Building for the Future: A Voluntary Regulation Code for Approved Housing Bodies in Ireland

Consultation Response from the Chartered Institute of Housing
September 2012

The Chartered Institute of Housing (CIH) is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation with a diverse and growing membership of over 22,000 people - both in the public and private sectors - living and working in over 20 countries on five continents.

CIH is the only professional organisation representing all those working in housing. Our purpose is to maximise the contribution that housing professionals make to the wellbeing of communities.

General Comments
CIH welcomes the publication of the draft voluntary regulation code and the opportunity to comment upon the consultation document. We strongly believe in the role that an effective regulatory framework has to play in a functioning housing system and support the establishment of regulation of the social housing sector in the Republic of Ireland.

There are a number of positive aspects within the consultation, such as the recognition that proportionality is important and an emphasis on engagement and collaboration. CIH also appreciate that a clear timeframe has been given for the establishment of a formal system of regulation by 2014. However, there are some areas for further consideration and potential concern. The draft voluntary regulation code is lacking in detail and appears confused in places. There is no clear explanation of why the Irish housing sector is significantly different from other jurisdictions with regards to regulation. Some of the terminology used within the voluntary code – for example non-registration (p.11) – is misplaced and unclear in this context. Given the voluntary nature of the code and its role in introducing the concept and benefits of regulation to the housing sector, there is also relatively little in the code that would incentivise sign-up from Approved Housing Bodies (AHBs). Some of these points are relatively easily addressed, while others may require further consideration and development.
CIH would have advocated for a statutory framework from the outset rather than a phasing in of regulation. One of our main concerns about the voluntary nature of this code is that it will not provide the necessary level of assurance to financial institutions to facilitate lending to the social housing sector. It is our understanding that one of the key drivers behind the introduction of regulation for the social housing sector is the need to attract private finance for the development of new housing and maintenance of existing housing stock. One of the primary comforts that regulation brings to lenders is the power of the regulator to ensure that the assets a loan is secured against will be realised to provide the necessary capital to the bank/lender in the case of default. Given that this power or indeed any of the other enforcement powers of a statutory regulator will not form part of the voluntary regulation code, it may not necessarily provide the stated assurance to potential investors and encourage private investment in the social housing sector.

Overall CIH welcomes the intent behind the voluntary regulation code and the longer term objective of introducing a statutory regulatory framework. We hope that the following comments on specific aspects of the consultation are helpful in explaining our concerns in more detail and offering ideas for further consideration.

Key Features of the Voluntary Code

CIH concurs with the three guiding principles of the voluntary code, but would suggest that they need to be further developed.

Proportionality

We support the establishment of a proportionate system; however, the basis on which the voluntary code is assessing a proportionate regulatory focus is not as clearly articulated as it could be. Whilst the size of an AHB and the stock it holds may be the most straightforward means of classifying organisations, we believe that the regulatory focus should be defined by the level of risk. There may be a clear correlation between size and risk in many instances, with smaller AHBs exposed to less risk, but this is not always the case. The voluntary code does refer to the development plans of the AHB but does not explicitly link this to risk or differentiate between state funded development and development using significant amounts of private finance in the principles. The three tiers outlined in the consultation do not appear to allow for a proper risk-based assessment of the sector as there is confusion between tiers two and three over whether development is financed through private loans or otherwise.
Accountability

CIH would agree that accountability is a core part of a strong regulatory system. It is not immediately clear in the voluntary code how accountability for services will be provided by AHBs either to tenants or funding bodies. We would suggest that there needs to be more detail on what aspects of their business AHBs should reasonably be expected to be accountable for and to whom, how accountability will be assessed and measured and who will determine whether or not AHBs are fulfilling their duties in terms of accountability.

Transparency

The voluntary code is not as clear and consistent as it could be in its current form. The process for sign up and the requirements of the code are not therefore as transparent as the principles suggest. CIH would also suggest that the principle of transparency should apply beyond the relationship between the regulator and AHBs to the relationship between AHBs and their tenants. We would also note that whilst the assurance that the code should not mean additional work for AHBs with good corporate governance, there is no detail as to what the experience will be like for AHBs who do not already have good corporate governance arrangements in place. It must be assumed that not all AHBs will be in this position, therefore it may be useful to outline the potential challenges for these organisations and actions that can be taken to help them embed good corporate governance practices.

