



Consultation Response
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**Classification of Registered Housing
Associations in Northern Ireland:
Consultation Two-
The Future of the House Sales Scheme**

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when everyone has a home

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1. INTRODUCTION

On 29 September 2016 the Office for National Statistics (ONS) announced that Registered Housing Associations (RHAs) in Northern Ireland (NI) would be reclassified from the private to the public sector. This was based on an assessment of the level of control that government has over an organisation. The impact of this reclassification is that RHA's expenditure, and in particular their spending on new homes programmes, will be charged to the NI Executive's Budget.

Given the implications of this decision, the NI Executive, immediately after the ONS made this announcement, asked that proposals be brought forward to enable it to seek a reversal of the decision. This consultation is the second consultation regarding the reclassification of RHAs in NI and it deals only with options that are directly linked to the future of the Housing Sales Schemes (HSS).

HOUSING RIGHTS

Housing Rights has been helping people in housing need for over fifty years and we are the **leading provider of independent specialist housing advice services in NI**. At Housing Rights we work to improve lives by tackling homelessness and housing problems, and our policy work is based on the experience of our clients.

Housing Rights offers advice to people living in all housing tenures in NI. Indeed, we regularly provide advice, assistance and advocacy to social tenants; routinely making representations on their legal rights and responsibilities.

Specifically, Housing Rights have had direct experience in dealing with the HSS; namely, tenants wishing to realise their legal right to purchase their social tenancy or, unfortunately during repossession proceedings when someone who purchased their social home via a HSS now is in financial difficulty. In addition, more generally, Housing Rights frequently make representations, litigating in both the county and high court, utilising the Housing (NI) Order 1983 and also the Housing (NI) Order 1988. Housing Rights also work at a strategic level, securing reported legal decisions on the rights of social tenants, which are used as legal precedent throughout the United Kingdom (UK). Furthermore, as independent housing advice specialists in NI, we also sit on a number of external groups regarding social housing and have indeed produced several publications and training courses on the rights and responsibilities of social tenants. A main area of our policy work is also involved in considering issues within the Social Rented Sector (SRS) and looking at its changing landscape – opportunities and limitations; namely; the issue of supply within the sector.

As such, our experience and expertise in this field make us acutely aware of the complexities and intricacies of the SRS, and give us a unique position to provide comments and recommendations on this proposal.

SUMMARY OF PROPOSALS

The options in this document are limited to the consideration of ways to change the HSS that could lead to a reversal of the ONS' decision on the reclassification of RHAs in NI.

There are three options:

- Option One - Do nothing
- Option Two – End the HSS only for RHA tenants
- Option Three – End the House Sales Schemes for all RHA and NIHE tenants

➤ Option One

The legislation for the HSS would stay in place and eligible tenants for both RHA and NIHE properties would continue to have the option to purchase their houses.

The Department for Communities (the Department) believes that leaving the legislation unchanged will not give the ONS grounds to reverse their decision to reclassify NI's RHAs to the public sector. Further, the financial issues previously outlined will impact the NI's Executive's Budget and there will be a significant reduction in the number of new social homes being built, having significant knock-on effects on the social housing waiting list and levels of housing stress.

➤ Option Two

Under this option, only the legislation relating to the RHAs' HSS would be repealed.¹ This option would leave in place the HSS that operate for tenants of the NIHE. Potentially, this would involve allowing a time limited extension of the HSS to allow existing tenants to avail before the scheme is fully closed.

However, the Department has noted that legislation which proposes to retain the HSS for NIHE tenants while ending it for the RHA tenants may not be equitable. The profile of RHA tenants means that such an option would disproportionately affect certain groups of people. Further, this would mean that having the opportunity to avail of the HSS will become an unintended and arbitrary function of the common waiting list used by the NIHE to allocate social homes. The way in which the allocation system works is to make the next social home available to the applicant on the waiting list with the greatest level of housing need. There is no consideration of whether the 'next home available' is one provided by a RHA or the NIHE. Therefore, the HSS, if only applicable to NIHE tenants, would confer a benefit on an arbitrary basis.

