
Joint Consultation Response Report on Proposals to Seek Reversal of the Reclassification of Registered Housing Associations in Northern Ireland

Consultation 1 issued 8 December 2016

Consultation 2 issued 3 July 2018

Please note this document is available in alternative formats.
For more information e-mail ONS.BillTeam@communities-ni.gov.uk

Contents

Contents.....	3
Glossary & Abbreviations	5
About this booklet	5
1. Introduction	6
Background	6
Consultation Process.....	7
2. Analysis of Responses - Consultation One	9
Introduction	9
Proposal REF A	9
Proposal REF B	10
Proposal REF C	10
Proposal REF D	11
Proposal REF E.....	11
Proposal REF F.....	11
Proposal REF G	12
Proposal REF H.....	13

Proposal REF I	13
Proposal REF J	14
Proposal REF K	14
Proposal REF L.....	15
Proposal REF M.....	15
Proposal Re Regulatory Framework.....	15
3. Analysis of Responses - Consultation Two	17
Introduction	17
Consultation Question 1.....	17
Consultation Question 2.....	17
Consultation Question 3.....	18
Consultation Question 4	18
Consultation Question 5.....	18
4. Additional Issues Raised.....	19
Consultation One	19
Consultation Two	20
5. Conclusion	21

Glossary & Abbreviations

Disposals Proceeds Fund	Fund for capital receipts from sale of properties through the House Sales Scheme
House Sales Scheme	Equivalent to the Right to Buy scheme in England; is compulsory for Registered Housing Associations and the Northern Ireland Housing Executive in Northern Ireland
Registered Housing Association(s)	Term used in legislation for Housing Associations registered with the Department for Communities
Registered Social Housing Provider(s)	Alternative term for Registered Housing Associations
Department for Communities	Referred to in this document as 'the Department'
ONS	Office for National Statistics
RHA	Registered Housing Association
CCNI	Charity Commission for Northern Ireland
NIHE	Northern Ireland Housing Executive

About this booklet

This document reports the findings of both consultations on the proposals to seek reversal of the reclassification of Registered Housing Associations (RHAs) in Northern Ireland and provides analysis of respondents' feedback to the consultation.

1. Introduction

This document reports the findings of both consultations on the proposals to seek reversal of the reclassification of Registered Housing Associations (RHAs) in Northern Ireland and provides analysis of respondents' feedback to the consultation.

Background

The Office for National Statistics (ONS) is the United Kingdom's (UK) largest independent producer of official statistics, and is the recognised national statistics institute for the UK. It is responsible for collecting and publishing statistics relating to the economy, population, and society at national, regional and local levels. The main purpose of the classification system is to provide a foundation for the National Accounts on which the Government bases its fiscal statistics and budgeting rules. ONS independently determines 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, ONS announced that RHAs would be reclassified to the public sector and designated as Public Non-Financial Corporations. This decision means that borrowing drawn down by RHAs to finance new social housing developments would constitute public expenditure and departmental budgets would need to provide cover for this borrowing. The impact would be to either reduce the number of social homes built each year, or reduce allocations to other capital projects to maintain social housing building at current levels.

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

ONS has provided some information on the elements of the legislation it identified as contributing to Government control of RHAs. The covering letter issued by ONS also indicated that the list may not be exhaustive, and for that reason the Department undertook a review of all of the relevant legislation.

Consultation Process

Consultation One: Proposals to seek reversal of the reclassification of Registered Social Housing Providers in Northern Ireland.

The Department published a consultation on the proposals to seek reversal of the reclassification of RHAs in Northern Ireland on 8 December 2016. The consultation ran until 8 February 2017. There were 13 areas of legislation identified for consideration and consultees were invited to provide feedback on each area, either on the response form provided at Annex D of the consultation document, or in another format that they were comfortable with. Consultees were also invited to provide comments on the Regulatory Framework.

Consultees were given the option of providing responses in writing, by post, or email. A document containing a full record of all responses received is available on request.

