent

5.1 Both sets of Regulations extend to the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the European Cooperative Society Regulations 2006 are compatible with the convention rights.”

- 6.2 Jim Fitzpatrick, Parliamentary Under-Secretary of State for Employment Relations and Postal Services, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the European Cooperative Society (Involvement of Employees) Regulations 2006 are compatible with the convention rights.”

7. Policy background

- 7.1 Cooperatives in the UK are a corporate form normally registered under the Industrial & Provident Societies Act 1965¹. They are run by their members and operate for their benefit. The Financial Services Authority acts as the registrar of industrial and provident societies in Great Britain and in Northern Ireland the appropriate registering authority is the Registrar of Credit Unions.
- 7.2 Introduction of the SCE is part of the European Council’s proposals aimed at promoting cross-border business among various corporate forms while preserving their distinctive features and actively seeks to provide for the involvement of employees. The SCE proposal parallels the proposal for the European Company (which came into force in 2004) but the SCE proposal has been tailored to the specific characteristics of cooperative societies.
- 7.3 SCEs will have a minimum share capital of €30,000. The use of the SCE form will be entirely voluntary. The SCE does not replace existing national or regional cooperatives.
- 7.4 HMT and DTI jointly consulted in Great Britain in a 12-week public consultation from 16 March to 8 June 2006. Over 500 copies of the consultation documents were issued to stakeholders in Great Britain and a copy posted on the Treasury public website. There were 7 written responses all of which supported the proposed Regulations, in particular supporting key policies such as the choice of Registrar and Competent Authority. The response from the umbrella group representing the majority of cooperatives in the UK has been very positive and they are overwhelmingly content with the way in which the EC Regulation and the EC Directive are being implemented by these two sets of Regulations.
- 7.5 A parallel public consultation was conducted in relation to Northern Ireland by Northern Ireland’s Department of Enterprise, Trade and Investment (DETINI) and Department of Employment and Learning (DEL). This included distribution to all key stakeholders as well as representatives of all political parties in accordance with current guidelines. A copy of the consultation document was also posted on the DETINI public website. One response, supporting the enforcement role of the Industrial Court in the proposed legislation, was received to the consultation.
- 7.6 A summary of the consultation responses is available on the HM Treasury public website at www.hm-treasury.gov.uk

¹ The relevant Act in Northern Ireland is the Industrial and Provident Societies Act (IPSA) 1969.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this explanatory memorandum.
- 8.2 The Financial Services Authority will act as the registrar for SCEs in Great Britain. The Registrar of Credit Unions will act as the registrar for SCEs in Northern Ireland. In addition the Financial Services Authority using powers under the Financial Services and Markets Act 2000 will act as the regulator for SCEs in GB and NI in relation to any regulated services, such as insurance, which they provide. There will be no other impact on the public sector.

9. Contact

- 9.1 Samuel Amissah at HM Treasury (Tel: 020 7270 5291) or email: Samuel.Amissah@hm-treasury.x.gsi.gov.uk) can answer any queries regarding the European Cooperative Society Regulations.
- 9.2 Steven Greenwell at Department of Trade & Industry (020 7215 5056) or email: Steven.Greenwell@dti.gsi.gov.uk can answer any queries on the European Cooperative Society (Involvement of Employees) Regulations.

FINAL REGULATORY IMPACT ASSESSMENT ON THE EUROPEAN COOPERATIVE SOCIETY

1. PROPOSAL

A.1 Giving effect to COUNCIL REGULATION (EC) No 1435/2003 (the EC Regulation) and COUNCIL DIRECTIVE 2003/72/EC (the EC Directive).

2. PURPOSE AND INTENDED EFFECT OF MEASURE

Objective A.2 The EC Regulation provides a legislative framework that will enable formation of a European Cooperative Society (SCE). The EC Directive supplements the EC Regulation by providing for employee involvement in SCEs. The directly applicable EC Regulation will come into force on 18 August 2006, as should the domestic legislation giving effect to the EC Regulation and the EC Directive.

Devolution A.3 HM Treasury (HMT) has policy responsibility for giving effect to the EC Regulation in the United Kingdom) and the Department of Trade & Industry (DTI) has responsibility for implementing the EC Directive. The relevant authorities in Gibraltar and Channel Islands will have responsibility for transposing the EC Regulation and EC Directive in their respective jurisdictions.

Background A.4 The aim behind the EC Regulation and EC Directive is to facilitate cooperatives wishing to engage in cross border business by creating the SCE form. SCEs will be able to operate across the EEA on the basis of registration in one Member State without a further need to register in each Member State in which it transacts business. Adoption by a cooperative of the SCE form is optional.

A.5 The EC Regulation creates the SCE and sets out the core legal framework that will apply to SCEs. The EC Directive specifies the employee involvement arrangements that will apply to an SCE. The EC Regulation and the EC Directive are similar to the European legislation that created the European Company and which came into force in 2004.

A.6 The domestic legislation to give effect to the European legislation on SCEs will comprise Regulations (made by HMT) to give effect to the EC Regulation and Regulations (made by DTI) to implement the EC Directive.

