



Scottish Housing
Regulator

Section 72: Reporting Information of Material Significance

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



HAPPY TO **TRANSLATE**

1. Introduction

- 1.1 Section 72 of the Housing (Scotland) Act 2010 (“the Act”) places a duty on statutory auditors and reporting accountants to disclose information of material significance to us.
- 1.2 This guidance provides examples of the type of events that we deem to be of material significance as well as setting out how any disclosure should be made.

2. What the Act says

- 2.1 Section 72 of the Act is set out as follows:

“72 Disclosure of information

- (1) *This section applies to any person appointed–
 - (a) to carry out an audit of a registered social landlord’s accounts, or
 - (b) as a reporting accountant in relation to registered social landlord.*

“reporting accountant” means a person appointed to prepare a report which, by virtue of any enactment, has to be prepared in respect of accounts which are not subject to audit.

- (2) *A person to whom this section applies must disclose information to the Regulator (and may express an opinion on it) where the person has reasonable cause to believe that the information is likely to be of material significance in relation to the performance of the Regulator’s general functions under section 3(1)(b).*
- (3) *A person to whom this section applies may disclose information to the Regulator (and may express an opinion on it) where the person has reasonable cause to believe that–
 - (a) there is no requirement to report the information under subsection (2), but
 - (b) the information is likely to be relevant to the performance of any of the Regulator’s functions.*
- (4) *A duty or power which arises under subsection (2) or (3) is not affected if the person in relation to whom it arises subsequently stops acting in the capacity mentioned in subsection (1).*
- (5) *No duty of confidentiality or other restriction on disclosure howsoever imposed prevents a person from disclosing information to the Regulator under this section.”*

3. What is information of material significance?

3.1 Section 72(2) of the Act specifies that where there is reasonable cause to believe that the information is of material significance to the performance of our functions, this information must be disclosed to us. This duty exists whether or not a disclosure has been made to another regulator, organisation or agency. The duty relates not only to affairs of the RSL, but also any parent or subsidiary body connected with the RSL where the information is relevant to our functions under section 3(10)(b) of the Act.

3.2 The Act does not define what is meant by material significance. Persons to whom the duty applies will require to exercise their judgement to consider what information will be of material significance in relation to the performance of our functions, as set out in section 3(1)(b) of the Act which are:

“to monitor, assess and report regularly on (and, where appropriate, to make regulatory interventions relating to) –

(i) social landlords’ performance of housing activities, and

(ii) registered social landlords’ financial well-being and standards of governance.”

3.3 A piece of information that has material significance may include information about anything that seriously threatens the stability of an RSL’s finances, operations, reputation or legality.

3.4 As a proportionate regulator, we are concerned with understanding and guarding against the major risks to our regulatory objective, which is set out in section 2 of the Act and which is to safeguard and promote the interests of persons who are or who may become homeless, tenants of social landlords or recipients of services provided by social landlords.

3.5 The following list provides some examples of information that we would consider being of material significance (this should be read in conjunction with our [notifiable events guidance](#) which explains when an RSL should contact us directly).

3.6 This list is not exhaustive and judgement needs to be applied in determining whether or not an issue is of material significance.

1. Anything that threatens the solvency of an RSL.
2. Information suggesting dishonesty or fraud involving a material loss of, or a major risk to, RSL’s funds, assets or reputation.
3. Failure of internal controls, including failure in governance, that results in a material loss or misappropriation of RSL funds or assets, or leads to a material amount of RSL funds or assets being put at risk.
4. Information leading to the belief or suspicion that the RSL, its board members, employees or assets have been involved in or supported criminal activity.
5. Evidence suggesting that tenants have been or were put at risk of abuse or mistreatment by the way in which the RSL has carried out its work.
6. Material or recurring breaches of legislation.
7. A deliberate or material breach of an order or direction made by SHR under its statutory powers.
8. Any information that suggests serious operational failures that may have had a material impact on tenant welfare.

3.7 Where a matter is reported to The National Crime Agency or its predecessor the Serious Organised Crime Agency (SOCA), external auditors or reporting accountants may still

have a duty to report the matter to us, if it is of material significance to the performance of our functions and does not involve tipping off. The tipping off offence is not committed where disclosures are made which are not likely to prejudice an investigation.

4. What is relevant information?

4.1 Section 72(3) of the Act gives the external auditor or reporting accountant a right to disclose information that they consider is likely to be relevant to the performance of our functions but which they do not consider to be of material significance. There is no requirement to notify us of such information. Given the discretion permitted we have not provided examples of such information. However the discretion may be exercised where the information is not regarded as being of material significance but may nonetheless give rise to concern.

5. How to report under Sections 72(2) and 72(3)

5.1 Where reporting an event under either section 72(2) or 72(3), we would expect to be notified as soon as is reasonably practicable. Reports should be forwarded either by email or in writing to:

- Email: SHR@SHR.gov.scot
- Mail: SHR, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF

5.2 The disclosure should include the following information and a template has been attached at Appendix A:

- The auditor or reporting accountant's name, company name, contact address, telephone number and email address.
- The RSL's name and registration number. If the report relates to a subsidiary or parent of an RSL then you must also provide the name of the organisation and its relationship to the RSL.
- Whether the disclosure is under section 72(2) (materially significant) or section 72(3) (not material but is relevant).
- A description of the information giving rise to concern including an estimate of the financial implications or, in the case of poor governance or internal control failure, a description of the risk.
- A brief description of the action taken by the RSL or a statement that no action has been taken.
- If the disclosure is in connection to criminal activity, confirmation that the RSL has made the police aware of the situation.
- Confirmation that the auditor or reporting accountant has notified the National Crime Agency (previously SOCA) and/or the police where the report concerns terrorist, money laundering or criminal activity.

5.3 The duty and power to report under both sections 72(2) and 72(3) continues even after someone ceases to act in the capacity of external auditor or reporting accountant to the RSL.

5.4 We will assess the information provided to consider the risk that this poses and will decide what our regulatory response needs to be, if any. Our statutory objective is to protect the interests of tenants and others and our regulatory response is based on the level of assurance we need to do this. If we are satisfied that an issue is being handled appropriately then we may require no additional assurance. If we require additional

assurance, we may review the level of engagement that we have with a landlord. We may also inform or ask the RSL to inform another regulator or authority if that is appropriate.

Appendix A

Section 72 disclosure template - Information of Material Significance

Information required	Details of disclosure
RSL name and registration number	
If disclosure relates to a subsidiary or parent please provide name and registered address of the organisation.	
Is the disclosure being made under S.72(2) (materially significant) or S.72(3) (not material, but is relevant)?	
Description of information giving rise to concern including an estimate of the financial implications and a description of the risk.	
Description of action taken by RSL (or its parent or subsidiary). If no action has been taken this should be stated.	
If the disclosure is in connection to criminal activity, please confirm that the RSL or its parent/subsidiary has made the police aware of the situation.	
Confirmation that the auditor has notified the National Crime Agency (previously SOCA) and/or the police where the report concerns terrorist, money laundering or criminal activity.	



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