

CLUBS NEW ZEALAND'S INITIAL COMMENTS ON MBIE'S PROPOSALS FOR REGULATIONS TO BE MADE UNDER THE INCORPORATED SOCIETIES ACT 2022

The following document aims to summarise MBIE's proposals regarding the development of regulations to be made under the Incorporated Societies Act 2022. For the most part the proposals make sense and largely deal with how, when, and why a society will communicate with the Registrar. Throughout the document we have made comments where we feel further discussion is needed, or potentially changes should be made.

REGULATIONS UNDER SECTION 254

Section 254(1)(a)

[Section 254\(1\)\(a\)](#) empowers the Governor-General to make regulations prescribing information that must be included or provided for the purposes of the Act.

There are several sections within the Incorporated Societies Act 2022 which make reference to "information prescribed by regulation".

SECTION	NATURE OF THE INFORMATION	MBIE PROPOSAL	ClubsNZ thoughts
9(a)	Information to be included in incorporation application	<p>Section 9 of the Incorporated Societies Act 2022 already provides that an application for incorporated must include (i) the proposed name of the society, (ii) the name and contact details of at least one 'contact person', (iii) a copy of the proposed constitution, and (iv) information about every person named as an officer (including that they consent to, and are not disqualified from being, an officer).</p> <p>MBIE propose that, under the regulations, the application should also include:</p> <ul style="list-style-type: none">• the proposed society balance date• the registered office of the proposed society, which must be a physical address• an address for service for the proposed society, which must be a physical address• each officer's name, contact address (which can be but need not be their residential address) and email address• certification that:<ul style="list-style-type: none">○ a majority of members of the proposed society have consented to the application○ the proposed constitution accompanying the application is the constitution of the society	<p>Under the 1908 Act applications are required to include a copy of the rules, a form signed by not less than 15 members, a certificate by an officer of the society or solicitor certifying that a majority of members have consented to the applications and that the rules supplied are in fact the rules.</p> <p>The 1979 regulations provide further information that must be included in the register and naturally this information is collected at the time of application.</p>

		<ul style="list-style-type: none"> in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026. 	<p>The biggest change here is that rather than having the application signed by 15 members, the application must include each officers' name, contact address, and email address.</p> <p>Clubs New Zealand does suggest that the application should also require the applicant to provide the number of members in order for the Registrar to determine eligibility to be incorporated under Section 8.</p> <p>We do note that the proposal as written within the consultation refers to the Incorporated Societies Act 2026, we believe this should be the Incorporated Societies Act 2022 and the proposed regulation will need to be amended accordingly.</p>
33(2)	Information that must accompany an amendment to the constitution.	<p>Section 33(2) already provides that the amendment, and amended constitution, must be accompanied by a certificate from an officer certifying that, amongst other things, the amendment was made in accordance with sections 30 and 31 Of the Incorporated Societies Act 2022.</p> <p>MBIE propose that, under the regulations, the information accompanying the amendment, and the amended constitution, should include:</p> <ul style="list-style-type: none"> the society's name the society's NZBN 	This makes sense and Clubs New Zealand have no further comments on this proposal.
79(2)(d)	"Other information" that the register must contain.	<p>Section 79(2) requires each society's register of members to contain the name of each member, their last known contact details (as defined in section 5(2)) of the Incorporated Societies Act 2022), and the date they became a member.</p> <p>At this stage, MBIE do not propose that the regulations require the register of members to contain any other information.</p>	<p>This makes sense and Clubs New Zealand have no further comments on this proposal.</p> <p>This regulation is setting the minimum amount of information required. Clubs can continue to record more information as they already do, within the constraints of the Privacy Act.</p>

86(2)	The information that the society's annual report must contain	<p>Section 86(1) requires a society's committee to present, at each AGM, "an annual report on the operations and affairs of the society during the most recently completed accounting period".</p> <p>Regulation 11(d) of the Companies Act 1993 Regulations 1994 sets out a requirement that a company's annual report should describe certain changes that may have occurred over the previous year, namely changes in the nature of the business of the company or in the types of businesses in which the company has an interest. MBIE do not think that this is particularly relevant to incorporated societies. Consequently, at this stage, they do not propose that the regulations require the annual report to contain any specific information, beyond the requirements of section 86(1). Societies will be able to determine for themselves what information they consider meets those requirements.</p>	This makes sense. Clubs New Zealand are supportive of clubs being able to determine for themselves what information should be included in the annual report in order to comply with Section 86(1).
109(2)	The information that must be contained in a society's annual return	<p>A new obligation for incorporated societies (excluding incorporated societies that already file an annual return with Charities Services) will be filing an annual return with the Registrar.</p> <p>MBIE propose that, under the regulations, the annual return should contain the following information:</p> <ul style="list-style-type: none"> • the society's name; • the society's NZBN; • the physical address of the society's registered office; • the society's address for service; • the society's balance date; • the society's membership figure at the time of filing the annual return; • the name and email address of the society's contact person; • the names and physical addresses of the society's officers, noting that the physical address need not be their residential address; • a certification that: <ul style="list-style-type: none"> ○ the information about the society on the incorporated societies register is up-to-date; ○ the membership figure included in the annual return is accurate; ○ an AGM was held and the quorum was met. 	<p>Under the 1908 Act there was no requirement to file an annual return.</p> <p>Clubs New Zealand is supportive of this proposal as it will ensure that the information held within the register is up to date.</p>
192(c)	The information that must be contained in an amalgamation proposal	<p>Section 220 of the Companies Act 1993 sets out the information that must be contained in a proposal to amalgamate companies. Much of that information is not relevant to incorporated societies.</p> <p>MBIE propose that, under the regulations, the following information be prescribed for inclusion in a proposal to amalgamate incorporated societies:</p> <ul style="list-style-type: none"> • the names, and NZBNs or society numbers, of the amalgamating societies • the name of the proposed amalgamated society • the name and contact details of at least one 'contact person' for the amalgamated society • the balance date of the proposed amalgamated society 	<p>This information is largely what is required when applying to register an incorporated society, it makes sense that similar information would be collected regarding two or more amalgamating societies.</p> <p>Clubs New Zealand does suggest that the application should also require the applicant to provide the number of members in order for the Registrar</p>