A.7 The EC Regulation contains the framework of the SCE including provisions for the formation, registration, capital, structure, accounting and winding-up of SCEs. The core features of the SCE are that:

- the SCE will have its own legal personality from the day of registration;
- the minimum amount of share capital is €30,000; and
- an SCE can be formed by 5 or more natural persons and/or corporate bodies or by merger of cooperatives provided the participating people/bodies are based in two or more Member States, or by the conversion of an existing EC registered cooperative if that cooperative has had an establishment in a Member State other than its place of registration for at least two years.

A.8 Whilst the EC Regulation provides the framework for the SCE, that framework is supplemented by:

- the individual rules of the particular SCE where permitted by the EC Regulation;
- the national law that gives effect to the EC Regulation and implements the EC Directive; and
- national laws either where expressly permitted by the EC Regulation or in the event that the EC Regulation is silent.

A.9 One of the national laws that the EC Regulation applies is the “national law on cooperatives”. The closest equivalent in UK to a national law on cooperatives is the law concerning Industrial and Provident Societies (IPSs) as the majority of cooperatives in UK are IPSs. However, some cooperatives are companies and cooperatives may take other forms such as limited liability partnerships.

A.10 Although the law concerning IPSs has, so far, been adequate in UK, there are limitations in its usefulness to UK IPSs which wish to operate across the EEA or create groups of cooperatives with entities from other Member States. The creation of the SCE form is intended to address some of those difficulties.

A.11 The EC Directive makes provision for employee involvement arrangements, information, consultation and, where appropriate, employee participation in SCEs. For most types of SCEs, in the first instance employee involvement arrangements are to be freely negotiated between the management and the employees, acting through a Special Negotiating Body (SNB). If a voluntary agreement is not reached, then the standard rules set out in the Annex to the EC Directive apply. On information and consultation, the standard rules are based on the provisions of the European Works Council Directive, i.e. a representative body of employees shall have the right to meet management at least once a year to be informed and consulted on certain matters.

A.12 In the case of SCEs set up from scratch (“ex novo”), which employ fewer than 50 employees or employ 50 or more employees in only a single Member State, then national rules of the Member State of the SCE's registered office or the provisions of the Member State where the SCEs' subsidiaries and establishments are situated will apply. In UK, information and consultation obligations do not apply to undertakings with fewer than 50 employees, so such SCEs will be exempt from the requirements described above. However, where after registration the total number of employees reaches or exceeds 50 employees in at least two Member States or where at least one third of the total number of employees of the SCE in at least two Member States so request, then the negotiation process applicable to most types of SCE will be triggered. Either a voluntary agreement will be concluded or the standard rules will apply as described in the preceding paragraph.

A.13 One of the more complex aspects of the EC Directive concerns employee participation. This is defined in the EC Directive at Article 2(k) as the influence of employee representatives in the affairs of the cooperative by way of a right to elect or appoint some of the members of the cooperatives supervisory or administrative organ, or the right to recommend or oppose appointments. The UK does not tend to have dual board systems (though the law does not prohibit such a structure) – the management board (or “board of directors”) is the equivalent of an “administrative organ”.

A.14 Employee participation is a European concept designed to increase employee involvement in organisations with the intention of improving employment relations and avoiding industrial unrest. In the UK, employees currently have no specific statutory rights to be represented on the boards of cooperatives, though the law does not prohibit such a set up.

A.15 The basic principle set out in the standard rules of the EC Directive is that participation levels should be established in the SCE at the highest level at which it existed in any of the entities (“participating entities”) which are forming the SCE. The overarching principle being the preservation of acquired rights. For example if the employees were entitled to 20% of the seats on the board on one of the participating entities, this level would apply to the SCE. If there were no participation previously, there would be no requirement for it to exist in the SCE (though parties could voluntarily agree to introduce it).

Rationale for Government intervention **A.16** The EC Regulation is directly applicable and will come into force on 18 August 2006, and, in order for the EC Regulation to have proper effect, Member States must provide for its effective application within their territory by that date. In addition, the EC Directive must be implemented by 18 August. Failure to properly give effect to the EC Regulation and EC Directive would lead to uncertainty, could deny the opportunity to form an SCE in the UK and could mean that employees involved in the formation of SCEs in other Member States (and operating in the UK) are unprotected. It would also mean that the UK was failing to comply with its obligations under the EC Treaty.

3. CONSULTATION

Within Government **A.17** The Treasury has consulted with the DTI, the Financial Services Authority (FSA), Her Majesty’s Revenue & Customs, the Department for Constitutional Affairs, the Scottish Office, the Small Business Service, the Welsh Office and the Department for Enterprise, Trade and Investment in Northern Ireland (“DETINI”). We have also consulted with Companies House and the Office of Fair Trading.

Public consultation **A.18** HM Treasury and DTI conducted an initial public consultation in July 2001 with questionnaires sent to a wide range of IPSs, professional bodies, stakeholders, academics and individuals working within the cooperative sector. The consultation document was also available on HM Treasury’s website and printed copies were available on request. The deadline for comments was 31 October 2001.

A.19 Seven organisations responded to the consultation out of which 3 were from the cooperative sector. Whilst this suggests that up-take of the SCE format will be low, all respondents were unanimous in their support of the proposals for the SCE.

