

Memorandum of Understanding

**Between Audit Scotland and
the Scottish Housing
Regulator**



**Scottish Housing
Regulator**

August 2015

Memorandum of Understanding

For cooperation between the Scottish Housing Regulator and Audit Scotland, on behalf of the Auditor General for Scotland and the Accounts Commission for Scotland.

Introduction

1. The Public Services Reform (Scotland) Act 2010 places a duty on a range of scrutiny bodies (including the Accounts Commission and the Scottish Housing Regulator) to cooperate and coordinate their activities with each other, and to work together to improve the efficiency, effectiveness and economy of their scrutiny of public services in Scotland.
2. This Memorandum of Understanding (MoU) sets out how Audit Scotland and the Scottish Housing Regulator (SHR) will work together to fulfil that duty. It describes our respective powers and responsibilities and supports a framework for collaborative working and communication. The framework is designed to optimise the skills and experience involved in audit and inspection, avoid duplication of effort and minimise the burden of scrutiny.
3. This MoU aims to:
 - secure cooperation and the exchange of information between Audit Scotland and SHR, subject to any legal constraints;
 - foster mutual understanding and effective working relations;
 - ensure Audit Scotland and SHR fulfil their statutory duties in the most effective way whilst minimising the burden of scrutiny on audited and regulated bodies;
 - secure consistent treatment of audit and regulation issues and assessments of shared interest; and
 - support inter-organisational staff development.
4. This MoU does not affect the statutory responsibilities of Audit Scotland and SHR. It does not imply any transfer of responsibility from one organisation to the other, nor does it imply the sharing of statutory responsibilities. This MoU is not a contract and is not legally enforceable. However, Audit Scotland and SHR agree to adhere to its principles and show proper regard for each other's activities.
5. Each organisation will take steps to ensure that its staff are:
 - aware of the content of this MoU;
 - aware of the responsibilities it places on members of staff; and
 - updated on any changes to the MoU.
6. This MoU does not apply to information held by Audit Scotland where the SHR is the audited body.

Statutory roles of the Auditor General for Scotland (AGS), Accounts Commission and Audit Scotland

7. The AGS is responsible for ensuring propriety and value for money in the spending of public funds. She investigates whether public bodies are achieving the best possible value for money and adhering to the highest standards of financial management. She is independent and not subject to the control of any member of the Scottish Government or the Parliament.
8. The AGS is responsible for securing the audit of the Scottish Government and most other public bodies, except local authorities. In relation to housing matters, this includes the Scottish Government Directorates and the Scottish Housing Regulator. In liaison with the Accounts Commission, she also audits joint working arrangements between central and local government bodies, including community planning partnerships.
9. The Accounts Commission is responsible for securing the audit of Local Authorities and associated bodies, including the new integration joint boards that are being established under the Public Bodies (Joint Working) (Scotland) Act 2014 to support the process of health and social care integration. The Accounts Commission is also responsible for securing the audit of the performance by local authorities of their Best Value and Community Planning duties. The Local Government Act 1973 (as amended) and the Local Government in Scotland Act 2003 also gives the Accounts Commission powers to:
 - consider reports made by the Controller of Audit on matters arising from these audits, to investigate all matters raised and to conduct hearings where appropriate;
 - make recommendations to Scottish ministers and to local authorities, as appropriate;
 - give directions to local authorities on the performance information they should gather, and publish information about how councils perform;
 - impose sanctions on individual officers and members in the event of having considered a special report from the Controller of Audit, finding that their negligence or misconduct leads to money being lost or that their actions are unlawful; and
 - help advise Scottish ministers on local authority accounting matters.
10. Section 23 of the Public Finance and Accountability (Scotland) Act 2000 gives the AGS specific powers to examine the economy, efficiency and effectiveness with which resources are being used by specified public bodies. This includes the power to examine the arrangements made by these organisations to secure Best Value.
11. All appointed auditors must comply with Audit Scotland's Code of Audit Practice, which includes guidance on the principles of public audit, the statutory and other duties of auditors, and audit requirements relating to financial statements, corporate governance and reporting the audit.

