Oireachtas Library & Research Service
Seirbhís Leabharlainne & Taighde an Oireachtais
Houses of the Oireachtas
Tithe an Oireachtais

L&RS Note

Regulation of Approved Housing Bodies in Ireland

Shane Burke, Senior Researcher
(Public Administration)

16 October 2018

Abstract

This *Note* provides an overview of the Approved Housing Bodies (AHB) sector. It looks at the regulatory environment and changes affecting the sector, including the recent reclassification of AHBs by Eurostat, so that borrowings by AHBs are added to the Government balance sheet. The *Note* provides information on stakeholder reaction to this reclassification and looks at how a similar reclassification was reversed in England. The *Note* also considers key policy challenges affecting the sector and policy issues arising from proposals for statutory regulation. The *Note* is published alongside a report provided by Benefacts and commissioned by the L&RS.

Contents

Introduction

Approved Housing Bodies (AHBs) (also called housing associations or voluntary housing associations) are independent, not-for-profit housing bodies which have met criteria for approval by the Department of Housing, Planning and Local Government (hereafter the Department).[1]

The then Government's 2011 *Housing Policy Statement* highlighted the importance of AHBs in the provision of social housing in Ireland, stating that AHBs are uniquely placed to help overcome segregation in housing.

This importance was again emphasised in *Social Housing Strategy 2020* (under Pillar 1 of the strategy, AHBs are envisaged as one of two primary delivery channels) and the Government's Housing and Homelessness Action plan *Rebuilding Ireland* (which states that AHBs will be a collaborative partner along with local authorities (LAs), the National Treasury Management Agency (NTMA) and the private sector).

The Department of Housing, Planning and Local Government states:[2]

> "It is estimated that AHBs have the capacity to contribute around a third of the 47,000 new social housing units that are targeted over the period to 2021 using a range of delivery methods."

The Government plans to introduce a statutory regulatory framework for the AHB sector. This *Note* provides an overview of the sector, including the current regulatory environment and the reclassification of AHBs by Eurostat, so that borrowings by AHBs are put on the Government balance sheet. The *Note* also considers existing challenges in the sector and policy issues arising from proposals for statutory regulation.

The L&RS commissioned a report by Benefacts, the data from which is included in this *Note*. The report has been published alongside this *Note* and can be accessed here.

This *Note* is structured as follows:

- Profile of the sector
- Current regulation
- Classification and international debate on classification
- Proposed legislation - Regulation of Housing Providers Bill
- Key policy issues
- Conclusion

[1] AHBs consist mainly of voluntary or co-operative organisations registered under the Companies Acts, societies registered under the Industrial and Provident Societies Acts, and/or trusts incorporated under the Charities Acts.
[2] Department of Housing, Planning and Local Government. Frequently Asked Questions. Accessed on 23/04/18 at http://www.housing.gov.ie/sites/default/files/publications/files/faqs_social_housing_project_list.pdf

Profile of the sector

There are 548 Approved Housing Bodies (AHBs) in Ireland[3] managing about 30,000 units. Less than half of these (254 AHBs) are regulated under a voluntary code, however these organisations manage ninety per cent of social housing units within the sector.[4] The voluntary code designates AHBs by 'Tier', depending on their size. Tier 1 refers to AHBs with 0-50 units, Tier 2 refers to AHBs with 50-300 units and Tier 3 refers to AHBs with more than 300 units (see Table 3 for more information regarding Tiers). Table 1 shows the top ten local authority areas by concentration of AHBs. The Housing Agency Regulation Office[5] (2017) notes that while there are a large number of AHBs, many are managing a small number of properties. For instance, Tier 1 AHBs manage an average of 17 units each, while Tier 2 AHBs manage an average of 88 units each and Tier 3 AHBs manage an average of 1,243 units each. A full analysis of AHBs by county is available in the Benefacts' data which accompanies this *Note*.

Table 1: Top ten local authority areas by concentration of operating AHBs.

Local Authority	No. of units	No. of AHBs in LA area	Average No. of units per AHB per LA
Dublin City	5,957	44	135
Limerick City & County	1,347	34	40
Cork County	2,007	26	77
Dún Laoighaire - Rathdown	1,232	25	49
Kildare	1,175	24	49
Tipperary	1,096	24	46
Kilkenny	580	24	24
Cork City	1,168	23	51
South Dublin	2,126	20	106
Fingal	1,410	19	74
Total	18,098	263	651

Source: Housing Agency Regulation Office (2017): 2016 Annual report and Sectoral Analysis

3 Department of Housing, Planning and Local Government. (2018). Register of Housing Bodies with Approved Status Under Section 6 of the Housing Act 1992.

4 Housing Agency Regulation Office. (2017). The Regulation of Approved Housing Bodies in Ireland: 2016 Annual Report and Sectoral Analysis. Accessed on 7 June 2017 at https://www.housingagency.ie/Regulation/Communications/Regulation-Office,-Housing-Agency-Annual-Report-Se.pdf

5 The Regulation Office, which operates within the Housing Agency, is responsible for the regulation of Approved Housing Bodies (AHBs) on an interim basis.

Employees

Volunteers play an important role in the running of AHBs, especially in the case of Tier 1 AHBs.[6] Tier 1 AHBs manage 2,215 homes, or 8% of the regulated stock.

Analysis commissioned by the Oireachtas L&RS and conducted by Benefacts,[7] shows that cumulatively, Tier 3 has the lowest number of employees, despite having the largest asset base. Benefacts notes that Tier 1 and 2 have cumulatively more employees because these Tiers include large organisations whose remit extends beyond providing housing, and many of their employees would be engaged in other activities.. For instance in Tier 1, DePaul Ireland and St. Aidan's Day Care account for 15% of all employment in this Tier, while in Tier 2 organisations, the Irish Wheelchair Association represents 25% of Tier 2 employees and 11% are accounted for by the Cope Foundation.

All Tier 3 AHBs, analysed by Benefacts, had paid employees, while only 80% of Tier 2 AHBs had paid employees. Among Tier 1 AHBs, 49% had paid employees, while for those that are not signed up to the VRC, 45% have paid employees.

