

The Board of the Scottish Housing Regulator

6 October 2020

Board role, Standing Orders, retained decisions and operation of delegation of statutory powers

Part one

1. Board role and accountability

- 1.1 The objective and functions of the Scottish Housing Regulator are set out in the Housing (Scotland) Act 2010. The Regulator must act within and in accordance with the provisions of the 2010 Act, any updates and all other relevant legislation. The Board is accountable to the Scottish Parliament for its actions and decisions.
- 1.2 The Board will provide active and effective strategic leadership, direction, support and guidance to ensure that it achieves its statutory objective by performing its functions effectively and efficiently. It will do this by:
 - formulating the Regulator's strategy and objectives;
 - overseeing plans to implement this strategy and monitoring performance;
 - ensuring that effective management arrangements are in place, and holding the Chief Executive and senior staff to account for the management of the organisation and delivery of agreed plans;
 - establishing the values and standards of the Regulator, and ensuring the highest standards of governance;
 - ensuring that regulatory work is free from any inappropriate influence; and
 - developing relationships with key stakeholders and ensuring that the Regulator operates and explains its views in an open, accountable and responsive way.
- 1.3 Members of the Board will:
 - participate actively in collective decision-making by the Board and, where required, chair or participate in one or more of the committees of the Board;
 - be sensitive to the views of others, inside and outside the boardroom;
 - challenge constructively and rigorously proposals put to the Board by senior staff.
 - monitor and support senior staff in their implementation of the Board's decisions;
 - accept collective responsibility for decisions of the Board;
 - help the Board to focus on the interests of tenants, homeless people and other service users of social landlords;
 - attend Board meetings on a regular basis and be well prepared by reading relevant papers in advance and, if necessary, seeking further information;
 - commit to continuing personal development activities in support of their non-executive role; and
 - ensure that their actions are in accordance with the Board's Code of Conduct.
- 1.4 The Board has resolved that certain powers and decisions may only be exercised by the Board. These powers and decisions are set out in a separate document: 'Schedule of retained decisions for the Board of the Scottish Housing Regulator'. The statutory powers which it has delegated to the Chief Executive are set out in the 'Operation of delegation of statutory powers'. These documents shall have effect as if incorporated into the Standing Orders and are set out in parts two and three.
- 1.5 Two Board members, selected by the Chair will form any appeals panel along with a third advisory member who is not an SHR staff or board member. When the Board is involved in making a decision that could be appealable (registration/deregistration and

transferring assets following inquiries), in advance the Chair will select two members to form any future appeals panel should it be required. These members will take no part in the decision making process.

2. The role of the Chair

- 2.1 The Chair of the Regulator will lead the Board and harness the skills of its members in reaching decisions and in setting and pursuing its strategy. The Chair will account to the Scottish Parliament for the performance and conduct of the Regulator, and will be a representative for the Regulator in its engagement with external stakeholders.
- 2.2 The Chair will ensure that appropriate arrangements are in place to appraise the performance of the Chief Executive, Board and individual Board members.

3. The role of the deputy Chair

- 3.1 The Chair of the Board may recommend a deputy from within the Board to Scottish Ministers for appointment. Appointments will be in line with the skills required at any given time. Reappointments may be made if appropriate.
- 3.2 Any Deputy Chair of the Regulator will:
- deputise for and support the Chair as required in agreement with the Chair;
 - act as a sounding-board to the Chair;
 - lead on particular themes in agreement with the Chair depending on their particular skills, strengths and knowledge;
 - lead on complaints investigations as requested by the Chair (complaints about Board members are investigated and handled by the Ethical Standards Commissioner and the Standards Commission; and
 - assist the Chair with operational and stakeholder relationships.

