



Scottish Housing  
Regulator

# **Consultation where the Regulator is directing a transfer of assets**

Statutory Guidance  
February 2019

# About us

We are the independent regulator of social landlords in Scotland.

## We safeguard and promote the interests of:

Around:

**600,000**

Tenants who live in homes provided by social landlords

---

Over:

**123,000**

Home owners who receive services of social landlords

---

Over:

**45,000**

People and their families who may be homeless and seek help from local authorities

---

Around:

**2,000**

Gypsy/Travellers who can use official sites provided by social landlords

---

## We regulate:

Around:

**200**

Social landlords

---

Around:

**160**  
**32**

Registered social landlords

Local authorities

## Our equalities commitment

Promoting equalities and human rights is integral to all of our work. We set out how we will meet our equalities duties in our Equalities Statement.

## Our role:

To monitor, assess and report on social landlords' performance of housing activities and RSLs' financial wellbeing and standards of governance. We intervene, where we need to, to protect the interests of tenants and service users.

Our Regulatory Framework explains how we regulate social landlords. It is available from: [www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk)



HAPPY TO TRANSLATE

# 1. Introduction

- 1.1 Section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”) gives us the power to transfer the assets of Registered Social Landlords (RSLs) if, after making inquiries, we are satisfied there has been mismanagement or misconduct in an RSL’s affairs, or its viability is in jeopardy. The 2010 Act requires us to consult the tenants of any houses we propose to transfer and any secured creditors before we direct a transfer. Financial jeopardy is not defined in legislation but we would need to be satisfied that there is either a potential or real, significant and imminent risk that the RSL will be unable to meet its liabilities as they fall due and face insolvency.
- 1.2 Our objective when considering a directed transfer is to protect tenants’ interests and ensure they have the security of having their homes managed by a well-run social landlord which provides good services.
- 1.3 Section 97 of the Housing (Scotland) Act 2014 (“the 2014 Act”) sets out that, in certain circumstances, we can set aside the requirements to consult under section 67 of the 2010 Act. The 2014 Act requires that we issue guidance on how we will exercise our powers when deciding whether or not to set aside the requirement to consult where we are directing a transfer of assets.
- 1.4 This guidance sets out:
  - how we will consult tenants and secured creditors about a proposed transfer of assets;
  - the circumstances in which we will not consult;
  - the actions we would take in those circumstances; and
  - how we intend to communicate with tenants, RSLs and secured creditors in those situations in which we do not consult.

# 2. Our approach

- 2.1 The 2010 Act sets out our intervention powers, including the power to direct a transfer of assets in certain circumstances. Having made inquiries, we can direct a transfer of assets if there has been misconduct or mismanagement, or if the RSL’s viability is in jeopardy for financial or governance reasons, or because it cannot provide housing services to an acceptable standard. We will inform the RSL of this decision in line with our Regulatory Framework which sets out how we will use our intervention powers. When intervening, we will set out our reasons in writing.
- 2.2 Where we intend to intervene under section 67 of the 2010 Act we will ordinarily seek the views of the RSL before doing so. We will provide the RSL with an opportunity to respond to our proposals. The timing and length of any consultation with the RSL will depend on the outcome of our inquiries.
- 2.3 Section 67 of the 2010 Act requires that before directing a transfer of assets, we must consult the tenants of any houses affected by the transfer and that we also consult with any secured creditors.