Although the issue of the House Sales Scheme was not specifically highlighted as an area of control by ONS in its decision on 29 September 2016, the letter did state: “However, please note that this may not be an exhaustive list of all central government controls in place in the current legislation”.

As a result Proposal Ref M, suggesting that the article be repealed or amended to make the scheme voluntary, was included in this first consultation. An analysis of the responses received to this consultation are included in section 2 of this document. The responses received in relation to the House Sales Scheme led the Department to conclude that it should consult further on the issue and engage with stakeholders specifically on the future of the House Sales Scheme.

Consultation Two : Classification of Registered Housing Associations in Northern Ireland: The Future of the House Sales Schemes

This consultation, entitled ‘Classification of Registered Housing Associations in Northern Ireland: Consultation Two – The Future of the House Sales Schemes’ ran from 3 July to 24 September 2018. This dealt solely with the issue of the House Sales Schemes in Northern Ireland (both for RHAs and the Northern Ireland Housing Executive (NIHE)).

During the 12 week consultation period, seven consultation events were held across Northern Ireland in six different locations (two events in Belfast and one in each of the following; Ballymena, Portadown, Londonderry/Derry, Enniskillen and Newry) during July and August 2018.

These public events provided opportunity for stakeholders to hear about the proposals from representatives of the Department, and raise any questions or concerns that they might have in relation to the proposals.

In addition to this, officials from the Department were invited to attend other events organised by stakeholders and other organisations.

An analysis of the responses received to the second consultation are included in section 3 of this document.

2. Analysis of Responses – Consultation One

Introduction

This section of the document provides an analysis of the responses to each consultation proposal, following consideration of the written submissions received.

A total of 14 written responses were received from a range of stakeholders including RHAs, housing professionals, political representatives and financial organisations. It should be noted that not all respondents provided comment on all the proposals outlined in the consultation document. The consultation responses received were in narrative form, with the majority of them detailed in nature.

Proposal REF A

Housing (Northern Ireland) Order 1992, Article 4(1)(c)

Background

This article gives the power to the Department to exercise supervision and control over RHAs. The proposal was to remove the reference to control. A new article setting out the objectives of the Housing Regulator would then be required.

Summary of Responses

Seven responses to this proposal were received – four were in broad agreement, and one disagreed with the proposal. One respondent referred to the need for an independent regulator in their response, and one to the regulatory framework. Some of the comments provided by the respondents included:

- protection of tenants’ and public interest will be an important consideration in the absence of the legislative power to exercise supervision and control
- the Department should ensure that any social housing regulator is explicitly independent, separate from public policy responsibilities and located outside Government
- good performance under each category is equally and jointly essential in ensuring that any social housing provider is operating effectively
- no amendment is required as ONS did not mention this article
- in three of the responses, it was stated that further detail would be needed with regard to the amended article

Proposal REF B

Housing (Northern Ireland) Order 1992, Article 6(3)

Background

This article gives the power to the Department to guarantee the borrowing of RHAs. The proposal was to amend this article to remove reference to RHAs.

Summary of Responses

All six of those who responded to this proposal disagreed with it. In general, it was felt that Article 6(3) did not necessarily represent government control. Some of the comments provided by the respondents included:

- not persuaded that this represents control per se, rather it is a power to support RHAs' businesses. The ability of Government to guarantee RHAs' borrowing represents a valuable safety net for RHAs' borrowers
- loans guarantees were not a concern for ONS in England and it may be useful to retain this provision in statute
- this proposal should be balanced with providing assurance to funders around measures the Department would take under the new regulatory framework in the circumstances of pending failure of an RHA
- ONS did not refer to this in its decision notification

Proposal REF C

Housing (Northern Ireland) Order 1992, Article 13

Background

This article requires that RHAs seek the permission of the Department to dispose of land etc. This article was identified by ONS in its decision notification. The proposal was to amend the article to require RHAs to notify the Department of such disposals.

