



# Bill Digest

## Housing (Regulation of Approved Housing Bodies) Bill 2019

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Shane Burke, Senior Parliamentary Researcher  
(Public Administration)

### Abstract

The Bill, if enacted, will establish a Regulator to be called the Approved Housing Bodies Regulatory Authority. The Regulator will be independent, and functions of the Regulator will include: establishing and maintaining a register of Approved Housing Bodies (AHBs), preparing draft standards, monitoring and assessing compliance by AHBs, and publishing information (including statistical information) concerning AHBs. The Regulator will also undertake investigations and will have the power to cancel the registration of AHBs, for a range of reasons, including if they do not comply with provisions under the Act.



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## Summary

### Profile of the sector

Approved Housing Bodies (AHBs) are independent, not-for-profit housing bodies, with a housing stock of approximately 30,000 units. There is currently a Voluntary Regulation Code (VRC) in place for the sector, which is managed by the Regulation Office in the Housing Agency.<sup>1</sup> The Regulation Office aims to protect AHB's assets and safeguard the interests of both existing and future tenants and reports to the interim Regulation Committee (iRC), which is also based in the Housing Agency. The sector includes some large charitable organisations, for which housing is only part of their remit.

To date 273 organisations have signed up to the VRC, translating to roughly half of the AHBs registered by the Department. However, AHBs which are signed up to the VRC manage around 95% of the housing stock. Only AHBs that have undergone assessment by the Regulation Office and can demonstrate commitment to the VRC will be considered eligible for funding by the Department. According to the most recent annual report from the Housing Agency Regulation Office, 83% of AHBs demonstrated high levels of compliance. Three AHBs were found to be unsatisfactory in the 2017/18 assessment cycle.

While there are several large AHBs operating in multiple regions, the sector is mainly composed of locally-based AHBs, managing a small number of units. For instance, 76% of all AHBs signed up to the code manage just 3,147 units (10% of the regulated stock), while 18 AHBs manage 74% of regulated units.

### Issues of concern within the sector

The Department of Housing, Planning and Local Government ("the Department") estimate that AHBs have the capacity to deliver one third of the 47,000 new social housing units that are targeted up to 2021. However, as the traditional grant funding of AHBs by the Exchequer has been replaced with increased use of loan finance, there are new challenges for the sector in terms of attracting funding. There are implications for the Exchequer also, on foot of the CSO/Eurostat decision to reclassify Tier 3 AHBS (i.e. the largest AHBs in terms of housing units) as General Government Sector, meaning their expenditure will go on the Government's balance sheet. To put this in perspective, loans taken by AHBs are expected to be €1,683M by 2019, which is an increase of 469% from 2016.

There is evidence that increasing regulation in the AHB sector has been problematic for Tier 1 AHBs (i.e. those which manage the fewest units), particularly in terms of added administrative requirements, which often fall on volunteers. Clúid have published a report suggesting that, as many Tier 1 AHBs will not be able to access funding (public or private), collaboration, mergers or acquisitions may help AHBs to achieve economies of scale and allow larger AHBs to give advice and support to smaller AHBs.

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<sup>1</sup> The Housing Agency is a government agency focused on supporting local authorities, the Department of Housing, Planning and Local Government and approved housing bodies.

## Provisions of the Bill

The [Housing \(Regulation of Approved Housing Bodies\) Bill 2019](#) was published on 26 July 2019. The stated rationale for introducing statutory regulation, according to the Department's press release, includes:

- ensuring the governance and the financial viability of the sector;
- safeguarding the State's contribution towards AHBs in relation to housing assets; and
- providing assurance to tenants, the public, and investors.

The Bill, if enacted, will establish a Regulator to be called the Approved Housing Bodies Regulatory Authority. The Regulator will be independent, and functions of the Regulator will include:

- establishing and maintaining a register of AHBs;
- preparing draft standards;
- monitoring and assessing compliance by AHBs; and
- publishing information (including statistical information) concerning AHBs.

An AHB which is registered under s.6 of the *Housing (Miscellaneous Provisions) Act 1992* will be deemed to be registered under the provisions of the Act. However, these AHBs must apply to the Regulator for registration within a statutory time period, with longer timeframes for those managing fewer units e.g. 12 months for AHBs managing 300 or more dwellings, 2 years for those managing 50-299 dwellings and 3 years for those managing less than 50 dwellings.

The Regulator will appoint inspectors with powers to enter and search premises where records are believed to be kept. Inspectors will also have powers to secure premises for later inspection and retain records. However, an inspector must not enter a dwelling without the consent of the occupier, or a warrant issued by a judge of the District court. The Regulator will have the power to cancel the registration of AHBs, for a range of reasons, including if they do not comply with provisions under the Act.

The Bill also provides that where an AHB's registration is cancelled or has lapsed or an application to register has been refused, the Regulator may issue a notice to that AHB requiring them to transfer all or any of their dwellings to another AHB, if the Regulator believes this is necessary in order to protect tenants. If the AHB objects to this, the Regulator may apply to the High Court for an order.

The Department's [Regulatory Impact Analysis](#) (RIA) estimates that a fully independent AHB regulator will cost €820,000 annually to the Exchequer. 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. This is the preferred option of the Department, as it means that the Regulator will have political independence and autonomy.

## Table of Provisions

Part 1		
Preliminary and general provisions		
Section	Title/Theme	Effect
1	Short title	This section provides that the Act will be called the Housing (Regulation of Approved Housing Bodies) Act 2019. The Act will come into effect on days appointed by the Minister. Different days may be appointed for different provisions.
2	Interpretation	This section provides definitions of terms used in the Bill, such as “approved standards”, “compliance plan”, “Regulator” and “register”. In the Act, the “Minister” refers to the Minister for Housing, Planning and Local Government.
3	Expenses	This section provides that expenses incurred by the Minister would be paid for by the Oireachtas, once approved by the Minister for Public Expenditure and Reform.
4	Review of the Act	The Act will be reviewed within 5 years after the establishment day. A report detailing the findings of this review will be laid before each House of the Oireachtas within six months of the end of the five year period, or on completion of the review, whichever is earlier.
5	Giving of documents	This section sets out the procedures for issuing a notice, direction, or other document to a person under the Act.
6	Offences and penalties	<p>This section provides for penalties to be imposed where certain offences are committed under the Act such as: falsely purporting to be an AHB; failing to give proper notice to the Regulator of certain events; and unauthorised disclosure of confidential information.</p> <p>The Regulator may, under certain circumstances, bring and prosecute summary proceedings for an offence under this Act.</p> <p>A person guilty of an offence under sections 36(3), 56(3) or 66(3) will be liable—</p> <p>(a) on summary conviction to a class A fine (up to €5,000) or to imprisonment for a term not exceeding 12 months or to both,</p> <p>(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.</p> <p>A person guilty of an offence under sections 36(1), 37(6), 39(9), 46(6) or 52 will be liable—</p> <p>(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both,</p>

		(b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 5 years or to both.
<b>Part 2</b>	<b>Approved Housing Body Regulatory Authority (the Regulator)</b>	
<b>7 - 8</b>	Establishment day/establishment of the Approved Housing Bodies Regulatory Authority	These sections provide for the establishment of the Regulator, to be called the Approved Housing Bodies Regulatory Authority.
<b>9 - 10</b>	Functions of the Regulator and Grants to the Regulator	<p>The functions of the Regulator will include: establishing and maintaining a register of AHBs, preparing draft standards, monitoring and assessing compliance by AHBs and publishing information (including statistical information) concerning AHBs. This section specifies that the Regulator will be independent in the performance of its functions.</p> <p>S.10 provides that the Minister for Housing, Planning and Local Government will give the Regulator moneys, with the consent of the Minister for Public Expenditure and Reform, in order to perform its functions.</p>
<b>11</b>	Fees	<p>The Regulator will, with the Minister's approval, determine the fees that should be paid to the Regulator in order to carry out its functions. In order to determine these fees, the Regulator may provide for different "classes of persons" and different amounts of fees payable by a specified class or classes of person. The Regulator must review these fees at least every 3 years from the date of their determination, having regard to any changes in the Consumer Price Index (CPI).</p> <p>Fees must be published on the Regulator's website.</p> <p>This section also provides that any fees which are owed to the Regulator may be recovered through the Court's system.</p>
<b>12 -14</b>	Chief executive/ Functions of chief executive/ Delegation of functions /	<p>A chief executive will be appointed by the Regulator, after a competition run by the Public Appointments Service (PAS). PAS cannot recommend more than 3 persons for the role.</p> <p>The competition for chief executive can be held before the establishment day. In this scenario, the successful candidate will be appointed by the Minister as "chief executive designate of the Regulator."</p> <p>The chief executive must not be a member of the Regulator or of any committee of the Regulator. The chief executive may be removed from office by the Regulator.</p> <p>The term of office for the chief executive is 5 years, but this term may be extended by the Regulator.</p>