Table 2: Summary of available employee and payroll data

Tier	Number of entities	AHBs with no payroll or employee details	% of Tier with no paid employees	AHBs with payroll or employee details	% of Tier with paid employees
Tier 1	175	89	51%	86	49%
Tier 2	52	11	21%	41	79%
Tier 3	15	-	-	15	100%
Have not signed up to the voluntary code	200	111	56%	89	45%
Total	442	211	48%	231	52%

Source: Benefacts (2018)

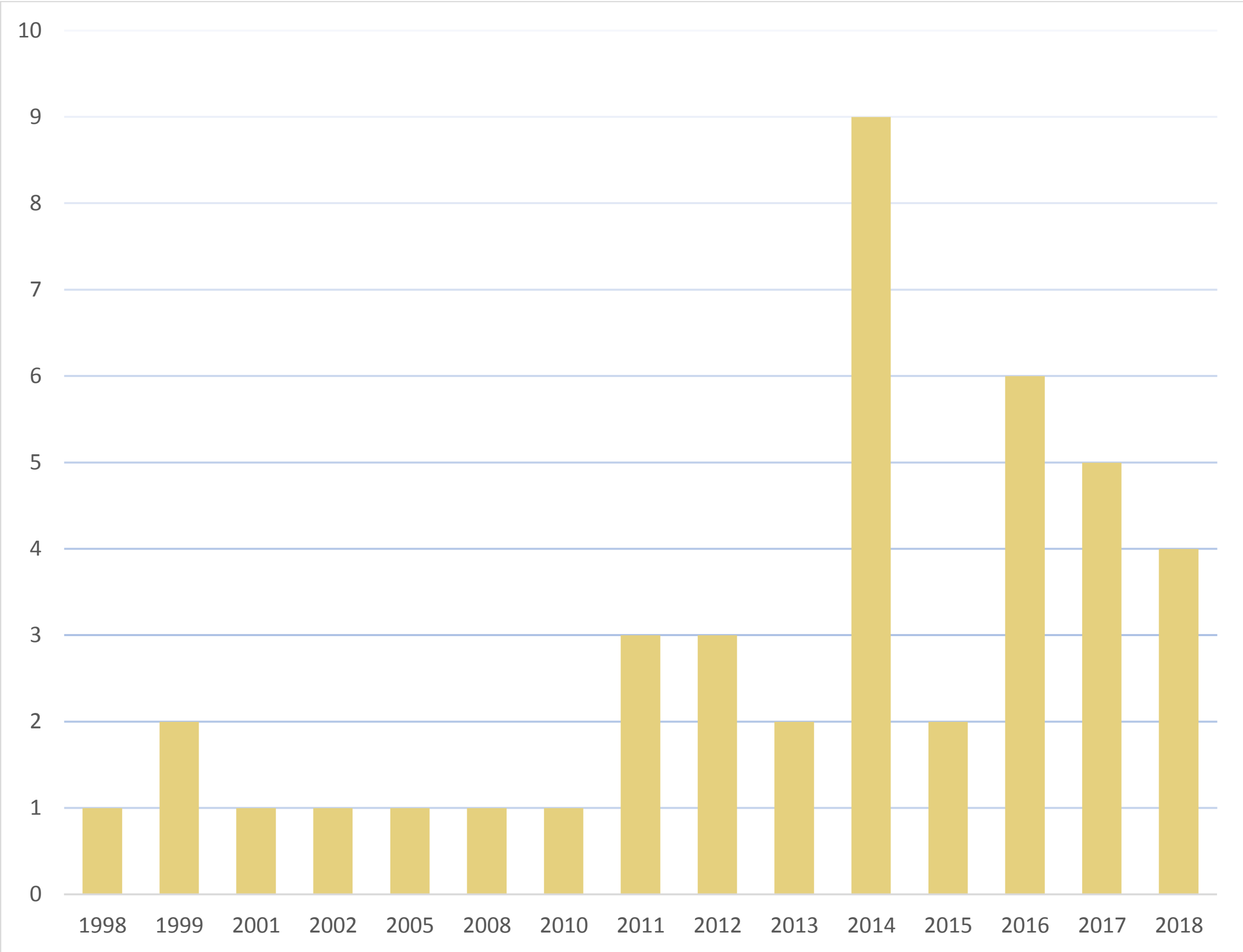
[6] Housing Agency. (2016). The Regulation of Approved Housing Bodies in Ireland: 2015 Annual Report and Sectoral Analysis. Accessed on 7 June 2017 at https://www.housingagency.ie/Housing/media/Media/AHB%20Regulation/Regulation-Office-2015-Annual-Report-FINAL.pdf

[7] Benefacts is a non-governmental organisation that provides free public access to extensive information about the nonprofit sector in Ireland.

Dissolved AHBs

Analysis provided to the L&RS by Benefacts shows, in Figure 1, that there are 42 AHBs on the Department of Housing, Planning and Local Government listing which are dissolved or struck off. None of these are signed up to the Voluntary Regulation Code (VRC). The largest number of AHBs was dissolved/struck off in 2014 and 50% of AHBs were struck off from 2014-2018.

Figure 1: AHBs by year dissolved/struck off from 1998 – 2018*



***Year to date**

Source: Benefacts (2018)

Funding of AHBs

Until recently, AHB building projects have been 100% and 95% funded by the Exchequer through the Capital Loan and Subsidy Scheme (CLSS), which was secured by way of mortgage, and the Capital Assistance Scheme (CAS), which was also secured by way of mortgage and aimed at housing for people with specific categories of need. However, this grant funded model has been replaced with increased use of loan finance. The Capital Advance Leasing Facility (CALF) was launched in 2011. Under CALF the State will fund 30% of AHBs' project costs, with the remainder provided by either private finance or the Housing Finance Agency[8] (HFA).[9]

As a result of these new funding arrangements, private finance is now lending to the voluntary housing sector, although, according to the European Investment Bank (2014):

> "…its scale and terms is still very limited, with only a handful of loans disbursed to just a few of the larger AHBs."[10]

The Local Government Audit Service in the Department of Housing, Planning and Local Government, published a report in 2015[11] which looked at the oversight role of local authorities in the provision of social housing by AHBs. The report found that cumulative from 2008 to 2014: €17,620,995 loan capital was advanced to AHBs by local authorities under CALF; while €19,491,949 was recouped to local authorities under annual P&A payments.

---

8 The HFA is a state owned company which provides loan finance to local authorities and voluntary housing bodies for housing and related purposes.

