



**Scottish Housing
Regulator**

Tenant consultation and approval

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



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1. Introduction

- 1.1 This guidance sets out the tenant consultation and approval process for Registered Social Landlords (RSLs) who propose to sell or transfer tenanted houses, restructure, or take other decisions like this which would significantly affect tenants. It aims to ensure that RSLs properly consider, and act in accordance with, the views of their tenants and that the interests of tenants are protected.
- 1.2 The guidance applies in each of the following situations:
 - sale or transfer of tenanted homes;
 - an RSL proposing to become a subsidiary;
 - where a court has issued an order summoning creditors to a meeting to agree proposals to restructure an RSL that is a company, with the result that a tenant will no longer be a tenant of that landlord. We refer to this in the guidance as restructuring;
 - voluntary wind up or dissolution of a registered society and/or company;
 - a company entering into a voluntary arrangement; or
 - conversion of an RSL that is a company into a registered society.
- 1.3 For ease of reference, we set out our requirements under each of these situations in parts 2 to 7 of this guidance.
- 1.4 In all of these circumstances the RSL must consult with and seek the approval of affected tenants for what it proposes to do.
- 1.5 We refer to a number of statutes in the guidance. For ease of reference these are:
 - The Housing (Scotland) 2010 (as amended) – the 2010 Act
 - The Co-operative and Community Benefit Societies Act 2014 – the 2014 Act
 - The Companies Act 2006 – the Companies Act
 - The Insolvency Act 1986 – the Insolvency Act
- 1.6 We have produced this guidance to comply with the requirements in Parts 8 and 9 of the 2010 Act which requires us to issue guidance in relation to:
 - Section 115B (1) - tenant consultation and approval under sections 115 and 115A;
 - Section 98 (5) and section 99 (5) - tenant consultation about the voluntary winding up or proposed dissolution of a registered society under sections 98 and 99 of the Act; and
 - Section 102 (6) – tenant consultation where it is proposed to convert an RSL that is a company into a registered society under section 102 of the Act.
- 1.7 We set out a range of proportionate measures designed to ensure that tenants' interests are safeguarded. RSLs must comply in full with the requirements of the 2010 Act.
- 1.8 RSLs should adopt in full the requirements that are set out in this guidance. Where an RSL considers that exceptional circumstances have arisen, it should discuss with us why a departure from this guidance is considered necessary, and it should explain the reasons for the departure to its tenants.

Notifiable events and other guidance

- 1.9 If an RSL is proposing to dispose of tenanted houses it must notify us. Our [Notifiable Events](#) guidance gives advice about how to notify us. An RSL proposing to dispose of tenanted houses should ensure the purpose and implications of the disposal are reflected in its business plan and that it meets Standard 7 of the Standards of Governance and Financial Management. We may ask to review the business plan when an RSL notifies us about a proposed disposal.
- 1.10 We have also produced guidance for RSLs on [Group structures](#). RSLs should consider this when taking forward a proposal to become the subsidiary of another body.
- 1.11 In all cases where an RSL is considering the sale or transfer of property to which this guidance applies, or where it is considering proposals to restructure, the RSL should notify us at an early stage in its deliberations, in accordance with our [Notifiable Events](#) guidance. While our consent is not required for the sale or transfer of RSL assets or for restructuring, early notification will allow us to engage with the RSL and, where appropriate, its tenants and funders, in order to ensure that the interests of tenants and stakeholders are safeguarded. We may also be able to provide support and guidance to the RSL.

2. Proposal to sell or transfer tenanted homes - Tenant consultation requirements

2.1 When an RSL proposes to dispose of land which results in a change of landlord where a tenant ceases to be a tenant of the landlord, the RSL must comply with the requirements of the 2010 Act, including:

- (S115) - consult with each tenant included in the proposed disposal;
- (S115A 1) - conduct a ballot or seek the written agreement of tenants included in the proposed disposal;
- (S115A 2) - notify us of the results of the ballot or written agreement before making the disposal;
- (S115B 3) - have regard to the guidance issued by us when complying with the legislative requirements for tenant consultation and approval.

Assistance for tenants

2.2 The implications for tenants where tenanted homes are being sold or transferred can be significant. The detail of and the rationale for the proposal may be very technical. It is important that tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.

2.3 The RSL should make arrangements for the provision of free and independent professional advice to the tenants of each house included in the proposed disposal and its tenants should be able to access this resource from the outset of the consultation.

