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# STATES OF JERSEY



## **SOCIAL HOUSING IN JERSEY: INTRODUCTION OF A REGULATORY FRAMEWORK – CONSULTATION RESPONSE AND POLICY POSITION OF THE MINISTER FOR HOUSING**

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**Presented to the States on 7th December 2017  
by the Minister for Housing**

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**STATES GREFFE**

## REPORT

### 1. Introduction

1.1 This paper sets out the Minister for Housing's response to a consultation on the introduction of a regulatory framework for social housing in Jersey. The consultation paper examined the following aspects of a potential regulatory framework –

- access to social housing (in relation to assessment and allocation through the Affordable Housing Gateway);
- standards of service provision, financial management and governance of social housing providers;
- the assessment and monitoring of social housing providers' performance; and
- intervention and enforcement powers in cases of inadequate performance.

1.2 In particular, the consultation intended to establish a clear set of objectives for the regulation of social housing, and to present options for a potential regulatory framework, including how the regulatory framework could operate in practice, and the institutional arrangements necessary to support regulation. Moreover, the consultation considered how to achieve a robust form of regulation that was consistent across the social housing sector, but which also took sufficient account of the independence of social housing providers and their different legal statuses.

1.3 Responses to the consultation show support for the introduction of a regulatory framework of social housing, although different views were expressed regarding the most appropriate form of regulation. The paper attempts to balance these different views within the overall principle that social housing provision should be bound by a robust system of oversight in accordance with the Government's priorities for housing.

1.4 The response to the consultation has been prepared in the context of the Jersey Independent Care Inquiry which found that the shortage and cost of housing have had a marked impact on the well-being of families in Jersey.<sup>1</sup> The proposals set out in this paper aim to respond to the concerns raised by the Inquiry and, building on the large investment that is today being made in social housing, provide a regulatory framework capable of protecting and strengthening the rights and interests of social housing tenants.

### 2. Summary of proposals

2.1 The Minister for Housing is proposing to introduce a regulatory framework for social housing, which will ensure that tenants receive a good standard of social housing, and will help to maintain the confidence of government and private investors. The Minister's proposals are as follows –

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<sup>1</sup> Jersey Independent Care Inquiry (2017) *Report of the Jersey Independent Care Inquiry* – Executive Summary, page 4 (online), available at <http://www.jerseycareinquiry.org/Pages/Final-Report.aspx>

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### **Regulating access to social housing**

- (a) The Minister has commissioned an independent review of access to social housing. The review will examine the application, assessment and allocation processes for accessing social housing in Jersey, and will make recommendations in relation to where improvements can be made. The review will consider –
- the introduction of a “Housing Options” service to provide cross-tenure information and advice about housing;
  - the identification and prioritisation of housing need;
  - the allocation process and method by which tenants apply for available housing;
  - the tenancy rights associated with social housing;
  - appropriate interaction between the allocation process and the overall governance of social housing; and
  - key performance indicators to measure the turnover of applications and allocations.
- (b) The review will also consider how vulnerable clients can be better supported to apply for and access social housing, including the elderly, people with serious medical conditions or disabilities, victims of domestic abuse, care-leavers and ex-offenders.
- (c) As a result of the review, it is anticipated that a statutory framework for the identification, assessment and of *housing need* will be introduced, including an independent appeals process for applicants who apply for housing through the Housing Gateway.

The independent review will be undertaken in early 2018, and the recommendations will be acted upon soon after.

### **Regulating social housing providers**

Social housing requires an effective and transparent system of governance and oversight, which protects tenants but does not create excessive regulatory burdens on social housing providers.

In light of the Independent Jersey Care Inquiry, the Minister for Housing plans to introduce a statutory regulatory framework for social housing within the next 18 months to 2 years, including the appointment of a regulator.

The Minister will use the non-statutory approach to regulation in order to build the capacity of social housing providers to manage the requirements of regulation, and use the learning points from the non-statutory measures to establish the subsequent design of the statutory form of regulation.