9 Irish Council for Social Housing. (2014). *Enabling the Delivery of Social Housing in Ireland*. Accessed on 22/05/17 at https://www.icsh.ie/sites/default/files/attach/icsh-news/861/enabling_the_delivery_of_social_housing_in_ireland_-_full_report_october_2014.pdf

10 European Investment Bank (2014). *Social Housing and Energy Efficiency in Ireland: Fund Structuring Services: Final Report for the Department of Public Expenditure and Reform.* Accessed on 22/05/17 at http://www.google.ie/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwihxOWO1YPUAhXsDMAKHSqEA7QQFgghMAA&url=http%3A%2F%2Fwww.per.gov.ie%2Fwp-content%2Fuploads%2FEIB-Report-on-Financial-Instruments-and-Social-Housing.pdf&usg=AFQjCNE5lWI9kUw1_Vse0zeA8dNumXmacQ

11 Department of Housing, Planning, Community and Local Government. (2015). Local Government Audit Service - The oversight role of local authorities in the provision of social housing by Approved Housing Bodies. Accessed on 09/05/18. at http://www.housing.gov.ie/sites/default/files/publications/files/vfm_report_no._29_-

Regulatory environment

At present AHBs have regulatory and compliance requirements with a number of bodies, such as:[12]

- Residential Tenancies Board (RTB) – AHBs must register their tenancies with the RTB.
- Local Authorities – LAs have responsibility for determining demand, suitability of development locations and contracts with AHBs.
- Health Information and Quality Authority (HIQA) – HIQA has a role in inspecting social care services which are provided by some AHBs.
- Charities Regulatory Authority (CRA) – as most AHBs are registered charities they must comply with the CRA.

Voluntary Regulation Code

In 2013, the then Department of Environment, Community and Local Government published *Building for the Future* which outlined a new Voluntary Regulation Code (VRC) (drafted in consultation with stakeholders), whereby AHBs could sign up to voluntary regulation and oversight. In this document, the Department refer to the VRC as a "stepping stone" to legally binding statutory regulation.

The VRC is proportional - there are different requirements placed on larger AHBs than smaller ones. The code describes three 'Tiers' of AHBs. AHBs can self-select which tier they belong to. It was envisaged that by signing up to the VRC, an AHB would have an opportunity to influence the final regulatory framework, as:[13]

> "Experiences gained in implementing the VRC will form the evidence base for the statutory framework, so this is a key opportunity for AHBs to get involved in a process that will have a profound effect on their future."

[12] Housing Agency Regulation Office. (2017). The Regulation of Approved Housing Bodies in Ireland: 2016 Annual Report and Sectoral Analysis. Accessed on 7 June 2017 at https://www.housingagency.ie/Regulation/Communications/Regulation-Office,-Housing-Agency-Annual-Report-Se.pdf

[13] Department of the Environment, Community and Local Government (2013): Building for the Future, A Voluntary Regulation Code for Approved Housing Bodies in Ireland. Accessed on 09/05/18 at https://www.housingagency.ie/Regulation/The-Code.pdf

Table 3: Description of Tiers 1 - 3

Tier	Description
Tier 1 Small AHBs with 0 - 50 units without development plans for more units. (There are 159 Tier 1 AHBs according to the Housing Agency Annual report 2016).	AHBs in Tier 1 have developed and completed projects, have housing units in management and have no further development plans.
Tier 2 AHBs with between 50 and 300 units and/or with development plans in place to provide more units. (There are 56 Tier 2 AHBs according to the Housing Agency Annual report 2016).	These AHBs have portfolios of between 50 - 300 units **and/or** have plans to develop new housing as part of their strategy in future in addition to the existing housing they manage. Tier 2 will also include those AHBs with less than 300 units that are applying for, or are in receipt of loans from the Housing Finance Agency, private finance or from other sources.
Tier 3 All AHBs with more than 300 Units. (There are 17 Tier 3 AHBs according to the Housing Agency Annual report 2016).	These AHBs include those larger bodies with more than 300 units and any Tier 2 organisations whose development plans are particularly sizable.

Source: Department of the Environment, Community and Local Government (2013)

Regulation Office

In 2014, the Department of Housing, Planning, Community and Local Government established an interim Regulation Committee (iRC), operating under the Housing Agency, to oversee the implementation of the VRC and to advise on statutory regulation. The Regulation Office, based in the Housing Agency, reports to the interim Regulation Committee.

The Regulation Office assesses AHBs on the basis of data provided under the Regulatory Framework. There are three categories within the framework: Governance, Performance Management and Financial Viability.

Box 1: Data which is reviewed by the Regulation Office under the Regulatory Framework

1. Governance	2. Performance Management	3. Financial Viability
• Fully functioning board • Established roles and responsibilities • Minimum 5 board members • Minimum 4 meetings per year • Board policies and procedures • Compliance and legislation	• Performance indicators • Tenant service policies • Repairs and maintenance • Process and procedures • Regular and effective communication processes	• Financial management • Audited financial statements • Sinking fund • Risk register • Strategic plans • Financial plans

Source: Housing Agency Regulation Office 2015 Annual Report

The Financial Standard

The Financial Standard, launched in 2015, is applicable, on a phased basis, to all AHBs who sign up to the Code, beginning with Tier 3 AHBs. It is estimated that the Financial Standard will apply to all AHBs by the end of 2018.[14] There are six objectives of the Financial Standard:

1. To provide the Regulation Office and AHBs with the earliest possible warnings of emerging risks.

2. To detail the financial governance and management disciplines which will support AHBs in delivering their services.

3. To monitor key financial ratios such as current ratios, interest cover, gearing[15] etc.

4. To provide a basis from which summarised aggregated data for the sector can be developed which will result in important sector-wide information.

5. To build the confidence of funders and other stakeholders that the Regulatory process has appropriate oversight.

6. To safeguard long-term viability of housing assets in the interest of tenants and residents.

The Housing Agency Regulation Office has also launched the Governance Standard which sets out six core principles of good governance. If an organisation does not meet a requirement of this Standard it either "must" or "should", depending on that particular requirement, provide an explanation to the Regulation Office.

[14] Housing Agency. (2015). The Financial Standard. Available from https://www.housingagency.ie/getattachment/Our-Publications/Latest-Publications/2015-Financial-Standard-and-Assessment-Framework.pdf
[15] In financial terms gearing means borrowing money to buy more assets. A gearing ratio represents the proportion of debt to equity.

The Office is planning to launch a **Service Performance Standard** later in 2018. The Regulation Office states that this standard will:[16]

> "…detail what is expected of each AHB in relation to the asset management systems and policies and procedures by which tenants and their homes are protected."