		<p>However, no person will be permitted to serve for longer than 10 years from their first appointment.</p> <p>Where the position is vacant, the Regulator may designate a member of its staff to perform the functions of chief executive.</p> <p>The chief executive may (with written consent from the Regulator) delegate any of his or her functions to a member of staff of the Regulator, but the chief executive will be accountable to the Regulator for any of these functions.</p>
15 - 17	<p>Interaction of the chief executive with Oireachtas Committees.</p> <p>Engagement of consultants and advisers.</p>	<p>S.15 provides that the chief executive must appear before the Committee of Public Accounts, to give evidence, among other things, to the propriety of its transactions and its use of resources. The chief executive must not however question or express an opinion on the merits of Government policy, or the merits of the objectives of such a policy. This also applies to the Committees included in s.16 (next paragraph).</p> <p>S.16 provides that the chief executive must appear before Oireachtas Committees upon written request. However he or she will not be required to give account before a Committee for any matter “which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.” If the chief executive declines the Committee’s request for this reason, but the Committee does not withdraw the request, the chief executive may apply to the High Court to determine the matter.</p> <p>S.17 provides that the chief executive may engage consultants and advisers if they are necessary for the performance of its functions. Any fees due to a consultant or adviser must “have regard” to guidelines issued by the Minister or by the Minister for Public Expenditure and Reform and be paid by the Regulator out of moneys at its disposal.</p>
18 - 20	<p>Transfer of employees from Housing Agency to the Regulator/ Staff of Regulator/ Superannuation</p>	<p>S.18 provides for the transfer of certain staff from the Housing Agency to the Regulator. The terms and conditions of transferred staff will be no less favourable than those they currently have.</p> <p>S.19 -20 provide for the Regulator to recruit staff and put in place a scheme for superannuation.</p>
21	<p>Strategy statement</p>	<p>This section provides that the Regulator must submit a strategy statement to the Minister for the forthcoming three years. This must be submitted not later than 6 months after the establishment day. The statement must include key objectives, outputs and related strategies; organisational structures;</p>

		and how the Regulator proposes to assess the effectiveness of the implementation of the strategy statement.
<b>22 - 23</b>	Accounts of the Regulator/Report to Minister	<p>This section provides that the Regulator must keep proper accounts of expenditure, property, assets and liabilities of the Regulator. The Regulator must also submit accounts, signed by the chief executive, to the Comptroller and Auditor General for audit.</p> <p>S.23 provides that the Regulator must prepare and submit an annual report to the Minister which would include a: summary of assessment reports by the Regulator, compliance plans approved by the Regulator, and results of any investigations. The Minister will lay a copy of the annual report before each House of the Oireachtas as soon as practicable.</p>
<b>24</b>	Administrative cooperation on regulatory matters	This section provides that the Regulator “endeavour to secure” cooperation with other regulatory bodies. Any arrangement under this section must be in writing and the Regulator must provide the Minister (and any relevant Minister in relation to a relevant regulator) a copy of each arrangement under this section. A “relevant regulator” includes: the Charities Regulatory Authority, the Director of Corporate Enforcement, the Registrar of Companies, the Registrar of Friendly Societies, Residential Tenancies Board, and the Health Information and Quality Authority (HIQA).
<b>25</b>	Information relating to offences, etc.	<p>This section provides that any information relating to a criminal offence may be disclosed to the Regulator. by:</p> <ul style="list-style-type: none"> <li>• the Garda Síochána,</li> <li>• Revenue Commissioners,</li> <li>• the Director of Corporate Enforcement,</li> <li>• the Residential Tenancies Board,</li> <li>• the Charities Regulatory Authority</li> <li>• the Health Information and Quality Authority, or</li> <li>• any other person charged by law with the detection, investigation or prosecution of offences.</li> </ul> <p>The Regulator may also provide these same bodies with information obtained by it during the performance of its functions, if the Regulator has reason to believe that an offence has been committed.</p>
<b>Part 3</b>	<b>Regulation of AHBs</b>	

<p><b>26 - 30</b></p>	<p>Provisions in relation to registration of AHBs</p>	<p>Sections 26-29 provide for the eligibility criteria for application to register as AHBs; the Approved Housing Bodies Register; procedures for applying for registration; and granting or refusing registration.</p> <p>The eligibility criteria included in s.26 will determine registration of companies who are not already registered under the <i>Housing (Miscellaneous Provisions) Act 1992</i>, as well as those who are but must apply for registration. This section specifies that a “person” that applies to register as an AHB must have at least 5 directors if it is a company. Eligibility also includes a registered society, a friendly society,<sup>2</sup> and a charitable trust.</p> <p>These entities must have in their constitution the provision and management of dwellings for the purpose of the alleviation of housing need; as well as the prohibition of surplus, profit, bonus or dividend to members or directors or other persons.</p> <p>All of its property must be applied to the provision and management of dwellings for the purpose of the alleviation of housing need (with the exception of costs relating to maintenance, remuneration, and superannuation).</p> <p>S.28 provides for the information required in order to register as an AHB. This includes: all audited accounts of the applicant with the auditor’s report; the number of dwellings owned or leased by the applicant; and a copy of the constitution of the applicant.</p> <p>S. 30 provides that where the Regulator proposes to refuse to grant an application for registration, it must state the reasons for this.</p>
<p><b>31 - 32</b></p>	<p>Provisions in relation to refusal of an application to register as an AHB</p>	<p>S.31 provides that where an application has been refused by the Regulator, the applicant will have 28 days to make a representation in writing to the Regulator. S.32 provides that where the Regulator considers but refuses to grant the application for registration, the applicant may appeal this decision within 21 days of the notice.</p>
<p><b>33 - 35</b></p>	<p>Correction of the register/ evidential value of entries/ certain persons deemed to be registered as AHBs.</p>	<p>S.33 provides that the onus is on AHBs to correct any errors on the register. From time to time the Regulator will review each entry in the register and make any necessary alterations.</p> <p>S.34 provides that documents which purport to be a copy of an entry on the register shall be received in evidence in any legal proceedings and be deemed to be a true copy of the entry.</p>

<sup>2</sup> The [companies registration office](#) describe Friendly societies as societies registered under the Friendly Societies Acts 1896-2018. Their main activities include providing small life assurance benefits, sick benefits and death benefits to members, or to promote particular activities or interests.

		<p>S.35 provides that a person who is approved under s.6 of the <i>Housing (Miscellaneous Provisions) Act 1992</i> will be deemed to be registered in the register as an AHB for the purposes of this Act. Such persons will be required to pay the Regulator a fee.</p> <p>This section also provides that the Minister must, upon request, furnish the Regulator with specified information kept by the Minister on a body registered under s.6 of the Act of 1992. This information would be the same as is required for registration under s.28.</p> <p>AHBs which are considered to be registered under the 1992 Act will be required to apply under s.28 to the Regulator for registration as an AHB within a statutory period, i.e. 12 months where managing 300 or more dwellings, 2 years if managing 50-299 dwellings and 3 years if managing less than 50 dwellings. If the Regulator believes these timelines to be unduly onerous, they may extend them.</p> <p>S.35 also provides that a person who is deemed to be registered as an AHB may have their registration cancelled, under specified circumstances.</p>
<b>S.36</b>	Prohibited conduct in relation to registration	S.36 provides for a criminal offence where a person knowingly or recklessly provides false information to the Regulator.
<b>S.37 - 38</b>	Power of Regulator to require information and records	<p>This section provides that the Regulator may issue a direction to an AHB requiring it to provide the Regulator with information, accounts, records and other documents.</p> <p>S.38 provides that the Regulator will (not later than six months after the commencement of Chapter 3) prepare and submit draft standards relating to: governance; financial management; financial reporting; property and asset management; and tenancy management.</p>
<b>Part 4</b>	<b>Standards assessment and compliance plans</b>	
<b>S.39</b>	Provisions relating to setting of standards and assessment of standards	S.39 provides that the Regulator may carry out a standards assessment of compliance by an AHB with the approved standards. The Regulator must prepare a report in writing of its standards assessment, setting out its findings and recommendations.
<b>S.40 - 44</b>	Provisions relating to compliance	S.40 provides that where an AHB fails to comply with an approved standard, it must submit a compliance plan to the Regulator, detailing how it will rectify the failure. If this plan is not submitted, the Regulator may issue the AHB with a “notice of non-compliance.”

		<p>S.41 provides that an AHB can appeal a notice of non-compliance not later than 21 days from the date of notice.</p> <p>S.43 provides that a “notice of non-implementation” may be issued to an AHB that the Regulator believes is not implementing a compliance plan. An AHB may appeal this notice, not later than 21 days from the date of the notice.</p> <p>S.44 provides that the Regulator must enter the details of the notice of non-implementation on the register. An AHB can write to the Regulator at any time to have these details removed, provided that the Regulator is satisfied that the compliance plan has been implemented.</p>
<b>Part 5</b>	<b>Investigations</b>	
<b>S.45- 53</b>	Provisions relating to investigations	<p>S.45 contains a number of definitions used in Part 5 of the Bill. For example, “agent” includes a banker, solicitor or auditor to an AHB.</p> <p>S.46 provides that the Regulator may appoint members of its staff to be inspectors, as well as other persons, as it thinks fit. Inspectors will be given a certificate of appointment by the Regulator, which may be presented upon request, along with a form of personal identification. It will be an offence to purport to be an inspector without having been appointed, or after an appointment ceases.</p> <p>S.47 provides that the Regulator may appoint one or more inspectors to investigate a particular AHB. Where more than one investigator has been appointed, the investigation report must be prepared jointly.</p> <p>S. 48 provides that the Regulator may provide a copy of an investigation report to other persons or bodies, including those whose financial interests appear to be affected, or any person whose conduct is referred to in the report. The Regulator may also publish an investigation report in any manner it considers appropriate.</p> <p>S.49 provides that AHBs must provide inspectors, upon request, with all information and records relating to the AHB that they have and assistance in connection with the investigation. An agent of the AHB must also meet the inspector in person, to provide this information. The investigator has similar powers over persons other than the agent, whom it believes has any information or records relating to the affairs of the AHB.</p> <p>S.49 also provides that if an inspector believes, during the course of the investigation, that a director, member or trustee of an AHB has maintained a bank account which has been used for transactions connected with “any act or omission” by those persons, the inspector may</p>

