

The Chair
Cabinet Economic Growth and Infrastructure Committee

A New Act for Incorporated Societies - Government response to the Law Commission's report

Proposal

- 1 This paper seeks agreement to table the attached government response to the Law Commission's report *A New Act for Incorporated Societies*. The Government is required to respond by 4 March 2014 under Cabinet Officer Circular CO (09) 01, which prescribes a 120 working day limit.

Executive Summary

- 2 The Incorporated Societies Act 1908 (IS Act 1908) provides for incorporation of not-for-profit entities. The benefits of incorporation include separate legal personality and limited liability. About 23,600 entities are registered under the IS Act 1908. Although regarded as high quality at the time of enactment, the IS Act 1908 is now seriously out-of-date and no longer provides an adequate or robust statutory framework for incorporated societies. It falls significantly short of the required standard when questions are raised about governance, rights, obligations and dispute resolution. Consequently, many people who are elected onto committees do not have a clear understanding of what they have to do to comply with the law.
- 3 The Law Commission has produced a top rate report which systematically analyses the major problems and proposes a comprehensive and coherent set of solutions. With one exception (a recommendation relating to agricultural and pastoral societies – see the discussion in paragraphs 23-26 below) the draft government response proposes accepting the recommendations in full or in principle as a basis for drafting a new IS Act and a model constitution.
- 4 The Commission's report addresses a small number of significant issues and a large number of smaller issues. I am satisfied that enacting new legislation based on the Commission's recommendations will improve society governance and performance by providing greater legal clarity, codifying best practice for operating an incorporated society and providing a cost-effective means for resolving internal disputes.
- 5 There will, as a consequence, be new compliance costs for societies. The gaps in the current law mean that many societies will need to review their constitutions. They will also need to become familiar with the simple format not-for-profit accounting standards that will replace the current inadequate financial reporting system, which has no recognition and measurement rules.
- 6 There are substantial risks that many societies will not be able to cope with the proposed changes unless there is support from the government and key not-for-profit sector umbrella organisations. Consequently, the draft government response proposes extensive education measures to assist the sector with the transition, along with a model constitution that will be sufficient to comply with the statutory requirements of the new Incorporated Societies Act.

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- 7 Many of the Commission's 102 recommendations are very detailed, and much of it is yet to be fully tested. In addition, some of the detail may not be fully consistent with other enactments and/or modern drafting practices, or may be incomplete. The draft government response states that the draft Bill and model constitution will be exposed for public comment before a Bill is introduced. This approach will provide the opportunity for the detail to be improved on before the Bill is introduced and free up select committee time to focus on the major issues.

Background

- 8 Incorporated societies make a major contribution to civil society in such areas as culture, sport, recreation, education, health, social services, philanthropy, emergency relief, environmental protection, animal protection and religion. Civic and advocacy organisations such as trade unions, business and professional associations, political parties and local interest groups also incorporate under the 1908 Act.
- 9 There is a broad consensus in the sector that the law of incorporated societies should be consistent with the following principles:
- a. Societies are organisations run by their members. This means that members have primary responsibility for holding societies to account, and that a group without members to hold it to account should consider an alternative form of incorporation.
 - b. Societies should not distribute profits or financial benefits directly to members. This is one of the key features that sets incorporated societies apart from other forms of incorporation. People join societies to achieve a shared purpose, not to personally profit financially from the activities of the society.
 - c. Societies are private bodies that should be self-governing and free from unnecessary state interference. Societies value the flexibility that the current regime gives them to adapt their operating environment to suit their purposes and their culture. That flexibility should be retained as much as possible.
- 10 The Law Commission commenced its review in 2010 and released an issues paper in 2011. The Commission's final report, *A New Act for Incorporated Societies*, was tabled in Parliament in August 2013. The Government has until 4 March 2014 to respond under a 120 working day rule in Cabinet Office Circular CO (09) 01.
- 11 The Commission identified numerous problems with the 1908 Act, which can be broadly categorised as follows:
- a. The law is incomplete, inaccessible and unclear.
 - b. The law is inconsistent with incorporated society and governance principles.
 - c. The law is difficult to enforce.
 - d. There are issues with other statutes under which societies operate.
- 12 These problems with the 1908 Act mean that many of the 23,500 or so incorporated societies are poorly governed without adequate accountability to members for the effective and efficient use of the resources under the governing body's control. A new Act based on the Law Commission's recommendations will help codify best practice for operating an incorporated society and provide greater clarity and protection for members.

