



**Scottish Housing
Regulator**



How we work

How we appoint managers
and governing body members

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About us

We are the independent Regulator of just under 200 social landlords – around 160 Registered Social Landlords (RSLs) and 32 local authorities. We are led by a Board of non-executive members and directly accountable to the Scottish Parliament.

Our one objective is **to safeguard and promote the interests of**

- nearly 600,000 **tenants** who live in homes provided by social landlords
- around 118,000 **owners** who receive services from social landlords
- around 40,000 **people and their families** who may be homeless and seek help from local authorities
- over 500 **Gypsy / Traveller** families who use official sites provided by social landlords.

Our role is to gather, monitor, assess and report on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate to achieve our objective. We also keep a public register of social landlords.

You can see more on how we regulate social landlords in our published [Regulatory Framework](#), available on our website at: www.scottishhousingregulator.gov.uk.

How we work

We want to be as open as possible about how we regulate so that tenants and service users, landlords and others with an interest in our work have a clear understanding of what we do, how we do it and why we do it.

Through the **How we work** series of publications we provide more information on how we work within our published [Regulatory Framework](#).

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1 Introduction

Effective regulation includes, when necessary, the right type of intervention at the right time. Tenants and stakeholders can take confidence that we will step in when we need to but we will only do so when it is the right thing to do.

To date we have only used two statutory intervention powers – appointing a manager and appointing governing body members - in four registered social landlords (RSLs). This information note explains how we expect to use these powers, based on our practice in applying the powers.

What is set out here will not happen often. But it will be of interest and relevance to all landlords, tenants and other stakeholders because what we do as a Regulator in intervening in one landlord not only protects the interests of the tenants of that landlord, but also protects the wider interests of the sector.

2 Purpose

This **How we work** note explains what we do and what the social landlord and others can expect in two intervention situations; appointing a manager and appointing governing body members to an RSL.

Our sole statutory objective is to safeguard and promote the interests of tenants and others who use the services of social landlords. This drives all our actions and decisions. So, when we need to intervene in a social landlord we do so solely to safeguard and promote tenants' and others' interests.

Most of our day-to-day work with social landlords is based on our statutory powers of regulation; we can require information from a landlord, ask questions and carry out inquiries because the legislation which establishes us as the Scottish Housing Regulator also sets out the powers which we have to regulate social landlords. This note is **not** about the statutory powers which underpin our regular day-to-day engagement with landlords. Intervention is when we use a statutory power to require action from a social landlord to improve or address a serious problem in its organisation.

Much that we included in our first information note in this published series - **How we work: Dealing with potentially serious issues in RSLs** - is relevant in setting out our initial approach to engaging with a landlord about serious matters. This note picks up at the point where we have to use one of our intervention powers.

3 Intervention powers



The Housing (Scotland) Act 2010, section 54, requires the Regulator to issue a code of practice on regulatory interventions setting out how we intend to make decisions about:

- whether to make a regulatory intervention;
- which regulatory intervention to make; or
- how to make a regulatory intervention.



When deciding to exercise regulatory intervention powers we are also required to consider:

- the desirability of social landlords being free to choose how to provide housing services and manage their financial and other affairs;
- the speed with which the failure or other problem needs to be dealt with; and
- our Code of Practice.



Our framework – ***Regulation of Social Housing in Scotland*** – specifically the section on intervention, is in effect the code of practice. We have set out in the framework the principles and criteria which will inform our approach to intervention and our consideration of the most appropriate, proportionate and effective intervention to take. We have not included here the detail of what we consider in making a decision to intervene; that is in our framework.



The intervention powers are different for RSLs and local authorities; this reflects our different regulation duties and their different constitutional and governance arrangements.

The following regulatory powers apply to all RSLs and local authority housing or homelessness service providers:

- requiring submission of a performance improvement plan;
- serving an enforcement notice; and
- appointment of a manager for housing activities.