		<p>require that director, member or trustee to produce all documents relating to that bank account.</p> <p>S.50 provides for the powers to be given to inspectors. Such powers include entering and searching premises where records are believed to be kept, as well as securing a premises for later inspection. The inspector will also have the power to remove and retain any records he or she considers to be necessary. An inspector must not enter a dwelling without the consent of the occupier, or a warrant issued by a judge of the District court, under s.50(4).</p> <p>S.51 provides that a copy of an investigation report can be used as evidence in any proceedings (other than proceedings for an offence).</p> <p>S.52 provides that any person who refuses to provide information, or withholds or destroys information, or otherwise obstructs an investigation will be guilty of an offence.</p> <p>S.53 provides that nothing in Part 5 of this Act would compel a person to share privileged information to the Regulator. This section also provides that any statement made by a person under Part 5 of the Act is not admissible in criminal proceedings (other than in criminal proceedings under s.52 of the Act). The inspector must explain this to the person in ordinary language.</p>
<b>Part 6</b>	<b>Intervention</b>	
<b>S.54 - 55</b>	Protection of tenants and protection of AHBs	<p>S.54 provides that where a deemed AHB's registration is cancelled or has lapsed or an application to register has been refused, the Regulator may issue a notice to that AHB requiring them to transfer all or any of their dwellings to another AHB, if the Regulator believes this is necessary in order to protect tenants. If the AHB objects to this, the Regulator may apply to the High Court for an order.</p> <p>S.55 provides for the circumstances under which the Regulator may seek an order from the High Court. This is an extensive list which includes an AHB: failing to comply with the provisions of the Bill, committing an offence, or misusing funds.</p> <p>Under these circumstances the High Court may issue an order which:</p> <ul style="list-style-type: none"> <li>• suspends or removes any director or other officer of the AHB,</li> <li>• appoints such person or persons, as appropriate, to act as a director or other officer of the AHB;</li> <li>• vests any or all of the property of the AHB to another AHB identified by the Regulator;</li> <li>• prohibits the removal, sale or application of any property of the AHB without the Regulator's consent;</li> </ul>

		<ul style="list-style-type: none"> <li>• directs any debtor of the AHB not to pay such debt for a specified period or pay it to such person as may be so specified in satisfaction of the debt to the AHB; and</li> <li>• restricts or prohibits the entering into, by the AHB, of such agreements, or agreements of such a class, as may be specified in the order.</li> </ul>
<p><b>S.56 - 58</b></p>	<p>Notice to Regulator of certain events and cancellation of registration where an AHB requests</p>	<p>S.56 provides that an AHB must give notice to the Regulator should specified events occur. These include: if the company is to be struck off, if its registry is to be cancelled, or if it is to be appointed to a receiver.</p> <p>S.57 provides for the modification of Part 10 of the Companies Act 2014, which deals with examinership, so that AHBs can be dealt with in this part.</p> <p>S.58 provides that an AHB may request cancellation, in writing to the Regulator, of its registration as an AHB. In doing so an AHB must provide the Regulator with information on its proposals in relation to dwellings provided or managed by it.</p> <p>The AHB must give a copy of this notice to each housing authority in which it has dwellings. Housing authorities will have an opportunity to make representations, in writing, to the Regulator concerning the notice.</p> <p>There are a number of situations under which the Regulator will not grant a cancellation, such as if there are ongoing legal proceedings or if an investigation under Part 5 has not been completed.</p> <p>An AHB may appeal to the Appeals Panel (under Part 7 of the Act) against a decision of the Regulator to refuse a request for cancellation of its registration.</p>
<p><b>S.59-61</b></p>	<p>Cancellation of registration and removal from register following cancellation</p>	<p>S.59 provides that the Regulator may cancel the registration of an AHB on one or more of the following grounds:</p> <ul style="list-style-type: none"> <li>(a) that the AHB has been convicted of an offence under this Act,</li> <li>(b) that the AHB has failed or is failing to comply with any provision of, or a requirement or direction under, this Act;</li> <li>(c) that the AHB no longer satisfies the eligibility criteria;</li> <li>(d) that there are grounds on which the Regulator would be entitled or required to refuse an application under <i>section 28</i> for the registration of the AHB;</li> </ul>

		<p>(e) that the AHB is an AHB to which section 35(10) or (11), as the case may be, applies.</p> <p>If the Regulator does cancel the registration of an AHB, it must notify each housing authority where the AHB has dwellings.</p> <p>S.60 provides that if an AHB ceases to exist (e.g. through dissolution), the Regulator must cancel the registration.</p> <p>S.61 provides that where an AHB is cancelled, the Regulator must remove from the register all information registered in relation to the AHB. The Regulator must also enter in the register a statement that the registration has been cancelled and the reasons for that cancellation.</p> <p>The Regulator must also provide notice to the Residential Tenancies Board (RTB) and the Charities Regulatory Authority (if the AHB is a registered charity).</p>
<b>Part 7</b>	<b>Appeals</b>	
<b>62-65</b>	Provisions in relation to appeals	<p>S.62 provides for the Minister to establish an Appeals Panel of at least 10 people with experience or expertise in matters relating to the hearing of appeals or the functions of the Regulator (other than members of the Regulator or staff of the Regulator). Subsection (10) details a number of grounds under which a member of the Appeals Panel must cease to hold office, such as if they are bankrupt, or convicted of an offence. This section provides that the Appeals Panel must be independent in the performance of its functions.</p> <p>S.63 provides for the establishment of an Appeals Board, the members of which (3 in total) must be appointed by the chairperson of the Appeals Panel.</p> <p>S.64 provides for the procedures to be taken when the Appeals Board considers an appeal. It provides that the Appeals Board may refuse to hear an appeal which it considers to be frivolous or vexatious. Subsection (4) provides that a witness before an Appeals Board shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.</p> <p>S.65 provides that either party may appeal, to the High Court, the decision of the Appeals Board within 3 months from the date of determination.</p>
<b>Part 8</b>	<b>Miscellaneous</b>	
<b>66</b>	Prohibition on unauthorised disclosure of confidential information	S.66 provides that relevant persons who have obtained confidential information while performing functions under the Act, must not disclose this

		information, unless he or she is required by law, or authorised by the Regulator, to do so.
<b>Part 9</b>	<b>Consequential amendments and transitional provisions</b>	
<b>67 - 70</b>	Amendments to other legislation	These sections amend the <i>Housing (Miscellaneous Provisions) Act 1992</i> , to ensure that it is consistent with the Act. S.68 ensures that references to AHBs in other Acts, or other bodies approved under s.6 of the Act of 1992 will be construed as references to AHBs under this Act.

**Source:** L&RS 2019

The Bill also includes a Schedule which provides for the organisation and governance of the Regulator. The schedule covers the composition of the board (the Minister will endeavour to ensure that there is an equitable balance between men and women on the board), as well as the tenure of the board and the circumstances under which members of the board may be disqualified.

## 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).<sup>3</sup>

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).

The Department of Housing, Planning and Local Government states:<sup>4</sup>

"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 [Housing \(Regulation of Approved Housing Bodies\) Bill 2019](#) was published on 26 July 2019. The [press release](#) published with the Bill states that the Bill:

"...provides for the regulation of Approved Housing Bodies (AHBs) for the purposes of ensuring the proper governance and the financial viability of that sector."

The Bill, if enacted, will establish a Regulator to be called the Approved Housing Bodies Regulatory Authority. The Regulator will be independent, and functions of the Regulator will include: establishing and maintaining a register of AHBs, preparing draft standards, monitoring and assessing compliance by AHBs, and publishing information (including statistical information) concerning AHBs. The Regulator will also undertake investigations and will have the power to cancel the registration of AHBs, for a range of reasons, including: if they do not comply with provisions under the Act.

This Bill Digest is structured as follows:

- Background and policy context;
- Pre-legislative scrutiny by the Joint Committee on Environment, Culture and the Gaeltacht;
- Principal provisions; and
- Policy and financial implications;

The reader may also be interested in an L&RS Note titled [Regulation of Approved Housing Bodies in Ireland](#), published on 16 October 2018. That Note provides an overview of the AHB sector, the reclassification of AHBs by Eurostat, and policy issues arising from proposals to introduce a statutory regulator, such as the impact on smaller AHBs and regulatory burden.

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<sup>3</sup> 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.

<sup>4</sup> Department of Housing, Planning and Local Government. [Frequently Asked Questions](#).

## Background and policy context

### Profile of the Sector

#### Number registered under the Voluntary Regulation Code (VRC)

There are 551 entities listed on the Register of Housing Bodies with Approved Status in Ireland.<sup>5</sup> To date 273 organisations have signed up to the VRC, while 15 have been removed from the listing due to non-submission of the Annual Return. However, AHBs which are signed up to the VRC manage around 95% of the housing stock. A list of organisations which have signed up to the VRC can be accessed [here](#).<sup>6</sup> The AHB sector is composed predominantly of locally-based AHBs managing a small number of units.<sup>7</sup> The services of some AHBs are more focused on the provisions of care and support, rather than the provision of housing. Table 1 shows the number of housing units, by Tier, for those appraised during the most recent assessment by the Housing Agency Regulation Office.<sup>8</sup> Table 1 shows that 18 AHBs manage 74% of units.