A.20 HMT and DTI carried out another 12-week public consultation in Great Britain (“GB”) beginning on 13 March 2006 and ending on 5 June 2006. Over 500 consultation documents were sent out to GB stakeholders. DETINI carried out a parallel consultation in Northern Ireland (“NI”). The responses to those consultations are contained in the summary of consultation responses available on the HMT public website and are also obtainable from the address below.

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4. OPTIONS

A.21 We considered 3 sets of options for giving effect to the EC Regulation. The first set evaluated the implications of not doing anything. The second set sought to apply a minimal approach to giving effect to the EC Regulation by doing what was necessary to exercise national options. The third set looked at a more detailed approach to giving effect to the EC Regulation by consolidating the existing UK laws pertaining to cooperatives.

Option 1: Do nothing

A.22 The EC Regulation will come into force in the UK on 18 August even if the UK failed to implement the options available to it. It would however be incomplete and the UK would not have the necessary structures in place (such as a register and a Competent Authority) to facilitate cooperatives wishing to adopt SCE status. Not doing anything would put UK cooperatives in a disadvantageous position in relation to their EU counterparts and would breach the UK's obligations under the EC Treaty. This option would therefore have limited economic effect but could cause legal difficulties in the future as well as reduce the ability of UK entities to form SCEs.

Option 2: Giving effect to the EC Regulation after taking into account Member State options

A.23 The EC Regulation contains the framework for the core elements of the SCE, including: formation, registration, capital, structure, accounting and winding-up. The EC Regulation also provides a number of options for Member States in determining how it is given effect. The EC Regulation does not cover areas of law such as taxation, competition, intellectual property or insolvency. National law and the rules of the body itself would apply in areas not covered by the EC Regulation.

A.24 Under this option we would adopt a similar approach to that taken in relation to the European Company. This would involve exercising Member States' choices to impose the minimum duties and costs on entities seeking to form or convert to an SCE.

A.25 Since formation of an SCE would remain entirely optional it would mean that compliance costs in relation to UK entities would only apply if they chose to form an SCE. There would however still be some implementation costs in setting up the regulatory regime. This option would enable us to provide legal certainty and an appropriate framework for those who wish to form a UK registered SCE but the economic benefits will depend on what use, if any, is made of the SCE option.

Option 3: Giving effect to the EC Regulation by consolidating the existing UK laws on cooperatives

A.26 Another option we considered was to take the opportunity to seek to consolidate the national law on cooperatives and then apply the various options under the EC Regulation on the basis of the new national legal regime. It could go as far as creating a

new national law on cooperatives in the UK. We considered that this would be a complex and impractical way of giving effect to the EC Regulation. It would require amendment of the relevant legislation including that relating to IPSs and would involve primary legislation or a Regulatory Reform Order. It would be the subject of further consultation and have an impact far wider than a measure giving effect to the EC Regulation.

A.27 We considered that the uncertainty about the take-up of the new corporate form did not warrant the costs of this approach. It would be a disproportionate response and the knock-on effect on other legislation and the attendant costs could not be justified by this policy proposal. This option could lead to over-implementing or 'gold-plating'.

A.28 We considered that the more detailed approach under option 3 would lead to substantial legislation for an EC Regulation that is likely to have limited take-up by the cooperative sector and would be likely to mean that the domestic legislation would not be in force by 18 August.

A.29 It was proposed that the FSA² would act as both the Registrar and the Competent Authority to fulfil the functions set out in the EC Regulation and the domestic legislation that gives effect to the EC Regulation in GB³. However, SCEs will also be subject to FSA's financial services regulation to the extent that an SCE is engaged in financial services or has deposit-taking functions as defined in the Financial Services and Markets Act 2000 (FSMA).

A.30 Following on from the joint HMT/DTI formal consultation and the parallel DETINI consultation with the general public and representative bodies we have examined responses, and prepared a response to the consultation. A detailed analysis of consultation responses will be available on the HMT and DTI websites.

A.31 Implementation of the SCE legislation has been supported by expert group meetings with the European Commission to discuss both the EC Regulation and EC Directive. Informal consultations have taken place with representative bodies in the sector to help gauge the potential take up of the new SCE form. In addition we have contacted a number of European partners (such as Spain and Denmark) to establish how they are intending to give effect to the EC Regulation and EC Directive.

5. COSTS AND BENEFITS

Sectors and groups affected

A.32 These proposals will potentially benefit the cooperatives sector as a whole. As at the end of 2002, there were around 8,802 societies registered under the IPS Act 1965 of which Credit Unions accounted for 686. Under current IPS legislation, cooperatives are disbarred from engaging in certain financial services such as banking. The EC Regulation however enables SCEs if they so wish to engage in financial and insurance services implying in theory that these sectors could see some competition.

A.33 The likely take up of this new SCE form is difficult to gauge. It was envisaged that the public consultation would give further information on this likelihood however this is still difficult to assess. Informal contacts and anecdotal evidence suggests that agricultural cooperatives in particular may be interested in this new SCE form, due to its ability to attract non-user investor members. Such a move could see a significant increase in their capital base and more cross border activities between European agricultural cooperatives.

² Cooperatives formed under the IPS legislation are currently registered by the FSA.

³ The Regulator of Credit Unions will act as the appropriate registrar and competent authority in Northern Ireland.

