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## Proposals to seek reversal of the reclassification of registered Social Housing providers in Northern Ireland

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Please note this document is available in alternative formats. Please contact the team using the contact details in section 1 of this document.

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# Ministerial Foreword



This consultation seeks your views on the Department's response to the recent decision by the Office for National Statistics (ONS) to reclassify Registered Social Housing Providers to the public sector.

Registered Social Housing Providers in Northern Ireland are the only organisations that build new social homes and anything that threatens what they do for our social tenants needs to be considered very carefully.

On one level the decision by ONS is very technical – it is to do with how the UK national accounts are collated. However, due to the current Treasury rules this decision has the

potential to significantly reduce the amount of money available to Registered Social Housing Providers and therefore the number of social homes that are built each year.

The Northern Ireland Executive has charged the Department with bringing forward proposals on how current housing legislation can be amended so that the ONS decision can be reversed. This document provides outline proposals for how that will be approached.

I would encourage you to take the time to read the consultation document and provide your views.

PAUL GIVAN

MINISTER FOR COMMUNITIES

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# Glossary & Abbreviations

DfC	Department for Communities
ESA	European System of Accounts
FTC	Financial Transactions Capital
MGDD	Manual on Government Deficit and Debt
NPI	Non Profit Institution
ONS	Office for National Statistics
RHA	Registered Housing Association
SORP	Statement of Recommended Practice





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# 1. Introduction

This section provides information on the Office for National Statistics (ONS) and sets out the background to its recent decision to classify Northern Ireland's Registered Social Housing Providers as public sector bodies.

## **The consultation**

This consultation is on the Department for Communities proposals to amend current housing legislation and policy so as to facilitate a reversal of the recent ONS decision to classify Registered Social Housing Providers in Northern Ireland as public sector bodies.

The consultation also provides information on the decision by ONS and why this needs to be reversed.

The consultation sets out the areas of legislation that are affected and offers proposals for consideration. There are a range of options for some of the changes while others have a straight forward solution. The Department is keen to hear your views on all the proposals.

## **Background**

The ONS is the UK's largest independent producer of official statistics and is the

recognised national statistical institute for the UK. It is responsible for collecting and publishing statistics related to the economy, population and society at national, regional and local levels. The main purpose of the classification system is to provide the foundation for the National Accounts on which the Government bases its fiscal statistics and budgeting rules. ONS independently determine classification decisions strictly in accordance with internationally agreed rules set out principally in the European System of Accounts 2010. The sector to which a body is classified in turn determines the treatment of its expenditure in departmental budgets.

On 29 September 2016 the ONS announced that Registered Social Housing Providers in Northern Ireland would be reclassified to the public sector and designated as Public Non-Financial Corporations.

This decision means that borrowing drawn down by Registered Social Housing Providers

to finance new social housing developments would constitute public expenditure and would therefore have to be taken out of the money available for other public services.

Because of the implications of this the NI Executive has asked that proposals should be brought forward (including amendments to legislation as necessary) to enable it to seek a reversal of the ONS decision.

The proposals set out in this document reflect the Department for Communities' assessment of the legislative change that would need to be made to the current governance and legislative framework governing Registered Social Housing Providers if reversal of the decision is to be achieved.

To assist with the consideration of this issue the document also sets out

- i. The implications for the social and affordable housing sector if the ONS decision is not revised
- ii. How tenants rights and the public interest would be safeguarded if the proposals presented in this document are implemented.

## **What is not covered**

This consultation deals only with the proposals that are directly linked to the ONS decision and are required to ensure a reversal of the ONS decision. Other areas of housing legislation and policy are outside the scope of this consultation.

## **How to respond to this consultation**

The consultation period runs from 08 December 2016 to 08 February 2017.

This document sets out the Department's proposals for changes to housing legislation to facilitate a reversal of the ONS reclassification of Registered Social Housing Providers published on 29 September 2016.

The Department would appreciate you taking the time to read through the proposals, consider them and give your views on the issues raised. The consultation response form is reproduced for your convenience at Annex D.

Ways you can respond to the publication are detailed below.

### **by post**

Complete a copy of Annex D and forward to:-  
ONS Reclassification Consultation  
3rd Floor Lighthouse Building  
Gasworks Business Park  
BELFASTBT2 7JB

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### **By email**

Send us your comments to  
[shrppolicy@communities-ni.gov.uk](mailto:shrppolicy@communities-ni.gov.uk)

You can view the consultation documents online by accessing the DSD website at [www.communities-ni.gov.uk/consultations](http://www.communities-ni.gov.uk/consultations), or alternatively by accessing the nidirect website at [www.nidirect.gov.uk](http://www.nidirect.gov.uk). You will then have the option to view a number of links. The links are:-

- Proposals to seek reversal of the reclassification of Registered Social Housing providers in Northern Ireland
- Consultation Response Form (which can be printed and completed or downloaded and emailed back to the address given above)
- Impact Assessment Screening Reports

If you have any queries about this document or require a copy in a different format you can contact us by telephone on: 028 9082 9046 or by e-mail at: [shrppolicy@communities-ni.gov.uk](mailto:shrppolicy@communities-ni.gov.uk)

Following the end of the consultation period, the Department will publish the responses in summary form, alongside a departmental view on the issues raised. Unless respondents indicate otherwise, all responses to this consultation may be published in full or summary form.

You should note that the Department is subject to the Freedom of Information Act 2000, which means that we have to consider any request made under the Act for information relating to responses to this consultation.

## 2. The ONS decision

This section looks at the detail of the ONS decision and the issues that their decision addressed directly and others not addressed directly but which could be considered to be referenced within the decision.

### How ONS reach their decision

Essentially the ONS assesses the level of control that government has over an organisation. They do so using a clearly defined set of indicators and depending on the level of control they find the organisation will be reclassified accordingly. The indicators are set out in Annex A and are taken from ONS' Classification Guidance<sup>1</sup>.

It is perhaps worth noting that the intention or interpretation of the power, section or requirement is not significant to the ONS approach – they consider what the legislation states and therefore the nuances of how the legislation actually operates is not considered. Neither do ONS consider the level of usage of the legislation in reaching their decision – it is sufficient that the power exists. Further ONS is clear that the decision to reclassify may be as a result of the evidence against one indicator or a combination of indicators.

### The Decision of 29 September 2016

In the decision issued by ONS on 29 September 2016 in relation to Registered Social Housing Providers in Northern Ireland (see Annex B) ONS identified 3 specific areas that they have indicated are examples of control.

- the Northern Ireland Executive's consent powers (exercised through section 13 of the Housing (Northern Ireland) 1992 Order) over the disposal of land (particularly in regard to the Northern Ireland Department for Communities (DfC) ability to impose conditions), is an indicator of public sector control through enabling instruments/excessive regulation
- the Northern Ireland Executive's powers (exercised through sections 23 & 25 of the Housing (Northern Ireland) 1992 Order) over the management of an RHA; in particular the power of DfC to remove, suspend or appoint a person to the committee of a housing association if an inquiry (instigated by the government)

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<sup>1</sup> [ARCHIVED CONTENT] UK economic statistics sector and transaction classifications: the classification process - ONS

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has found there to be mismanagement; is an indicator of public sector control through the appoint of officers/key personnel and/or through enabling instruments/excessive regulation

- the Northern Ireland Executive's powers (exercised through sections 23 & 26 of the Housing (Northern Ireland) 1992 Order) over the management of an RHA, in particular the power of DfC to direct a Housing Association to transfer land it owns to another body if an inquiry (instigated by the government) has satisfied them that the management of the land would be improved, is an indicator of public sector control through enabling instruments/excessive regulation

It should be noted that in the conclusion ONS also stated "However, please note that this may not be an exhaustive list of all central government controls in place in the current legislation". This sentence requires careful consideration and the Department has conducted a thorough review of the legislation to establish additional areas that should be considered for review, amendment or repeal.

