Regulatory Impact Analysis (RIA)
in relation to the Home Building Finance Ireland Bill 2018

Section 1: Summary of RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/ Office: Department of Finance	**Title of Legislation:** Home Building Finance Ireland Bill 2018
Stage: General Scheme	**Date:** 12 June 2018
Related Publications: Home Building Finance Ireland Bill 2018	
Available to view or download at: **https://www.finance.gov.ie**	
Contact for enquiries: Eoin Murphy **Telephone: +353 76 100 7733** The following policy options have been considered in relation to the Home Building Finance Ireland Bill, hereafter referred to as the HBFI Bill: 1. No intervention 2. Creating a SPV as part of NAMA to lend to non-NAMA debtors 3. Repurposing NAMA as a development agency 4. Formation of a new entity to provide credit for residential development **Preferred option:** Option 4 – the formation of a new entity to provide credit for residential development – is being pursued by the Department for Finance through the Home Building Finance Ireland Bill 2018.	

Section 2: Statement of policy problem and objective

Government Objective

The mission of the Government is:

> To increase the supply of credit to developers willing to build viable residential development projects in order to address the current shortfall in the supply of housing.

The proposed approach is through legislation as follows:

Proposed Legislation

The proposed draft legislation establishes a fund entitled the Home Building Finance Ireland and sets out the functions and operations of the entity. These functions include granting NAMA and the NTMA the necessary powers to provide staff and services to HBFI on a cost recoverable basis, granting specific powers to HBFI to carry on the business of residential development finance, enabling the funding of HBFI by ISIF, and establishing the parameters under which HBFI may borrow in the future.

Policy context

At present, there is a serious deficit in the supply of housing in Ireland: the annual shortfall is estimated to be 15,000-20,000 units per annum. Amongst the measures required to address the shortfall is an increase in the availability of finance for residential development. There is widespread agreement across a variety of market participants and many active developers in this space that the relative scarcity of development funding and the barriers to obtaining it are major contributory factors to the shortfall in residential supply.

The level of residential property development that is required to meet demand - an increase from current levels of completions of less than 10,000-15,000 units per annum in 2016-17 to 30-35,000 units per annum - necessitates a substantial expansion of lending to finance the required construction. However, there is evidence to suggest that there is insufficient capacity across existing providers to satisfy such an increase in demand for credit.

It has been estimated that funding for residential development in 2016 may have been, at most, €1.2bn with c.75% of this provided by the banks and the remainder by alternative lenders. The ESRI have estimated that the required annual investment in residential property to meet forecast demand would range from €6bn in 2016 to over €9bn per annum in 2024.

While appetite for residential development funding is increasing both by the main banks and alternative funding providers there appears to be evidence of emerging supply constraints and there is a concern that further supply constraints in debt financing could quickly emerge if house building levels rapidly increase to the economy's required levels. There is also evidence to suggest that there is a focus by existing lenders on areas in key urban locations and the supply of debt funding is particularly constrained outside such locations. Consequently there is a strong case for a policy intervention to address this shortfall in supply while it exists.

Section 3: Identification and description of options

The policy options considered and the decisions taken on each option are set out below:

1. **No intervention**

The 'no intervention' option is primarily being included for benchmarking purpose. Therefore it will not be examined in great detail as part of this RIA because it is not envisaged that this option will be pursued in practice. To take no action would mean accepting the current insufficient supply of credit available for residential development and maintain the risk that the private sector does not respond to market demand in the coming years. As illustrated in section 2, it is believed that this shortfall in funding for viable residential development would continue to act as a considerable impediment to deliver the required supply of housing in the near term.

2. **Creating a SPV as part of NAMA to lend to non-NAMA debtors**

NAMA is currently providing residential development funding to its debtors on commercially viable sites but cannot lend to non-NAMA debtors with similar projects. A separate Special Purpose Vehicle (SPV) operating as a NAMA Group entity would operate as a fund to lend to borrowers currently outside of NAMA. The fund would be administered as a separate SPV created by NAMA and would be segregated from NAMA's current programme of residential funding to NAMA debtors and receivers. The SPV would fund the development of projects which are currently stalled through lack of funding and which would otherwise not be developed for a number of years.