12. Audit Scotland is a statutory body set up in April 2000 under the Public Finance and Accountability (Scotland) Act 2000. It provides services to the AGS and the Accounts Commission. Audit Scotland provides independent assurance to the people of Scotland that public money is spent properly and provides value for money. It supports improvement in public services by holding to account those responsible for spending public funds. The values of independence and integrity, valuing people, quality, co-operation and effective communication underpin all of its work. Audit Scotland will be responsible for adopting the framework for collaborative working outlined in this Memorandum.
13. Audit Scotland may also undertake planned performance audits and Best Value audits on public bodies involved in the provision or commissioning of housing services or on specific aspects of their work, as requested by the AGS or the Accounts Commission. Performance audits undertaken on behalf of the AGS are reported to the Scottish Parliament, primarily through the Public Audit Committee.

Statutory role of the Scottish Housing Regulator (SHR)

14. The SHR is an independent regulator of social landlords (Councils and Registered Social Landlords (RSLs)) in Scotland. It is a Non-Ministerial Department, directly accountable to the Scottish Parliament. The SHR Board of non-executive members lead the organisation by setting its strategic direction and ensuring that it achieves and delivers its functions effectively and efficiently.
15. Section 2 of The Housing (Scotland) Act 2010 (the Act) sets out SHR's statutory objective to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords.
16. The Act requires SHR to monitor, assess and report regularly on social landlords' performance of housing activities and RSLs' financial well-being and standards of governance, and to intervene where appropriate. SHR will also keep a publicly available register of social landlords.
17. The Act gives SHR a range of regulatory powers to deliver its statutory objective. It can:
 - use its inquiry powers to obtain the information and assurance it needs from landlords, assess risks and investigate problems;
 - monitor and report on landlords' performance in achieving the outcomes and standards in the Scottish Social Housing Charter;
 - set standards and outcomes which social landlords should aim to achieve, and publish these in a Scottish Social Housing Charter;
 - use its intervention powers to secure landlord improvement and protect the interests of tenants, homeless people and other service users;
 - require RSLs to seek its consent to certain types of organisational change and disposals; and

- set registration and de-registration criteria for RSLs.

18. SHR's approach to regulation is set out in its Regulatory Framework for social housing in Scotland. Registered subsidiaries of an RSL parent are also expected to comply with the standards set out in the Framework.

19. SHR also expects that a parent RSL of a non-registered subsidiary will ensure that the organisation is well governed and managing risks. SHR's powers to carry out inquiries and obtain information relating to a social landlord extend to bodies connected with a social landlord, such as a subsidiary organisation.

20. SHR's level of engagement will depend on the level of assurance it needs, taking account of the impact, probability and manageability of potential or actual risks. SHR will publish regulation plans based on its assessment of risk.

Complementary roles of audit and regulation

21. The Auditor General, the Accounts Commission and the SHR have distinct statutory responsibilities for the audit and regulation of public sector organisations providing housing related services in Scotland. However, there are some areas where their duties may overlap. For example, in relation to arrangements for governance and accountability, achieving Best Value, performance management or community planning in local authority housing and homelessness services.

22. The Auditor General, The Accounts Commission, Audit Scotland and SHR are also prescribed persons for the purposes of section 43F of the Employment Rights Act 1996, to receive qualifying "whistleblowing" information on specific subjects, as described in the Schedule to The Public Interest Disclosure (Prescribed Persons) Order 2014.

23. The Auditor General, The Accounts Commission, Audit Scotland and the SHR are also bound by various other statutory requirements, some of which are imposed on all public bodies.¹ This Memorandum is intended to operate within this wider legislative context.

A framework for collaborative working

24. The Auditor General, The Accounts Commission and the SHR are committed to ensuring that our audit and regulatory work contributes to providing assurance that public sector social housing related services in Scotland are operating efficiently and effectively and delivering Best Value; and that our recommendations and actions lead to demonstrable improvements in service delivery. We will also work to ensure that our audits and regulatory work are risk-based and proportionate, delivered efficiently and effectively and do not place an unreasonable burden on local authorities, Community Planning Partnerships (CPPs) or Health and Social Care integrated bodies.

25. In fulfilling our duty to cooperate, we are committed to:

¹ These statutory obligations include, for example, requirements around freedom of information, data protection, records management, climate change and complaints handling.