Tier 1 refers to AHBs with 0 – 50 units, without development plans for more units.

Tier 2 refers to AHBs with 50 – 300 units and/or with development plans to provide more units.

Tier 3 refers to all AHBs with more than 300 units.

**Table 1: Number of units managed by AHBs by Tier**

	Number of AHBs	Number of units
Tier 1	179	2,947
Tier 2	50	5,016
Tier 3	18	23,117
Totals	247	31,080

**Source:** Housing Agency Regulation Office 2017 annual report

<sup>5</sup> Department of Housing, Planning and Local Government. (2019). [Register of Housing Bodies with Approved Status under Section 6 of the Housing Act 1992](#).

<sup>6</sup> Housing Agency. (2018). [A-Z Organisation Listing](#).

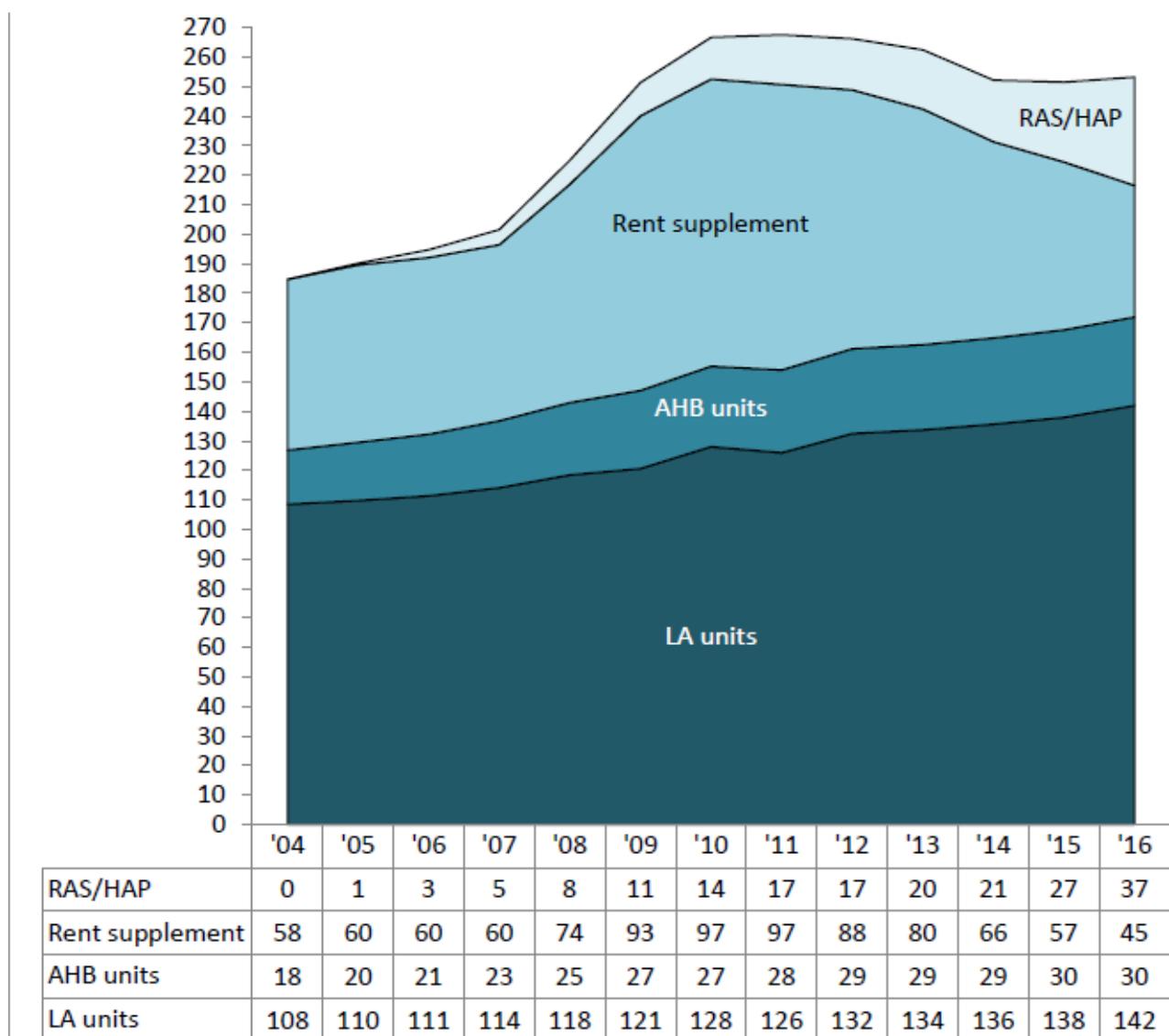
<sup>7</sup> Housing Agency Regulation Office. (2018). [2017 Annual Report and Sectoral Analysis](#)

<sup>8</sup> Ibid.

### Social housing provision

As of 2016 AHBs managed around 30,000 units, compared to just over 140,000 local authority units. An ESRI report<sup>9</sup> looks at the growth in social housing units, by sector, from 2004-2016. Figure 1 is reproduced below and shows that the number of units managed by AHBs grew substantially over the period, from 18,000 units in 2014, a 40% increase. During the same period the number of units managed by local authorities grew by 31%.

**Figure 1: Estimated social housing units 2004-2016**



Source: ESRI (2018)

<sup>9</sup> Corrigan, E. and Watson, D. (2018). [Social housing in the Irish housing market.](#)

## Employees

Volunteers play an important role in the running of AHBs, especially in the case of Tier 1 AHBs.<sup>10</sup> Tier 1 AHBs manage 2,947 units, or 9% of the regulated stock. Analysis commissioned by the Oireachtas L&RS and conducted by [Benefacts](#),<sup>11</sup> 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)

## Funding of AHBs

The traditional grant funding of AHBs by the Exchequer, through the Capital Loan and Subsidy Scheme (CLSS) and the Capital Assistance Scheme (CAS), has been replaced with increased use of loan finance. The Capital Advance Leasing Facility (CALF) was launched in 2011. Department expenditure under CALF has grown from €4.5M in 2014 to €120.9M in 2018.<sup>12</sup> Under CALF the State will fund 30% of AHBs' project costs, with the remainder provided by either private finance or

<sup>10</sup> Housing Agency. (2016). The Regulation of Approved Housing Bodies in Ireland: 2015 Annual Report and Sectoral Analysis.

<sup>11</sup> Benefacts is a non-governmental organisation that provides free public access to extensive information about the nonprofit sector in Ireland.

<sup>12</sup> Written answer to PQ dated 13 June 2019.

the Housing Finance Agency<sup>13</sup> (HFA).<sup>14</sup> Around 40% of AHBs examined by the Regulation Office were in receipt of funding from the Health Service Executive (HSE), while another 32% received funding from other state agencies such as the Dublin Region Homeless Executive, TUSLA, the Department of Justice and the Department of Social Protection.

A number of Tier 2 organisations whose primary objective is not housing are funded by the HSE, Department of Social Protection, Department of Education and Skills and the Department of Employment Affairs for the provision of care, support and services.<sup>15</sup>

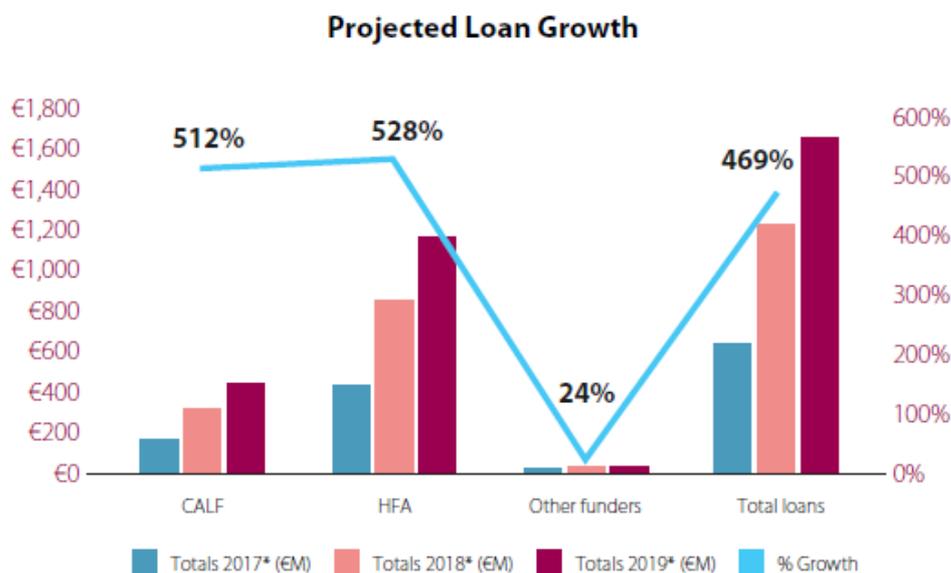
Figure 1 (overleaf) shows the source and growth of loans to the AHB sector from 2016-2019. The chart shows growth of 512% through CALF and 528% through the HFA, while “other funders”, a relatively small source of loans, was predicted to grow by 24%. In total, loans taken by AHBs are expected to grow by 469% (from €296M to €1,683M) during the period.