		<ul style="list-style-type: none"> the registered office of the proposed amalgamated society (which must be a physical address) an address for service for the proposed amalgamated society for each officer of the proposed amalgamated society, their name, contact address (which can be but need not be their residential address) and email address certification that: <ul style="list-style-type: none"> a majority of the members of each of the amalgamating societies have consented to the application; each officer name consents to, and is not disqualified from being, an officer; the proposed constitution accompanying the application is the constitution of the proposed amalgamated society; in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026. 	<p>to determine eligibility to be incorporated under Section 8.</p> <p>We do note that the proposal as written within the consultation refers to the Incorporated Societies Act 2026, we believe this should be the Incorporated Societies Act 2022 and the proposed regulation will need to be amended accordingly.</p>
193(a)	"Other information" that the committee must send to members, along with the amalgamation proposal	<p>Section 193(a) requires that the committee of each amalgamating society send to each member of that society "a copy of the amalgamation proposal and all other information prescribed by the regulations (if any)".</p> <p>At this stage, MBIE do not propose that the regulations require the committee to send members any other information.</p>	Clubs New Zealand agrees that there is no need for regulations to prescribe further information that must be sent to members of the amalgamating societies.
193(b)	"Other information" that the committee must send to creditors, along with the amalgamation proposal	<p>Section 193(b) requires that the committee of each amalgamating society send to every secured creditor of the society "a copy of the amalgamation proposal and all other information prescribed by the regulations (if any)".</p> <p>At this stage, MBIE do not propose that the regulations require the committee to send secured creditors any other information.</p>	Clubs New Zealand agrees that there is no need for regulations to prescribe further information that must be sent to secured creditors of the amalgamating societies.
197(c)	"Other information" that must be sent to the Registrar when 2 societies amalgamate	<p>Section 197 requires that certain items be sent to the Registrar, notably the amalgamation proposal, officer certificates, and "all other information prescribed by the regulations (if any)".</p> <p>At this stage, MBIE do not propose that the regulations require the Registrar be sent any other information.</p>	Clubs New Zealand agrees that there is no need for regulations to prescribe further information that must be sent to the Registrar when 2 or more societies amalgamate.
Sch 3 cl (3)(b)	Information that must be included in a reregistration (conversion) application	<p>Schedule 3 concerns entities established under their own statutes who wish to convert into regular incorporated societies. Clause 3 of Schedule 3 already requires that an application for conversion include the proposed name of the society, the name and contact details of at least 1 contact person, and evidence that any relevant pre-conditions have been met.</p> <p>MBIE propose that, under the regulations, the application for conversion should also include the name of the entity, its NZBN or register number (if any), the name of its founding statute and any associated secondary legislation, and finally the same information that MBIE intend to require under section 9(a), namely:</p>	<p>The proposed regulation is consistent with the application requirements and Clubs New Zealand does not have any further comments.</p> <p>Clubs New Zealand does suggest that the application should also require the applicant to provide the number of members in order for the Registrar</p>

		<ul style="list-style-type: none"> the proposed society's balance date the registered office of the proposed society, which must be a physical address an address for service for the proposed society; each officer's name, contact address (which can be but need not be their residential address) and email address certification that: <ul style="list-style-type: none"> a majority of the members of the proposed society have consented to the application; the proposed constitution accompanying the application is the constitution of the society; in the applicant's view, the constitution complies with the requirements of section 26 of the Incorporated Societies Act 2026. 	<p>to determine eligibility to be incorporated under Section 8.</p> <p>We do note that the proposal as written within the consultation refers to the Incorporated Societies Act 2026, we believe this should be the Incorporated Societies Act 2022 and the proposed regulation will need to be amended accordingly.</p>
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Section 254(1)(b)

[Section 254\(1\)\(b\)](#) empowers the Governor-General to make regulations prescribing, for the purposes of any provision of the Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing:

- I. by whom, when, where, and how the thing must be done
- II. the form that must be used in connection with doing the thing
- III. what information or other evidence or documents must be provided in connection with the thing
- IV. requirements with which information, evidence, or documents that are provided in connection with the thing must comply
- V. that fees or charges must be paid in connection with doing the thing.

