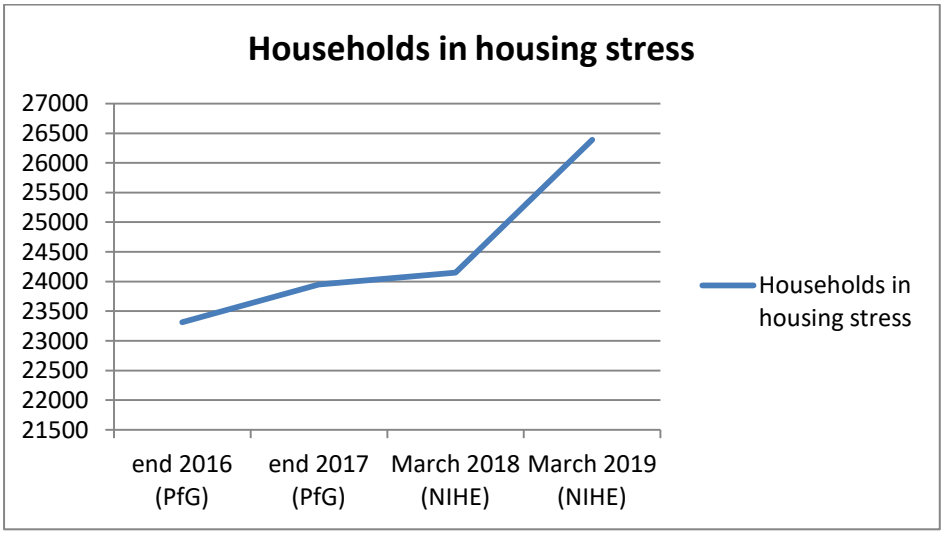
Consultation response from Participation and the Practice of Rights

Q1. Do you think the current definition of affordable housing needs amended?

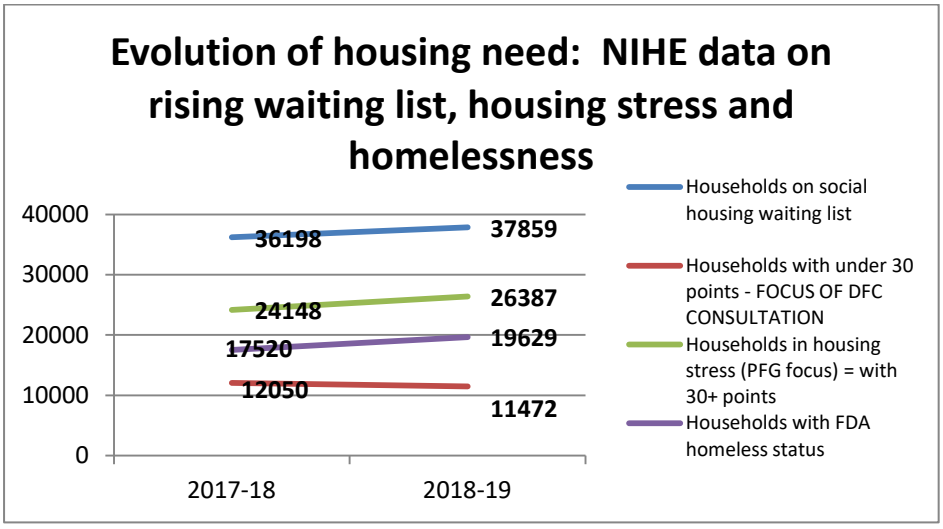
If yes, why? If no, why not?

Yes, the definition does need to be amended in order to reflect a ***higher priority placed by the Department for Communities on provision of social housing*** *in response to the current housing crisis.*

Not least, the Department should focus on addressing the measure highlighted in the Programme for Government, ***"the number of households in housing stress"*** *(https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/execoffice/outcomes-delivery-plan-2018-19.pdf p. 59), which is increasing at a rapid rate:*