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<sup>13</sup> The HFA is a state owned company which provides loan finance to local authorities and voluntary housing bodies for housing and related purposes.

<sup>14</sup> Irish Council for Social Housing. (2014). [Enabling the Delivery of Social Housing in Ireland.](#)

<sup>15</sup> [Submission from the Regulation Office to the Public Accounts Committee 12 April 2019.](#)

**Figure 1:** Projected loan growth in the AHB sector 2016-2019

**Source:** Housing Agency Regulation Office annual report 2017

## Existing regulatory environment

At present AHBs have regulatory and compliance requirements with a number of bodies, such as:<sup>16</sup>

- Residential Tenancies Board (RTB) – AHBs must register their tenancies with the RTB.
- Local Authorities (LAs) – 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 many 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. Due to the recent publication of the *Housing (Regulation of Approved Housing Bodies)*

<sup>16</sup> Housing Agency Regulation Office. (2017). The Regulation of Approved Housing Bodies in Ireland: 2016 Annual Report and Sectoral Analysis.

*Bill 2019*, the Regulation Office is reviewing the Voluntary Regulatory Assessment Cycle for 2019/20.

### 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.

**Table 2: Data which is reviewed by the Regulation Office under the Regulatory Framework**

1. Governance	2. Performance Management	3. Financial Viability
<ul style="list-style-type: none"> <li>Fully functioning board</li> <li>Established roles and responsibilities</li> <li>Minimum 5 board members</li> <li>Minimum 4 meetings per year</li> <li>Board policies and procedures</li> <li>Compliance and legislation</li> </ul>	<ul style="list-style-type: none"> <li>Performance indicators</li> <li>Tenant service policies</li> <li>Repairs and maintenance</li> <li>Process and procedures</li> <li>Regular and effective communication processes</li> </ul>	<ul style="list-style-type: none"> <li>Financial management</li> <li>Audited financial statements</li> <li>Sinking fund</li> <li>Risk register</li> <li>Strategic plans</li> <li>Financial plans</li> </ul>

Source: Housing Agency Regulation Office 2015 Annual Report

Additional to the VRC are three other standards: the financial standard, the governance standard and the performance standard. These are described briefly below.

### The Financial Standard

The Financial Standard, launched in 2015, has six objectives:

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<sup>17</sup> 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.

<sup>17</sup> In financial terms gearing means borrowing money to buy more [assets](#). A gearing ratio represents the proportion of debt to equity.

## The Governance Standard

The [Governance Standard](#) was launched in December 2017 and has six core principles of good governance, building on those identified in the VRC. 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. The standard provides detailed requirements, including those in relation to the role of the board, the chair and subcommittees; as well as conduct, financial risk management and compliance with legal, regulatory and constitutional obligations.

## The Performance Standard

The Performance Standard was launched in December 2018. The overall objective of the standard is to set a standard for essential service performance from the AHB sector. The Regulation Office states that this standard:<sup>18</sup>

“...incorporates the most important aspects of the relationship between the AHB and the tenant. It captures: how properties are maintained, improved and repaired over time, how those works are paid for, how rents are set, charged, collected and debts recovered; how properties are allocated and let, and how tenancies are managed and terminated. It establishes a standard in relation to properties and services for the people who live in them, in addition to seeking assurance that all AHBs have sufficient policies and procedures in operation to deliver good quality and consistent services across all tenancies.”

There are three main sections to the Performance Standard: [people](#), [property](#) and [performance](#). The standard will be applicable for Tier 3 organisations from 2019, Tier 2 organisations from 2020 and Tier 1 organisations from 2021. The performance standard requires AHBs to monitor and report on areas relating to tenancies, such as repairs, allocations, voids and arrears.

## Incentives to sign up to voluntary regulation

Since 1<sup>st</sup> 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.<sup>19</sup>

It was envisaged that by signing up to the VRC, an AHB would have an opportunity to influence the final regulatory framework, as:<sup>20</sup>

“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.”

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<sup>18</sup> Housing Agency Regulation Office. (2018). [The Performance Standard](#).

<sup>19</sup> Housing Agency Regulation Office. (2018). [2017 Annual Report and Sectoral Analysis](#)

<sup>20</sup> Department of the Environment, Community and Local Government (2013): [Building for the Future, A Voluntary Regulation Code for Approved Housing Bodies in Ireland](#).

According to the most recent annual report from the Housing Agency Regulation Office, 83% of AHBs demonstrated high levels of compliance with the VRC.<sup>21</sup> Three AHBs were found to be unsatisfactory in the 2017/18 assessment cycle. The annual report states that:

“...the AHB Sector continued to show a strong commitment to ensuring they are well-managed, well-governed and financially viable.”

## Classification of AHBs as General Government Sector

On 2<sup>nd</sup> March 2018 Eurostat published a letter expressing its view in relation to the classification of the AHB sector,<sup>22</sup> which is that AHBs are “...ultimately controlled by Government...” and would therefore be classified as “General Government Sector”,<sup>23</sup> (i.e. bodies that are directly or indirectly controlled by a Government department or office, or local authority and are non-market producers).

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.

## Reactions to the March 2018 Eurostat decision

The Housing Agency Regulation Office Annual Report 2017 states that the reclassification has created uncertainty in the AHB sector and the implications of this are under review. 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.<sup>24</sup> In August 2018 the Housing Alliance<sup>25</sup> told the Joint Committee on Housing, Planning and Local Government, that it does not agree with the “entirety” of the CSO assessment and has taken advice which suggests it is open to challenge.

The Housing Alliance recommend the establishment of a working group that will focus on the reclassification issue and attempt to determine what changes need to be made so that the AHB sector will once again be off-balance sheet.<sup>26</sup>

Mr. John Hannigan, the CEO of Circle Housing, told the Joint Committee on Housing, Planning and Local Government:<sup>27</sup>

“Until the classification deadline was set and while we were on the balance sheet, we were able to generate €3 from the private sector for every €1 we received from the State. At that

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<sup>21</sup> Ibid.

<sup>22</sup> The full letter may be accessed [at this link](#).

<sup>23</sup> Definition of General Government Sector can be found [here](#).

<sup>24</sup> Irish Times. (2018). [Eurostat move will not curb social housing, Eoghan Murphy vows](#).

<sup>25</sup> The Housing Alliance are five of the largest AHBs: Clúid Housing, Co-operative Housing Ireland, Circle Voluntary Housing Association, Oaklee Housing and Respond! Housing Association.

<sup>26</sup> Housing Alliance [opening statement to the Joint Committee on Housing, Planning and Local Government](#).

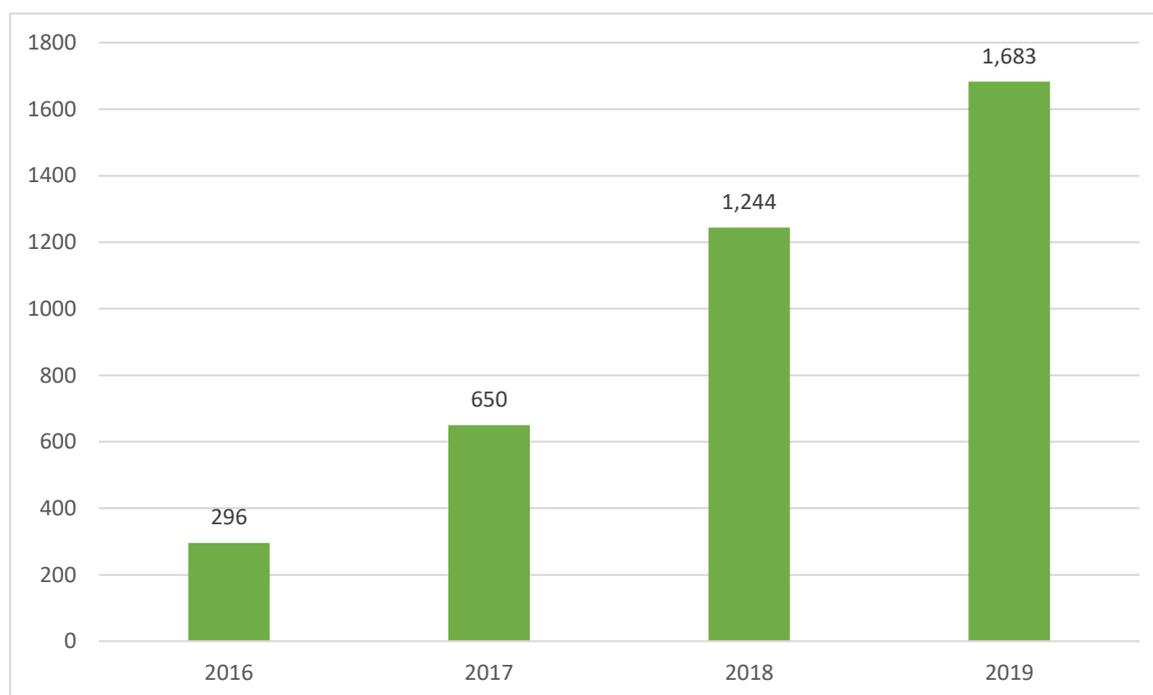
<sup>27</sup> Joint Committee on Housing, Planning and Local Government. (2019). [Approved housing bodies: discussion](#).

point the borrowings of the **Housing** Finance Agency, HFA, were considered to be off-balance sheet. They are now considered to be on the balance sheet. Everything we have borrowed since, regardless of from where it came, has been on the balance sheet. We have lost the ability to provide an extra €3 worth for every €1 spent by the State on **housing**. That is where we are.”