Additional Principles for Consideration

This section of the voluntary code is missing a real opportunity to define the type of regulatory framework that government hopes to develop, i.e. will the emphasis be on economic or consumer regulation or a balance between the two. There is also a striking omission in relation to standards or performance/delivery outcomes. The voluntary code outlines the guiding principles with an emphasis on proportionality as the foundation for delivery and regulatory returns from AHBs. CIH would suggest, however, that serious consideration is given to developing a more comprehensive set of standards/outcomes around corporate governance, financial management and landlord services. This would provide a clear operating context for AHBs and also facilitate the sort of accountability that the code refers to.

Within the key features or principles section we would also hope to see more discussion of what direction the voluntary code is headed in with regard to a statutory framework. For example, AHBs
might feasibly ask what the managing principles of the voluntary code and future regulatory framework will be. CIH would support a system of co-regulation which is a combination of self-regulation (based on codes of practice, voluntary benchmarking and self-certification) and the ability of the regulator to investigate where it is deemed necessary. The voluntary code and future regulatory framework should be focused on strategic issues and not on the detail of delivery and there is a danger based upon this consultation that the two could become confused.

We would also suggest that there needs to be much more emphasis on tenants within the guiding principles of the code. An effective voluntary regulation code should have a strong focus on the needs and aspirations of tenants and service users and require clear evidence of involvement from tenants and service users in checking, confirming and challenging their housing provider on an ongoing basis.

In relation specifically to question 4, care organisations are already subject to regulation though the Health Service Executive and other organisations and would be captured within tier three of the organisational classification.

Requirements from AHBs

CIH welcomes the assertion within the consultation that the voluntary code and future regulation should not be an onerous addition to the work that AHBs do but a core part of their business planning. The requirements of the regulator should mirror the services delivered and information already collected by AHBs. However, this situation is dependent on a regulatory framework that is risk-based and outcomes-focused with self or co-regulation the managing approach of the regulator rather than compliance and inspection. It is worth bearing this point in mind and retaining a degree of flexibility in the voluntary code and development of the statutory framework.

Although this may seem to be a point of form rather than function, we feel that the term Charter of Commitments is confusing and does not give a clear sense of exactly what is required as part of regulation. It would be much more straightforward to simply call this a regulatory return or regulatory assessment.

CIH would suggest that a useful starting point for a regulatory assessment would be to ensure that it is line with the requirements of Companies Office and other regulatory or funding bodies to minimise the amount of duplication and bureaucracy for all stakeholders in the process. On a
specific point we do not believe that tier two organisations need to have an audit committee. They do, however, need to have external audit processes in place.

Good governance and financial viability are, along with service delivery, the cornerstones of an effective, efficient and high-performing organisation and as such should be at the heart of the standards that AHBs should be required to demonstrate commitment to and compliance with. We also believe that all AHBs, not just those in tier three, should have to have an agreed range of tenant services indicators in place and an agreed set of performance management indicators. These are immensely important aspects of regulation and it is concerning that the consultation does not see them as applicable to all AHBs regardless of their size. If, as suggested in the previous section of this response, there was a clear sense of what the standards/performance outcomes are that AHBs should be meeting, this could be easily incorporated into the on-going data collection/monitoring at an organisational level and then include in a regulatory assessment. However, there must be a clear sense even at this early stage in the process of what information on performance, service delivery, outcomes etc. that the regulator will want to see as part of the regulatory process. Although the voluntary code notes that data collection will be refined as the code is being implemented, CIH would suggest that there needs to be greater certainty for all concerned at the beginning of this process.

We note that there is some conflation between the role of the Department, the Housing Agency and other possible agents as part of the regulatory process. There should be clarity for AHBs and indeed tenants and lenders about who is responsible for regulation within the housing system. The intended role of the Department, the Housing Agency and any other agents (including who they might be) will need to be clearly defined at the earliest stage possible. We would also advocate that there is one single body responsible for administering the voluntary code, implementing the new regulatory framework and managing regulation in the future. There is significant potential for confusion if a number of agencies all have a role within the regulatory system.

