



**Scottish Housing**  
Regulator

**Removal from the Register  
of Social Landlords  
Advisory Guidance  
March 2022**

# Removal from the Register of Social Landlords Advisory Guidance

## 1. Introduction

- 1.1 The Scottish Housing Regulator ('SHR') keeps a public Register of Social Landlords ('the Register'). To be admitted to the Register, an organisation must meet the registration criteria set out in the Housing (Scotland) Act 2010 and in the Regulatory Framework.
- 1.2 A number of different processes can result in the requirement for the removal of a Registered Social Landlord ('RSL') from the Register. Most often this will happen after an RSL has transferred its engagements to, or merged with, another RSL, and as a result it no longer meets the registration criteria.
- 1.3 This advisory guidance explains what RSLs need to do:
  - when seeking voluntary removal from the Register; and
  - when SHR seeks to compulsorily remove an RSL from the Register.
- 1.4 RSLs will often need to ensure removal from other regulatory registers following removal from the Register. The guidance also aims to provide an overview of the various de-registration processes which RSLs may require to follow and to set out the sequencing of, and inter-relationship between, each of these. It does not set out the requirements of other regulators in any detail. RSLs should liaise with other regulators regarding their requirements.
- 1.5 It is critical that an RSL undertaking the process for removal from the Register makes sure that it completes all regulatory de-registration requirements in the right order, otherwise it may be unable to provide the information required to complete de-registration with SHR.
- 1.6 We have produced this advisory guidance to help RSLs comply with the legislative and regulatory requirements relating to removal from the Register. It is not legal advice and RSLs should seek their own appropriate advice if considering removal from the Register, including advice on their legal duties in relation to removal from other regulatory registers.
- 1.7 There may be circumstances where an RSL considers that it requires to depart from the approach set out in this guidance. In such circumstances, the RSL should be clear about why it requires to depart from the approach set out in this guidance, ensure that it takes appropriate professional advice and discusses its proposal with us before proceeding.
- 1.8 This advisory guidance applies to all RSLs. It does not apply to local authorities which are not included in the Register. Any reference to 'social landlords' in this guidance is therefore a reference to RSLs and does not include local authority landlords.

## 2. Legislative and Policy Context

2.1 This advisory guidance references a number of statutes.

2.2 Part 2 (sections 20 to 30) of the Housing (Scotland) Act 2010 ('the 2010 Act') sets out the provisions for the registration and removal of social landlords from the Register (also referred to as 'de-registration'):

- section 23 sets out two types of registration criteria: legislative and regulatory;
- section 24 sets out the legislative registration criteria;
- section 25 requires the SHR to set regulatory registration criteria, which we do in section 9 of the [Regulatory Framework](#). An RSL must meet both sets of criteria to be eligible for registration and to remain registered with SHR;
- section 27 permits the SHR to remove an RSL from the Register (referred to as 'compulsory de-registration') if SHR considers that the RSL:
  - (a) no longer meets (or has never met) the registration criteria,
  - (b) has ceased to carry out activities, or
  - (c) has ceased to exist.
- section 28 requires SHR to set de-registration criteria to be applied where an RSL seeks to be removed from the register ('voluntary de-registration'). We do this in section 9 of the Regulatory Framework.

2.3 As well as the 2010 Act, this advisory guidance references a range of statutes relevant to the RSL de-registration process:

- the majority of RSLs are incorporated as 'registered societies' under the Co-operative and Community Benefit Societies Act 2014 ('the 2014 Act'). The Financial Conduct Authority ('the FCA') is the registering authority for registered societies and has set out detailed guidance on [registration and de-registration of societies](#). The Mutuals Public Register is the public record of societies registered by the FCA;
- a small number of RSLs are incorporated as companies limited by guarantee ('CLG') under the Companies Act 2006 ('the 2006 Act'). Companies House is the registering authority for companies and has set out guidance on the [striking off/winding up of companies](#). The Register of Companies is the public record of companies registered by Companies House;
- the majority of RSLs are Scottish Charities registered under the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act'). The Office of the Scottish Charity Regulator ('OSCR') is the registering authority for Scottish charities and has set out detailed guidance on the [winding up / dissolution of charities](#). The Scottish Charity Register is the public record of all charities registered with OSCR; and
- some RSLs are also property factors registered under the Property Factors (Scotland) Act 2011 ('the 2011 Act'). The Scottish Government is the registering authority for property factors and has set out further guidance on its [website](#). The Scottish Property Factor Register is the public record of all property factors registered with the Scottish Government.