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. 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.<sup>28</sup>

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, as already mentioned, private loans by AHB have been growing over the past three years, as shown in Figure 2. This debt will go on the State’s balance sheet.

**Figure 2: Total loans to AHBs 2016-2019 (€M)**



**Source:** Housing Agency Regulation Office (2018)

<sup>28</sup> 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>

## Stakeholder commentary

There has been little commentary from stakeholders since the publication of the Bill. However, as there has been a relatively long lead-in to publication of the Bill (PLS took place in 2015), many stakeholders have expressed their concerns and/or support for the proposals in the interim period.

For instance, the latest annual report from the Housing Agency Regulation Office noted that the delay in the publication of the *Housing (Regulation of Approved Housing Bodies) Bill* was a “risk to the sector with both reputational and funding implications”.

The ICSH commenting in their annual report 2018 stated that:<sup>29</sup>

“The legislation that will underpin the Regulator for AHBs has yet to be published. The working group is keen for the legislation to be published with clear guidelines facilitating independence and respecting proportionality within the sector.”

CEO of Circle Housing, Mr. John Hannigan, told the Committee in July 2019 that:<sup>30</sup>

“We have not seen the regulation Bill. There has been no consultation with us in respect of it, so we cannot tell the Deputy specifically what is in it.”

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<sup>29</sup> Irish Council for Social Housing: [Annual Report 2018](#)

<sup>30</sup> Joint Committee on Housing, Planning and Local Government. (2019). [Approved housing bodies: discussion.](#)

## Pre-legislative scrutiny by the Joint Committee on Environment, Culture and the Gaeltacht

The Joint Committee on Environment, Culture and the Gaeltacht conducted its PLS on the *General Scheme of the Housing (Regulation of Approved Housing Bodies) Bill 2015* in December 2015.<sup>31</sup> 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.

During PLS the Committee also stated that it would be appropriate for the CEO's appointment to be approved by the Committee (or its successor), as the Committee is responsible for overseeing national housing policy. The published Bill does not include such a provision.

During PLS, key areas discussed by the Committee and stakeholders, alike, included (a) disposal of assets (it was proposed that disposal of assets with a value of more than €10,000 would require the consent of the Regulator, but this does not feature in the published Bill) and (b) transfer of an AHB's assets where their registration is cancelled or has lapsed, or an application to register has been refused.

In relation to the latter proposal the ICSH expressed concern that the transfer of assets should only be considered where there is a significant risk to the financial viability of an AHB. The Committee stated:

“...it is not clear from the General Scheme whether an AHB can be compelled to accept a transfer of the assets of another AHB. Neither is it clear whether the AHBs involved need to operate in the same geographical area or provide the same type of service to the same type of tenants.”

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<sup>31</sup> The Committee's report can be accessed [at this link](#).

Table 3 (overleaf) contains the Department's response to the key issues and considerations identified by the Committee.

**Table 3: Joint Committee PLS report considerations v Bills provisions (Department's response)**

No.	Key issue as per Joint Committee Report	Whether addressed (either in whole or in part) in the Bill
1	The reasons why a large number of AHBs did not sign up for voluntary regulation and the impact automatic registration may have on such bodies.	<p>Since the introduction of voluntary regulation it was a requirement for any new body applying for AHB status to sign up to the voluntary regulatory code. Since 2016 in order to access new funding under section 6 of the <i>Housing (Miscellaneous Provisions) Act 1992</i> AHBs must sign up to the VRC. However, a number of AHBs who did not fall into either of these categories chose not to sign up.</p> <p>The Bill addresses the impact of automatic registration. Pursuant to s.35 all existing AHBs will be deemed to be registered in the first instance and will subsequently have to make an application for registration within certain timeframes depending on the size and development plans of the AHB.</p>
2	Whether a process for de-registration should be put in place in advance of the introduction of legislation.	The Department will carry out a de-listing exercise in advance of the introduction of statutory regulation. The Regulator will also work with the AHBs who wish to deregister post enactment in a controlled manner in order to protect the assets of the AHB and the AHB's tenants interests.
3	Whether Head 11(3)(a) should be broadened to include any change to the Rules of a co-operative as suggested by Co-operative housing Ireland.	Notifiable events including if the AHB no longer satisfies the eligibility criteria apply to all AHBs pursuant to s.56.
4	Whether the eligibility requirements for registration should reflect the current requirements for approved status.	Yes the eligibility requirement broadly reflect the current requirements for Approved Housing Body status. Under S.67 the power to grant approved status will be removed from the Minister by means of an amendment to the Housing (Miscellaneous Provisions) Act 1992 and will oblige AHBs to be registered with the Regulator as a prerequisite to receiving financial assistance under section 6 of HMPA 1992
5	What might comprise an event, which may be seen as bringing an AHB into disrepute as no guidance is provided in the General Scheme.	<p>Chapter 8 of the Financial Standard and Assessment Framework 2015 published by the Regulation Office gives guidance on notifiable events. This guidance can be downloaded at</p> <p><a href="http://www.housingagency.ie/sites/default/files/2019-03/HA-Financial-Standard-FINAL-WEB.pdf">http://www.housingagency.ie/sites/default/files/2019-03/HA-Financial-Standard-FINAL-WEB.pdf</a></p>
6	Whether the notification requirements should apply in respect of the acquisition of properties in the development process.	This is reflected in the Bill. Pursuant to s.56 an AHB is required to notify the Regulator of any matter that may threaten or reasonably be expected to threaten the stability, efficiency, operations and general viability of the AHB. The Standards drafted pursuant to s.38 will set out the notification requirements more comprehensively.

7	Whether the requirement that an AHB must obtain the consent of the Regulator before disposing of an asset valued in excess of €10,000 raises constitutional issues in relation to the right to own and dispose of private property.	This is not reflected in the final Bill. There is no requirement to obtain the consent of the Regulator for disposing of assets.
8	Whether the requirement that an AHB must obtain the consent of the Regulator before disposing of an asset valued in excess of €10,000 will amount to an additional administrative burden on AHBs and the Regulator, and interfere with the independence of AHBs to manage their day to day financial affairs.	This is not reflected in the final Bill. There is no requirement to obtain the consent of the Regulator for disposing of assets.
9	Whether a higher monetary threshold should be introduced.	There is no requirement to obtain the consent of the Regulator for disposing of assets.
10	Whether the current 'comply or explain' principle in the voluntary code should be adopted in relation to Head 11 rather than the creation of an offence for failure to comply.	<p>It is not an offence under the Bill if an AHB fails to comply with the standards. There are other options available to the Regulator such as to require the AHB to enter into a compliance plan or for more serious matters the Regulator may wish to carry out an investigation under Part 5 of the Bill or to cancel the registration or apply to the High Court for an order under Part 6.</p> <p>Offences under the Bill are limited to matters of a more serious nature including knowingly providing false information to the Regulator.</p>
11	Whether Head 11 as currently drafted will result in the Regulator becoming involved in the management of AHBs as opposed to the oversight of such bodies.	This is not the intent and has been reflected within the final published Bill. There is no requirement for the Regulator's consent before an AHB can dispose of assets.
12	Whether the provisions will secure the objectives of regulation (i.e. protection of assets, securing investment and the protection of tenants).	Yes the protection of state assets and the interest of tenants are paramount to the Bill.
13	Whether the proposed powers of inquiry, investigation and assessment should apply to an AHB which is entirely privately funded.	Any body that meets the eligibility criteria may seek to register as an AHB but any body who wishes to receive funding under section 6 of the HMPA 1992 must register. The provisions of the Bill will apply equally to all bodies registered.
14	Whether the proposed provisions are reasonable, appropriate and proportionate given the nature and diversity of the sector.	The Bill provides for a suite of intervention powers. The standards will be proportionate with regard to the size and scale of housing support services provided by the AHB.

15	Whether Head 15 needs to be more specific in terms of the type of conduct which would justify requiring an AHB to submit and implement an engagement plan.	Section 40 provides that if the Regulator finds that an AHB is failing to comply with a standard s/he may require the AHB to submit a compliance plan. The standards will be published and may make different provisions for different categories of AHBs.
16	Whether Head 15 is in line with the right to fair procedures, which requires among other things that bodies/persons making decisions which affect you must treat you fairly, and afford you an opportunity to be heard.	<p>Representations can be made by the AHB to the Regulator at various stages including;</p> <ul style="list-style-type: none"> <li>• If the Regulator proposes to refuse an application for registration,</li> <li>• On a draft assessment report received from the Regulator,</li> <li>• If the Regulator proposes to reject a compliance plan,</li> <li>• If the Regulator proposes to give a notice of non-implementation of a compliance plan</li> <li>• If the Regulator proposes to cancel the registration of an AHB on specified grounds.</li> </ul> <p>S62-65 provide for the establishment of an appeals panel and the hearing of appeals. An AHB may submit appeals where the Regulator exercises its powers in relation to registration, compliance plans or cancellation of registration.</p>
17	Whether a time-frame for compliance should be included in legislation to allow AHBs achieve regulatory compliance.	Compliance is an ongoing activity and the Regulator will work with the AHB to ensure that they reach compliance. Appropriate provisions are included in the Bill to enable AHBs achieve compliance in a fair and proportionate manner.
18	The need to include representative bodies in the consultation process under Heads 13 and 17.	Provisions are made within the Bill under s.38 to allow for public representations when drafting standards.
19	Whether Head 16 raises any potential data protection issues.	The Regulator will be a Data Controller and will be subject to the provisions of the Data Protection Act.
20	Whether it should be made mandatory that the Regulator issue guidelines in respect of the criteria for registering an AHB.	One of the functions that the Regulator is required to perform is to promote awareness and understanding of the Act and to make available information on the operation of the Act. The eligibility criteria and the requirement for registration are set out in the Act.
21	Whether the consultation process should be mandatory.	Under s.38 the Regulator must publish draft standards on its website and must consider any representations made before the draft standards are submitted to the Minister for approval.
22	Whether an event triggering the undertaking of an assessment of an AHB should be required before the Regulator initiates an assessment.	Under the Bill an assessment is a regulatory tool that is used to monitor ongoing compliance with regulatory standards and is not intended as a power of intervention.