The law is incomplete, inaccessible and unclear

- 13 The main problems identified by the Commission in this regard are as follows:

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- a. Society officers have duties that are akin to directors' duties under the Companies Act. These duties are in case law, not in the 1908 Act. Consequently, there is little understanding in the sector that they exist, let alone what they are and who they are owed to.
 - b. The 1908 Act is silent on a number of important governance issues such as dealing with conflicts of interest, personal liability, and the consequences for third parties who deal in good faith with societies which act outside their rules. Again, this means that there is considerable uncertainty about the law in these and other areas.
 - c. The restructuring options are limited. Unlike the Companies Act, the IS Act 1908 makes no provision for amalgamations or voluntary administration.
- 14 The Commission has made several recommendations to the effect that the new Act should include explicit provisions about these matters and, where relevant, the provisions should be modelled on or cross-refer to the equivalent provisions in the Companies Act. The main benefits will be to increase legal certainty and compliance with the law, improve society governance and performance and widen societies' restructuring options.

The law is inconsistent with incorporated society and governance principles

- 15 The Commission has identified several inconsistencies with incorporated society and governance principles. In particular:
- a. The IS Act 1908 permits societies to distribute the surplus assets to their current members on dissolution. This provision is inconsistent with the no financial benefits principle outlined in paragraph 9b above. The Commission has recommended that incorporated societies be required to nominate a particular not-for-profit entity or class of not-for-profit entity to which any surplus assets would be distributed.
 - b. Many constitutions do not serve society members well because they are incomplete or poorly drafted. The Commission has recommended that a model constitution be prepared which would mean that societies can be sure that their rules fully comply with the new Act.
 - c. Financial reporting is often poor because the basis for preparation is often not disclosed, and there is no consistency in what financial information is disclosed and how transactions are recognised and measured. The Commission has recommended that incorporated societies be required to report in accordance with the same accounting standards that the External Reporting Board has issued for use by registered charities.

The law is difficult to enforce

- 16 There are several problems with monitoring compliance and enforcing incorporated society law, including the following:
- a. Case law obliges societies to resolve or participate in the resolution of disputes or grievances that arise within their society. Silence about internal dispute resolution in the IS 1908 means that it can be necessary to go to court, usually the High Court, to try and resolve the matter. This can be expensive and time consuming because none of the civil law routes available suit the incorporated society context. Thus, a lot of time can be spent arguing which cause of action is appropriate and whether a remedy should be granted. The adversarial nature of the court system also means that the process can be divisive or even destructive within a society. The Commission has recommended that:

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- i. societies be required to include procedures for dealing with internal disputes in their constitutions; and
 - ii. clear and targeted civil enforcement remedies be included in the new Act.
 - b. The Registrar of Incorporated Societies needs to contact individual societies for several reasons including investigating alleged serious breaches of the law, checking whether registrations remain up-to-date, sending reminders to lodge financial statements and in relation to the possible dissolution of societies that appear to no longer be operating. However, a lot of time can be wasted because Registries staff can find it difficult to readily identify a society officer. The Commission has recommended that every incorporated society should be required to appoint a statutory officer.
- 17 The Commission has also made a number of enforcement-related recommendations proposing:
- a. criminal sanctions for serious contraventions
 - b. a power for the courts to ban individuals from governance and management in certain circumstances
 - c. an infringement offence regime for minor offences
 - d. a power for the Registrar to exercise some statutory management-related powers that appear in the Corporations (Investigation and Management) Act 1989.
- 18 These recommendations are conceptually consistent with modern liability and enforcement frameworks used in other recent legislation, such as the Financial Markets Conduct Act 2013 but have been modified to reflect the different circumstances in the not-for-profit sector.