4. Meetings and proceedings

- 4.1 The Board will determine how often it needs to meet, at such intervals as it considers necessary to conduct its business. No meetings will be held on bank or public holidays.
- 4.2 At least five working days' notice of the date, place and agenda of all meetings will be given in writing to all Board members. Meeting papers will also be provided five working days in advance (or seven calendar days where there are public holidays). The Chair can call a special meeting of the Board, or a committee of the Board, if deemed necessary. A special meeting may be called with fewer than five days' notice. A special meeting may also be called by agreement of three other Board members.
- 4.3 The Chair, if unable to attend, will ask the Deputy Chair to chair the meeting. If the Deputy is unavailable the Chair will ask another member of the Board to chair the meeting.
- 4.4 No business will be transacted at a meeting unless three members of the Board are present.
- 4.5 The Chief Executive and Directors of the Regulator are expected to attend meetings of the Board, along with the Corporate Governance Manager who will provide secretariat functions. Other members of the Regulator's staff will attend, depending on the matters for discussion. The Board may also meet privately with the Chief Executive after each Board meeting.

- 4.6 The Board welcomes staff observers to its meetings and also to specific agenda items and will be arranged with the Corporate Governance Manager . Any items not open to observation will be agreed in advance with the Chair.
- 4.7 If a Board member is unable to attend a meeting, they may submit comments on the Board papers in writing, in advance of the meeting. The Board should consider these comments in reaching its decision.
- 4.8 It will be the role of the Chair, in relation to meetings, to:
- determine the agenda for meetings, in conjunction with the Chief Executive;
 - decide whether an urgent matter that is not on the agenda can be discussed and if late papers can be accepted (in exceptional circumstances);
 - decide, in consultation with other members of the Board, if an item should be treated as confidential and not for public record in the minutes;
 - respond to Board member requests to pull items from the consent agenda and allow agenda time for these to be discussed;
 - ensure the business is conducted efficiently and effectively; and
 - ensure that every member of the Board has a chance to express their views on each matter under discussion.
- 4.9 Minutes of the proceedings and decisions of the Board will be drawn up and circulated to all Board members around five working days after the meeting. At its subsequent meeting, the Board will formally approve the final version for publication on the Regulator's website.
- 4.10 Where an urgent decision requires to be made between Board meetings, the Chief Executive will raise this with the Chair. The Chair will contact at least two other Board members and will take their views into account when reaching a decision. The Chair will inform the Board of this decision at its next meeting and it will be recorded in the minutes.

5. Committees

- 5.1 The Board may appoint standing or temporary committees as may be required to discharge the Regulator's responsibilities and functions, with specific remits. The Board will determine the membership and terms of reference of such committees and shall receive reports from them.
- 5.2 In line with the requirements of the Scottish Public Finance Manual, an Audit and Risk Assurance Committee is constituted to support and provide assurance to the Board in its responsibilities for issues of risk, control and governance and associated assurance through a process of constructive challenge. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.
- 5.3 A minimum of three non-executive directors will be appointed to the Audit and Risk Assurance Committee, unless the Board decides otherwise.

6. Confidentiality requirements

- 6.1 Board members will often receive or discuss information of a private nature which is not yet public, or perhaps which would not be intended to be public. Members are expected to treat all discussions and papers in a confidential manner, unless otherwise agreed. Further information on confidentiality requirements is provided in the Board's Code of Conduct.

7. Ethical standards, declaration of interests and gifts and hospitality

- 7.1 Members of the Board will ensure that they are familiar with, and that their actions comply with, the Board's Code of Conduct. In accordance with this Code, members will declare certain interests. A register of interests will be maintained, and will be publicly available on the Regulator's website. Members are required to update their entries on the register within one month of their circumstances changing.
- 7.2 At the start of each Board meeting, members will be asked to declare any interest in relation to the matters for discussion. If a Board member has a personal or professional interest which could compromise the independence of their decision-making or which could present, or may be perceived as, a conflict of interest, the Board member must:
- declare this;
 - not take part in any decision affected by this conflict of interest; and
 - leave the meeting while the relevant business is discussed.
- 7.3 Where an interest in an agenda item is known in advance of the meeting, the Chair may discuss with the Board member whether he or she should receive Board papers relating to the item.
- 7.4 Any declarations of interest relating to matters being considered by the Board will be recorded in the minutes of that meeting.
- 7.5 Members are responsible for and are required to update the Board's gifts and hospitality register within one month of being offered a gift or hospitality. The register will be published on the Regulator's website.