2.4 We refer to the above statutes in the advisory guidance. More information about the relevant sections of each is contained in Appendix 1.

### 3. Voluntary Removal from the Register

3.1 Sections 27 and 28 of the 2010 Act provide that SHR can remove a body from the Register either as a 'compulsory de-registration' or as a 'voluntary de-registration'.

3.2 Section 28 of the 2010 Act provides for where an RSL voluntarily seeks to be removed from the Register, on the grounds that it meets the voluntary de-registration criteria set by SHR. The de-registration criteria are set out in Section 9 of the Regulatory Framework and are summarised below. The RSL must confirm in its application for removal from the Register under section 28, that it:

- does not own or manage any houses which are or will be used for the purposes of social renting;
- its de-registration does not materially affect the interests of its tenants;
- has repaid all borrowings or obtained the consent of its lenders to de-register;
- has repaid any public funding or has the agreement of the funder that no payment is required; and
- has consulted the relevant local authorities in their capacity as strategic housing authority.

3.3 In terms of section 28, if satisfied that the RSL meets the de-registration criteria, SHR must remove it from the Register. SHR's objective in considering a request for de-registration is to safeguard the interests of tenants. We will assess each request for de-registration against the criteria above. We will consider each case on its own merits and individual circumstances. If we are satisfied that the interests of tenants are safeguarded and the other de-registration criteria are met we will remove the RSL from the Register.

3.4 We set out below:

- i. a summary of what RSLs need to do when seeking voluntary removal from the Register of Social Landlords; and
- ii. more details about what RSLs need to do when seeking voluntary removal from the Register following a transfer of engagements from one RSL to another. This includes information on what an RSL needs to do to seek removal from other regulatory registers and sets out the sequence of steps and applications in relation to each registering authority, including ourselves. We set this process out in detail because it is the most common route to voluntary de-registration with SHR. All of the voluntary de-registrations under the 2010 Act to date have resulted from transfers of engagements.

#### i. Voluntary removal process

3.5 We expect RSLs who plan on seeking voluntary removal from the Register to engage with us at an early opportunity about the proposed organisational changes. We will use the information shared with us by the RSL in the course of its engagement with us to help us assess if the RSL meets the de-registration criteria.

3.6 An RSL seeking voluntary removal from the Register must produce and approve a final set of audited financial statements up to the date of transfer and an accompanying auditor's report. The RSL's governing body must also pass a resolution to request removal from the Register, and then intimate a request to SHR to remove the RSL from the Register. When requesting removal the RSL must:

- confirm that it is requesting removal under section 28 of the 2010 Act;
- confirm and provide evidence where appropriate that it meets the de-registration criteria, namely that it:
  - does not own or manage any houses which are or will be used for the purposes of

- social renting;
- its de-registration does not materially affect the interests of its tenants;
- has repaid all borrowings or obtained the consent of its lenders to de-register;
- has repaid any public funding or has the agreement of the funder that no payment is required;
- has consulted the relevant local authorities in their capacity as strategic housing authority; and
- submit its final audited financial statements and auditor's report.

- 3.7 Once in receipt of all required information, SHR's Board will consider the RSL's de-registration request. SHR's Board will approve the de-registration where it is satisfied that the de-registration criteria are met. We will then confirm the date of removal to the RSL and will also give notice of the removal to OSCR and the FCA or Companies House, as appropriate. RSLs should note that whilst SHR will notify its own decisions to OSCR and the FCA or Companies House, it will be for RSLs to make their own applications to these regulators and to any other regulatory body to which they are subject (for example the Scottish Government if it is a registered property factor) for any required consents and to secure any required removal from other registers.
- 3.8 RSLs must not seek de-registration from the FCA or Companies House registers prior to being removed from the Register of Social Landlords, otherwise they may be unable to provide the information SHR requires to complete the voluntary de-registration process (set out in section 3.6).

