



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Consultation paper

Draft Incorporated Societies Regulations 2023 and
proposed initial fees under the Incorporated Societies
Act 2022

10 July 2023

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (**MBIE**) seeks written submissions on the issues raised in this document by 5.00 pm on 24 July 2023.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please provide your submission by filling out the 'response' sections throughout this document. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to societies@mbie.govt.nz.
- mailing your submission to:

Corporate Governance and Intellectual Property Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to societies@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's regulatory development process and will inform advice to Ministers on the detail of the new regulations for Incorporated Societies. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Objections to the release of information

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

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MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

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The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Contents

- How to have your say..... 3**
- 1 Introduction..... 6**
- 2 Content of regulations and questions for submitters..... 7**
 - Title, commencement, and Part 1 – Preliminary provisions (Regulations 1-4) 7
 - Part 2 – Incorporation of societies (Regulations 5-7) 7
 - Part 3 – Administration of societies (Regulations 8-28) 8
 - Part 4 – Removal from register, amalgamation, liquidation, and other processes (Regulations 29-44) 10
 - Part 5 – Societies and entities incorporated under other or former Acts (Regulations 45-52).... 12
 - Part 6 – Infringement fees and other fees (Regulations 53-57) 13
 - Part 7 – Transitional regulations for implementation of Act (Regulations 58-61)..... 14
 - Schedules 14
 - General comments..... 15
- 3 Proposed initial fees..... 16**

1 Introduction

Background

1. The new Incorporated Societies Act 2022 (the **2022 Act**) was passed in April 2022. It fully comes into force on 5 October 2023.
2. The 2022 Act replaces the Incorporated Societies Act 1908 (the **1908 Act**). Societies incorporated under the 1908 Act will have two and a half years from 5 October 2023 to reregister under the 2022 Act. If they do not reregister within that timeframe, they will be removed from the register.
3. In order for the 2022 Act to function as intended, regulations must be made setting out (among other matters) administrative and procedural matters concerning registration and reregistration of incorporated societies.
4. We consulted on proposals for these regulations in October and November 2022. Following consideration of the 72 submissions received, we provided advice to Ministers on the content of the regulations. Cabinet made policy decisions on what the regulations should provide for in May 2023. The paper that went to Cabinet, along with all the submissions we received, are now available on the MBIE website: [Incorporated Societies Act review | Ministry of Business, Innovation & Employment](#).
5. An exposure draft of the Incorporated Societies Regulations 2023 (the **regulations**) has now been prepared.

What does this consultation paper do?

6. We are consulting on:
 - The regulations – *We seek your feedback on whether the drafting is clear, and if there are any technical issues that may affect their workability and effectiveness.*
 - Proposed initial fees - *We seek your feedback on whether you support our proposal to roll over registration and restoration fees from the 1908 Act. These fees will be in place while a review of all Companies Office fees and levies takes place.*

Process and timeline

7. Consultation is open until 5.00 pm on 24 July 2023. Following analysis of the submissions, the regulations will be revised based on the feedback we receive. Then the final regulations will be considered by Cabinet. The new regulations will be Gazetted at least 28 days before they come into force on 5 October 2023.

2 Content of regulations and questions for submitters

Overview

8. We seek your feedback on whether the regulations are clear, or if there are any technical issues that may affect their workability and effectiveness. In this section we provide more detail on the structure and content of the regulations, along with questions for you to consider in your submissions. We consider each part in turn.
9. All references to section numbers in this document refer to the 2022 Act.

Title, commencement, and Part 1 – Preliminary provisions (Regulations 1-4)

10. These regulations set out the title of the regulations; the day they come into force (which is the same day the remaining provisions come into force under the 2022 Act: 5 October 2023); and definitions used in the 2022 Act.

