EXPLANATORY MEMORANDUM TO THE HOUSING (NOTIFICATION OF DISPOSALS AND MORTGAGES) REGULATIONS (NORTHERN IRELAND) 2021

SR 2021 No. 190

1. Introduction.

1.1 This Explanatory Memorandum has been prepared by the Department for Communities and makes a Statutory Rule by the negative resolution procedure under powers conferred as a consequence of the Housing (Northern Ireland) Order 1992 as amended by the Housing (Amendment) Act (Northern Ireland) 2020. The Housing (Amendment) Act (Northern Ireland) 2020 was approved by the NI Executive, received Royal Assent on 28 August 2020 and was introduced on 26 May 2020. The Act replaces the consents process used by registered housing associations (RHAs) in respect of disposals and mortgages with a notifications process and these regulations set out the detail of the information the RHAs should provide under the notifications process.

2. Purpose

2.1. In September 2016, the Office for National Statistics (ONS) took a decision to reclassify RHAs in Northern Ireland as non-financial public corporations. This coincided with similar decisions in respect of RHAs in Scotland and Wales and followed a similar decision in respect of RHAs in England. On the same day, the NI Executive instructed Department for Communities to bring forward proposals to facilitate the reversal of the ONS' decision, including legislative proposals where appropriate.

2.2. The reason why the NI Executive decided to legislate to facilitate reversal ONS' decision was to maintain the advantages that a private sector classification lends to its development of new social homes through RHAs. Private sector classification has long enabled RHAs to complement with their own borrowings the Capital Departmental Expenditure Limit that the NI Executive has allocated to the development of new social homes. These borrowings did not "score" as public borrowing due to the RHA's private sector classification – but they would under the public sector classification.

2.3. The Housing (Amendment) Act (Northern Ireland) 2020 amends the Housing (Northern Ireland) Order 1992 to replace the consents process outlined in Article 13 of the 1992 Order with a notifications process. The purpose of the Housing (Notification of Disposals and Mortgages) Regulations (Northern Ireland) is to detail the information the RHAs must provide in completing the notifications process.

3. Discussion and consultation

3.1 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. 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.

3.2. The public sector classification also means that RHAs are ineligible for Financial Transactions Capital (FTC). RHA's access to FTC has supported other housing interventions, the most significant of which is the Co-ownership Housing Scheme. Without a private sector classification either an alternative funding source is needed or these scheme would have to close to new applicants. As we move into the post pandemic recovery phase that funding will be very difficult to provide.

3.3. ONS determined that RHAs should be classified to the public sector because they observed the level of "public sector control" of RHAs by the Department to be consistent with a public sector classification. ONS made reference to several legislative provisions in detailing this observation, but also made it clear that it was not providing "an exhaustive list of all central government controls in place in the current legislation".

3.4. The purpose of the Housing (Amendment) Act (Northern Ireland) 2020 and these regulations is, therefore, to reduce or remove all central government control that is consistent with a public sector classification from our housing legislation. ONS' identification of certain provisions has been helpful but the onus has been on the Department to be exhaustive in their approach to this and provide, through legislative change, the comprehensive case for the reversal of ONS' decision.

3.5. 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.

3.6. The majority of respondents to the consultation were in favour of the overall approach and the more detailed proposals contained within the consultation document.

4. Human Rights and Equality Impact

4.1 The regulations do not engage any Convention rights. An Equality Impact Assessment was carried out on the Housing (Amendment) Act (Northern Ireland) 2020. Consideration has again been given to compliance with Section 75 of the Northern Ireland Act 1998 and no further equality issues relating to designation have been identified.

5. Regulatory Impact Assessment

5.1 The Housing (Notification of Disposals and Mortgages) Regulations (Northern Ireland) 2020 will not have a direct or indirect impact on businesses. The information the RHAs are asked to provide is exactly the same as they provide under the consents process. However the under the notification process they will provide the information within 28 days of the disposal/mortgage rather than before under the consents process.

6. Additional Information

6.1 It is not the intention of the legislation to increase the administrative burden on either the RHAs or the Department. In July 2012, the Department agreed to provide a global consent to the Northern Ireland Co-ownership Housing Association (NICHA). This means that the Department has given its consent to disposals under the NICHA's equity sharing schemes and such disposals can be undertaken without the need for an individual consent in each case.

6.2. This global consent was granted on the basis of the significant volume of cases that NICHA undertook annually. Not applying the same approach would greatly increase the administrative burden on NICHA. Therefore, the global consent has been included in the regulations but refers only to the equity sharing schemes undertaken by NICHA. In all other cases of disposal or mortgage, they must follow the route prescribed in the legislation.