23	What the implications of mandatory regulation will be for smaller AHBs who are already failing to comply with regulatory standards, for example in terms of board membership.	Regulation will give AHBs greater support in order to assist them in achieving compliance. It will also help AHBs manage risk and to focus on achieving best outcomes for tenants. Smaller Tier 1 AHBs will be deemed to be registered in the first instance and will have three years before they are required to apply for registration. Tier 2 AHBs will have two years to register and Tier 3 AHBs will have one year.
24	Whether an AHB should be allowed appoint a person to fulfil the functions of the suspended officer/employee with the consent of the Regulator, rather than the Regulator making this decision.	This is not reflected in the final Bill. The Regulator may apply to the High Court for an order in certain circumstances which are set out in s.55. Two of the remedies available to the High Court are to make an Order: <ul style="list-style-type: none"> <li>• suspending or removing any director or officer or staff of the AHB, and</li> <li>• an Order appointing such person(s) as the High Court considers appropriate to act as director or other officer of the AHB in addition to, or instead of, any existing director or officer.</li> </ul>
25	The dual role of the High Court under Head 23.	This is not reflected in the final Bill.
26	The financial effect of the appointment of a manager/interim manager on a small community based AHB run primarily by volunteers.	This is not reflected in the final Bill.
27	Whether the obligation on an appointed manager to comply with the directions of the Regulator in relation to the performance of his/her functions as manager may erode the autonomy of an AHB.	This is not reflected in the final Bill.
28	Whether all the decisions of the Regulator should be appealable given the extensive powers proposed (for example a refusal to give permission for the disposal of assets valued in excess of €10,000).	The consent to dispose of assets is not reflected in the final Bill. Decisions of the Regulator are appealable.
29	Whether Head 16 will permit the Regulator to have access to information relating to an AHB which is in the possession or control of a third party (for example a private investor).	Under Part 5 the Regulator may appoint an inspector to investigate the affairs of an AHB who will have access to information relating to an AHB which is in the possession or control of a third party.
30	Whether the proposed restrictions on the disposal of assets as proposed in the General Scheme potentially give rise to constitutional concerns.	This is not reflected in the Bill.

31	Whether Head 27(4) should be expanded to include consultation with the AHBs in question and any affected tenants.	There is provision in the Bill whereby a deemed AHB; who fails to apply for registration; or its application for registration is refused; or if the registration of any AHB is cancelled, and the Regulator thinks its necessary for the protection of tenants, the Regulator may by notice require the AHB to transfer its property to another AHB with consent of both parties and any relevant third parties (other than tenants). If any party objects to the transfer the Regulator may apply to the High Court. The consent of the accepting AHB would be required as the High Court would not transfer assets to an AHB without their consent. The transfer would be without prejudice to any rights or interest of any third parties including tenants.
32	Whether an AHB who receives transferred assets should operate in the same geographical area or provide the same type of service to the same type of tenants.	This is not reflected in the Bill.
33	Whether the Regulator can compel an AHB to accept a transfer of the assets of another AHB.	An AHB must consent to the acceptance of assets of another AHB.
34	Whether any competition law issues arise in the transfer the assets of one AHB to another.	This is not reflected in the Bill.
35	Whether the provision in relation to the transfer of assets could result in the removal of smaller local based AHBs from the sector giving rise to larger more nationally based organisations.	This is not the intent of the Bill. Once an AHB is properly managed, is in compliance with the standards and there is no risk to the financial viability of the AHB, the Regulator may not apply to the High Court for an order to transfer the assets.  Section 58 provides for those AHBs, that no longer wish to continue to operate as an AHB and wish to apply for voluntary cancellation of their registration, that any transfer of assets is done in an orderly way to ensure the safety of tenancies.
36	Whether the various applications to the High Court will be on an ex parte basis.	Section 55(3) provides that applications by the Regulator for an interim order may be made ex parte.
37	What will happen to an AHB following the transfer of all its assets.	Its registration will be cancelled.

Source: Department of Housing, Planning and Local Government (2019), through correspondence with the L&RS.

## Principal provisions

This section looks at a number of key provisions. It does not look at every section of the Bill in detail. Provisions included in this section are:

- Establishing a new statutory regulator;
- Oversight of the Regulator by Oireachtas Committees;
- Registration of AHBs;
- Standards assessments and compliance plans;
- Powers of the Regulator to conduct investigations; and
- Appeals

### Establishing a new statutory regulator

Part 2 of the Bill provides for the establishment of a statutory regulator to be called the Approved Housing Bodies Regulatory Authority. Functions of the Regulator will include, but are not limited to:

- establishing and maintaining a register of AHBs;
- preparing draft standards;
- monitoring and assessing compliance by AHBs; and
- publishing information (including statistical information) concerning AHBs.

Sections 12-14 of the Bill provide that a chief executive will be appointed by the Regulator, after a competition run by the Public Appointments Service (PAS). The chief executive must not be a member of the Regulator or of any committee of the Regulator.

The term of office for the chief executive will be 5 years, though it can be extended by the Regulator. However, no person will be permitted to serve for longer than 10 years from their first appointment. Where the position is vacant, the Regulator may designate a member of its staff to perform the functions of chief executive.

The chief executive may (with written consent from the Regulator) delegate any of his or her functions to a member of staff of the Regulator, but the chief executive will be accountable to the Regulator for any of these functions and the chief executive may be removed from office by the Regulator.

### Oversight of the regulator by Oireachtas committees

The chief executive must appear before the Committee of Public accounts (PAC), to give evidence, among other things, to the propriety of its transactions and its use of resources. The Bill states that the chief executive must not question or express an opinion on the merits of Government policy, or the merits of the objectives of such a policy.

In addition to presenting before the PAC. Section 16 provides that the chief executive must appear before Oireachtas Committees upon written request. However, he or she will not be required to give account before a Committee for any matter “which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.” If the chief executive declines

the Committee's request for this reason, but the Committee does not withdraw the request, the chief executive may apply to the High Court to determine the matter.

## Registration of AHBs

### Eligibility criteria

The eligibility criteria included in s.26 will determine registration for both companies who are not already registered under the *Housing (Miscellaneous Provisions) Act 1992*, as well as those who are (but must still apply for registration). Section 26 specifies that a "person" that applies to register as an AHB must have at least 5 directors if it is a company. Eligibility also includes a registered society, a friendly society, and a charitable trust.

In order to be eligible, these entities must have in their constitution the provision and management of dwellings for the purpose of the alleviation of housing need; as well as the prohibition of surplus, profit, bonus or dividend to members or directors or other persons. In addition, all property must be applied to the provision and management of dwellings for the alleviation of housing need (with the exception of costs relating to maintenance, remuneration, and superannuation).

### Information required in order to register as an AHB

Section 28 provides for the information required to register as an AHB. This includes: all audited accounts of the applicant, together with the auditor's report; the number of dwellings owned or leased by the applicant; and a copy of the constitution of the applicant.

Under s.28, AHBs registered under the *Housing (Miscellaneous Provisions) Act 1992* will be required to apply to the Regulator, for registration as an AHB, within a statutory period. This period will vary depending on how many units the AHB manages, with longer timeframes for those managing fewer units e.g.

- 12 months for AHBs managing 300 or more dwellings,
- 2 years for those managing 50-299 dwellings and
- 3 years for those managing less than 50 dwellings.

If the Regulator believes these timelines to be unduly onerous, they may extend them.

### Procedures for when an application is refused by the Regulator

Section 31 provides that where an application has been refused by the Regulator, the applicant will have 28 days to make a representation in writing to the Regulator. Section 32 provides that where the Regulator considers but refuses to grant the application for registration, the applicant may appeal this decision within 21 days of the notice. Section 33 provides that the onus is on AHBs to correct any errors on the register.

### Provisions relating to existing AHBs and prohibited conduct

Section 35 provides that a person who is approved under s.6 of the *Housing (Miscellaneous Provisions) Act 1992* will be registered in the register as an AHB for the purposes of this Act. Such persons will be required to pay the Regulator a fee. This section also provides that the Minister must, upon request, provide the Regulator with specified information kept by the Minister on a

body registered under s.6 of the Act of 1992. This information would be the same as is required for registration under s.28.

Section 36 provides that a person, other than an AHB, must not describe himself, herself, or itself as an AHB, or imply that they are an AHB. A person found guilty of this under s.6, will face, on summary conviction, a class A fine, or imprisonment for a term not exceeding 12 months or both. If convicted on indictment they will face a fine not exceeding €300,000 or to imprisonment for a term not exceeding 10 years, or both.