**ii. Detailed process for transfers of engagements of registered societies: see Appendix 2**

- 3.9 Transfers of engagements can only happen under the 2014 Act and, therefore, can only be carried out by RSLs which are incorporated as registered societies under the 2014 Act. A transfer of engagements is given effect to by a registered society passing a special resolution to transfer its engagements to any other registered society (under section 110 of the 2014 Act) or to a registered company (under section 112 of the 2014 Act) that agrees to fulfil those engagements.
- 3.10 We expect RSLs who are considering transferring their engagements to engage with us at an early opportunity to discuss their proposals. RSLs should ensure that their transfer project plan incorporates the process set out in Appendix 2. For clarity, Appendix 2 defines the transferor RSL as 'RSL A' and the transferee RSL as 'RSL B'. We adopt that terminology in this guidance.
- 3.11 Where RSL A proposes to transfer its engagements to with RSL B, RSL A must comply with the consultation requirements of the 2010 Act and the SHR Guidance on tenant consultation and approval. If RSL A decides to progress a transfer of engagements, it must undertake a consultation under section 115 of the 2010 Act. After the consultation has taken place, RSL A then needs to conduct an independent ballot or seek the written agreement of tenants in accordance with section 115A(1) of the 2010 Act.
- 3.12 At this point, RSL A may also decide to seek OSCR's consent under section 16 of the 2005 Act to wind up/dissolve. RSL A needs to seek OSCR's consent not less than 42 days before the transfer of engagements special resolution is registered by the FCA (set out in section 3.18 below). RSLs should refer to the OSCR's Guidance on Dissolution / Winding Up (see section 2.3) for more detailed information on this
- 3.13 Where the majority of tenants voting in the ballot/providing written agreement support the transfer, the RSL must notify SHR of the result in accordance with section 115A(2) of the 2010 Act and the SHR Guidance on notifiable events. At this point, SHR will update the engagement plans of both RSL A and RSL B to reflect the ballot/written agreement

outcome. SHR will also confirm arrangements for and the timing of any final regulatory returns for RSL A, to RSLs A and B, as both RSLs will be involved in the submission of the returns. The returns will include:

- Notifiable Events: SHR will confirm the final information required to close any open notifiable events.
- Annual Return on the Charter ('ARC'): SHR will confirm whether an ARC is required for RSL A or whether RSL A's stock should be included in RSL B's ARC. Where a separate ARC is required for RSL A, this will require to be submitted by RSL B.
- Loan Portfolio In-Year or End-Year Return ('LP IYR/EYR'): where RSL A has private borrowing, RSL A and RSL B will require to complete a LP Return either in year or at year end, depending on the timing of the transfer. The returns will show the transfer of borrowing from RSL A to RSL B.
- Annual Financial Statement Return ('AFS'): an AFS Return will normally be required and can be submitted by RSL B. SHR will confirm if an AFS Return is not required.
- Request for De-Registration and Annual Financial Statements and Auditors Report: SHR and the RSL will agree the timing of RSL A's request for de-registration which must be accompanied by RSL A's final audited financial statements (including a redacted version of the statements) and auditor's report. The financial statement period end will be the date of transfer registered by the FCA (set out in section 3.18 below).

3.14 If it has not already sought OSCR's consent (as set out in section 3.11), RSL A should now do so following the outcome of the ballot/written agreement.

3.15 Alongside this, RSLs A and B must comply with their constitutional requirements and section 111 or 113 of the 2014 Act which set out the requirements relating to members' and governing body agreement to the transfer. RSLs should refer to the FCA's Guidance on the FCA's Registration Function (see section 2.3) for more detailed information on this. In summary:

- RSL A needs to pass a special resolution for the transfer at a first general meeting of its members. RSL A then needs to confirm the special resolution at a second general of its members. The second meeting must take place between 14 days and one month from the date of the first meeting.
- The transfer must be to an RSL (B) who has undertaken to fulfil the engagements being transferred. Exactly how it does this will depend on its constitution and will involve either the governing body or the membership passing the resolution. This should be completed before the special resolution of the transferring society (RSL A) is confirmed at the second general meeting.

3.16 Once the above is complete, and members/governing body have approved the transfer, RSL A then needs to apply to the FCA to register the special resolution to transfer its engagements. This must be done within 14 days of the second general meeting. The resolution must be signed by the Chair of the second general meeting and countersigned by the society secretary.