8. Review

- 8.1 The ARAC will review this document and agree proposals for Board approval at least once every three years.

Part Two

Schedule of retained decisions for the Board of the Scottish Housing Regulator

1. Introduction and background

- 1.1 The objectives and functions of the Scottish Housing Regulator are set out in the Housing (Scotland) Act 2010.
- 1.2 The Regulator's functions lie with the Board which consists of Non Executive members appointed by Scottish Ministers through the public appointments process. The Board is responsible for the leadership and strategic direction of the organisation, ensuring that it achieves its statutory objective, carries out its functions effectively and efficiently and is a best value organisation. The Board must ensure that the Regulator has appropriate arrangements in place for corporate and business planning, risk and financial management, and reporting on its performance.
- 1.3 Board Members have collective responsibility for the actions and decisions of the Regulator and are accountable to the Scottish Parliament.
- 1.4 All matters set out in section two below are reserved for decisions by the Board. All other matters are delegated to the Chief Executive. The Chief Executive is authorised to delegate powers to senior staff of the Regulator within the limits of his own delegated authority, and to supervise the exercise of delegated powers.
- 1.5 Part three sets out the scheme of delegation for the Regulator's statutory powers.

2. Schedule of reserved authority

Board Business

- 2.1 Appointment of a chief executive, as a member of staff, with the approval of Ministers.
- 2.2 Receiving and recording Board Members' declarations of interest in a public register.
- 2.3 Approval of the Board's remit and standing orders and the terms of reference and membership of committees acting on behalf of the Board.
- 2.4 Approval of the framework document setting out the terms of agreement between the Regulator and Scottish Ministers, in relation to the governance and financing and operation of the functions of the Regulator.

Corporate strategy and performance

- 2.5 Setting the strategic direction for the Regulator and approval of its Corporate Plan.
- 2.6 Approval of the Regulator's communication strategy.
- 2.7 Approval of the Regulator's fraud, whistle blowing and anti bribery policy statements.
- 2.8 Approval of the Regulator's health and safety policy statement.
- 2.9 Approval of the Regulator's strategy for meeting its equalities duties.
- 2.10 Approval of the Regulator's consultation and involvement strategy.
- 2.11 Approval of the Regulator's strategy for meeting its environmental and climate change duties.
- 2.12 Approval of the risk management strategy for the Regulator and ensuring significant risks are suitably and sufficiently identified, monitored and controlled.
- 2.13 Approval of the Regulator's annual operating plan.
- 2.14 Approval and monitoring of the budget for the Regulator.
- 2.15 Appointment of internal auditors.
- 2.16 Approval of all proposals to commit expenditure on goods and services over £25,000. In addition specific approval of all proposals to commit expenditure on research commission or consultancy work costing more than £10,000.
- 2.17 Approval of all proposals to appoint a temporary or interim member of staff where the cost of the appointment is likely to exceed £10,000 in total **and** the person would be paid at or above a salary at the annual equivalent of £60,000.
- 2.18 Approval of the annual report and accounts for the Regulator to be laid before Parliament.

Regulation

- 2.19 Approval of the regulatory framework. This will include standards of governance and financial management, a code of practice on inquiries; and how the Regulator will:
 - register and de-register Social Landlords;
 - use its intervention powers;

- involve tenants and others in its work; and
- monitor and assess landlords' achievement of the Scottish Social Housing Charter outcomes.

2.20 Approval of the scheme of delegation for the Regulator's statutory powers set out in part three. The table below sets out a summary of the powers the Board will retain.

