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HOUSING POLICY FORUM

Social Housing and the Opportunities of Wider Role Social Enterprise

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Regulatory Régimes - legal Régimes:

- Discrepancy between:
 - The Regulators' ambitions and public funding constraints, and
 - The legal and regulatory régimes affecting / serving the “regulated”



Mismatch????

Legal Models / Legal Entities

Disparate sector



- ❑ Industrial and provident Societies
- ❑ Trusts (i.e. Trusts set up under Trust Deeds)
- ❑ Companies Limited by Shares
- ❑ Companies Limited by Guarantee
- ❑ Scottish Charitable Incorporated Organisations (SCIOs under the Charities and Trustee Investment (Scotland) Act 2005)
- ❑ Partnerships
- ❑ Limited Liability Partnerships (LLPs)
- ❑ Community Interest Companies (CICs)
- ❑ Joint Ventures / group structures – combination of above
- ❑ Others? – Credit Unions, Public Limited Companies

Legal Models / Legal Entities

- The SHR recognises some but not all
 - Likewise, OSCR recognises some but not all.
-

Variations

- Fully mutual
Only tenants can be members => cannot be charities!
- Partially mutual
Tenants and others are members => question as to whether they can be charities
- Co-ops
Distinct legal regimes apply to them
- Community-Based Housing Associations (CBHAs)
=> Operate within defined boundaries

Private or Public?



- They are neither or both:
 - RSLs owned by their members ... but, as well as controlled by statutory frameworks, they are heavily monitored and regulated.
 - Can borrow ... but need consent, and spending is controlled.
 - Can contract freely ... but subject to EU Procurement Regulations

National Housing Federation

INSIDE
HOUSING BSME Campaign of the Year
News, views and jobs in
social housing



11 February 2011

“Freeing housing associations from European Union tendering requirements would allow them to build up to 9,000 extra homes a year, according to the National Housing Federation.”

Status of charities vis à vis EU Procurement Regulations?

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Private or Public? Cont'

- Private law ... but:
 - (i) **now** subject to Judicial Review over some management matters - Human Rights Act 1998
- Does it extend to bodies other than RSLs?
- In passing: is the Short SST in breach of the HR Act 1998?
- (ii) **may** come under Freedom Of Information (Scotland) Act 2002.
 - The Environmental Information (Scotland) Regulations 2004?

All in all, very confusing messages.

Governance



- **GOVERNANCE:** one of the most important considerations
... and yet, for example:
 - I&Ps: silence in the I&P legislation on Directors' duties:
 - * BUT, watch out for “Co-operative and Community Benefit Societies and Credit Unions Act 2010” to be supplemented by a legislative reform order
 - =>
 - Companies Act 2006 ... but, if a charity:
 - the Charities and Trustee Investment (Scotland) Act 2005.
- = at very least unnecessary duplication

□ November 2010:

1. *“Housing association governance structures “holding sector back” and need reform”*
2. *“landlords suffer from mismatch between structures, responsibilities and incentives”*
3. *“The challenges we face mean we have to put sentiment aside and challenge our governance structures, including the ownership model, board structures and the use of non-executive directors”*
4. *“Most major associations have quietly euthanised their shareholders”*
5. *Housing Associations: “big business or big society?”*

Funders



- Must think about to “whom” they are lending and for what => must be flexible and adaptable.
- Must buy into the borrowers’ requirements, which requirements connect with government policies = “re-write” internal “rules” if need be.
- Must take long term view and deal with their own issues – every bad debt is a result of a bad lending decision – but the need for funding has not gone away.

Thinking the unthinkable Speaking the unspeakable



- The Housing (Scotland) Act 2001:
 - To ease Large Scale Voluntary Transfers (amongst other things) – Council indemnities, Moratorium, SST etc
- Numerous legislative and other reforms:
 - RTB, Homelessness, 20 year rule, regulatory reforms, etc
- Massive bail out of some banks by the Westminster Government



Anything is possible!!!!!!

Conclusion

For every initiative brought forward review legal framework and amend as required, either to simplify it or to make it coherent, or to avoid duplication!

For eg: abolition of Schedule 7 – should its replacement be that applicable to charities

IF NOT NOW, WHEN?