Analysis of costs and benefits **A.34** It is difficult at this stage to provide a precise quantification of the expected benefits and costs associated with the EC Regulation and EC Directive. This task is made even more complex by the fact that eligibility for forming an SCE extends right across from natural persons (individuals), cooperatives, companies to other legal entities. Any estimates of costs and benefits in the tables below are therefore purely illustrative.

Option 1:

A.35 There are no benefits to not implementing the EC Regulation and EC Directive. The ensuing costs of this option could be high in terms of the UK's reputation as well as legal costs should this be challenged in the courts. There would also be legal uncertainty for anyone trying to set up a UK registered SCE.

Option 2:

A.36 The main benefit of this light touch approach is that it will enable UK cooperatives to carry out cross border business in Europe without the additional administrative burden of having to register in each Member State in which it transacts business.

A.37 Another benefit of this policy approach is that by only adopting the options that are essential for successful implementation, it would lead to lower costs and greater flexibility for SCEs. Cooperatives may in any case judge a more formal rigid framework as an inflexible and unnecessary burden, especially in light of the capacity of cooperatives for democratic self-monitoring. Under this approach it is more likely that the EC Regulation will be given effect by 18 August and much sooner than it would be for a more detailed and formal interventionist approach.

Option 3:

A.38 The main benefit of this option is that it will provide a comprehensive national law on cooperatives (something which is at present lacking in UK). Anecdotal evidence supported by the 2001 consultation responses would appear to suggest a low take-up of the SCE form. In the light of this it would seem reasonable to suggest that the costs associated with consolidating all the various applicable laws would far outweigh the anticipated benefits.

A.39 If Option 2 or Option 3 is adopted, there will be set-up and ongoing costs to be borne by the FSA and it is likely that this will be passed on to SCEs that register in GB. This burden would however be lower if there were a high take-up of the SCE form since these costs would be spread among more SCEs. The indicative costs associated with the registering SCE are based on the 2005 financial year-end fee structure for a society registering as an IPS with the FSA.

Preliminary estimate of costs⁴ to be borne by Cooperatives wishing to adopt the SCE form

A.40 For ease of analysis we have assumed that the application fees and periodic fees payable to the FSA or Registrar of Credit Unions in Northern Ireland are the same irrespective of method of formation. The rationale is that the stated capital of an SCE (€30,000) does not vary according to the method of formation.

⁴ In Northern Ireland while the fees have yet to be determined the Registrar has indicated that these will be broadly in line with those in the rest of Great Britain in all likelihood be less due to the reduced overhead costs.

Method of formation ⁵	Description of costs and type of work ⁶	Value ⁷
Five or more natural persons	Application fees: Periodic fees: Legal fees ⁸ - Optional: Annual audit fees:	£40-£950 £60-£370 £2400 £2100
Five natural persons and companies	Application fees: Periodic fees: Legal fees - Optional: Annual audit fees:	£40-£950 £60-£370 £2400- £3000 £2100
Assets merger between cooperatives (Minimum of two cooperatives)	Application fees: Periodic fees: Legal fees-Transfer of title: Accountants /Due diligence: Quantity Surveyor (if property involved) Audit fees: Communication with members:	£40-£950 £60-£370 £5000+ £5000+ £5000+ £2100 £2100
Conversion of an existing cooperative	Application fees: Periodic fees: Legal fees-conversion:	£40-£950 £60-£370 £5000+

A.41 Since SCE's can be formed by natural persons (and not just by existing cooperatives) it is extremely difficult if not impossible to assess the total costs. A precise quantification of the overall costs is hampered, not least because it is not possible to assess the likely take-up of the SCE form by GB entities. The consultation sought if persons (entities including cooperatives) that were considering setting up an SCE could offer an assessment of the financial costs and benefits.

Preliminary estimates of costs associated with the European Cooperative Society (Employee Involvement) Regulations 2006

⁵ For ease of analysis we have assumed that costs for all participants are those that would entail were they solely UK based entities wishing to form an SCE.

⁶ Analysis excludes admin, set-up and annual running costs for SCEs as these will vary with each enterprise.

⁷ Some fees are given in ranges. For example application fees range from £40 to £950 depending on the number of amendments to the model rules. Periodic fees range from £60 to £370 based on a tier system using the total value of assets. Legal fees for the assets merger or conversion are the minimum.

⁸ Based on a rough estimate of a Solicitor spending one day (eight hours) at an hourly rate of £300 excluding VAT.

A.42 Cooperatives adopting the SCE format will be required to set up employee involvement arrangements before they register (subject to certain exemptions for small cooperatives). There are certain benefits for employees and employers, which stem from involving and consulting staff. Economists have argued that information and consultation, together with other types of employment relations practices, acts to align better the interests of organisations and employees, thus potentially improving an organisation's performance, through lower employee turnover and higher productivity⁹.

A.43 By being consulted, employees may feel more committed to the organisation and may feel more secure in their jobs. As the benefits of information and consultation will depend very much on the circumstances of the cooperative, the flexibility of options is likely to mean a greater chance of realising benefits. The management organs of cooperatives and their employees (or their representatives) will be able to agree their employee involvement arrangements, taking into account their unique requirements and existing set of arrangements.