- 2.4 When we are considering a directed transfer we will engage with tenants to provide full information on the proposed directed transfer. Part 4 of this guidance gives more information on how we will consult tenants.
- 2.5 Section 97 of the 2014 Act, however, gives us the power to set aside the requirement to consult with tenants and secured creditors on the direction of a transfer of assets where all four of the following requirements are met:
- the RSL's viability is in jeopardy for financial reasons;
  - a person could take a step in relation to the RSL which we would require to be notified of under Section 73 of the 2010 Act;
  - the direction to transfer assets would substantially reduce the likelihood of a person taking such a step; and
  - there is insufficient time to comply with the duty to consult and make a direction which would substantially reduce that likelihood.
- Each of these tests must be met before we can decide not to consult with tenants in advance of the asset transfer.
- 2.6 Within Section 73 of the 2010 Act there are certain actions, referred to as steps, which parties can take and which would lead to a formal insolvency situation. These actions vary depending on an RSL's constitution. These include but are not limited to a winding up order or enforcement of a security for a Registered Society, or an administration order, appointment of a receiver or enforcement of a security for a limited company.
- 2.7 In summary the actions listed are actions that are likely to lead to the dissolution or winding up of the RSL. Once these actions have been taken it may be difficult to halt or reverse the winding up process even if an alternative to winding up is available. It may be necessary in some cases to act quickly in order to prevent the winding up process from getting in the way of an asset transfer that might be in the best interests of affected tenants.

### 3. Secured creditors

- 3.1 We will consult secured creditors when we are considering directing a transfer of an RSL's assets. When considering the decision to direct a transfer of assets, we will ordinarily discuss with the secured creditors the proposed recovery strategy. Where appropriate and where practicable these discussions will normally involve the RSL.
- 3.2 Section 97 of the 2014 Act provides that, the decision to set aside the requirement to consult with tenants is separate from the decision to set aside the requirement to consult with secured lenders. We cannot foresee any circumstances in which we would seek to set aside the duty to consult secured creditors. This is because of the implications for existing loan agreements and covenant compliance, and because there is likely to be a small number of creditors involved so it should ordinarily be possible to conclude the consultation process within a reasonable timescale. It is also likely that we will have been engaging with secured creditors in the course of our inquiries.

## 4. Tenant consultation

- 4.1 In every case we will seek to engage as fully as possible with tenants where we are considering a direction to a landlord to transfer its assets. We will provide clear information about:
- the reasons for the proposed transfer;
  - the potential transferee landlord;
  - what the proposed transfer will mean for tenants particularly in relation to the services they will receive; and
  - the consultation process and how tenants can give us their views.
- 4.2 We will determine what form the consultation will take based on the circumstances of each case, taking into account the number of consultees, the time available for consultation and what is reasonable in each case.
- 4.3 We will provide tenants with an opportunity to consider the proposals and to give us their response. Ordinarily we will aim to ensure the consultation period is for at least 28 days. Where possible the consultation process should as a minimum take the form of a written notice, advising of the proposed transfer of assets to another landlord and seeking feedback on the proposal.
- 4.4 We will also consider whether it might be helpful to include additional methods of consultation. This may include for example meeting with tenants, the use of email, text and other social media.
- 4.5 We will provide free, independent advice to maximise opportunities for tenants to fully engage in the consultation process.
- 4.6 We will consider tenants' views before making a decision about a proposed directed transfer.
- 4.7 There may be a limited number of cases where it is clear that there is an imminent threat to the landlord's financial viability, and where we may judge that we need to use our statutory powers to direct a transfer of assets to another landlord.
- 4.8 In these situations there may not be sufficient time to consult tenants and we may need to set aside the requirement to consult tenants. We anticipate that in most cases, we will have both the time and the capacity to carry out statutory consultation with tenants. However, where there is insufficient time to consult with tenants and to protect their interests it is vital that we are able to act swiftly to protect the interests of tenants and prevent insolvency.
- 4.9 In cases where we have not consulted with tenants in advance of taking the decision to direct a transfer of assets to another landlord, we will set out our reasons for having decided that it was not appropriate to consult.
- 4.10 Whether or not we consult with tenants, we will always ensure that tenants are made aware that we have taken the decision to direct a transfer of assets to another landlord, the reasons for this decision and the implications of this for tenants. We may communicate directly with tenants, or we may work with the landlord to ensure that tenants are made aware of the decision to transfer assets and are given information about the implications of this decision for them.



**Scottish Housing  
Regulator**

[www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk)