

Submission on *Consultation on regulations for the Incorporated Societies Act 2022*

Your name and organisation

Name	[REDACTED]
Organisation (if applicable)	
Contact details	[REDACTED]

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Responses to questions

Part 2 of the discussion document: section 254

	Matter	Question
1	<p><i>Prescribing information that must be included or provided</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(a)?</p> <p>Re s 9(a), when certifying that “in the applicant’s view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026” regulations need to be clear whose view matters. Is it just the person giving the declaration, is it all proposed officers or is it all people under s 8? In the circumstances, not all s 8 applicants (i.e. founding members) may be actively involved in drafting the constitution or intending to be involved in running the society. It is not necessary or appropriate for them to give a certification. I submit that each of the proposed officers should have to certify their care that the constitution complies with s 26.</p> <p>Re s 79(2)(d) some societies provide for classes of membership in their rules/constitution (eg., ordinary member, associate member, student member, honorary member or life member). These different classes accord different fundamental rights and responsibilities for members. I submit it would be useful for the membership register to record any membership classes if the constitution provides for different classes. In the absence of such a register, a member’s constitutional class may only be determined by society records such as historical meeting minutes or application forms. In the case of long standing life members, the precise status may be hard to determine.</p> <p>Re 109(2) the regulations should be clear when the membership figure is determined. Is it at the date of the most recent AGM, the date of certification or the date of lodging the return?</p> <p>Re 109(c), the regulations proposed create a temporal issue. Section 192 defines an “amalgamation proposal” to be a document. Under the proposed regulations, that document would have to include a certification that a majority of members have consented to the application. However, under s 193, the “amalgamation proposal” must be sent to each member and must be approved under s 194. Consequently, an “amalgamation proposal” cannot include a certification that members have approved. Such a certification should instead be required under s 197© as information to be sent to the registrar when societies amalgamate.</p>
2	<p><i>Prescribing the manner in which things must be done</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(b)?</p>

	<p>If online forms are to be mandatory, appropriate provisions should be made for application preparation and submission by professional advisors.</p> <p>Re 111(3), your proposal to make regulations corresponding to s 187(3) of the Companies Act is pointless and likely ultra vires as s 111(4) of the Incorporated Societies Act 2022 already provides when the change in registered office takes effect in these exact terms.</p> <p>Given that a change in registered office does not take effect until after registration (see s 111(4)), I do not see any purpose in imposing a deadline by which a change in registered office must be filed. Also, there is no obligation that a society's registered office actually conform to where a society carries out business. I presume that the 20 working days proposed is working days from the formal decision (either by committee resolution or under delegation). Imposing a deadline as a legal obligation only imposes an additional compliance burden with no discernible benefit.</p> <p>Re 185, it is not clear that s 185 or s 254 gives the Governor-General the jurisdiction to make regulations restricting who can make applications under s 185. I submit that the Ministry should take legal advice before including such a provision in recommended regulations. Als, it would be irregular for regulations to give a court a power to 'apply' to the registrar to restore a society to the registrar. There is no provision in the Act equivalent to s 329 of the Companies Act so a Court would not have jurisdiction to order that a society be restored. The more orthodox approach would be to specify classes of person who can apply to the registrar under s 185 and then include a catchall class being persons who have leave from a Court to apply.</p> <p>Re 177, "liquidator or receiver (if any)" should also include statutory manager. If notice is to be given to security holders for personal property under the Personal Property Securities Act, consideration should be given to requiring notice to registered security holders of any land owned by the society.</p> <p>The failure to include notification requirements under ss 65 and 66 could have the effect of rendering ss 63 and 64 ineffective. I propose that, if a society does not notify members individually or as a group, societies should be required to publish a public notice that a breach of the provisions has occurred and that members may request further information from a designated contact person. I draw a parallel to provisions in the relatively new Trusts Act 2019. This requires trustees to give basic trust information to beneficiaries. In the absence of this, trustees are required to seek directions from the High Court. The rationale for this provision is that, in the absence of oversight by the beneficiaries, there is no one to hold trustees to account. The same rationale applies to a society's officers vis their members.</p>	
3	<p><i>Authorising the Registrar to determine the manner in which things must be done</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?</p> <p>I agree. Sub-delegation of legislation making powers is risky and not currently justified.</p>
4	<p><i>Declaring persons to be, or not to be, officers</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?</p>