1

Do you have any comments to make in relation to regulations 1-4? (Title, commencement, and Part 1)

Part 2 – Incorporation of societies (Regulations 5-7)

11. Regulations under Part 2 relate to new applications for incorporation and cover:
 - Information required in an application for incorporation, see section 9(a). [\[Reg 5\]](#)
 - That incorporation applications must be made online, but the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 9(g). [\[Reg 6\]](#)
 - How a society can consent to another society using an identical, or almost identical, name. [\[Reg 7\]](#)
12. These requirements are important for administration, such as the service of documents, and the overall integrity of the register. In particular, we note that:
 - For a ‘physical address of the registered office’ under regulation 5(a) – *it is intended to cover a street address, not a PO Box or private bag. This is consistent with other legislation. However, this does not prevent a society from providing another form of address, such as a PO Box or private bag, for communication purposes.*
 - For an ‘officer’s physical address’ under regulation 5(e) – *in response to submitters’ concerns about privacy, this will not be made public on the register. Officers will also be encouraged to provide an email address, but this will not be a legislative requirement.*

- For what might be considered ‘unreasonable’ under regulation 6(2) – *this could apply in various circumstances. For example, it could be considered unreasonable to refuse a postal application if a society does not have internet access or is not technologically literate.*

2

Do you have any comments to make in relation to regulations 5-7? (Incorporation of societies)

Part 3 – Administration of societies (Regulations 8-28)

13. Part 3 sets out the regulations that support the ongoing administration of societies once they have incorporated or reregistered.

Officers (Regulations 8-12)

14. These regulations relate to officers of a society and cover:
- Excluding (for the avoidance of doubt) liquidators, receivers, and statutory managers from the definition of ‘officer’ as they have duties under other legislation that may conflict with officers’ duties in the 2022 Act, see section 5(1)(c). [\[Reg 8\]](#)
 - Persons subject to certain orders from all other countries are disqualified from being officers, see section 47(3)(g). [\[Reg 9\]](#)
 - Applications to waive disqualifying factors must be made online but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 48(1). [\[Reg 10\]](#)
 - Additional officer information changes for which notice must be given and that all notices required must be filed online but, similar to other regulations, the Registrar may accept notice made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 52(2). [\[Regs 11 and 12\]](#)

Note: transitional regulations relating to independent officers on committees

The 2022 Act, at section 45(3), requires that the majority of officers on the committee must be members of the society. Section 45(4) allows regulations to prescribe circumstances under which societies are exempt from this requirement.

Cabinet decided that more information was needed to make a decision on what regulations, if any, are appropriate under section 45(4), and so agreed to transitional regulations in the meantime. These are set out in Part 7 of the regulations and discussed further below.

3

Do you have any comments to make in relation regulations 8-12? (Officers)

Members (Regulations 13-14)

15. These regulations relate to members of a society and cover:
- Additional information that a society's register of members must contain, see section 79(2)(d). [\[Reg 13\]](#)
 - Societies with a membership over 1,000 can limit attendance at annual general meetings (**AGMs**) to delegates or other representatives, see section 84(4). [\[Reg 14\]](#)

Note: transitional regulations relating to limiting attendance at AGMs

The 2022 Act, at section 84(1), requires societies to hold an AGM for all its members. Section 84(4) allows regulations to prescribe kinds of societies that may limit attendance at AGMs to delegates or other representatives.

Cabinet decided that existing societies below the 1,000-member threshold that currently restrict attendance in this way have up to five years to become compliant with the new requirements. This is provided for in the transitional regulations in Part 7 of the regulations and discussed further below.

4 Do you have any comments to make in relation to regulations 13-14? (Members)

Financial reporting (Regulations 15-16)

16. These regulations relate to financial reporting requirements and cover:
- Defining 'total current assets' based off of international accounting standards, endeavouring to use plain language where possible, see section 103(5). [\[Reg 15\]](#)
 - Setting a threshold of \$3,000,000 total operating expenditure in the two preceding financial years, above which societies (that are not charitable entities) will need their financial statements independently audited. [\[Reg 16\]](#)
17. The 'total current assets' definition will be used to assess if a society is 'small' under section 103(4) for financial reporting purposes. We intend for guidance to be released on how to calculate this in practice, using specific examples.