Notice of the Proposal

2.4 S115 (1) of the 2010 Act (tenant consultation) states that an RSL proposing to make a disposal must serve a notice on the tenants of each house included in the proposed disposal.

2.5 The 2010 Act requires that the notice must:

- specify to whom the proposed disposal is to be made;
- explain the likely consequences of the proposal for tenants;
- inform tenants of their right to make representations to the RSL within such reasonable period (of not less than 28 days) as may be specified; and
- include such other details as the landlord considers appropriate.

2.6 Where the disposal is to another RSL the notice should include as a minimum:

- information on the implications for their tenancy and all the rights and responsibilities contained in that tenancy;
- details of the proposed membership and governance arrangements (including how tenants can participate as well as become members);
- details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards).

2.7 Where the disposal is to a person or body other than an RSL, the landlord should also explain the likely consequences of the proposal for tenants including as a minimum information about:

- how the loss of status as a social tenant will affect tenants' rights and interests and how the rights and interests of current and future tenants will be protected following the disposal;
- how tenants can participate and become involved with their landlord and in the

- decisions it makes; and
 - details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards).
- 2.8 The notice should be issued long enough before the proposed disposal to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants must be advised of their right to make representations and be given a reasonable period of time in which to do so. RSLs are obliged by the 2010 Act to allow for a minimum of 28 days. RSLs should consider a longer consultation period where at all possible.
- 2.9 The RSL should consult us about its proposals for tenant consultation including the length of the consultation period in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.
- 2.10 The 2010 Act requires that the RSL must consider any representations made to it within the specified time period in relation to the first written notice.
- 2.11 In addition the RSL should:
- give careful consideration to the representations made by tenants and discuss them with the independent tenant adviser;
 - take account of any concerns raised by tenants during the consultation;
 - reflect on any new information which comes to light such as our engagement with a proposed recipient landlord; and
 - record that they have undertaken the requirements set out above and also any decisions taken in light of any representations, information or concerns that are brought to their attention as a consequence of undertaking these requirements.
- 2.12 Where responses received in relation to the first written notice raise significant concerns about the proposal, the RSL should consider whether to halt or proceed with its proposal. This need not automatically mean that the RSL does not proceed to the next stage in seeking tenant approval, for example if a significant number of tenants are undecided at the point of the first stage in the consultation process.
- 2.13 Where the consultation identifies any material considerations not previously identified by the RSL, it should consider whether it is appropriate to continue to the next stage.
- 2.14 The RSL must, after considering the representations, serve a further notice (the second notice). The second notice must:
- inform them of any changes to the proposal and explain that the proposal requires the approval of tenants by way of ballot or written agreement.
- 2.15 Prior to issuing this second notice, the RSL should consult with the independent tenant adviser to ensure that the information in the second notice is informed by, and adequately reflects, the views that have been expressed by the tenants who have responded to the first notice.
- 2.16 The next stage is to seek the approval of tenants by carrying out a ballot or seeking tenants' written agreement. Section 115A of the 2010 Act (tenant approval) requires that a ballot of tenants is conducted or that the RSL seeks the written agreement of its tenants for the proposed disposal. Guidance on how to conduct a ballot and how to seek the written agreement of tenants likely to be affected by the proposal is provided in part 8 of this guidance.

3. Proposal that a registered social landlord becomes a subsidiary of another body

- 3.1 This part of the guidance applies where an RSL, which is a registered society or a registered company, proposes to enter into an arrangement under which it will become a subsidiary of a body of which it is not currently a subsidiary. In these circumstances the RSL must have regard to the provisions of section 104A of the 2010 Act which in turn requires that the RSL must comply with sections 115 to 120 of the 2010 Act.
- 3.2 This means the RSL must have regard to the following requirements of the 2010 Act:
- (S115) - consult with its tenants (this extends to all tenants of the RSL);
 - (S115A 1) - conduct a ballot or seek the written agreement of its tenants (this extends to all tenants of the RSL);
 - (S115A 2) - notify us of the results of the ballot or written agreement before implementing the proposal; and
 - (S115B 3) - have regard to the guidance issued by us when complying with the legislative requirements for tenant consultation and approval.