		<p>Under para (a)(ii), the definition of officer (in the absence of regulations to the contrary) appears to apply to liquidators, receivers and statutory managers.</p> <p>Such natural should be excluded from the definition of officer because, under the Act, the officers are subject to a number of duties. These duties may conflict with the function and duties of liquidators, receivers and statutory managers. For example, under s 54, officers have a duty to act in what they believe is the best interests of the society. A receiver may be required to put the interests of the appointing creditor ahead of the society.</p>
5	<p><i>Prescribing circumstances related to independent committee members</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?</p>
		<p>Regarding the proposal for sporting bodies: the term "regional" is undefined. This term has a particular meaning in other statutes such as the Local Government Act 2002 and the Resource Management Act 1991. It refers to one of New Zealand's 16 regions as opposed to its districts or cities. This could have unintended consequences. For example, a sporting body representing clubs in the city of Christchurch or South Canterbury would not meet this definition as "regional" refers to the region of Canterbury as a whole. Similarly, a body which represents sport in two or more regions (e.g. Waikato and Bay of Plenty) would not be a regional body as it represents more than one region. The term "regional" should be expressly broadly defined.</p> <p>It is not clear whether "as those terms are used in the Sport and Recreation New Zealand Act 2002" applies to the term "regional". However, that Act does not define the term either. In s 8(j) of that Act, it refers to "schools, regional, central, and local government". This implies that the term regional has a meaning broader than local.</p> <p>I have no preference for the options in [42] of the consultation paper.</p>
6	<p><i>Prescribing jurisdictions whose officer disqualifications we will recognise</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?</p>
		<p>No comment.</p>
7	<p><i>Prescribing the types of changes in officer information that must be notified</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?</p>
		<p>No comment.</p>

8	<i>Regulating constitutional provisions on conflicts of interest</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?
	No comment.	
9	<i>Prescribing societies that can restrict general meeting attendance to delegates</i>	Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?
	No comment.	
10	<i>Defining the term 'total current assets'</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?
	I suggest, in place of the word "sold" in the definition, you should use "disposed" of. An incorporated society charity may have a potentially large amount of property which they are expecting to gift within the next 12 months to various beneficiaries. Under the proposed definition, they would not be considered part of the total current assets.	
11	<i>Prescribing additional requirements for the financial statements of small societies</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(k)?
	No comment.	
12	<i>Determining the class of society that must have its financial statements audited</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?
	No comment.	
13	<i>Setting infringement fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?
	No comment.	
14	<i>Prescribing the information to be included in infringement and reminder notices</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(n)?

	No comment.	
15	<i>Removal and restoration of societies from the register</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(o)?
	No comment.	
16	<i>Prescribing certain matters relating to surplus assets</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?
	No comment.	
17	<i>Prescribing procedural requirements for surplus asset 'resolutions'</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?
	No comment.	
18	<i>Prescribing how documents must be served on a society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?

The term “legal proceeding” is not defined. Furthermore, the Governor-General does not have jurisdiction to define in regulations the meaning of the term used in an Act of Parliament (this would be putting the cart before the horse). You have given an example of a legal proceeding a notice from the Registrar under s 119. I do not think it is sufficiently clear that this would be a legal proceeding. The term “proceeding” suggests some judicial or quasi-judicial process such as an application to a Court or Tribunal. The procedure in s 119 does not provide an opportunity for submissions or a hearing. It is administrative in nature rather than judicial. It, therefore, should not be assumed to be a “legal proceeding”.

As the above example demonstrates, the question as to what is a “legal proceeding” can be ambiguous. If it can be avoided, the regulations should not rely on a person judging and coming to the correct view on whether something is a legal proceeding. Section 125 allows the Governor-General to prescribe manner of service in both legal proceedings and for other matters. It is not necessary for the regulations to specify precisely which subsection the regulations are relying on for jurisdiction (see Legislation Act 2019, s 40). For this reason, I submit that the different categories of service should be expressly defined in the regulations. For example, service in relation to or in contemplation of proceedings before a Court or Tribunal.

Regarding the contents of proposed service rules, service by delivery to an employee of a society is too broad. A cleaner may be employed by an incorporated society. It is not reasonable for such a person to be responsible for receiving service documents. Furthermore, the status of a natural person as an employee or a contractor may be unclear not only to the person serving the documents but to the person receiving them. If documents are served on an apparent employee and that person is later declared by the Employment Court to be a contractor, is the service invalidated?

Regarding deemed receipt of posted documents, unfortunately, it is no longer reasonable to assume that a document posted will be delivered within 5 working days. Furthermore, the term “document exchange” is ambiguous and should be defined.

19

Prescribing how documents must be served on a person

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(s)?

See my comments on regulations under s 254(1)(r).

20

Prescribing matters relating to the incorporated societies register

Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(t)?

Section 233(1)(e) requires the register to contain not only the names of existing officers but of all former officers. However, in the absence of regulations to the contrary, s 237(2)(d) could be interpreted as limiting searches to names of existing officers. This would mean that, if you were trying to identify a society knowing only the name of a former officer, the register could not legally identify the society on a search of the former officer’s name despite the fact that that information is required to be kept in the register. This seems like an oversight and should be corrected by a regulation under s 237(2)(e) clarifying that the register may be searched by reference to the name of a former officer.

21	<i>Specifying matters concerning conversion into an incorporated society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?
	No comment.	

Part 3 of the discussion document: section 254

	Matter	Question
22	<i>Setting fees for the performance of functions or the exercise of powers</i>	Do you have any suggestions on regulations that should be made under section 255(1)(a)?
	No comment.	
23	<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	No comment.	
24	<i>Setting other fees</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?
	No comment.	

Part 4 of the discussion document: section 254

	Matter	Question
25	<i>Providing that certain rules apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?
	No comment.	
26	<i>Providing that certain legislative rules do not apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?
	No comment.	
27	<i>Prescribing matters for the purposes of Part 1 of Schedule 1</i>	Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(c)?
	No comment.	

Other comments

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