



**An Phríomh-Oifig Staidrimh**  
Central Statistics Office

Central Statistics Office

## **Review of Sector Classification of Approved Housing Bodies**

December 2017

# **Summary of Financial Schemes for Provision of Social Housing**

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## Introduction

The purpose of this document is to

- a) provide a brief overview of the schemes and programmes which are currently, or have been, in operation for the provision of social housing in Ireland.
- b) examine those schemes in the context of the ESA 2010<sup>1</sup> classification criteria for assessing the degree of control by Government, and
- c) assess the role played by these schemes in the broader context of the 2017 review of the sector classification of Approved Housing Bodies (AHBs) in Ireland.

## Background Information

Several key bodies and agencies play a central role in the area of social housing in Ireland. These include –

1. Local Authorities (LAs)
2. The Department of Housing, Planning and Local Government (DHPLG) – the Department
3. The Housing Finance Agency (HFA)
4. The Irish Council for Social Housing (ICSH)
5. The Housing Agency (HA)
6. Approved Housing Bodies (AHBs)

The HA is regulating, on an interim basis, AHBs in Ireland. The regulation of AHBs is based on a voluntary code<sup>2</sup> and framework which aims to promote good governance, financial management and general oversight of the sector. The table below gives a summary of the numbers of AHBs in Ireland at the end of December 2017

### Summary of AHB Numbers in Ireland (December 2017)

	Number of AHBs	Housing Stock	Signed up to Regulatory Code
	546*	30,000	Some
of which,			
Tier 1	182	< 50	Yes
Tier 2	51	50 - 300	Yes
Tier 3	18	> 300	Yes
<b>Total</b>	<b>251</b>		

\*Number of AHBs registered with the DHPLG under the Housing (Miscellaneous Provisions) Act, 1992. ICSH has indicated that many are not active. Most of those that are active are signed up to the Voluntary Regulatory code and are members of the ICSH.

<sup>1</sup> European System of Accounts 2010 - the legally binding document that outlines the standards under which National Accounts and, in particular, Government Finance Statistics must be compiled.

<sup>2</sup> <https://www.housingagency.ie/Regulation/The-Code.pdf>

AHBs provide and manage social rented housing. They are not-for-profit organisations, formed with the aim (usually stated explicitly in their constitution or memorandum of articles and association) of relieving housing need.

AHBs provide housing in response to a range of different needs including to families on low incomes and to households with special needs, older persons, people with disabilities and homeless persons.

**Subject to conditions set out in the Housing (Miscellaneous Provisions) Act, 1992** AHBs can be limited companies, societies or trusts (incorporated under the Charities Act). Under this Act they must have as their primary objective the relief of housing needs, poverty, or hardship, or the welfare of members of the Traveller community and the provision and management of housing. They cannot distribute surplus profit, bonuses or dividends to members, and their assets must be used to meet their primary objective.

AHB's have been, and continue to be, a key mechanism for the DHPLG and the LA's to implement their housing strategy. This is evidenced by the provision of funding schemes by Central Government to support their role in providing social housing.

The Departmental Guidance note contained in the *Memorandum VHU:2/02 – Capital Funding Schemes for the Provision of Rental Accommodation by Approved Housing Bodies (Voluntary & Co-Operative Housing)* states -

“The provision of rental accommodation by the voluntary and co-operative housing associations and other approved voluntary organisations has become an increasingly important part of the overall response to national housing needs.” (Para 1.1)

“The Government wishes to ensure that the output of dwellings by the voluntary and co-operative housing sector is expanded more rapidly. In order to assist in this process, the Department has taken steps to improve the levels of funding and to simplify aspects of the terms and conditions of the Schemes in consultation with representatives of the LA's, the Voluntary Housing Sector and the Co-operative Housing Movement.”( Para 1.5)

“However, the effective operation of the procedures set out in this Memorandum is only one aspect of the policy response required to achieve an expanded contribution from the voluntary and co-operative housing associations” (Para 1.8)

“The output and development of the voluntary and co-operative housing sector is critically dependent on the response by housing authorities to approaches from approved housing bodies for assistance.” (Para 3.2)

The Government's Social Housing Strategy 2020<sup>3</sup> also envisages a key role for AHBs in the provision of social housing in Ireland.

“The Government's *Social Housing Strategy 2020*, places AHBs at the heart of social housing provision in the coming years, with a view to the sector expanding significantly and playing a lead role in the delivery and supply of new social housing.”<sup>4</sup>

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<sup>3</sup> [http://www.housing.gov.ie/sites/default/files/publications/files/social\\_strategy\\_document\\_20141126.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/social_strategy_document_20141126.pdf)

“...an enhanced role for AHBs in the provision of new supply will be central to the Government’s vision for the provision of social housing supports. This Strategy includes a number of changes and actions that will help to promote the optimal configuration of what is a very diverse sector; and encourage the formation of the large scale providers that the sector needs, if it is to fulfil an enhanced role in social housing supply. The changes include the introduction of a multi-annual housing expenditure programme; prioritisation of funding to incentivise scale; a more streamlined funding process; promotion of collaboration at local and regional level between LA’s and AHBs; and enhanced regulation.”

“This Strategy is based on a multi-annual housing expenditure programme. .... It will also allow for broad reform of the sector by facilitating sustainable planning and development through multi-annual housing strategies by LA’s, coordinated on a regional basis, and by AHBs.”