The potential for a successful challenge of Option Two, on the grounds of inequality, means that it does not securely or directly promise a legislative settlement that would give the ONS grounds to reverse its decision.

➤ Option Three

Under this option, the legislation for both the NIHE and the RHAs would be repealed, ending both schemes. New legislation would include provision of transitional

¹ Article 3(A) of the Housing (Northern Ireland) Order 1983

arrangements necessary to allow a period of time for tenants to be informed of the changes and to exercise their rights. Potentially this would involve allowing a time-limited extension of the House Sales Scheme to allow existing tenants to avail before the schemes are fully closed.

The option would avoid the potential for inequality and the arbitrary nature of Option Two. The Department concludes that Option Three is the only option that securely and directly promises a legislative settlement that would remove the compulsory nature of the HSS and thus enhance the prospect of the reclassification of RHAs being reversed

- Transitional arrangements

The Department in their consultation have identified that in looking at both Options Two and Three, there would be a need to consider if transitional arrangements would be required and what those arrangements should be. When it abolished the RTB scheme, Scottish Parliament implemented a two-year transition period and the Welsh Assembly implemented a one year or two-month transition period, depending on whether or not the home was new to the social housing stock.

- Human Rights and impact assessments

The Department has stated that they believe the options are compatible with the Human Rights Act 1998 (HRA 1998). Section 75 of the Northern Ireland Act 1998 requires each public authority, when carrying out its functions in relation to Northern Ireland, to have due regard to the need to promote equality of opportunity between nine categories of persons, namely:

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- Between men and women generally
- Between persons with a disability and persons without
- Between persons with dependants and persons without

The public authority must also have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. Due to a lack of qualitative and quantitative data available on the HSS in relation to the aforementioned categories of persons, the Department says it is difficult to tell with any degree of certainty the exact level of impact each would face if the scheme were removed. However, the Department does know that the number of tenants buying their homes through the scheme has dwindled significantly in recent years. On average only 360 homes have been sold through the scheme each year over the past 10 years. It can therefore be logically concluded that the numbers affected in each of the categories in Section 75 would be fewer than this figure. However, while removal of the HSS would have minimal impact on each of the Section 75 categories, it would not be equitable to end the scheme for only one element of the overall housing sector.

- Rural needs impact assessment

The Department says there would be no differential impact in rural areas or on rural communities.

2. SUMMARY OF CONSULTATION RESPONSE

- **Housing Rights recommend that Option Three is the preferred option, when considering the future of the HSS in NI.**
- **Housing Rights believe that the context of the current landscape of the SRS is important when considering the proposals contained within this consultation. At present there are 37,611 people in NI on the housing waiting list for a social home. Notably however, only 10,440 allocations were made last year, this is the lowest number of allocations in 9 years; allocating housing to less than 30% of those on the waiting list and to less than 18% of those who were found of be FDA.**
- **Housing Rights believes Option Three creates equity and ensures that all tenants have equal legal social rights both during their tenancy and from the outset. Housing Rights has concerns that choosing Option Two could have a detrimental impact on allocations, leading to a situation where upon receipt of an offer an applicant has a further consideration to make e.g. will they take a secure tenancy that does/does not have the right to buy their property. A natural consequence of this could be that individuals may decline offers, this could lead to the slowing down of allocations and an ineffective use of social stock.**
- **Housing Rights' view that there is a disproportionate number of individuals who have purchased their social home via the HSS who have experienced financial difficulty and/or repossession. It is the experience of Housing Rights' advisers that these individuals may also more likely to hold mortgages with "sub-prime" lenders, who are less willing to negotiate and/or offer forbearance, often leading to homelessness and the need to be rehoused**
- **Housing Rights are aware that there is currently a Departmental proposal to discharge the homeless duty into the PRS. Housing Rights suggest that the HSS has created a reduced stock which, coupled with the low number of social homes being built, has meant that there is an increased pressure to look towards the PRS to replace this diminished social stock. Housing Rights have already made representations to the Department on concerns of the readiness of the PRS to provide this accommodation.**
- **Housing Rights suggest it is essential that there are transitional arrangements in place to safeguard both social landlords and tenants. Housing Rights believe that it is paramount that the need for reversal of the ONS reclassification is balanced with the current legal rights of existing tenants.**

- **Housing Rights have concerns the equality impact assessment may have been misapplied. Housing Rights would recommend that further statistical data is retrieved and a more in –depth impact assessment linked to tenant/applicant profiles, is carried out.**

3. RESPONSE

3.1 Consultation Question 1

Which of the three options do you prefer?