Summary of Responses

Of the six respondents who addressed this proposal, four were broadly supportive of this proposal, one disagreed, and one other response was unique to that organisation. Some of the comments provided by respondents included:

- agree with the Department's proposed approach and agree it should be retained for unregistered housing associations as this is consistent with England
- agree that this article should be amended and it is suggested that Northern Ireland should follow the example set in England where the consents regime was removed in its entirety (for both registered and deregistered providers, and to both empty and tenanted stock)
- further detail of the new notification process is required
- clarification needed to establish if the proposal covers deeds and recertification of titles

- this article should remain – cannot have a position of public land being handed over to RHAs, and then have no control over what they do with it

Proposal REF D

Housing (Northern Ireland) Order 1992, Article 19

Background

This article gives the Department power to specify the information that must be reported in RHAs' annual accounts. The proposal was to amend this article, as in practice reporting requirements are determined by the Financial Reporting Council as set out in Statements of Recommended Practice.

Summary of Responses

Of the four respondents who addressed this proposal, two were broadly supportive, one disagreed, and one made a comment in relation to other legislation that may be impacted. Some of the comments provided by respondents included:

- agree that this should be amended and should be replaced by regulatory, rather than legislative requirements for RHAs to adhere to the Statement of Recommended Practice
- currently RHAs are required to provide accounts in accordance with the Registered Housing Association (Accounting Requirements) Order (NI) 1993. It is assumed that if Article

19 is removed, this subordinate legislation will also fall

- not mentioned in ONS' decision and it should therefore not be amended, and it is not an issue in practice

Proposal REF E

Housing (Northern Ireland) Order 1992, Article 20

Background

This article provides for enforcement of the requirements set out in Article 19. The proposal was to amend this article to reflect the position with Article 19 and the Statement of Recommended Practice 2014.

Summary of Responses

Of the four respondents who addressed this proposal, three were in agreement, and one disagreed.

- The respondent who disagreed stated that, as it was not mentioned in ONS' decision, it should not be amended, and it was not an issue in practice

Proposal REF F

Housing (Northern Ireland) Order 1992, Article 21-21(c)

Background

This was introduced by the Housing (Amendment) Act (NI) 2010, section 6. The article strengthens the Department's

power to monitor RHAs and is quite wide reaching. The proposal was to reframe the powers to seek information and penalties that are available for non-compliance.

Summary of Responses

Of the four respondents who addressed this proposal, three were in agreement, and one disagreed. The comments provided by respondents included:

- agree with the proposal to reframe the provision, however would wish to see the detail of the proposed changes to ensure funders' interests were not prejudiced or undue weakening of the regulation of the sector
- while it is agreed that this should be amended, the level of control for the Department to request information at any time from an RHA for almost any purpose is wholly inappropriate for independent social businesses. The Department should provide further clarification as to when and how it believes these powers should be exercised

The comment disagreeing with the proposal is outlined below:

- not mentioned in ONS' decision and it should therefore not be amended. If anything these powers need to be strengthened to avoid the possibility of a collapse of an RHA

Proposal REF G

Housing (Northern Ireland) Order 1992, Article 23

Background

This article gives the Department powers to launch an inquiry into the affairs of an RHA. However, the circumstances in which the power may be deployed are not clarified, and may be considered too wide. The proposal was to amend Paragraph (1) to reflect specific circumstances where this power may be used.

Summary of Responses

Respondents were broadly supportive of this proposal with five out of the seven respondents agreeing, and another two making further comments. The comments provided by respondents included:

- the Department's inquiry and intervention powers should be limited and used only where there is a breach or possible breach of legal requirements
- while there may be a case for greater clarity, these are important powers and need to be retained
- opportunity should be taken when reviewing Articles (23 and 25) to consider how these powers sit with the very similar powers of inquiry and removal held by the Charity Commission for Northern Ireland (CCNI) (sections 22 and 33 of the Charities Act (NI) 2008 refer)
- more detailed proposals required
- there should be a right of appeal

Proposal REF H

Housing (Northern Ireland) Order 1992, Article 25

Background

This article gives the Department power to remove, suspend or appoint a person to the RHA's board. As the framing of this article is very wide, the proposal was to amend the article to reflect specific circumstances where the power may be used. As with Article 23, this could mean a clarification of the circumstances in which the Department, in its role as Housing Regulator, would exercise the intervention powers. This article was identified by ONS in its decision notification.