Regulations prescribing how a society must communicate with the Registrar

SECTION	NATURE OF THE INFORMATION	MBIE PROPOSAL	ClubsNZ thoughts
9(a)+(f)+(g)	Manner in which application for incorporation must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications for incorporation must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.
48	Manner in which an application to waive officer disqualifying criteria must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications to waive officer disqualifying criteria must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.

52(2)	Manner in which notices about officers are made to the Registrar	Except with the leave of the Registrar given in his or her absolute discretion, notices about officers must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.
109(1)	Manner in which a society must give its annual return to the Registrar	<p>Except with the leave of the Registrar given in his or her absolute discretion, annual returns must be filed online through the Internet site designated by the Registrar.</p> <p>Having noted that s.109 does not set out a deadline by which an annual return must be filed, MBIE also propose setting such a deadline through regulations made under section 254(1)(b). The simplest solution for incorporated societies would be to align that deadline with the deadline for filing financial statements i.e., within 6 months of the end of the society's financial year.</p>	This makes sense and Clubs New Zealand have no further comments on this proposal.
111(3)	Manner in which a society must notify the Registrar of a change of registered office	<p>Except with the leave of the Registrar given in his or her absolute discretion, notice of any change to a society's registered office must be filed online through the Internet site designated by the Registrar.</p> <p>Having noted that s.109 does not set out a deadline by which a notification of a change in registered office must be filed, MBIE also propose setting such a deadline through regulations made under section 254(1)(b). That deadline should be within 20 working days.</p> <p>A related issue is when the change in registered office should take effect. Section 187(3) of the Companies Act 1993 provides that, for companies that provide notice to the Registrar of Companies that their registered office is changing, "[t]he change in the registered office takes effect on the date stated in the notice" provided that that date cannot be "earlier than 5 working days after the notice is registered". There are identical provisions in section 68 of the Limited Partnerships Act 2008 and section 95 of the Retirement Villages Act 2003. Subject to confirming that there is a regulation making power that allows the Governor-General to do so, MBIE propose that the Minister recommend the making of regulations that have the same effect for incorporated societies.</p>	This makes sense and Clubs New Zealand have no further comments on this proposal.
116(2)	Manner in which a society must notify the Registrar of a change in contact person	Except with the leave of the Registrar given in his or her absolute discretion, notice of any change to a society's contact officer must be filed online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.
117(1)	Manner in which an application to change the society's name must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications to change a society name must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.
176(2)	Manner in which a society may request its removal from the register	Except with the leave of the Registrar given in his or her absolute discretion, requests to remove a society from the register must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.

185(1)+(2)	Manner in which a person may make an application for a society to be restored	<p>Except with the leave of the Registrar given in his or her absolute discretion, requests to restore a society from the register must be made online through the Internet site designated by the Registrar.</p> <p>MBIE also propose prescribing who can apply for a society to be restored. This might include, for example, the society itself, any of its officers, any creditors, any liquidator or receiver, or any court.</p>	<p>This proposal makes sense, however, the proposal as written within the consultation should be amended to read:</p> <p>“...requests to restore a society to the register...”</p> <p>Regarding who can apply for a society to be restored Clubs New Zealand believes that those listed within the proposal are appropriate.</p>
216(2)(b)	Manner in which the society must make the application for a different distribution under s.216(1)(d) [see also (p) below]	Except with the leave of the Registrar given in his or her absolute discretion, requests that the Registrar act under subsection(1)(d) must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.
Sch 3 cl (3)(f)+(g)	Manner in which a conversion application must be made	Except with the leave of the Registrar given in his or her absolute discretion, applications for reregistration must be made online through the Internet site designated by the Registrar.	This makes sense and Clubs New Zealand have no further comments on this proposal.

Regulations prescribing communications by the Registrar

SECTION	NATURE OF THE INFORMATION	MBIE PROPOSAL	ClubsNZ thoughts
177(2)(b)	Manner in which a notice by the Registrar (that he intends to remove a society) must be given	<p>Section 177(2) already provides that a notice of intention to remove a society from the register must be:</p> <ul style="list-style-type: none"> • given to the public; and • specify the date by which an objection to the removal must be delivered to the Registrar. <p>MBIE propose that the notice also be:</p> <ul style="list-style-type: none"> • given to the society concerned; • given to the liquidator or receiver (if any); • given to security holders registered on the Personal Property Securities register; and • given to the public by being published: <ul style="list-style-type: none"> ○ in the Gazette; and ○ on the Companies Office website for not less than 20 working days 	<p>Under the 1908 Act the Registrar is only required to provide notice of removal via the <i>Gazette</i> and on an internet site maintained by, or on behalf of, the Registrar for no less than 20 days.</p> <p>Clubs New Zealand agrees with the proposal and has no further comments.</p>

186(2)	Manner in which Registrar must give notice of proposed restoration	<p>Sections 186(2) and 186(3) already provide that a notice of intention to restore a society to the register must be:</p> <ul style="list-style-type: none"> • given to the public; and • specify the date by which an objection to the restoration must be delivered to the Registrar. <p>MBIE propose that the notice also be:</p> <ul style="list-style-type: none"> • given to security holders registered on the Personal Property Securities register; and • given to the public by being published: <ul style="list-style-type: none"> ○ in the Gazette; and ○ on the Companies Office website for not less than 20 working days. 	Clubs New Zealand believe that a notice of restoration should be provided to the society concerned, particularly if the restoration request was made by officers or creditors.
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Other Communications