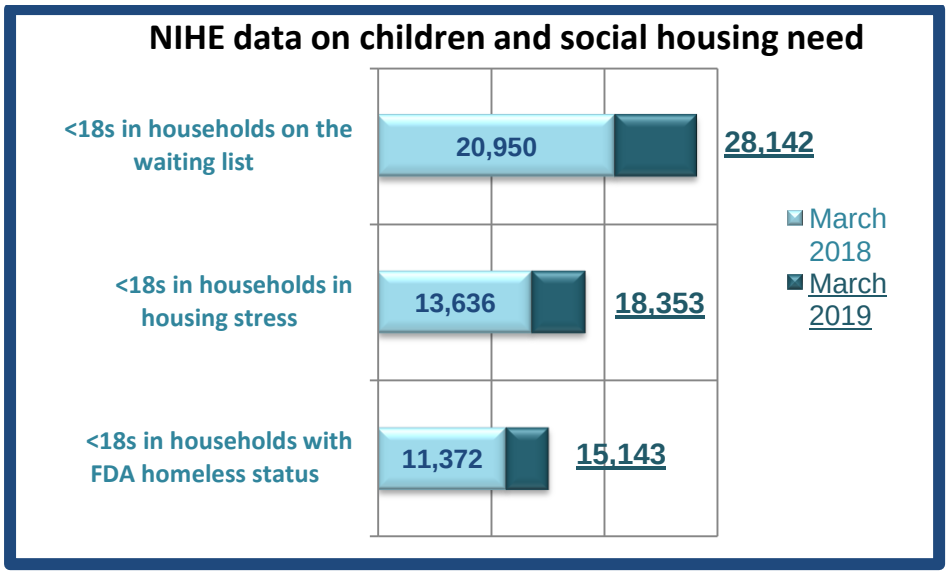


Levels of homelessness are rising with housing stress, as demonstrated below:

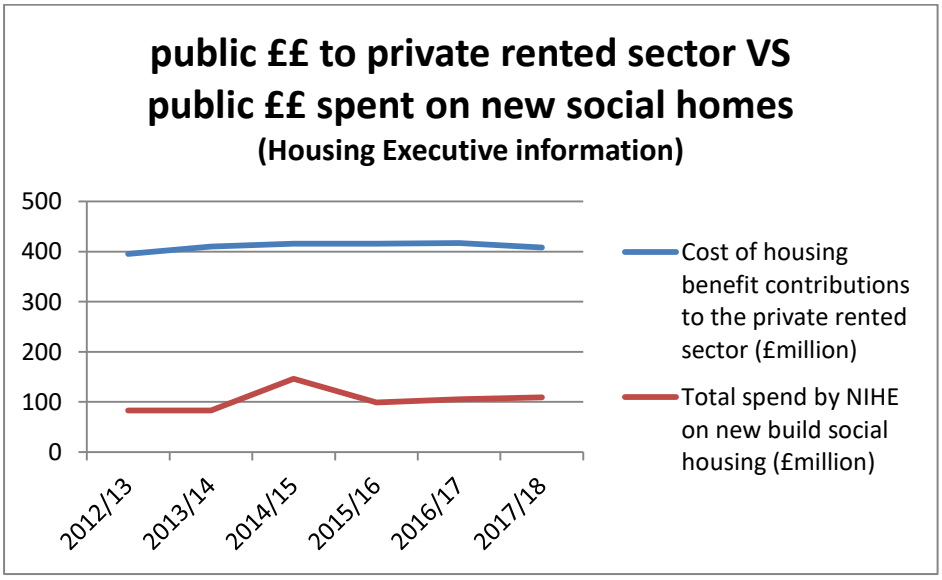


This ***particularly affects children under 18****, whose long-term health can be permanently affected by stressors experienced during their development (inter alia, The Health Foundation*

at https://www.health.org.uk/publications/allostatic-load?gclid=EAIaIQobChMIsOPt_qjI5AIVBrTtCh3hPg68EAAYASAAEgLb0vD_BwE), and whose rights to the highest attainable standard of health and to develop to their full potential are being jeopardised by the denial of their right to a stable, safe home:



*It is important to note that this rise in housing stress and homelessness – damaging for everyone affected, but to an even greater extent when they happen to be children – is occurring in a privatised context, in which **four** times as much public money is spent annually on paying housing benefit to private landlords as is spent on building new social homes:*



Clearly the system is failing to positively impact rates of homelessness. Belfast City Council has recognised this, and in December 2018 unanimously passed a motion on child homelessness which, amongst other things, "calls upon the Department for Communities and the Northern Ireland Housing Executive to work with the Council to use all available powers, including

powers of vesting, zoning and planning, to ensure that housing provision meets current and projected needs in the city of Belfast"
(https://minutes3.belfastcity.gov.uk/ieListDocuments.aspx?MId=8749).

Amending the definition of affordable housing to be more responsive to those in greatest need would be a positive step for the Department for Communities to take in order ***to fulfil its duties under Section 75 of the NI Act (1998) and the St Andrew's Agreement (2008)*** *and its own corporate obligations around "the provision of decent, affordable, sustainable homes and housing support services" and "tackling disadvantage and promoting equality of opportunity by reducing poverty" (https://www.communities-ni.gov.uk/about-department-communities).*

However, the Department for Communities' proposed definition goes in the opposite direction.

Q2. Do you agree with the overarching principles and objectives which have been identified?

No

Any further comments?