### **Performance standards**

The Minister for Housing will introduce performance standards for social housing providers. These standards will establish expectations around financial management, governance and service delivery for social housing providers. The performance standards will be established as a legal requirement of the legislation.

### **Performance assessment, monitoring and reporting**

A set of performance indicators for social housing providers will be developed. The indicators will facilitate the assessment and monitoring of performance against the standards.

It is anticipated that social housing providers will report on their performance on an annual basis. The performance information will be monitored and assessed by a regulator, which will have oversight of the activities of social housing providers. The regulator will publish an annual report to the States Assembly setting out its findings on the performance of social housing providers in order to provide transparent and comparable data on the performance of the sector.

### **Intervention and enforcement powers**

A proportionate and graduated set of procedures will be included in the statutory regulatory framework so that the regulator is able to deal with instances where the standards have not been met or are at risk of not being met.

## **3. Background**

- 3.1 The introduction of a regulatory framework for social housing was identified in [P.33/2013](#) – ‘The Reform of Social Housing’ – which was approved by the States Assembly on [16th May 2013](#). P.33/2013 proposed the separation of the landlord, policy and regulatory functions that had been performed by the Housing Department. It included the following proposals –

### **P.33/2013 – ‘The Reform of Social Housing’**

- **The establishment of a Strategic Housing Unit (“SHU”):** leading on the development of housing strategy and policy. The SHU was established in 2014 and is overseen by the Minister for Housing.
- **The introduction of a 90% rents policy:** rents for new social housing tenancies are charged at up to 90% of the market equivalent rent for the same type of property. This policy has been in effect since May 2014. Not all social housing providers charge 90% rents and some keep rents below this level.
- **Incorporation of the former Housing Department:** Andium Homes was established as a States-owned company in July 2014. Andium Homes performs a landlord function for approximately 4,500 tenants in Jersey and is responsible for the management of all former States-owned social housing. Andium Homes has been tasked by the States of Jersey to deliver more than 1,000 units of affordable housing and refurbish its existing properties to achieve the Decent Home Standard by 2020.
- **Regulation of social housing:** introducing a regulatory framework for social housing providers in order to support the delivery of the Minister for Housing’s goals in relation to social housing, and to ensure appropriate oversight of social housing providers.

- 3.2 The introduction of a regulatory framework for social housing has yet to be delivered because of concerns that were raised by the former Health, Social Security and Housing Scrutiny Panel when P.33/2013 was lodged. In carrying out a review of P.33/2013 (see [S.R.6/2013](#)), the Panel was concerned about whether statutory regulation was appropriate, and stated that “*clarity and agreement on the purpose and operation of the regulator*” was required before legislation was brought forward for consideration by the States Assembly.<sup>2</sup>
- 3.3 The Scrutiny Panel lodged an amendment to P.33/2013, which was subsequently adopted by the States Assembly, recommending that “*alternatives for regulation must be brought forward that are more appropriate to the size and nature of Jersey’s social housing sector*”<sup>3</sup>. It was noted by the Scrutiny Panel that an appropriate first step to regulating a small social housing sector, as in Jersey, would be the adoption of a voluntary form of regulation which relied on co-operation rather than compulsion, and focused on improving service delivery as opposed to dealing with service failure.
- 3.4 The Minister for Housing published the Jersey Housing Strategy in March 2016 and – in light of the role the strategy affords social housing providers in the supply of affordable housing in the years to come – wishes to revisit the proposal to introduce regulation of social housing in order to ensure that the sector is operating effectively and continues to be a viable source of housing for Islanders.
- 3.5 The proposals in this paper have been informed by the recommendations made by the Health, Social Security and Housing Scrutiny Panel in respect of a potential approach to regulation. In accordance with the views of the Panel, the Minister has released the paper to ensure that the proposals are subject to appropriate examination.