The DHPLG has in place four schemes exclusively available to AHBs to support the provision of social housing.

These are –

1. CAS - Capital Assistance Scheme
2. CLSS - Capital Loan and Subsidy Scheme
3. CALF - Capital Advance Leasing Facility
4. SHCEP - Social Housing Current Expenditure Programme

In addition to these schemes the Department operates the Rental Accommodation Scheme (RAS), and the Housing Assistance Payment (HAP)<sup>5</sup> which are aimed at supporting housing needs.

The government schemes enable AHBs to source units for the provision of social housing through two different mechanisms –

- a) Construction or acquisition of units
- b) Leasing units from the private sector

Until 2011, Government provided two 100% capital funded support schemes to AHBs. Under the Capital Loan and Subsidy Scheme (CLSS), AHBs provided accommodation for people on the local authority waiting list and tenants paid differential rent. This scheme closed in 2011, but during the period 2002 to 2013, there were 6,823 dwellings completed or acquired through this funding. Funding was also provided under the Capital Assistance Scheme (CAS) to construct or acquire property for people with special needs, with 8,317 units added under this scheme between 2002

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<sup>4</sup> <https://www.housingagency.ie/Regulation.aspx>

<sup>5</sup> AHBs cannot currently utilise HAP for units funded through Capital schemes (CLSS and CAS), however the legal provision allowing for same is to be commenced in due course. AHBs currently have a very limited involvement in HAP.

and 2013. Tenants in these CAS properties pay economic rents which are set at a level which takes into account the tenants' income and as agreed between the local authority and the AHB. In 2011, a new capital and debt funding model was introduced, to replace CLSS. In this scheme, called CALF, AHBs can apply for a capital advance from government, which allows them to raise finance from the HFA or commercial banks, for the leasing, acquisition or construction of housing. As noted above, 174 units were delivered under CALF in 2013. Payment and Availability (P&A) agreements are signed, at a discount to market rent, between the local authority and the AHB. Tenants pay a differential rent.

1,042 housing units were delivered by LAs and AHBs through the social housing leasing initiative (now known as SHCEP) during 2013.

The DHPLG supplied a number of documents to the CSO to provide information on the various funding schemes available to AHBs and to aid the CSO in the classification review process. These documents included –

*“Schemes available to Approved Housing Bodies in the provision of social housing” (DHPLG Doc)*

*“**Memorandum VHU:2/02** – Capital Funding Schemes for the Provision of Rental Accommodation by Approved Housing Bodies (Voluntary & Co-Operative Housing)”*

These documents have been reviewed to gain further understanding of the operation of the relevant funding schemes in place for AHBs. The information provided in this document has been assessed in relation to the control criteria outlined in the ESA 2010.

# Types of Agreement in Operation for Social Housing Provision

## Payment and Availability Agreement

A Payment and Availability Agreement (P&A agreement) is the contract which forms the basis of the lease arrangement between the local authority and the AHB for the purposes of leasing a housing unit, regardless of how the housing unit is sourced.

The basic principles behind the operation of the agreement are:

- Local Authority identifies tenants
- Local Authority decides rent to be paid by tenant to AHB
- Local Authority makes payments to AHB on a regular basis (monthly, quarterly, etc.)
- The Department (DHPLG) reimburses the Local Authority

Annexe 1 contains a sample Payment and Availability Agreement and Section 2 of that document states these general features –

“2. WHEREAS

A. The AHB owns the units.

B. The AHB has agreed to make the units available to the Council (LA) for the provision of housing to Eligible Nominees for the term.

C. The Council (LA) has agreed, subject to the terms and conditions set out herein, to procure the

Payment to the AHB for the Term.

D. The Council (LA) and the AHB have agreed to enter into this Payment and Availability Agreement upon the terms and conditions hereinafter contained.”

In addition, Section 4 of this document lays out the obligations on the AHB under this agreement. In particular, this section highlights several areas in which the LA exerts influence and control over the way in which the AHB operates –

“4. In consideration of the payment to the AHB as hereinafter provided and of covenants and agreements on the part of the Council (LA), the AHB COVENANTS AND AGREES:

(a) To make the Units available to the Council for the purposes of providing housing support for Eligible Nominees.

(e) To comply with European Communities (Energy Performance of Buildings) Regulations 2006 and to provide a BER certificate and advisory report for the Units to the Council.

(f) To charge, collect and retain the rent calculated in accordance with the Differential Rent Scheme from the occupants of the Units.



(g) To produce an annual report to the Council in relation to the occupancy and condition of the Units and to certify (in a form to be notified by the Council and subject to change) on an annual basis that the Units are lettable and are being used for the provision of housing for Eligible Nominees.

(h) To take out and maintain during the Term proper and appropriate property insurance for the reinstatement value of the Units and public (minimum €6.5 million) and employer's liability (minimum €13 million) insurance or in such sums as the Council may reasonably require having regard to industry standards (to be adjusted from time to time as the Council reasonably deems necessary) with a reputable insurance company or reputable underwriter and to pay all premiums necessary for that purpose and when required to produce to the Council the policies for such insurance and the receipt for the current premium.

(i) To comply at all times during the Term at the expense of the AHB with the provisions and requirements of the Planning Acts and of the Building Regulations and of all licences consents permissions approvals certificates and fire safety certificates (if any) granted issued or imposed under the Planning Acts or in connection with the Building Regulations in so far as the same respectively relate to or affect the Units or any part thereof or any operations works acts or things already or in the future to be carried out executed or done on or to the Units or any part thereof.”