- 3.1.1 Housing Rights recommend that **Option Three is the preferred option**, when considering the future of the HSS in NI. Housing Rights suggest that there are a number of reasons for this and have detailed these below.

PRESSURES ON THE SRS

- 3.1.2 Each year the NI Housing Statistics Report² undertaken by the NI Statistics and Research Agency (NISRA) and published by the Department, provides a view of the current landscape this sector. While data provided in this report illustrates the demand on the social sector e.g. the number of applicants on the HSS housing waiting list and the areas in NI experiencing the greatest demand, it also reports on the number of actual allocations made to both existing social tenants (transfer applicants on the waiting list) and new housing applicants this year.

- 3.1.3 At a glance, the Report identifies that 37,6113 people in NI are currently placed on the housing waiting list for a social home by virtue of the Common Selection Scheme (CSS) and that 23,694 of these people are in “Housing Stress”.⁴ The Report also highlights that last year the CSS determined that 11,889 of the 18,573 households making an application for a social home, met the statutory threshold for FDA. Notably however, only 10,440 allocations were made last year, this is the lowest number of allocations in 9 years, allocating housing to less than 30% of those on the waiting list and to less than 18%⁵ of those who were found of be FDA.

² Available at: <https://www.communities-ni.gov.uk/publications/northern-ireland-housing-statistics-2016-17>

³ NI Housing Statistics Report 2016 – 2017. Section 3 – Social Renting Demand.

⁴ “Those found to have a points total in excess of a defined minimum (currently 30 points) are considered to be in housing stress, or housing need (Housing Executive, 2007).” Review of Housing Need Formula for NIHE, Newhaven Research 2010. Pg.9

⁵ “The Housing Executive can discharge its housing duty in one of three ways: by re-housing of the applicant in the social or private sector, by offering the applicant three reasonable offers of accommodation which are all refused by the applicant or if the applicant re-houses him/herself and is no longer interested. It is not possible to provide a breakdown of discharged Full Duty Applicants into these three subgroups.” NI Housing statistics report, Appendix 3. Pg. 14.

- 3.1.4 In addition, notably, only 1,387⁶ social housing development programme completions occurred in 2016 – 2017. Indeed, the NI Housing Market Review & Perspectives Report 2015 – 2018⁷ highlights that between 2001 and 2014 the social housing stock has decreased from 133,900 to 110,800 – although a small proportion of social properties have been built, the subsequent decrease in stock can be attributed largely to social tenants realising their statutory HSS.
- 3.1.5 This context of the current landscape of the SRS is important when considering the proposals contained within this consultation. **While the abolition of the HSS, is not the sole answer, Housing Rights wish to highlight some further key concerns of the current HSS.**

IMPACT ON ALLOCATIONS

- 3.1.6 Currently, a secure social tenant, regardless of whether or not they are a tenant of a RHA or NIHE, have the right, to make an application to purchase their social tenancy.⁸ This creates equity and ensures that all tenants have equal legal social rights both during their tenancy and from the outset.
- 3.1.7 Conversely, if it was determined that Option Two was the preferred option, meaning that only legislation relating to RHA's HSS would be repealed, this would undoubtedly create a fundamentally unfair position. Indeed, this could potentially lead to a situation where upon receipt of an offer an applicant has a further consideration to make e.g. will they take a secure tenancy that does/does not have the right to buy their property. A natural consequence of this could be that individuals may decline offers, this could lead to the slowing down of allocations and an ineffective use of social stock. **Housing Rights suggest that the option pursued should ensure that the policy of allocation of a basis of housing need is upheld; and for this reason Housing Rights support Option Three as the preferred option.**