#### **4. The Independent Jersey Care Inquiry**

- 4.1 The response to the consultation has been prepared in the context of the Jersey Independent Care Inquiry (“ICJI”) published on 3rd July 2017.
- 4.2 The ICJI did not make specific recommendations in relation to housing, but it noted that –

*“The shortage and cost of housing have had a marked impact on family life and wellbeing for some families, and on fostering in Jersey, with some potential candidates having insufficient space to accommodate foster children. Pressures on accommodation in Jersey have also had a detrimental effect on the ability of the relevant departments to recruit and retain suitably qualified and trained child care staff from outside the island.”*

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<sup>2</sup> Health, Social Security and Housing Scrutiny Panel (2013) ‘Housing Transformation Programme Review’ ([S.R.6/2013](#)) page 42.

<sup>3</sup> Health, Social Security and Housing Scrutiny Panel (2013) ‘The Reform of Social Housing (P.133/2013): amendment’ ([P.133/2013 Amd.](#)) page 5.

*“We concluded that at no time did the Housing Department accept or discharge the role that it had to play in the States of Jersey’s responsibility as corporate parent of children in care.”<sup>4</sup>*

- 4.3 In response to the ICJI report, the Minister for Housing wishes to make clear her commitment to improving the housing circumstances of Islanders, particularly low-income households who face difficulties securing suitable housing in the open market. Housing is a basic human need, yet for far too long, social housing has been in such scarcity that many households in Jersey have been living in inadequate and insecure housing. This has had serious consequences for the health and well-being of Islanders, their access to educational and economic opportunities, and their participation in the community.
- 4.4 The Government is taking steps to tackle a legacy of under-investment in social housing and – together with Andium Homes and the housing trusts – is undertaking a significant programme of investment to build more than 1,000 affordable homes by 2020. Andium Homes also plans to meet the Decent Homes Standard on all its properties in the same period. The social housing sector will, therefore, play a leading role in the supply of housing in the coming years, and the introduction of a measured form of regulation for the sector is a key element of this expanding role, ensuring the continued provision of high-quality social housing and adequate protections for social housing tenants.

## **5. The consultation process**

- 5.1 The Minister for Housing presented to the States a consultation paper entitled: ‘*Consultation Paper: introduction of a regulatory framework for affordable housing provision in Jersey*’ ([R.116/2016](#)) on 14th November 2016. The consultation paper proposed the introduction of various measures to regulate social housing provision. The consultation closed on 20th January 2017.
- 5.2 The consultation received the following responses –
- 14 individuals and organisations responded to the consultation paper; 6 responses were in writing and 8 were via an online portal.
  - 425 responses were received through an online survey. The majority of these responses were from social housing tenants and people who had used the Housing Gateway.
  - 49 comments were received via social media.
  - A number of public meetings were held to inform people about the consultation, including at ‘Brighter Futures’, the General Hospital and the Social Security Department.
  - A meeting was held with representatives of Andium Homes Tenants’ Forum, RADAR.

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<sup>4</sup> Jersey Independent Care Inquiry (2017) ‘*Report of the Jersey Independent Care Inquiry – Executive Summary*’, page 4.

5.3 The Minister welcomes the extensive feedback provided in response to the consultation. The responses have informed the Minister's preferred approach to the introduction of a regulatory framework for social housing.

## 6. What is social housing

6.1 Before considering proposals for the regulation of social housing, it is important to define what is meant by the term 'social housing', and the scope of provision in Jersey. Social housing can be thought of as a category of tenure for eligible households whose needs are not adequately met in the private sector. Eligibility is determined with reference to factors such as income and personal circumstances that could make it difficult for a person to meet his/her housing needs in the open market (e.g. serious medical conditions or disabilities).

6.2 Social housing may also fall under the umbrella term 'affordable housing', which distinguishes between a range of affordable housing products designed to suit different levels of household incomes. However, there is not the same level of variation in Jersey, and affordable housing encompasses only social rented housing and low-cost home ownership.

6.3 Access to social housing in Jersey is administered by the Affordable Housing Gateway, which is administered by the Social Security Department on behalf of the Minister for Housing.