It is also stated, in Section 4F, that the LA determines the differential rent which must be paid by the tenant to the AHB.

Section 6.4 also outlines the circumstances under which the LA is liable to pay for vacant units –

#### “6.4 Vacant Units

For the first letting of a Unit and in the event that a Unit becomes vacant (howsoever arising) or the AHB receives notice that a Unit will become vacant the following shall apply:-

(a) The AHB shall notify the Council as soon as it becomes aware of the vacancy that a nomination is required for the vacant Unit.

(b) The Council will provide a nomination for a vacant Unit within one month of being notified by the AHB that the Unit is vacant (the “Nomination Period”).

(c) The AHB shall have three months from the date it becomes aware of the vacancy (the “Vacancy Period”) to have the nominee occupy the vacant Unit on condition that a nomination is provided within the Nomination Period.

(d) The Payment shall continue in relation to a vacant Unit for the Vacancy Period.

(e) If the nomination has been provided within the Nomination Period and the AHB fails to have the vacant Unit occupied within the Vacancy Period then the Payment may be

suspended until the Unit is filled. When the Unit is filled the Payment will resume when the new tenancy commences, but for the avoidance of doubt, no Payment will be made to the AHB for the period during which the AHB fails to occupy the vacant Unit after the Vacancy Period.”

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>Doc. Ref.</b>
1.	The LA nominates the tenants for the housing units underpinning the agreement.  This indicates control by government.	Contractual Agreements	Para. 2B
2.	The LA makes regular payments to the AHB.  This indicates financing by government.	Degree of Financing	Para. 2C Para. 5A
3.	The AHB must make the housing units underpinning the P&A agreement available to social housing tenants.  This indicates control by government.	Contractual Agreements	Para. 4A
4.	The LA is liable to continue to pay for vacant units in certain circumstances.  This indicates a risk to government.	Risk Exposure	Para. 6.4D
5.	The AHB must take out insurance on the housing units (which are the subject of the P&A agreement) in accordance with guidelines set out by the LA.  This indicates control by government.	Contractual Agreements	Para. 4H

### Conclusion

This contractual arrangement demonstrates a high degree of financing and control by government, and some risk exposure.

## Capital Advance Agreement (CAA)

Under the Capital Advance Leasing Facility (CALF) scheme, the CAA is the agreement between the AHB and the LA which underpins the provision of a loan by the Local Authority, up to a maximum of 30% of the capital cost of a project. Repayments on the loan (capital advance) are not required during the term of the Payment and Availability (P&A) agreement that forms the basis of the leasing arrangement which is put in place as part of the CALF scheme. However, the loan remains outstanding at the end of the agreement.

**Annexe 2** contains a sample Capital Advance Agreement. Section 4 of this document outlines how the schedule of payments of this loan, effectively in tranches, is managed –

“4.1 The Capital Advance may be drawn down in tranches until the whole amount of the Capital Advance Amount has been drawn down.

4.2 Each drawdown amount will be for vouched expenditure and, subject to clause 4.6, shall be limited to the extent that the total amount drawn down under this agreement does not exceed the Capital Advance Amount and also, subject to the amount requested being a minimum of €Y as agreed with the Local Authority.

4.3 Tranche payments may only be drawn down by the AHB giving ten [10] Business Days written notice to the Local Authority before the proposed date for drawdown.

4.4 Tranche payments may only be drawn down where specific milestones have been reached to the satisfaction of the Local Authority, where such milestones are set out in the Funding Approval.”

	Feature of Scheme / Agreement	Control Indicator	DHPLG Doc
1.	Risk arises for a local authority where they do not carefully manage the payment of the Capital Advance Agreement (CAA) in conjunction with the execution of contracts, or the phased delivery milestones in a construction scheme.  This indicates a financial risk for government	Risk Exposure	Page 26
2.	The LA is exposed to financial risk in the event of a default by the AHB on the loan.  This indicates a financial risk for government	Risk Exposure	Page 26

## Conclusion

This contractual arrangement exhibits elements of financial risk exposure for Government.

## Continuation Agreement

This is the agreement entered into by the AHB, the LA and a third party lender when the AHB looks to take a loan (in addition to the capital finance provided by the Local Authority under the CAA element of the CALF scheme) to finance the outstanding cost of the purchase or construction of housing units. **Annexe 3** contains a sample Continuation Agreement which outlines the purpose of the agreement –

### “1. RECITALS

A. The AHB has agreed to make the residential units listed in the Schedule hereto (“the Units” and each a “Unit”) available to the Council for the provision of housing to Eligible Nominees under a Payment and Availability Agreement dated the day of 20 (“the P & A Agreement”) a copy of which is attached as an Appendix hereto.

B. The Council has agreed, subject to the terms and conditions set out in the P & A Agreement, to procure certain payments to the AHB.

C. The Bank and the AHB have entered into the Loan Agreement dated the [ ] day of [ ] 201[ ] to assist the AHB to develop and make the Units available for the provision of housing to Eligible Nominees under the P & A Agreement.”

Additionally, Paragraph 1D states that there is a financial risk for the LA in this agreement –

“D. One of the conditions of the Bank entering into the Loan Agreement is that the Council will enter into this Agreement to provide that, in certain circumstances, the Bank can call on the Council to make payments as set out in this Agreement.”