The use of the word audit without further detail is also of some concern. CIH would like to see a positive, enabling system of co-regulation that is focused on delivery and outcomes rather than a prescriptive and compliance driven system that is characterised by audit and inspection\(^1\). It is not obvious what is meant by audit in relation to the voluntary code or what form that might take and we would welcome further clarification. It is also unclear what will happen if an AHB is not able to or

\(^1\) This precludes the role of an audit committee and the role of an AHB’s external auditor.
fails to meet these requirements or what the outcomes will be from an unsatisfactory annual review meeting. We believe that this section of the voluntary code is perhaps the most important in the consultation and should be subject to further consideration with much greater levels of detail needed before AHBs can reasonably be expected to sign up to the code.

Managing the Voluntary Code

Echoing the point made above, CIH would question that naming of two organisations in relation to regulatory oversight. If the regulatory process is to be effective, even in the form of the voluntary code, there must be clarity and consistency around the management of the system and reporting arrangements. We believe that the most credible and effective regulator – for tenants and lenders – is one which is independent of government. The constitution of the regulator varies across the UK. Whilst Scotland has an independent regulator, regulatory powers rest within government in Wales and Northern Ireland and in the Housing and Communities Agency in England. We believe that the Republic of Ireland should strongly consider an independent regulator, particularly in terms of quickly establishing a credible system that will attract private finance. However, at the very least the regulator must be politically independent. If the regulatory function is to rest with the Department, even in the short-term for the lifetime of the voluntary code, we would recommend that certain safeguards are put in place. The Welsh Government, for example, has created a Regulatory Board for Wales, which is supported by members of the Tenant Advisory Panel. This ensures that the regulatory team is held to account and subject to appropriate oversight, perhaps going some way to allaying the fears of who regulates the regulator.²

When considering the management of the voluntary code and a future statutory framework it is important to take account at the earliest possible stage of the resources, skills and capacity necessary to develop and deliver it within government and also within AHBs. The regulatory team will need to include people with a strong knowledge of the housing sector as well as finance/accountancy/governance expertise. There may also be a need to take account of what support AHBs will need to prepare for both the voluntary code and statutory regulation in relation to corporate governance, risk management, financial forecasting and reporting and performance management. The Department may need to factor in resources for training and support in helping prepare AHBs as the system is bedded in.

The reference to local authorities in the consultation is somewhat confusing at this stage in the development of the voluntary code and, we would suggest, injects a degree of uncertainty that is not helpful or necessary.

CIH supports the proposal made by the Department to publish regulatory reports on its website. This is important in terms of accountability, transparency and assurance for tenants and lenders. However, we would suggest that there is a ‘right to reply’ for AHBs after the regulatory report has been drafted to ensure that all parties are content with any published material insofar as is reasonably possible.

**Funding Regulation**

The use of the word registration is not in line with the rest of the consultation and is a different issue to that of regulation. CIH would agree that signing up to a voluntary code should not require a charge, particularly as this is a new system with no model within other jurisdictions as to the potential benefits of a voluntary form of regulation. Given the established benefits that statutory regulation is likely to bring for AHBs, tenants and government/statutory housing agencies it seems appropriate that the financing of a regulatory system should be shared by AHBs and the Department. This also means that both of the main stakeholders in regulation – government and the social housing sector – have a sense of ownership over the system with no one party perceived to have undue influence. A regulatory system funded entirely by government or by AHBs could lead to a sense that it is not independent of either.

**Regulatory Powers and Consequences**

CIH appreciates that a voluntary code cannot, by its very nature, have the same level of enforcement powers as a statutory regulatory framework. However, it does seem reasonable to insist upon adherence to the code as a precondition for any continuing or future funding from the public purse. It would also seem fair to publish a list of those organisations who have not signed up to the voluntary code once the issues with the code highlighted in this response and from other stakeholders have been addressed and a final code produced. There is very little in the way of incentive within this consultation for AHBs to sign up to the voluntary code; therefore, if the Department does wish to see organisations engaging with this process then a strong disincentive or consequence for not doing so may be the only lever available to ensure that this happens.
In saying that, CIH believes that there should be a right to reply and appeals process as part of the voluntary code if AHBs do not get a positive regulatory assessment or fail to meet certain aspects of the code. In addition, there should be an opportunity for AHBs to explain why they cannot comply with any aspects of the code/charter of commitments at an early stage so that the Department can work with the organisation to help them reach a position whereby they can comply. There may also be circumstances in which the Department may wish to accept that a particular requirement cannot be delivered by the organisation.