The following intervention powers apply only to RSLs:

- appointment of a manager for financial or other affairs to an RSL in order to ensure that the RSL manages its financial or other affairs to an appropriate standard;
- remove a member of the governing body of an RSL;
- suspend a governing body member or an agent of an RSL during or following inquiries;
- remove a governing body member or an agent of an RSL following inquiries;
- appointment of a new governing body member to an RSL;
- restrictions on dealings in an RSL during or following inquiries; and
- direct an RSL to transfer some or all of its assets to another RSL, if, following an inquiry into its affairs, there has been mismanagement or misconduct in the RSL's financial or other affairs, or its viability is in jeopardy, or it cannot provide housing services to an acceptable standard.

4 How we intervene

In deciding whether or not to intervene we will refer to the legislation and our **Regulatory Framework**. We will always take account of the particular circumstances involved in a case and exercise discretion in the application of statutory powers.

In all cases we will consider what would be the most effective and proportionate action we could take to protect tenants' interests and address our concerns and the risks to the organisation.

Our work with most landlords about issues of concern does not involve the use of our regulatory intervention powers. This is because landlords will generally work with us to investigate and address the issues of concern. We may use our inquiry powers when we need to obtain information, or assess and investigate an issue or concern with a landlord but this is not intervention.

We will not normally need to use our statutory intervention powers where:

- we are confident that the landlord is able and willing to address the concerns;
- the landlord engages openly, positively and constructively with us;
- the landlord gives us the assurance that it understands and is tackling the issue effectively; and
- it has the skills and knowledge to deal effectively and speedily with the issue.

In such circumstances we will work with the landlord to support it to tackle the issue and / or deliver improvement. We will normally give the landlord the opportunity to address any issues itself in the first instance.

We will intervene only when this is appropriate; when we are of the view that the matter is of a serious or urgent nature and the landlord does not have the willingness and / or the capacity to deal with the issue and improve the situation.

We will use the most appropriate power to target the issue or problem effectively and proportionately. Where we decide to intervene we will set out our actions and the reasons for them in a published Regulation Plan (for an RSL) or local scrutiny plan (for a local authority).

5 Statutory appointment of a manager

Below we set out what we will do when we make a statutory appointment of a manager to an RSL or local authority. To date we have only appointed managers in four RSLs. If we have to appoint a manager to a local authority we will have regard to our practice in RSLs while also taking account of the different governance arrangements in local authorities and the specific legislative requirements applying to local authorities.



5.1 What's in the Act

The power to appoint a manager to a social landlord is set out under sections 57, 58 and 59 of the Housing (Scotland) Act 2010. The Scottish Housing Regulator may exercise these powers where, having made inquiries, it considers that the landlord is at risk of failing to:

- meet the standards or outcomes in the Scottish Social Housing Charter;
- meet a performance improvement target;
- implement a performance improvement plan; or
- comply with an enforcement notice; and
- a person needs to be appointed in order to ensure that the landlord provides its housing services to an appropriate standard.

A manager may also be appointed if an RSL is failing to manage its financial and other affairs to an appropriate standard.

Before appointing or requiring the appointment of a manager for a local authority, we will consult the local authority, relevant representative bodies, and Audit Scotland, and have regard to their views.



5.2 Appointing a manager

When we decide to appoint a manager, we will identify an experienced manager with the skills, expertise and track record needed to address the landlord's problems and manage its housing services, and/or financial or other affairs, to an appropriate standard. We have a [list of potential managers, published on our website](#), and will identify the manager from this list. We may run mini-competitions for each appointment, or, if we need to act urgently, make a direct appointment. In the exceptional circumstances of no list members being available, or if we require other additional skills, we may make a direct appointment outwith the list. We will take account of the potential manager's daily payment rates in making our appointment.

We will establish that the potential manager has no inappropriate or unmanageable conflicts of interest which would prevent an appointment being made. We will also confirm that the manager is able to meet the time commitment required.