Section 3 of this agreement outlines in detail the circumstances under which the LA may be required to assume responsibility for the loan repayments –

### “3. NOW IT IS HEREBY AGREED as follows:

(i) The Council agrees, (strictly on the undertaking that it assumes no responsibility for compliance with any of the obligations of the AHB under the P & A Agreement which shall be solely a matter for the AHB, its liquidator, receiver and manager or examiner as the case may be), that on receipt of written notice from the Bank in accordance with Clause 5 it will during the Step-In Period:-

(a) pay to the Bank Appointed Receiver the payments due or payable (or that would be due or payable if the Step-In Event or other disability had not occurred) to the AHB under the P & A Agreement;

(b) promptly meet and actively engage with the Bank with a view to ensuring continuity of occupation until such time as the P&A Agreement is assigned to an Alternative AHB or the Council terminates the P&A Agreement and, in the event a New Loan Agreement is entered into with an Alternative AHB, to enter into a Replacement Agreement; and

(c) actively assist the Bank to secure an Alternative AHB to take on the role of the AHB under the P&A Agreement.

(ii) The Step-In Events which give rise to the right of the Bank under Clause 5 (i) to give notice to the Council that it must comply with the obligations under Clause 3 (i) above are any of the following:-

(a) The AHB has a winding-up petition presented against it or passes a winding-up resolution (other than in connection with a members' voluntary winding-up for the purposes of an amalgamation which need only to be notified to the Bank); or

(b) The AHB resolves to present its own winding-up petition or is wound-up (whether in Ireland or elsewhere); or

(c) A receiver is appointed to the AHB or a receiver or manager is appointed over any of the Units by the Bank. For the avoidance of doubt, a receiver appointed by any other entity, save for the Bank, would not invoke the rights under Clause 5."

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>Doc Ref.</b>
1.	The Continuation Agreement stipulates the existence, in conjunction with this agreement, of a Payment and Availability Agreement which requires the AHB to make available its housing units to the LA for renting to tenants nominated by the LA.  This indicates control by government.	Contractual Control	Para. 1A
2.	The LA is responsible for repaying the loan taken by the AHB from the third party lender in the event that the AHB is unable to make repayments.  This indicates a financial risk for government through the existence of a guarantee.	Risk Exposure	Para. 1D Section 3

### Conclusion

This contractual arrangement exhibits features which indicate control by Government, and also some financial risk exposure.

### **Continuation Agreement (NAMA/NARPS)**

This agreement is similar to the Continuation Agreement above, except in this case the third party lender is NAMA/NARPS.

## Capital Financing Schemes

The Departmental (DHPLG) Guidance note contained in the **Memorandum VHU:2/02 – Capital Funding Schemes for the Provision of Rental Accommodation by Approved Housing Bodies (Voluntary & Co-Operative Housing)** – sets out general conditions for capital funding by LA’s to AHBs. In particular, it also sets out conditions which are specific to the CAS and CLSS. Both of these schemes, together with the general provisions contained in this document, are reviewed and assessed in the following sections.

### Capital Loan and Subsidy Scheme (CLSS)

The Capital Loan and Subsidy Scheme (CLSS) commenced in 1991 to provide capital funding to AHBs to meet the cost of constructing units of accommodation for renting to people on the local authority social housing waiting list. The LAs access the funding they provide to the AHBs from the Housing Finance Agency (HFA) which is repaid over a 30 year period to the HFA by the LA. In turn the LAs provide this funding to AHBs by way of a non-refundable loan as long as the AHB complies with the terms and conditions of the CLSS. Following discussions with the Department, it has been confirmed that ownership of the housing units transfers unconditionally to the AHB at the end of the mortgage period, although it has not been possible to verify this from the documentation reviewed so far.

It was decided in 2009 to wind down the scheme and it is effectively now terminated. However, the “loan liabilities” (see Table 1, Item 1 below) associated with this scheme are still outstanding.

In addition to the capital costs of providing the accommodation, a management and maintenance allowance is provided annually to AHBs towards the upkeep of the accommodation.

See Parts 5, 7 and 9 of Memorandum VHU:2/02.

The following table takes features of the CLSS and relates them to the relevant ESA210 indicators of control.

**Table 1: Key Features of Capital Loan and Subsidy Scheme**

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>Paragraph Ref. in Memorandum VHU:2/02.</b>
1.	The terms of the Scheme provide that the Department may pay a subsidy towards the full amount of the loan repayments and interest charges incurred by the approved housing body (credited directly by the housing authority to the approved body’s mortgage loan account), subject to continued compliance by the approved housing body with the terms of the Scheme.  This indicates financing by government.	Degree of Financing	Paragraph 5.2 Paragraph 5.8