There are issues with other statutes under which societies operate

- 19 There are issues relating to societies that operate under other Acts. The two most significant relate to charitable societies, and agricultural and pastoral societies.

Charitable societies

- 20 One of the two forms of incorporation provided for under the Charitable Trusts Act 1957 (CT Act) is to incorporate as a charitable society. A few hundred of the 22,000 entities registered under the CT Act are charitable societies.
- 21 This incorporation option means that some groups may choose to incorporate under the CT Act rather than the IS Act 1908 for administrative convenience reasons (e.g. not having financial reporting obligations) rather than because the CT Act provides the most appropriate governance framework. The Commission notes that the CT Act option does not provide a suitable governance framework for charitable societies. Societies are member-driven institutions. Incorporated societies law is designed to protect membership involvement and a degree of democratic decision-making. Trusts are not about either of these things. They are a way of holding and distributing property.
- 22 The Commission has recommended that societies should no longer be able to register under the CT Act and that existing societies registered under the CT Act should be given a substantial transition period to re-register under the new IS Act.

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Agricultural and pastoral societies

- 23 The Commission's discussion paper of June 2011 asked whether agricultural and pastoral societies (A&P societies) should be incorporated under the new statute. Several submissions from A&P societies stated in reasonably strong terms that there should be no change. The Commission's final report recommends that the new IS Act should have a provision that would provide an easy and efficient mechanism for A&P societies to voluntarily transfer their incorporation from the Agricultural and Pastoral Societies Act 1908 (A&P Act) to the new IS Act.
- 24 Officials have concluded that this recommendation may not go sufficiently far because voluntary reregistration will not address the problems with A&P legislation for societies that choose to not reregister. Those problems include:
- a. Many of the same weaknesses as the IS Act 1908 in relation to governance, rights and obligations
 - b. Barriers to mergers and joint ventures
 - c. Tight restrictions on the sale, mortgage, acquisition and use of land
 - d. Unnecessary restrictions on the way that A&P societies govern themselves, including prescriptive quorum and voting power rules
 - e. A requirement to select the auditors from among the society's ordinary members. This provision is contrary to the most important principle of auditing: the auditor must be, and be seen to be independent.
- 25 This inflexibility is evidenced by the significant number of non-public Acts in this sector that provide relief from A&P Act restrictions. Two Private Acts have been enacted to facilitate joint ventures involving A&P societies. Eight other Acts allow A&P societies to sell land or use land in ways that are not permitted by the A&P Act. The inflexibility of the A&P Act is further evidenced by the fact that 21 A&P societies are incorporated under the IS Act 1908, including 16 that have migrated in the last 20 years.
- 26 The draft government response proposes that the Government defers decisions on this matter until after the draft Bill and regulations have been exposed for public comment. This approach will overcome the situation faced by the sector, when making submissions in response to the Commission's 2011 issues paper, that they only had the opportunity to consider the issues hypothetically. Providing the sector with a real draft Bill and model constitution will move the debate from the conceptual to the practical. This approach will also provide officials with the opportunity to consult with the A&P society sector before the exposure draft is released, including testing whether the concerns are primarily based on a perceived loss of status.

Other substantive recommendations

- 27 This EGI paper only discusses the major issues raised by the Commission's report, not every issue. The other issues are discussed in the regulatory impact statement. I will report on any significant issues that might arise in relation to those other matters as a result of the exposure draft process.

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Implementation

- 28 It is clear that the great majority of societies do not have the resources to obtain legal advice on the reforms, and they will not be able to successfully transition to the new regime unsupported. In addition to the exposure draft process, the government response also proposes coordination between government agencies and major sector umbrella organisations, road show presentations and plain language guidance material.