LINK BETWEEN HSS AND REPOSSESSION

- 3.1.8 As an independent housing advice provider in NI, Housing Rights have a wealth of experience in advising clients of their legal rights to accessing the HSS as a social tenant and also their rights as subsequent home-owners. Indeed, it is evident that the scheme can produce great benefits for individuals, allowing them to get on the “property ladder” and become home-owners, however, it is also unmistakable they there is a significant number

⁶ NI Housing Statistics Report 2016 – 2017. Section 1 - Supply.

⁷ Available at: https://www.nihe.gov.uk/northern_ireland_housing_market_perspectives_2015-2018.pdf

⁸ Subject to eligibility criteria: Housing (NI) Order 1992 and Housing (NI) Order 2003 (as amended)

of these individuals who have purchased their social tenancy via the HSS, that have and continue to experience difficulty meeting their housing costs.

CASE STUDY 1

Mrs Smith was a secure social tenant who had lived in her property for 10 years. The property was adapted for her disabled child. Mrs Smith was on a benefit only income and was separated from her partner. Following advertisements by companies regarding the ability to purchase your social tenancy, Mrs Smith decided to purchase her home under the HSS scheme; her lender was a “sub-prime” lender, whose interest rate was 14%. Mrs Smith received Support for Mortgage Interest (SMI) to assist her mortgage repayments, however struggled to make up the rest of the contractual monthly instalment. Mrs Smith was in arrears from the beginning of her home-ownership. The sub-prime lender took action and Mrs Smith eventually lost her home. Mrs Smith is now in temporary accommodation and on the social housing waiting list.

3.1.9 Indeed, the Financial Services Authority (FSA), in their 2009 Mortgage Market Review⁹ cited a Department for Communities and Local Government (DCLG) Survey which identified that borrowers who bought from a council or RHA **were two to three times more likely to fall into arrears than someone with a standard mortgage.** Furthermore, **the vulnerability of this group of home-owners** has been further illustrated by the FSA’s 2012 Market Review¹⁰ which determined that **41% of the Right to Buy (RTB)/HSS mortgages in 2011 had a record of payment problems of some kind with 8% in current arrears of two payments or more.** The importance of these figures become more significant when drawing a comparison with other first time buyers: i.e. In 2011 around **1 in 17 UK RTB/HSS borrowers had their home repossessed or a possession order made, compared to 1 in 40 first time buyers.**

3.1.10 In considering how those who have purchased their property via HSS may be more susceptible to arrears and thus risking repossession, **it is Housing Rights experience that borrowing behaviours during the time of the “boom”, coupled with more generous lending conditions, emergence of more “sub-prime” lenders and less stringent regulation, may have played a significant role.** Indeed, Housing Rights’ experience has been further reiterated by the work of the then Department for Social

⁹ Financial Services Authority (FSA), in their 2009 Mortgage Market Review. Available at: <https://www.fca.org.uk/publication/discussion/fsa-dp09-03.pdf>

¹⁰Financial Services Authority (FSA), in their 2012 Mortgage Market Review. Available at: <https://www.fca.org.uk/publication/archive/fsa-mm-r-datapack2012.pdf>

Development's (DSD) (Now, Department for Communities (DfC)) work via the Housing Repossessions Taskforce¹¹:

“Research has shown that borrowers in NI ‘took advantage of the availability of cheap credit to consolidate their debt or spend money on home improvements or other purposes such as to finance buy – to – let properties.”

The DSD in their report also stated that:

“Anecdotally we understand that this behaviour was encouraged through cold calling, pressurised selling techniques and misrepresentation by firms, whose activities were targeted in RTB/HSS areas”.

3.1.11 In light of the above, it is Housing Rights' view that there is a **disproportionate number of individuals who have purchased their social home via the HSS who have experienced financial difficulty and/or repossession**. It is Housing Rights' experience that this individuals are also more likely to hold mortgages with “sub-prime” lenders, who are less will to negotiate and/or offer forbearance, often leading to homelessness and the need to be rehoused.

