



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations under the Incorporated Societies Act 2022: Release of Discussion Document	Date to be published	15 November 2022

List of documents that have been proactively released

Date	Title	Author
22 September 2022	Regulations under the Incorporated Societies Act 2022: Release of Discussion Document	Office of the Minister of Commerce and Consumer Affairs
29 September 2022	Regulations under the Incorporated Societies Act 2022: Release of Discussion Document GOV-22-MIN-0034 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's and MFAT's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Regulations under the Incorporated Societies Act 2022: release of discussion document

Proposal

1. This paper concerns potential regulations to be made under the Incorporated Societies Act 2022. It seeks Cabinet approval for the release of a discussion document.

Executive Summary

2. The Incorporated Societies Act 1908, now over 110 years old, focuses on creating and winding up incorporated societies but provides no clear guidance on how to run them. In this context, Parliament adopted the Incorporated Societies Act 2022 with a view to supporting better run societies that can more efficiently devote their time to pursuing the objectives for which they were established, such as teaching our children to play sport, representing workers' rights, and tending to our national monuments.
3. The Incorporated Societies Act 2022 will enter fully into force in October 2023. In the interim, if the new regime is to function as intended, the Governor-General must make a set of several dozen regulations, on my recommendation.
4. I intend to take a two-step approach to public consultation on the regulations, with a discussion document this year and an exposure draft of the regulations in early 2023.
5. In this regard, my officials have prepared a discussion document proposing what regulations should be made and what those regulations should prescribe.
6. I am seeking Cabinet:
 - 6.1. approval for the release of this discussion document; and
 - 6.2. authorisation, once the consultation period has closed, to issue drafting instructions to the Parliamentary Counsel Office to prepare an exposure draft of the regulations.

Background

7. The Incorporated Societies Act 1908 (**the 1908 Act**) is over a hundred years old and no longer fit for purpose.
8. For example, the 1908 Act focuses on the creation and winding up of incorporated societies but does not set out clear rules on how an incorporated society should be

governed during its lifetime. This has led to a situation where society officers struggle to understand their obligations (for example, to act in the best interests of their society), where members struggle to understand their rights (for example, their ability to access information held by their committee), and where – for want of guidance on dispute resolution – internal society matters end up litigated in the High Court.

9. In this context, Parliament enacted the Incorporated Societies Act 2022 (**the 2022 Act**) in April this year. As well as updating the rules around the creation and winding-up of an incorporated society, the 2022 Act sets out a robust framework for the governance of incorporated societies. For example, officers will have clearly articulated duties to their society, members' rights to access information will be listed, and society constitutions will have to set out internal dispute resolution procedures that meet natural justice requirements. The result will be better run societies that can more efficiently devote their time to pursuing the objectives for which they were established, such as teaching our children to play sport, representing workers' rights, and tending to our national monuments.
10. The 1908 Act and the 2022 Act currently co-exist, because the 2022 Act has not yet entered fully into force. The timeframe for transitioning to the new statute is as follows:
 - 10.1. until early October 2023 (18 months after Royal Assent), the 1908 Act is fully in force but only the regulation-making provisions of the 2022 Act (sections 254, 255 and 256) are in force.
 - 10.2. between early October 2023 and early April 2026, both the 1908 Act and the 2022 Act are fully in force.
 - 10.3. from early April 2026, only the 2022 Act is in force.
11. The Governor-General must make a suite of regulations before October 2023 if the 2022 Act is to be effective when it enters into force next year.

Discussion document

12. My officials have prepared a discussion document outlining what regulations can be made under the 2022 Act and proposing what regulations should be made, as well as what they should prescribe.
13. The discussion document is divided into three main parts, each related to one of the regulation-making provisions, namely sections 254, 255 and 256. Sections 254 and 255 allow regulations that will apply to societies once they transition to the new regime (e.g. annual return fees). Section 256 allows regulations that will apply to societies as they prepare for that transition (e.g. what their re-registration application must include).

Regulations applicable to societies once they have re-registered

14. Section 254 of the 2022 Act is the main regulation-making power. It empowers the Governor-General to make regulations on a range of matters related to the new regime.