Consultation

- 29 The Commission consulted extensively. Over 200 submissions were made in response to the issues paper it released in 2011. The Commission held public meetings in five locations and there was specific tāngata whenua input. The Commission also consulted directly with interest groups and societies and set up a reference group to test proposals and provide feedback.
- 30 There was general support for the reforms proposed by the Commission. Most submitters agreed that the IS Act 1908 is deficient in relation to governance, rights and obligations including officers' duties, and dealing with conflicts of interest and internal disputes. A minority of submitters consider that the IS Act 1908 is generally sufficient to allow like-minded persons to incorporate as societies. However, several submitters among the minority did acknowledge that some specific changes were needed.
- 31 The Department of Internal Affairs, Ministry of Justice, Te Puni Kokiri, Ministry for Primary Industries and Treasury have been consulted on the contents of this paper. The Department of Prime Minister and Cabinet has been informed.

Financial Implications

- 32 There are no known financial implications at present. The cost of the education initiatives proposed for 2015 will be met from existing baselines. Decisions are yet to be made about resourcing any subsequent education initiatives.
- 33 Consideration has not, at this stage, been given to whether the existing register of incorporated societies would be needed to be modified or replaced. If there are any such changes, the associated costs would not start being incurred until 2016/17. If there are any such costs, then consideration would be given to meeting some or all of them through third party revenue.

Human Rights

- 34 The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative Implications

- 35 The changes proposed by the Law Commission can only be implemented by way of primary legislation. I have sought a Category 6 priority: drafting instructions to Parliamentary Council Office in 2014. I am proposing that the draft Bill would be exposed for public comment in 2015. Further policy decisions would then be sought with a view to the Bill being introduced in 2016, enacted in 2017 and fully brought into force by 2020.

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Regulatory Impact Analysis

- 36 The General Manager, Strategic Policy Branch and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Publicity

- 37 The Minister for the Community and Voluntary Sector and I propose to release a media statement announcing the tabling of the government response on the day that it is tabled.

Recommendations

I recommend that the Committee:

Government response

- 1 **Note** that the government response to the Law Commission's report *A New Act for Incorporated Societies* is required to be tabled by 4 March 2014 under the 120 working day rule in Cabinet Office Circular CO (09) 01
- 2 **Note** that the Law Commission concluded that the Incorporated Societies Act 1908 lacks guidance on society and officer rights and obligations and about how disputes within societies should be dealt with
- 3 **Note** that the Law Commission considers that there is a strong need to replace the 1908 Act with a modern statute
- 4 **Note** that the main points in the attached draft government response are:
 - 4.1 To agree that a new Incorporated Societies Act is needed to replace the 1908 Act
 - 4.2 To draft a Bill and prepare a model constitution based largely on the recommendations in the Law Commission's report
 - 4.3 To release the Bill and model constitution as exposure drafts for public comment
 - 4.4 To delay government decisions on whether agricultural and pastoral societies should continue to be incorporated under separate legislation until after the exposure draft process has been completed
- 5 **Agree** to the attached government response to the Law Commission's report *A New Act for Incorporated Societies*

Legislative implications

- 6 **Note** that the Minister of Commerce has sought a category 6 priority (drafting instructions to be issued to Parliamentary Counsel Office in 2014) for an Incorporated Societies Bill in the 2014 Legislation Programme
- 7 **Invite** the Minister of Commerce to issue drafting instructions to Parliamentary Counsel Office in relation to the proposed Incorporated Societies Bill
- 8 **Agree** that the Bill be released as an exposure draft for public comment

