

HOUSING (AMENDMENT) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department for Communities (“the Department”) in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and neither is it meant to be, a comprehensive description of the Bill. Where a clause or part of a clause or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The purpose of the Bill is to facilitate a reversal of the decision of the Office for National Statistics (ONS) to reclassify Registered Housing Associations (RHAs). The ONS is the UK’s largest independent producer of official statistics and is the recognised national statistical institute for the UK. It is responsible for collecting and publishing statistics related to the economy, population and society at national, regional and local levels.
4. On 29 September 2016 the ONS announced that RHAs in Northern Ireland would be reclassified to the public sector and designated as Public Non-Financial Corporations.
5. This decision means that borrowing drawn down by RHAs to finance new social housing developments would constitute public expenditure and would therefore be charged against the NI Executive budget.

CONSULTATION

6. Given the implications of this the NI Executive asked that proposals be brought forward (including amendments to legislation as necessary) to enable it to seek a reversal of the ONS decision.
7. Two consultations have been carried out by the Department. The first consultation, Proposals to Seek Reversal of the Reclassification of Registered Social Housing Providers in Northern Ireland, ran from 8 December 2016 to 8 February 2017. This document contained proposals reflecting the Department’s assessment of the legislative changes that would need to be made to facilitate a reversal of the

decision. The second consultation, Classification of Registered Housing Associations in Northern Ireland: Consultation Two - The Future of the House Sales Schemes, ran from 3 July 2018 to 24 September 2018. This document presented options for changes to the House Sales Schemes in order to ensure that RHAs return to their private sector classification.

8. As England, Scotland and Wales also had the same reclassification decision made by ONS there was regular liaison between officials in the four jurisdictions. This forum allowed the Department to learn from the other experiences and to gain an insight into the legislative amendments that ONS considered to be acceptable in terms of reversing their decision. The issue of the House Sales Scheme was unique to Northern Ireland as it was the only jurisdiction with a compulsory scheme.

OPTIONS CONSIDERED

9. As ONS had identified controls within legislation the Department considered what legislative changes would be needed in order to seek a reversal of the classification of RHAs. The impact of failing to reverse the classification would be significant both in terms of the Executive's budget and also on the number of social and affordable houses that could be provided.

The NI Executive decided to seek a reversal of the ONS decision in order to maintain the advantages that a private sector classification of RHAs lends to its development of new social homes. RHAs are the sole developers/providers of new social homes. A private sector classification of RHAs has long enabled them to complement, with their own borrowings, the funding that the NI Executive has allocated to the development of new social homes. These private borrowings had no impact on the public purse. However, under a public sector classification the RHAs borrowing would count as public borrowing thereby impacting the Executive's budget. It would also prevent the RHAs from obtaining any further borrowings which would result in the Executive having to provide full funding for the development of new social homes.

Since the ONS decision, the UK Government (HM Treasury) has prevented the ONS decision from having this effect on the Executive's budget by applying a derogation. The derogation allows for the impact of the classification to the private sector to be delayed for a period of time. The current derogation expires on 31 March 2021 and it is unlikely that there will be a further extension. If reclassification cannot be achieved within this timeframe the RHAs will not be able to access private borrowings that would complement the funding allocated by the Executive. In real terms, had this applied in the financial year 2019-20, the RHAs would not have been able to match the £146m allocated by the Department for the development of new social homes. As a result, instead of supporting a target of 1850 new build starts, only half of that number would have been affordable.

Another consequence of the ONS classification of RHAs to the public sector is that they are no longer eligible to access Financial Transactions Capital (FTC) loan funding. This access to FTC has supported housing tenures other than social rented, the most significant of which is the Co-Ownership Scheme. Within the last two years, this scheme has supported 2145 households into home ownership (1370 in 2018-19 and

775 to end of November 2019). From April 2015 the scheme had utilised a FTC loan to do this. However from November 2018 the Department has maintained delivery of the scheme at the same levels through securing an additional £49m to its budget (grants of approximately £15m for 2018-19 and a further £34m for 2019-20). The alternative would have been the closure of the scheme to new applicants. Unless a private sector classification is returned to RHAs then closure of the scheme, or still further pressure on the Executive's budget, are the only options for 2020-21 and beyond.

The approach adopted to this Bill has been based on the direction from the Executive in September 2016 and does only that which is necessary to achieve reversal of the ONS decision. That is why the Bill proposes changes to the current compulsory House Sales Scheme for RHAs, but not to the NI Housing Executive House Sales Scheme.