NAMA is a wind down vehicle which is repaying its debt and maximising the value of its remaining assets. The creation of a SPV as a NAMA Group entity would require the continued operation of NAMA beyond its envisaged 2020/2021 horizon and constitute a significant expansion of NAMA's original purpose. As NAMA cannot currently advance funding to non-NAMA debtors, it would be necessary to amend the NAMA Act. NAMA was established with a very specific legal mandate, and included explicit State aid which was approved by the European Commission for this purpose. Therefore any expansion of NAMA's original purpose to provide debt funding to Developers outside of NAMA would have significant State aid implications that could jeopardise NAMA's existing work, as well prohibit NAMA's direct involvement in development.

It has been made clear by DG Competition that any expansion of NAMA's remit would have implications for its existing State Aid approval. Furthermore, EUROSTAT's treatment of NAMA outside of government for the calculation of general government debt could also be potentially impacted as this treatment was predicated on NAMA being established for a temporary duration in response to the financial crisis and for the sole purpose of managing loan books acquired from financial institutions. Any extension of NAMA's mandate clearly risks a revision of this treatment.

3. Repurposing NAMA as a development agency

Under this option NAMA would be become a developer with the powers to build housing units on publically owned sites on behalf of the State. Repurposing NAMA as a development agency would involve expanding NAMA's existing mandate to allow for the agency to directly develop residential projects.

The repurposing of NAMA into a development agency would require the continued operation of NAMA beyond its envisaged 2020/2021 horizon. Similar to option 2, repurposing NAMA as a development agency would require an amendment to the NAMA act to expand its existing mandate. This again would present significant State aid implications that could jeopardise NAMA's existing work, as well prohibit NAMA's direct involvement in development.

To expand NAMA's remit to that of a development agency, a considerable amount of additional resources and staff with development expertise would have to be procured in order for NAMA to take a direct role in the development of residential projects. NAMA's existing experience and expertise in the residential sector involves providing finance to develop viable land owned by its debtors or controlled by its receivers rather than delivering projects directly. The expansion of NAMA's mandate into direct residential development would require NAMA to engage in operations outside of its existing skillset.

Finally, repurposing NAMA as a development agency would only allow for an increase of in the supply of residential units from publically owned land. This option would have no impact on increasing the credit supply to residential developers who have commercially viable residential projects but cannot currently gain access to funding. Therefore this option would do nothing to increase the supply of residential units from the private market.

4. Formation of a new entity to provide credit for residential development

This option would entail the creation of an entirely separate legal entity to the NAMA Group. The entity would manage a programme of residential funding to non-NAMA developers who are currently not availing of bank or alternative funding for their residential development projects. It is proposed to name the entity Home Building Finance Ireland (HBFI). HBFI would, draw on the expertise in residential development credit and lending currently in NAMA.

Early activation of HBFI could be facilitated by the fact that a residential delivery function, with requisite skills in banking, credit, planning, property, corporate finance, legal and accounting, already exists within NAMA. HBFI would avail of this expertise under a service contract from NAMA on a cost reimbursement basis.

HBFI would operate on core market operator principles. New lending would be on commercial, market-equivalent terms and conditions and depending on risk profile of the project, a quality of collateral and the creditworthiness of the borrower. This approach would be akin to a bank or private equity investor, in that HBFI would not be directly involved in development – its role would be solely as a lender. Commercial viability testing will also ensure returns are the same as market norms.

HBFI could avail of €750m debt and equity funding from the Irish Strategic Investment Fund (ISIF). Given that this €750m is already classified as within General Government while held by ISIF it is not envisaged that the establishment of HBFI will result in any impact on General Government Debt. As long as the investment from ISIF is commercially viable and HBFI provides funds at competitive market rate, HBFI's lending activities will not be brought on balance sheet.

The Department of Finance would have to pre-notify the EU Commission and advise that there is no State aid involved as the fund's lending would be market equivalent and available to all market participants.

Section 4: Analysis of costs, benefits and other impacts for each option

	COST	BENEFIT	IMPACTS
Option 1 No intervention	Shortage of credit for residential developments continues for the next few years, exacerbating the shortfall in housing	€750m in ISIF funding could be invested in other activity	*National Competitiveness:* Continued shortfall in housing will discourage FDI as foreign employees will be unwilling to relocate to Ireland due to high residential costs.