Assistance for tenants

- 3.3 The implications for tenants of such a proposal may be significant. The detail of and the rationale for the proposal may be very technical and may not be readily understood by tenants. It is important that tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.
- 3.4 The RSL should make arrangements for the provision of free and independent professional advice to its tenants and its tenants should be able to access this resource from the outset of the consultation.

Notice of the Proposal

- 3.5 S115 (1) of the 2010 Act (tenant consultation) states that the RSL must serve a notice on the tenants. This means on all tenants affected by the proposal, which in this case means all of the RSL's tenants. Section 115 of the 2010 Act requires that the written notice must:
- specify the body of which it is proposed the RSL will become a subsidiary (the parent organisation);
 - explain the likely consequences of the proposal for tenants;
 - inform tenants of their right to make representations to the RSL within such reasonable period (of not less than 28 days) as may be specified; and
 - include such other details about the proposal as the landlord considers appropriate.
- 3.6 The notice should include as a minimum:
- the reasons for the proposal (to include financial information and a summary of any business plan upon which the proposal is based);
 - a summary of the benefits and any potential disbenefits of the proposal;
 - explain when it is that the proposal will be implemented, and
 - details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards).
- 3.7 The notice should be issued long enough before the proposal to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants must be advised of their right to make representations and be given a reasonable period of time in which to do so. RSLs are obliged by the 2010 Act to allow for a minimum of 28 days. RSLs should consider a longer consultation period where at all possible.

- 3.8 The RSL should consult us about its proposals for tenant consultation, including the length of the consultation period, in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.
- 3.9 The 2010 Act requires that the RSL must consider any representations made to it within the specified time period in relation to the first written notice.
- 3.10 In addition the RSL should:
- give careful consideration to the representations made by tenants and discuss these with the independent tenant adviser;
 - take account of any concerns raised by tenants during the consultation;
 - reflect on any new information which comes to light such as our engagement with relation to any proposed parent body; and
 - record that they have undertaken the requirements set out above and also any decisions taken in light of any representations, information or concerns that are brought to their attention as a consequence of undertaking these requirements.
- 3.11 Where responses received in relation to the first written notice raise significant concerns about the proposal, the RSL should consider whether to halt or proceed with its proposal. This need not automatically mean that the RSL does not proceed to the next stage in seeking tenant approval, for example if a significant number of tenants are undecided at the point of the first stage in the consultation process.
- 3.12 Where the consultation identifies any material considerations not previously identified by the RSL, it should consider whether it is appropriate to continue to the next stage.
- 3.13 The RSL must, after considering the representations, serve a further notice (the second notice). The second notice must:
- inform them of any changes to the proposal and explain that the proposal requires the approval of tenants by way of ballot or written agreement.
- 3.14 Prior to issuing this second notice the RSL should consult with the independent tenant adviser to ensure that the information in the second notice is informed by and adequately reflects the views that have been expressed by the tenants who have responded to the first notice.
- 3.15 The next stage is to seek the approval of tenants by carrying out a ballot or seeking tenants' written agreement. Section 115A of the 2010 Act (tenant approval) requires that a ballot of tenants is conducted or that the RSL seeks the written agreement of its tenants for the proposal. Guidance on how to conduct a ballot and how to seek the written agreement of tenants likely to be affected by the proposal is provided in part 8 of this guidance.

4. Companies: Restructuring - Tenant consultation requirements

- 4.1 This part of the guidance applies to situations where an RSL which is a company, proposes to restructure and where the restructuring will result in a tenant ceasing to be a tenant of the RSL. The relevant statutory provisions are to be found in section 100A of the 2010 Act.
- 4.2 Restructuring might include:
- amalgamation; or
 - transfer of engagements.
- 4.3 It does not include where a company is being wound up or is in administration.
- 4.4 In the circumstances described above the RSL must comply with the requirements set out in the following sections of the 2010 Act:
- (S115) - consult with each tenant affected by the proposal;
 - (S115A 1) - conduct a ballot or seek the written agreement of tenants affected by the proposal;
 - (S115A 2) - notify us of the results of the ballot or written agreement before implementing the proposal; and
 - (S115B 3) - have regard to the guidance issued by us when complying with the legislative requirements for tenant consultation and approval.

Assistance for tenants

- 4.5 The implications for tenants of such a proposal may be significant. The detail of and the rationale for the proposal may be very technical and may not be readily understood by tenants. It is important that tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.
- 4.6 The RSL should make arrangements for the provision of free and independent professional advice to its tenants and its tenants should be able to access this resource from the outset of the consultation.

