



Rialtas na hÉireann  
Government of Ireland

# Housing (Regulation of Approved Housing Bodies) Act 2019

## FAQ

Prepared by the Department of Housing, Planning and Local Government

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## **Who is the Regulator?**

- 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.

## **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.

## **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.

## **What are the functions of the Regulator?**

The functions of the Regulator 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, and monitor and assess compliance by AHBs with the approved standards and with the legislation more generally;
- carry out investigations in accordance with the Act;
- protect tenants and AHBs and cancel the registration of AHBs;
- encourage and facilitate the better governance, administration and management, including corporate governance and financial management, of AHBs by the provision of information and advice;
- with a view to promoting awareness and understanding, make available to the public information about the operation of the legislative arrangements being introduced under the Act;

- collect information concerning AHBs for the purposes of the performance of the functions conferred on it by or under this Act;
- publish such information (including statistical information) concerning AHBs, as appropriate.

### **Who is eligible to register as an AHB?**

- 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 –
  - the provision or management of dwellings for the alleviation of housing need;
  - the prohibition of the distribution of any surplus or profits to its members;
  - a requirement that all of its property be applied solely for the purpose of its objective.

### **Do existing AHBs have to register?**

- Existing AHBs approved under section 6 of the Housing (Miscellaneous Provisions) Act 1992 are deemed to be registered in the first instance, but have to apply to be retained on the register within periods of 1, 2 and 3 years, depending on the scale of their activities.
- 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.

### **What happens if a deemed AHB subsequently refuses to register or has their application refused by the Regulator?**

- The AHB will no longer be deemed to be registered and their registration will be cancelled.

### **Can a body receive funding under section 6 of the Housing (Miscellaneous Provisions) Act 1992 if they are not registered?**

- In order to receive any new assistance a body must be registered.

### **Will an AHB receive funding under section 6 of the Act of 1992 once it is registered?**

- There is no automatic entitlement for funding. Funding will continue to be provided at the discretion of the relevant Housing Authority in accordance with policy set by the Department of Housing, Planning & Local Government.
- However in order to be eligible to apply for funding a body must be registered as an AHB.

### **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 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 provides 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.

### **Will the Regulator consult stakeholders when drafting the standards?**

- The Regulator will publish the draft standards on its website and allow persons to make representations on them in writing.
- The standards once approved by the Minister will be published on the website.
- The standards will be reviewed from time to time or as the Minister directs.

### **How will the Regulator know if an AHB is complying with the standards?**

- 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.

### **What happens if an AHB fails to comply with the standards?**

- Arising from the assessment, if the Regulator deems that the AHB is not complying with the standards it may require the body to draw up and submit a compliance plan, setting out the measures the body will undertake to ensure that it becomes compliant with the standards.
- Where an AHB is obliged to submit a compliance plan, it will be noted on the register of AHBs. The notice will be removed when the Regulator is satisfied that the body has complied with the plan. Where a body fails to submit a plan, it will be served with a non-compliance notice and it will be noted on the register.
- The AHB is obliged to implement a plan that is agreed to by the Regulator. Where an AHB fails to implement a plan, the Regulator may give the body notice requiring it to comply within a specified period and the matter will be noted on the register.
- Currently an AHB must have received a satisfactory assessment under the voluntary regulatory code in order to be eligible for funding under Circular 15/2016. The Department will be reviewing and updating this Circular to ensure that funding eligibility remains linked to satisfactory performance in accordance with the statutory regulatory regime.

### **What powers of investigation will the Regulator have?**

- 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.

## **What will inspectors be able to do?**

- Inspectors will have the powers to undertake investigations into the affairs and performance of AHBs. Inspectors will be able to -
  - Enter premises at reasonable times to search for records relating to the affairs of an AHB;
  - Inspect, examine and take copies of records;
  - Require owners of a premises or their employees to assist in examining records;
  - Examine bank accounts of AHBs;
  - Where an offence under the Act is suspected, remove records;
  - Where an offence under the Act is suspected, require that records are maintained for such period as considered necessary;
  - Require a person who has records or access to records to give such information as may be reasonably required to assist an investigation.
- Inspectors will prepare and submit to the Regulator an investigation report.