Rather than the guiding principles underpinning the definition being "flexibility and the ability to accommodate different needs and situations", the guiding principles are already set down in law – and are not reflected in this consultation document. They are:

- *to respond to objective need, per section 28E of the NI Act(1998)*
- *to have due regard to the need to promote equality of opportunity, under section 75 of the NI Act (1998)*
- *to fulfil the Department for Communities' stated duties around "tackling disadvantage and promoting equality of opportunity by reducing poverty" (https://www.communities-ni.gov.uk/about-department-communities) as obligated and empowered under Section 75 of the NI Act (1998) and the St Andrew's Agreement (2008).*

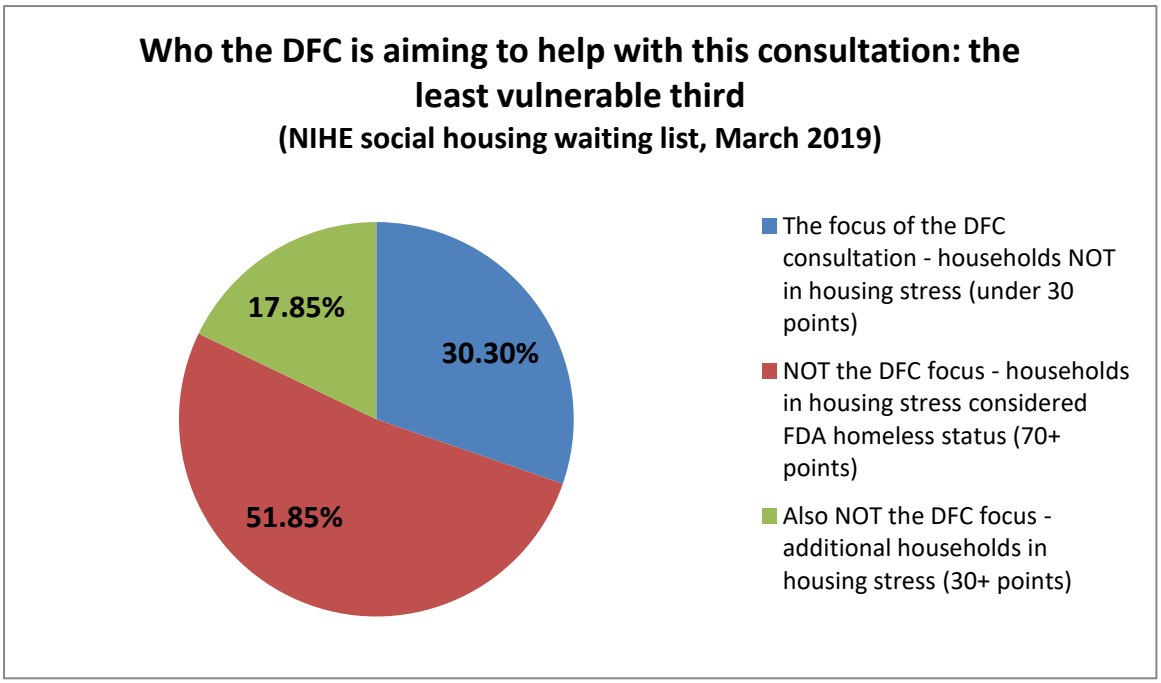
*In particular, the objective "****to target our resources on those households who need help to access suitable and affordable housing"*** *is woefully misstated. In line with the Department for Communities' duties arising from the above legislation, the Department has a specific obligation towards those experiencing the greatest level of objective need and poverty.*

Instead however the Department, as explained further down in the document, explicitly "target our resources" not to the homeless or to those in housing stress, but to those with enough resources to access 'intermediate housing' products: expressly, four "customer groupings" (first time buyers / returnees to the market, active older people, disabled people and those on the social housing waiting list with less than 30 points) who are manifestly NOT (barring possible individual exceptions) amongst those facing the greatest levels of inequality or objective need.

These are clearly not the households who MOST "need help to access suitable and affordable housing".

*It is difficult to understand how the Department – shortly after citing the Programme for Government housing indicator, "improve the supply of suitable housing", and its measure "**the number of households in housing stress**" -- can see fit to expressly target its efforts to support those households that by definition – as having less than 30 points on the social housing waiting list – are NOT in housing stress.*

*To clarify, using Housing Executive statistics below – the Department for Communities is directing its new housing 'models' NOT to those in housing stress or homeless, but to the **least needy 30% of households on the waiting list**:*



It is entirely foreseeable that these measures would breach Departmental statutory obligations by wilfully exacerbating existing inequalities, and would constitute a mis-direction of departmental resources and efforts.

Q3. Do you agree with the proposed revised definition? If not please provide comment.

No.

*The categories of affordable housing, according to the existing definition in the SPPS, are **social rented housing** and **intermediate housing**. The SPPS describes both, and leaves open the possibility of incorporating "other types of tenure below open market rates".*

In its proposed definition the Department for Communities has done several things which raise concern:

A. Produced an 'overarching definition' that does not reflect the SPPS context, in particular its commitment, in line with NI Executive priorities, to Improving Health and Wellbeing.