6.4 The table below indicates the social housing providers in Jersey and the approximate number of dwellings owned and managed by each organisation –

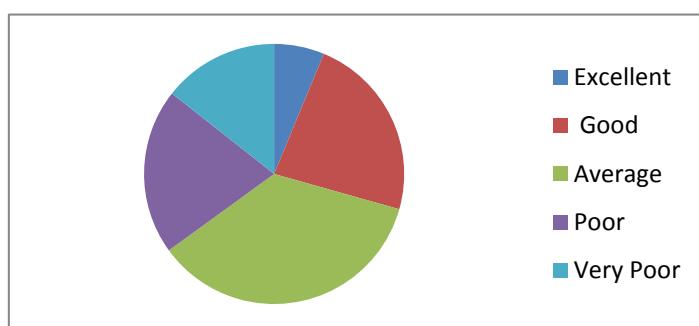
Social housing provider	Approximate number of properties
Andium Homes Limited	4,500
C.T.J. Housing Trust	143
F.B. Cottages Housing Trust	32
Les Vaux Housing Trust	361
Jersey Homes Trust	768

## 7. Regulation of access to social housing

7.1 The consultation examined how social housing is currently accessed through the Affordable Housing Gateway, and asked whether the policies used to regulate access to social housing should be established in legislation in order to provide a legal framework for the assessment and prioritisation of housing need.

7.2 The majority of responses did not express a strong view regarding this question. Responses acknowledged that the Affordable Housing Gateway had operated effectively since being set up in 2012, and provided an efficient and equitable applications process for social housing. It was, therefore, considered unnecessary to establish the Housing Gateway in law, especially if this were to affect the Minister for Housing's ability to respond promptly to changing needs.

- 7.3 There was also support for the introduction of a scheme of the policies and procedures used to determine access to social housing. It was felt that the proposal would help to improve the transparency of the assessment process and ensure decision-making was clear and seen to be free from any undue influence.
- 7.4 Moreover, support was expressed for the introduction of an independent appeals mechanism for the Affordable Housing Gateway so that applicants had a means of challenging decisions made by officers regarding their application, where appropriate.
- 7.5 The online survey also asked people to rate their experience of using the Housing Gateway. Out of 160 responses –
- ❖ 10 people said that their experience had been “excellent” (6%)
  - ❖ 37 people said “good” (23%)
  - ❖ 57 people said “average” (36%)
  - ❖ 33 people said “poor” (21%)
  - ❖ 23 people said that their experience had been “very poor” (14%).



**Figure 1: Response to question rating experience of the Affordable Housing Gateway**

- People were also asked whether they had been satisfied with the information provided to them about the criteria used to determine applications for social housing –
  - ❖ 15 people said they had been “very satisfied” (9%)
  - ❖ 53 people said they had been “satisfied” (33%)
  - ❖ 59 people said “neither satisfied nor dissatisfied” (37%)
  - ❖ 20 people said “dissatisfied” (13%)
  - ❖ 8 people said “very dissatisfied” (5%).
- The comments in response to this question indicated that people thought the process of applying for social housing had been straightforward, though others said there had been a lack of communication about their application once it had been registered. Responses also queried the transparency of decisions around the prioritisation of applications at the point allocation.



## **Ministerial response**

- 7.6 The Minister for Housing wishes to strengthen governance and oversight of the assessment and prioritisation of housing need and, therefore, intends to introduce a statutory framework for the Affordable Housing Gateway. As the demand for social housing exceeds supply, it is essential that the decision-making process is fair, open and equitable – and that it is seen to be so. A statutory framework will provide a clear basis for the rules that determine access to social housing and improve the transparency of the process, as well as giving prospective tenants a way to challenge decisions made regarding their application. Overall, this will help to protect and strengthen the rights of people who wish to access social housing.
- 7.7 Before the Minister introduces legislation, an independent review of access to social housing will be commissioned. This review will help to inform and scope the provisions of the Law. At this time, it is proposed that the review will examine the current application, assessment and allocation policies for social housing and (in view of best practice in other jurisdictions), will make recommendations to improve access to social housing. The review will consider –
- ❖ the introduction of a “Housing Options” service to provide advice and information in relation to housing across all categories of tenure;
  - ❖ the identification of housing, including the factors that comprise housing need;
  - ❖ the prioritisation that is afforded to different types of housing need;
  - ❖ the allocation process and method by which tenants apply for available housing;
  - ❖ how vulnerable clients can be better supported to apply for and access social housing – including the elderly, people with serious medical conditions and disabilities, care-leavers and ex-offenders;
  - ❖ appropriate interaction between the allocation process and the overall governance of social housing;
  - ❖ the tenancy rights associated with social housing;
  - ❖ key performance indicators to measure the turnover of applications and allocations.
- 7.8 The review will commence in autumn 2017 and be completed by February 2018.