SECTION	NATURE OF THE INFORMATION	MBIE PROPOSAL	ClubsNZ thoughts
11(3)	Manner in which a society gives its consent to a new society using a similar name	The other society, company, or body corporate (A) should give its consent in writing. That consent may be given on A's behalf by a person acting under A's express or implied authority.	Clubs New Zealand agrees that consent must be given in writing, however, to ensure clarity and consistency the regulation should also prescribe how that consent should be delivered to the registrar, i.e. online through the Internet site designated by the Registrar.
65(1) , 66	Manner in which a society's committee must notify members of the society of a failure to comply with conflict-of-interest provisions	At this stage, MBIE do not propose that the regulations prescribe the manner in which a committee must notify the society members of a failure to comply with sections 63 or 64.	<p>This makes sense and allows societies the make the notification in the manner which they believe to be most appropriate.</p> <p>Clubs New Zealand have no further comments on this proposal.</p>
125(1)	Manner in which a legal proceeding may be served on a society	Discussed in more detail below under Section 254(1)(r)	
125(2)	Manner in which other documents may be served on a society	Discussed in more detail below under Section 254(1)(r)	

193(c)	Manner in which the committee of an amalgamating society must give public notice of the proposed amalgamation	The notice must be published in the Gazette and either: <ul style="list-style-type: none"> • in at least 1 issue of a newspaper circulating in the area in New Zealand in which its registered office is situated: or • on an Internet site maintained by the society and to which the public has free access. 	Clubs New Zealand is supportive of the proposal and satisfied that by including the option to publish the notification on an Internet site maintained by the society will provide options to keep costs down.
225(2)	Manner in which an application to the Registrar of Land must be made	Discussed in more detail below under Section 254(1)(r)	

Section 254(1)(c)

Like section 254(1)(b), [section 254\(1\)\(c\)](#) concerns provisions of the Act that require a thing to be done in a manner prescribed by the regulations. However, section 254(1)(c) empowers the Governor-General to authorise the Registrar (rather than regulations) to determine or prescribe those matters.

At this stage, MBIE do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make regulations under section 254(1)(c) authorising the Registrar to determine or prescribe any matters. This is because they consider that, generally, such delegation of legislative powers should be made only where there is a strong case for doing so and, in the present case at the present time, we have not found one.

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(d)

[254\(1\)\(d\)](#) empowers the Governor-General to make regulations declaring any class or classes of persons to be, or not to be, officers for the purposes of this Act. At this stage MBIE does not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under this section, this is largely because no regulations have been made under equivalent provisions.

An officer is defined with the act to mean—

- (1) a natural person who is a member of the committee; or
 - (2) a natural person occupying a position in the society that allows the person to exercise significant influence over the management or administration of the society (for example, a treasurer or a chief executive); and
- (b) includes any class or classes of natural persons that are declared by regulations to be officers for the purposes of this Act; but
- (c) excludes any class or classes of natural persons that are declared by regulations not to be officers for the purposes of this Act

Clubs New Zealand is supportive of no further regulations being made under this section, however, in talking to committees and managers recently, many are somewhat shocked to learn that paid secretaries, managers etc. are considered officers for the purposes of this act.

Classing those who have significant influence over the society as officers' means that they are subject to the duties of an officer i.e., duty to act in good faith and in the best interest of the society, duty to use powers for a proper purpose, requirements to comply with the Act and constitution etc. given that committees and management are working together for the betterment of the club one would expect that those roles would be attached to similar duties and liabilities. However, on the flip side of that argument, would one expect a paid secretary of a small club to have the same level of duty and liability as a member of the committee? Clubs New Zealand would be interested to hear clubs' thoughts on this.

Clubs New Zealand considers that providing a definition of delegate and representative within the regulations would be appropriate i.e., a representative is anyone authorised by the society to represent that society irrespective of whether that person is a current officer of the society.

Section 254(1)(e)

[254\(1\)\(e\)](#) empowers the Governor-General to make regulations prescribing circumstances for the purposes of section [45\(4\)](#). 45(4) means that the requirement for the majority of officers on the committee must be made up of members of the society does not apply if regulations are in place.

MBIE are proposing that regulations be made to provide exceptions for:

- national and regional Incorporated Societies whose main purpose is sport or physical recreations; and
- other societies with operations above a specified threshold.

In regard to a specified threshold there are several options being proposed:

Having one threshold:

- aligned with the audit threshold in the Incorporated Societies Act 2022: proposed in this discussion document to be operating expenses in excess of \$3 million for two years straight.
- Aligned with the audit threshold in the Charities Act 2005: specified in section 42D of the Charities Act 2005 to be operating expenses in excess of \$1.1 million for two years straight; or

Having more than one threshold:

- A threshold for incorporated societies not registered as charities aligned with the audit threshold in the Incorporated Societies Act 2022 (the aforementioned \$3 million); and
- A threshold for incorporated societies registered as charities aligned with the audit threshold in the Charities Act 2005 (the aforementioned \$1.1 million).

The main motivation for requiring the majority of officers on the committee to be members of the club, is that one of the purposes of the Act is that societies are private bodies that should be self-governing in accordance with their constitutions, any bylaws, and their own tikanga, kawa, culture, and practice, and should be free from inappropriate Government interference. For most clubs we would expect that the majority of committee would be made up of members of the club.