2.	<p>It is a requirement of the Scheme that 75% of the dwellings are occupied by tenants qualified for local authority housing whose tenancies have been approved by the local authority in accordance with the terms of the Scheme.</p> <p>This indicates control by government.</p>	Contractual Agreements	Paragraph 5.4(c)
3.	<p>The LA can take back the housing asset if the conditions of the CLSS scheme are not met.</p> <p>This indicates control by government.</p>	Contractual Agreements	Paragraph 3.16 Paragraph 3.17
4.	<p>Where the circumstances of a tenant changes to the extent that they would no longer qualify for LA housing, the subsidy towards the loan repayments incurred by the AHB will continue to be paid by the Department.</p> <p>This indicates the presence of an income guarantee by government</p>	Degree of Financing	Paragraph 5.9
5.	<p>LAs pay an annual management and maintenance allowance to AHBs towards the upkeep of the housing units. This payment is made on the condition that the tenants are chosen from the LA housing waiting list.</p> <p>This indicates financing and control by government.</p>	Degree of Financing	Paragraph 9.10
6.	<p>There is a highly prescriptive formula for the setting of rent-payment levels. This formula includes, for example, definitions of household income for the purpose of determining rents and the definition of a dependent child, as well as a rent calculation formula based on these definitions.</p> <p>This indicates control by government.</p>	Contractual Agreements	Paragraph 9.8
7.	<p>The parameters relating to the construction and design of housing units, followed by AHBs, are closely aligned to Government guidelines for those housing units funded under the CLSS.</p> <p>This indicates control by government.</p>	Contractual Agreements	Part 7
8.	<p>The rules and policy on Public Procurement must be adhered to by AHBs during the construction of housing units.</p> <p>This indicates control by government.</p>	Special Regulations	Section 13 <sup>6</sup>

<sup>6</sup> SI 284-2016 European Union (Award of Public Authority Contracts) Regulations 2016



## **Conclusion**

The features of the scheme highlighted above indicate, on balance, a high degree of financing and control by Government.

## Capital Assistance Scheme (CAS)

Under the Capital Assistance Scheme (CAS), LAs may advance loans of up to 100% (or 95% where the AHB chooses to retain the right to nominate 25% of tenancies) to AHBs to assist with capital costs. To qualify for these loans the AHBs must provide housing for the elderly, homeless, people with disability, or other disadvantaged persons who have been identified by the LAs as in need of housing. The loans are for a 30-year period and are non-repayable provided the accommodation continues to be let to eligible categories of persons, be adequately maintained and continues to meet CAS conditions. The local authority loans are covered by payments made to the LAs by the DHPLG. Following discussions with the Department, it has been confirmed that ownership of the housing units transfers unconditionally to the AHB at the end of the mortgage period, although it has not been possible to verify this from the documentation reviewed so far.

At the expiration of the mortgage period, the deeds are discharged and full title to the units resides with the AHB.

See Parts 4, 7 and 9 of *Memorandum VHU:2/02*.

The following table takes features of the CAS and relates them to the relevant ESA210 indicators of control.

**Table 2: Key Features of Capital Assistance Scheme**

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>Paragraph Ref. in Memorandum VHU:2/02.</b>
1.	Under this scheme the capital loans (up to 100%) are non-repayable to the LA, assuming the conditions of the scheme are adhered to. This is viewed in the national accounts framework as a grant provided by government.  This indicates financing by government.	Degree of Financing	Paragraph 4.2
2.	The LA decides upon the eligible tenants for the housing units that are provided under this scheme.  This indicates control by government.	Contractual Agreements	Paragraph 4.5 (i) and 3.17 (ii)
3.	Up to a maximum of 25% of accommodation may be allocated to persons that are freely nominated by the AHB. These freely chosen tenants are generally taken from the LA housing list.  This indicates a degree of AHB autonomy.	Feature of autonomy	Paragraph 4.5 (ii)
4.	The market value of land, which the AHB owns or is obtained for a fee, may be	Financing	Paragraph 3.9

	included in calculating the approved cost.  This indicates financing by government.		
5.	There are very explicit and prescriptive guidelines, set by the Department, relating to the design and construction of housing units funded under the CAS.  This indicates control by government.	Contractual Agreements	Paragraph 7.4 Paragraph 7.5
6.	The rules and policy on Public Procurement must be adhered to by AHBs during the construction of housing units.  This indicates control by government.	Contractual Agreements	Section 13 <sup>7</sup>

### Conclusion

Although there is some AHB autonomy with regard to the choice of tenants, the other features of the scheme highlighted above indicate a high degree of financing and control by Government,

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<sup>7</sup> SI 284-2016 European Union (Award of Public Authority Contracts) Regulations 2016

## CALF (Capital Advance Leasing Facility)

The Department introduced the capital assistance scheme called CALF in 2011. The purpose of CALF is to provide financial support from LAs to AHBs via a long-term loan, termed the Capital Advance Agreement (CAA), to help with the purchase or construction of housing units. The LA provides up to a maximum of 30% of the capital cost under the CAA. The remainder of the finance is then sourced from either the private sector or the HFA<sup>8</sup>. This second element of the financing is secured under a Continuation Agreement (see Annex 3).

This scheme is only open to AHBs in the situation where they agree to make available the housing unit(s) in question under a Payment and Availability (P&A) agreement (see Annex 3) to nominees (candidates on a waiting list) of the local authority for an agreed period of time.

Repayment of the loan provided to the AHB under the CALF scheme (the CAA element) is not required during the lifetime of the P&A agreement. However, the loan remains outstanding once the agreement ends.