## **8. Regulation of social housing providers**

- 8.1 The proposals set out above in section 7 deal with the regulation of access to social housing, i.e. governance and oversight of the policies and procedures by which a prospective tenant’s application for social housing is assessed and prioritised, and the allocation of social housing properties. This is one aspect of a regulatory framework relating to the duties of Government in respect of the determination of housing needs. The other aspect of a regulatory framework includes social housing providers – Andium Homes and the housing trusts – and

oversight of activities such as the provision of homes and housing-related services to tenants.

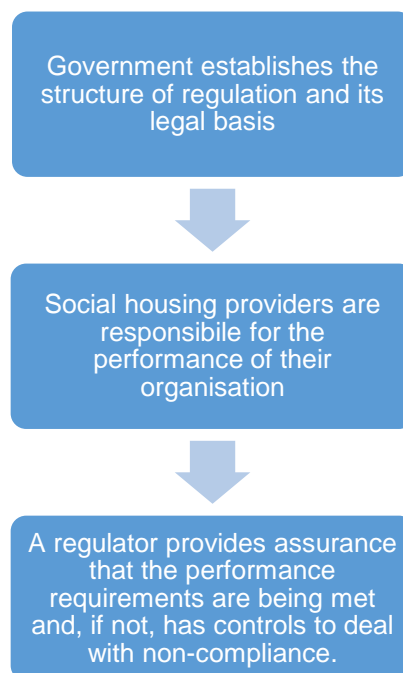
- 8.2 The responses to the consultation generally supported the introduction of a regulatory framework for social housing providers, and it was acknowledged that some form of regulation was required in order to protect the rights of social housing tenants and to ensure that public funding for social housing was used effectively by social housing providers. Nonetheless, it was clear from responses that the institutional arrangements necessary to support regulation needed to be cost-effective and proportionate to the size and nature of social housing provision in Jersey. It was stated by one of the housing trusts, for example, that unless a ‘light touch’ approach to regulation was adopted, the housing trusts (whose trustees were unpaid and carried out their roles on a voluntary basis) might find it difficult to replace trustees, especially if regulation led to the introduction of enforcement powers.
- 8.3 Social housing providers supported the introduction of a contractual form of regulation, which could be tailored to the different circumstances of individual social housing providers. It was noted that a number of separate agreements relating to specific social housing developments had been entered into over time between social housing providers and the Treasury and Resources Department – which included terms around the appointments of trustees; rights over the sale of property; and step-in rights in the event of bankruptcy – and the agreements could be incorporated under a new contractual arrangement with the Minister for Housing.
- 8.4 A number of social housing providers also stated that the size of the social housing sector did not justify the cost of employing a regulator. However, one housing trust supported the appointment of a regulator that was independent of the Minister for Housing. The trust accepted that there would be a cost differential, but stated that this need not be conclusive consideration, as the regulatory framework may be in place for many years to come, and it was important to get it right at the start.
- 8.5 The Social Security Department supported the introduction of a regulatory framework for social housing. The Department stated that significant investment had been made in social housing – including a £250 million bond and £20 million each year from Income Support payments – so it was reasonable for this investment to receive regulatory oversight. The Department also noted that payments on social housing rents were the largest expense in the Income Support budget, and the introduction of regulation would, therefore, help to minimise the financial risk created by the regular flow of public money to social housing providers.