We are aware that there are several clubs that have adopted governance structures which call for “independent officers” and if the majority of the committee are “independent” and not members of the club, these clubs will need to rely on the regulations or change their governance structure to ensure that the majority of officers on the committee are members.

As far as the exceptions proposed are concerned, there would be few, if any Clubs New Zealand clubs that meet the definition of national and regional Incorporated Societies whose main purpose is sport or physical recreations as they are typically not National/Regional. Additionally, there would only be a small number of clubs that have operating expenses in excess of \$3 million for two straight years meaning that most clubs would remain subject to section 45(3).

For Clubs New Zealand specifically, if we for some reason do not meet the definition of a national and regional Incorporated Societies whose main purpose is sport or physical recreations, we may encounter some issues with the majority of our committee members being members of the society, largely because the only natural persons who can currently be members of Clubs New Zealand are life members. The majority of committee members can, however, be representatives of bodies corporate that are members of the society, so Clubs New Zealand’s committee members would need to be representatives of a member club. An immediate concern here would be how we ensure that the majority of committee members are representatives of a member club given that several current committee members are not officers of a member club.

Section 254(1)(f)

[254\(1\)\(f\)](#) empowers the Governor-General to make regulations prescribing jurisdictions whose officer disqualifications will be recognised under section [47\(3\)\(g\)](#). This section reads “a person who is subject to an order that is substantially similar to an order referred to in paragraph (f) under a law of a country, State, or territory outside New Zealand that is a country, State, or territory prescribed by the regulations:”

MBIE is proposing that the Governor General make regulations under section 254(1)(f) prescribing Australia.

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(g)

[Section 254\(1\)\(g\)](#) empowers the Governor-General to make regulations prescribing what ‘information changes’ must be notified to the Registrar regarding Officers. Under section [52\(1\)](#) of the Incorporated Societies Act 2022, a society must inform the Registrar when a new officer starts, when an existing officer departs, or when certain information about an existing officer changes.

MBIE is proposing that the Governor-General make regulations under section 254(1)(g) prescribing the following information changes:

- a) any change to an officer’s name, contact address or email address (including the date of the change);
- b) any change to an officer’s status as an officer e.g., resignation, disqualification, death etc. (including the date of the change).

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(h)

[Section 254\(1\)\(h\)](#) empowers the Governor-General to make regulations regarding constitutional provisions on conflicts of interest. [Section 62\(1\)\(e\)](#) of the Incorporated Societies Act allows a society to specify (in its constitution) circumstances – additional to those listed in the Act – where a person will be considered to have a conflict of interest (say, where the person is also an officer at another society with conflicting objectives). Section 62(2)(d) of the Incorporated Societies Act 2022 is the negative equivalent of section 62(1)(e). Under section 62(2)(d), a society can specify in its constitution that certain kinds of interest (say, having once worked for a company with which the society proposes to do business) does not amount to a conflict of interest.

Similarly, under [section 67](#) of the Incorporated Societies Act 2022, a society has the right, in its constitution, to “negate, limit, or modify” the consequences of an officer having a conflict of interest (say, by providing that an officer with a conflict of interest may vote on a matter if a simple majority of non-conflicted committee members agree).

At this stage MBIE does not propose to make any regulations under this section.

Given that this is an entirely new provision under the Act, Clubs New Zealand is supportive of not convoluting the requirements by allowing certain exceptions at this stage.

Section 254(1)(i)

[Section 254\(1\)\(i\)](#) empowers the Governor-General to make regulations prescribing kinds of societies for the purposes of section [84\(4\)](#). Section 84(4) provides that, if a society is a union, or “is of a kind prescribed by the regulations”, the society can provide in its constitution that “a right to attend an annual general meeting applies only to delegates or other representatives of members”.

A potential ‘kind of society’ might be one with a membership exceeding a certain threshold. However, MBIE are not certain what that threshold should be.

Clubs New Zealand does not believe that specific regulations are required here from a club perspective. From a Clubs New Zealand perspective, given that our members are “bodies corporate” (with the exception of a small number of life members), we propose that a regulation be made specifying that Section 84(4) applies to societies for whom the majority of members are bodies corporate. This would allow Clubs New Zealand to specify within our constitution that the right to attend AGM only applies to delegates or representatives of our members as opposed to members of our members.

Section 254(1)(j)

Section 254(1)(j) – defining the term ‘total current assets’

Under [section 102](#) of the Incorporated Societies Act 2022, the general rule is that incorporated societies must prepare their financial statements in accordance with generally accepted accounting practice i.e. the standards set by the External Reporting Board (XRB). However, an exemption is created for ‘small societies’.

In this regard, assume a society was incorporated several years ago, has a balance date of 31 December and, in early 2028, is preparing its financial statements for 2027. Under [section 103](#), one of the criteria that it must meet to qualify as 'small' for its 2027 financial year is that its '**total current assets**' on each of 31 December 2025 and 31 December 2026 were less than \$50,000.

Although many people have a sense that the term 'current assets' means 'liquid assets' such as money in a bank account or invested in shares, there are varying views within the accounting profession on what makes an asset current or not. For this reason, section 254(1)(j) empowers the Governor-General to make regulations that define the term 'current total assets'.