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- 9 **Note** that some of the detail in the Law Commission's recommendations:
- 9.1 may not be fully consistent with other enactments and/or modern drafting policies and practices
 - 9.2 may be incomplete (for example in relation to the range of matters that should be treated as offences)
- 10 **Authorise** the Minister of Commerce to make changes to the exposure draft of the Bill to deal with issues of the type described in recommendation 9 above
- 11 **Authorise** the Minister of Commerce and the Minister of Primary Industries to approve any targeted consultation paper that might be prepared for the purpose of consulting with agricultural and pastoral society stakeholders prior to the exposure draft process

Report back

- 12 **Invite** the Minister of Commerce to report to EGI by 31 March 2016 on the outcomes of the exposure draft process

Publicity

- 13 **Authorise** the Ministry of Business, Innovation and Employment to place this paper and the government response on its website
- 14 **Note** that the Minister of Commerce will issue a press release on the day the government response is tabled.

Hon Craig Foss
Minister of Commerce

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**Government response to the Law Commission's
report
*A New Act for Incorporated Societies***

**Presented to the House of Representatives
February 2014**

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Introduction

1. This Government response has been prepared under Cabinet Office Circular CO (09) 1.

Background

2. The Incorporated Societies Act is an important statute because the sector is very diverse and every New Zealander is affected by incorporated societies either directly or indirectly. It is essential that the governance and accountability legal frameworks under which incorporated societies operate fully meet contemporary societal needs and be future-proofed to the extent possible.
3. As stated by the Commission in the foreword to its report, the Incorporated Societies Act 1908 has been a success story. However, the Act is now out of date and deficient in a number of important respects. As the terms of reference for this review note, lawyers are often asked for advice on whether to set an incorporated society up, how to set one up, how to register it and what to include in the documents. The incompleteness of the 1908 Act means that difficult questions frequently arise around the governance and administration of such organisations and the resolution of their internal disputes. For these reasons, the terms of reference asked the Law Commission to take a first principles look at the Act.

The Law Commission report

4. The report recommends a new Incorporated Societies Act to replace the 1908 Act. Although the Commission has recommended a new Act, the report emphasises that the fundamentals of incorporated societies should remain unchanged, in particular:
 - societies are organisations run by their own members
 - societies should not distribute profits or financial benefits to members
 - societies are essentially private, and should be self-governing and remain free from unnecessary state interference.
5. In identifying the key areas for reform, the report notes that the 1908 Act lacks guidance about the obligations of those running societies and about how disputes within societies should be dealt with. The report also notes that the 1908 Act is silent on the duties and responsibilities of committee members and others taking on responsibilities in incorporated societies. There are no express procedures for managing conflicts of interest, and the Act's total silence on what to do about disputes with or between members means societies are too often disrupted by disputes that they have no effective method for resolving.
6. These gaps and other issues are comprehensively addressed in the report's 102 recommendations. The key sets of recommendations are:
 - to replace the 1908 Act with a new Act
 - to set out a set of basic duties for committee members. The proposed officers' duties are similar to company directors' duties, modified where necessary
 - to provide a procedure for dealing with financial conflicts of interest
 - to require each society to include disputes procedures in their constitution
 - to provide for a model constitution which a society may adopt instead of drafting its own constitution
 - to provide a transition period of no less than four years.

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Overview of the Government's response

7. The Government:
 - a. agrees that the fundamentals of incorporated societies should remain unchanged
 - b. agrees with the key recommendations as summarised above
 - c. is satisfied that the package of recommendations provides a sound basis for a new Act
 - d. considers that Appendix A of the Commission's report provides a sound basis for regulations that would be made under the new Act prescribing the matters that would be mandatory for the rules of every society's constitution to address.
8. The Government has decided that exposure drafts (ED's) of the proposed Bill and model constitution will be released for public comment before the Bill is introduced into the House. Issuing ED's will have the following benefits:
 - It will provide stakeholders with the opportunity to better understand the practical implications of the Bill and model constitution taken as a whole.
 - It will provide the opportunity for minor issues to be resolved before the Bill is introduced into Parliament. This will provide the opportunity to free up select committee time to focus on the major issues.
 - It should lead to higher quality legislation.