15. Most of the matters to be prescribed are relatively procedural. For example, the discussion document proposes regulations prescribing:
 - 15.1. information that must be provided when making applications to the Registrar of Incorporated Societies e.g. the society's name and New Zealand Business Number;
 - 15.2. the manner in which applications must be made e.g. through an online portal.
16. Prescribing procedural matters such as these will ensure that the new regime functions efficiently.
17. A few matters are likely to attract more debate. For example, the discussion document proposes regulations prescribing:
 - 17.1. the meaning of 'total current assets', a term which is used in determining which societies must follow stricter financial reporting standards;
 - 17.2. which entities established under their own statutes should have the right (though not the obligation) to convert into incorporated societies e.g. the Library and Information Association of New Zealand Aotearoa; and
 - 17.3. the circumstances under which a society's committee can have a majority of independent members i.e. committee members who are not society members. A number of national and regional sporting bodies, in particular, have made a good case for such an exemption, in light of a number of public reviews (e.g. cycling, gymnastics) that have stressed the importance of high-quality governance in ensuring the wellbeing of athletes.
18. Section 255 of the 2022 Act, for its part, empowers the Governor-General to make regulations prescribing 'fees' and 'other amounts payable' to the Registrar of Incorporated Societies once a society is registered under the 2022 Act.
19. The discussion document does not make proposals regarding 'fees' payable under the new regime e.g. the annual return fee that must be paid. This is because MBIE is currently undertaking a system-wide review of what fees (and, potentially, levies)¹ should be payable by all registered entities, including companies, limited partnerships, credit unions, and incorporated societies. In other words, I will consider the fees to be paid under the new regime at a later date.
20. The discussion document does, by contrast, address the issue of 'other amounts payable' to the Registrar under the new regime e.g. 'late fees' for failure to deliver documents to the Registrar within the timeframe prescribed. This is because these 'amounts payable' will not be dealt with in the system-wide consultation.

Regulations applicable to societies while they prepare to re-register

21. Section 256 of the 2022 Act concerns, in particular, the transition of the 24,000 existing societies to the new regime. It empowers the Governor-General, until early October 2028, to make time-limited regulations stipulating matters related to the

¹ See the Companies (Levies) Amendment Bill 2022, currently before Parliament

transition process, including the possibility of imposing a fee on societies for re-registering.

22. In this regard, the discussion document proposes regulations prescribing a number of routine matters, such as the information that must accompany a society's application to re-register under the new regime, and the manner in which that application must be made.
23. The discussion document, without making a proposal either way, also seeks feedback on whether there should be a fee associated with transitioning to the new regime (a re-registration fee). Such a fee would, if introduced, be used to fund the costs the Companies Office will bear as a result of processing re-registration applications.

Risks

24. I have not identified any material risks associated with the release of the discussion document.

Consultation

25. In preparing this Cabinet paper and the accompanying discussion document, MBIE policy officials have consulted with the Companies Office, the External Reporting Board, the Registrar-General of Land, Sport NZ, the Department of Internal Affairs, Treasury, and the Department of Prime Minister and Cabinet (Policy Advisory Group).

Financial Implications

26. This paper has no financial implications.

Legislative Implications

27. This paper has no immediate legislative implications. However, the submissions generated by the discussion document will inform the development of regulations to be made under the 2022 Act.

Impact Analysis

28. The Treasury's Regulatory Impact Analysis team has determined that the release of the discussion document is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the discussion document includes the key features of an interim RIS.
29. The Ministry of Business, Innovation and Employment's Quality Assurance panel has reviewed the discussion document and confirms that it substitutes as an interim RIS. The discussion document is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions. The discussion document strikes a balance between presenting a range of options and giving submitters enough information to make an informed submission, and it includes a commitment to make submissions publicly available as soon as reasonably possible, and encourages people to suggest options not presented in the

document. A full RIS will be completed at a later date to inform Cabinet's final decisions on regulatory proposals.

30. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Human Rights, Gender Implications, and Disability Perspective

31. This paper raises no material human rights, gender or disability issues.

Publicity

32. The proposal to release a discussion document is likely to be reported on by the media. I intend to issue a media statement providing context for the release.

Proactive Release

33. I propose to release this paper proactively, subject to any appropriate redactions, within 30 business days.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that the regulation-making provisions of the Incorporated Societies Act 2022 have entered into force, and most of the rest of the statute will enter into force in early October 2023;
2. **note** that, for the Incorporated Societies Act 2022 to function as intended, it is critical that the Governor-General make regulations under the regulation-making powers in the statute;
3. **note** that I intend to take a two-step approach to public consultation on the regulations, with a discussion document this year and an exposure draft of the regulations in early 2023;
4. **note** that officials have prepared a discussion document seeking stakeholder feedback on what regulations should be made and what they should prescribe;
5. **agree** to the release of the discussion document;
6. **authorise** the Minister of Commerce and Consumer Affairs:
 - 6.1. to determine the precise dates for the consultation period; and
 - 6.2. once the consultation period has closed, to issue drafting instructions to the Parliamentary Counsel Office for an exposure draft of the regulations;

7. **invite** the Minister of Commerce and Consumers Affairs to report back to Cabinet with the exposure draft of the regulations.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Appendix 1: Draft discussion document