Regulatory powers are fairly standard across the UK and the Department should take into account the statutory powers that are held by other regulators, independent and within government/statutory agencies, when developing the Irish regulatory framework. CIH would suggest that these should include:

- The right to commission additional inspections where there is evidence of poor performance, governance/financial irregularity etc.;
- Requiring action to be taken within a specified timescale where problems have been identified;
- Imposing financial penalties for serious failure to comply with required actions;
- The power to withdraw or recall funding;
- The power to remove Board members and require new members to be appointed in instances of serious governance failure that have not been addressed within a reasonable timeframe;
- The power to require existing senior management to be removed and new/interim senior managers to be appointed;
- The right to direct an inquiry into an association’s affairs;
- The power to require the merger of a housing association with another association if significant concerns have been raised and an inquiry carried out;
- The right to petition for the winding up of an association.  

However, CIH would suggest further research, consideration and consultation before any decisions are reached on the key regulatory powers for the statutory framework. It must also be stressed that these powers are to be used in extremis, with good cause and on the basis of sound evidence following a rigorous and fair process of inquiry.

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3 The term housing association is used here as these powers are already in place and pertain to housing associations across the UK.
Before these powers can be deemed fairly enforceable the Department should make every effort to work with the housing sector and representative bodies to ensure that Board members and staff within AHBs fully understand the new regulatory framework; their role and responsibilities; and have access to any necessary training and support.

**Training and Support**
In relation to the voluntary code, CIH would suggest that engagement with representative groups such as the ICSH and CIH as well as with the IPA and academic institutions would help to ensure that our members and people taking part in training courses can be provided with relevant information and support as soon as possible. Work should also begin now to prepare and train senior managers and Board members in the tier two and three organisations for the introduction of the statutory regulatory framework on key areas such as good governance, risk management, financial management, performance management and service delivery.

CIH would be happy to work with the Department, other training providers and representative bodies in the Republic of Ireland to share our expertise and experience of supporting housing professionals in all of the above areas and in preparing for regulatory change more generally.

**The Board**
CIH would question why all of the Board for an AHB should be required to be resident in the Republic of Ireland. Even the inclusion or potential inclusion of one member from another jurisdiction could provide a different perspective and experience that adds real value to the work of the Board. We agree that there should be time limits placed upon the membership of the Board and would suggest that the nine year rule with three terms and no more than three terms to be served is a useful model that allows for greater refreshing of Board members than the proposed two terms of five years. Consideration should also be given to ensuring that a number of Board members are not required to stand down at the same time and that this arrangement is phased in to allow existing and in some cases founding Board members to step down in a timely manner.

**Concluding Comments**
In terms of next steps, CIH would suggest that AHBs will require a different version of the voluntary code than that published for consultation. The structure and layout of this document and inadequate levels of detail mean that it is not currently fit for purpose as a guide for housing
organisations. That is not to say that there are not some good initial principles and proposals within the draft voluntary regulatory code, but, if it is to act as the first step in the regulatory process, more consideration must be given to its accessibility and usefulness in providing a clear sense of direction of Boards and senior managers.

CIH is in favour of outcomes and risk based co-regulation; however, we acknowledge that this is a new system for AHBs and, as such, a more prescriptive and structured approach may be helpful in the early stages of the regulatory process to help organisations fully understand what is required of them. If this level of detail is not available now, then it will mean additional work down the line in preparation for the introduction of the statutory framework.

We would suggest that consideration is given to establishing a steering group as part of the launch of the finalised voluntary code which will advise and support the Department in taking forward the development of the statutory regulatory framework. This group should be representative of all stakeholders involved in the regulatory process, including of tenant interests and those of financial institutions, and have a clear terms of reference. By designing the regulatory framework using a co-production approach, it should be possible to get an early sense of any challenges presented by the voluntary code, what steps need to be taken to address them and what additional features must be included in a statutory system of regulation. A steering group with a clear role and remit would also ensure greater buy-in to the concept and principles of statutory regulation from stakeholders and the development of a more robust and deliverable regulatory system.

CIH hope that this response has been helpful in highlighting some areas for further consideration. We would be happy to provide any additional information or support as appropriate.
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