The Register	<ul style="list-style-type: none"> • Register a social landlord • Set criteria and guidance for registration and de-registration of a social landlord • Approve compulsory de-registrations • Approve all voluntary de-registrations • Reconsideration of a decision not to register an RSL or removal from the register of an RSL following a remittal of the case from Court of Session
Performance of Social Landlords	<ul style="list-style-type: none"> • Set performance improvement targets for all social landlords • Notify social landlords of performance improvement targets for all social landlords • Issue guidance on measuring and assessing social landlords progress towards the Scottish Social Housing Charter • Issue a Code of Conduct setting out standards of financial management and governance of RSLs • Issue guidance on the Code of Conduct • Set financial management and governance targets for all RSLs
Inquiries and Information	<ul style="list-style-type: none"> • Publish a statement setting out types of inquiries which will be published • Publish a statement setting out details on what constitutes a significant performance failure and how the Regulator will deal with information provided by tenants • Issue guidance on extent to which social landlords must seek to involve persons (or representatives of such persons) who are or who may become: homeless, tenants of social landlord; or recipients of services provided by social landlords • Issue a code of practice on inquiries
Regulatory Intervention	<ul style="list-style-type: none"> • Issue a code of practice on regulatory interventions • Transfer of assets following inquiries
RSL: Insolvency etc	<ul style="list-style-type: none"> • Determine what is meant by a step to enforce a security over a registered social landlord's land
RSL: organisational Change	<ul style="list-style-type: none"> • Determine a petition for winding up a registered social landlord • Determine an asset transfer on dissolution or winding up

2.21 Approval of the Regulator's approach to its annual regulatory risk assessment of all social landlords.

- 2.22 Approval of any statutory regulatory guidance.
- 2.23 Approval of any response to a public consultation by the Regulator.
- 2.24 Approval of the Regulator's policy and procedures for handling complaints to ensure the Regulator's approach is in line with the Scottish Public Services Ombudsman's good practice guidance.

Operational delegation of statutory powers

This table lists all the statutory powers in the Housing (Scotland) Act 2010 and sets out which powers will be exercised by the Board of Scottish Housing Regulator and which are delegated to the Chief Executive. The Chief Executive is authorised to delegate powers to staff of the Regulator within the limits of his own delegated authority, and to supervise the exercise of delegated powers.

Housing (Scotland) Act 2010	Nature of approval or decision	Authority
Delegation of Powers		
S16	Delegate the performance of any function to a person outwith the Regulator or its staff	The Chief Executive
The Register		
S20	Maintaining the register of RSLs	The Chief Executive
S23	Registering an RSL	SHR Board
S25 (1) S28 (1)	Setting regulatory registration and de-registration criteria	SHR Board
S26 (1)	Setting guidance on regulatory registration criteria	SHR Board
S30 (1) (2)	Notifying registration to other bodies	The Chief Executive
S27 (1)	Compulsory de-registration where the body: <ul style="list-style-type: none"> ◆ No longer meets (or has never met) the registration criteria ◆ Has ceased to carry out activities ◆ Has ceased to exist All other voluntary de-registrations	SHR Board SHR Board
S29 (2) (c)	Reconsideration of a decision not to register an RSL or removal from the register of an RSL following a remittal of the case from Court of Session	SHR Board
S30 (1) (2)	Notifying removal to other bodies	The Chief Executive

Performance of Social Landlords		
S34 (1) (2)	Setting Performance Improvement Targets	SHR Board The Chief Executive
S34 (4)	<ul style="list-style-type: none"> ◆ For all social landlords ◆ For individual social landlords 	
	Notifying social landlords of performance improvement targets	SHR Board The Chief Executive
	<ul style="list-style-type: none"> ◆ For all social landlords ◆ For individual social landlords 	
S35 (1)	Issuing guidance on measuring and assessing social landlords' progress towards the Scottish Social Housing Charter	SHR Board
S36 (1)	Issuing Code of Conduct setting out standards of financial management and governance for RSLs	SHR Board
S36 (3)	Issuing guidance on the Code of Conduct	SHR Board
S37 (3)	Setting financial management or governance targets for all RSLs	SHR Board
	Setting financial management or governance targets for an individual RSL	The Chief Executive
S40 (1)	Assessing social landlords' performance of housing activities	The Chief Executive
S41 (1)	Publication of annual reports on social landlords' performance in achieving the Scottish Social Housing Charter	The Chief Executive
Inquiries and Information		
S42 (4)(b)	Appointing someone to conduct an inquiry	The Chief Executive
S44 (1)	Arranging a survey of the condition of housing accommodation	The Chief Executive
S44 (3)	Authorising a person to carry out a survey of housing accommodation	The Chief Executive
S44 (5)	Notifying social landlords of intention to carry out a survey of housing accommodation	The Chief Executive
S44 (8)	Providing social landlords with a copy of the survey report	The Chief Executive
S45 (1)	Requiring an exceptional audit for the purposes of an inquiry	The Chief Executive
S46 (1)	Preparation and publication of an inquiry report	The Chief Executive
S46 (2)	Publishing statement setting out types of inquiries which will be published	SHR Board

