[Please note this is a progress report as the Bill is not yet fully enacted. A final report will be issued by the ICSH following enactment]
1. Introduction - Outline of the Bill

The regulation of housing associations/ approved housing bodies (AHBs) has been an objective of Government for some time, essentially to ensure that housing provided by AHBs is well governed and managed. The ICSH has been advocating on behalf of members in regard to the proposed regulation of the sector and working closely with the Minister and the Department of Housing, Planning and Local Government (DHPLG) to ensure that the regulation of AHBs is established on a robust, fair and transparent footing.

In July 2013, Building for the Future: A Voluntary Regulation Code for Approved Housing Bodies in Ireland, (the VRC), was launched by the then Minister for Housing. This introduced a voluntary regulation framework and is the predecessor to the statutory regulatory framework which is now being introduced through the Housing (Regulation of Approved Housing Bodies) Bill 2019.

The VRC, developed by the Department of the Environment, Community and local Government (DECLG), sets out guiding principles that all AHBs should adhere to, relating to governance structures, financial management and tenant services. It is designed to make AHBs more transparent and accountable in their dealings with stakeholders such as tenants, government departments and financial institutions.

In September 2015, the Government gave its approval to the drafting of the Housing (Regulation of Approved Housing Bodies) Bill which was the first step to establishing a statutory Regulator for the sector. Pre-Legislative Scrutiny was undertaken in December 2015 and the report was laid before the Oireachtas in February 2016. The ICSH appeared before the Joint Oireachtas Committee on Housing and made a Submission on the draft legislation.

In July 2019 the Bill was published. As of now the Bill has passed Report and Final Stage in the Dáil on 3rd December 2019 and final stage in the Seanad on 12th December. The final step to be taken is...
for the Bill to be signed into law by the President. A final notice will be issued by the ICSH following enactment of the Bill to advise members.

The following is a general summary and is not intended to be a legal interpretation or exhaustive of all provisions in the legislation.

1.1 Outline of the Bill

- The Bill provides for the establishment of a Regulator to oversee the effective governance, financial management and performance of AHBs.
- The Regulator will aim to safeguard public and private investment in the AHB sector. The statutory regulatory framework will provide further assurances to investors, tenants, the Government and to the sector itself that social housing providers operate in a well-regulated and stable environment.

1.2 Who is the Regulator?

Part 2 of the Bill sets out the general provisions for the establishment of the Regulator to be known as the Approved Housing Bodies Regulatory Authority. The Regulator will consist of a Board of between 5 and 11 members appointed by the Minister. One of whom will be the chairperson appointed by the Minister.

1.3 What are the functions of the Regulator?

Part 2 sets out the functions of the Regulator which will be to:

- establish and maintain a register of AHBs;
- register persons as AHBs;
- prepare draft standards for approval by the Minister, publish the approved standards,
- monitor and assess compliance by AHBs with the approved standards and with the legislation;
- carry out investigations under Part 5;
- exercise powers under Part 6 of the Bill with regard to the functioning and management of an AHB;
- encourage and facilitate better governance, administration and management (including corporate governance and financial management) of AHBs through the provision of information and advice;
- to promote awareness, understanding, and provide public information about the operation of the legislative arrangements being introduced under the Bill;
- collect information concerning AHBs for the purposes of the performance of its functions; and
- publish information (including statistical information) concerning AHBs.

A Chief Executive Officer will be appointed under the Public Appointments Service after a competition for a period of 5 years (and can be reappointed but not exceeding 10 years).

Under Section 20 the Regulator will prepare a strategy statement for the Minister’s approval within 6 months of establishment setting out its objectives, approach and outputs among other aspects.
2. Amendments to the Bill

The ICSH has sought and supported a number of amendments to the Bill, which have been adopted at Committee and Report Stage in the Dáil. These included an amendment to reword Section 9(1)(f) to clarify the functions of the Regulator in regard to the operational running of AHBs.

The ICSH sought the removal of fees and to delete this section in its entirety. A Ministerial amendment was put forward during Report Stage in agreement with the Oireachtas Housing Committee members who had supported this amendment to remove the sections imposing fees on AHBs.

In regard to the proposal for a new subsection to define “special needs accommodation” where it is provided by an AHB, the Minister proposed an amendment as a compromise, which provides that when drafting standards under section 37, the Regulator may make different provision for different categories of AHBs and for that purpose shall have regard to at least the following matters:

(a) the nature, scale and complexity of the activities of each category of AHB including the types of dwellings provided or managed, or both, as the case may be, by each category of AHB to meet the different accommodation needs of different categories of tenants.