5 Do you have any comments to make in relation to regulations 15-16? (Financial reporting)

Annual return (Regulations 17-18)

18. These regulations relate to annual returns and cover:
- Annual returns must be filed online within 6 months of the society's balance date but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 109(1). [\[Reg 17\]](#)
 - Information an annual return must contain, similar to other regulations, see section 109(2). [\[Reg 18\]](#)

6 Do you have any comments to make in relation to regulations 17-18? (Annual return)

Other matters (Regulations 19-28)

19. The remainder of Part 3 of the regulations address other matters relating to the administration of societies and cover:

- Notice of a change of:
 - registered office must be filed online but, similar to other regulations, the Registrar may accept notice made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 111(3). If a society has vacated their registered office, this must be given within 30 working days from vacation. [\[Reg 19\]](#)
 - contact person details must be filed online but, similar to other regulations, the Registrar may accept notice made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 116(2). [\[Reg 20\]](#)
 - society name must be filed online but, similar to other regulations, the Registrar may accept notice made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 117. [\[Reg 21\]](#)
- How documents may be served on societies and officers either in legal proceedings or otherwise, and when those documents are treated as being received, see section 125. [\[Regs 22-26\]](#)
- The register must contain certificates of incorporation and amalgamation for societies, see section 233(1)(i). [\[Reg 27\]](#)
- The register must be searchable by names of former officers of societies under the 2022 Act, see section 237(2)(e). [\[Reg 28\]](#)

7 Do you have any comments to make in relation to regulations 19-28? (Other matters)

Part 4 – Removal from register, amalgamation, liquidation, and other processes (Regulations 29-44)

20. Part 4 of the regulations address a number of issues that broadly relate to societies winding up (including amalgamation and, in some cases, restoration).

Removal from register (Regulations 29-32)

21. These regulations relate to how societies are removed from the register and cover:
- Requests to remove a society must be made online but, similar to other regulations, the Registrar may accept requests made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 175(1)(a). [\[Reg 29\]](#)
 - How the Registrar must give notice of intention to remove a society and the time frame for objecting to a society's removal, see section 177. [\[Regs 30-31\]](#)

Restoration to register (Regulations 33-38)

22. These regulations relate to how societies are restored to the register and cover:
- Who can apply to restore a society and that applications must be made online but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 185. [\[Regs 33 and 34\]](#)
 - How the Registrar must give notice of intention to restore a society and the time frame for objecting to a society's restoration, see section 186. [\[Regs 35 and 36\]](#)
 - People who may apply to court to restore a society, see section 188. [\[Reg 37\]](#)
 - A restoration application, if a society did not reregister, must be made online but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see clause 12 of Schedule 1 of the 2022 Act. [\[Reg 38\]](#)

8

Do you have any comments to make in relation to regulations 29-38? (Removal, amalgamation, liquidation, and other processes)

Amalgamation (Regulations 39-41)

23. These regulations relate to the amalgamation of two or more societies and cover:
- Information required in an amalgamation proposal, see section 192. [\[Reg 39\]](#)
 - How notice of an amalgamation proposal must be published, see section 193(c). [\[Reg 40\]](#)
 - Additional information that must be sent to the Registrar relating to an amalgamation proposal, see section 197(c). [\[Reg 41\]](#)
24. Personal information set out in regulation 41, such as officer addresses, are not included in the amalgamation proposal for privacy purposes. In particular, section 193 requires a copy of the proposal to be distributed to all members and secured creditors of a society.