Summary of Responses

There was broad support for this proposal with three out of the six respondents clearly agreeing that Article 25 should be amended, and three respondents made additional comments supporting the need for further clarity. The comments provided by respondents included:

- agree this should be amended and these powers should be limited to cases where there are possible breaches of legal requirements as happens in England
- agree with proposal, and consideration to be given to when the power can be used. Should be framed in such a way to ensure the Housing Regulator can still intervene effectively at the right time before an RHA has failed

- any revised powers should allow government appointed RHA board members, particularly in the case of any future large-scale transfers of NIHE stock. For the purposes of compatibility of reclassification reversal, such appointments should not be in a majority, or have a controlling share
- the role and powers of CCNI needs to be considered
- more detail on this proposal is required

Proposal REF I

Housing (Northern Ireland) Order 1992, Article 26

Background

This article gives the power to the Department to direct the transfer of land to another body following an inquiry. As it is considered that the framing of this article is too wide, it was proposed that it should be amended to reflect specific circumstances where the power may be used. As with Article 23 this could mean clarification of the circumstances in which the Department, in its role as Housing Regulator, would exercise the intervention powers. This article was identified by ONS in its decision notification.

Summary of Responses

Of the five respondents who addressed this proposal, four agreed, and one disagreed. The comments provided by respondents included:

- agree with the proposal, and timely exercise of the power will be necessary to protect tenants and social housing assets, and so consideration of the circumstances in which it could be used should also include the issue of when it could be used. Power should be exercisable before a failure has occurred
- the Department should not be able to direct the transfer of disposal of land even after an inquiry
- if this power is removed then the Department is unlikely to be able to intervene when an RHA gets into trouble

Proposal REF J

Housing (Northern Ireland) Order 1992, Article 29

Background

This article deals with the power of the Department in relation to rule changes and voluntary amalgamation, winding up, or dissolution of RHAs. It was proposed that this article should be amended to limit the power of the Department in this area, potentially requiring the RHAs to provide notifications.

Summary of Responses

A total of five responses were received out of which three agreed with the proposal, and two disagreed. The comments provided by respondents included:

- this power was not mentioned in ONS' decision, and should not be weakened as it will severely restrict the Department's ability to resolve a financial crisis in an RHA
- powers in relation to voluntary amalgamation should be retained as this is relevant to the protection of tenants and the public interest

Proposal REF K

Housing (Northern Ireland) Order 1992, Article 30

Background

This article deals with payments by RHAs to members. It was proposed that this article should be amended to remove the Department's power in relation to setting limits on payments.

Summary of Responses

There was broad support for this proposal with four out of six of the respondents agreeing that the power should be removed. Two respondents disagreed with the proposal. The comments provided by respondents included:

- lifting the restrictions on making payments to members of the RHA is worrying from the perspective of considering the public purse and ensuring public accountability and transparency
- not mentioned in ONS' decision, therefore it should not be amended

Proposal REF L

Housing (Northern Ireland) Order 1992,
Article 31

Background

This article deals with payments and grants of benefits by RHAs – this includes payments to board members. It was proposed to amend this article to remove the Department’s power in relation to such payments.

Summary of Responses

A total of four responses were made with three agreeing with the proposal to amend the Department’s power, and one disagreeing with the proposal. The comments provided by respondents who disagreed were:

- this article should be removed
- not mentioned in ONSs decision, therefore it should not be amended

Proposal REF M

Housing (Northern Ireland) Order 1992,
Article 3(a)

Background

This article, which was introduced via the Housing (NI) Order 2003 Article 131, introduces a compulsory House Sales Scheme for RHAs. It was proposed that this article should be repealed or at a minimum amended to make the scheme voluntary.