A.44 In the event that companies decided to take up the SCE format it is likely that the principal additional costs would come from setting up employee involvement arrangements. However, the voluntary nature of becoming an SCE, as well as the many different circumstances of the companies involved, make it very difficult to come up with an estimate of the overall costs.

A.45 Some illustrative costs are set out below which are based on the merger of two cooperatives of a similar size, one in GB and the other in another EU country, intending to register as an SCE in GB. Costs may be higher if there are more than two cooperatives involved. The examples used below assume that there are no subsidiaries and all the employees of each cooperative are located in each of their two respective Member States.

A.46 For the purpose of agreeing arrangements for employee involvement, a Special Negotiating Body (SNB), made up of employee representatives from the participating entities and any "concerned" subsidiaries¹⁰, must be established. Any expenses relating to the functioning of the SNB, and to the negotiations in general, must be borne by the management of the participating entities (this may include the cost of up to one "expert" to assist the SNB). The SNB and management have 6 months, extendable to 12 months, in which to reach a voluntary agreement on employee involvement under Part 4 of the Employee Involvement Statutory Instrument (EISI).

A.47 There are three possible outcomes:

1. the SNB and the management draw up a voluntary agreement for employee involvement; or
2. the SNB takes the two-thirds majority decision under regulation 19 of the EISI to rely on the national Information and Consultation rules already in force in

⁹ See David Levine and Laura D'Andrea Tyson "Participation, Productivity and the Firm's Environment" in *Paying for Productivity. A Look at the evidence*, Blinder A.S for a review of the literature pre-1990; Olaf Hubler "Works Councils and Collective Bargaining in Germany: the Impact on Productivity and Wages" *IZA Discussion Paper no 322* July 2001; Ralf Dewenter, Kornelius Kraft and Jorg Stank "Co-determination and Innovation", Satoshi Nakano "Management Views of European Works Councils: A preliminary Survey of Japanese Multinationals". *European Journal of Industrial Relations* Volume 5 Number 3 pp 307-326 1999; and John Addison, Claus Schnabel and Joachim Wagner "Works Councils in Germany: their effects on establishment performance" *Oxford Economic Papers* 53 (2001) pp 659 to 694.

¹⁰ "Concerned subsidiary" is a subsidiary of a participating entity, which will become a subsidiary of the SCE once it is formed.

the Member State in which the SCE has employees ¹¹(this option is not available where the SCE is to be formed by transformation); or

3. no voluntary agreement is reached by the end of the negotiating period and a regulation 19 decision is not taken but the participating companies still wish to go ahead and register the SCE. In such a case, the standard “fallback” rules of the Member State in which the SCE wishes to register will apply¹².

Ballots to elect SNB members and number of SNB representatives

A.48 Where a ballot is conducted to elect SNB representatives for the GB employees costs will be incurred. Separate ballots may need to be conducted in each Member State where the participating companies or subsidiaries have employees although this will not always be the case. The EISI also provides the option of appointing SNB representatives from existing “consultative committees” (defined at regulation 14 EISI). Taking this option would dispense with the need to hold a ballot.

A.49 The cost of conducting a ballot to elect the GB SNB members is estimated to be at least £13,650 based on data from the Regulatory Impact Assessment on European Works Councils published in 1999. Using a 2.5% inflation rate this would be £16,230¹³ in 2006.

A.50 The rules for the composition of the Special Negotiating Body (SNB) depend on a variety of factors including the number of participating companies or “concerned” subsidiaries and in how many Member States the employees are located and in what proportion etc. The method of determining the number of SNB members in the EC Directive implies that there will always be a minimum of 10 SNB members and currently, with the 28 countries of the EEA covered by the EC Directive, an absolute maximum of 37.

Costs of holding a special negotiating body meeting

A.51 Assuming an SNB has 10 employee representatives and 6 management representatives. The costs of this meeting would include the opportunity cost of the workers’ and employers’ time, travel costs, the cost of the venue and interpreter costs. It is estimated that the costs for one meeting would be about £26,700¹⁴.

Illustrative costs:

A.52 Three cases, where both cooperatives involved in formation have information and consultation processes in place, are set out below: -

¹¹ Member States have had such rules in force since April 2005 as a result of the implementation of the Information Consultation Directive.

¹² These rules must comply with the Annex to the EC Directive.

¹³ This is the cost for the ballot in GB alone. For full breakdown of 1999 figure see the annex of “Implementation of the Regulations on European Works Councils- Regulatory Impact Assessment”. Source:<http://www.dti.gov.uk/er/ewc-anx.pdf>

¹⁴ The cost of worker time is taken to be £115 per day and the cost of management time is £293. This is based on earnings information multiplied by 1.3 to take into account non-wage costs. Source: New Earnings information Survey 2002. It is assumed that each worker and each manager needs to dedicate two days per meeting. Estimated costs of travel is £10,000, interpretation £5000 and venue £3000. This is based on the findings of the study by T Weber, P Foster and K Lkevent Egriboz entitled “ Costs and Benefits of European Works Councils Directive” Employment Relations Research Series No 9. The study was published in 2000. Inflating by 2.5% each year to 2006 would bring meeting+ travel+ interpretation + venue to £20,870. Costs are assumed to be evenly distributed between the companies (i.e. two company example, the GB company would therefore pay half of this cost).