- joint discussions on planning our audit and regulatory work in local authority housing services, including sharing risk assessments;
- sharing relevant information, subject to any legal constraints;
- respecting confidentiality of shared information;
- maintaining effective communication and liaison;
- working together where appropriate;
- sharing knowledge, skills, expertise and experience; and
- secure consistent treatment of audit and regulatory issues and assessments of shared interest.

26. *Joint discussions on planning.* Audit Scotland and SHR will share annual risk assessments to inform future audit and regulatory activity. Audit Scotland and the SHR will share any significant issues or risks and consult on audit and regulatory activity in local authorities as part of the Shared Risk Assessment process. Plans for other relevant areas of work that may be undertaken (for example specific performance audits or Best Value audits by Audit Scotland or thematic studies by SHR) will be shared and discussed as part of liaison arrangements.

27. *Sharing relevant information.* Audit Scotland and the SHR will operate an open and transparent approach to sharing relevant information. The types of information which will be shared on work of relevant mutual interest includes strategic developments relating to social housing, performance and financial information, fieldwork planning, draft versions of project briefs, project initiation documents, audit reports and regulatory reports. Both organisations will provide notification to the other when it publishes relevant reports. Mechanisms for this will be agreed and reviewed as part of the liaison arrangements.

28. We will respect the confidential nature of the information we share between us. This will include, for example, draft reports, commercially sensitive information and confidential documents. Any information passed between our organisations will not be disclosed to a third party without prior discussion. This MoU may be supplemented by a separate information sharing handling agreement for specific information or project.

29. *Maintaining effective communication and liaison.* Audit Scotland and SHR staff will meet regularly to ensure effective communication between the two organisations. Senior level meetings will be held at least once a year to discuss strategic issues and progress of agreed work programmes. Audit Scotland and SHR staff will meet at an operational level when there is joint working on specific topics and as part of the Shared Risk Assessment process. It is also envisaged there will be on-going informal communication at all levels. If deemed appropriate, Audit Scotland and SHR will invite the other organisation to participate in Project Advisory Groups.

Working together where appropriate. The Auditor General, the Accounts Commission and the SHR have different statutory responsibilities and different reporting

arrangements. We therefore, do not anticipate many joint reports. However, we are committed to making the best use of our collective skills and expertise in our audit or regulatory work.

We will consider the potential for joint working, short-term secondments or placements to deliver specific audits or regulatory work, and will provide mutual advice and support as required.

30. *Sharing knowledge, skills, expertise and experience.* We believe there is much to be gained by both organisations in sharing our respective knowledge, skills and expertise. We will be open to different approaches for doing this, for example, through shared training on methodology, work shadowing and temporary secondments.

Criminal Offence

31. If it is believed that a criminal offence has been identified, Audit Scotland and SHR will liaise with the Crown Office and Procurator Fiscal Service both jointly and separately in relation to their own regulatory responsibilities.

Dispute resolution

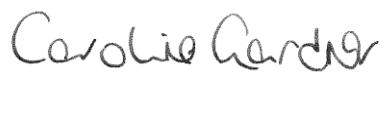
32. Both Audit Scotland and the SHR are committed to working together in an environment of mutual trust and respect and promoting a culture of openness. This approach should minimise the risk of a dispute arising. Should disputes arise, they should be resolved amicably between the staff concerned and failing that, through discussions between relevant senior managers.

Reviewing the Memorandum of Understanding

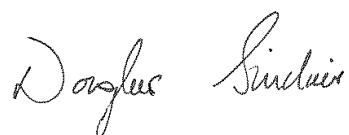
33. Named contacts will be responsible for monitoring on an on-going basis, through liaison activity, whether the MoU is working effectively and if any changes need to be made. The named contacts for this MoU are:
 - Fraser McKinlay, Director of Performance Audit and Best Value - Audit Scotland
 - Christine MacLeod, Director of Regulation, Governance & Performance Division - SHR
34. We will formally review this Memorandum every three years to ensure both organisations are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances. A formal review can also be started at the request of either organisation. In addition, the MoU will be reviewed in the event of any significant changes to the legislative or scrutiny framework for Audit Scotland or SHR.

35. This MoU came into effect on 1 August 2015.

Signed:



Signed:



Signed:



Auditor General for
Scotland

Chair of the
Accounts Commission

Chief Executive
SHR