MBIE are proposing that regulations be made that define current assets by exclusion:

"total current assets means total assets excluding fixed assets, where fixed assets are those items of property, plant, and equipment which are not expected to be sold within 12 months after the society's balance date"

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(k)

[Section 254\(1\)\(k\)](#) empowers the Governor-General to make regulations prescribing requirements under section [104\(b\)](#). Section 104 of the Incorporated Societies Act 2022 sets out the Minimum requirements for financial statements of small societies. Societies that qualify as 'small' will be able, if they wish to, to continue to apply very basic accounting standards to their financial statements. Such societies need only specify their assets and liabilities, the security interests (e.g. mortgages) affecting their property, and (if they choose accrual accounting) their income and expenditure or (if they choose cash accounting) their receipts and payments. However, under Section 104(b) of the Incorporated Societies Act 2022, they must in addition comply with "requirements prescribed by the regulations".

Some smaller societies already struggle to comply even with the basic requirements set out in section 23(1) of the Incorporated Societies Act 1908, which are almost identical to those in section 104 of the Incorporated Societies Act 2022. In this context, at this stage, MBIE do not propose recommending that the Governor-General make regulations under section 254(1)(k) prescribing any such requirements.

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(l)

[Section 254\(1\)\(l\)](#) empowers the Governor-General to make regulations prescribing kinds of societies for the purposes of [section 105](#). Section 105 prescribes that every society that is “of a kind prescribed by the regulations” must ensure that its financial statements are audited by a qualified auditor.

The Minister can only make a recommendation for such a regulation if he or she has had regard to:

- a) the circumstances in which companies and other kinds of entities are required to have their financial statements audited under other legislation;
- b) the desirability of avoiding unnecessary administrative burdens, and unnecessary compliance costs, for incorporated societies;
- c) the four principles set out in section 3(d) of the Incorporated Societies Act 2022 e.g. that societies are organisations with members who have the primary responsibility for holding the society to account, but that societies should operate in a manner that promotes the trust and confidence of their members; and
- d) the desirability of promoting confidence in the integrity of the financial reporting of incorporated societies.

Based on their research taking into account the above, MBIE propose that the Governor-General make regulations under section 254(1)(l) prescribing that the kinds of societies that must ensure their financial statements for a given accounting period are audited by a qualified auditor are:

Those societies not registered as charities for which, in each of the 2 preceding accounting periods, the total operating expenditure of the society and all entities it controls (if any) is \$3 million or more

More than half of Clubs New Zealand member clubs will already be subject to an audit requirement as operators of Class 4 Gaming Machines. The clubs that do not operate gaming are very unlikely to be subject to the proposed regulation and therefore Clubs New Zealand have no further comments on this proposal.

Section 254(1)(m)

[Section 254\(1\)\(m\)](#) empowers the Governor-General to make regulations setting the infringement fee for each infringement offence, which must not exceed \$1,000.

The proposed infringement fees sit between \$100 and \$500. These infringements relate to things such as failure to notify constitutional changes, failure to maintain register of members etc. These infringements are intended to punish and deter certain behaviours.

While one is always reluctant to accept the possibility of infringement fees, the proposed fees appear to be reasonable and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(n)

[Section 254\(1\)\(n\)](#) empowers the Governor-General to make regulations prescribing additional information to be included in infringement notices. When issuing an infringement notice or a reminder notice, the Registrar must ensure that it contains a number of pieces of information, set out in [section 164](#) of the Incorporated Societies Act 2022 e.g. details of the alleged infringement and the amount of the infringement fee.

MBIE do not propose recommending that the Governor-General make regulations under section 254(1)(n) as section 164 is sufficient. Section 254(1)(n) also empowers the Governor-General to make regulations prescribing the *form* that infringement notices must take, and section 167 does the same in respect of reminder notices. MBIE will propose what the infringement notice should look like.

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(o)

[Section 254\(1\)\(o\)](#) empowers the Governor-General to make regulations prescribing matters for the purposes of [subpart 1 of Part 5](#). Subpart 1 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to [sections 174-190](#)) concerns scenarios where the Registrar removes a society from the register.

SECTION	NATURE OF THE INFORMATION	MBIE PROPOSAL
177(1)(a)	Persons to whom the Registrar must give notice when proposing to remove a society	<ul style="list-style-type: none">• The contact person of the society• Charities Services (for those registered as charities)• Inland Revenue
177(2)(a)	Minimum period (number of working days) that Registrar can set for objections to his notice of intended removal	20 working days
177(2)(b)	Manner in which a notice by the Registrar (that he intends to remove a society) must be given	See regulations prescribing communications by the Registrar above

185(1)+(2)	Manner in which a person may make an application for a society to be restored	
186(2)	Manner in which Registrar must give notice of proposed restoration	See regulations prescribing communications by the Registrar above
186(3)	Minimum period (number of working days) that Registrar can set for objections to his notice of intended restoration	20 working days
188	People who may apply to the court for a court order requiring restoration	Similar to section 329 of the Companies Act, MBIE propose that the following persons have the right to apply: any officer of the society; any member of the society; any creditor of the society; any party to legal proceedings against the society; any person with an undischarged claim against the society; any liquidator or receiver of the society.