The SPPS explicitly refers to the World Health Organisation's definition of health as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity' (https://www.planningni.gov.uk/index/policy/spps_28_september_2015-3.pdf para.

4.3). Integral to this is safe, healthy and secure housing (see inter alia, WHO Health Principles of Housing) – something that is denied to homeless people and people in housing stress here, people whose needs are overlooked by the Department for Communities' proposed definition. Who the Department for Communities designates its new 'target group' for affordable housing is "those whose needs are not met by the market" – an economic/financial, rather than a health and wellbeing, marker.

B. Changed the framework of 'affordable housing' in a manner that downgrades the importance, significance and weight given to social housing.

It is unclear what resource implications this may have. *Given that currently, 16% of Northern Ireland's 790,000+ homes are socially rented -- 12% (roughly 94,800) from the Housing Executive and another 4% (roughly 31,600) from Housing Associations (*https://www.communities-ni.gov.uk/system/files/publications/communities/ni-housing-stats-17-18-full-copy.PDF p. 2*) -- this has far-reaching repercussions.*

The SPPS defines two types of affordable housing:

1. *social rent*
2. *'intermediate' housing, for "households who can afford a small mortgage, but that are not able to afford to buy a property outright".*

In its proposal, the Department for Communities adds new sub-categories to type 2, 'intermediate housing', which previously only comprised 'shared ownership'. The SPPS provides for this possibility – "this definition of intermediate housing used for the purpose of this policy may change over time to incorporate other forms of housing tenure below open market rates" – but does not provide for a change to the overall structure, which recognised social housing as a separate entity of equal weight to 'intermediate housing'.

The Department admits that ***this proposed definition would change the framework set up in the SPSS****. Rather than recognising social rent as the primary category, distinct from and of equal weight to the second category of 'intermediate housing' (including whatever sub-categories of 'models' it might have, as foreseen in the SPPS),* ***the proposed definition downgrades 'social rented housing' to one of six or seven affordable housing 'models' of equal weight, significance and importance*** *– all but one directed towards providing 'intermediate' housing products. This is skewing resources and attention away from people who cannot afford or manage 'intermediate' products, and who, as the most needy, in fact merit MORE focus and effort, not less.*

C. Changed the definition of social rented housing.

The SPPS definition stipulates that:

> *"social rented housing is housing provided at an affordable rent"*

However, the definition proposed by the Department for Communities replaces this with

> *"social rents are provided at submarket rent levels."*

There is no explanation of the reasons for or any assessment of the potential equality impacts of this policy change. The current definition specifies that social rented housing is provided "by a Registered Housing Association" while the proposed definition widens this to "... by a Registered Housing Association or the Northern Ireland Housing Executive". While the Housing Executive returning to construction of new and additional social housing would be a welcome development, this deserves explanation and expansion.

D. Introduced new private, profit-making and commercial actors through new 'intermediate housing' models, where before these were limited to the Housing Executive (a public body) and housing associations (not for profit).

These include private developers, private landlords and lenders – none of whom are remotely accountable, under the current framework, to rights holders, or to the Department itself. No forethought appears to have been given to the need to oversee how these entities function in relation to people's right to adequate housing, their use of public money, their compliance the Decent Homes Standard and other relevant standards designed to protect the rights of tenants .

Similarly there is no mention of preparations for procedures or pathways for effective remedy for people if and when private, for profit entities do not act in accordance with standards.

<u>These changes, taken as a whole, give rise to a number of concerns:</u>

- ***The apparent devaluing and relegation of social housing** by the department as the most important policy tool to ensure people's right to adequate housing – in particular the most vulnerable. This is accompanied by measures by the Department to open new pathways – in the form of new 'models of intermediate housing' – to private sector, commercial developers and landlords. This is deeply worrying, as in areas where it has already occurred – for instance in the paying of four times as much public money in housing benefit to private landlords as it spends in building new social housing – the impacts have included*
    - *lack of accountability amongst private landlords to the Decent Homes Standard;*
    - *lack of security of tenure for tenants;*
    - *rising rents and increasing unaffordability;*
    - *increasing homelessness; and*
    - *absence of effective remedy for people whose right to adequate housing in all of its internationally agreed aspects (<u>https://www.refworld.org/pdfid/47a7079a1.pdf</u>) is denied.*
- ***In a context of local development planning, the lack of fundamental safeguards to ensure that social housing is not crowded out by more lucrative 'intermediate' products.** The Belfast draft LDP strategy (<u>https://www.belfastcity.gov.uk/buildingcontrol-environment/Planning/ldp-plan-strategy.aspx#ldp</u>), for instance, includes policy HOU5, that 20% of all new residential developments over 5 units have a minimum of 20% of units as affordable housing, described as "social rented housing and/or intermediate*

housing". In order to ensure that social housing is built proportional to need, the Department for Communities should include in its definition of 'affordable' a stipulation that a given percentage of all affordable housing built – for instance 70%, in light of the proportion of waiting list applicants in housing stress -- be social rental.