**Table 3: Features of the Capital Advance Leasing Facility**

	Feature of Scheme / Agreement	Control Indicator	DHPLG Doc
1.	The CALF scheme, through the non-CAA element of the financing, contains a <i>Continuation Agreement</i> (see Annex 3), a feature of which is the existence of an implicit government guarantee on the private loan.  This indicates a financial risk for government through the existence of a guarantee.	Financial Risk Exposure	Clause 3 <sup>9</sup>
2.	In some cases LAs advance monies to AHBs' solicitors to facilitate the closing of transactions. There is some risk exposure to government, through the LA, if these payments, due under the <i>Capital Advance Agreement</i> (CAA), are not managed appropriately.  This indicates a risk to government.	Risk Exposure	Page 24
3.	It is a requirement of the Scheme that these dwellings are occupied by tenants qualified for local authority housing whose tenancies have been approved by the housing authority in accordance with the terms of the Scheme.  This indicates control by government.	Contractual Agreements	Page 23

### Conclusion

This scheme has been recently introduced. The scheme relies on the existence of a Payment and Availability Agreement (P&A) and a Continuation Agreement. These agreements have been

<sup>8</sup> Housing Finance Agency (classified in Central Government).

<sup>9</sup> Draft P&A Continuation Agreement.

reviewed above (copies available in Annex 3) and indicate high/varying levels of control by government.

In the AHBs that have been examined by the CSO there is very little evidence of private sector funding under this scheme (see Annex 4). The majority of the funding observed in the accounts is supplied by the Housing Finance Agency, which is part of government. Thus, financing under this scheme is largely funding by government (up to 30% under the Capital Advance Agreement) and the balance coming from the HFA.

Repayments which are due on the loan to the AHB made under the Capital Advance Agreement (CAA) are required to be made at the end of the term of the P&A agreement. However, at the end of the loan term, there are a variety of options for how the loan, owing to the Local Authority, is to be repaid. These include –

- Repay the outstanding CALF loan and interest outstanding.
- The AHB may decide to sell the units and repay the monies owed to the local authority. Given that the asset should have a considerable residual value at this stage, the AHB may wish to use this to invest in stock elsewhere.
- The AHB may wish to realise some of the residual value of the property and get a further private loan to re-invest in units and repay the local authority.
- The AHB and the housing authority may decide to enter into another P&A agreement where the monthly/quarterly payments due from the housing authority would be adjusted to reflect the repayment of the capital and interest outstanding.

Although the situation has not yet arisen, due to the very recent introduction of this scheme, the question remains as to whether this funding is actually a loan or a grant. Correspondence from the DHPLG indicates that this is a loan.

## General Provisions Relating to the Capital Funding Schemes for AHBs

Besides terms and conditions specific to the CLSS or CAS, *Memorandum VHU:2/02* also sets out general conditions that apply to AHBs when they seek funding under these schemes. Some of the provisions within the memo indicate a collaborative and cooperative approach between the LAs and AHBs. For example,

- LAs are encouraged to develop a partnership approach with the sector (3.3), consultation and liaison with AHBs (3.6) and provide them with technical assistance in the formulation of their application (3.6).
- The LAs respond to proposal projects put forward by AHBs and not the other way around and AHBs can choose their area of operation (Section 3).

Additionally, the memorandum also details how LAs are encouraged to respond quickly and appropriately to AHB proposals so as to support the sector.

Other sections set out quite prescriptive terms and conditions for AHBs to adhere to in order to avail of funding under these schemes;

1. Conditions to become an Approved Housing Body, and thus avail of government funding, are prescribed in Section 6 of the Housing (Miscellaneous Provisions) Act, 1992. Thus, government prescribes the form and governance of AHBs where they want to access funding. Section 2 of the DHPLG document details these conditions. Such conditions go as far as to exclude commercial or risk taking activity by an AHB, where it is considered that these activities may adversely affect their housing activity (Paragraph 2.11).

Paragraph 2.13 states that “A body approved under Section 6 of the 1992 Housing Act may have its approved status suspended or withdrawn in the event of the body ceasing to comply with the provisions of Paragraphs 2.3 to 2.11, or the requirements, terms and conditions of the Department’s Capital Funding Schemes.” (Paragraph 2.13)

2. When deciding on whether to support an AHB application for funding under one of these schemes, the Local Authority has to take into account the number of AHBs already operating in a particular area (Paragraph 2.12) and “Where it is practicable and compatible with the needs of occupants in the approved housing body’s housing accommodation, housing authorities should seek to have communal facilities used to serve local community needs (e.g., meals-on-wheels, recreation and social services etc.)” (Paragraph 6.7).

Additionally, consideration is given to the contribution that a given housing project will make to the area in which it is located - “In addition the housing authority should be satisfied that the housing project will make a useful contribution to the relief of housing needs in the area where it is located” (Paragraph 3.22).

3. The Memo provides for prescriptive guidelines on the design of the accommodation to be built under the schemes (Section 7).

4. Part 9 of the memo covers terms and conditions for the management, letting policies, rents and maintenance of dwellings provided under the schemes. Although the section initially indicates that the above are the responsibility of the AHBs, the section subsequently outlines prescriptive conditions on –
  - **Rent setting:** Paragraph 9.6 relates to the CAS and Paragraph 9.8 to the CLSS. The latter has a very detailed formula on how rents should be set.
  - **Lettings policy:** Paragraph 9.4 relates to the CAS and Paragraph 9.7 to the CLSS. Under the CLSS, 75% of dwellings must be let to Local Authority tenants.
  - **Vacancies** Paragraph 9.14 states that AHBs are expected to “carry without subsidy a reasonable number of short term casual vacancies as may occur on routine lettings” and 9.19 states any tenant in a CLSS or CAS house have same terms and conditions as LA tenants in relation to surrendering of dwelling.
  
5. Further evidence of government financing and risk exposure is found in the general provisions for capital funding schemes.