### **Ministerial response**

- 8.6 The Minister for Housing is encouraged that the principle of regulation has been supported as a result of the consultation process. The Minister will therefore seek to introduce a regulatory framework for social housing in order to –
- protect the rights and interests of tenants through oversight of social housing providers in the provision of housing and housing-related services; and

- safeguard public investment provided to social housing providers, and the social housing stock that is developed from that investment.

8.7 The Minister's preferred approach to regulation is a co-regulation model, whereby government will set the structure of regulation and institutional arrangements, including the appointment of a regulator to oversee performance, but social housing providers will maintain responsibility for the monitoring, assessment and reporting of their performance according to the regulatory requirements.



**Figure 2: The co-regulation approach**

8.8 The Minister will seek to establish a regulatory framework in legislation, which can be adapted to the different sizes, objectives and resources of social housing providers. Whilst the Minister acknowledges that there is concern about the effect of statutory regulation on the smaller housing trusts, there is no need for regulation to be burdensome, and a single and straightforward legal framework would provide clarity to all organisations involved. It is therefore the Minister's view that a statutory form of regulation should be introduced, as was the expectation of the Housing Transformation Programme in 2013.

8.9 The Minister acknowledges concerns about the costs of regulation, which are estimated to be in the region of £100,000 per annum. However, any form of regulation, whether contractual or statutory, will require administrative support, and in order to provide the best possible basis for regulation, a statutory framework is required. The cost of regulation can also be minimised by ensuring that the regulatory requirements are proportionate to the size and nature of social housing provision in Jersey, which will be achieved through adopting a co-regulation approach to regulation and ensuring that social housing

providers are responsible for carrying out their own monitoring of performance and assessment.

- 8.10 However, prior to the introduction of statutory regulation, the Minister is proposing to establish an interim arrangement whereby several of the proposed features of a regulatory framework – performance standards and monitoring and reporting requirements – will be given effect on a non-statutory basis in order to build the capacity of social housing providers to administer the regulatory requirements. These arrangements will be in place for between 18 months and 2 years before statutory regulation is introduced, and will help to identify the key learning points for inclusion in the eventual legal framework.

## **9. Performance Standards**

- 9.1 The consultation considered performance standards for social housing providers, which would cover financial management, governance and service delivery. The responses were in favour of the introduction of performance standards as a way to provide assurance that good quality homes and housing-related services were being delivered by social housing providers. It was noted that, in many instances, the standards were already being achieved without regulation, because social housing providers sought to adopt industry best practice.
- 9.2 Social housing providers agreed that standards should be introduced in core areas of activity, which were clear, measurable and deliverable. The performance standards should, however, be adaptable and avoid setting specific rules, focusing instead on the outcomes for tenants.
- 9.3 One of the themes to emerge from the consultation was a requirement to make provision for the needs of vulnerable groups with specialist housing needs. It was suggested, for example, that there should be an obligation placed upon social housing providers to provide housing to vulnerable households, balanced in a way that recognised the difference in the capabilities of individual social housing providers to provide accommodation for these types of household.
- 9.4 The online survey also asked social housing tenants to provide their thoughts on areas where performance standards could be introduced. The responses generally identified the value that was attached to the security of tenure provided by social housing, the quality of housing, and the responsiveness of repairs and maintenance services. The survey also asked for people's views on what could be done to improve social housing. There were a number of comments about the affordability of rents, and others suggesting that more should be done to tackle anti-social behaviour and tenants who did not maintain their homes or the terms of their leases.
- 9.5 Those who responded were also asked whether they thought that performance standards should be introduced for social housing: 157 people (77%) agreed that standards should be introduced; whilst 22 people (11%) said that standards should not be introduced; and 23 people (11%) did not know. There was general support for establishing standards, and comments suggested that working to a clear set of standards would help to drive better quality and more consistent standards of service.