### **Additional Areas of Control**

The review has demonstrated that the current legislation reserves powers to the Department to intervene in the affairs of Registered Social Housing Providers in a

number of ways. In addition to the specific powers highlighted in the ONS decision, these powers include:

- General powers to exercise supervision and control over Registered Social Housing Providers;
- Powers to guarantee borrowing;
- Power over information to be included in the accounts;
- Power to launch inquiries and extraordinary audits;
- Power over the amalgamation, winding up or dissolution of Registered Social Housing Providers;
- Power over remuneration of Board members;
- Power over the sale of Social Housing to tenants; and
- A general power to obtain information.

These powers will have to be reviewed if the ONS decision is to be reversed

### **Regulation**

The decision framework applied by ONS also references the government control via regulation. The degree of 'control' exercised over Registered Social Housing providers through such administrative measures will also be an important consideration in moving forward.

### 3. The Benefits of an Independent Registered Social Housing Provider Sector

This section considers the role of the Registered Social Housing providers and gives more detail on the potential impact of the ONS decision.

The Registered Social Housing Provider sector has since its inception made a tremendous difference to peoples' lives here. In 1998 Registered Social Housing Providers took over the delivery of new social housing in Northern Ireland and over the last 18 years have built 24,737 new housing offering a quality of life to many thousands of people of all ages, including some of our most vulnerable and frail citizens, that would not otherwise have been deliverable.

That they have been able to do so has been due to their status as independent social enterprises sitting outside of government (until the recent ONS decision). This has meant that they could complement the government grant allocated as a contribution to the costs of their new build programmes, with their own finances, accessing millions of pounds of borrowing on the strength of the stable income stream from tenants' rent.

As government on average contribute around 50% of the costs of each home, this has meant that the numbers of new homes built over the last two decades is double that which would otherwise have been affordable.

If the ONS decision of September 2016 is not reversed, the Executive will have to cover 100% of the costs of new social homes built by the Registered Social Housing providers from its capital budget. Borrowing by the sector, although sourced privately and financed by tenants' rents, will be deemed to be public expenditure.

This will mean that instead of being able to afford to build some 2000 new homes per year as we are now, we will only be able to build 1000 homes (unless money is found from some other government programme). We will fall short year on year in the number of homes we will need to build to meet housing need.

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But it is not only the social housing development programme that will be adversely impacted. The contribution of the Registered Social Housing Provider sector goes far beyond house building. The sector is a source of regeneration. Through its investment programme it has revitalised neighbourhoods, breathed new life into communities, offered opportunities for enhanced independent living for people with disabilities and for the elderly, and offered employment opportunities to thousands of people. Through its community investment agenda it helps maintain the social fabric of the communities it serves. All of this activity would be curtailed if the ONS decision is not reversed.

The sector has also made a substantial contribution to the wider private housing market. The NI Co-ownership Housing Association is a Registered Social Housing Provider. Through its status to date as an independent body it has been able to benefit from the availability of Financial Transaction Capital (FTC) (only available to private sector organisations). The Co-ownership scheme is currently financed by FTC and over the last few years £100m has been made available to the Association to help people into home ownership. If the ONS decision is not reversed, the Association would not be able to avail of this innovative funding scheme.

In addition, some £30m of FTC has been made available to other Registered Social

Housing Providers to help stimulate the supply of housing generally eg. The empty homes scheme, the new “rent to buy” scheme and the Affordable Home Loans scheme. This too is jeopardized by the ONS decision.

In overall terms the need to account for the borrowing of Registered Social Housing Providers in the NI Executive budget and the need to replace FTC with capital, if the programme is to be sustained could cost the public purse in the region of £100m per annum. This in effect would be the opportunity cost of maintaining the existing legislative and governance framework for the Registered Social Housing Provider Sector.

Our assessment is that the only way to avoid that cost and to ensure the benefits of the existing levels of investment are enjoyed for years to come, is to replace the current statutorily controlled Registered Social Housing Provider system with a properly independent social enterprise model, in which authority and control is exercised by the Boards of individual organisations and the interests of tenants and the public purse is safeguarded by a modern best practice system of regulation.

Our proposals on what needs to be done to achieve that are set out below.



## 4. What needs to change

This section considers the elements of the current legislation that need to be addressed and proposes solutions. In some cases options are presented and before final decisions are taken we would welcome the views of consultees.

The proposals have been developed following a process of engagement with other jurisdictions which face similar issues and the Registered Social Housing Provider sector and reflect our current thinking as to what is required. That engagement process is ongoing and it cannot be ruled out that some additional fine detail issues may be identified. This consultation offers consultees an opportunity to consider whether all material issues have been considered.

### **The areas of legislation**

ONS have provided some information on the elements of the legislation they have identified as contributing to Government control of Registered Social Housing Providers. However they have also indicated that their list may not be exhaustive and for that reason the Department has undertaken a review of all of the relevant legislation.

In the following pages the legislation that needs to be considered has been summarised along with the outline proposals for each area. The proposals include a reference as to whether the legislation should be amended or repealed along with any mitigations that may exist. You can view the full legislation <http://www.legislation.gov.uk/> however, for your convenience the affected articles have been reproduced in Annex C. The reference letter in column 1 of the table below will help you find the appropriate legislation in Annex C



Ref	Legislative Ref	Issue	Proposal	Mitigations
A	<b>Housing (Northern Ireland) Order 1992, Article 4(1)(c)</b>	This article gives the power to the Department to “exercise supervision and control over registered housing associations.	Amend article to remove words “”supervision and control”. A new article dealing with regulation of the sector will be included.	Tenant and public interest safeguarded through regulation.
B	<b>Housing (Northern Ireland) Order 1992, Article 6(3)</b>	This article gives the power to the Department to guarantee the borrowing of Registered Social Housing Providers.	Amend this article to remove reference to Registered Social Housing Providers. Reference to unregistered associations to remain.	No guarantees in place.
C	<b>Housing (Northern Ireland) Order 1992, Article 13</b>	This article requires that Registered Social Housing Providers seek the permission of the Department to dispose of land etc. This article was identified by ONS in their decision notification.	Amend article to require Registered Social Housing Providers to notify Department of such disposals. Article should be retained where it refers to unregistered associations	The Department has not withheld such permissions in the past. By maintaining a notifications requirement Registered Social Housing Providers would have to provide the Department with an account of such disposals. This notifications process could be annually.
D	<b>Housing (Northern Ireland) Order 1992, Article 19</b>	This article gives the Department the power to specify the information that must be reported in Registered Social Housing Providers annual accounts.	Amend – In practice reporting requirements are determined by the Financial Reporting Council as set out in statements of recommended practice (SORP)	Registered Social Housing Providers are required to comply with SORP.

Ref	Legislative Ref	Issue	Proposal	Mitigations
E	<b>Housing (Northern Ireland) Order 1992, Article 20</b>	This article provides for enforcement of the requirements set out in Article 19.	This Article would have to be amended to reflect the position with Article 19 and SORP 2014.	As per article 19.
F	<b>Housing (Northern Ireland) Order 1992, Article 21 – 21(c)</b>	Introduced by the Housing (Amendment) Act (NI) 2010, Section 6 this article strengthens the Department's power to monitor Registered Social Housing Providers and is quite wide reaching. To demonstrate less control the section should be reframed.	This section should be amended to reframe the powers to seek information and penalties that are available for non compliance	This power has not been used
G	<b>Housing (Northern Ireland) Order 1992, Article 23</b>	This article gives the Department powers to launch an inquiry into the affairs of a Registered Social Housing Provider. However the circumstances in which the power (paragraph 1) may be deployed are not clarified and may be considered too wide.	Amend paragraph (1) to clarify the meaning of mismanagement	To date the Department has not exercised this power having reached agreement with Registered Social Housing Providers on resolution of issues.

