



Submission to: the Ministry of Business,
Innovation and Employment | Hikina
Whakatutuki

On: draft Incorporated Societies Regulations
2023 and proposed initial fees under the
Incorporated Societies Act 2022

18 July 2023

By email: societies@mbie.govt.nz

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

Your name and organisation:

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Email	Privacy of natural persons
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Draft Incorporated Societies Regulations 2023

1	Title, Commencement and Part 1 – Preliminary provisions
	Do you have any comments to make in relation to regulations 1-4? (Title, commencement, and Part 1)
	<i>No comment</i>

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Part 2 – Incorporation of societies

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

During the 2022 consultation, MBIE proposed that all documents should be filed online using an internet site designated for this purpose by the Registrar, except where the Registrar gives leave to file in a different manner within the Registrar's absolute discretion. According to the May 2023 Cabinet paper (Annex 2), submitters acknowledged that most transactions of this type are now done online, but raised concerns that some societies do not have computers, internet access or technological knowledge, and that this approach would therefore exclude those with older, poorer, or rural members. Submitters suggested alternatives to the exemption that would more clearly recognise the differing circumstances of societies.

In response, regulation 6 still proposes that an application for incorporation must be made online, but provides that the Registrar may accept an application made in another manner if the Registrar considers it would be unreasonable to refuse the application.

With respect, the change in wording is a distinction without a difference. Regulation 6 will still require those societies for whom online filing is not practicable to approach the Registrar and negotiate an exception. Not only will this be off-putting, it will create an unnecessary barrier, contrary to the underlying aim of the legislation which should encourage people to come together in furtherance of a shared purpose, thereby enhancing community wellbeing and social cohesion. We submit strongly that filing in a non-online manner should be available as of right. It is perfectly possible to encourage people towards online filing, as currently happens in many cases, but the legislation should not force people to file online. We should not be expecting incorporated societies or applicants for incorporated society status to have to negotiate an exception in order to undertake basic functions under the Act.

This same reasoning applies to: applications to waive disqualifying factors (regulation 10), giving notice of changes in officers (regulation 12), filing annual returns (regulation 17), giving notice of a change in registered office (regulation 19), giving notice of a change in contact person (regulation 20), applying to change the name of a society (regulation 21), a request for a society to be removed from the register (regulation 29), an application to be restored to the register (regulations 34 and 38), a request for an alternative distribution of assets (regulation 43), an application for reregistration (regulations 46 and 50), and branch notifications (regulation 52).

3	Part 3 – Administration of societies: Officers Do you have any comments to make in relation regulations 8-12? (Officers)
	<p><i>Regulation 8 – we have no difficulty with regulations excluding liquidators, receivers and statutory managers from the definition of officer. The May 2023 Cabinet Paper states that the duties of liquidators, receivers and statutory managers “may conflict with the duties of an officer” and that “[w]hile it is unlikely that they would be considered officers (as their duties are set out in other legislation), it is worth clarifying”.</i></p> <p><i>However, if liquidators, receivers and statutory managers need to be excluded from the definition of “officer” for the purposes of the Incorporated Societies Act, should they not also be excluded from the definition of “officer” for the purposes of the Charities Act? The recent amendments to the definition of “officer” in the Charities Act 2005 are complex, confusing and create unnecessary inconsistency with the definition in the Incorporated Societies Act: we reiterate the concern expressed in our October 2022 submission that it is not reasonable to expect incorporated societies that are also registered charities to have to try to comply with conflicting and inconsistent definitions of fundamental concepts. The “significant influence” concept in the definition of “officer” was initially added in error (see the discussion in the Focus on Purpose report at 436-438) and then imported into the Health and Safety at Work Act and the Incorporated Societies Act in what appears to be have been a process of compounding error upon error. We strongly recommend that the definition of “officer” in both the Incorporated Societies Act and the Charities Act is amended to make it clear that the definition is limited to members of the governing body only. Then, it would not be necessary to create specific piecemeal carveouts for liquidators, receivers and statutory managers which will only further exacerbate current issues of inconsistency. We appreciate that amending the definition in either the principal Act or in the Charities Act is beyond the scope of this consultation on the draft regulations. However, commencing a process of creating exceptions raises the fundamental question of whether the base definition is correct in the first place. We submit that it is not.</i></p> <p><i>Regulation 9 – we agree with the extension to any country.</i></p> <p><i>Regulations 10 and 12 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
4	Part 3 – Administration of societies: Members Do you have any comments to make in relation to regulations 13-14? (Members)
	<p><i>With respect to regulation 14, we are not clear that delegate voting is merely a size issue. To require societies with less than 1,000 members that currently allow delegate voting to transition within 5 years seems very prescriptive.</i></p>