Section 3 advises LAs to waive the development levies, thereby providing a form of indirect financing of AHB development projects – “Given the nature of the social housing schemes, and the role of housing authorities in facilitating the voluntary and co - operative housing sector, authorities should not, as a matter of practice, impose conditions under section 48 of the *Planning and Development Act, 2000* in grants of planning permission for social housing schemes.” (Paragraph 3.2)

Government is potentially exposed, via a guarantee which may be provided by the Local Authority on possible AHB borrowings required to finance project planning – “In addition, an authority may, under Section 6 of the Housing (Miscellaneous Provisions) Act, 1992, give a guarantee to an approved housing body in respect of borrowings that may be necessary to enable planning of a project to proceed in the early stages.” (Paragraph 3.6)

In relation to insurance coverage, AHBs are obliged to name the relevant Local Authority as an interested party for the duration of the mortgage period where loans have been advanced under these schemes. “Arrangements must be put in place whereby the housing authority are notified by the Insurance Company of failure by the approved housing body to make payment of the annual renewal premium” (para 9.15). This indicates risk exposure to the Local Authority

The conditions set out in the sample mortgage deed agreement also demonstrate a high degree of control in relation to this - regular proof of payment of insurance premiums is required and an insistence on use of any claims received to rectify damage to the property. (see Appendix 2 of the memorandum).

6. A number of provisions are in place to assist AHBs in managing the costs associated with project development relating to land acquisition, structural development and legal fees.

“Additional loan assistance is available towards the costs incurred by approved housing bodies in the direct acquisition by them of land or sites for providing housing accommodation. Where site costs are included in an application for Capital funding, grant assistance up to 100%” (Paragraph 3.11)

“Costs incurred by an approved housing body in relation to site development and sub-structural works may also be included as site costs (subject to the maximum amount allowable under the terms of the Scheme) where the local authority considers the works justified.” (Paragraph 3.12)

“Legal costs incurred by an approved body in acquiring a site may also be included.” (Paragraph 3.12)

7. Section 8 of the DHPLG document outlines the constraints imposed on AHBs regarding advertising, contract procedures and tenders.

Projects which are undertaken by AHBs and funded by LAs through the Capital Funding Schemes are to be advertised according to guidelines laid down in the DHPLG document – “A suitable billboard, visible and easily legible from the nearest public road, should be erected by the approved housing body at the entrance to the site giving its name and the name of the housing authority and stating that funding for the project is being provided by the Department of the Environment and Local Government. This billboard shall be separate to any other billboard erected on the site.” (Paragraph 3.24)

AHBs must adhere to public procurement rules when entering into contracts to build housing units/developments – “It is a basic principle of Government procurement that competitive tendering should always be used in publicly funded projects including those undertaken by approved housing bodies under the Capital Funding Schemes for voluntary housing projects. The broad principles of the procedures outlined in the booklet "Public Procurement" should be adhered to by approved housing bodies in the planning, tendering and construction of their housing projects.” (Paragraph 8.2)

Local Authority approval is needed in some cases regarding the AHBs decision in the tendering process – “Approval of the housing authority must be obtained in any case where the approved housing body proposes to pass over the lowest valid tender. In such cases the approved body must outline to the housing authority the reasons for non-acceptance of the lowest valid tender e.g., the factors which affect the suitability of the tender and the reasons why the tender may not be the most economically advantageous.” (Paragraph 8.13)

AHBs are, under the Capital Funding Schemes, subject to EU directives on competitive tendering procedures – “As approved housing bodies are organisations in receipt of over 50% of the cost of their projects from state sources, when finance is provided under the Capital Funding Schemes, there is a requirement that projects with an estimated value at the



assignment / commissioning stage in excess of €6,242,028(£4,915,996) would be subject to the relevant EU Directives for invitation of tenders, including the insertion of advertisements in the EU Journal.” (Paragraph 8.15)

**Conclusion:**

The general conditions set out in the memorandum demonstrate additional aspects of control and financing by Government to the AHBs.

## Leasing Schemes

The Department operates the Social Housing Current Expenditure Programme (SHCEP). The programme was formerly known as the Social Housing Leasing Initiative.

SCHEP is operated by the Department to facilitate the provision of social housing by giving financial support to AHBs to allow them lease, on a long-term basis, housing units from the private sector.

There are four different leasing models in operation –

- 1) AHB direct lease from a private owner
- 2) AHB direct lease from NAMA NARPS
- 3) AHB-owned units (CALF – *see below*)
- 4) AHB Mortgage to Rent (MTR)

Payments under the SHCEP leasing scheme are made by the Department to the relevant local authority, which in turn funds the AHB according to the number of active units under contract.

### AHB Direct Lease from Private Owner

These are units which are sourced by AHBs directly from private owners and leased over a period of between 10 and 20 years.

As part of this arrangement the AHB and the LA sign a P&A Agreement.

### AHB Direct Lease from NAMA NARPS

To help streamline delivery, NAMA established a special purpose vehicle (National Asset Residential Property Services or 'NARPS') to take direct ownership of properties where there was an established demand and to then lease these properties long-term to an AHB or Local Authority. The scheme has been in place since 2013.

As part of this arrangement the AHB and the LA sign a P&A Agreement.

This model also includes a Continuation Agreement, entered into by the AHB, the LA and NARPS<sup>10</sup>.