Ref	Legislative Ref	Issue	Proposal	Mitigations
H	<b>Housing (Northern Ireland) Order 1992, Article 25</b>	<p>This article gives the Department the power to remove, suspend or appoint a person to the Registered Social Housing Provider board. The framing of this article is very wide.</p> <p>This article was identified by ONS in their decision notification.</p>	<p>The article should be amended to reflect specific circumstances where this power may be used. As with Article 23 this could mean a clarification of the circumstances in which the Department/Regulator would exercise the intervention powers.</p>	<p>It could be argued that this power rests with the boards. The new regulatory regime places the responsibility for all governance issues with the board. However, it is suggested that powers are reserved to the Department so that it can intervene in exceptional circumstances</p>
I	<b>Housing (Northern Ireland) Order 1992, Article 26</b>	<p>This article gives the power to the Department to direct the transfer of land to another body following an inquiry. Again the framing of this article is too wide.</p> <p>This article was identified by ONS in their decision notification.</p>	<p>The article should be amended to reflect specific circumstances where this power may be used. As with Article 23 this could mean a clarification of the circumstances in which the Department/Regulator would exercise the intervention powers.</p>	<p>It could be argued that this power rests with the boards. The new regulatory regime places the responsibility for all governance issues with the board. However, it is suggested that powers are reserved to the Department so that it can intervene in exceptional circumstances</p>
J	<b>Housing (Northern Ireland) Order 1992, Article 29</b>	<p>This article deals with the power of the Department in relation to rule changes and voluntary amalgamation, winding up or dissolution of Registered Social Housing Providers.</p>	<p>This article should be amended to limit the power of the Department in this area. Potentially requiring the Registered Social Housing Providers to provide notification of rule changes</p>	<p>This power has been used, however many of the rule changes are also subject to the approval of the Charity Commission for NI as well.</p>

Ref	Legislative Ref	Issue	Proposal	Mitigations
K	<b>Housing (Northern Ireland) Order 1992, Article 30</b>	This article deals with payments by Registered Social Housing Providers to members	This article should be amended to remove the Department's power in relation to setting limits on payments.	The new regulatory regime places the responsibility for governance issues with the board, the operation of which will be reviewed under the Governance standard.
L	<b>Housing (Northern Ireland) Order 1992, Article 31</b>	This article deals with payments and grant of benefits by Registered Social Housing Providers – this includes payment to Board Members	This article should be amended to remove the Department's power in relation to such payments.	The new regulatory regime places the responsibility for governance issues with the board, the operation of which will be reviewed under the Governance standard.
M	<b>Housing (Northern Ireland) Order 1983, Article 3(a)</b>	This article, which was introduced via the Housing (NI) Order 2003, Article 131 introduces a compulsory house sales scheme (right to buy) for Registered Social Housing Providers	This article should be repealed or at a minimum amended to make the scheme voluntary.	There are few houses sold under this scheme at present.

You are asked to consider these issues and provide your views either in writing using a format you are comfortable with or via e-mail – details of how you can respond are included in section 1 of this document.

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## 5. Protecting Tenants and the Public Interest

This section sets out how tenants and the public interest will continue to be safeguarded if the proposals presented in the previous section are implemented.

It should be emphasised that the governance regime which applies to, and which is approved by Registered Social Housing Provider sector does not in practice rely on the statutory powers outlined in the previous section.

Registered Social Housing Providers themselves have obligations arising from their legal status e.g. as charitable bodies registered under the Industrial and Provident Societies Act (Northern Ireland) 1969 and their borrowing is subject to covenants agreed with their lenders, who themselves carry out due diligence on the governance and financial viability of individual associations before borrowing is made available.

Furthermore, the sector will continue to operate within a common regulatory framework which encompasses standards of governance with which Registered Social Housing Providers must comply and against

which the extent of their compliance will be assessed on an ongoing basis by the social housing ‘Regulator’.

It is through the process of regulation that assurances are obtained about the effective management and governance of a Registered Social Housing Provider, about the relationship between tenants and providers and about ongoing financial viability.

The Housing (Northern Ireland) Order 1992 provides the legislative basis for the regulatory function and the Regulation and Inspection Unit within the Department currently exercises the regulatory role in Northern Ireland.

In 2015 the Department for Social Development brought forward proposals for a new regulatory framework for NI heralding a change from detailed inspection to a more

comprehensive assessment of risk, with a particular focus on tenants, governance and financial viability. The new approach is based on

- a consumer standard focusing on tenant involvement, complaints, services and tenants needs;
- a governance standard focussing on robust risk management processes; and
- a financial standard which will consider the arrangements in place to protect assets, public funds, meet financial obligations and deliver value for money.

This new approach which reflects best practice is currently being put in place and will be operational in 2017. When fully implemented the system will provide for the required level of assurances about the operations for Registered Social Housing Providers, and particularly about how the public interest and tenants rights are safeguarded.

It is important to emphasise that in its decision of 29 September, ONS did not take issue with the concept of regulation. However as referenced in section 2 the extent of government control through regulation is part of its decision framework.

That said, for a regulator to be effective it will need to have available to it a range of mechanisms to secure improvement in governance etc where this is deemed necessary. This would include for example:

- suspension from the Social Housing Development Programme;
- suspension from social housing adaption grants;
- agreement and implementation of an improvement programme before readmission to the above;
- publication of Regulator's reports; and
- "step in" powers for the Regulator in exceptional circumstances.

With the changes which are needed to legislation to facilitate a reversal of the ONS decision, there is an opportunity to include a greater level of detail in the legislation with regard to the role of the Regulator. For example framing the objectives of regulation in legislation would strengthen the statutory basis for regulation and with enhanced powers the Regulator would continue to provide protection for tenants and public interest.

Consultee's views on these arrangements will be particularly welcome as the Department develops proposals for the way forward.

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## 6. Human rights and impact assessments

### Human Rights

The Department believes that the proposals are compatible with the Human Rights Act 1998.

### Equality Impact

Under the terms of Section 75 of the Northern Ireland Act 1998, the Department carried out a screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups. In fact not undertaking the changes outlined in the consultation would have negative impacts across the section 75 groups as fewer social homes would be built if the ONS decision cannot be reversed. A copy of the screening form can be viewed on the Department's website: <https://www.communities-ni.gov.uk/dfc-equality>.

### Regulatory Impact

The Department has conducted a regulatory impact assessment and is satisfied that the potential associated costs with the proposed legislative changes will be more than offset by the potential savings for the Registered Social Housing Providers. Outside of the Registered Social Housing Providers

there are no associated costs or savings for business, charities, social economy enterprises or the voluntary sector. A copy of the screening form can be viewed on the Department's consultation page along with the consultation document - [www.communities-ni.gov.uk/consultations](http://www.communities-ni.gov.uk/consultations)

### Rural Proofing

The Department has assessed the proposed guidance and considers there would be no differential impact in rural areas or on rural communities. A copy of the screening form can be viewed on the Department's consultation page along with the consultation document - [www.communities-ni.gov.uk/consultations](http://www.communities-ni.gov.uk/consultations)

### Social Inclusion Impact

The Department has assessed the proposed guidance and is satisfied there are no negative impacts on social inclusion consequent to the changes in legislation being proposed. In fact not undertaking the changes outlined in the consultation would have negative impacts on social inclusion as fewer social homes would be built if the ONS decision cannot be reversed.

