



Scottish Housing  
Regulator

# **Group Structures and Constitutional Partnerships**

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:



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 This guidance relates to:
  - Registered Social Landlords (RSLs) in group structures, whether they are the group parent or a subsidiary; and
  - RSLs considering creating or joining a group structure.
- 1.2 In complying with this guidance, RSLs will meet the requirements relating to group structures in chapter 3 of the [Regulatory Framework](#) including the Standards of Governance and Financial Management and Constitutional Requirements.

## 2. Principles

- 2.1 An RSL that is part of a group, as parent or subsidiary, must meet:
  - the Standards of Governance and Financial Management and related guidance
  - the Constitutional Requirements set out in Chapter 3 of the Regulatory Framework
  - all regulatory requirements set out in Chapter 3 of the Regulatory Framework.
- 2.2 An RSL should not establish an unregistered subsidiary or group structure, or join a group structure where that would impede in any way its ability to meet the above requirements.
- 2.3 RSLs should manage effectively any risks to the RSL and to tenants' and other stakeholders' interests from operating within a group structure.
- 2.4 RSLs which are charities or have charitable subsidiaries should refer to charity law and to guidance produced by the Office of the Scottish Charity Regulator (OSCR) available on its website. Trustees of charitable RSLs (generally governing body members) will need to take full account of their obligations and duties under charity law when developing proposals to create or join a group structure, and when operating within a group structure.
- 2.5 Similarly, RSLs which are registered societies should refer to relevant law and to guidance issued by the Financial Conduct Authority (FCA) available on its website.
- 2.6 The RSL must ensure that its governance and financial arrangements, and those of the group, are such as to allow us to regulate effectively, and exercise our full regulatory powers.
- 2.7 Where the parent of a group is an RSL, our main regulatory relationship is with the parent. The parent should ensure in the first instance that the other RSLs within the group comply with the Regulatory Framework and regulatory guidance.
- 2.8 Some RSLs are constituted as subsidiaries of Registered Providers in England. In these circumstances, our regulatory relationship is with the subsidiary RSL. We liaise with the social housing regulator in England to get appropriate assurance about the parent Registered Provider.

### **3. Setting up a group structure and unregistered subsidiaries**

- 3.1 An RSL must notify us when it plans to set up or participate in a group structure or set up a new unregistered subsidiary, in line with our Notifiable Events guidance. The RSL should contact us at an early stage in the process.
- 3.2 An RSL considering setting up a group structure must ensure that the proposed structure:
- is consistent with, and contributes to, the RSL's purpose and objectives
  - does not impede in any way the RSL's ability to meet all regulatory requirements
  - allows the RSL to manage effectively any risks to the RSL and to tenants' and other stakeholders' interests
  - allows the RSL to meet its obligations and duties under charity law or the law relating to registered societies where appropriate
  - is sustainable financially.
- 3.3 The RSL must ensure the proposed group can operate in accordance with the guidance set out in section 5.
- 3.4 The RSL's governing body should consider appropriate professional advice when setting up a group structure, and must consult with tenants and other stakeholders as necessary.

#### **Registration of new RSLs**

- 3.5 An organisation seeking to register as an RSL must meet our registration criteria set out at Chapter 9 of the Regulatory Framework. This explains how to apply to us to become an RSL and the registration process.
- 3.6 An organisation seeking to register as an RSL which will be constituted as the parent or subsidiary of another body must set out the proposed group arrangements and show:
- the roles and relationships between each part of the group structure
  - that the parent has effective control over any subsidiary
  - that it complies with this guidance
  - that we will be able to regulate effectively to protect the interests of tenants and other service users, the social housing assets, and public and private investment