We will set out in writing to the landlord the name of the appointed manager, the start date and period of appointment, the purpose of the appointment and the specific remit of the manager, plus the quoted rates. We will also set out these details to the appointed manager.

We will provide these details so that the landlord is clear about what is going to happen, what we expect and to ensure it makes preparations for the appointment.

The landlord can ask for a review or [appeal](#) our decision to appoint a manager. We will normally proceed with the appointment pending the outcome of the appeal.



We will require the landlord to provide all relevant information and briefing about the organisation to the manager. We will also brief the manager in detail at the start of the appointment about:

- The organisation
- Background to the decision to appoint the manager
- Role and responsibilities of the manager
- Relevant timescales
- Reporting requirements
- Arrangements for remuneration and termination of the appointment.

We will arrange for the manager to meet with the landlord's Chair and/or governing body or housing convenor/housing committee.

Generally, we will expect the appointed manager to work directly from the landlord's office. The manager is not an employee of the landlord however we expect the landlord to have due regard to its responsibilities towards an individual working in their offices.

The manager will be accountable to us and will report directly to us on progress. We will require the appointed manager to comply with any of our directions about the performance of the manager's functions (and we may remove the manager for failure to comply). The manager must conduct himself/herself in accordance with our issued remit, our Regulatory Standards of Governance and Financial Management, and all relevant good practice and codes of governance. We will require the manager to confirm his/her acceptance of the terms and conditions of the appointment.



5.3 Period of appointment

It is for the Regulator to determine the period of appointment of the manager (section 59 of the Housing (Scotland) Act 2010).

The appointment will be subject to such terms and conditions as we deem necessary and appropriate to enable the manager to fulfil the remit. The terms and conditions may vary from case to case however we would be likely to set out details about the start and end of the appointment, the time commitment required, and any review arrangements.



5.4 Powers of the appointed manager

The appointed manager will have general powers to do anything required to perform the manager's functions (section 59(3) of the Housing (Scotland) Act 2010) including power to enter into agreements or do anything else which the social landlord has power to do. The Act further provides a manager with any such powers as the Regulator may specify.

The manager has the ability to act without reference to the landlord's governing body/elected members/housing committee or senior officers, but may not act beyond the landlord's powers, (that is, he/she can only do things which the social landlord has the legal capacity to do). The manager will have access to any information held within the landlord.



5.5 The appointed manager's role

The general role of an appointed manager is to oversee the regulated body and to remedy serious problems or failures affecting the provision of its housing services or management of its financial or other affairs as set out in the remit.

Beyond this general role, we will specify the remit for each individual appointment, and this will reflect the reasons for the appointment being made. Depending on these reasons, the manager's role could involve any or all of the following:

- Dealing urgently with any immediate serious risks;
- Addressing and resolving the issues of concern which required the appointment;
- Carrying out a strategic review and implementing or monitoring any necessary improvements to ensure that the RSL meets the Regulatory Standards of Governance and Financial Management;
- Providing the landlord with a clear strategy for moving forward on the matters covered by the appointment;
- Implementing his/her recommendations, if the social landlord lacks the senior staff capacity to do this effectively;
- Assisting and supporting the governing body to ensure that the RSL's affairs are managed to an appropriate standard;
- Assisting and supporting the governing body to initiate and commission any required investigations, consider findings, and take any necessary actions arising from the investigation reports; and
- Assuming overall senior management responsibility within the landlord, for example if there is no senior staff member performing that role, or if the conduct or performance of existing senior staff is preventing the landlord from managing its financial or other affairs effectively.

The manager may identify a need for the regulated body to commission other consultants or agents with relevant expertise, for example where the social landlord does not employ staff in a particular operational role, or where the manager considers that the organisation's existing staff resources need to be supplemented. Any such additional commissions would be made by the landlord or the appointed manager, rather than by us.