Notice of the Proposed Restructuring

- 4.7 S115 (1) (tenant consultation) of the 2010 Act states that the RSL must serve a notice on the tenants. This means on any tenant who will cease to be a tenant of the RSL if the proposal is implemented.
- 4.8 Section 115 of the 2010 Act requires that the notice must:
- specify the nature of the proposal including specifying with whom any proposed amalgamation or transfer is to be made;
 - explain the likely consequences of the proposal for tenants;
 - inform tenants of their right to make representations to the RSL within such reasonable period (of not less than 28 days) as may be specified, and
 - provide such other details about the proposed disposal as the landlord considers appropriate.
- 4.9 The notice to tenants should include as a minimum:
- information on the implications for their tenancy and all the rights and responsibilities contained in that tenancy;
 - where appropriate details of the proposed membership and governance arrangements that will come about as a consequence of the proposal (including, where appropriate, how tenants can become members);

- details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards);
 - where appropriate how the loss of status as a social tenant will affect tenants' rights and interests; and how the rights and interests of current and future tenants will be protected following the disposal; and
 - information about how tenants can participate and become involved with their landlord and in the decisions it makes.
- 4.10 The notice should be issued long enough before the proposed restructuring to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants must be advised of their right to make representations and be given a reasonable period of time in which to do so. RSLs are obliged by the 2010 Act to allow for a minimum of 28 days. RSLs should consider a longer consultation period where at all possible.
- 4.11 The RSL should consult us about its proposals for tenant consultation, including the length of the consultation period, in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.
- 4.12 The 2010 Act requires that the RSL must consider any representations made to it within the specified time period in relation to the first written notice.
- 4.13 In addition the RSL should:
- give careful consideration to the representations made by tenants and discuss these with the independent tenant adviser;
 - take account of any concerns raised by tenants during the consultation;
 - reflect on any new information which comes to light such as our engagement with a proposed recipient landlord; and
 - record that they have undertaken the requirements set out above and also any decisions taken in light of any representations, information or concerns that are brought to their attention as a consequence of undertaking these requirements.
- 4.14 Where responses received in relation to the first written notice raise significant concerns about the proposal, the RSL should consider whether to halt or proceed with its proposal. This need not automatically mean that the RSL does not proceed to the next stage in seeking tenant approval, for example if a significant number of tenants are undecided at the point of the first stage in the consultation process.
- 4.15 Where the consultation identifies any material considerations not previously identified by the RSL, it should consider whether it is appropriate to continue to the next stage.
- 4.16 The RSL must, after considering the representations, serve a further notice (the second notice). The second notice must:
- inform them of any changes to the proposal and explain that the proposal requires the approval of tenants by way of ballot or written agreement.
- 4.17 Prior to issuing this second notice the RSL should consult with the independent tenant adviser to ensure that the information in the second notice is informed by and adequately reflects the views that have been expressed by the tenants who have responded to the first notice.
- 4.18 The next stage is to seek the approval of tenants by carrying out a ballot or seeking tenants written agreement. Section 115A of the 2010 Act (tenant approval) requires that a ballot of tenants is conducted or that the RSL seeks the written agreement of its

tenants for the proposed restructure. Guidance on how to conduct a ballot and how to seek the written agreement of tenants likely to be affected by the proposal is provided in part 8 of this guidance.

5. Registered societies: Restructuring – Tenant consultation requirements

- 5.1 This part of the guidance applies where a registered society proposes to pass a special resolution for the purposes of a restructuring provision where the restructuring:
- will result in a tenant under a Scottish secure tenancy ceasing to be a tenant of the society proposing the restructuring; and
 - is a restructuring other than the conversion of the registered society into a company.
- 5.2 The relevant statutory provisions are set out in section 96A of the 2010 Act. For the purposes of section 96A restructuring includes:
- amalgamation; or
 - transfer of engagements
- 5.3 It does not include the conversion of a registered society into a company in accordance with section 112 of the 2014 Act. RSLs that are unsure as to whether a proposal is covered by section 96A of the 2010 Act should take professional advice and should discuss the proposal with us.
- 5.4 In the circumstances described above the RSL must comply with the requirements set out in the following sections of the 2010 Act:
- (S115) - consult with each tenant affected by the proposal;
 - (S115A 1) - conduct a ballot or seek the written agreement of tenants affected by the proposal;
 - (S115A 2) - notify the Regulator of the results of the ballot or written agreement before implementing the proposal; and
 - (S115B 3) - have regard to the guidance issued by us when complying with the legislative requirements for tenant consultation and approval.

Assistance for tenants

- 5.5 The implications for tenants of such a proposal may be significant. The detail of and the rationale for the proposal may be very technical and may not be readily understood by tenants. It is important that tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.
- 5.6 The RSL should make arrangements for the provision of free and independent professional advice to its tenants and its tenants should be able to access this resource from the outset of the consultation.

Notice of the Proposed Restructuring

- 5.7 S115 (1) (tenant consultation) of the 2010 Act states that the RSL must serve a notice on the tenants. This means on any tenant who will cease to be a tenant of the RSL if the proposal is implemented.
- 5.8 Section 115 of the 2010 Act requires that the notice must:
- specify the nature of the proposal including specifying with whom any proposed amalgamation or transfer is to be made;
 - explain the likely consequences of the proposal for tenants;
 - inform tenants of their right to make representations to the RSL within such reasonable period (of not less than 28 days) as may be specified; and

- provide such other details about the proposed disposal as the landlord considers appropriate.
- 5.9 The notice to tenants should include as a minimum:
- information on the implications for their tenancy and all the rights and responsibilities contained in that tenancy;
 - where appropriate details of the proposed membership and governance arrangements that will come about as a consequence of the proposal (including, where appropriate, how tenants can become members);
 - details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards);
 - where appropriate how the loss of status as a social tenant will affect tenants' rights and interests and how the rights and interests of current and future tenants will be protected following the disposal; and
 - information about how tenants can participate and become involved with their landlord and in the decisions it makes.
- 5.10 The notice should be issued long enough before the proposal to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants must be advised of their right to make representations and be given a reasonable period of time in which to do so. RSLs are obliged by the 2010 Act to allow for a minimum of 28 days. RSLs should consider a longer consultation period where at all possible.
- 5.11 The RSL should consult us about its proposals for tenant consultation, including the length of the consultation period, in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.
- 5.12 The 2010 Act requires that the RSL must consider any representations made to it within the specified time period in relation to the first written notice.
- 5.13 In addition the RSL should:
- give careful consideration to the representations made by tenants and discuss these with the independent tenant adviser;
 - take account of any concerns raised by tenants during the consultation;
 - reflect on any new information which comes to light such as our engagement with a proposed recipient landlord; and
 - record that they have undertaken the requirements set out above and also any decisions taken in light of any representations, information or concerns that are brought to their attention as a consequence of undertaking these requirements.
- 5.14 Where responses received in relation to the first written notice raise significant concerns about the proposal, the RSL should consider whether to halt or proceed with its proposal. This need not automatically mean that the RSL does not proceed to the next stage in seeking tenant approval, for example if a significant number of tenants are undecided at the point of the first stage in the consultation process.
- 5.15 Where the consultation identifies any material considerations not previously identified by the RSL, it should consider whether it is appropriate to continue to the next stage.
- 5.16 The RSL must, after considering the representations, serve a further notice (the second notice). The second notice must:

- inform them of any changes to the proposal and explain that the proposal requires the approval of tenants by way of ballot or written agreement.
- 5.17 Prior to issuing this second notice the RSL should consult with the independent tenant adviser to ensure that the information in the second notice is informed by and adequately reflects the views that have been expressed by the tenants who have responded to the first notice.
- 5.18 The next stage is to seek the approval of tenants by carrying out a ballot or seeking tenants' written agreement. Section 115A of the 2010 Act (tenant approval) requires that a ballot of tenants is conducted or that the RSL seeks the written agreement of its tenants for the proposed restructure. Guidance on how to conduct a ballot and how to seek the written agreement of tenants likely to be affected by the proposal is provided in part 8 of the guidance.