Summary of Responses

A total of nine responses were made with eight agreeing with the proposal to repeal or amend, and one making a further comment. Out of the eight who supported the proposal four clearly stated their support for repealing the article. The comments provided by respondents included:

- welcomes this proposal and supports the full repeal of the Right to Buy scheme. The Right to Buy scheme increases pressure on the supply of social housing, running directly counter to the aim of the proposals, which is to ensure that RHAs are able to continue to access private finance and build new homes
- this should be repealed and the right to buy ended, as happened in Scotland
- advocate the removal of a compulsory house sales scheme, to be replaced by a voluntary arrangement
- not applicable to the shared ownership scheme

Proposal Re Regulatory Framework

Background

The decision framework applied by ONS also references the government control via regulation. The degree of control exercised over RHAs through such administrative measures will also

be an important consideration in moving forward. The Department proposed to review the guidance in support of the regulatory framework to ensure control via regulation is compatible with the decision framework used by ONS.

Summary of Responses

A total of four responses were received, three clearly agreed with the proposal, and one posed a further question. The comments provided by respondents included:

- 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.

Any further guidance should be consulted on to ensure it is compatible with reclassification reversal, comprehensive, and includes good practice examples to help promote sector standards

- has the new regulatory framework been assessed against ONS' decision?
- agreed. This review needs to be based on clear policy decisions about the role RHAs are to play in addressing the housing crisis. A default position of seeking to return RHAs to the private sector, as commercial entities, is wrong headed and will not provide decent affordable homes for all. This is evident with the impact of the policy decisions in England where some RHAs are now moving away from social tenants.

3. Analysis of Responses - Consultation Two

Introduction

The second consultation asked a total of five questions. This section of the document provides an analysis of the responses received in relation to those questions. A total of 30 responses to the consultation were received from a range of stakeholders including RHAs, tenants, tenant groups and political parties.

Consultation Question 1

Background

The consultation document set out the background and outlined the options available, Consultees were asked which of the three options they preferred.

- Option 1: Do nothing
- Option 2: End the House Sales Scheme only for Registered Housing Association tenants
- Option 3: End the House Sales Schemes for all – Registered Housing Association and Northern Ireland Housing Executive tenants

Summary of Responses

A total of 30 responses were received in relation to this consultation, of which 27 responded directly to this question.

The majority of consultees (18) were in favour of Option 3, to end the House Sales Schemes for all social housing tenants. It is of note that these responses came mainly from housing associations and tenant forum groups.

Six consultees indicated Option 1 as their preferred option. In the majority of cases, these consultees were identified as being tenants, although it should be noted that it was not distinguishable as to whether they were RHA or NIHE tenants. Only one consultee indicated Option 2 as their preferred option.

Five consultees did not express a preference, however they provided general comments. A summary of general comments, including those outside the scope of the consultation, is in the section following the analysis of responses.

Consultation Question 2

Background

The document sought the views of consultees on the introduction of transitional arrangements in relation to ending the House Sales Scheme for Options 2 & 3.

Summary of Responses

The majority of consultees (21) were in favour of the development of transitional arrangements. Three consultees were not in favour of a transitional period, and six did not answer the question.

15 of the 21 who were in favour of transitional arrangements had given Option 3 to the first question as their preferred option. Two of the three who were not in favour of transitional arrangements had answered Option 1 to the first question.

Consultation Question 3

Background

Consultees were asked what they thought the minimum period the transitional arrangement should remain in place.

Summary of Responses

Of the 30 responses received, only 18 consultees specified a minimum period for transitional arrangements. The suggested minimum period ranged from nine months to ten years, however the majority of consultees (14) suggested a 1-2 year transitional period.

Consultation Question 4

Background

An EQIA was published as part of the consultation document and consultees were asked if they agreed with the assessment of impact as outlined in the document?

Summary of Responses

Of the 30 responses received, 11 consultees agreed with the assessment, four did not agree with the draft Equality Impact Assessment, nine did not answer the question and the remaining six provided other comments. A summary of general comments is in the section following the analysis of responses.

Consultation Question 5

Background

Consultees were asked if they had any other pieces of evidence relevant to the future of the House Sales Schemes they would like us to consider?