The proposals under this section largely make sense, the thing that is probably of concern is the limited window that a club has to lodge an objection should the Registrar make a notice to remove. If we take our current clubs that have been dissolved, they would have missed that window a long time ago.

Section 254(1)(p)

[Section 254\(1\)\(p\)](#) empowers the Governor-General to make regulations prescribing matters for the purposes of [subpart 5 of Part 5](#). Subpart 5 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to [sections 214-226](#)) concerns certain matters relating to the removal of a society from the register or its liquidation.

The regulations that can be made under this section include:

Section	Description	MBIE Proposal
216(2)(b)	People (other than the society) who can apply to the Registrar for a different distribution under s.216(1)(d)	A liquidator or receiver of the society
216(2)(b)	Manner in which such people, or the society, must make the application for a different distribution under s.216(1)(d)	See regulations prescribing communications by the Registrar above
216(2)(c)	Circumstances that must be present for sections 216(2) to apply (in turn being relevant to whether the conditions of section 216(1)(d) are met)	At this stage, MBIE do not propose that the regulations require any such circumstances to be present

225(2)	Manner in which an application to the Registrar of Land must be made	<p>Section 225(2) of the Incorporated Societies Act 2022 resembles section 27(5) of the Incorporated Societies Act 1908. Schedule 2 of the Incorporated Societies Regulations 1979 (made under the 1908 Act) sets out the form of an application to the Register-General of Land to register the vesting of land in a person.</p> <p>Although they may spike somewhat if many societies fail to reregister by April 2026, such applications are likely to be relatively uncommon.</p> <p>MBIE consider it makes sense to align these applications to the regime already in place under the Land Transfer Act 2017 for registering transmissions (i.e. where land is acquired by operation of law – see s87 Land Transfer Act 2017). MBIE therefore propose that regulations be made under section 225(2) prescribing the manner in which applications must be made to the Registrar-General of Land. MBIE propose that those regulations require that the application:</p> <ul style="list-style-type: none"> • be presented in the form of a transmission instrument under the Land Transfer Act 2017; • be made by the person in whom the land has vested under the direction • given by the Registrar of Incorporated Societies under section 221(a); • specify the Record of Title for the vested land; • include a copy of the direction given by the Registrar of Incorporated Societies.
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This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(q)

[Section 254\(1\)\(q\)](#) empowers the Governor-General to make regulations prescribing “procedural requirements” for [sub-part 6 of part 5](#)

If a society winds up, then once it has paid all its debts there may be assets still left over e.g., a few thousand dollars in the bank. Those are its ‘surplus assets’. Meanwhile, ‘resolutions’ are a way for a society to make significant decisions without having to wait for an annual general meeting or schedule a special general meeting.

Subpart 6 of Part 5 of the Incorporated Societies Act 2022 (which corresponds to sections 227-230) brings these two concepts together by empowering societies to make resolutions to, amongst other things, distribute their surplus assets.

MBIE are not proposing to make any regulations under section 254(1)(q) proscribing procedural requirements.

This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(r)

[Section 254\(1\)\(r\)](#) empowers the Governor-General to make regulations prescribing how documents must be served on a society.

- a) [Section 125\(1\)](#) of the Incorporated Societies Act 2022 provides that a “document in a legal proceeding” may be served on a society “in the manner prescribed by the regulations”.
- b) Similarly, section 125(2) of the Incorporated Societies Act 2022 provides that a “document, other than a document in a legal proceeding” may be served on a society “in the manner prescribed by the regulations”. This might capture, for example, notices served on a society by the registrar under section 119 of the Incorporated Societies Act 2022, requiring the society to change its name.

The full proposal is outlined within the consultation document. Clubs New Zealand have no further comments on this proposal.

Section 254(1)(s)

[Section 254\(1\)\(s\)](#) concerns how documents will be served on a person. This is because on occasion not all documents are to be served on the society.

These follow a similar vein to the proposed regulations under section 254(1)(r) and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(t)

[Section 254\(1\)\(t\)](#) empowers the Governor-General to make regulations prescribing procedures, requirements, and other matters for the register, provided they are not inconsistent with the Incorporated Societies Act 2022. The provision specifies that this might include matters that relate to: (i) the operation of the register; (ii) the form of the register; (iii) the information to be contained in the register; (iv) access to the register; (v) search criteria for the register; and (vi) circumstances in which amendments must be made to the register.

Section	Description	MBIE Proposal
231(3)(b)	At present, under s 231(4), the Registrar is able to suspend operation of the register “if the Registrar considers that it is not practical to provide access to the register”. Section 231(3)(b) allows for regulations prescribing additional circumstances for suspension.	At this stage, MBIE do not propose that the regulations prescribe additional circumstances when the register may be suspended.
233(1)(i)	At present, under s 233(1), the register must contain, amongst other things, the name of the society, its registered office, its registration number, its NZBN, and its financial statements. Section 233(1)(i) allows for regulations prescribing “other information” that the register must contain	

237(2)(c)	At present, under s 237(2), the register may be searched by reference to the name of the society, its registration number, its NZBN, or the name of its officers. Section 237(2)(e) allows for regulations prescribing “other criteria” by which the register may be searched	At this stage, MBIE do not propose that the regulations prescribe additional criteria by which the register may be searched.
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This makes sense and Clubs New Zealand have no further comments on this proposal.