6. Proposed conversion to a registered society, voluntary arrangement or voluntary winding up of a company - Tenant consultation requirements

- 6.1 This part of the guidance applies where it is proposed to convert an RSL that is a company into a registered society under section 115 of the 2014 Act.
- 6.2 This part of the guidance also applies where an RSL that is a company proposes to enter into a voluntary arrangement under the Insolvency Act or where it is proposed that the company is wound up.
- 6.3 In these circumstances the undernoted sections of the 2010 Act will apply:
- Section 102 – Conversion to a registered society
 - Section 103 – Voluntary arrangement
 - Section 104 – Voluntary winding up
- 6.4 Where the proposal is that the company is to be converted into a registered society it must consult its tenants before passing a special resolution.
- 6.5 Where the proposal is that the company enters into a voluntary arrangement it must consult its tenants before the arrangement is approved.
- 6.6 Where the proposal is that the company is wound up it must consult its tenants before passing a special resolution. RSLs are also required under section 73 of the 2010 Act to notify us before, and as soon as reasonably practicable after notice of a proposal of a resolution for winding up of an RSL which is a company is given to members of the company who are entitled to vote on the proposal.
- 6.7 We are required to issue guidance on the consultation processes that are to be adopted in each case. Registered societies are required by the 2010 Act to have regard to our guidance.

Assistance for tenants

- 6.8 The implications for tenants where an RSL is being wound up or dissolved can be significant as can the implications of conversion to a registered society. It is important that its tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.
- 6.9 The RSL should make arrangements for the provision of free and independent professional advice for its tenants and its tenants should be able to access this resource from the outset of the consultation.

Conversion to a registered society

- 6.10 Where it is proposed that the company should convert to a registered society, before passing a special resolution under section 115 of 2014 Act the company should serve each tenant with a notice that:
- provides details of the proposed conversion. This should include clear and detailed reasons for the proposals;
 - explains the likely consequences of the proposal for tenants, including information on the implications for their tenancy; and
 - provides any other details about the proposal as the landlord considers appropriate.
- 6.11 The notice should be issued long enough before the proposed conversion to enable

tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants should also be advised of their right to make representations and be given a reasonable period of time in which to do so. The 2010 Act does not specify a minimum period of time but as such a proposal may have significant consequences for tenants, we consider that the minimum period should be 28 days.

- 6.12 The RSL should consult us about its proposals for tenant consultation including the length of the consultation period in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders
- 6.13 The RSL should consider any representations made to it within the specified time period in relation to its written notice. We require the RSL to give careful consideration to the representations made by tenants and discuss these with any independent tenant adviser.
- 6.14 The RSL should take account of any concerns raised by tenants during the consultation and inform its tenants of the outcome of the consultation before proceeding to pass a resolution.

Notification

- 6.15 The 2010 Act does not require the RSL to notify us of the outcome of the consultation. However in the interests of openness and transparency we would prefer that the RSL does so.
- 6.16 As part of its notification to us, the RSL should:
- confirm that it has complied with this regulatory guidance on the conduct of the tenant consultation exercise; and
 - provide to us the independent tenant adviser's confirmation of the conduct of the tenant consultation exercise.
- 6.17 The RSL must, as soon as reasonably practicable after sending the resolution to the registrar of companies, notify us of the conversion. We consider "as soon as reasonably practicable" to be within ten working days but our preference is that we are notified at the time the resolution is sent to the registrar.

Voluntary arrangement

- 6.18 Where it is proposed that the company enters into a voluntary arrangement the arrangement cannot be approved under section 4 of the Insolvency Act before the RSL consults with its tenants. The RSL should serve each tenant with a notice that:
- provides details of the proposed arrangement to its tenants. This should include the reasons for the proposals;
 - explains the likely consequences of the proposal for tenants, including information on the implications for their tenancy; and
 - provides any other details about the proposal as the landlord considers appropriate.
- 6.19 The notice should be issued long enough before it is proposed that the arrangement is to be approved to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants should also be advised of their right to make representations and be given a reasonable period of time in which to do so. The 2010 Act does not specify a minimum period of time but as such a proposal may have significant consequences for tenants, we consider that the minimum period should be

28 days.

- 6.20 The RSL should consult us about its proposals for tenant consultation, including the length of the consultation period, in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.
- 6.21 The RSL should consider any representations made to it within the specified time period in relation to its written notice. We require the RSL to give careful consideration to the representations made by tenants and discuss them with any independent tenant adviser.
- 6.22 The RSL should take account of any concerns raised by tenants during the consultation and inform its tenants of the outcome of the consultation before proceeding to pass a resolution for the winding up of the RSL.