### **Standards assessments and compliance plans**

Section 39 provides that the Regulator may carry out a standards assessment, determining if an AHB is compliant with the approved standards (as described in s.9 of the Bill). The Regulator must prepare a report in writing of this assessment which sets out its findings and recommendations.

Section 40 provides that where an AHB fails to comply with an approved standard, it must submit a compliance plan to the Regulator, detailing how it will rectify the failure. If this plan is not submitted, the Regulator may issue the AHB with a “notice of non-compliance. Section 41 provides that an AHB can appeal a notice of non-compliance not later than 21 days from the date of notice.

Section 43 provides that a “notice of non-implementation” may be issued to an AHB that the Regulator believes is not implementing a compliance plan. An AHB may appeal this notice, not later than 21 days from the date of the notice.

Section 44 provides that the Regulator must enter the details of the notice of non-implementation on the register. An AHB can write to the Regulator at any time to have these details removed, provided that the Regulator is satisfied that the compliance plan has been implemented.

### **Powers of the Regulator to conduct investigations and potential consequences for AHBs**

#### **Investigation reports**

Part 5 of the Bill provides that the Regulator may appoint members of its staff to be inspectors, as well as other persons, and that these inspectors may investigate a particular AHB. Inspectors will produce a report based on their findings and the Regulator may provide a copy of such a report to other persons or bodies, as it considers appropriate. Section 51 provides that a copy of an investigation report can be used as evidence in any proceedings (other than proceedings for an offence).

#### **Powers of investigators**

Section 49 provides that AHBs must provide inspectors, upon request, with all information and records, in their position, relating to the AHB. An agent of the AHB must meet the inspector in person, to provide this information. Section 49 also provides that if an inspector believes, during the course of the investigation, that a director, member or trustee of an AHB has maintained a bank account (connected with the work of the AHB) the inspector may require that they produce all documents relating to that bank account.

Inspectors will have powers to enter and search premises where records are believed to be kept. They will also have powers to secure a premises for later inspection and retain any records he or

she considers to be necessary. However, an inspector must not enter a dwelling without the consent of the occupier, or a warrant issued by a judge of the District court, under s.50(4).

### **Offences**

Section 52 provides that any person who refuses to provide information, or withholds or destroys information, or otherwise obstructs an investigation will be guilty of an offence.

Section 53 provides that nothing in Part 5 of this Act would compel a person to share privileged information to the Regulator. This section also provides that any statement made by a person under Part 5 of the Act is not admissible in criminal proceedings (other than in criminal proceedings under s.52 of the Act). The inspector must explain this to the person in ordinary language.

### **Transfer of dwellings to another AHB**

Section 54 provides that where a deemed AHB's registration is cancelled or has lapsed or an application to register has been refused, the Regulator may issue a notice to that AHB requiring them to transfer all or any of their dwellings to another AHB, if the Regulator believes this is necessary in order to protect tenants. If the AHB objects to this, the Regulator may apply to the High Court for an order.

Section 55 provides for the circumstances under which the Regulator may seek an order from the High Court. This is an extensive list which includes an AHB: failing to comply with the provisions of the Bill, committing an offence, or misusing funds.

Under these circumstances the High Court may issue an order which:

- suspends or removes any director or other officer of the AHB,
- appoints such person or persons, as appropriate, to act as a director or other officer of the AHB;
- vests any or all of the property of the AHB to another AHB identified by the Regulator;
- prohibits the removal, sale or application of any property of the AHB without the Regulator's consent;
- directs any debtor of the AHB not to pay such debt for a specified period or pay it to such person as may be so specified in satisfaction of the debt to the AHB; and
- restricts or prohibits the entering into, by the AHB, of such agreements, or agreements of such a class, as may be specified in the order.

S.56 provides that an AHB must give notice to the Regulator should specified events occur. These include: if the company is to be struck off, if its registry is to be cancelled, or if it is to be appointed to a receiver. An AHB which fails to give notice to the Regulator will, under s.6, face, on summary conviction, a class A fine, or imprisonment for a term not exceeding 12 months or both. If convicted on indictment they will face a fine not exceeding €300,000 or to imprisonment for a term not exceeding 10 years, or both.

Section 57 amends Part 10 of the Companies Act 2014 to apply examinership provisions to AHBs.

### **Cancellation of registration and removal from the register**

Section 59 provides that the Regulator may cancel the registration of an AHB on one or more of the following grounds:

- (a) that the AHB has been convicted of an offence under this Act, or any other indictable offence;
- (b) that the AHB has failed or is failing to comply with any provision of, or a requirement or direction under, this Act;
- (c) that the AHB no longer satisfies the eligibility criteria;
- (d) that there are grounds on which the Regulator would be entitled or required to refuse an application under section 28 for the registration of the AHB;
- (e) that the AHB is an AHB to which section 35(10) or (11), as the case may be, applies.

If the Regulator does cancel the registration of an AHB, it must notify each housing authority where the AHB has dwellings.

Section 60 provides that if an AHB ceases to exist (e.g. through dissolution), the Regulator must cancel the registration.

Section 61 provides that where an AHB is cancelled, the Regulator must remove from the register all information registered in relation to the AHB. The Regulator must also enter in the register a statement that the registration has been cancelled and the reasons for that cancellation.

The Regulator must also provide notice to the Residential Tenancies Board (RTB) and the Charities Regulatory Authority (if the AHB is a registered charity).

## Appeals

An AHB can appeal a decision of the Regulator in relation to compliance plans or registration.

Section 62 provides for the Minister to establish an Appeals Panel of at least 10 people with experience or expertise in matters relating to the hearing of appeals or the functions of the Regulator (other than members of the Regulator or staff of the Regulator). Subsection (10) details a number of grounds under which a member of the Appeals Panel must cease to hold office, such as if they are bankrupt, or convicted of an offence. This section provides that the Appeals Panel must be independent in the performance of its functions.

Section 63 provides for the establishment of an Appeals Board, the members of which (3 in total) must be appointed by the chairperson of the Appeals Panel.

Section 64 provides for the procedures to be taken when the Appeals Board considers an appeal. It provides that the Appeals Board may refuse to hear an appeal which it considers to be frivolous or vexatious. Subsection (4) provides that a witness before an Appeals Board shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

Section 65 provides that either party may appeal, to the High Court, the decision of the Appeals Board within 3 months from the date of determination.

Section 66 provides that relevant persons who have obtained confidential information while performing functions under the Act, must not disclose this information, unless he or she is required by law, or authorised by the Regulator, to do so. A person found guilty of this under s.6 will face, on summary conviction, a class A fine, or imprisonment for a term not exceeding 12 months or both. If convicted on indictment they will face a fine not exceeding €300,000 or to imprisonment for a term not exceeding 10 years, or both.

## Policy and financial implications

### 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 the case for a new regulator can be demonstrated, considering the structures that already exist.<sup>32</sup>

As the AHB sector is already regulated by several bodies, and is operating under a voluntary code, it is reasonable to consider if a statutory 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.”

Travers et al. (2010) cite several potential risks attached to new regulatory frameworks such as:<sup>33</sup>

- 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.

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. This complexity presents specific challenges for those seeking to regulate the sector.

### Capacity within the sector

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. It is hoped that introducing a statutory regulator will 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.<sup>34</sup> NESC also highlighted issues of capacity in the sector, stating that while some AHBs have in-house design and development capacity, “most do not.”

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<sup>32</sup> Brown, Ciara and Scott, Colin. (2010). [Regulation in Ireland: History, Structure, Style and Reform.](#)

<sup>33</sup> Travers, Max, Phillips, Rhonda, Milligan, Vivienne and Gilmour, Tony. (2010). [Regulatory frameworks and their utility for the not-for-profit housing sector.](#)

<sup>34</sup> National Economic and Social Council. (2014). [Review of Irish Social and Affordable Housing Provision.](#)

## Regulatory burden on smaller AHBs

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. For instance, it was reported in the *Irish Times* that Stepping Stone Accommodation (which has a portfolio of 29 homes) is to end its operations due to increased regulatory and governance requirements.<sup>35</sup>

In terms of opportunities, it is possible that smaller AHBs may come together in order to achieve economies of scale. Clúid housing, commenting on increased regulation in the AHB sector, state that regulatory burden is a problem for Tier 1 AHBs, which is particularly felt by volunteers and directors. Clúid also make the point that volunteers don't necessarily have the skills to deal with regulation on top of their everyday work.<sup>36</sup> Clúid housing writes that, as many Tier 1 AHBs will not be able to access funding (public or private), collaboration, mergers or acquisitions may be a solution. These help AHBs to achieve economies of scale and allow larger AHBs to give advice and support to smaller AHBs.

## Financial implications

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.

In addition to costs for the Exchequer there will be financial implications for AHBs. During pre-legislative scrutiny, Ms. Rosalind Carrol (then Head of Regulation at the Housing Agency) told the Committee that good regulation can lead to lower lending costs for the AHB Sector, as lenders are reassured about the long-term stability of the Sector. It is also likely that there will be some costs incurred by AHBs, related to compliance, particularly in terms of compliance and registration.

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<sup>35</sup> Kelly, O. (2018). Dublin housing charity winds up. *Irish Times*, 10 December 2018.

<sup>36</sup> Clúid Housing. (2018). [Joined up thinking: successful AHB collaboration, mergers and acquisitions.](#)



## Contact:

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

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

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