5.6 Communications

We will publish a Regulation Plan where it is an RSL, or Local Scrutiny Plan in the case of a local authority, on our website setting out the risks and concerns which led to the intervention, what we expect from the landlord and our planned engagement. We will also publish this with a news release to highlight our action.

We will expect the landlord to communicate the position to its staff, tenants and stakeholders and in the case of an RSL to notify its lenders of any change to its regulatory engagement level and the reason for this.

Where it is an RSL, we will contact any public funders and other key stakeholders such as the local authority, the charity regulator, Scottish Government, and the landlord's representative body to advise about the intervention. Where it is a local authority we will work closely with Audit Scotland and contact key stakeholders.

At the conclusion of the intervention we will publish a report about the issues which led to the intervention, the purpose of the intervention, and what the intervention has achieved. We will aim to do this within three months of the intervention ending.



5.7 Impact on existing staff

Where we appoint a manager, the regulated body should discuss this fully with existing staff members, so that they are aware of the reasons for the appointment, the appointed manager's role, and any implications for their own role. Existing staff will remain responsible for the day to day operations in the organisation. It is important, particularly if the senior officer is no longer in place, that the governing body communicates with staff to make sure they are well-informed about what is happening and about the role of the appointed manager, and what their relationship is with the appointed manager.

If the landlord does not have a senior member of staff in post (e.g. because the previous post-holder has left or is absent from work for an extended period), it may need to fill the senior post on an interim basis to ensure continued management of operations. The appointed manager's duties may include performing the senior officer role, on a temporary basis.

If there is an existing senior officer in post, the organisation will need to manage the situation carefully, taking appropriate legal advice. The appointment of a manager will clearly impinge on the role of the senior staff member, but the appointed manager's role is not intended to supplant the day-to-day role of the existing senior staff member, unless:

- The manager's appointment involves running all aspects of the social landlord's affairs;
- The conduct or performance of the current post-holder has been a material factor in the social landlord's poor performance, or is subsequently identified as such.

Where staff performance or conduct is part of the organisation's difficulties, it should manage this according to its normal human resources processes, informed by legal advice if appropriate



5.8 Monitoring the manager's appointment

We will require an appointed manager, as a condition of his/her appointment, to submit regular reports to us about progress in carrying out the terms of the appointment. The substance of such reports would normally be shared with the governing body/housing committee except in cases where it would be inappropriate because of the particular nature of the report.

We will monitor and review the manager's performance, and we may terminate the appointment if he/she fails to adhere to the specified terms and conditions, for example if the manager fails to provide information or to implement instructions. In these circumstances we will consider their continued inclusion on our selection list. We may issue directions regarding the exercise of the manager's functions during the period of appointment.

Nearing the end of the period of appointment we will formally review the effectiveness of the appointment and whether it should be terminated or extended.



5.9 Payment of the appointed manager

Under section 59 (2) of the Housing (Scotland) Act 2010 it is for the social landlord to pay the appointed manager's remuneration and expenses. The manager will claim his/her payment and expenses direct from the landlord. We would expect the landlord to pay any claims for remuneration and expenses within seven days of receipt.

We will be alert to the costs to the organisation of its having to pay for the appointed manager and potentially for other support, and will closely monitor the cumulative costs to be assured of the value to the landlord and its tenants.

6 Statutory appointment of governing body members

Below we set out what we will do when we appoint additional members to an RSL governing body and what the RSL can expect. This is a statutory power which only applies to RSLs and to date we have only used the power in two RSLs.



6.1 What's in the Act

The powers to appoint individuals to an RSL's governing body are set out under section 65 of the Housing (Scotland) Act 2010. The Regulator may appoint an individual as a governing body member of the RSL in the following circumstances:

- in place of a governing body member we have removed under section 60 or 62, or
- where there are no governing body members, or the RSL has an insufficient number of governing body members to appoint governing body members itself, or
- where we consider it necessary for the proper management of the RSL's financial or other affairs to have an additional governing body member.