Incentives to sign up to regulation

Since 1st January 2017 only AHBs that have undergone assessment by the Regulation Office and can demonstrate commitment to the VRC and Financial Standard and Assessment Framework will be considered eligible for funding by the Department. [17]

As of 15 November 2016, 243 AHBs had signed up to the voluntary code, representing 90% of all voluntary housing stock.[18] A list of organisations which have signed up to the VRC can be accessed here.[19]

---

[16] Housing Agency Regulation Office. (2017). The Regulation of Approved Housing Bodies in Ireland: 2016 Annual Report and Sectoral Analysis. Accessed on 7 June 2017 at https://www.housingagency.ie/Regulation/Communications/Regulation-Office,-Housing-Agency-Annual-Report-Se.pdf

[17] Housing Agency Regulation Office. (2016). 2015 Annual Report and Sectoral Analysis.

[18] PQ, 35065/16.

[19] Housing Agency. (2018). A-Z Organisation Listing. Accessed on 09/05/18 at https://www.housingagency.ie/Regulation/AHBs-Signed-Up-to-Voluntary-Regulation/A-Z-Organisation-Listing

Classification and the international debate

On 2nd March 2018 Eurostat published a letter expressing its view in relation to the classification of the AHB sector,[20] which is that AHBs are "…ultimately controlled by Government…" and would therefore be classified as "General Government Sector",[21] (i.e. bodies that are directly or indirectly controlled by a Government department or office, or local authority and are non-market producers).

NESC's 2014 *Social Housing at a Crossroads*[22] explains how Eurostat define the "general-government sector" and the "corporations' sector":

> "The general-government sector is defined by Eurostat as all institutional units engaged in either the production of *non-market* output financed by taxation or the redistribution of income or wealth. Publicly owned corporations engaged in market activity (like the ESB or Coillte) are in the corporations' sector rather than general government."

Previously, AHBs in Ireland were classified by Eurostat as "non-profit institutions serving households" (NPISH) in their Institutional Sector Accounts. This meant that they were considered to be both non-market and under *private* control. General government, on the other hand, are non-market and under *public* control. The extent to which AHBs come under public control was therefore a key consideration in Eurostat making their decision.

The Eurostat reclassification will mean that all borrowings by AHBs will add to general government debt. The Oireachtas Parliamentary Budget Office (PBO) Overview of the Stability Programme Update 2018 states that the reclassification of AHBs increases government Gross Fixed Capital Formation (GFCF) by €600 million.[23]

The decision to reclassify AHBs in the Institutional Sector Accounts was based on analysis provided by the Central Statistics Office (CSO) (requested by Eurostat), which assessed Tier 3 AHBs (these are AHBs with more than 300 units, approximately 80% of AHB housing stock). As such, Eurostat's classification refers to Tier 3 AHBs only. The CSO will commence its review of the remaining sector in late 2018.

In order to make its assessment, Eurostat considered the following information, which was provided by the CSO:

- AHB classification cover letter to Eurostat;
- summary of Financial Schemes for Provision of Social Housing, containing the background information on all types of agreement in operation for social housing provision;

[20] The full letter may be accessed at this link: http://ec.europa.eu/eurostat/documents/1015035/8683865/Advice-2018-IE-Sector-classification-Approved-Housing-Bodies.pdf/4813b7be-a51b-4952-bbb2-46906aacbbdd
[21] Definition of General Government Sector can be found here.
[22] National Economic and Social Council (NESC). (2014). Social Housing at the Crossroads: Possibilities for Investment, Provision and Cost Rental. Accessed on 09/05/18 at http://files.nesc.ie/nesc_reports/en/138_Social_Housing.pdf
[23] Parliamentary Budget Office. (2018). Overview of the Stability Programme Update 2018.

- sources of capital funding of AHBs; and
- an assessment file consisting of the individual assessment of 15 AHBs.

Some of these documents can be accessed from the CSO website.[24]

Eurostat outlined the following reasons why they arrived at this decision. Noting that AHBs have access to capital funding by entering into contractual agreements with government, Eurostat regard the following as evidence that government does control AHBs via these agreements:

- a local authority can nominate 75% or more of tenants (depending on the scheme);
- government can/does provide guidance on rent setting;
- there is government guidance on design and construction (in case of CAS and CLSS schemes);
- the level of financing provided under contractual agreements brings the expenditure on construction by AHBs within the scope of public procurement policy (CLSS, CAS);
- for a voluntary housing body to retain its AHB status, its assets must be directed to the relief of housing needs. Eurostat argue that it is debatable, therefore, whether the transfer of assets under the CLSS and CAS would be unconditional; and
- government seeks to protect tenants by prohibiting commercial activity and risk taking where it is considered that these may adversely affect the AHB's housing activity.

This led Eurostat to conclude:

> "…as explained by the Irish statistical authorities, it may be seen that government, in setting the conditions around the design and construction of the assets, their involvement in rent setting and their constraints on commercial activity by the AHB, is acting in the role of landlord, with the AHB as agent."

Reactions to the March 2018 Eurostat decision

The *Irish Times* reported that a number of AHBs such as Respond!, Clúid and Circle Housing have stated that this reclassification is the most significant issue to face the sector in many years and will result in a reduction of social housing output.[25]

A number of stakeholders have suggested that Eurostat's decision to classify AHBs as government sector may reduce the supply of social housing, as AHBs compete against other areas of spending within the "fiscal space". However, the Minister for Housing, Planning and Local Government, Mr. Eoghan Murphy, T.D. has stated that the decision will not impede the delivery of social housing.

[24] Central Statistics Office - Classification of Approved Housing Bodies. Accessed on 17/05/18 at http://www.cso.ie/en/methods/governmentaccounts/classificationdecisions/classificationofapprovedhousingbodies/
[25] Irish Times. (2018). Eurostat move will not curb social housing, Eoghan Murphy vows.

He pointed out that most lending to AHBs has been through the Housing Finance Agency (HFA), which is already on the State's balance sheet.[26]

While the impact of Eurostat's decision is expected to be limited in the short term, the longer term effects could be more pronounced. For instance, the 2016 annual report from the Regulation Office projects that loans by Tier 3 AHBs (the largest, in terms of accommodation units) will grow from a projected €755 million in 2017 to €1.15BN (cumulative) in 2018. This debt will go on the State's balance sheet. The decision may also lead to government oversight of all AHBs borrowings.[27] Commenting on the decision to categorise housing associations in England as public bodies (see Box 2), the Northern Ireland Federation of Housing Associations stated:[28]

> "Potentially it could lead to more government oversight of all housing association borrowing. Housing associations would no longer be able to act independently and have control over financial decision-making."