9

Do you have any comments to make in relation regulations 39-41? (Amalgamation)

Other matters relating to removal or liquidation of a society (Regulations 42-44)

25. These regulations relate to the removal or liquidation of a society and cover:
- Who can request alternative distribution of surplus assets, see section 216(2)(b). [\[Reg 42\]](#)
 - A request for alternative distribution of surplus assets must be made online but, similar to other regulations, the Registrar may accept requests made in another manner if the Registrar considers it would be unreasonable to refuse it, see section 216(2)(b). [\[Reg 43\]](#)
 - How an application to the Registrar-General of Land must be made in the case that a matter relates to land, see section 255(2). [\[Reg 44\]](#)

10

Do you have any comments to make in relation to regulations 42-44? (Removal or liquidation)

Part 5 – Societies and entities incorporated under other or former Acts (Regulations 45-52)

26. The regulations under Part 5 relate to reregistration under the 2022 Act of:
- Incorporated societies (i.e. those incorporated under the 1908 Act) - *existing societies have two and half years from commencement to reregister (until 5 April 2026).*
 - Other entities established under specified pieces of legislation – ‘*specified entities*’ can choose to reregister under the 2022 Act at a time of their choosing.

Reregistration of existing societies as societies under 2022 Act (Regulations 45-46)

27. These regulations set out what a reregistration application must include and that a reregistration application must be made online but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see clause 5 of Schedule 1 of the 2022 Act. [\[Regs 45 and 46\]](#)

11

Do you have any comments to make in relation to regulations 45-46? (Reregistration of existing societies)

Reregistration of specified entities (Regulations 47-51)

28. Section 257 and Schedule 3 of the 2022 Act provide that entities established under any legislation listed in regulations can convert to an incorporated society. These entities are referred to as ‘*specified entities*’. Regulation 47 lists the New Zealand Library Association Act 1939 and the Libraries and Mechanics Institutes Act 1908.

29. The regulations relating to the reregistration of the specified entities cover:
- Preconditions that a specified entity must meet to reregister as an incorporated society under the 2022 Act, see section 257. [\[Reg 48\]](#)
 - Information required to accompany an application for reregistration, similar to other regulations, see clause 3(b) of Schedule 3. [\[Reg 49\]](#)
 - Reregistration applications must be made online but, similar to other regulations, the Registrar may accept applications made in another manner if the Registrar considers it would be unreasonable to refuse it, see clause 3(c) of Schedule 3. [\[Reg 50\]](#)
 - Conditions that a specified entity must continue to meet after reregistration, see clause 4 of Schedule 3. [\[Reg 51\]](#)

Incorporated branches and groups of branches (Regulation 52)

30. Under clause 17 of Schedule 1 of the 2022 Act, a branch or group of branches incorporated under the Incorporated Societies Amendment Act 1920 will continue to be incorporated under the 2022 Act unless notice is given by the parent society and the branch or group.
31. Regulation 52 sets out that this notice must be filed online but, similar to other regulations, the Registrar may accept notice made in another manner if the Registrar considers it would be unreasonable to refuse it.

12

Do you have any comments to make in relation to regulations 47-52? (Specified entities and incorporated branches)

Part 6 – Infringement fees and other fees (Regulations 53-57)

32. The regulations relating to infringement fees cover:
- penalties for infringement offences, see 160(1). [\[Regs 53 and 54\]](#)
 - the form of an infringement and reminder notice, see sections 164 and 167. [\[Regs 55 and 56\]](#)
33. Infringement offences and penalties are set out in Schedule 2 of the regulations. The form of an infringement and reminder notice will be set out, respectively, in Schedules 3 and 4.
34. A number of provisions in the 2022 Act also set out timeframes for the delivery of certain documents to the Registrar. Regulation 57 lists these provisions and sets out the penalty fees for failure to meet these deadlines.

13

Do you have any comments to make in relation to regulations 53-57? (Infringement fees and other fees)

Part 7 – Transitional regulations for implementation of Act (Regulations 58-61)

35. Part 7 of the regulations sets out transitional regulations in relation to two matters:
- The number of independent officers on committees
 - Restricting attendance at AGMs to delegates for societies under 1000 members.
36. Regulations 58 and 59 set out that the transitional period lasts for five years commencing on the date the 2022 Act comes into force, namely 5 October 2023.

Independent officers on committees (Regulation 60)

37. Regulation 60 sets out the provisions relating to societies that currently have committees with more than 50 percent of the officers being independent (i.e. not members of the society).
38. This regulation provides that societies do not have to comply with section 45(3) (i.e. have more than 50 percent independent officers on their committee) if:
- they notify the Registrar that they do not comply; and
 - their constitution expressly provides for the majority of the committee to be made up of officers that are not members.
39. Notification must take place in the form and manner approved by the Registrar. The five-year period and notification requirement will give us time to understand the circumstances where societies may need an exemption from section 45(3) and draft a permanent exemption if needed. If a permanent exemption is drafted, it will take effect from the end of this period.

Restricting attendance at AGMs (Regulation 61)

40. Regulation 61 sets out the provisions relating to societies that currently restrict attendance at AGMs to delegates and are below the 1,000-member threshold. These societies must, within the five-year period that starts on the commencement of the new Act and regulations (i.e. 5 October 2023), amend their rules to be compliant with section 84. That is, they will no longer be able to restrict attendance from the end of the five-year period.

14

Do you have any comments to make in relation to regulations 58-61? (Transitional regulations)

Schedules

41. Schedule 1 sets out that there are no transitional provisions in relation to these regulations. Please note that this is a separate matter from the transitional regulations set out in Part 7.
42. As discussed above, Schedule 2 sets out the infringement offences and penalties. Schedules 3 and 4 will follow. These set out the form that, respectively, an infringement notice and a reminder notice must take.

General comments

43. We would like to hear any general comments you may have that may not be related to any specific aspect of the regulations.

15 Do you have any general comments regarding the regulations?

3 Proposed initial fees

44. We seek your feedback on whether you support our proposal to roll over registration and restoration fees from the 1908 Act into the 2022 Act. These fees will be in place while a review of all fees and levies for registers administered by the Companies Office takes place.

System-wide funding review

45. The Companies (Levies) Amendment Act 2022 (the **Levies Act**) amended the Companies Act 1993 to modernise and consolidate how the Companies Office funds its registry functions.
46. The Levies Act was the first step in a new fees and levies regime and allows the charging of levies to fund corporate registry activities. With this in place, a system-wide funding review of what fees and, potentially, levies should be payable by all registered entities has commenced and proposals will be consulted on in due course. This review will not be completed, with the new fees and levies implemented, until 2024.

Proposed initial fees

47. Under the 1908 Act (and as set out in Schedule 1¹ of the Incorporated Societies Regulations 1979), there are currently two main fees payable to the Registrar:²
- Application for incorporation of a society: \$88.89 (GST exclusive)
 - Revocation of a declaration of dissolution of a society (effectively 'restoration'): \$177.78 (GST exclusive).
48. However, the fees made under the 1908 Act (listed above) will not automatically roll over to the 2022 Act. Without making new regulations to cover the period until the full review is complete, the Registrar will not be able to charge for incorporation and restoration.
49. We are therefore proposing (and seek your views on) rolling over the current fees until the system-wide funding review is complete. That is, the following initial fees will be charged:
- Application for incorporation of a society: \$88.89 (GST exclusive)
 - Restoration of a society to the register: \$177.78 (GST exclusive)

16

Do you agree with our proposal to roll over the current fees under the 1908 Act to the 2022 Act to cover the period until the system-wide funding review is complete? If not, why not?

¹ The Incorporated Societies Regulations 1979 reflects a GST inclusive fee, when GST was 12.5 percent. The current GST payable fee has been adjusted to 15 percent, but this is not reflected in those regulations.

² There is also a fee 'for a certification copy of or extract from any document' in the Incorporated Societies Regulations 1979, but we do not propose to continue this under the 2022 Act.