3.17 RSL A can request a specific date for registration of the transfer (for example the quarter-, mid- or year- end) but this will be a matter for the FCA to agree. At the time of application, RSL A must confirm to the FCA that it has notified SHR of the transfer in accordance with our requirements and must provide evidence of this (for example via evidence that a notifiable event has been raised). If this has not been confirmed and evidenced, the FCA will not register the transfer. Once the FCA is satisfied that the application is complete and meets its requirements, it will register the special resolution. The FCA registration has the

effect of implementing the transfer resolution and RSL A's engagements will transfer to RSL B on that date.

- 3.18 At the point at which the FCA confirms it has registered the transfer, it will send RSL A a 'section 126 certificate'. This must be completed by RSL A after transfer to certify that all property vested in the society has been duly conveyed or transferred to those persons entitled to it. Registration of the section 126 certificate ends a society's registration under the 2014 Act. This cannot be restored. The section 126 certificate should not be submitted to the FCA until after RSL A has been removed from the Register of Social Landlords, otherwise RSL A may be unable to provide the information SHR requires to complete the de-registration process (set out in section 3.13).
- 3.19 RSL A must notify SHR of the implementation of the transfer in accordance with section 109 of the 2010 Act and the SHR Guidance on notifiable events. At this point, we will update RSL B's engagement plan to reflect that the transfer has taken place. We will also engage with RSL B about the delivery of any transfer commitments made to tenants and in relation to the removal of RSL A from the Register. We will only update RSL A's engagement plan where we have ongoing statutory intervention with RSL A.
- 3.20 RSL B will then support the governing body of RSL A to complete any final regulatory returns (as set out in section 3.13 above), including producing and approving final financial statements with a period end of the date of transfer and an accompanying auditor's report. RSL A's governing body must also pass a resolution to request RSL A's removal from the Register of Social Landlords, and then request that SHR removes it from the Register. When requesting removal RSL A must comply with the requirements set out at section 3.6 above. We would normally expect RSL A to seek removal from the Register within six months of transfer.
- 3.21 SHR's Board will then consider RSL A's de-registration request. Where it is satisfied that the de-registration criteria are met, SHR's Board will approve the de-registration.
- 3.22 Section 29 of the 2010 Act provides that RSLs have the right to appeal a decision about voluntary removal of an RSL from the Register in terms of section 28. Sections 3.27 to 3.30 below provide more information about the appeal process.
- 3.23 Where an RSL does not appeal SHR's decision under section 28, we will confirm the date of removal from the Register to RSLs A and B and will also confirm removal to all other relevant regulators including OSCR and the FCA.
- 3.24 Once removed from the Register of Social Landlords, RSL A can return the 'section 126 certificate' to apply to the FCA to de-register RSL A under section 126 of the 2014 Act. If satisfied that its de-registration criteria are met, the FCA will cancel RSL A's registration with it and will issue a certificate to RSL A to confirm this.
- 3.25 RSL A must then notify OSCR that it has been removed from the Mutuals Public Register within three months of the FCA's de-registration of it. If satisfied its criteria are met, OSCR will then remove RSL A from the Scottish Charity Register. Section 19 of the 2005 Act requires that any charity removed from the Scottish Charity Register remains under a duty to use its assets and any income from those assets for the purposes it had on the Scottish Charity Register at the time of removal.
- 3.26 RSLs who are registered property factors must also apply to the Scottish Government to secure removal from the Scottish Property Factor Register.

### **Transfers involving companies**

3.27 A small number of RSLs are incorporated as companies. Where an RSL constituted as a company takes a decision to pursue a transfer to another RSL it must take its own professional advice on how to progress the transfer and engage with us at an early stage in the process.

### **Partial transfers**

3.28 There may be situations where RSLs decide to transfer their housing operations but retain other operations, for example care and support services, and request removal from the Register of Social Landlords on the basis that they no longer provide social housing and no longer meet our registration criteria. RSLs should take their own professional advice about their proposals and engage with us about this at an early stage in the process.

### **Appeals of SHR decisions about voluntary removal under section 28 of the 2010 Act**

3.29 Under section 28 of the 2010 Act, if satisfied that an RSL which requests removal from the Register meets the de-registration criteria, SHR must remove it from the Register. Where an RSL requests removal and following consideration of the request and review of the evidence provided, the SHR Board decides that the de-registration criteria are not met, SHR will confirm to the RSL that it will not be removed from the Register.

3.30 Section 29 of the 2010 Act provides that RSLs have the right to appeal a decision about voluntarily removal of an RSL from the Register in terms of section 28. SHR will not proceed with a de-registration decision before any appeal has been finally determined or is withdrawn.

3.31 Where the RSL does not appeal SHR's decision not to remove it from the Register, the SHR will review our regulatory engagement with the RSL and will update its engagement plan accordingly.

3.32 Where an appeal is made to the Court of Session in terms of section 29 of the 2010 Act, the Court may determine an appeal by:

- confirming SHR's decision: we will confirm to the RSL that it remains on the Register, review our regulatory engagement and update the RSL's engagement plan accordingly; or
- remitting the case back to SHR for reconsideration. The SHR Board may decide, on the basis of a fresh consideration, not to de-register the RSL. In this case, SHR will confirm to the RSL that it will not be removed from the Register. SHR will review our regulatory engagement with the RSL and will update its engagement plan accordingly. The SHR Board may alternately decide that the de-registration criteria are met, and therefore to de-register the RSL. In this case SHR will confirm the decision to the RSL, the reasons for the decision, that the RSL has been removed from the Register and the date of removal.

3.33 SHR will also confirm the outcome of any appeals and the removal of an RSL from the Register to other regulators including the FCA, Companies House and OSCR as appropriate.

3.34 It will then be for the RSL to determine whether it requires to request removal from any other regulatory registers and to apply to the relevant registering authority.



## 4. Compulsory Removal from the Register

4.1 Section 27 of the 2010 Act provides that SHR may compulsorily remove an RSL from the Register if it considers that the RSL:

- no longer meets (or has never met) the registration criteria;
- has ceased to carry out activities; or
- has ceased to exist.

4.2 The registration criteria include the statutory registration criteria set out in section 24 of the 2010 Act and the regulatory criteria which are set out in section 9 of the Regulatory Framework. The statutory criteria include that the RSL is established for the purpose of, or has among its objects and powers, the provision, construction, improvement or management of:

- houses to be kept available for letting, or
- houses for occupation by members of that body, where the rules of that body restrict membership to persons entitled or prospectively entitled (as tenants or otherwise) to occupy a house provided or managed by that body, and,

that it carries out, or intends to carry out, those purposes, objects or powers in Scotland.

4.3 The regulatory criteria include that the RSL must be able to:

- demonstrate that it has a sustainable role within the existing social landlord network in Scotland;
- meet the Regulatory Standards of Governance and Financial Management and constitutional requirements;
- show it can meet the needs of tenants and other service users by demonstrating that it is able to meet any relevant standards of performance the Regulator expects it to meet and all other relevant outcomes, standards, legislation and guidance; and
- demonstrate it is and will remain financially viable.

4.4 Compulsory removal is one of the SHR's most significant powers and we only use this power when we are satisfied that an RSL meets the compulsory de-registration criteria and that it would be proportionate for the RSL to be compulsorily de-registered.

4.5 Appendix 3 provides an overview of the general compulsory de-registration process and Appendix 4 provides an overview of the process for compulsory de-registrations following a directed transfer under section 67 of the 2010 Act. Each Appendix sets out the process and sequence of steps the SHR and the RSL will follow to effect compulsory removal from the Register. The appendices also set out the concurrent steps that RSLs who are charities and registered societies/companies should follow to effect removal from other regulatory registers, if this is also required and is possible.

### **Compulsory Removal: see Appendix 3**

4.6 Compulsory removal is one of the SHR's most significant powers and it is likely that we will already have had significant and ongoing engagement with any RSL we seek to de-register.

4.7 Where SHR proposes to compulsorily remove an RSL from the Register, section 27 of the 2010 Act obliges the SHR to take all reasonable steps to give the RSL at least 14 days' notice of its intention, and have regard to any views expressed by the RSL in that period. As part of this process, we may ask the RSL to whom we have given notice of our intention to de-register to provide us with any information that would demonstrate that it still meets the registration criteria.