Notification

- 6.23 The 2010 Act does not require the RSL to notify us of the outcome of the consultation. However in the interests of openness and transparency we would prefer that the RSL does so.
- 6.24 As part of its notification to us, the RSL should:
- confirm that it has complied with this regulatory guidance on the conduct of the tenant consultation exercise; and
 - provide to us the independent tenant adviser's confirmation of the conduct of the tenant consultation exercise.
- 6.25 The 2010 Act requires that the RSL must notify us as soon as reasonably practicable after the voluntary arrangement takes effect. We consider "as soon as reasonably practicable" to be within ten working days but our preference is that we are notified as soon as possible.

Voluntary Winding Up

- 6.26 Where it is proposed that the RSL is wound up the RSL cannot pass a special resolution before it consults with its tenants.
- 6.27 The RSL should serve each tenant with a notice that:
- provides details of the proposed winding up to its tenants. This should include the reasons for the proposals;
 - explains the likely consequences of the winding up for tenants, including information on the implications for their tenancy; and
 - provides any other details about the proposal as the landlord considers appropriate.
- 6.28 The notice should be issued long enough before the proposed winding up to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants should also be advised of their right to make representations and be given a reasonable period of time in which to do so. The 2010 Act does not specify a minimum period of time but as such a proposal may have significant consequences for tenants, we consider that the minimum period should be 28 days.
- 6.29 The RSL should consult us about its proposals for tenant consultation, including the length of the consultation period, in order that we can assess whether the consultation will provide sufficient safeguards in the interests of tenants and stakeholders.

- 6.30 The RSL should consider any representations made to it within the specified time period in relation to its written notice. We require the RSL to give careful consideration to the representations made by tenants and discuss them with any independent tenant adviser.
- 6.31 The RSL should take account of any concerns raised by tenants during the consultation and inform its tenants of the outcome of the consultation before proceeding to pass a resolution for the winding up of the RSL.

Notification

- 6.32 The 2010 Act does not require the RSL to notify us of the outcome of the consultation. However in the interests of openness and transparency we would prefer that the RSL does so.
- 6.33 As part of its notification to us, the RSL should:
- confirm that it has complied with this regulatory guidance on the conduct of the tenant consultation exercise; and
 - provide to us the independent tenant adviser's confirmation of the conduct of the tenant consultation exercise.
- 6.34 The RSL must as soon as reasonably practicable after sending a copy of the resolution to the registrar of companies notify us of the winding up. We consider "as soon as reasonably practicable" to be within ten working days but our preference is that we are notified at the time the resolution is sent to the registrar.

7. Proposed voluntary wind up or dissolution of a registered society - Tenant consultation requirements

- 7.1 This part of the guidance applies where it is proposed to wind up or dissolve an RSL that is a registered society.
- 7.2 In these circumstances the following sections of the 2010 Act will apply:
- S98 - voluntarily wind up; or
 - S99 - dissolution of the registered society
- 7.3 Where the proposal is that the registered society is to be wound up the 2010 Act requires that it must consult with its tenants before it makes a resolution to wind up. RSLs are also required under section 73 of the 2010 Act to notify us before, and as soon as reasonably practicable after, notice of a proposal of a resolution for winding up of an RSL which is a registered society is given to members of the registered society who are entitled to vote on the proposal.
- 7.4 Where the proposal is that the registered society is to be dissolved, the 2010 Act requires that it must consult with its tenants before it seeking the approval of the Financial Conduct Authority for the proposal.
- 7.5 We are required to issue guidance on the consultation processes that are to be adopted in each case. Registered societies are required by the 2010 Act to have regard to our guidance.

Assistance for tenants

- 7.6 The implications for tenants where an RSL is being wound up or dissolved can be significant. It is important that tenants are able to understand the implications of the proposal and consequently that they can obtain advice from an independent source.
- 7.7 The RSL should make arrangements for the provision of free and independent professional advice to its tenants and its tenants should be able to access this resource from the outset of the consultation.