1. **Case 1** - the two participating cooperatives are satisfied with their respective information and consultation arrangements and do not choose to have a transnational body (in effect, an European Works Council (EWC)) in addition to their existing national information and consultation structures;
2. **Case 2** - the two participating cooperatives want a transnational body in addition to their existing national information and consultation structures and they can reach a voluntary agreement to this effect;
3. **Case 3** - the two participating cooperatives want a transnational body in addition to their existing national information and consultation structures but they cannot reach a voluntary agreement and so go down the fallback route.

Case 1. It is assumed that it takes two SNB meetings for the representatives to take the decision under Regulation 19 of the implementing legislation EISI to rely on the national information and consultation rules already in place in their own countries (i.e. to agree not to supplement their existing agreements). This would cost about £53,400.

Case 2. It is assumed that it takes 4 SNB meetings to come to a voluntary agreement, at a cost of £107,000. The voluntary agreement is such that each company in the merger has to make some changes to its existing information and consultation agreements, equivalent to having one or more meetings of a transnational consultative committee a year. This will cost about £75,700¹⁵ each year.

Case 3. It is assumed that failure to reach a voluntary agreement is time consuming and could take 6 to 8 SNB meetings, with a cost of about £160,000 to £214,000. The information and consultation structure set up under the fallback arrangements is likely to be quite similar to that in case 2.

Participation at board level

A.53 If one of the participating entities already has employee participation on the company board, there will need to be at least the same level of participation on the SE board (unless the SNB take a two-thirds majority decision to reduce, or even abolish, employee participation in the new SCE). Since there is no tradition of employee participation in GB, the possible costs involved have been estimated using the German model as an example.

A.54 The maximum percentage of representatives is likely to be 50% of the board as this is the maximum that applies in Germany; it is doubtful that this percentage would be exceeded. In this example it is assumed that there are two worker representatives on the board of the cooperative in the non-GB cooperative and that the SNB decides that there should be four – two from each country. This would mean an extra two worker representatives attending maybe 12 meetings per year, which take up one day of each representative's time. The cost of travel has been included, but not interpreter and venue costs (since these costs will already have been included). It is estimated that this will cost about £20,000 per year.

¹⁵ This is the cost of an ordinary EWC meeting, calculated in the Regulatory Impact Assessment for the implementation of the regulations of the European Works Council. See link: <http://www.dti.gov.uk/er/emp-ria.pdf>

A.55 In Germany, a proportion of the employee representatives on the boards of companies may be full time union representatives who are paid by the company for this purpose. If this model were followed for SCE boards, there would be no opportunity costs to companies of employee time for these representatives.

A.56 It is sometimes argued that employee participation on boards can slow down decision-making and hence reduce companies' competitive edge. However, research sponsored by the DTI on the impact of European Works Councils on UK employers finds that "consultation was not seen to slow down management decision making, as extraordinary meetings to discuss, for example, anticipated restructuring, could be convened fairly quickly"¹⁶. Accordingly, no costs have been factored in for longer decision-making processes.

A.57 Once the employee involvement arrangements have been put into place, compliance is likely to follow similar rules and procedures to those set out in the Transnational Information and Consultation of Employees (TICE) Regulations, which implement the European Works Council Directive. There will therefore be costs to employers if a complaint is brought before the Central Arbitration Committee (CAC) or an Employment Tribunal.

A.58 The costs of appearing at the CAC is estimated to be £11,900¹⁷ and consists of the average cost of a CAC case together with the cost of 2 days of management time and 1 day of employee representative time. The costs of appearing at an Employment Tribunal are £2,540 and consist of £2,000 for the employer and £540 for the Employment Tribunal Service¹⁸.

Business sectors affected

A.59 All business sectors are affected since any five individuals or companies may form or convert to an SCE if it fits the criteria set out in Article 2 of the Regulation (referred to in paragraph 7 above).

6. SMALL FIRMS IMPACT TEST

A.60 We have had face-to-face meetings with some representative groups in the cooperatives sector with a view to assessing the impact of the proposed legislation on small firms. The HMT/DTI view is that since the proposed SCE form is voluntary, only cooperatives opting for this will incur the associated application, registration and legal fees. Such fees are set by the FSA are consistent with the level of fees that pertains at present for a cooperative wishing to register with the FSA and should not be unduly onerous.

A.61 Some SCEs with less than 50 employees will also be exempt from information and consultation requirements in the EISI, significantly reducing their costs of forming a European Cooperative.

A.62 Accordingly, our view is that there will not be a disproportionate impact on small businesses

7. COMPETITION ASSESSMENT

¹⁶ Costs and benefits of European Works Councils Directive, T. Weber, P. Foster and K.L Egriboz, DTI Employment Relations Research Series 9 (February 2000).

¹⁷ This includes the cost to the CAC of £10,234 and the cost to the employer of around £1700.

¹⁸ Source: Findings from the 1998 Survey of Employment Tribunal Applications.

A.63 We have performed a simple competition assessment of the IPS sector. This sector at present primarily comprises of cooperatives in the Retail, Wholesale, Agricultural, Fishing, Housing sectors as well as Clubs and Credit Unions. Statistics from the FSA annual summary of returns suggests that there were some 8,322 such societies as at 2004 the largest of which were housing associations and general clubs.