- ***The failure to learn the lessons of damaging exercises in redefining affordability elsewhere.*** *Housing experts, reviewing the impact of planning and policy decisions in London and elsewhere, have highlighted the need to ensure that definitions of affordable housing link affordability solidly to* ***income rather than an arbitrary percentage of market prices*** *(See for instance https://www.tcpa.org.uk/Handlers/Download.ashx?IDMF=780d5d17-f263-4f9f-907a-05084626ce2b p. 47). Otherwise, experience has shown that houses built to be 'affordable' quickly become anything but. The Department for Communities, in its paper, have acknowledged the risk of this but have not proposed any measures to counteract it – here is a practical suggestion.*

Q4. Are there are other products that we should consider for inclusion as examples of affordable housing?

If so, please provide details.

No comment.

Q5. Do you agree with our proposed definition for Low Cost Housing without subsidy?

Please explain the reasoning behind your answer.

No comment.

Q6. Do you consider that low cost housing without subsidy should be included in a new definition of affordable housing?

Please explain the reasoning behind your answer.

The question of Low Cost Housing without subsidy, "defined as housing that is priced at or below the average house price for the council area, as reported by LPS Northern House Price Index Report and which is provided without any Government funding and offered for outright sale" merits further explanation and review. As mentioned above, there are already difficulties in holding property owners – including those who act as landlords – to account for the Decent Homes Standard. Attention and resources would be required to develop mechanisms for ensuring an effective remedy for people affected by living in properties that do not meet the Decent Homes Standard.

Q7. What are your views on retaining affordable homes?

In a place with a growing number of homeless children – currently over 15,000 -- the consultation paper's statement

> *another key question is how to ensure that properties remain affordable and indeed perhaps* ***whether*** *properties should remain affordable [DFC emphasis]*

itself raises serious doubts about the Department for Communities' priorities and approach. How is it possible to claim that this work meets the Department's duties of "tackling disadvantage and promoting equality of opportunity by reducing poverty" (https://www.communities-ni.gov.uk/about-department-communities)? Why would the Department focus its limited resources and efforts on facilitating and supporting the building of properties that then become unaffordable, even to those not in housing stress or homeless?

Q8. Are these the right target groups or are there other groups we should consider?

Please provide supporting evidence for the inclusion of additional target groups.

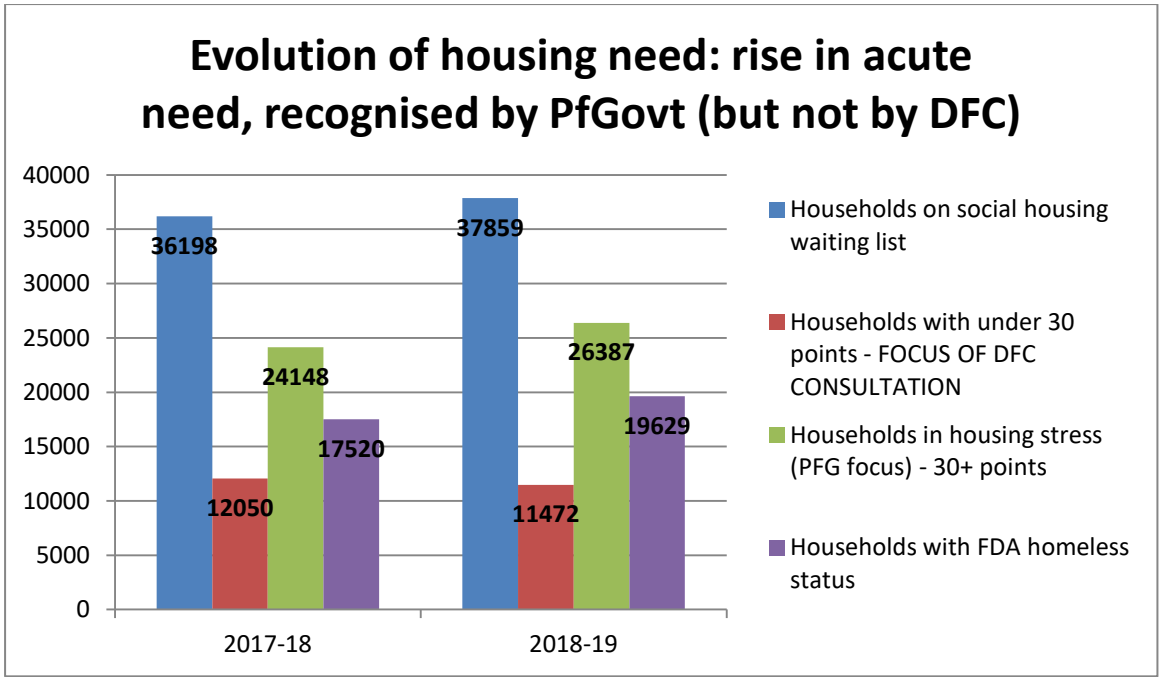
No.