### Ministerial response

- 9.6 The Minister for Housing will introduce performance standards for social housing providers, which will encompass financial management, governance and service delivery requirements. These standards will provide the basis for co-regulation – i.e. the standards will be set by the Minister and used by social housing providers to monitor and report on their performance.
- 9.7 The following are examples of potential areas of performance standards –
- Examples of financial management and governance standards**
- Clear aims and objectives for the organisation.
  - Defined roles, responsibilities and accountabilities for Board members and trustees.
  - Adherence to relevant laws and compliance with governing documents.
  - Adequate systems of risk management to identify and mitigate risk levels.
  - Effective management of resources, assets and liabilities.
  - Appropriate business plan and financial forecasting.
- 9.8 The following are examples of potential service delivery standards –
- Examples of service delivery standards**
- **Allocations of housing:** tenants are selected openly and fairly according to housing need.
  - **Rents:** tenants pay rents in accordance with government rents policy.
  - **Tenancy management:** tenants are provided with appropriate security of tenure.
  - **Repairs and maintenance:** tenants live in safe, secure and well-maintained housing.
  - **Communication and engagement:** tenants receive timely communications about issues that affect them, and are encouraged to give feedback on service delivery.
  - **Neighbourhood and community:** tenants feel safe and live in well-maintained communities, and are supported to live independently.
- 9.9 The standards will not be prescriptive, but will be adaptable to the scope of operations, resources and capabilities of each social housing provider. This will give social housing providers the ability to decide how best the standards apply to their organisation so as not to place unrealistic requirements or costs on social housing providers.
- 9.10 One of the standards will include a requirement to provide housing to people with diverse specialist needs, such as households with serious medical conditions and disabilities, and ex-offenders. The Minister is aware of many good examples of social housing providers working with the voluntary and community sector and statutory services to provide supported housing, and wishes to see this type of work continue.

## 10. Performance monitoring and reporting requirements

- 10.1 The consultation examined performance monitoring and reporting requirements for social housing providers, including the type of information that social housing providers would be required to provide in order for a regulator to monitor and assess their performance against the regulatory standards.
- 10.2 There was support for the introduction of performance monitoring and reporting requirements for the Affordable Housing Gateway and individual social housing providers. It was noted that performance monitoring was an integral business process and, as such, the introduction of these requirements would formalise existing good practice.
- 10.3 The Social Security Department indicated that it would like to see statistics made available to the Public that could be compared against written policies, such as void property management and rents policy.

### Ministerial response

- 10.4 Under a co-regulation model, the Board of each social housing provider has primary oversight and responsibility for the performance of the organisation and is accountable for service delivery. The onus is therefore on social housing providers to demonstrate that they meet the standards, and for a regulator to seek assurance of the robustness of the process.
- 10.5 A set of key performance indicators will be introduced, which will enable social housing providers to monitor, assess and report on their performance. The KPIs will be linked to the standards, and will provide consistent and comparable information on the performance of the social housing sector. It is noted that social housing providers already monitor and report on their performance, and these reporting requirements will seek to build on existing good practice.
- 10.6 The following are examples of some of the possible types of KPIs that could be introduced –
- **Property information:** the total number and type of units of accommodation that are owned and managed at year-end, including units developed or acquired during the year.
  - **Rents:** the rental values for various types of accommodation; rent arrears and rent losses.
  - **Tenancies:** the number of offers for accommodation made and refused in the year, including to people with specialist housing needs; and the number of evictions.
  - **Housing quality:** information on the housing stock in a social housing provider's portfolio which meets the Decent Homes Standard.
  - **Housing management:** a breakdown of management and maintenance costs.
  - **Repairs:** number of repairs carried out during a year, including response times.