Summary of Responses

Generally this question was unanswered, or comments were given that did not relate to the Equality Impact Assessment. A summary of the general comments has been included in the following section.

4. Additional Issues Raised

Consultation One

A number of further comments were made by respondents in addition to those already covered above. These have been analysed and will be considered further throughout the development of the amended legislation after further engagement with stakeholders where necessary. Examples of the additional comments are outlined below:

- would not want to see the removal or reform of existing key powers to the extent that the regulator could no longer effectively intervene.
- all consents within the regulatory regime should be replaced with notifications. One respondent went on to say that they would not support a half way measure whereby powers are reserved so that the department can intervene in exceptional circumstances.
- RHAs should be able to carry out all procurement activity in the manner they deem most appropriate within EU legislation and UK regulations.
- Section 8 of the Housing (Amendment) Act (NI) 2010 outlines state control, which should be modified and limited to where there are possible breaches of legal requirements.
- the Disposals Proceed Fund should be removed and RHAs given discretion over how to use the funds for sales.
- Article 11 of the 1992 Housing Order enables the Department to issue guidance to RHAs on the management of housing accommodation and, when exercising its supervisory powers, to have regard to the extent to which the guidance has been followed by associations. The power to direct the housing management function of a housing association is intervention in the corporate policy making of the organisation. The Tenants' Guarantee is issued under this legislation. This article should be considered for amendment.
- the Department should consider its role in relation to easements and wayleaves.
- there is no clear rationale why the Department is going beyond the issues highlighted by ONS – out of the 13 changes proposed by the Department, only four appear to have been specifically mentioned by ONS.
- Article 15 of the 1992 Order is not referenced in the consultation. It is part of the eligibility requirements for registration as an RHA; however it also includes information on the powers of the RHA. It should be for the RHAs Board to specify its powers and objects, not the Housing Regulator.

A number of comments were received that were not covered by the consultation and are considered to be outside the scope of the reclassification of ONSs decision.

Examples of these are outlined below:

- houses should continue to be allocated on the basis of housing need and applicants taken off NIHE's waiting lists
- confirmation that the stock transfer programme currently being facilitated by NIHE is also on hold pending the re-establishment of the Assembly
- a number of the proposed changes reinforce the absolute necessity to retain NIHE as a public accountable housing authority

Consultation Two

In addition to answering the five questions, and in some cases as an alternative, consultees provided comments to the consultation document, however these were deemed to be outside the scope of Consultation Two

- Reference was made to the possible introduction of a voluntary house sales scheme in Northern Ireland. Responses were received from those in favour, and also those against the introduction of such a scheme.
- A few consultees made reference to depleting housing stock levels. The existence of the House Sales Scheme was given as a reason for

the depletion. Other factors cited for the depletion in stock levels included the lack of investment, the inability to rehouse tenants in unsuitable dwellings

- Reference was made by a few consultees to the new research project 'Rethinking Social Housing in NI', which covers the House Sales Scheme and recommends ending it for all social housing tenants in NI.
- Comment was made that research showed that a high proportion of former social housing has been transferred to the private rental sector. Similar comments voiced concern that aspiration to become home owners was not the main motivation of people who purchased their home, but rather a commercial one i.e. to rent out the property rather than living in it themselves.
- Comment was made that a reduction in availability of social housing stock has left those in housing need with no other option than to go to the private rent sector, which is often not an affordable option.
- It was highlighted that during a period of such housing stress, it was unreasonable to continue to offer social homes for sale with such a significant discount.

It should be noted that the above list were the most common comments made in response to the consultation, however there were additional, general comments made by consultees that have not been included here.

5. Conclusion

The Department is pleased to note that the responses to the proposals outlined in the consultation to seek reversal of the reclassification of RHAs in Northern Ireland, have been broadly supportive of the need to reverse the reclassification decision, and the implications for the RHAs and the Northern Ireland Executive budget if the Department is not successful in doing so.

The Department is grateful for the responses received.

Available in alternative formats.

© Crown Copyright 2020