S46 (3) (4)	Sending copies of inquiry reports to social landlords and registered tenant organisations	The Chief Executive
S47 (2)	Publishing a statement setting out details on what constitutes a significant performance failure and how the Regulator will deal with information provided by tenants	SHR Board
S48 (1)	Power to Obtain Information	The Chief Executive
S50 (1)	Issuing guidance on extent to which social landlords' must seek to involve persons (or representatives of such persons) who are or who may become: <ul style="list-style-type: none"> - homeless - tenants of social landlords; or - recipients of services provided by social landlords 	SHR Board
S51 (1)	Issuing code of practice on inquires	SHR Board
Regulatory Intervention		
S54 (1)	Issuing code of practice on regulatory interventions	SHR Board
S55 (2)	Requiring a social landlord to submit a performance improvement plan	The Chief Executive
S56 (1)	Serving enforcement notice on social landlord	The Chief Executive
S57 (2)	Appointment of manager for housing activities	The Chief Executive
S58 (1)	Appointment of manager for financial or other affairs	The Chief Executive
S60 (1)	General power to remove officers of a registered social landlord	The Chief Executive
S61 (1)	Suspension of officers etc. during or following inquiries	The Chief Executive
S61 (3)	Lifting of suspension of officers etc.	The Chief Executive
S61 (4)	Giving registered social landlord directions about the performance of a suspended individual functions or any other matter arising from the suspension	The Chief Executive
S62 (1)	Removal of officers following inquiries	The Chief Executive
S65 (1) (as amended by Housing (Amendment)(Scotland) Act 2018, s2(6)(a) –	Appointment of new officers of an RSL	The Chief Executive

<i>no substantive change but note s.65(2A) where the appointment is by virtue of s.65(1)(d) – failure to comply with a duty/requirement, the appointment is to be for so long as is necessary to so rectify the failure)</i>		
S65 (4)	Renewal of appointment of an officer	The Chief Executive
S66 (2)	Restrictions on dealing during or following inquiries	The Chief Executive
S67 (3)	Transfer of assets following inquiries	SHR Board ; or if a decision is needed between Board meetings, then the Chief Executive with consultation with Chair or in their absence two board members
S67 (4)	Consultation with tenants and secured creditors prior to making the decision to direct transfer.	The Chief Executive
S67 (7)	Consulting with OSCR in the event that the transfer of assets relates to an RSL which is a charity	The Chief Executive
Registered Social Landlords: Accounts and Audit		
S68 (1)	Determination of accounting requirements	The Chief Executive
Registered Social Landlords: Insolvency etc.		
S73 (2)	Determining what is meant by a step to enforce a security over a registered social landlords land	SHR Board
S76 (2) (4)	Giving notice of an extension, cancelation or renewal of the moratorium	The Chief Executive
S76 (5)	Giving note of moratorium ending to RSL and secured creditors	The Chief Executive
S77 (2)	Renewal of original moratorium if secured creditors give consent	The Chief Executive
S79 (1)	Appointing, or requiring RSL to appoint, an interim manager to RSL during moratorium	The Chief Executive

S80, S81, S82, S83	Making, submitting, agreeing and modifying proposals about the future ownership and management of the RSL's land	The Chief Executive
S85	Appointing a manager to implement the proposals	The Chief Executive
S88	Giving assistance to a registered social landlord	The Chief Executive
Registered Social Landlords: Organisational Change etc.		
S106 (2)	Asset transfer on dissolution or winding up	SHR Board
S106 (3)	Consultation with tenants before making a direction	The Chief Executive
S106 (5) (6)	Consultation with OSCR	The Chief Executive