The Government's response on specific issues

9. The Government's responses on the recommendations are discussed below in the following ways:
 - In some cases the response states whether or not the Government agrees with a recommendation. This approach is used mainly in relation to recommendations that are expressed in broad policy terms.
 - In all other cases but one, the response states whether the Government broadly agrees with a recommendation or agrees that the provisions in the ED will be modelled on the Law Commission's proposals. This approach is used mainly in relation to recommendations that include detailed descriptions of the proposed law changes. The purpose of the "broad agreement" approach is to recognise that changes may need to be made to some of the detail as issues become evident during the drafting process. Broad agreement could either mean that the provisions will be drafted exactly in accordance with the Commission's recommendation or that there may be some modifications.
 - For one recommendation (recommendation 3 relating to agricultural and pastoral societies), the Government has decided to wait until after the ED process before making a decision.

Chapter 1: Origins justifications and principles (Recommendation 1)

10. The Government agrees the 1908 Act should be replaced by a new Act.

Chapter 2: The non-profit sector: legal structures and status (Recommendations 2-3)

11. The Government agrees that charitable societies should no longer be able to incorporate under the Charitable Trusts Act 1957 and that those currently incorporated under that Act

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should transition to become societies under the new Act (recommendation 2). The Government will ensure that any changes in the new Incorporated Societies Act are aligned with any changes that may occur as a result of the Law Commission's work on stage 2 of its review of trusts, intended to deal with charitable trusts and the Charitable Trusts Act 1957.

12. Recommendation 3 proposes a simple mechanism for agricultural and pastoral societies to voluntarily transfer registration from the Agricultural and Pastoral Societies Act 1908 to the new Incorporated Societies Act. The Government has decided to reserve judgment on this matter until after it has had the opportunity to consider feedback on the ED. A decision will then be made about whether to implement recommendation 3, transfer the registration of A&P Act entities to the new IS Act, or make changes that will align the A&P Act with the new IS Act.

Chapter 3: What kinds of society can be registered under the Act (Recommendation 4)

13. The Government agrees that the new Act should prohibit societies operating for the monetary gain of members. The provisions in the ED will be drafted broadly in accordance with recommendation 4.

Chapter 4: Establishment and registration of societies (Recommendations 5-12)

14. The Government agrees or broadly agrees with all the recommendations in chapter 4. Specifically:
 - a. the ED will provide for reducing the minimum number of members of a society from 15 to 10 (recommendation 5) and include provisions which will require societies to continue to at least have the minimum number (recommendation 6)
 - b. there should be rules on society names modelled on s 22 of the Companies Act 1993 (recommendation 7)
 - c. the ED will include changes in relation to branches as outlined in recommendations 8-12.

Chapter 5: The legal dealings of an incorporated society (Recommendations 13-18)

15. The Government agrees or broadly agrees with all of the recommendations in chapter 5. The ED will include:
 - a. Limitation of liability provisions based on recommendations 13-14, including provisions relating to indemnification modelled on s 97 of the Companies Act
 - b. Provisions stating that a society has full capacity to carry on or undertake any business or activity, or do any act or enter any transaction, modelled on s 16 of the Companies Act (recommendation 15)
 - c. *Ultra vires*-related provisions as outlined in recommendations 16-18.

Chapter 6: Committees, officers, duties and arrangements for running societies (Recommendations 19-45)

16. The Government agrees or broadly agrees that:
 - a. the ED will provide that every society must have a committee of at least three members which has responsibility for the affairs of the society (recommendation 19)