## **What happens in the case of Insolvency or Examinership?**

- The Act contains provisions obliging an AHB to notify the Regulator of certain events, including where it is struck off the Companies Register or the register of charitable organisations or if it is dissolved under the Friendly Societies Acts.
- The Act provides for the modification of Part 10 of the companies Act 2014 which provides for examinership so that Part 10 is applied to AHBs which are companies. Specific reference to the Regulator is included in those modifications including for the purpose of notification to be given to the Regulator of a petition for the appointment of an examiner and to provide that the Regulator has power to present a petition.

## **What are the offences under the Act?**

There are a range of offences under the Act. 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.

### **Can AHBs cancel their registration?**

- An AHB can apply to the Regulator to have its registration cancelled. In seeking a cancellation, it must submit to the Regulator any information the Regulator requires, particularly in relation to any assistance provided by the housing authorities under section 6 of the Housing (Miscellaneous Provisions) Act 1992 and the management of homes provided for social housing.
- The Regulator may refuse to cancel the registration if:
  - The AHB does not provide the information required or it is insufficient;
  - The Regulator considers that removal from the register would lead to the distribution of assets among its members;
  - A standards assessment of the AHB is being carried out and is not complete;
  - An investigation into the AHB is being carried out and is not complete;
  - There are legal proceedings pending in relation to the AHB; or
  - Any other reason the Regulator reasonably considers that deregistering the AHB may prejudice the performance of the Regulator's functions.
- Before cancelling a registration, the Regulator must consult with any housing authority in whose area the AHB owns or manages housing.

### **Can the Regulator cancel the registration of an AHB?**

- The Regulator may cancel a registration of an AHB on one of the following grounds – that the AHB:
  - Has been convicted of an offence under the Act or any other indictable offence;
  - Has failed or is failing to comply with any provisions under the Act;
  - No longer satisfies the eligibility criteria for registration as an AHB, or
  - Has ceased to exist.
- The Regulator must give notice of the proposal to cancel the registration to the AHB and each housing authority in whose functional area the AHB is managing or providing dwellings.
- The Regulator must consider any representations made and consult with the housing authority before deciding whether or not to cancel the registration.

### **What happens to dwellings of an AHB if its registration is cancelled?**

- If the Regulator considers it necessary for the protection of tenants of dwellings the Regulator will by notice require the person to transfer such dwellings to another AHB identified by the Regulator or to a Housing Authority if the Regulator considers it appropriate.
- If the AHB or any third party (other than the tenants) who has any right or interest in the dwellings objects to the proposed transfer the Regulator may apply to the High Court for an order.

### **When can the Regulator seek a High Court order?**

The Regulator has the power to seek a High Court Order if he or she suspects that:

- An AHB has committed or is committing an offence under the Act;
- An AHB is has failed or is failing to comply with provisions under the Act;
- An AHB has or is misusing or mismanaging property in such a way that endangers the property;
- There has been misconduct or mismanagement by a director or employee of an AHB in relation to its affairs;
- There has been or is unlawful or improper use of funds;
- There is a serious risk to the financial viability of the AHB;
- It is necessary for the purpose of the protection of the tenants of dwellings provided or managed by an AHB for the purpose of the alleviation of housing need; or
- Information showing any of the above has been or is being concealed or destroyed.

The Court may order:

- Removal or suspension of any director or officer or employee of the AHB;
- Appointment of other people to be a director or officer of the AHB in addition to or instead of, any existing director or officer;
- Vesting of any or all of the property of the AHB with another AHB identified by the Regulator or another appropriate person;
- Prohibiting the removal or sale of the property of the AHB without the Regulator's consent;
- A debtor not to pay a debt to the AHB for a specified period; or
- The restriction or prohibition of an AHB to enter any agreements.

## **Is there an appeals process?**

- An AHB may submit an appeal to the appeals panel where the Regulator has exercised its power in relation to registration, compliance plans or cancellation of registration.
- An appeal must be made within 21 days of the date of the notice of the relevant decision of the Regulator
- The Minister will appoint at least 10 people to the appeals panel.
- Upon receipt of an appeal, the chairperson of the appeals panel will appoint 3 persons from the panel to an appeals board to determine the appeal.
- The Appeals Board will establish the procedures to be followed regarding the making of submissions to the Board and may establish procedures in relation to the holding of hearings, requests for information and any other matter the Appeals Board considers appropriate for the proper performance of its functions.
- Within 3 months from the date on which an appeal is determined by an Appeals Board any party to the appeal may appeal to the High Court on a question of law arising from the determination.

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