Section 254(1)(u)+(v)+(w)

[section 254\(1\)\(u\)](#) empowers the Governor-General to make regulations specifying Acts for the purposes of section 257 and Schedule 3;

[section 254\(1\)\(v\)](#) empowers the Governor-General to make regulations specifying any preconditions that must be met for a body corporate or other association to be reregistered as an incorporated society under section 257 and Schedule 3; and

[section 254\(1\)\(w\)](#) empowers the Governor-General to make regulations specifying terms and conditions that must be complied with by an entity after it has reregistered as an incorporated society under section 257 and Schedule 3 reading the proposals these regulations only appear to apply to the New Zealand Library Association Act 1939.

These regulations would be largely inconsequential to clubs and Clubs New Zealand has no further comments on this proposal.

REGULATIONS UNDER SECTION 255

[Section 255](#) of the Incorporated Societies Act empowers the Governor-General to make regulations prescribing fees and other amounts payable to the Registrar. Section 255 resembles section 372 of the Companies 1993.

Under section 255(1)(a) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing fees or other amounts payable to the Registrar for the performance of functions or the exercise of powers under this Act or the regulations.

Provisions in the Incorporated Societies Act 2022 that expressly envision fees include:

- a) section 9(f) – concerning fee that must accompany an application for incorporation;
- b) section 197(d) – concerning the fee that must be paid when two societies amalgamate; and

- c) clause 3(f) of Schedule 3 – concerning the fee that must accompany an application for an entity to convert into an incorporated society.

MBIE is currently undertaking a system-wide assessment of what fees (and, potentially, levies) should be payable by all registered entities, including companies, limited partnerships, credit unions, and incorporated societies. In this context, they are not using this discussion document to propose specific fees, or fee levels, that should apply to incorporated societies under the Incorporated Societies Act 2022.

However, they are interested to hear any thoughts you may have on this issue. We can then consider those thoughts as part of our wider system review.

Clubs New Zealand stated within its submission on the Incorporated Societies Act that “Clubs New Zealand would oppose the creation of a fee that is payable when notifying the Registrar of appointments and other changes relating to officers under Section 47 of the Bill. Similarly, the Bill significantly enlarges the role of the Registrar of Incorporated Societies. Any enlarged roll will have to be paid for and given the nature of incorporated societies (i.e., not for profit) there could be issues if the societies are expected to fund this enlarged roll for the Registrar and supporting staff. Clubs New Zealand submits that careful consideration must be given to the nature of societies and their not-for-profit status when setting fees.” Our position on this has not changed.

Section 255(1)(b)

Under section 255(1)(b) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing amounts payable to the Registrar by way of penalty for failure to deliver a document to the Registrar within the time prescribed by or under the Act.

MBIE consider the levels set out in the Companies Act 1993 Regulations 1994 to be appropriate for incorporated societies, as the costs to the Companies Office are the same whether it is dealing with a late filing from a company or an incorporated society. If the amounts payable were set any lower, there is a risk that they could be less than the cost incurred by the Registrar in collecting them.

The proposed penalties are either \$25 or \$100.

Again, one is always reluctant to accept the possibility of penalty fees, the proposed fees appear to be reasonable and Clubs New Zealand have no further comments on this proposal.

Section 255(1)(c)

Under section 255(1)(c) of the Incorporated Societies Act 2022, the Governor-General may, by Order in Council, make regulations prescribing fees or other amounts payable to the Registrar for any other matter under this Act or the regulations.

At this stage, MBIE do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 255(1)(c).

Clubs New Zealand have no further comments on this proposal.

TRANSITIONAL REGULATIONS UNDER SECTION 256

[Section 256](#) of the Incorporated Societies Act 2022 empowers the Governor-General to make regulations concerning certain transitional matters.

However:

- a. this power is time-limited, as section 256 will self-repeal at the close of the “5-year date” (likely 6 October 2028);
- b. the Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the regulations:
 - i. are necessary or desirable for the orderly implementation of this Act; and
 - ii. are consistent with the purposes of this Act.

The regulations may:

- a. provide that certain rules apply;
- b. provide that certain rules, set out in the Incorporated Societies Act 2022 or other relevant legislation, do not apply or apply in modified form; and/or
- c. prescribe matters for the purposes of Part 1 of Schedule 1 of the Incorporated Societies Act 2022 (which concerns the process by which existing societies re-register under the new regime).

Section 256(1)(a) is designed to allow the making of time-limited regulations that address any transitional issues that require new secondary legislation. At this stage, MBIE do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 256(1)(a).

Section 256(1)(b) is designed to allow the making of time-limited regulations to address any transitional issues that require amendments to primary legislation.

At this stage, MBIE do not propose that the Minister of Commerce and Consumer Affairs should recommend that the Governor-General make any regulations under section 256(1)(a).

[Part 1 of Schedule 1](#) concerns the process by which the existing 24,000 societies re-register under the new regime, which they will be able to do between around October 2023 and April 2026.

The regulations proposed here are very similar to the requirements of a society applying to register.

MBIE are proposing a \$50 reregistration fee. One never wants to accept that a fee be applied for something you are legislatively required to do in order to protect your legal status, however, we must accept that there will be significant cost for the Registrar to re-register 24,000 societies and this seems to be the fairest method of covering those costs.