There are a number of crucial equality issues here. The Department for Communities has NOT followed the requirements of its own Equality Scheme (https://www.communities-ni.gov.uk/sites/default/files/publications/communities/dfc-equality-scheme.pdf p. 10).

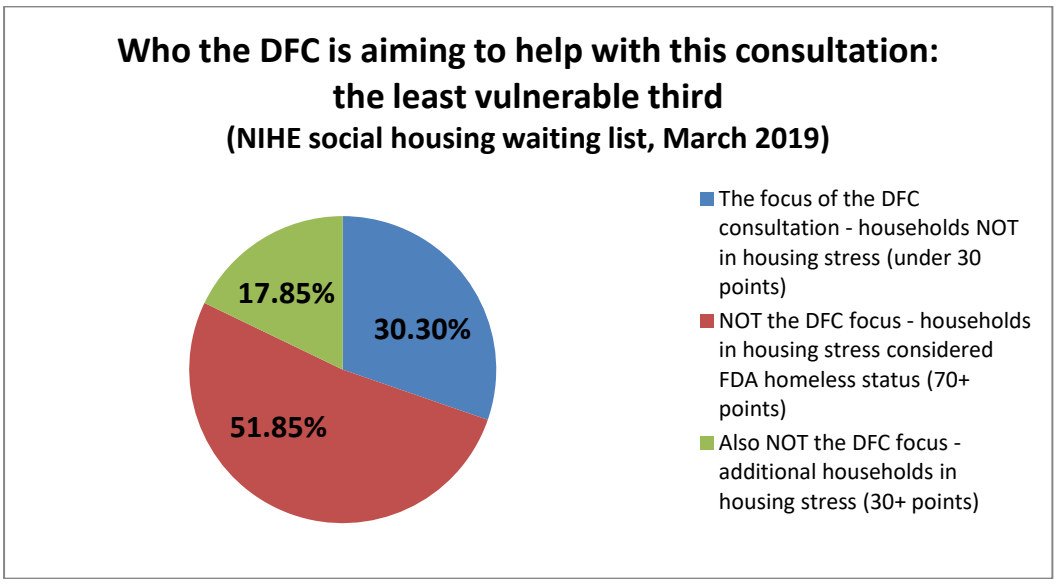
1. *Although the consultation document referred to it, the equality document related to this consultation was NOT publicly available on the DFC consultation webpage (although the Rural Needs Impact Assessment was), in contravention of the Department's own Equality Scheme commitments (eg "We will consider the accessibility and format of every method of consultation we use in order to remove barriers to the consultation process" (3.7).*

2. *The Department did not carry out a full Equality Impact Assessment, only a screening exercise. It is not at all clear why or how this decision was made, given the clear equality impacts of a redefinition of affordable housing, not least on everyone currently in / waiting for social homes.*

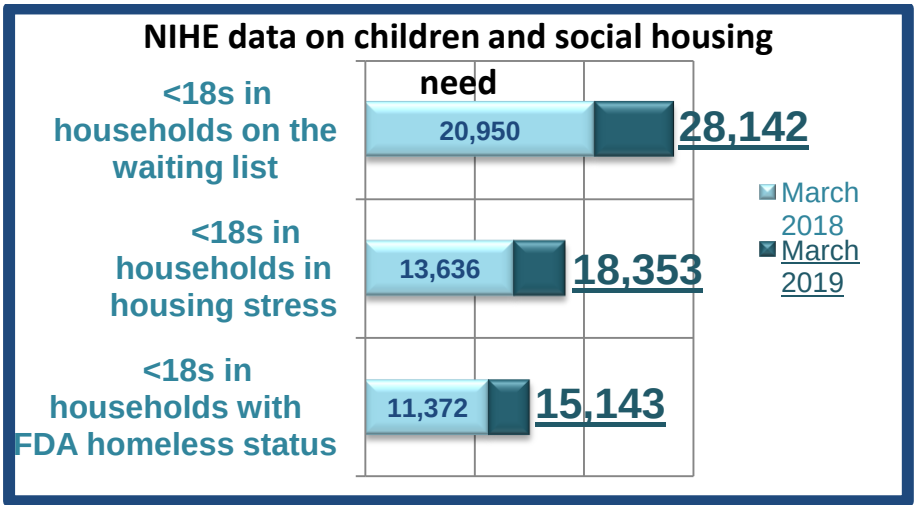
3. *The screening exercise was itself deeply inadequate and flawed. It focused solely on narrow groups – the minority 30% of social housing applicants not in housing stress, those applicants who had tried to avail of intermediate products and the like – NOT on the wider impact on the needy of the decision to focus efforts and resources away from them (see chart below): this despite the Equality Scheme guidance that "consultations will seek the views of those directly affected by the matter/policy, such as, the Equality Commission and representative groups of Section 75 categories" (3.3). Changing the definition of affordable housing will obviously impact on a whole range of vulnerable people, not least social housing tenants, with ramifications for all section 75 groups.*