USING PRS TO ADDRESS THE SUPPLY ISSUE

3.1.12 Housing Rights are aware that there is currently a Departmental proposal to discharge the homeless duty into the PRS. Housing Rights suggest that the HSS has created a reduced stock which, coupled with the low number of social homes being built, has meant that there is an increased pressure to look towards the PRS to replace this diminished social stock. Housing Rights have already made representations to the Department on concerns of the readiness of the PRS to provide this accommodation.

3.1.13 In essence, Housing Rights have concerns regarding lack of Regulation, current low fitness standards and insecurity of tenure, within the PRS.

¹¹ Department for Social Development (DSD), Housing Repossessions Taskforce Initial Evidence Paper (2014). Available at: <https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/rtf-initial-evidence-paper.pdf>

3.2 Consultation Question 2 and Question 3

Do you agree transitional arrangements should be developed for Options Two and Three?

What is the minimum period that the transitional arrangements should remain in place?

- 3.2.1 Housing Rights suggest that if Option Two or Three is pursued, it is essential that there are transitional arrangements in place to safeguard both social landlords and tenants. Housing Rights believe that while there should not be undue delay in ending the HSS, that it is paramount that the need for reversal of the ONS reclassification is **balanced** with the current legal rights of existing tenants.
- 3.2.2 Housing Rights would recommend that like Wales and Scotland, transitional arrangements are considered alongside the removal of the HSS. It is important to note however, that the positions with the RTB schemes in both Scotland and Wales, differ from NI. I.e. Scotland Parliament implemented a two-year transition period and the Welsh Assembly implemented a one year or two-month transition period, depending on whether or not the home was new to the social housing stock. Scotland had already previously made reforms to their RTB and created a “preserved RTB” and “modernised RTB”, therefore their transitional arrangements were cognisant of this. Similarly Wales also had “suspended areas” and “preserved rights”. As such, Housing Rights recommend that any transitional arrangements are conscious of the HSS in NI and our current SRS landscape. Housing Rights suggest that the Department may wish to convene a stakeholder group to discuss transitional arrangements.
- 3.2.3 Notably, the ending of the HSS could result in a surge of applications and sales during the notice period. In order to manage the impact of this correctly, a considered period of time should be given.
- 3.2.4 Furthermore, **Housing Rights highlight the importance to ensure that there is a proportionate amount of time to allow existing and incoming tenants to consider their options, seek advice if required, and think about the financial implications of homeownership for them.**
- 3.2.5 Finally, it is of paramount importance that there **is timely and good quality communication** between all parties affected.

3.3 Consultation Question 4

Do you agree with our assessment of impact as outlined in the draft Equality Impact Assessment?

- 3.3.1 Housing Rights is concerned that the equality impact assessment for this consultation may have been misapplied.
- 3.3.2 Section 75 of the Northern Ireland Act 1998 requires a public authority, when carrying out its functions in relation to NI, to have due regard to the need to promote equality of opportunity between nine categories of persons; these are known as protected groups. Housing Rights wishes to highlight that being a social tenant is not a protected group, and instead the correct method of applying the assessment would be to look at tenant profiles i.e. do they have a disability. Whilst there is evidence of some consideration, Housing Rights recommend that fuller consideration needs to be given, and that where there isn't sufficient data, the Department should meet with those affected.
- 3.3.3 Housing Rights recommend that there should be an emphasis on looking at tenant profiles, both of existing tenants and of those on the housing waiting list. Examining the profiles of both, will allow an in-depth assessment to be carried out. Housing Rights note that 2011 Census data was used as evidence and information in the assessment; when considering disability the criterion was "bad health", however, this does not necessarily equate to having a disability. **Housing Rights would recommend that further statistical data is retrieved and a more in –depth impact assessment linked to tenant/applicant profiles, is carried out.**

3.4 Consultation Question 5

Are there any other pieces of evidence relevant to the future of the House Sales Schemes you would like to discuss with us?

- 3.4.1 N/A.