## 4. Joining a group structure

- 4.1 An RSL proposing to change its constitution to become the subsidiary of another body must notify us in accordance with our Notifiable Events guidance. It must also notify us of any such arrangement in accordance with s104A of the Housing (Scotland) Act 2010 (the 2010 Act).
- 4.2 A charitable RSL seeking to change its constitution to become a subsidiary of another RSL must obtain OSCR's prior consent if the change to the constitution includes a change to the RSL's purposes. RSLs with registered care services must comply with the Care Inspectorate's procedures if the proposed change will affect a registered care service.
- 4.3 An RSL considering joining a group structure must ensure that this:
  - is consistent with, and contributes to, the RSL's purpose and objectives
  - does not impede in any way the RSL's ability to meet all regulatory requirements
  - is in the best interests of its tenants and service users
  - allows the RSL to manage effectively any risks to the RSL and to tenants' and other stakeholders' interests
  - allows the RSL to meet its obligations and duties under charity law where appropriate
  - is sustainable financially.
- 4.4 The RSL must ensure the arrangement will operate in accordance with the guidance set out in section 5.
- 4.5 The RSL's governing body should consider appropriate professional advice when considering joining a group.
- 4.6 The RSL must consult its tenants in accordance with sections 104A and 115 of the 2010 Act (as amended by the Housing (Scotland) (Amendment) Act 2018). The RSL must carry out a ballot or seek the written authorisation of its tenants before it can make that change. We give further information about the tenant consultation process in our regulatory guidance '[Tenant consultation and approval](#)'.

## 5. Operating group structures

### Governance arrangements

- 5.1 The RSL must ensure that the group governance arrangements:
- make clear the identities, roles and responsibilities of each part of the group
  - assign accountability for decision-making
  - where it is the parent, give it powers of control through the governing instruments of subsidiaries, taking account of the legal status of members of the group
  - have people with the skills and expertise needed in the governance and management of the subsidiary or subsidiaries to successfully take forward and sustain the proposed activities of the subsidiary or subsidiaries
  - have people in the RSL with skills and expertise to monitor the activities of the subsidiaries, and to correctly identify and manage any risks arising from the activities of the subsidiaries
  - ensure people who are governing body members in more than one organisation in the group have a clear understanding of their governance responsibilities
  - ensure that each organisation in the group has a different Chairperson.
- 5.2 The RSL should ensure that the group has a comprehensive Intra Group Agreement (IGA) or similar document, defining all aspects of the parent/subsidiary relationship and how the group is to operate.
- 5.3 The RSL should ensure that the group has an appropriate code of conduct for all governing body members and staff that applies to all organisations within the group.
- 5.4 A parent RSL should ensure that the operation of audit and risk management within the group is effective.
- 5.5 The group must ensure that relationships and transactions between group members are described in individual and group financial statements as required by accounting standards, prescribed by the Determination of Accounting Requirements issued under section 68(1) of the Housing (Scotland) Act 2010, and the RSL Statement of Recommended Practice.
- 5.6 The group should regularly review the effectiveness of governance and control arrangements within the group, and that they comply with statutory and regulatory requirements and reflect current best practice.

### Control and independence

- 5.7 The proposed structure must give a parent RSL constitutional control over subsidiaries. Constitutional control is not the same as control over operational decisions: the subsidiary may exercise independent control over operational matters, within the limits set by its parent and to standards agreed between the two bodies. A parent RSL should establish clear financial and other limits within which its subsidiaries should work.
- 5.8 A parent RSL should formally define the scope of a subsidiary's activities, describing any limits that apply, including financial limits.
- 5.9 A parent RSL must give a subsidiary sufficient independence to manage its affairs without undue interference in operational matters by the parent organisation. Subsidiary RSLs must have sufficient autonomy to plan, manage and deliver their services in a way which is responsive to their local context and the views of their

tenants.