The ONS review of RHAs was in part sparked initially by a number of issues being discussed by the government in London, one of which was the potential introduction of a compulsory House Sales Scheme for RHAs in England. In the end this did not materialise and the voluntary scheme launched in 2016 and still under development in England did not draw comment from ONS as it was not based in legislation. Scotland and Wales have ended their House Sales Schemes for all tenants. The key difference for Northern Ireland is that the House Sales Scheme is compulsory and set out in legislation. It evidences the sort of control that ONS based their decision on. Although not mentioned in their initial letter to the Executive summarising their decision, subsequent correspondence between the Department and the ONS Secretariat confirmed that this issue was of material interest. Not ending the RHA House Sales Scheme risks the aim of the Bill i.e. achieving a reversal of the classification decision.

The Department will subsequently bring forward proposals to look at how methods of entry to affordable homeownership can be improved and developed and will include how best to protect the social housing stock and the future of the NI Housing Executive House Sales Scheme.

ONS determined that RHAs should be classified to the public sector because they observed the level of control of RHAs by the Department on behalf of the Executive not to be consistent with a private sector classification. Therefore, the sole focus of the Bill is to remove or amend those provisions in existing Housing legislation that provide for this control. Changes to this or future legislation will need to be assessed carefully for evidence of control lest a future review by ONS may cause a reversion to a public sector classification for RHAs.

OVERVIEW

10. The Bill has 8 substantive clauses and 3 technical ones. There is also a short Schedule. The substantive clauses consist mostly of amendments to the Housing (Northern Ireland) Order 1992 ("the 1992 Order"). Any reference in this Memorandum to a numbered Article is to that Article of the 1992 Order. A commentary on the provisions follows (comments are not given where the wording is self-explanatory):

COMMENTARY ON CLAUSES

Clause 1: Disposal of land etc

This clause substitutes a new Article 13 which requires a registered housing association to notify the Department if it disposes of or mortgages any land. The manner of this notification and what information is required will be in a form as the Department may prescribe. Such notifications must be made within 28 days of the disposal taking place or mortgage being created. Provision is made for dispensing with notifications through regulations. This requirement to notify the Department replaces the previous requirement to obtain the Department's consent.

The second part of this clause (new Article 13A) specifies that an unregistered housing association must have the consent of the Department before it disposes of any grant-aided land. The clause also allows the Department to place conditions on any consent given. An unregistered housing association may dispose of land without obtaining the consent of the Department by the granting of a lease (ending within 7 years and 3 months of the date of the grant) unless it is granted in consideration of a fine or any associated renewal option takes its term outside this specified period.

This clause also contains various consequential amendments and repeals.

Clause 2: Inquiries into affairs of registered housing associations

This clause makes provision, by amending Article 23, for the Department to initiate an inquiry into the affairs of a registered housing association if the Department has reasonable grounds to suspect that the association has failed, or is failing, to comply with the duties and requirements placed on it by legislation and guidance. These criteria are new and their effect is to define more clearly the scope of the Department's regulatory power. Failure to comply with guidance has been included as a provision for starting an inquiry as it might be an indicator of more serious failings within an association. It will not, however, be a trigger for the Department to take action under Article 25 or Article 26.

The Department may appoint an individual to conduct the inquiry and, if it is considered appropriate, that person may inquire into the business of any other body associated with the registered housing association concerned. This clause also contains associated consequential amendments.

Clause 3: Power to act for protection of registered housing association

This clause, by amending Article 25, gives the Department the power to intervene in the affairs of a registered housing association where it is considered that such action is needed to protect the interests of the tenants or the assets of that association. This provision can only be used if it is felt the committee of the association is unwilling to take the appropriate action. This restriction is new and its effect is to define more clearly the scope of the Department's regulatory power.

Article 25 does not confer a power to initiate an inquiry.

Where the Department is satisfied as the result of an inquiry (under Article 23 as amended by clause 2) or an audit (under Article 24) that a registered housing association has failed to comply with any duty or requirement placed on it the Department may: remove any committee member, officer, agent or employee of the association; suspend such a person for up to 6 months; order a freeze on any securities held on behalf of the association or restrict transactions or the nature and amount of payments made in the administration of that association.

The Department may also remove a committee member for a number of other reasons set out in Article 25(4), including if the person is subject to bankruptcy restrictions or bankrupt, or they cannot be found or do not act and the absence or failure compromises the committee's ability to ensure that the association complies with the duties and requirements on the association.