Notice to tenants

- 7.8 In the case of voluntary winding up or the proposed dissolution of a registered society, the RSL should serve each tenant with a notice that:
- provides details of the proposed voluntary winding or the proposed dissolution of the registered society to its tenants. This should include the reasons for the proposals;
 - explains the likely consequences of the proposal for tenants, including information on the implications for their tenancy; and
 - provides any other details about the proposal as the landlord considers appropriate.
- 7.9 The notice should be issued long enough before the proposed winding up or dissolution to enable tenants to consider the proposal and its implications (including its legal implications), to discuss the proposals collectively, and to take independent advice. Tenants should also be advised of their right to make representations and be given a reasonable period of time in which to do so. The 2010 Act does not specify a minimum period of time but as such a proposal may have significant consequences for tenants, we consider that the minimum period should be 28 days.
- 7.10 The RSL should consult us about its proposals for tenant consultation including the length of the consultation period in order that we can assess whether the consultation

will provide sufficient safeguards in the interests of tenants and stakeholders.

- 7.11 The RSL should consider any representations made to it within the specified time period in relation to its written notice. We require the RSL to give careful consideration to the representations made by tenants and discuss these with any independent tenant adviser.
- 7.12 The RSL should take account of any concerns raised by tenants during the consultation and inform its tenants of the outcome of the consultation before proceeding to pass a resolution for the winding up of the registered society or before seeking the approval of the Financial Conduct Authority for its dissolution.

Notification

- 7.13 The RSL should notify us of the outcome of the consultation.
- 7.14 As part of its notification to us, the RSL should:
- confirm that it has complied with this regulatory guidance on the conduct of the tenant consultation exercise; and
 - provide to us the independent tenant adviser's confirmation of the conduct of the tenant consultation exercise.
- 7.15 The RSL must notify us of the voluntary winding up or dissolution as soon as reasonably practicable after sending the copy resolution to the Financial Conduct Authority. We consider 'as soon as reasonably practicable' to be within 10 working days. In most cases we would expect to be notified at the time the resolution is sent to the Financial Conduct Authority.

8. Ballot or written agreement

- 8.1 The 2010 Act requires that in relation to a proposed sale, transfer or restructuring an RSL must conduct a ballot or seek the written agreement of the tenants included in the proposal. These processes cannot be commenced until after the tenant consultation process has been completed and the second notice has been served in each case. RSLs should refer to the relevant parts of this guidance for further information on tenant consultation.
- 8.2 The statutory provisions relating to ballots and written agreements are set out in section 115A of the 2010 Act.
- 8.3 In almost all cases, the RSL should ballot its tenants on the proposal. Only in very exceptional cases should the RSL seek to obtain the written agreement of tenants instead of carrying out a ballot. An example of when written agreement may be appropriate is where the number of tenants involved is very small and it would be practical for the RSL to engage directly with each tenant. The RSL should consult with and take account of the views of the independent tenant adviser on which method would be in the best interests of the tenants included in the proposal.
- 8.4 Any ballot ought to be conducted with regard to any guidance or good practice issued by the Electoral Commission and Ministers. The 2010 Act does not prescribe the period of time for which any ballot should be open. However, given the significance of the matters that are subject to this procedure and their potential implications for tenants, we consider that the minimum ballot period should be 28 days.
- 8.5 We would be happy to discuss detailed proposals in advance of the ballot commencing.
- 8.6 By written agreement we mean a signed agreement from tenants of houses included in the proposal acknowledging their understanding and acceptance of the proposal. Landlords should agree with the independent tenant adviser the format of the written agreement, and the method of seeking written agreement, to ensure it is carried out independently and in line with best practice.

Notification

- 8.7 The 2010 Act requires that the RSL must notify us of the results of the ballot, or of the number of written agreements sought and given, as soon as reasonably practicable after the ballot has been completed or, as the case may be, the period for the giving of written agreement has expired.
- 8.8 We consider “as soon as reasonably practicable” to be within ten working days. If the RSL believes it will be unable to notify us in this period, then it should explain the reason for the delay and request an extension. We will not unreasonably withhold or delay our agreement to an extension of time.
- 8.9 In the interests of openness and transparency and in order that we can give effect to our objective, RSLs should notify us before implementing the proposed sale, transfer or restructure.
- 8.10 As part of its notification to us, the RSL should:
- confirm that it has complied with this regulatory guidance on the conduct of the tenant consultation exercise including any ballot/written agreement; and

- provide to us the independent tenant adviser's confirmation of the results from the tenant consultation exercise including any ballot or written agreement results.

8.11 Where we are not satisfied that the majority of tenants wish the proposal to proceed, we will engage with the RSL.

8.12 The RSL has no power to dispose of land or restructure, unless the RSL has complied with these provisions and a majority of the affected tenants agree to the proposal.



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