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- b. the ED will include committee composition, role and function provisions modelled on recommendation 20
 - c. officers' duties shall be stated in the new Act in general terms (recommendation 27)
 - d. the ED will include officers' duties provisions modelled on recommendations 28-29
 - e. the ED will include other officers' duties-related provisions modelled on recommendations 30-33
 - f. the ED will include conflict of interest provisions modelled on recommendations 34-42
 - g. the ED will include financial reporting provisions modelled on recommendations 43-44
 - h. there will be a power for an annual return form to be prescribed by regulations (recommendation 45).
17. In relation to recommendations 21-26, the Government agrees that:
- a. every society should have a statutory officer at all times (recommendation 21) and that the officer should be a member of the society's committee (recommendation 22)
 - b. there should be statutory officer qualification and disqualification provisions modelled on recommendations 23 to 25
 - c. there should be a provision relating to not invalidating the statutory officer's actions due to appointment defects and related reasons modelled on recommendation 26
18. The provisions in the ED will make it clear that the statutory officer role is limited to being a contact point, particularly for the Registrar in relation to compliance matters. It will not mean that the statutory officer will be required to carry out all the society's statutory compliance obligations or have any additional exposure to liability. Consistent with the Companies Act, every person charged with governance will be accountable for discharging all governance responsibilities.

Chapter 7: Constitutions (Recommendations 46-65)

19. The Government agrees or agrees in principle with 18 of the 20 recommendations in chapter 7. Further advice will be obtained before decisions are made on the other two recommendations. The ED will include constitution-related provisions broadly in accordance with recommendations 46-57, which relate to:
- a. a model constitution
 - b. mandatory requirements for every constitution (also see Appendix A of the Commission's report)
 - c. optional rules for constitutions
 - d. amending a constitution
 - e. transitional issues relating to changing constitutions.
20. More specifically, the Government agrees with recommendation 51 that the new Act should enable a model constitution to be made in regulations. A decision will be made at a later date whether the model constitution will be included in regulations or appear on the Registrar's website.
21. The Government agrees that:
- a. the new Act should require every society to have a registered office and maintain a register of members (recommendations 58-61)
 - b. the new Act should not require every society to have a common seal.

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22. The ED will include provisions relating to general meetings broadly consistent with recommendations 63 and 65.
23. Advice will be sought before deciding whether there is a need to have express provisions:
 - a. permitting the use of a common seal (recommendation 62)
 - b. permitting the use of modern technology for the purposes of conducting general meetings (recommendation 64).

Chapter 8: Complaints and grievances (Recommendations 66-75)

24. The Government agrees or agrees in principle that:
 - a. the new Act should require all societies to include procedures in their constitutions for dealing with internal disputes (recommendation 66)
 - b. the new Act should provide societies with the flexibility to have disputes procedures that meet their needs, subject to a requirement that those procedures comply with the rules of natural justice (recommendation 67)
 - c. the ED will include other disputes-related provisions broadly consistent with recommendations 69-72 and 74-75
25. Advice will be sought before deciding whether it is necessary to include an express provision to permit societies to include appeal rights in their dispute procedures (recommendation 73).

Chapter 9: Civil enforcement (Recommendations 76-85)

26. The Government agrees or broadly agrees that:
 - a. the new Act should provide for a society, member or former member to apply to a court for orders to enforce the constitution of a society (recommendation 76)
 - b. the new Act should provide for a society to apply for court orders for redress from breaches of officers' duties (recommendation 80)
 - c. the Government agrees that the new Act should provide for a society to apply for court orders to restore any money wrongly paid to a member (recommendation 85)
 - d. the ED will include provisions relating to the private civil enforcement of statutory duties that are broadly consistent with recommendations 81, 83 and 85
 - e. the ED will include a remedy for oppressive conduct that is broadly consistent with recommendation 84.
27. The Government agrees that the Registrar of Incorporated Societies should have last-resort civil enforcement powers to enforce a society's constitution (recommendations 77-79) and in relation to serious breaches of officers' duties (recommendation 82). The Government will obtain further advice as to the best way of framing these provisions.

Chapter 10: Criminal sanctions and the powers of the Registrar (Recommendations 86-89)

28. The Government:
 - a. has decided that the ED will include offence provisions that are broadly consistent with the proposals in recommendation 86. The Government will obtain further advice before deciding whether the ED will include an offence for a person dishonestly using their position to obtain an advantage or cause loss. These matters may be fully covered by existing offence provisions in Part 10 of the Crimes Act 1961 and the Secret Commissions Act 1910.