# Annex A – Indicators of Government Control – ONS Classification Guide

## 3.1.1 is the unit public or private?

12. When classifying institutional units, it is important to establish the boundary between the public and the private sectors, and ESA10 has introduced considerable new guidance on delineating the two. The fundamental question is “does government exercise significant control over the general corporate policy of the unit?” The international guidance defines control as the ability to determine general corporate policy, and this can be exercised through the appointment of directors, control of over half of the shareholders’ voting power, through special legislation, decree, or regulation. Whether or not such control exists is assessed by examining the characteristics of the unit in terms of the following “indicators of government control” set out in ESA10 §2.38, MGDD §I.2.3:

a) government rights to appoint, remove or approve a majority of officers, board of directors, etc (including where government has rights to veto the above) – if the government appoints a majority of

directors or other key personnel, the unit would be classified to the public sector

- b) government rights to appoint, remove or approve a majority of appointments for key committees having a decisive role in determining key factors of the unit’s general policy, board of directors, etc (including where government has rights to veto the above) – if the government has the right to appoint or remove most members of the finance or investment committees (for example), the unit would be classified to the public sector
- c) government ownership of the majority of the voting interest – for example, if a majority of shares in a unit are owned by government, it would be classified to the public sector
- d) government rights to appoint or remove key personnel (or veto appointments/removals) – if government appointments of key positions (for example, chairperson, executive directors) effectively give it a “decisive say” in key aspects of corporate policy, the unit will be classified as public



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- e) government rights under special shares and options – if government has special entitlements, for example, in relation to a “golden share”, this may lead the unit to be classified as public
  - f) government rights to control via contractual agreements – if government imposes restrictions on the operation of the unit, for example, through its position as a dominant customer, this may lead to classification in the public sector
  - g) government rights related to borrowing/financing – if government has a predominant role in setting the conditions of borrowing by the unit, including the terms of borrowing and/or use of funds borrowed, or is the predominant source of financing for the unit (either directly or by providing guarantees on borrowing by the unit), this may lead to classification in the public sector
  - h) government control via regulation – if the government restricts a unit from ceasing activities (that is, exiting markets) or from diversifying its activities, this may lead to classification in the public sector
  - i) other relevant aspects – ONS is also required to consider other ways in which the government might exercise control over a unit
- 13. In the case where a unit is an NPI (distinguished by not having generating and distributing profits for the benefit of owners, shareholders, etc as a central aim), ESA10 identifies the following 5 characteristics of the unit that must be examined:
    - a) government appointment of officers – if the government is entitled to appoint a majority of those managing the NPI (usually through provisions in its constitution, articles of association or other enabling instruments), the unit will generally be classified to the public sector
    - b) other provisions of the enabling instrument(s) – if the functions, objectives and operating provisions of the NPI are determined by government, if government approval of budget or financial arrangements is required, or if government can veto dissolution, changes to the statute of the entity or termination of any relation between the NPI and government, the unit may be classified as public
    - c) government control via contractual agreements – if the main activity of the NPI is entering into and executing contracts with government (for example, provision of social care), government is likely to exert control over the general policy of the NPI, and this may result in

a public sector classification, especially when the unit is not free to exit its relation with government

designed to ensure that these judgements are appropriate, consistent and internationally comparable.

- d) the degree of government financing of the unit – if an NPI is mainly (over 50%) financed by government on an ongoing basis and/or this financing results in narrow monitoring of the use of funds and thus strong influence over general policy of the NPI, it may be classified to the public sector
  - e) the degree of government risk exposure in respect of the unit and its activities – if the government is exposed to a large portion of the financial risks of the NPI (for example, through the provision of debt guarantees or guarantees in case of disruption to income streams from sources other than government), it may be classified as public
14. In both cases, government control may be established by the strength of one of these indicators alone (generally the case when indicator a, b or c in Section 11 is met), or by the combined strength of evidence against a number of them. Classification as public or private can therefore require judgement, and ONS processes are

15. In summary, the difference between the public and private sectors is determined by where control over the organisation lies, rather than by “ownership” or whether or not the entity is financed from public funds.

### **3.1.2 Is the unit a “market” or “non-market” producer?**

16. A second key question when classifying institutional units is whether they are “market” or “non-market producers”. Market producers are defined by charging “economically significant prices” (that is, prices that have a substantial influence on the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce. By contrast, some units provide all or most of their output to others free of charge or at prices that are not economically significant – these are non-market producers.

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# Annex B – ONS Notification of Decision

## Text of ONS Notification

As you are aware, the Office for National Statistics (ONS) has undertaken a review of the statistical classification of Registered Housing Associations (RHA) to establish whether these bodies should continue to be recorded as Private Non-Financial Corporations or if the recording should change following legislative and regulatory changes brought about through the Housing (Northern Ireland) Order 1992, and amendments made to this Act through the Housing (Amendment) Act (Northern Ireland) 2010. Additionally, the review ensures that the treatment is consistent with the latest 2010 European System of Accounts (ESA 2010), which entered force in September 2014.

First, it is important to be clear that the review applies specifically to Housing Associations registered with the Northern Ireland Executive's Department for Communities. Thus, while this has been referred to as a classification review of "Housing Associations", the conclusions apply to all bodies subject to the relevant regulations and do not apply to those housing associations not registered with the Department.

The ONS Economic Statistics Classifications Committee (ESCC) convened to discuss the classification of RHAs of social housing in Northern Ireland on the 21st September 2016.

Pursuant to established procedure, ESCC considered classifications in the context of internationally agreed rules in the European System of Accounts 2010 (ESA 2010) and the accompanying Manual on Government Deficit and Debt 2016 (MGDD 2016). After detailed discussion, ESCC concluded the following:

- that all RHAs should be considered as institutional units as they have the ability to incur liabilities and hold assets on their own account, enter into contracts and exhibit sufficient decision making autonomy
- that all RHAs are subject to public sector control in accordance with control indicators outlined in ESA 2010, paras. 20.15 and 20.309 and MGDD 2016 I.2.3. In concluding this, ESCC reasoned that,
- the Northern Ireland Executive's consent powers (exercised through section 13 of the Housing (Northern Ireland)

1992 Order) over the disposal of land (particularly in regard to the Northern Ireland Department for Communities (DfC) ability to impose conditions), is an indicator of public sector control through enabling instruments/excessive regulation

- the Northern Ireland Executive's powers (exercised through sections 23 & 25 of the Housing (Northern Ireland) 1992 Order) over the management of an RHA; in particular the power of DfC to remove, suspend or appoint a person to the committee of a housing association if an inquiry (instigated by the government) has found there to be mismanagement; is an indicator of public sector control through the appoint of officers/key personnel and/or through enabling instruments/excessive regulation
- the Northern Ireland Executive's powers (exercised through sections 23 & 26 of the Housing (Northern Ireland) 1992 Order) over the management of an RHA, in particular the power of DfC to direct a Housing Association to transfer land it owns to another body if an inquiry (instigated by the government) has satisfied them that the management of the land would be improved, is an indicator of public sector control through enabling instruments/excessive regulation
- That RHAs meet the prescribed conditions detailed in ESA 2010 Chapter 2 and 20 to be classified as market producers en masse. In making this judgement, ESCC

stated that there is sufficient evidence to suggest that RHAs are charging economically significant prices in accordance with ESA 2010 20.23

Consistent with this, ESCC recommended that RHAs in Northern Ireland should be classified to the Public Non-Financial Corporations (S.11001) subsector for the purpose of national accounts. The Director of National Accounts & Economic Statistics has approved this recommendation and the classification applies with effect from the 15th July 1992, the date of enforcement of the Housing (Northern Ireland) Order 1992.

I trust this provides sufficient explanation of the decision reached, and that it provides an adequate summary of the points most relevant to ESCC. However, please note that this may not be an exhaustive list of all central government controls in place in the current legislation. Also, I would point out that each of the individual controls referenced in this letter may not necessarily be, by themselves, sufficient to lead to a public sector classification and the decision is based on an assessment of all the indicators of control identified.

If you have any queries, please do not hesitate to get in touch.

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# Annex C – Detail of Affected Legislation

NB where legislation has been amended by a subsequent order or act this is referenced in the table below.