The Department may appoint a person as a committee member of the registered housing association (for a specified period of time subject to renewal), whether or not they are a member of that association, in place of a removed member, where there are no members in place or the Department feels it is necessary for the association to have an additional committee member to ensure that it complies with its duties and requirements. The appointed person will have the same rights as an elected member. Any person to be suspended or removed from the association shall be given 14 days' notice.

Clause 4: Transfer of land of registered housing associations

This clause amends Article 26 so as to make provision for the Department to identify land (or part of it) and direct that it is transferred to another body. The clause imposes new, more restrictive conditions for the exercise of this power. This action can only be carried out if the Department is satisfied as a result of an inquiry (under Article 23 as amended by clause 2) or audit (under Article 24) that the following three conditions are met: (i) a registered housing association has failed to comply with any duty or requirement placed on it, (ii) such an intervention is desirable for protecting the interests of the tenants and the assets of that association and (iii) the association is unwilling to take that action.

Article 26 does not confer a power to initiate an inquiry.

In the case of an association that has charitable status such land will be transferred to another charitable registered housing association which appears to the Department to be as closely matched as possible. In the case of a non-charitable registered housing association such land may be transferred to another registered housing association or to the Department.

Clause 5: Power to petition for winding up of registered housing association

This clause, by repealing Article 27, removes the Department's power to present a petition for the winding up of a registered housing association, under the Insolvency (Northern Ireland) Order 1989. At present that power can be exercised on the ground

that the association is failing to carry out its purposes or objects properly, or on the ground that the association is unable to pay its debts.

Clause 6: Restrictions on exercise of certain powers of registered housing associations

This clause relates to where a registered housing association plans, through special resolution, to amalgamate or transfer their engagements to another society; to wind up voluntarily; to be dissolved or to amend their rules. The clause amends Article 29. In each case, the existing rule that the action cannot take place without the Department's consent is replaced by a requirement to notify the Department of the action.

In the case of amalgamation or the transfer of engagements of a registered housing association a copy of the special resolution must be sent to the Department. The Department will then issue a certificate to confirm this has been received and a copy of this certificate along with a copy of the special resolution should be forwarded to the registrar.

In the case of the voluntary winding up of a registered housing association the Department must be notified in advance of the intention to propose a special resolution. The Department will then issue a certificate to confirm this has been received and a copy of this certificate together with a copy of the special resolution should be forwarded to the registrar.

In the case of the dissolution of a registered housing association a copy of the instrument of dissolution must be sent to the Department. The Department will then issue a certificate to confirm this has been received and a copy of this certificate and the instrument of dissolution (original) should be forwarded to the registrar.

In the case of amending the rules of a registered housing association a copy of the amended rule(s) must be sent to the Department. The Department will then issue a certificate to confirm this has been received. A copy of this certificate and two signed copies of the amended rule(s) must be sent to the registrar.

The greater detail of these processes is provided for in sections 9, 59, 60, 64 and 67 of the Co-operative and Community Benefit Societies Act (NI) 1969.

Clause 7: Abolition of right-to-buy scheme

This clause provides for the abolition of the right-to-buy scheme for registered housing associations, by repealing the relevant provision of the Housing (Northern Ireland) Order 1983. This repeal is subject to a transitional period of 2 years (see clause 10(1)). The transitional period will allow time for eligible tenants to be aware of the closure of the scheme and to exercise their right within that timeframe. This clause also introduces a Schedule containing various consequential amendments.

Clause 8: Grants for support of non-statutory right-to-buy schemes

This clause makes provision for the Department to make grants in the event that registered housing associations wish to administer their own non-statutory scheme.

FINANCIAL EFFECTS OF THE BILL

11. It is not anticipated that the Bill will give rise to any significant additional expenditure. There is the potential for the budget of registered housing associations to see a limited reduction in capital receipts from property sales following abolition of the house sales scheme.

HUMAN RIGHTS ISSUES

12. The provisions of the Bill are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

13. A screening exercise was undertaken on the proposals in accordance with section 75 of the Northern Ireland Act 1998 and did not identify any issues adversely affecting any section 75 groups. An Equality Impact Assessment was carried out on the effect of the removal of the House Sales Scheme. The assessment identified that any adverse impact on section 75 groups was both minimal and justified in the light of the benefit that will accrue to all members of the public.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

14. A Regulatory Impact Assessment has been completed. Following the date of implementation, the scheme will be evaluated on an ongoing basis to assess and measure its impact and contribution towards achieving its primary objectives.

LEGISLATIVE COMPETENCE

15. The Minister for Communities had made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Housing (Amendment) Bill would be within the legislative competence of the Northern Ireland Assembly.