			Poverty: Continued shortfall in housing will likely increase the number of homeless people in the State.
Option 2 Creating a SPV as part of NAMA to lend to non-NAMA debtors	Outside scope of NAMA Act – would require an amendment. Extends lifespan of legacy crisis vehicle likely impacting on EUROSTAT treatment of NAMA Would exceed the State aid approval that DG Comp have granted NAMA	No new legislation required Utilises NAMA's skills and experience funding residential developments. NAMA could develop residential sites that are not commercially viable in the near term but will be in a number of years.	*Residential Construction Sector:* An increase in activity in the residential sector due to an increase in the supply of credit *Employment:* An increase of residential construction should create new jobs in the construction industry *Poverty:* An increase in the supply of housing should lead to a reduction in homelessness.
Option 3 Repurposing NAMA as a development agency	NAMA does not have the requisite experience or skillset Outside scope of NAMA Act – would require an amendment. Would exceed the State aid approval the DG Comp have granted NAMA Extends lifespan of legacy crisis vehicle likely impacting on EUROSTAT treatment of NAMA Would not increase the supply of credit to fund other residential developments.	Directly increases the supply residential units Fund would be off-balance sheet and would not contribute to the national debt	*Employment:* Increased residential development on State lands should lead to an increase in employment in the construction sector. *Poverty:* An increase in the supply of housing should lead to a reduction in homelessness.

Option 4 Formation of a new entity to provide credit for residential development	Enabling legislation would be required The fund would have to comply with EU State aid rules €750m in ISIF funding could not be invested in other activity	Directly increases the supply of credit for residential development Utilises NAMA's skills and experience funding residential developments. Application for State aid approval may not be necessary. Fund would be off-balance sheet	*Residential Construction Sector:* An increase in activity in the residential sector due to an increase in the supply of credit *Employment:* An increase of residential construction should create new jobs in the construction industry *Poverty:* An increase in the supply of housing should lead to a reduction in homelessness.

Section 5: Consultation

The Department has engaged with a broad array of stakeholders in order to assist it in determining the best option to increase the supply of credit for residential developments.

Consultations with the Construction Industry Federation (CIF) have taken place to gather first-hand information on the impediments that residential developers have accessing funding for viable projects.

The Department of An Taoiseach, the Department of An Tánaiste, The Department of Public Expenditure and Reform and the Office of Attorney General have all had the opportunity to present their observations on the General Scheme of the HBFI Bill before drafting was approved by Government.

There has been ongoing engagement with NAMA and the NTMA with a view to clarifying numerous technical aspects of the HBFI Bill, including on how HBFI will lend, be governed and staffed.

The Central Bank has been consulted with a view to clarifying the regulatory regime that will apply to HBFI once established.

Department Officials have been engaging with the Competition Directorate of the European Commission to ensure that the establishment of HBFI does not contravene EU State aid rules.

The General Scheme was submitted to the Joint Committee on Finance, Public Expenditure and Reform for pre-legislative scrutiny.

Section 6: Enforcement and Compliance

HBFI will be responsible for ensuring compliance with directly applicable regulations.

HBFI will have to comply with EU State aid rules regarding how it is both funded and in relation to the terms and conditions of the loans that it offers to residential developers.

HBFI will be located within the Government Sector, and as such will have to comply with the Code of Practice for the Governance of State Bodies. HBFI's activities will not be brought on balance sheet provided that its funding from ISIF is commercially viable and it provides loans to applicants at competitive market rates.

HBFI will not be engaged in deposit-taking or holding itself out as a banker. Therefore the vehicle will not require a banking licence. Furthermore, as HBFI will not be lending to natural persons, but rather entities incorporated under the Companies Act, it will not require retail credit firm authorisation from the Central Bank.

The annual accounts of the HBFI shall be submitted to the Comptroller and Auditor General for audit within two months of the end of the financial year to which they relate. The Comptroller and Auditor General shall then, if satisfied, certify these accounts and they shall be laid before each House of the Oireachtas.

Additionally, a senior member of the executive staff of HBFI nominated by its Chairperson shall report to the Committee of Public Accounts, the Committee on Finance, Public Expenditure and Reform and Taoiseach whenever required by those Committees.

As a company registered under the Companies Acts, HBFI will also be required to fulfil the obligations set out for such companies in the Companies Acts, including the requirements in relation to memorandum and articles of association and the obligation to lodge certain documents with the Companies Registration.

Section 7: Publication

This Regulatory Impact Analysis statement and any future versions of the document shall be published in accordance with the RIA Guidelines for publication relating to secondary legislation. It shall be published on the Department of Finance's website and accompanied by a link to the Bill once one becomes available.