- 5.10 A parent RSL must ensure a subsidiary cannot exercise control or undue influence over the parent.
- 5.11 Constitutional control by the parent should normally be exercised through:
- powers to control the majority of votes at a general meeting of a subsidiary, and/or
  - powers to appoint and remove a majority of the subsidiary's governing body (ensuring that any RSL subsidiary has a quorum of governing body members who are not also members of the parent's governing body).
- 5.12 Parent RSLs should monitor the activities and performance of their subsidiaries. Parent RSLs should take timely and effective action if their subsidiaries do not operate within approved limits or fail to meet appropriate standards of performance.
- 5.13 Parent RSLs must have clearly defined rights to step in and take action if a subsidiary does not adhere to financial or other agreed limits or does not achieve agreed standards.
- 5.14 Parent RSLs must have appropriate step-in rights where a subsidiary or its governing body is experiencing serious problems. Step-in rights must include the power to appoint and, where necessary, remove members of the subsidiary's governing body.
- 5.15 The group must set out service provision between group members in written service level agreements or contracts, with clear costs and charges, and review them regularly. It is for RSLs to decide, taking appropriate professional advice, whether there is a requirement (such as from procurement legislation, directives and regulations) to expose existing services to competition.

### **Governing body membership**

- 5.16 The governing body of a parent RSL must be able to make objective decisions about the RSL's relationships with its subsidiaries. A parent RSL must ensure that not all of its governing body members serve on the governing body of a particular subsidiary, to have members who are free from any potential conflict of interest between the parent and the subsidiary.
- 5.17 Where a subsidiary is an RSL, its governing body must as a minimum have sufficient members to form a quorum independently of any members who are also governing body members of the parent organisation. This does not restrict the constitutional rights a parent may have to appoint or remove governing body members of a subsidiary or to use any other step-in rights.
- 5.18 The governing body of a unregistered subsidiary should include some members who are independent of the parent RSL's governing body.
- 5.19 Governing body members must always act in the interests of the organisation's governing body on which they are serving. The management of conflicts of interest must be governed by the code of conduct and by the terms of the Intra Group Agreement (or similar document). The group must provide governing body members with clear guidance on declaring and managing conflicts of interest which may arise.

### **Finances**

- 5.20 The parent RSL must keep a comprehensive register of loan agreements, conditions

and covenants for all borrowing within the group, and a comprehensive and up to date asset register for each organisation within the group. Each organisation within the group must keep appropriate financial and borrowing information in line with regulatory requirements.

- 5.21 An RSL lending to, investing in, or providing financial support to another organisation within a group must legally be able to do so and must manage the risks effectively. The trustees of an RSL that is a charity must ensure that the terms of any loan, including the interest rates, comply with charitable obligations and duties. The RSL must ensure that such arrangements are formalised, with appropriate arrangements for monitoring and control.
- 5.22 The RSL should ensure that any on-lending is:
- on terms that impose no additional cost on its tenants
  - in accordance with the terms of any funding agreement that relates to the money being provided to the other organisation
  - on terms that make it a 'qualifying loan' in accordance with HMRC rules, if the RSL is charitable
  - on arm's length terms and minimise the risks to which the RSL is exposed.
- 5.23 A parent RSL should have contractual limits for any guarantees entered into by the parent RSL on behalf of the subsidiary.
- 5.24 A parent RSL should ensure that any cross-collateralisation, guarantees (including cross guarantees), equity investment or lending is clearly identified in the group members' business plans, budgets, financial reports and annual accounts.
- 5.25 A parent RSL should not take general financial responsibility for any non-registered subsidiary, nor imply to third parties that it will do so. The extent of an RSL's liabilities for the debts of a non-registered subsidiary should not exceed any guarantees it has provided and/or its available resources. Governing bodies of RSLs with non-registered subsidiaries must consider any risks to the RSL, and be satisfied that providing financial support is in the RSL's best interests, and will make a demonstrable contribution to achieving its objectives.

## **6. Connected bodies and inquiries**

- 6.1 We also have powers under section 42 of the 2010 Act to make inquiries about bodies which are or were connected to a social landlord, and in the course of an inquiry to have access to information or documentation relating to the social landlord.
- 6.2 A subsidiary of the social landlord or the parent of a social landlord is a connected body.
- 6.3 When making inquiries or otherwise for a purpose connected with our functions, we have powers to require any person to provide us with any document or other information relating to a social landlord, or a body which at the material time is or was connected to a registered social landlord or a local authority landlord. These powers are provided for by section 48 of the 2010 Act.

This guidance is issued under section 36 of the 2010 Act.



**Scottish Housing  
Regulator**

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