4. *More broadly – as stated above, the Department's focus to broaden the definition of affordable housing only in the area of 'intermediate housing' products by definition accessible to only people who can afford them is in itself extremely problematic in equality terms. The DFC Equality Scheme states that "The Department will make all relevant information available to consultees in appropriate formats to ensure meaningful consultation. This includes information on the policy proposal being consulted upon and any relevant quantitative and qualitative data" (3.16). However, nowhere in the consultation paper is there any indication or reference to data that the "lower income households" actually constitute less than a third of those on the waiting list, nor that the remainder is worse off. It is worth reproducing here the chart from earlier, showing the percentage of waiting list applicants that the Department for Communities is interested in reaching with this re-definition:*



*4. There are additional points that matter with regard to specific section 75 groups. With regard to **age**, for instance: housing stress and homeless are not just residual problems here, they are growing. They are stunting the prospects of thousands of children and damaging the lives of their parents and other adults, in contravention on a wealth of human rights standards (the Convention on the Rights of the Child, the International Covenant on Economic and Social Rights and more). The decision to focus attention on a less vulnerable and less needy group – those who can afford 'intermediate' products -- is not just short-sighted; it is a dereliction of the Department's section 28E / section 75 (NI Act) and international obligations. Relevant data attached again here:*

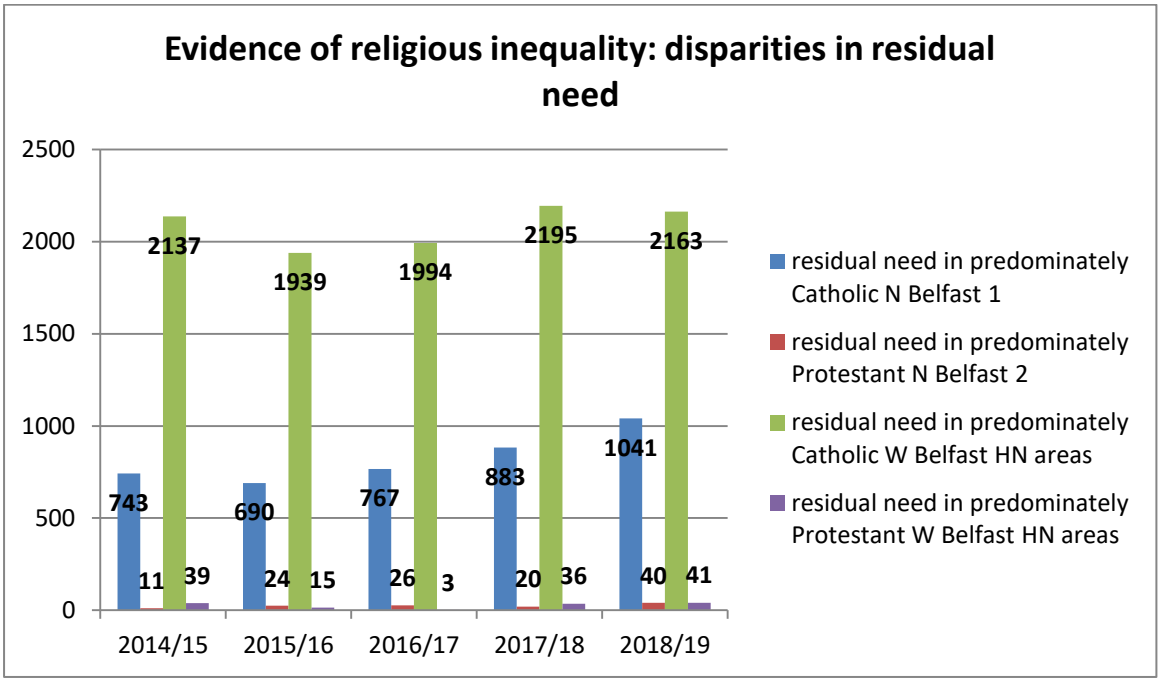


*5. With regard to **religious belief**, there is readily available evidence of inequality which is clearly of relevance to any re-definition of affordable housing. With regard to the availability of social housing, Catholic and Protestant families – even those living in adjacent areas -- can face starkly different prospects. In April 2017 the Equality Commission reported that Catholic-headed households continue to experience the longest waiting times (http://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/HousingCommunities-KeyInequalitiesStatement.pdf, para. 1.9).*