John Hannigan, CEO of Circle Voluntary Housing Association, has stated that the reclassification by Eurostat will hinder AHBs' ability to deliver the 15,000 units envisioned by *Rebuilding Ireland*, calculating that this will require €3.375 billion of Government debt. Mr. Hannigan highlighted the following possible outcomes resulting from the reclassification:[29]

- The non-delivery of a substantial element of the *Rebuilding Ireland* targets.
- Reduction in work of AHBs as voluntary, socially focused not-for-profit bodies.
- Exclusive reliance on the Exchequer for funding for Social Housing.
- Less incentive for private finance providers to invest in the sector, leading to almost exclusive reliance on the private sector (profit based) to deliver the scale required.

Box two presents a case study of recent development in the UK, which provide an interesting insight into the response of the government there to the reclassification of housing bodies.

[26] Irish Times. (2017). Minister promises to protect funding for housing associations. Accessed on 17/05/18 at https://www.irishtimes.com/business/construction/minister-promises-to-protect-funding-for-housing-associations-1.3335651

[27] As noted by Economic consultant Mr. Rafique Mottiar in Cloud on the Horizon – the potential impact of the Eurostat reclassification on Social Housing Provision in Ireland at a conference by Public Affairs Ireland on 24 May 2018.

[28] As cited in Northern Ireland Assembly, Research and Information Service (RaISE). (2016). The re-classification of Housing Associations in England – implications for Northern Ireland.

[29] Presentation, titled *Delivering new homes in partnership with Government –Overcoming the classification clouds* at a conference by Public Affairs Ireland on 24 May 2018.

Box 2: Case study - statistical treatment of housing associations in the UK

In October 2015, the Office for National Statistics (ONS) in the UK determined that "Private registered providers" (including most housing associations) in England would be reclassified from Private to Public Non-Financial Corporations for the purposes of the UK National Accounts.[30] The reclassification applied from 22 July 2008. In October 2016, following a review, the ONS also decided that housing associations in Scotland, Wales and Northern Ireland would be classified as public bodies. [31] This reclassification was implemented in public sector finances (PSF) in January 2017. The classifications applied in Scotland from 18 July 2001, in Northern Ireland from 15 July 1992 and in Wales from 24 July 1996.

The UK Government introduced legislation in response to this classification. The *Housing and Planning Act 2016* came into force on 6 April 2017 and, as stated by the then Minister for Housing and Planning (Mr. Alok Sharma): "…removed the majority of controls that the ONS highlighted as a concern."[32] The 2016 Act was used to introduce regulations which the ONS decided, if implemented, would no longer classify housing associations as public bodies:[33]

> "Having carried out an assessment on the additional information, ONS has determined that if the proposed regulations come into force as proposed then local authority and central government influence in combination with the existence of nomination agreements would not constitute public sector control, and English PRPs would be reclassified as Private Non-Financial Corporations (S.11002)."

The Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017 dealt with the control of local authorities over housing associations and came into force on 16 November 2017. The provisions of these regulations included limiting a local authority to directly appointing up to 24% of board membership of a housing association, as well as removing the ability of a local authority to have shareholding membership in a housing association.[34] Introducing the Regulations, the Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office, Lord Bourne of Aberystwyth said that the Government had a:

> "…clear objective to remove this borrowing from the public accounts to enable housing associations to get on and build."

The ONS reclassified housing associations, in England, as private bodies on this same date. The significance of this announcement, according to National Housing Federation (a representative group of housing associations in England) is that, had the change not been made:

> "…it is likely that the Government would have limited the amount of money the sector could borrow, in the way it does for local authorities… [which] would almost certainly have reduced their ability to build new affordable homes."

[30] Northern Ireland Assembly, Research and Information Service (RaISE). (2016). The re-classification of Housing Associations in England – implications for Northern Ireland.
[31] Office for National Statistics. (UK). National Accounts articles: Methods article on the implementation of the reclassification of English housing associations and other classification decisions. Accessed on 11 July 2018 at https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/articles/nationalaccountsarticles/reclassificationofenglishhousingassociationsandotherclassificationdecisions
[32] UK Parliament. (2017). Draft Regulation of Social Housing (Influence of Local Authorities) (England) Regulations 2017.
[33] Letter from the Office for National Statistics, 31 August 2017.
[34] House of Lords 07 November 2017.

Housing (Regulation of Approved Housing Bodies) Bill

In 2015, the Department published the General Scheme of the *Housing (Regulation of Approved Housing Bodies) Bill 2015,* the primary purpose of which, as described, is to provide for the establishment of a regulatory framework for AHBs. [35]

The Housing Agency describes several reasons for regulation of the voluntary housing sector, such as to:[36]

- "Provide assurance to tenants, Boards, Government and potential investors that the AHB sector is stable and well-regulated;
- Safeguard public investment in the sector;
- Encourage private investment in the sector;
- Encourage long-term strategic thinking and facilitate collaboration, alliances and mergers within the sector;
- Help AHBs to manage risk and to focus on achieving best outcomes for tenants;
- Protect and advance the rights of existing and future AHB tenants in terms of openness and accountability;
- Demonstrate that the Government is delivering on its key housing policies and priorities; and
- Contribute to the overall sustainability of the sector."

The general scheme provides for a dedicated independent regulator that would oversee a statutory regulatory framework, be responsible for registering and approving housing bodies, and set regulatory standards. The proposals would also give the regulator powers for undertaking inquiries, investigations, and assessments, as well as for the protection of assets. Under these proposals the Regulator will not regulate all aspects of AHB activity (for instance it will not have oversight of tenancies and standards of accommodation, which will be the responsibility of the RTB and local authorities respectively). Instead the regulator will concentrate on the regulation of governance, financial management and performance of AHBs.[37]

The general scheme proposed that the AHB regulator would be fully independent of Government. However, another possible option would be to create a Committee situated within an agency such as the Housing Agency. This would make the regulator quasi-independent. As it stands the interim Regulation Committee is already positioned within the Housing Agency. A similar system exists in the UK where the regulator operates within Homes England (formerly the Homes and Communities

---

[35] Please see the L&RS Bills Tracker page for more information on this Bill. The page is only accessible, however, on the Houses of the Oireachtas Serivce's intranet.
[36] Housing Agency. (2017). AHB Regulation. Accessed on 23/05/17 at https://www.housingagency.ie/Regulation.aspx
[37] Department of Housing, Planning, Community and Local Government. (2015). Regulatory Impact Assessment. Available from http://www.housing.gov.ie/sites/default/files/legislations/ahb_regulation_-_ria.pdf

Agency). However, the Department of Housing, Planning and Local Government (2015) are not in favour of this option and state that, under such a scenario:

> "There would be the potential for conflict of interest between the regulation function and the supply function of the Agency."

The Department's Regulatory Impact Analysis (RIA) estimates that a fully independent AHB regulator will cost €820,000 annually to the Exchequer. This figure includes a staffing complement of 6 persons (€365,000), Administration and Overheads (€165,000), External Services (€200,000), as well as AHB Regulation Board expenses (€90,000). The RIA compares the establishment of a fully independent regulator with the option of creating a quasi-independent regulator under an existing State body, which they estimate would be similar to the present interim regulation costs which are broadly €600,000 per year.

Pre-Legislative Scrutiny (PLS)

The Joint Committee on Environment, Culture and the Gaeltacht conducted its PLS in December 2015.[38] The Committee broadly welcomed the proposed legislation, agreeing with the Department that the establishment of a regulatory framework is needed. However, the Committee did have concerns over:

- the extent of the proposed powers of the regulator and whether the principle of proportionality has been fully integrated into these powers, i.e. would it ensure that an unfair burden was not placed on smaller AHBs?
- the potential loss of autonomy for AHBs if legislation results in the regulator becoming involved in the day-to-day management of the business activities of individual AHBs, rather than oversight of the sector as a whole.

In addition, the Committee recommended that:

- a process should be put in place before the enactment of legislation to allow bodies which are currently approved but not active in the management of, or development of, social housing, to de-register.
- proposed sanctions for offences should be revisited and redrafted in a more proportionate manner as they could have a negative impact on attracting and retaining board members within the sector.[39]

---

[38] The Committee's report can be accessed at the following link: https://www.oireachtas.ie/parliament/media/20160202-Approved-Housing-Bodies-Report-Ver-11-MB-LB.pdf

[39] Proposed sanctions under the Head 41 of the General Scheme are (a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment, to a fine not exceeding €300,000 or to imprisonment for a term not exceeding 10 years or to both.

Key policy issues

There are several significant challenges facing AHBs and those responsible for regulating them. These challenges include the need to: develop capacity within the sector, respond to the potential risks of an increasingly complex regulatory environment, manage the disposal of assets and deal with the implications of the reclassification of AHBs.

1. Capacity within the sector

One possible effect of creating a new Regulator may be that it places too much pressure on smaller AHBs, in terms of compliance, i.e. it will not be proportional. This may lead to the winding down or merger of such AHBs. In terms of opportunities, it is possible that smaller AHBs may come together in order to achieve economies of scale.

The Government estimate that, over the lifetime of the Housing and Homelessness Action plan, *Rebuilding Ireland*, up to 2021, AHBs will build approximately 4,700 units and acquire or directly lease over 20,700 units. A central rationale for introducing a statutory regulator is to help the sector scale up its provision of social housing.

However, in 2014 NESC argued that this scaling up may not necessarily occur as a result of introducing further regulation:[40]

> "While regulation of the housing association sector will improve the credit-worthiness of some associations, it will not turn committed niche providers into major developers and bodies capable of large-scale financial management."

NESC also highlighted issues of capacity in the sector, stating that while some AHBs have in-house design and development capacity "most do not."

The sector faces specific challenges in terms of its funding models. As Government funding of social housing is on balance sheet, the Government has been exploring ways to finance social housing using "special purpose vehicles" (SPVs). A special purpose vehicle (SPV) is a technical term which refers to a financial entity which is set up to achieve a particular objective. The Housing Agency Regulation Office 2016 Annual Report states that:

> "Additional evidence is emerging that a new, innovative funding mechanism is under consideration which makes use of Special Purpose Vehicles (SPVs) to access both domestic and European funds. This external, off-balance sheet funding may be available on attractive/competitive terms from banks/funds who are natural, long-term funders with experience in funding social housing."

NAMA has established an SPV, known as the National Asset Residential Property Services Limited (NARPS), to expedite social housing delivery. NARPS acquires residential units from

---

[40] National Economic and Social Council. (2014). Review of Irish Social and Affordable Housing Provision. Accessed on 09/05/18 at http://files.nesc.ie/nesc_secretariat_papers/No_10_Review_of_Irish_Social_and_Affordable_Housing_Provision.pdf

NAMA's debtors and receivers and leases them long-term to an approved housing body (AHB) or local authority.[41]

Rebuilding Ireland – Action Plan for Housing and Homelessness states that support will be given to an Irish Council for Social Housing (ICSH)-led SPV which would include credit unions as possible investors. The Action Plan states:[42]

> "This new vehicle, which could itself ultimately seek AHB status and charitable recognition, has the potential to deliver significant additional investment funding for the delivery of permanent social housing by AHBs through both acquisition and new build."

There will be some challenges to the sector in terms of the expertise and/or experience required to access funding on the scale required. Writing of the potential for AHBs to source funding through SPVs, the Housing Agency Regulation Office notes that this will require:[43]

> "…greater awareness and management of funding risks and the development of customised Treasury Management Policies to ensure safe and sustainable growth…"

This is likely to remain a challenge for some AHBs even after the creation of a statutory regulator.

2. Potential risks of introducing a new regulatory body

Brown and Scott cite the 2004 White Paper *Regulating Better* which states that new regulatory bodies should not be created unless:[44]

> "…the case for a new regulator can be clearly demonstrated in light of existing structures."

As the AHB sector is already regulated by several bodies, it is reasonable to consider if another regulator is necessary. The Department's Regulatory Impact Analysis (RIA) states that existing regulation is fragmented and to rely on this would:

> "…risk losing momentum on the progress the Department and the Housing Agency have made in working with the AHB sector to adapt to the new reality of reliance on debt-financing for housing development rather than 100% capital funding from the Exchequer."

Likewise the RIA states:

> "…regulation is a critical tool in developing the capacity of the sector to borrow off balance sheet and in building confidence with lenders and investors to invest in the sector."