The Bill originally contained a section requiring that an AHB must notify the Regulator if it received a determination order (within the meaning of section 121 of the Residential Tenancies Act 2004). The ICSH expressed the view that notifying every RTB order is disproportionate and unnecessarily onerous and proposed that this be removed. The Minister agreed to accept this amendment.

A new section has been added that requires the Minister to commission a report, within 12 months, relating to the transfer of dwellings provided by AHBs that have received funding through the various funding schemes for housing bodies from the Department. The amendment ensures there will be consultation with key stakeholders (Regulator, AHBs, housing authorities) and will examine any matters arising, including legal and financial, in relation to such transfers.

3. What are the main changes for the AHB sector?

The establishment of a statutory regulator for the AHB sector will bring with it a number of key changes that will impact on the sector. The key principles of regulation have been developed during the voluntary phase, however once the obligations and requirements become statutory this will further impact on AHBs. The ICSH will continue to work with and support members throughout this next phase.

Part 3 deals with Registration, eligibility criteria, registration process and other issues.

3.1 Who is eligible to register as an AHB?

- Under Part 3, Section 25 an AHB will be eligible to register with the Regulator if -
  - it is a company with at least 5 directors;
  - it is a registered society;
  - it is a friendly society;
  - it is a charitable trust with at least 5 trustees;
- and includes in its constitution either or both of the following as its primary object or primary objects—
  - the provision or management of dwellings for the alleviation of housing need;
  - the management of dwellings provided for the purpose of the alleviation of housing need, whether or not it provides those dwellings,
and

- the prohibition of the distribution of any surplus, profits, bonus or dividend to its members or directors;
- a requirement that all of its property be applied solely for the purpose of its objective.

In this section references to the provision of dwellings for the purpose of the alleviation of housing need mean the provision of dwellings, in the State, with assistance given by a housing authority under section 6 of the Act of 1992—

(a) for letting to persons assessed under section 20 of the Act of 2009 as being eligible for social housing support (within the meaning of that Act),

(b) for letting to persons who are not qualified for social housing support (within the meaning of the Act of 2009) but whose income would not be adequate to meet the rental payments for a dwelling to meet the person’s reasonable accommodation needs because the rental payments calculated over the course of a year would exceed 35 per cent of that person’s annual income net of income tax and pay related social insurance, or

(c) for sale under affordable dwelling purchase arrangements under Part 5 of the Act of 2009 to eligible households (within the meaning of Part 5 of the Act of 2009).

3.2 Do existing AHBs have to register?

- Existing AHBs approved under section 6 of the Housing (Miscellaneous Provisions) Act 1992 are deemed to be registered, but have to apply to be retained on the register within periods of 1, 2 and 3 years of commencement of the relevant section, depending on the scale of their activities (Tier 3 – within 12 months; Tier 2- within 2 years; Tier 1- within 1 year).
- Regulation has a key role to play, not just in protecting tenants and safeguarding public investment in social housing, but in the delivery of social housing.
- The intent behind this provision is to ensure that all bodies approved for the provision of social housing come within the purview of the Regulator and that there is no residual cohort of un-regulated bodies. It is not the intention that registration confers a stamp of approval.
- Deemed AHBs must comply with the provisions of the Act.

3.3 Who is the CEO of the Regulator?

- A CEO will be appointed by the Regulator from recommendations made by the Public Appointments Service (PAS) after a competition has been held.
- PAS may make recommendations for up to three people.
- Provision is made for the Minister to appoint a chief executive designate in advance of the establishment of the Regulator from recommendations made by the Public Appointments Service (PAS) after a competition has been held.
- If a chief executive designate is appointed, they will be appointed chief executive on the establishment of the Regulator.

3.4 Who are the staff of the Regulator?

- The Regulator may appoint staff with the consent of the Minister given with the consent of the Minister for Public Expenditure and Reform.
- Provision is made for the transfer of staff from the Housing Agency to the Regulator. The staff of the interim voluntary Regulation Office are employees of the Housing Agency.
3.5 What will the standards cover?