The Act uses the term “officer” for a governing body member of an RSL whether the RSL is constituted as a registered society or as a registered company. In our [Regulatory Framework](#) and in this information note we will refer to governing body members rather than officers. We use the term “governing body” as a generic term for the board of management, management committee, or board of directors of an RSL. We will use the term “appointees” for these appointed officers to the governing body.

The Act also uses the term “constitution” to refer to the articles of association for a registered company or the rules in relation to a registered society. In this note we use the term “constitution” from the Act to mean the rules or articles of an RSL.



6.2 Appointing an individual to the governing body

When we decide to appoint individuals to an RSL, we will select appointees who individually and/or collectively have the skills and experience necessary to support the governing body in addressing the RSL's problems. Often these will be experienced staff or governing body members from other RSLs but can be drawn from other sectors as well.

The landlord can ask for a review or [appeal](#) our decision to make appointments. We will normally proceed with the appointments pending the outcome of the appeal.

A person can be appointed to a governing body even if the RSL's constitution contains a restriction on such an appointment; for instance if the constitution sets a maximum number of governing body members or if the constitution normally prohibits the appointment of non-members. So there is no limit to the number of appointees.



We will establish that the potential appointees have no conflicts of interest which would prevent their appointment. Proposed appointees may need to obtain their employer's approval to the appointment.

We will normally appoint a minimum of two to three appointees, but the number may be greater depending on the nature of the problems and the RSL and what is needed to effect the necessary improvements. This means there should always be an appointee presence at governing body meetings even if an individual appointee is not able to attend every meeting.

We will set out in writing to the RSL the name of the appointees, the start date and period of appointment, and the purpose of their appointment. We will also set out these details to the appointees. We will expect the appointees to attend the RSL's governing body meetings wherever they are held.

We will provide these details so that the RSL is clear about what is going to happen, what we expect and to ensure it makes preparations for the appointees. We will arrange to meet with the governing body to introduce the appointees, explain their role, and to answer any questions the governing body may have. The RSL should provide key governance and management documents and all relevant information and briefing about the organisation to the appointees.

We will brief the appointees about the issues of concern at the RSL and their role on the governing body. We will ask the appointees to meet with us on a regular basis and update us on progress on matters relating to their remit.

We will expect the appointees' conduct to be in accordance with our issued remit, our Regulatory Standards of Governance and Financial Management, and all relevant good practice and codes of governance. We will require the appointees to confirm their acceptance of the terms and conditions of the appointment. We will provide a named point of contact to the appointees and appointees can contact us at any time for advice.



6.3 Period of appointment

It is for the Regulator to determine the period of appointment of the appointees (section 65 (2) of the Housing (Scotland) Act 2010). The appointment will be subject to such terms and conditions as we deem necessary and appropriate to enable the appointee to fulfil the remit. The terms and conditions may vary from case to case however we would be likely to set out details about the start and end of the appointment, the time commitment required, and any review arrangements.



6.4 Powers of the appointees

An appointee's functions and responsibilities on the governing body are identical to those of other members. The appointees will have the full authority and legal status of a governing body member of the RSL. Appointees have the same rights as other governing body members to receive notices and papers for all meetings.

Appointed governing body members have a statutory entitlement to:

- attend, speak and vote at any general meeting of the RSL;
- move a resolution at any general meeting;
- require a general meeting to be convened within 21 days of a written request being made to the RSL; and
- resign or retire in accordance with the RSL's constitution.



6.5 The appointees' role

Essentially we will expect the appointees to strengthen and support the governing body to address the RSL's problems and make progress so that statutory intervention is no longer required. We will provide the appointees with a remit for their appointment and share this with the governing body. This remit will reflect the reasons for the intervention.