### AHB-Owned Units financed under Capital Advance Leasing Facility (CALF)

The AHB purchases/constructs housing units using finance obtained under the CALF scheme (up to 30% LA loan, 70% private loan, implying the existence of a Continuation Agreement) and leases them, via a P&A Agreement, to the LA.

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<sup>10</sup> Availability payments continue to NARPS in the event of an AHB being wound up until a new AHB is identified or the agreement is terminated.

## AHB-Owned Units Sourced under Mortgage to Rent (MTR)

Under the MTR scheme that was developed and introduced in 2012, a household with mortgage arrears goes from being a homeowner to becoming a social housing tenant of an AHB. The borrower voluntarily surrenders their property to their lender who in turn sells the property to an AHB. The AHB becomes the landlord and the household gets to remain in the family home as social housing tenants with the AHB receiving approved payments monthly in accordance with the P&A Agreement from the LA for the length of the lease agreement with the LA. The tenants pay a differential rent to the AHB based on their income which is designed to be affordable.

Funding for MTR transactions is provided through

- (1) capital advanced through the Capital Advance Leasing Facility (CALF),
- (2) the AHBs own finance and [implying the existence of a Continuation Agreement], and
- (3) a P&A Agreement executed between the AHB and LA.

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>DHPLG Doc</b>
1.	Operates through a combination of the CALF scheme, a Continuation Agreement and a P&A agreement, whose pertinent features are described above.  This indicates a risk to government.	Risk Exposure	Page 28
2.	The LA is exposed to financial risk in the event they are unable to provide the AHB with an alternative tenant if the former owner vacates the unit.  This indicates a risk to government.	Risk Exposure	Page 31

## Conclusion

Several aspects of this scheme display features which indicate a financial risk to Government.

## Rental Accommodation Scheme (RAS)

The Rental Accommodation Scheme (RAS) is a targeted scheme catering for the accommodation needs of persons in receipt of Rent Supplement from the Department of Social Protection, generally for more than 18 months, and who are assessed by local authorities as having a long-term housing need.

The cost of the scheme is met largely from funding that would otherwise be devoted to rent supplement along with rent contributions from tenants on a similar basis to the local authority differential rent scheme.

At the end of 2015 (which is the latest information available) 4,432 households were being housed by AHBs through RAS. The local authority pays the RAS contribution directly to the AHB, quarterly in advance, subject to confirmation that tenants remains in residence.

In the case where the landlord is an AHB, the features of this scheme can be assessed in a similar fashion to previous schemes and arrangements –

	<b>Feature of Scheme / Agreement</b>	<b>Control Indicator</b>	<b>DHPLG Doc</b>
1.	The LA is exposed to the risk of non-payment of differential rents by tenants.  This indicates a risk to government.	Risk Exposure	Page 38
2.	The RAS payment is paid directly from the Local Authority to the AHB.  This indicates government financing	Degree of Financing	Page 37

### Conclusion

This scheme provides direct funding from government to the AHB and exposes Government to some degree of risk, as indicated in the table above. Neither the Annual Regulatory Return to the Interim Housing Regulator nor the Annual Financial Statements of the AHBs (except in one instance) separate out RAS payments from LAs from the differential rent paid by tenants. Thus, this additional funding from government is not evident in the financial information as presented.

## Summary of Schemes and Features

Scheme	Who Funds Stock	Who Chooses Tenants	Who Sets Rent	Who Funds Rent	Sources of Finance
CAS	Up to 100% funding provided by the LA through a grant to the AHB	At least 75%, and up to 100%, of the tenants are identified by the LA.	The AHB sets what is termed an 'economic rent' – designed to cover the ongoing costs associated with the property.	Eligible tenants are elderly, homeless, disabled – presumably rent is funded by transfers from Govt.	Public
CLSS <sup>11</sup>	100% funded by the Local Authority through a grant to the AHB	The LA identifies suitable tenants who they deem are in need of housing.	The AHB sets the rent.	Eligible tenants are those identified by LA as in need of housing – presumably some element of the rent is funded by transfers from Govt <sup>12</sup> .	Public
CALF + P&A Agreement	Up to 30% funding provided by the LA through CAA. Remaining finance sourced elsewhere.	The LA identifies suitable tenants who they deem are in need of housing.	The LA decides the differential rent to be paid by the tenant.	Part funded through the P&A agreement.	Public (HFA, EIB) and Private (but not much evidence of private financing in accounts of the Tier 3 AHBs)
RAS <sup>13</sup>	The LA through the CAS.	The LA identifies tenants who have a long-term housing need and are in receipt of Rent Supplement.	The AHB sets what is termed an 'economic rent' – designed to cover the ongoing costs associated with the property.	LA pays RAS contribution directly to the AHB and the tenant pays the balance.	Public

<sup>11</sup> In 2009 it was decided to wind down this scheme.

<sup>12</sup> Under the CLSS scheme, subsidies are payable to the AHB once the LA-approved tenants take up residence.

<sup>13</sup> AHBs participating in this scheme will have had their housing stock funded through the CAS.

## **Annexe 1: Payment and Availability Agreement**

## **Annexe 2: Capital Advance Agreement (CALF)**

## **Annexe 3: Continuation Agreement (CALF)**



## **Annexe 4: Private Sector Funding of AHBs**

**Annexe 5: Memorandum VHU:2/02 – Capital Funding Schemes for the Provision of Rental Accommodation by Approved Housing Bodies (Voluntary & Co-Operative Housing)**