- 10.7 The assessment, monitoring and reporting requirements will be set out in legislation, including the role that a regulator will play in these requirements. It is expected that social housing providers will be required to report on their performance on an annual basis within a prescribed period of the year-end. The documentation to be provided as part of the reporting requirements will include –
- **Planning:** the social housing provider’s strategy or business plan.
  - **Governance:** the social housing provider’s constitution.
  - **Financial:** the social housing provider’s audited financial statements, financial forecasts, loan portfolio information, and risk management.
  - **Performance:** the social housing provider’s performance monitoring and assessment against the performance standards – e.g. statistics relating to the key performance indicators.
- 10.8 The documentation referred to above reflects sources of information that social housing providers should have in place already in order to satisfy their governing bodies. This is not an exhaustive list, and social housing providers may also refer to other supporting information. A regulator will use the information provided by social housing providers to make an assessment of their individual performance over the year, having regard to the performance standards.
- 10.9 Using each social housing provider’s own assessment of their performance, a regulator will consider key risks, such as –
- Liquidity
  - Gearing
  - Debt
  - Governance arrangements
  - Performance management
  - Rent levels.
- 10.10 The assessment will be provided to the States Assembly with the regulator’s opinion on the performance of social housing providers, including achievements, innovative practice, areas for improvement, and where there are risks in relation to the performance of a social housing provider or the sector as a whole. Information on the performance of the social housing sector will be published on an annual basis, which will provide accessible information to encourage comparison and public accountability, and help social housing providers to consider where improvements to performance can be made.
- 11. Intervention and enforcement powers**
- 11.1 As part of the consultation paper, a number of options for a regulator’s intervention and enforcement powers were set out, which would be used where a social housing provider was at risk of failing to achieve one or more the regulatory standards.

- 11.2 The responses to the consultation agreed that controls were necessary, but argued that these did not need to be any different or more rigorous than those available through contractual dispute resolution processes. Andium Homes noted, for example, that the company's Memorandum of Understanding with the Minister for Treasury and Resources enabled the guarantor to give directions to the company.
- 11.3 One of the housing trusts was also concerned that there appeared to be sentiment in the consultation paper to hold social housing providers to account, and that the concept of compensation or fines, which had been proposed as potential enforcement powers, were unnecessary. Moreover, the trusts were of the view that draconian measures set the wrong tone for regulation and would not facilitate co-operation. One trust stated that social housing providers should be able to have an honest disagreement with a regulator, and it would be preferable to introduce a form of dispute resolution before resorting to any other form of enforcement powers.

### Ministerial response

- 11.4 The Minister for Housing recognises that there is concern about the intervention and enforcement powers that a regulator might be given. The Minister believes it is important to make clear that co-regulation is based on an assumption of good faith and honesty (unless demonstrated otherwise), and will facilitate co-operation and trust in the delivery of social housing.
- 11.5 However, it is important to be able to deal with situations where there are reasonable grounds to believe that a social housing provider does not meet the standards, or a risk that it might not meet the standards. The Minister will seek to include a set of graduated controls in the statutory regulatory framework, including –
- **Informal negotiation:** monitoring performance through reporting requirements, with regular dialogue with social housing providers to discuss compliance concerns, and voluntary actions to ensure compliance – i.e. “constructive challenge”.
  - **Proactive compliance:** investigations in response to serious concerns or alleged breaches of the standards, including an independent external audit.
  - **Graduated sanctions:** a formal improvement notice on completion of investigation, if a social housing provider is found in breach of one or more of the standards. Mediation offered as a way of dealing with a dispute, otherwise escalation to the Court for an enforceable undertaking.
- 11.6 These controls reflect the Minister's commitment to the adoption of a proportionate approach to oversight of social housing, while recognising that enforcement may sometimes be necessary to protect the interests of tenants. The Minister will consult further with stakeholders to consider the type and scope of intervention and enforcement powers that might be necessary, ensure that these controls are reasonable, and reflect the size and nature of the activities of social housing providers.



**12. Next steps**

- 12.1 The response and policy paper will be provided to stakeholders for comment. A number of parts of the framework require further consultation to consider the specific detail of the proposals, and the Minister for Housing will work with stakeholders to ensure the framework is appropriate. On the same date that this Report is published, the Minister is lodging the in-principle proposals for States' debate (*see* P.120/2017).