Depending on these reasons the appointees' role may include but is not limited to the following:

- assisting the governing body to develop and implement an action plan which addresses any serious and immediate risks to the RSL's governance and financial management position and to ensure that these issues are resolved;
- considering whether the current governance and financial management processes and procedures are fit for purpose and supporting the governing body to ensure that the RSL's affairs are managed to meet the Regulatory Standards of Governance and Financial Management;
- ensuring that the governing body is able to lead the organisation and that any decisions are taken in the best interests of the organisation and its tenants; this includes ensuring the appropriate level of challenge to any decision making;
- supporting the appointed manager (if applicable) to deliver the overall recovery strategy for the organisation; and
- exercising the powers given under section 65(6) as they consider appropriate.

Although appointees may contribute specialised knowledge, experience or skills, their role is not to act as consultants. The governing body should decide if specialist consultants are needed and, if so, take steps to engage them.

Equally it is not part of the duties of appointees to undertake the work of the staff or agents of an RSL. If the RSL's problems are attributable to the performance of staff and/or agents, it is the governing body's responsibility to take the necessary steps to remedy the situation.

We will expect the appointees to notify us of any issues of regulatory concern, even if such issues do not form part of their original remit.

Appointees should not make public comment about the RSL or their role, but should work within the RSL's own communications plan and refer any press enquiries to the RSL or to the Scottish Housing Regulator as appropriate.



6.6 Communications

It is important that when we use statutory powers to intervene in a landlord that we are transparent about the risks and concerns which led to the intervention, what powers we have used and what we intend to achieve by the intervention. We will publish a Regulation Plan to confirm our statutory appointments and our planned engagement with the RSL and issue a news release to highlight our action.

We will expect the governing body to communicate the position to staff, tenants and stakeholders and notify its lenders of the change to its regulatory engagement level and the reason for this.

We will contact any public funders and other key stakeholders such as the local authority, the charity regulator, Scottish Government, and the landlord's representative body to advise about the intervention. We will send our Regulation Plan and news release to other stakeholders including local MPs and MSPs.

At the conclusion of the intervention we will publish a report about the issues which led to the intervention, the purpose of the intervention, and what the intervention has achieved. We will aim to do this within three months of the intervention ending.



6.7 Review arrangements

We will regularly review the RSL's progress, the effectiveness of our intervention and the appointees' remit. We will expect the appointees to report directly to us on progress with their remit on a regular basis.

We may decide to extend the appointments or increase the number of appointees if insufficient progress has been made or we may consider other statutory options. If we are satisfied that the intervention has been successful and the RSL has addressed the problems that led to intervention, then we will bring the appointments to an end.

If an appointee resigns, or does not wish to continue if we propose an extension of the appointment, we may make a replacement appointment. We will give formal notification of the ending of appointments to the appointees and the RSL.

At the end of their appointments, appointees are free to be co-opted by the governing body or to fill casual vacancies in accordance with the RSL's constitution, should the governing body wish. Former appointees can also seek membership of the RSL and election to the governing body if they

wish, provided that they meet the relevant eligibility criteria in the RSL's constitution.



6.8 Payment of the appointees

Under section 65(5) of the Housing (Scotland) Act 2010 it is for the RSL to pay the appointees' remuneration and expenses and the Regulator determines the terms of the remuneration and expenses. The appointees will make any claims in respect of payment and expenses direct to the RSL. The RSL should pay expenses in accordance with its policies and procedures. Most RSLs do not pay their governing body members so in the majority of cases appointees would only receive their expenses in the same way as their fellow governing body members. We do not expect appointees to be specifically remunerated for their role as appointees.

Appointed governing body members are entitled to be sure they will not be put at personal or financial risk where they have acted reasonably, responsibly and in good faith in fulfilling their duties as governing body members. Where an RSL has insurance in place for governing body members, it should ensure the same protection is extended to the appointees. We may require the RSL to purchase and maintain personal indemnity insurance for the appointees (Housing (Scotland) Act 2010 section 65(3)).

7 Review

We have published this note to provide information about how we will apply two of our intervention powers. We hope this helps to explain our role and what we will do. We will keep this note under review and welcome any comments or feedback.