Ref	Legislation
Housing (Northern Ireland) Order 1992	
A	<p><b>Functions of the Department</b></p> <p>4. (1) Without prejudice to any specific function conferred on the Department by or under this Part or any other statutory provision, the Department may— (c) establish and maintain a register of housing associations, and exercise supervision and control over registered housing associations. [underlined words inserted by the Schedule paragraph 2 of the Housing (Amendment) (Northern Ireland) Order 2006]</p>
B	<p><b>Borrowing by housing associations</b></p> <p>6. (3) The Department may guarantee, in such manner and on such conditions as it may think fit, the repayment of the principal of, and the payment of interest on, any sums which a registered housing association or an unregistered self-build society borrows from any person.</p> <p>(4) Any sum required by the Department for fulfilling a guarantee under paragraph (3) shall be charged on and issued out of the Consolidated Fund, and for the purpose of providing such issues the Department of Finance and Personnel may borrow money.</p>
C	<p><b>Disposal of land, etc.</b></p> <p>13. (1) Subject to paragraph (2), any provision contained in the rules of a registered housing association which prevents it from disposing of any land (where such disposal would otherwise be lawful) shall be of no effect.</p> <p>(2) Notwithstanding anything contained in section 30 of the Act of 1969—</p> <p>(a) a registered housing association may not dispose of or mortgage any land, and</p> <p>(b) an unregistered housing association may not dispose of any grant-aided land as defined in Schedule 2, without the consent of the Department.</p> <p>(3) Any such consent may be given</p> <p>(a) subject to such conditions as the Department sees fit to impose; and</p> <p>(b) either generally in relation to all housing associations or to a particular housing association or description of association; or</p> <p>(c) in relation to particular land or in relation to a particular description of land.</p>

Ref	Legislation
	Housing (Northern Ireland) Order 1992
C	<p>(4) Paragraph (2)(b) shall not prevent an unregistered housing association from disposing of any land by the granting of a lease for a term ending within the period of 7 years and 3 months beginning on the date of the grant unless—</p> <p>(a) there is conferred on the lessee (whether by the lease or otherwise) an option for renewal for a term which, together with the original term, would expire outside that period; or</p> <p>(b) the lease is granted wholly or partly in consideration of a fine.</p> <p>(5) Without prejudice to the generality of the expression “dispose” in paragraph (2), in paragraph (4) the expression “lease” includes an agreement for a lease and a licence to occupy and the expressions “grant” and “term” shall be construed accordingly.</p> <p>(6) This Article does not apply to a letting of land to one or more individuals by a registered housing association under a secure tenancy or under what would be a secure tenancy but for paragraphs 1(b) to 10 [text substituted by section 13 of the Housing (Amendment) Act (Northern Ireland) 2010 of Schedule 2 to the Order of 1983.</p> <p>7) There shall be included among the matters which are required to be registered in the Statutory Charges Register the statutory condition attaching by virtue of this Article to land acquired by a registered housing association.</p> <p>(7A) Paragraph (7) shall not apply in relation to any land acquired by any registered housing association specified by the Department if the association acquired the land for the purpose of granting an equity sharing lease of that land. [Text inserted by Article 141 of the Housing (Northern Ireland) Order 2003]</p> <p>(8) An application for registration of the statutory condition attaching to land by virtue of this Article shall be made by the Department as soon as is reasonably practicable after the acquisition of the land.</p> <p>(9) For the purposes of paragraph (8), a registered housing association shall upon acquiring any land forthwith—</p> <p>(a) inform the Department of the acquisition, and</p> <p>(b) provide such information with respect to the acquisition as the Department may require.</p> <p>(10) Any person who suffers loss by reason of the failure of the Department to comply with paragraph (8) may bring proceedings in any court of competent jurisdiction against the Department and recover from it the amount of that loss.</p>

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Ref    Legislation

Housing (Northern Ireland) Order 1992

<b>D</b>	<p><b>Accounts and audit</b></p> <p>19. (1) The Department may by order lay down accounting requirements for registered housing associations with a view to ensuring that the accounts of every registered housing association are prepared in the requisite form and give a true and fair view of the state of affairs of the association, so far as its housing activities are concerned, and of the disposition of funds and assets which are, or at any time have been, in its hands in connection with those activities.</p> <p>(2) The accounts of every registered housing association must comply with those requirements; and the auditor's report shall state (in addition to any other matters which it is required to state) whether in the auditor's opinion they do so comply.</p> <p>(3) Every registered housing association shall furnish to the Department a copy of its accounts and auditor's report within 6 months of the end of the period to which they relate.</p> <p>(4) A registered housing association shall be subject to section 38(1) of the Act of 1969 (obligation to appoint auditors) without regard to the volume of its receipts and payments, the number of its members or the value of its assets; and such an association is in no case to be treated as an exempt society under that section.</p>
<b>E</b>	<p><b>Enforcement of Article 19</b></p> <p>20. (1) All persons who are directly concerned with the conduct and management of the affairs of a registered housing association and are in that capacity responsible for the preparation and audit of accounts shall have the duty to ensure that Article 19 is complied with by the association.</p> <p>(2) If—</p> <p>(a) the accounts of a registered housing association, as furnished to the Department under Article 19(3), do not comply with the accounting requirements laid down under paragraph (1) of that Article; or [text amended by section 17(2)(a) of the Housing (Amendment) Act (Northern Ireland) 2011]</p> <p>(b) Article 19(3) is not complied with in respect of the accounts and auditor's report; [text amended by section 17(2)(b) of the Housing (Amendment) Act (Northern Ireland) 2011]</p> <p>the association as well as each of the persons on whom the above duty is imposed shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(3) It is a defence—</p> <p>(a) for a person charged under paragraph (2) to prove that he did everything that could reasonably have been expected of him by way of discharging the duty imposed by paragraph (1); and</p> <p>(b) for an association charged under paragraph (2) to prove that the persons mentioned in paragraph (1) did everything that could reasonably have been expected of them by way of discharging the duty imposed by paragraph (1) in relation to the association.</p> <p>(4) No proceedings for an offence under this Article shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.</p>

Ref	Legislation
	<b>Housing (Northern Ireland) Order 1992</b>
<b>F</b>	<p><b>General power to obtain information – substituted by Housing (Amendment) Act (NI) 2010 – Section 6</b></p> <p>21. (1) The Department may for any purpose connected with the discharge of any of its functions in relation to registered housing associations serve a notice on a person requiring him—</p> <ul style="list-style-type: none"> <li>(a) to give to the Department, at a time and place and in the form and manner specified in the notice, such information relating to the affairs of a registered housing association as may be specified or described in the notice, or</li> <li>(b) to produce to the Department or a person authorised by the Department, at a time and place specified in the notice, any documents relating to the affairs of the registered housing association which are specified or described in the notice and are in his custody or under his control.</li> </ul> <p>(2) A notice under this Article may be served on—</p> <ul style="list-style-type: none"> <li>(a) a registered housing association,</li> <li>(b) any person who is, or has been, an officer, member, employee or agent of a registered housing association,</li> <li>(c) a subsidiary or associate of a registered housing association,</li> <li>(d) any person who is, or has been, an officer, member, employee or agent of a subsidiary or associate of a registered housing association, or</li> <li>(e) any other person who the Department has reason to believe is or may be in possession of relevant information.</li> </ul> <p>(3) No notice shall be served on a person within sub-paragraphs (b) to (e) of paragraph (2) unless—</p> <ul style="list-style-type: none"> <li>(a) a notice has been served on the registered housing association and has not been complied with, or</li> <li>(b) the Department believes that the information or documents in question are not in the possession of the housing association.</li> </ul> <p>(4) Nothing in this Article authorises the Department to require—</p> <ul style="list-style-type: none"> <li>(a) the disclosure of anything which a person would be entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the High Court, or</li> <li>(b) the disclosure by a banker of anything in breach of any duty of confidentiality owed by him to a person other than a registered housing association or a subsidiary or associate of a registered housing association.</li> </ul> <p>(5) A notice under this Article shall be given in writing.</p> <p>(6) References in this Article to a document are to anything in which information of any description is recorded; and in relation to a document in which information is recorded otherwise than in legible form, references to producing it are to producing it in legible form.</p> <p>(7) Where by virtue of this Article documents are produced to any person, he may take copies of or make extracts from them.</p> <p>(8) In this Article—</p> <p>“agent” has the meaning given in Article 23(8); and</p> <p>“associate” and “subsidiary” have the same meanings as in Article 23.</p>



## Housing (Northern Ireland) Order 1992

### F Enforcement of notice to provide information, &c.

21A. (1) A person who without reasonable excuse fails to do anything required of him by a notice under Article 21 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person who intentionally alters, suppresses or destroys a document which he has been required by a notice under Article 21 to produce commits an offence and is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum,

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

(3) Proceedings for an offence under paragraph (1) or (2) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland or the Department.