- The standards will cover matters relating to corporate governance, financial management and reporting, property and asset management and tenancy management.
- Draft standards may in particular, provide for—

(a) in the case of the governance of an AHB—

(i) the membership and governance structure and the roles and responsibilities of the board or the trustees, as the case may be, of an AHB,

(ii) the procedures for decision-making to ensure control and oversight of an AHB,

(iii) the management of conflicts of interest including a register of interests of the members of the board or the trustees, as the case may be, of an AHB, and

(iv) a code of conduct for the board or trustees, as the case may be, of an AHB,

(b) in the case of the financial management of, and financial reporting by, an AHB—

(i) the requirements for financial and risk control,

(ii) the procedures for monitoring and assuring the financial viability of the AHB,

(iii) the keeping of proper books of account that—

(I) correctly record and explain the transactions of the AHB,

(II) enable the financial position of an AHB to be determined with reasonable accuracy at any time, and

(III) enable the accounts of the AHB to be readily and properly audited,

(iv) the requirements for internal control and audit,

(v) the requirements for strategic planning, including the preparation of financial and business plans,

(vi) the procedures for monitoring performance, and

(vii) the requirements for the confirmation and verification of compliance with statutory obligations the requirement, for including, in particular, obligations arising under the Charities Act 2009 and the Act of 2014,

and

(c) in the case of property and asset management and tenancy management by AHBs, policies and procedures relating to—

(i) nominations to dwellings of tenants, and allocations of dwellings to tenants, by AHBs,

(ii) the management of dwellings by AHBs, and

(iii) communication by AHBs with their tenants.

- Draft standards prepared under subsection (1) may make different provision for different categories of AHBs and for that purpose shall have regard to at least the following matters:

(a) the nature, scale and complexity of the activities of each category of AHB including the types of dwellings provided or managed, or both, as the case may be, by each category of AHB to meet the different accommodation needs of different categories of tenants;
(b) the number of dwellings provided or managed, or both, by each category of AHB;
(c) the level of borrowings of each category of AHB;
(d) the level of financial risk associated with each category of AHB.

3.6 Powers of the Regulator

- Under Part 2, Section 23 the Regulator will have the power to secure administrative cooperation between the Regulator and relevant regulators and enter into arrangements (whether in the form of a memorandum of understanding or otherwise) facilitating administrative cooperation with the objective of avoiding duplication of activities by the Regulator, consistency between decisions made or measures taken by the Regulator and relevant.

These relevant regulators include: the Charities Regulatory Authority, the Director of Corporate Enforcement, the Registrar of Companies, the Registrar of Friendly Societies, the Residential Tenancies Board and the Health Information and Quality Authority. The ICSH view this as an important section as AHBs work under various different regulators already and there is a need to ensure regulation is proportionate and not overly cumbersome or indeed contradictory.

- The Regulator has the powers to monitor compliance by AHBs with the standards and can conduct an assessment to establish the level of compliance.

- In undertaking an assessment, the Regulator may give the AHB notice requiring it to give the Regulator such information as it requires for the assessment and the AHB must comply with the notice.

- The Regulator may appoint inspector(s) to investigate the affairs of an AHB where the regulator considers it necessary to do so for the purposes of the performance of any of its functions.

- Under Part 6 the Regulator has powers of intervention for the protection of dwellings and tenants. It is not envisaged that this provision would be largely used however there is provision in the Bill to allow for the Regulator to require the transfer of assets from an AHB to another AHB.

- If an AHB objects to the transfer the Regulator may apply to the High Court for an order and it will be a matter for the Courts.

4. FAQs

Is Regulation a legal requirement now?

The Bill has passed all stages of the Oireachtas and once the President signs the Bill it will become an Act. The Minister will then, at some stage, commence the Act which will mark the start of the different steps to establishing the Regulator.

What are the offences under the Bill?

There are a range of offences under the Bill. These are:

- Providing false information, either knowingly or recklessly, to the Regulator when applying to registered;
- Purporting to be an AHB if not registered;
- Providing false information to the Regulator in the course of a standards assessment;
- Purporting to act as an inspector without being properly appointed;
Withholding, destroying records or refusing to provide information to an inspector undertaking an investigation;
Failing to comply with a requirement of an inspector or hindering an inspector undertaking an investigation;
Disclosing information obtained under an investigation without the consent of the AHB unless to a competent authority;
Failure by an AHB to inform the Regulator if it is being taken off the Charities register, is being wound up or entering examinership;
Unauthorised disclosure of confidential information.

For further information contact Karen Murphy, Director of Policy, ICSH, Tel: 01 6618334 or karen@icsh.ie