A.64 The different possible methods of formation for the SCE will mean that natural persons can for the first time form a cooperative in association with other legal entities like companies. The new domestic legislation will affect all markets since formation of SCE is not restricted to any particular sector. It is anticipated that the legislation will not affect competition, either positively or negatively. However it is possible that the legislation will have an effect on market structure since the formation of SCEs by merger could (but not necessarily) lead to a smaller number of GB registered cooperatives.

A.65 As the proposal merely introduces an option that cooperatives can choose to take up if they believe it adds value to their business, this proposal in itself should have no competition implications. However, the fact that SCEs can in theory engage in activities like financial services which few other GB cooperatives are engaged in, could in the long run give SCEs a competitive advantage over local cooperatives.

8. ENFORCEMENT, SANCTIONS AND MONITORING

A.66 All SCEs will need to register with the Registrar, the FSA in GB and the Registrar of Credit Unions in Northern Ireland. These bodies will also act as the respective Competent Authority and will be responsible for enforcing and monitoring compliance. Complaints relating to employee involvement will be heard by the Central Arbitration Committee for GB registered SCEs or by the Industrial Court for Northern Ireland.

A.67 HMT and DTI will keep the SCE legislation under review and aim to conduct a post implementation review in 2007. If, in the light of experience, it proves necessary to amend domestic legislation this could be done by making further Regulations under Section 2(2) of the European Communities Act 1972.

9. COMPENSATORY SIMPLIFICATION MEASURE

A.68 As part of the drive to create a better balance between the creation of new measures and reducing existing requirements on businesses, Cabinet Office guidance requires departments to look for opportunities to simplify or remove existing requirements when introducing new legislation. Having reviewed this carefully, we are of the opinion that one of the options in the EC Regulation we have exercised, allowing the participation of non-user investor members in SCEs, if adopted by national cooperatives will have such a de-regulatory effect.

10. IMPLEMENTATION AND DELIVERY PLAN

A.69 The SCE project aims to ensure the timely effect of the EC Regulation and the implementation of the EC Directive by ensuring that all the appropriate legislative and registration mechanisms are in place by the 18 August 2006. Among the success criteria are approval by the Joint Committee on Statutory Instruments (JCSI) and the timely laying of the legislation before Parliament.

A70 HMT, DTI and Northern Ireland counterparts at DETINI are working closely together to ensure a smooth and synchronised implementation in GB and NI. We have also been in communication with the FCO to ensure that the SCE is being appropriately given effect in Gibraltar. The FSA is preparing draft guidance for aspiring persons/entities wishing to form an SCE and will make this information freely available on their website, HMT, DTI and DETINI will issue a joint press release and make information available on their respective public websites.

A71. The requirement for the use of a common commencement date for enacting joint UK government department initiatives is not relevant in this context as the date on which the SCE will come into effect has already been nominated by the European Council.

11.POST-IMPLEMENTATION REVIEW

A.72 We plan to carry out a post implementation review in two year's time to assess how well the arrangements that were put in place meet the policy objectives. We will aim to consult with stakeholders as part of this review. There is no statutory requirement to conduct this but we will be conducting this as part of project best practice. We will also review any required changes to the legislation in the light of any emerging issues.

12.SUMMARY AND RECOMMENDATION

A.73 The summary of preliminary estimates of costs in paragraphs 40 and 52 are merely indicative. These costs are mainly administrative and will differ from one SCE to another depending on their size. There are no environmental or social costs attached. It is impossible to quantify the revenue benefits that will arise from cross border cooperative business as a result of the SCE form but it is clear that only bodies which consider there to be a real benefit will opt to register this new form.

A74. On the basis of the available evidence and on the consultation responses the Government recommends option 2. This will apply a light touch approach to implementation, ensuring that the necessary legislation and structures are in place to enable the orderly formation of an SCE but without creating further administrative burdens on national cooperatives.

A75. The Government considered that the other 2 options that were identified were inappropriate in the circumstances. Option 1 (Doing nothing) would run the risk creating legal uncertainty and would cause the UK to fail in its obligations under the EC Treaty whilst Option 3 (involving a comprehensive review of the IPS law) was deemed to be a disproportionate response to an issue with low take-up.

A76. The SCE form will offer national cooperatives and other interested parties a useful and convenient vehicle for engaging in cross border activity.

A77. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister for the EC Regulation

.....
Ed Balls, the Economic Secretary to the Treasury

Signed by the responsible Minister for the EC Directive

.....
Jim Fitzpatrick, DTI Minister for Employment Relations

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**Draft European Cooperative Society (Involvement of Employees) Regulations 2006
Transposition Notes**

Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.		
The Directive sets out the employee involvement arrangements that will govern the European Cooperative Society (“SCE”), which covers employee information, consultation and, in certain circumstances, participation on the board of the SCE.		
These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.		
Articles	Objectives	Implementation
Article 1	Sets out the purpose of the Directive which is to govern the involvement of employees in SCEs and the procedures for establishing those arrangements.	No implementation required.
Article 2	Sets out the definitions of the terms used in the Directive	The terms used in the Regulations have the same definitions as set out in Article 2. Additional terms are defined in the Regulations Schedule 3 provides for modifications to be made in the application of the Regulations in Northern Ireland.
Article 3	Creates an obligation on participating legal entities to take steps to start negotiations with employees’ representatives on arrangements for employee involvement in the SCE.	Implemented by Part 2 of the Regulations. Regulation 7 creates a duty on participating individuals and entities to provide information and the circumstances in which this will apply.
	Sets out the requirement for a special negotiating body (SNB) for the purpose of negotiating the employee involvement agreement and the criteria for its creation.	Parts 2 and 3 provide detailed rules relating to the criteria for creating the SNB. Regulations 9 and 10 define the function of the SNB and its composition. Regulation 7(3) and 17(1) details how the competent organs should inform the SNB with information concerning the establishment of the SCE. Regulation 18 concerns the decision making powers of the SNB. Regulation 18(5) provides for the SNB to be assisted by experts of its choice and Regulation 19 governs the decisions whether not to open or to terminate negotiations. Regulation 13(8) and 18(6) sets out rules relating to who should bear the costs of ballots and the functioning of the SNB.
Article 4	Sets out the requirements for the agreement of and contents of the agreement	Regulation 16 sets out the duty on the participating individuals and competent organs and the SNB to negotiate in a spirit of cooperation and with a view to reaching agreement. Regulation 17 and paragraph 11 of Schedule 1 sets out the particulars of the employee involvement agreement.

Article 5	Sets out the required duration of the negotiations.	Regulation 16 governs the negotiations to reach an employee agreement. Regulations 16(3)(a) and (b) set out the duration that the negotiations should last for 6 months (or 12 months by agreement).
Article 6	Sets out which Member State's legislation will be applicable to the negotiation procedure.	Regulation 4 provides makes provision for the circumstances when the Regulations shall apply, including where an SCE has its registered office in the UK.
Article 7	Sets out the circumstances in which the standard rules contained in the Annex are applicable.	Regulation 21 sets out the conditions for the use of the standard rules. The rules will apply where the parties so agree or they have reached the end of the negotiating process.
Article 8	Sets out the rules applicable to SCEs established exclusively by natural persons or by a single entity and natural persons.	Regulations 4 and 5 govern this provision. Regulation 4 makes provision for when the Regulations apply. Regulation 5 sets out the criteria for exempt SCEs below a minimum threshold from the requirements of the Regulations. Regulation 6 and Schedule 1 provides for subsequent application of the Regulations to a formerly exempt SCE.
Article 9	Participation in the General Meeting or Section or Sectoral Meeting.	Regulation 17 sets out particulars of the employee involvement agreement. Regulation 17(2)(h) makes provision for participation at the general meetings. Regulation 21(5) provides for a similar provision where the standard employee involvement rules apply. Regulations 28, 31 and 33 provide protection for representatives who fall within this category.
Article 10	Permits Member States to provide for the non-disclosure of certain confidential information.	Regulations 26 and 27 implement this provision. Regulation 26 provides that it shall be a breach of duty for the recipient of information to disclose it except in accordance with the terms on which it was disclosed to him.
Article 11	Ensures that the competent organ and the SCE shall work in a spirit of cooperation.	Regulation 16(2) provides that parties are under a duty to negotiate in a spirit of cooperation, with a view to reaching an employee involvement agreement.
Article 12	Provides that members of the SNB, representative body, and any employee representatives should enjoy the same protections and guarantees as provided to employee representatives in their country of employment.	Part 8 provides protection for members of the SNB and other representatives. This includes protection from unfair dismissal (Regulation 31) and detriment (Regulation 33).

Article 13	Provides that Member States should take appropriate steps to ensure that employee rights are protected	The Regulations protect employee rights generally throughout the Regulations. For example, regulation 8 ensures that an employee representative may complain to the CAC where there has been a failure to provide information. Further examples of protections can be found in regulations 11, 12(4), 14(6), 20 and 22.
Article 14	Requires member states to take steps to ensure that they all parties comply with the terms of the Directive, including enforcement measures.	Part 6 deals with compliance and enforcement. Regulation 22 provides for complaints to the CAC about the operation of the employee involvement agreement. Regulation 23 deals with penalties under a penalty notice. Regulation 25 provides that where Parts 2 to 6 and Schedule 1 to these Regulations apply provide a remedy by way of application to the CAC and provide for no other remedy.
Article 15	Sets out the link between the between the Directive and other existing legislation.	Regulations 42 inserts a new provision into the Transnational Information and Consultation of Employees Regulations 1999, giving effect to this Article. Regulation 43 provides that, except as relating to rights to participation, the Regulations shall not prejudice employee involvement rights that employees enjoyed immediately prior to the registration of the SCE.
Article 16	Provides that the Directive should enter into force no later than 18 August 2006	No implementation required
Article 17	Provides that the Directive should be reviewed no later than 18 August 2009	No implementation required
Article 18	Provides date for Directive's entry into force	No implementation required
Article 19	Indicates that the Directive is addressed to the Member States	No implementation required
Annex: Part 1	Standard rules on the composition of the representative body	Part 1 of Schedule2 sets out the standard rules on the representative body.
Annex 2	Standard rules regarding information and consultation	Part 2 of Schedule 2 sets out standard rules for information and consultation.
Annex 3	Standard rules on participation	Part 3 of Schedule 2 makes provision for standard rules on participation.