(4) If a person makes default in complying with a notice under Article 21, the High Court may, on the application of the Department, make such order as the court thinks fit for requiring the default to be made good.

(5) Any such order may provide that all the costs or expenses of, and incidental to, the application shall be borne by the person in default or by any officers of a body who are responsible for its default.

#### Disclosure of information to the Department

21B. (1) A body or person to whom this Article applies may, subject to the following provisions, disclose to the Department, for the purpose of enabling the Department to discharge any of its functions relating to registered housing associations, any information received by that body or person under or for the purposes of any statutory provision.

(2) This Article applies to the following bodies and persons—

(a) any government department (including a department of the Government of the United Kingdom);

(b) any district council;

(c) any constable; and

(d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

(3) This Article has effect subject to any express restriction on disclosure imposed by or under any other statutory provision.

(4) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article.

#### Disclosure of information by the Department

21C. (1) The Department may disclose to a body or person to whom this Article applies any information received by it relating to a registered housing association—

(a) for any purpose connected with the discharge of the functions of the Department in relation to such housing association, or

(b) for the purpose of enabling or assisting that body or person to discharge any of its or his functions.

(2) This Article applies to the following bodies and persons—

(a) any government department (including a department of the Government of the United Kingdom);

(b) any district council;

(c) any constable; and

(d) any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities).

Ref	Legislation
Housing (Northern Ireland) Order 1992	
F	<p>3) Where any information disclosed to the Department under Article 21B is so disclosed subject to any express restriction on the further disclosure of the information, the Department's power of disclosure under this Article is exercisable subject to that restriction.</p> <p>(4) A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(5) Any information disclosed by the Department under this Article may be subject by the Department to any express restriction on the further disclosure of the information.</p> <p>(6) A person who discloses information in contravention of any such restriction commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.</p> <p>(7) Proceedings for an offence under paragraph (6) may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland or the Department.</p> <p>(8) Nothing in this Article shall be construed as affecting any power of disclosure exercisable apart from this Article."</p>
G	<p>Inquiries into affairs of registered housing associations</p> <p>23. (1) The Department may appoint a person to conduct an inquiry into the affairs of any registered housing association and, if the appointed person considers it necessary for the purposes of the inquiry, he may also inquire into the business of any other body which, at a time which the appointed person considers material, is or was a subsidiary or associate of the association concerned.</p> <p>(2) No person who is, or at any time has been, an officer of the Department or a member or employee of the Executive shall be appointed to conduct an inquiry under paragraph (1). [<u>underlined words inserted by section 7 of the Housing (Amendment) Act (Northern Ireland) 2010</u>]</p> <p>(3) The appointed person may, by notice in writing served on—</p> <p>(a) the association concerned; or</p> <p>(b) any person who is, or has been, an officer, agent or member of the association; or</p> <p>(c) any person who is, or has been, an officer, agent or member of a subsidiary or associate of the association; or</p> <p>(d) any other person whom the appointed person has reason to believe is or may be in possession of information of relevance to the inquiry;</p> <p>require the association or that person to produce to him such books, accounts and other documents relating to the business of the association or of any other such body as is referred to in paragraph (1) and to furnish to him such other information relating to that business, as he considers necessary for the purpose of the inquiry.</p> <p>(4) Any association or other person who without reasonable excuse fails to comply with the requirements of a notice under paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.</p> <p>(5) Where, by virtue of paragraph (3), any books, accounts or other documents are produced to the appointed person he may take copies of or make extracts from them.</p>

## Housing (Northern Ireland) Order 1992

G	<p>(6) The appointed person may, if he thinks fit during the course of the inquiry, make one or more interim reports to the Department on such matters as appear to him to be appropriate.</p> <p>(7) On completion of the inquiry the appointed person shall make a report to the Department on such matters and in such form as the Department may specify.</p> <p>(8) In paragraph (3) “agent” includes banker, solicitor and auditor; but nothing in this Article requires disclosure—</p> <p>(a) by a solicitor, of any privileged communication made to him in his capacity as solicitor; or</p> <p>(b) by a housing association’s bankers, of any information as to the affairs of any of their other customers.</p> <p>(9) In this Article, in relation to a housing association, “subsidiary” means a company with respect to which one of the following conditions is fulfilled,—</p> <p>(a) the association is a member of the company and controls the composition of the board of directors; or</p> <p>(b) the association holds more than half in nominal value of the company’s equity share capital; or</p> <p>(c) the company is a subsidiary, within the meaning of the Companies Acts (see section 1159 of the Companies Act 2006) [underlined words substituted by article 138(3) of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009] or the Act of 1969, of another company which, by virtue of paragraph (a) or paragraph (b), is itself a subsidiary of the housing association.</p> <p>(10) For the purposes of paragraph (9)(a), the composition of a company’s board of directors shall be deemed to be controlled by a housing association if, but only if, the association, by the exercise of some power exercisable by the association without the consent or concurrence of any other person, can appoint or remove the holders of all or a majority of the directorships.</p> <p>(11) In this Article, in relation to a housing association, “associate” means—</p> <p>(a) any body of which the association is a subsidiary, and</p> <p>(b) any other subsidiary of such a body,</p> <p>and in this paragraph “subsidiary” has the same meaning as in the Companies Acts (see section 1159 of the Companies Act 2006) [underlined words substituted by article 138(3) of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009] or the Act of 1969 or, in the case of a body which is itself a housing association, has the meaning assigned by paragraph (9).</p> <p>(12) In relation to a company which is an industrial and provident society—</p> <p>(a) any reference in paragraph (9)(a) or paragraph (10) to the board of directors is a reference to the committee of management of the society; and</p> <p>(b) the reference in paragraph (10) to the holders of all or a majority of the directorships is a reference to all or a majority of the members of the committee or, if the housing association is itself a member of the committee, such number as together with the association would constitute a majority.</p>
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Ref	Legislation
	Housing (Northern Ireland) Order 1992
H	<p>Department's power to act for protection of registered housing associations</p> <p>25. (1) Where the Department is satisfied as the result of an inquiry or an audit under Article 23 or 24 that there has been any misconduct or mismanagement in the administration of a registered housing association, the Department may do all or any of the following, namely—</p> <ul style="list-style-type: none"> <li>(a) by order remove any member of the committee of the association, or any officer, agent or employee of the association, who has been responsible for or privy to the misconduct or mismanagement or has by his conduct contributed to it or facilitated it;</li> <li>(b) by order suspend such a person for up to 6 months, pending determination whether he should be removed;</li> <li>(c) order any bank or other person who holds money or securities on behalf of the association not to part with the money or securities without the approval of the Department;</li> <li>(d) by order restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the association without the approval of the Department.</li> </ul> <p>(2) Where a person is suspended, the Department may give directions with respect to the performance of his functions and otherwise as to matters arising from the suspension.</p> <p>(3) If at any time the appointed person makes an interim report under Article 23(6) and, as a result of that interim report, the Department is satisfied that there has been misconduct or mismanagement as mentioned in paragraph (1),—</p> <ul style="list-style-type: none"> <li>(a) the Department may at that time exercise any of the powers conferred by sub-paragraphs (b) to (d) of that paragraph; and</li> <li>(b) in relation to the exercise at that time of the power conferred by paragraph (1)(b), the reference therein to a period of 6 months shall be construed as a reference to a period beginning at that time and ending 6 months after the date of the report under Article 23(7).</li> </ul> <p>(3A) If, at any time after the commencement of an inquiry under Article 23 or an audit under Article 24, the Department has reasonable grounds to believe—</p> <ul style="list-style-type: none"> <li>(a) that there has been misconduct or mismanagement as mentioned in paragraph (1) in the administration of a registered housing association, and</li> <li>(b) that immediate action is needed to protect the interests of the tenants of the registered housing association or to protect the assets of the association,</li> </ul> <p>the Department may at that time exercise any of the powers conferred by sub-paragraphs (b) to (d) of paragraph (1). [Inserted by Section 8 of the Housing (Amendment) Act (Northern Ireland) 2010]</p> <p>(4) The Department may also by order remove a member of the committee of a registered housing association where that member—</p> <ul style="list-style-type: none"> <li>(a) is a bankrupt, or has made an arrangement with his creditors or is incapable of acting by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 [1986 NI4];</li> <li>(b) has not acted; or</li> <li>(c) cannot be found or does not act and his absence or failure to act impedes the committee's proper management of the association's affairs.</li> </ul>