Travers et al. (2010) cite a number of potential risks attached to new regulatory frameworks such as:[45]

---

[41] Examples of properties acquired by NARPS and leased to AHBs are shown here https://www.nama.ie/social-initiatives/social-housing/examples-of-properties-delivered-for-social-housing/

[42] Rebuilding Ireland – Action Plan for Housing and Homelessness. Accessed on 13/04/18 at http://rebuildingireland.ie/Rebuilding%20Ireland_Action%20Plan.pdf

[43] Housing Agency Regulation Office. (2017). The Regulation of Approved Housing Bodies in Ireland: 2016 Annual Report and Sectoral Analysis. Accessed on 7 June 2017 at https://www.housingagency.ie/Regulation/Communications/Regulation-Office,-Housing-Agency-Annual-Report-Se.pdf

[44] Brown, Ciara and Scott, Colin (2010): Regulation in Ireland: History, Structure, Style and Reform. Accessed on 09/05/18 at http://www.ucd.ie/geary/static/publications/workingpapers/gearywp201044.pdf

- bureaucratic burdens - bureaucracy takes a heavy toll on organisations;
- regulatory creep – regulatory regimes take on "a life of their own" beyond their original purpose;
- a tendency for regulation to become ritualistic through under-resourcing – this means that the regulatory body has no real impact; and
- regulatory capture – a regulatory agency acts in the interests of those it is regulating, instead of the public interest.

While the above risks are associated with regulation generally, they are worth considering in light of the proposals as outlined in the General Scheme of the *Housing (Regulation of Approved Housing Bodies) Bill 2015.*

Also, worth considering is the heterogeneity within the AHB sector. There are a number of AHBs, particularly within Tier 1 (AHBs with 0 - 50 units) and Tier 2 (AHBs with 50 - 300 housing units), for which housing is only part of their remit. For instance in Tier 1, DePaul Ireland and St. Aidan's Day Care account for 15% of all employment in this Tier, while in Tier 2 organisations. The Irish Wheelchair Association represents 25% of Tier 2 employees and 11% are accounted for by the Cope Foundation.[46] This complexity presents specific challenges for those seeking to regulate the sector.

There are a number of AHBs who receive the bulk of their funding from non-Government sources. Any new regulatory regime should be flexible enough to facilitate the complexity of, and diversity within, the sector.

3. Disposal of assets

The General Scheme of the *Housing (Regulation of Approved Housing Bodies) Bill 2015* outlined the Government's intended policy as regards disposal of assets. The Department stated that this approach was modelled on the Scottish Regulator Regulatory Guidance on Consent to disposals of land or assets (April 2012).[47]

Under the Department's proposals (Head 11 (4)) AHBs would be obliged to apply for consent to the AHB Regulator to dispose of assets valued at greater than €10,000. The regulator would have the power to give, or refuse to give, consent to the disposal of assets, for example in

[45] Travers, Max, Phillips, Rhonda, Milligan, Vivienne and Gilmour, Tony. (2010). Regulatory frameworks and their utility for the not-for-profit housing sector. Accessed on 24/04/18 at https://www.ahuri.edu.au/__data/assets/pdf_file/0016/2824/AHURI_Positioning_Paper_No127_Regulatory-frameworks-and-their-utility-for-the-not-for-profit-housing-sector.pdf
[46] Analysis commissioned by the Oireachtas L&RS and conducted by Benefacts.ie
[47] Scottish Housing Regulator. (2012). Consent to disposals of land or assets: Regulatory guidance. Accessed on 12/04/18 at https://www.scottishhousingregulator.gov.uk/sites/default/files/publications/2B%20-%20Consent%20to%20disposals%20-%20Regulatory%20Guidance%20-%20Consultation%20-%20February%202015%20-%20Gudiance%20Revisions_1.pdf

circumstances where an AHB wishes to sell land (acquired by it for the purpose of providing social housing support). While the Department acknowledged that this provision may have some impact on constitutional property rights, it stated that:

> "…[this] provision is considered a vital component of regulation and is provided for in order to protect assets which have been funded by the state or indeed by private investors for the provision of social housing."[48]

However, although this approach was modelled on the Scottish Regulator, that Regulator may soon remove the requirement for consent, in relation to disposal of assets. On 28 September 2016 the Office for National Statistics (ONS) in Scotland decided that Registered Social Landlords (RSLs) would be classified as public bodies, meaning that all new net borrowing by RSLs would count against the Scottish Government's borrowing limits.[49]

The *Housing (Amendment)* (Scotland)Act*, 2018*, seeks to reduce the influence of LAs over registered social landlords. The Act removes the requirement for the Scottish Regulator to consent to the disposal of assets by RSLs.[50] This shift in policy is part of a series of changes, the objective of which is to bring RSLs back under the classification of private bodies for the purposes of the national accounts.

Disposal of assets as a percentage of asset cost

Analysis commissioned by the Oireachtas L&RS and conducted by Benefacts, shows that details on asset base are available for 442 AHBs. Benefacts' analysis shows that Tier 1 AHBs accounted for 5% of the total asset base (€216M), Tier 2 accounted for 18% (€704M) and Tier 3 accounted for 57% (€2.3BN) of the total asset base. Twenty percent (€790M) of the asset base is owned by AHBs that have not signed up to the VRC.

Benefacts' analysis shows that disposals in each year (2015 and 2016) are a small percentage of the overall asset cost, see Tables 4 & 5. For instance, the total costs of assets in 2016 were €3.7BN, while disposal of assets accounted for €37.7 million in that year. As figure 1 reveals, disposals in each year are a small percentage of the overall asset base.

[48] See the General Scheme of the Housing (Regulation of Approved Housing Bodies) Bill 2015, Head 26 Notes accessed on 12/04/18 at this link https://www.oireachtas.ie/parliament/media/.../2015-09-11-Heads-of-Bill-Final.docx
[49] Ibid.
[50] Scottish Government. Business and Regulatory Impact Assessment: Housing (Amendment) (Scotland) Bill.

Table 4: Disposal of assets 2015

	Total Costs at Beginning of Year €	Cost of Disposals during 2015 €	Disposals as a % of asset cost
Tier 1	211,957,310	1,672,754	0.80%
Tier 2	611,173,486	2,944,984	0.50%
Tier 3	1,917,632,078	1,067,059	0.10%
Have not signed up to the Voluntary Code	779,702,608	12,268,633	1.60%
Total	**3,520,465,482**	**17,953,430**	

Source: Benefacts (2018)