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- b. agrees the new Act should include powers for the court to impose governance and officer banning orders on persons convicted of offences under the new Act (recommendation 87). Consideration will also be given to broadening the disqualification powers to recognise banning decisions made under other Acts (e.g. the Companies Act) and under similar legislation in other countries.
 - c. has decided that the ED will include infringement offence provisions covering administrative obligations broadly consistent with recommendation 88.
29. The Government agrees that certain powers contained in the Corporations (Investigation and Management) Act 1989 should apply to incorporated societies (recommendation 89). Paragraph 10.74 of the Commission's report states that the relevant provisions should be repeated in the new Incorporated Societies Act. The Government will obtain further advice before deciding whether to give effect to the recommendation as proposed by the Commission or by some other means.

Chapter 11: Terminations, restructures and rescues (Recommendations 90-102)

30. The Government agrees with all the recommendations in chapter 11. Specifically:
- a. the Government agrees that new Act should include a new statutory power for the Registrar to remove a society from the registrar on request, consistent with s 318(1)(d) and (2) of the Companies Act (recommendation 90)
 - b. the Government agrees that the new Act should replace the existing provisions for revocation of dissolution with procedures for restoration to the register modelled on ss 328-330 of the Companies Act (recommendations 91-92)
 - c. the ED will include other provisions relating to dissolutions broadly consistent with recommendations 93-95
 - d. the Government agrees that the new Act will include provisions to facilitate amalgamations and mergers of societies (recommendation 96)
 - e. the ED will include provisions on mergers and amalgamations broadly consistent with the features listed within recommendation 96
 - f. the Government agrees that the new Act should provide for societies to be placed in voluntary administration (recommendation 97). Advice will be sought before decisions are made about whether this should be given effect to by way of reference to Part 15A of the Companies Act or some other means.
 - g. the Government agrees with recommendation 98 listing who will have the power to place a society into administration.
 - h. the ED will include provisions related to distributions broadly consistent with recommendations 99-101.
 - i. the ED will retain the substance of the provisions of division of surplus assets on winding up in s 27(3)-(7) of the 1908 Act (recommendation 102).

Appendix A: Rules that must be included in constitutions

31. The Government has decided that the draft model constitution will be broadly consistent with the rules that the Commission has recommended should be mandatory for every constitution as set out in Appendix A of the Commission's report.

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Links to the Charities Act

32. Some issues are likely to arise during the drafting process relating to links between the new Act and the Charities Act 2005. For example it will be necessary to consider:
- a. including provisions for the Registrar of Incorporated Societies and the Registrar of the Charities Register to provide each other with certain information, such as decisions to deregister an entity.
 - b. whether differences between the Commission's proposed definition of officer in recommendation 30 and the definition in section 4 of the Charities Act are an issue.

Sector education

33. The proposed reforms are significant because they will clarify and modernise the law, fill gaps in the law, and change some legal rights, duties and obligations. It is clear that the reforms can only be successfully implemented if the not-for-profit sector has a good understanding of them. The Government has concluded that sector education will be an integral part of the implementation programme. For example, seminars will be held while the draft Bill and Regulations are being exposed for public comment. Practical guidance material will be prepared before the new Act comes into force.
34. The relevant government agencies will work with relevant not-for-profit sector umbrella organisations to develop a sector education package.

Conclusions

35. The Government welcomes the Law Commission's report *A New Act for Incorporated Societies* tabled in the House of Representatives on 21 August 2013. The Government has concluded that there is a need to reform incorporated societies legislation in accordance with all the Commission's key recommendations and largely in accordance with the detailed recommendations.
36. The next steps will be to draft a Bill and model constitution in accordance with this response, and expose them for comments. The Government will subsequently introduce a Bill into Parliament.