## Housing (Northern Ireland) Order 1992

- H**
- (5) The Department may by order appoint a person to be a member of the committee of a registered housing association (whether or not he is a member of the association and, if he is not, notwithstanding that the rules of the association restrict membership of the committee to members of the association)—
- (a) in place of a member of the committee removed by it under this Article or otherwise;
  - (b) where there are no members of the committee; or
  - (c) where the Department is of opinion that it is necessary for the proper management of the association's affairs to have an additional member of its committee;
- and the power conferred by sub-paragraph (c) may be exercised notwithstanding that it will cause the maximum number of the committee members permissible under the association's rules to be exceeded.
- (6) A person appointed under paragraph (5) as a member of the committee of a housing association shall be entitled—
- (a) to attend, speak and vote at any general meeting of the association and to receive all notices of and other communications relating to any general meeting which a member of the association is entitled to receive; and
  - (b) to require a general meeting of the association to be convened within 21 days of a request to that effect made in writing to the committee of the association.
- (7) A person appointed to be a member of the committee of a registered housing association under paragraph (5) shall hold office for such period and on such terms as the Department may specify and, on the expiry of any such period, the Department may renew the appointment for such period as it may specify; but nothing in this paragraph shall prevent any such person from retiring from the appointment in accordance with the rules of the association.
- (8) Any member of the committee of a registered housing association or any officer, agent or employee of the association who is ordered by the Department to be removed under paragraph (1)(a) or (4) or suspended under paragraph (1)(b) may appeal against the order to the High Court.
- (9) Before making an order under paragraph (1)(a) or (4) the Department shall give not less than 14 days' notice of its intention to do so—
- (a) to the person whom it intends to remove, and
  - (b) to the registered housing association concerned.
- (10) Any person who contravenes an order under paragraph (1)(c) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5, or to imprisonment for a term not exceeding 3 months, or to both; but no proceedings for an offence punishable under this paragraph shall be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Department.
- (11) As soon as may be after making an order under this Article the Department shall send a copy of the order to the registrar.

## Ref Legislation

### Housing (Northern Ireland) Order 1992

#### I Transfer of land of registered housing associations

26. (1) Where the Department is satisfied, as the result of an inquiry or an audit under Article 23 or 24, that—

- (a) there has been in the administration of a registered housing association any misconduct or mismanagement, or
- (b) the management of the land belonging to any such association would be improved if the land were to be transferred in accordance with this Article,

the Department may direct the association to transfer the land belonging to it to another body in accordance with paragraph (2).

(2) A direction under paragraph (1) may require the association concerned to transfer the land belonging to it,—

- (a) in a case where that association is a charity, to another registered housing association which is a charity and the objects of which appear to the Department to be, as nearly as practicable, akin to those of the association directed to make the transfer; and
- (b) in any other case, to the Department or to another registered housing association.

(3) A transfer in pursuance of a direction under paragraph (1) shall be made on the terms that the Department or, as the case may be, the association to which the land is transferred will pay or undertake to pay to the association making the transfer such sum, if any, as will be necessary to defray all its proper debts and liabilities (including any debts and liabilities secured on the land to be transferred) after taking into account any money or other assets belonging to the association.

(4) If it appears to the Department to be likely that, as a result of a transfer in pursuance of a direction under paragraph (1), the association making the transfer will be dissolved as mentioned in paragraph (a) or paragraph (b) of section 64 of the Act of 1969, the Department shall secure that the costs of such a dissolution are taken into account in determining the sum payable to the association under paragraph (3).

#### J Restrictions on exercise of certain powers of registered housing associations

29. (1) The provisions of this Article apply in relation to a registered housing association, the registration of which by the Department has been recorded by the registrar under Article 18(2), and references in the following provisions of this Article to a registered housing association shall be construed accordingly.

(2) The registrar shall not register a special resolution, as defined in section 59(2) of the Act of 1969, which is passed by a registered housing association for the purposes of section 59 or 60 of that Act (amalgamation of societies and transfer of engagements between societies) unless, together with the copy of the special resolution sent to him as mentioned in section 59(4) of that Act, there is sent a copy of the Department's consent to the amalgamation or transfer concerned.

(3) Section 61 of the Act of 1969 (power of registered society to convert itself into, or to transfer its engagements to, a company registered under the Companies Act 2006) [underlined words substituted by article Schedule 1 Article 2(1) paragraph 138(6)(a) of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009] shall not apply to a registered housing association.

(4) If, in pursuance of section 64(1)(a) of the 1969 Act, a registered housing association resolves by special resolution that it be wound up voluntarily under the Insolvency (Northern Ireland) Order 1989, the resolution has no effect unless—

- (a) before the resolution was passed the Department gave its consent to its passing, and
- (b) a copy of the consent is forwarded to the registrar together with a copy of the resolution required to be so forwarded in accordance with section 64(3) of the 1969 Act. [underlined words substituted by Schedule 1 Article 2(1) paragraph 138(6)(b) of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009]

## Housing (Northern Ireland) Order 1992

- J** (5) If, in pursuance of section 64(1)(b) [underlined words substituted by Schedule 1 Article 2(1) paragraph 138(6)(c) of the Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009] of the Act of 1969, a registered housing association is to be dissolved by an instrument of dissolution, the registrar shall neither register that instrument, as required by section 67(5) of that Act, nor cause notice of the dissolution to be advertised as mentioned in section 67(6) unless, together with the instrument of dissolution required to be sent to him under section 67(4), there is sent a copy of the Department's consent to the making of that instrument.
- (6) Section 9 of the Act of 1969 shall have effect in relation to a registered housing association as if—
- (a) in subsection (1) after the words “shall not be valid” there were inserted the words “without the consent of the Department of the Environment nor” and after paragraph (b) there were inserted the words “and there shall also be sent with the copies of the amendment a copy of the consent of the Department of the Environment under this subsection”; and
- (b) in subsection (2) at the end of the words preceding the paragraphs there were inserted the words “notice of any such change shall be sent to the Department of the Environment and”.
- K** Payments by registered housing associations to members, etc.
30. (1) Subject to paragraph (2), a registered housing association shall not make a gift or pay any sum by way of dividend or bonus—
- (a) to any person who is or has been a member of the association;
- (b) to any person who is a member of the family of any such person as is referred to in sub-paragraph (a); or
- (c) to any company of which a person falling within sub-paragraph (a) or (b) is a director.
- (2) Paragraph (1) does not apply to—
- (a) any sum paid, in accordance with the rules of the association concerned, as interest on capital lent to the association or subscribed by way of shares in the association; or
- (b) any sum which—
- (i) is paid by an association whose rules restrict membership to persons who are tenants or prospective tenants of the association and preclude the granting or assignment of tenancies to persons other than members; and
- (ii) is paid to a person who has ceased to be a member of the association; and
- (iii) is due to that person under his tenancy agreement with the association or under the terms of the agreement under which he became a member of the association.
- (3) The Department may specify the maximum amounts which may be paid by a registered housing association—
- (a) by way of fees or other remuneration or by way of expenses to a member of the association who is not a member of its committee or an officer or employee of the association;
- (b) by way of expenses to a member of its committee who is not an officer or employee of the association; or
- (c) by way of expenses to an officer of the association who does not have a contract of employment with the association.