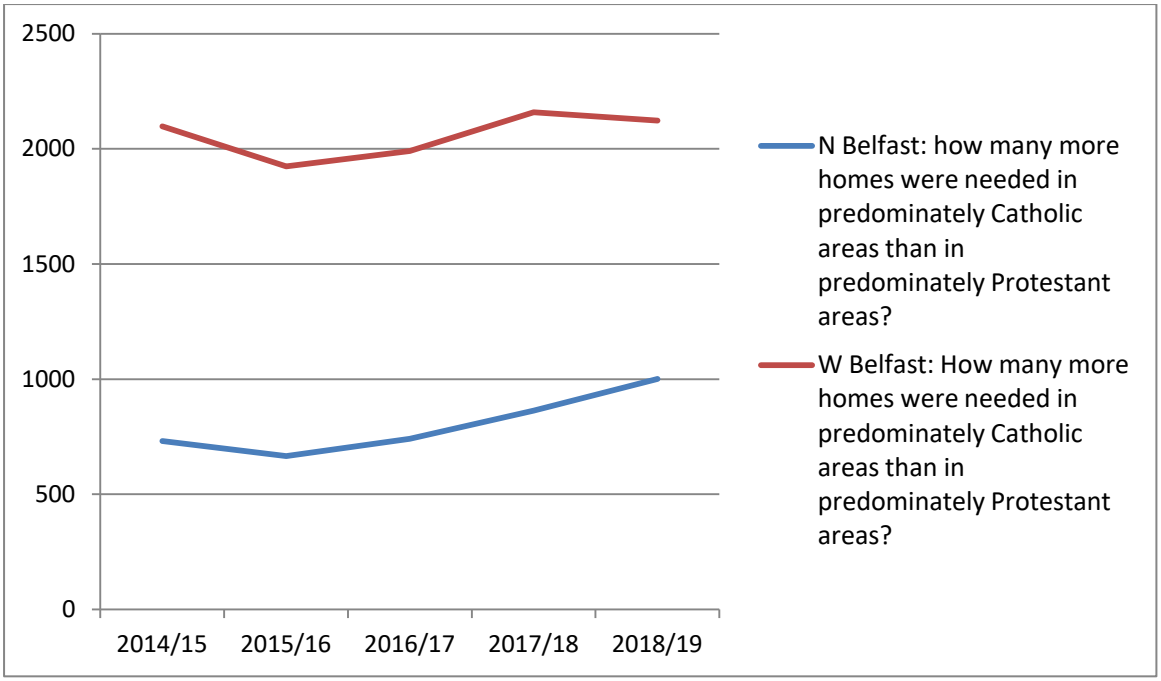
Analysis of the Housing Executive's measure of demand for housing is even more revealing: the number of people in housing stress in a given area, minus the average number of re-lets of social homes each year in that area, gives the Housing Executive measure of "residual housing need" (https://touch.nihe.gov.uk/review_of_housing_need_assessment_formula_for_the_northern_ireland_housing_executive__published_november_2010_.pdf). Housing Executive data for 2018/19 reveals that in predominately Catholic North Belfast 1 HNA area there is "residual need" for 1041 homes, while in adjacent but predominately Protestant North Belfast 2, "residual need" is only 40 homes. Similarly, the predominately Catholic areas of Inner, Middle and Outer West Belfast have a cumulative residual need for 2,163 social homes. Meanwhile, the surrounding West Belfast areas together have a shortfall of just 41 social homes.

Belfast NIHE Sectors Grouped HNA Area	*HNA Area*	*Average residual need*
North Belfast	*North Belfast 1*	*1041*
	North Belfast 2	*40*
West Belfast	*Outer West Belfast/Areema*	*499*
	Inner West Belfast	*671*
	Middle West Belfast	*993*
		(cumulative 2163)
	Ainsworth/Woodvale	*30*
	Ballygomartin	*5*
	Lower Shankill	*-30*
	Mid Shankill	*36*
		(cumulative 41)

This disparity in residual need is an ongoing issue, and one that existing Department for Communities and related policies have yet to impact:



To see this data in a different way, the chart below shows the difference in residual need between adjacent areas of different predominate religious belief over time:



Given the persistence of this differential, its general upward trend and the apparent ineffectiveness of any official efforts to counteract it over time, it is unconscionable that the Department for Communities would fail to fully assess the equality impacts of such a significant piece of policy as the affordable housing definition.

Q9. Do you have any other comments?

No.

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PPR consent for its identity to be made public.