5	Part 3 – Administration of societies: Financial reporting Do you have any comments to make in relation to regulations 15-16? (Financial reporting)
	<i>With respect to regulation 15, it appears to us that the process for determining whether a society is "small" may be more complicated for a society than simply using the new, simplified tier 4 standard. In principle, we do not support creating exceptions from the requirement to prepare financial statements to External Reporting Board standards as attempts to do so are likely to act perversely to create more, rather than less, complexity. Again, we appreciate that amending the principal Act is outside the scope of this consultation, but the difficulty in defining the concept of "total current assets" highlights in our view how the original premise of creating the exception is conceptually flawed. The same argument applies to recent amendments to the Charities Act to create a similar exception: when the Department of Internal Affairs comes to write the corresponding regulations for small charities (if they ever do) they will discover that they cannot reduce the information requirements any further than they have already been reduced by the XRB without removing all meaningful accountability, as a number of submitters pointed out.</i>
6	Part 3 – Administration of societies: Annual return Do you have any comments to make in relation to regulations 17-18? (Annual return)
	<i>Regulation 17 – see discussion above regarding encouraging online filing rather than requiring it filing</i> <i>Regulation 18 – we query why there is no requirement for the annual return to confirm that the Annual General Meeting was held?</i>

7	<p>Part 3 – Administration of societies: Other matters</p> <p>Do you have any comments to make in relation to regulations 19-28? (Other matters)</p>
	<p><i>Regulation 19 – we query why notice of a change in registered office must be made within 30 working days. Changes in officers and contact person are required to be notified within 20 working days, while changes in the constitution are required to be notified within 25 working days. What is the significance of the different timeframes? Could the timeframes be aligned, to reduce the scope for confusion and inadvertent non-compliance?</i></p> <p><i>Regulation 24(2)(b) and 25(1)(b) allow service of a document to be effected by leaving it at a physical address used by the officer “if known”. We query why or how service would be effected to a physical address that was not known?</i></p> <p><i>Regulation 25(i) provides that service can be effected by “sending it by fax to the officer’s residential address”. This is shorter than the previous version which was “sending it by fax to a telephone number used by faxes at the officer’s residential address”. We submit that the former wording is not clear and the latter wording is preferable.</i></p> <p><i>Regulation 26(2)(b)(ii) – there appears to be a typo in the second line: we submit that the word “it” should not appear after the word “left” and should instead be removed</i></p> <p><i>Regulations 19 - 21 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
8	<p>Part 4 – Removal from register, amalgamation, liquidation, and other processes: Removal from, and restoration to, register</p> <p>Do you have any comments to make in relation to regulations 29-38? (Removal, amalgamation, liquidation, and other processes)</p> <p><i>There appears to be a typo on the first line of regulation 35: the Registrar gives public notice under section 186(2) rather than 186(1).</i></p> <p><i>Regulations 29, 34 and 38 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
9	<p>Part 4 – Removal from register, amalgamation, liquidation, and other processes: Amalgamations</p> <p>Do you have any comments to make in relation regulations 39-41? (Amalgamations)</p> <p><i>No comments</i></p>

10	<p>Part 4 – Removal from register, amalgamation, liquidation, and other processes: Removal or liquidation of societies</p> <p>Do you have any comments to make in relation to regulations 42-44? (Removal or liquidation)</p>
	<p><i>Regulation 43 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
11	<p>Part 5 – Societies and entities incorporated under other or former Acts: Reregistration of existing societies as societies under 2022 Act</p> <p>Do you have any comments to make in relation to regulations 45-46? (Reregistration of existing societies)</p>
	<p><i>Regulation 46 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
12	<p>Part 5 – Societies and entities incorporated under other or former Acts: Reregistration of specified entities and incorporated branches</p> <p>Do you have any comments to make in relation to regulations 47-52? (Specified entities and incorporated branches)</p>
	<p><i>Regulation 49 – should the application for reregistration including the entity’s name?</i></p> <p><i>Regulations 50 and 52 – see discussion above regarding encouraging online filing rather than requiring it</i></p>
13	<p>Part 6 – Infringement fees and other fees</p> <p>Do you have any comments to make in relation to regulations 53-57? (Infringement fees and other fees)</p>
	<p><i>With respect to regulation 54 and schedule 2, the infringement fees have a very punitive flavour. Similar “administrative penalties” under the Charities Act have never been imposed, despite widespread non-compliance, apparently due to the cost involved (see Charities Act Regulatory Impact Statement at 111). Fundamentally, our concern is that legislation in this area of voluntary contribution should err on the side of encouraging rather than punishing. Incorporated societies by definition are not set up for private pecuniary profit and in this respect they are fundamentally different from companies.</i></p> <p><i>Similarly with respect to regulation 57, the late fees seem punitive and we query whether they would ever be imposed?</i></p> <p><i>With respect to regulation 57(d), we note that the requirement to provide documents relating to the auditor’s report under section 107 falls on the auditor. Is the intention to impose late fees on the auditor?</i></p>

14	Part 7 – Transitional regulations for implementation of the 2022 Act
	Do you have any comments to make in relation to regulations 58-61? (Transitional regulations)
	<i>No comments</i>
15	General comments
	Do you have any general comments regarding the regulations?
	<i>No further comments</i>

proposed initial fees under the Incorporated Societies Act 2022

16	Initial fees
	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?
	<i>No – in our view, fees should not be imposed under this legislation. Incorporated societies are by definition not-for-profit entities: the framework should encourage people to come together in groups without putting fee barriers in the way of the corresponding benefits of social cohesion and social capital that results. This regime should be funded by the state as an important contribution to the type of society we want to live in.</i>