## Ref Legislation

### Housing (Northern Ireland) Order 1992

- K** (4) Different amounts may be specified under paragraph (3) for different purposes.
- (5) Where a registered housing association—
- (a) pays any sum or makes any gift in breach of paragraph (1); or
- (b) pays to any person a sum which exceeds any maximum amount specified in relation to that person under paragraph (3);
- the sum or, as the case may be, the value of the gift or, in a case falling within sub-paragraph (b), the amount by which the sum exceeds the maximum shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives the association a direction to that effect.
- (6) For the purposes of paragraph (3)(b) and Article 31, a person co-opted by the committee of a registered housing association to serve on the committee (whether he is a member of the association or not) shall be treated as a member of the committee.
- L** Payments and grant of benefits by registered housing associations
31. (1) Subject to paragraph (5), a registered housing association shall not make any payment or grant any benefit to—
- (a) a person who is, or at any time within the relevant period has been, a committee member, officer or employee of the association;
- (b) a close relative of such a person; or
- (c) a business trading for profit in which a person falling within sub-paragraph (a) has a personal interest.
- (2) In paragraph (1)(a), “the relevant period” means the period of 12 months immediately preceding the making of the payment or the grant of the benefit.
- (3) For the purposes of paragraph (1)(c), a person has a personal interest in a business if he, or a close relative of his, either is one of the principal proprietors of the business or is directly concerned with its management.
- (4) Any sum paid, or the value of any benefit granted, by a registered housing association in breach of paragraph (1) shall be recoverable by the association; and proceedings for its recovery shall be taken by the association if the Department gives it a direction to that effect.
- (5) This Article does not apply to—
- (a) any payment made or benefit granted by a registered housing association to an officer or employee under his contract of employment with the association;
- (b) any payment of expenses made by such an association to a member of its committee;
- (c) any payment to which, by virtue of paragraph (2) of Article 30, paragraph (1) of that Article does not apply;
- (d) any payment of expenses to which Article 30(3)(c) applies;
- (e) the grant or renewal of a tenancy of a house; or
- (f) any payment made or benefit granted by a registered housing association in such class or classes of case as may be specified in a determination made by the Department.
- (6) The Department may make different determinations for the purposes of paragraph (5)(f) and, before making such a determination, the Department shall consult such bodies appearing to it to be representative of registered housing associations as it considers appropriate; and after making such a determination the Department shall publish the determination in such manner as it considers appropriate for bringing it to the notice of the associations concerned.



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Ref    Legislation

Housing (NI) Order 2003

- M**    House sales by registered housing associations
131. After Article 3 of the Order of 1983 (house sales scheme) there shall be inserted—
- “House sales by registered housing associations
- 3A. (1) The Department shall make a scheme for registered housing associations to offer for sale or lease to their secure tenants, the dwelling-houses occupied by those tenants.
- (2) A scheme made under paragraph (1) may contain such provision as the Department considers appropriate and, without prejudice to the generality of the foregoing, shall include provision with respect to the matters mentioned in sub-paragraphs (a) to (f) of Article 3(2).
- (3) A scheme made under paragraph (1) may include provision for registered housing associations to offer, in such circumstances as the scheme may provide, to grant equity-sharing leases in relation to dwelling-houses to which the scheme applies.
- (4) Registered housing associations shall comply with a scheme made under paragraph (1).
- (5) The Department may at any time amend a scheme made under paragraph (1) or a scheme replacing any such scheme; and paragraphs (2) to (4) shall have effect in relation to an amended scheme or a scheme replacing an existing scheme as they have effect in relation to a scheme.”

## Annex D – Consultation Response form

You can use this form to respond to the consultation or alternatively you can submit a response as outlined in section 4 of this document.

### Comments on Proposed Changes

Ref	Legislative Ref	Issue	Proposal	Your Comments
A	<b>Housing (Northern Ireland) Order 1992, Article 4(1)(c)</b>	This article gives the power to the Department to “exercise supervision and control over registered housing associations.	<b>Amend</b> article to remove words “supervision and control”. A new article dealing with regulation of the sector will be included.	
B	<b>Housing (Northern Ireland) Order 1992, Article 6(3)</b>	This article gives the power to the Department to guarantee the borrowing of Registered Social Housing Providers.	<b>Amend</b> this article to remove reference to Registered Social Housing Providers. Reference to unregistered associations to remain.	

Ref	Legislative Ref	Issue	Proposal	Your Comments
C	Housing (Northern Ireland) Order 1992, Article 13	This article requires that Registered Social Housing Providers seek the permission of the Department to dispose of land etc. This article was identified by ONS in their decision notification.	<b>Amend</b> article to require Registered Social Housing Providers to notify Department of such disposals. Article should be retained where it refers to unregistered associations	
D	Housing (Northern Ireland) Order 1992, Article 19	This article gives the Department the power to specify the information that must be reported in Registered Social Housing Providers annual accounts.	<b>Amend</b> – In practice reporting requirements are determined by the Financial Reporting Council as set out in statements of recommended practice (SORP)	
E	Housing (Northern Ireland) Order 1992, Article 20	This article provides for enforcement of the requirements set out in Article 19.	This Article would have to be <b>amended</b> to reflect the position with Article 19 and SORP 2014.	
F	Housing (Northern Ireland) Order 1992, Article 21 – 21(c)	Introduced by the Housing (Amendment) Act (NI) 2010, Section 6 this article strengthens the Department's power to monitor Registered Social Housing Providers and is quite wide reaching. To demonstrate less control the section should be reframed.	This section should be <b>amended</b> to reframe the powers to seek information and penalties that are available for non compliance	

Ref	Legislative Ref	Issue	Proposal	Your Comments
G	Housing (Northern Ireland) Order 1992, Article 23	This article gives the Department powers to launch an inquiry into the affairs of a Registered Social Housing Provider. However the circumstances in which the power (paragraph 1) may be deployed are not clarified and may be considered too wide.	<b>Amend</b> paragraph (1) to clarify the meaning of mismanagement	
H	Housing (Northern Ireland) Order 1992, Article 25	This article gives the Department the power to remove, suspend or appoint a person to the Registered Social Housing Provider board. The framing of this article is very wide. This article was identified by ONS in their decision notification	The article should be <b>amended</b> to reflect specific circumstances where this power may be used. As with Article 23 this could mean a clarification of the circumstances in which the Department/Regulator would exercise the intervention powers.	
I	Housing (Northern Ireland) Order 1992, Article 26	This article gives the power to the Department to direct the transfer of land to another body following an inquiry. Again the framing of this article is too wide. This article was identified by ONS in their decision notification.	The article should be <b>amended</b> to reflect specific circumstances where this power may be used. As with Article 23 this could mean a clarification of the circumstances in which the Department/Regulator would exercise the intervention powers	

Ref	Legislative Ref	Issue	Proposal	Your Comments
J	<b>Housing (Northern Ireland) Order 1992, Article 29</b>	This article deals with the power of the Department in relation to voluntary amalgamation, winding up or dissolution of Registered Social Housing Providers. This power was highlighted in the ONS decision on Welsh & Scottish Registered Social Housing Providers.	This article should be amended to limit the power of the Department in this area. Potentially requiring the Registered Social Housing Providers to provide notification of rule changes	
K	<b>Housing (Northern Ireland) Order 1992, Article 30</b>	This article deals with payments by Registered Social Housing Providers to members	This article should be amended to remove the Department's power in relation to setting limits on payments.	
L	<b>Housing (Northern Ireland) Order 1992, Article 31</b>	This article deals with payments and grant of benefits by Registered Social Housing Providers – this includes payment to Board Members	This article should be amended to remove the Department's power in relation to such payments.	

Ref	Legislative Ref	Issue	Proposal	Your Comments
M	<b>Housing (Northern Ireland) Order 1983, Article 3(a)</b>	This article, which was introduced via the Housing (NI) Order 2003, Article 131 introduces a compulsory house sales scheme (right to buy) for Registered Social Housing Providers	This article should be <b>repealed</b> or at a minimum <b>amended</b> to make the scheme voluntary.	

Regulation				
<b>Regulatory Framework</b>	<b>The decision framework applied by ONS also references the government control via regulation. The degree of ‘control’ exercised over Registered Social Housing providers through such administrative measures will also be an important consideration in moving forward.</b>	The Department should review the guidance in support of the regulatory framework to ensure that “control” via regulation is compatible with the decision framework used by ONS.		

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