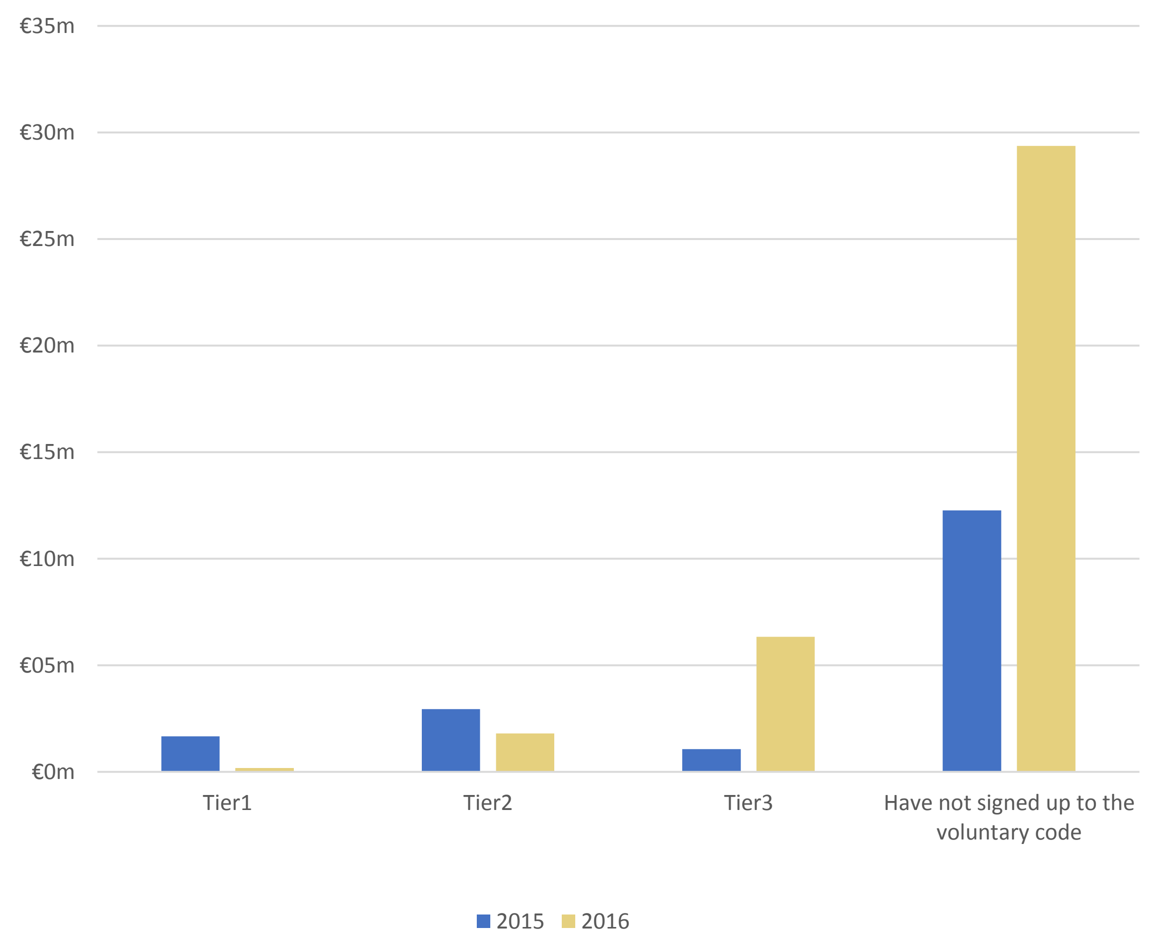
Table 5: Disposal of assets 2016

	Total Costs at Beginning of Year €	Cost of Disposals during 2016 €	Disposals as a % of asset cost
Tier 1	205,396,257	182,133	0.10%
Tier 2	673,243,066	1,803,035	0.30%
Tier 3	2,027,121,895	6,340,802	0.30%
Have not signed up to the Voluntary Code	793,800,546	29,339,739	3.70%
Total	**3,699,561,764**	**37,665,709**	

Source: Benefacts (2018)

Figure 1 combines the data from the tables above and compares disposals of assets in 2015 with 2016, across Tiers. The chart shows that AHBs which have not signed up to the VRC had the highest costs of assets disposed in 2015 and 2016 (however, in 2016 the bulk of this (86%) was from one AHB – Rehab Group).

Figure 2: Disposal of Assets 2015 & 2016



Source: Benefacts (2018)

4. Impact of reclassification of AHBs as General Government Sector

An important consideration regarding proposals to create a statutory regulator for AHBs, is the impact the reclassification of AHBs as General Government Sector will have on these proposals. In particular, is it the Government's intention to take steps that would ultimately lead to the reversal of Eurostat's classification, so that AHB borrowings do not remain on the Government balance sheet? Such measures were taken in England (where the independence of social landlords from councils was strengthened).

If yes,

- Will proposals outlined in the *General Scheme of the Housing (Regulation of Approved Housing Bodies) Bill 2015* need to be revisited?
- How will the Government strike a balance between regulation and reducing Government control of the sector?

- Financial data shows that disposals represent a small percentage of the asset cost of AHBs each year. Should the proposal to seek sanction from the Regulator, contained in the General Scheme be reconsidered (as happened in Scotland)?

If no,

- Will AHBs be able to deliver the targets outlined in *Rebuilding Ireland*, given how the reclassification will affect government spending?
- In the long term, will Government seek greater oversight in relation to borrowings by AHBs? If so, how will oversight of Government borrowings affect private investment in the sector?

Conclusion

This *Note* has examined the Government's proposals to create a statutory regulator which would oversee AHBs in Ireland. The *Note* has explained that the rationale behind the policy is to encourage private investment in the sector, as well as safeguard public investment. While the Government hopes that the AHB sector will scale up its supply of social housing in the coming years, the sector faces a number of challenges, particularly in terms of its capacity to expand and to finance building projects.

There is a variety of AHBs in Ireland, in terms of remit, scale and how they are funded. For instance, there are a number of care, support and services-orientated organisations, only part of whose remit is housing. There is also significant variance in terms of scale, with Tier 3 AHBs responsible for (on average) over 1,000 units, Tier 2 around 88 units and Tier 1 around 17 units.

While the decision by Eurostat, to reclassify larger AHBs as government sector bodies, may not have an immediate impact, it may mean that the Government will require greater control of AHB's borrowings in the long-term, as such borrowing will effectively be treated as if they were taken on by the State. This could mean that ultimately AHBs are constrained in their ability to finance building projects.

As such, a number of stakeholders argue that the Government should take measures to ensure that AHBs are reclassified by Eurostat as non-profit institutions. In the UK, a similar situation led to certain "deregulation" measures taking place, which reduced LAs' control over registered social landlords. This may be a blueprint for action in Ireland, though local difference will of course need to be recognised.

Contact:
Houses of the Oireachtas
Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie
Tel: +353 (0)1 6183000 or 076 1001700
Twitter: @OireachtasNews

Library & Research Service
http://library
Tel: +353 (0)1 6184701
Email: library.and.research@oireachtas.ie

Connect with us