- 4.8 SHR engages with OSCR about our regulatory strategies in accordance with our published Memorandum of Understanding. Prior to taking a decision to compulsorily remove a charitable RSL from the Register, we will advise OSCR of our intention. It will be for the RSL to determine whether it also requires to seek removal from the Scottish Charity Register and, if it does, the appropriate time to apply to OSCR to be removed. We will continue to engage with OSCR until the RSL has been removed from the Register of Social Landlords.
- 4.9 It will also be for the RSL to determine if it requires to seek de-registration with the FCA or Companies House. RSLs should refer to the FCA's Guidance on the FCA's Registration Function (see section 2.3) for more detailed information on the options open to them. It is critical that an RSL which has been given notice of our intention to de-register, completes the de-registration process in relation to the Register of Social Landlords before it is de-registered by the FCA or Companies Housing, otherwise it may be unable to provide the information required to complete de-registration with SHR (see section 4.13).
- 4.10 Where, after having been given notice of the SHR's intention to compulsorily de-register it, an RSL provides sufficient evidence that it continues to meet the registration criteria, we will confirm to the RSL that it will not be removed from the Register. We will review engagement with the RSL and will update its engagement plan accordingly.
- 4.11 Where the RSL provides no or insufficient evidence of adherence to the registration criteria, or agrees with removal, the SHR Board will consider the proposal to remove the RSL and will have regard to the RSL's views and any evidence provided, before making a final decision on compulsory removal from the Register.
- 4.12 Where the SHR Board considers that the de-registration criteria are not met, we will confirm to the RSL that it will not be removed from the Register. We will review engagement with the RSL and will update its engagement plan accordingly.
- 4.13 Where the SHR Board considers that the de-registration criteria are met and that the RSL should be compulsorily removed from the Register, SHR will confirm this decision to the RSL. We will also advise the RSL about any final regulatory requirements, including the requirement to provide any final regulatory returns which may include:
- Notifiable Events: SHR will confirm the final information required to close any open notifiable events.
  - Annual Return on the Charter ('ARC'): SHR will confirm whether an ARC is required.
  - Loan Portfolio In-Year or End-Year Return ('LP IYR/EYR'): where an RSL has private borrowing, it will require to complete a LP Return either in-year or at year-end, depending on the timing of de-registration.
  - Annual Financial Statements and Auditors Report. The financial statement period end will be the date of transfer; and
  - Annual Financial Statement Return ('AFS'): SHR will confirm whether an AFS Return is required.
- 4.14 RSLs have a statutory right to appeal a decision to compulsorily remove them from the Register in terms of section 27 of the 2010 Act. They can also use SHR's appeals process. We will alert the RSL of its right to appeal and the two routes of appeal when giving notice of our decision to the RSL.
- 4.15 We will not proceed with a de-registration decision before any appeal (under either route) has been finally determined or is withdrawn.

- 4.16 Where the RSL does not appeal and submits the required final regulatory returns, we will review any final regulatory returns and, if satisfied that they meet our requirements, will confirm to the RSL that it has been removed from the Register and the date of removal.
- 4.17 Where the RSL appeals under the SHR appeals process, an appeal panel will consider the appeal. Where the appeal panel upholds the decision to de-register the RSL, SHR will confirm the decision to the RSL, the reasons for the decision, that the RSL has been removed from the Register and the date of removal. Where the appeal panel does not uphold the decision to de-register, we will confirm the decision to the RSL and that it will not be removed from the Register. We will review our regulatory engagement with the RSL and will update its engagement plan accordingly.
- 4.18 Where an appeal is made to the Court of Session, the Court may determine an appeal by
- confirming SHR's decision: we will then confirm to the RSL that it has been removed from the Register and the date of removal; or
  - remitting the case back to SHR for reconsideration. The SHR Board may decide on the basis of a fresh consideration to de-register the RSL. In this case we will confirm the decision to the RSL, the reasons for the decision, that the RSL has been removed from the Register and the date of removal. The SHR Board may alternately decide not to de-register the RSL. In this case, we will confirm to the RSL that it will not be removed from the Register. We will review our regulatory engagement with the RSL and will update its engagement plan accordingly.
- 4.19 SHR will confirm the outcome of any appeals and the removal of an RSL from the Register to other regulators including the FCA, Companies House and OSCR as appropriate.
- 4.20 It will then be for the RSL to determine whether it requires to seek de-registration from any other regulatory registers and to apply to the relevant registering authority.

**Compulsory Removal following a direction under Section 67 of the 2010 Act: see Appendix 4**

- 4.21 SHR can direct the transfer of an RSL's assets to another RSL under section 67 of the 2010 Act. Our advisory guidance on How we use our statutory powers of intervention explains that this is one of the most significant powers we have. SHR can only use this power where, having made inquiries, we consider that:
- there has been misconduct or mismanagement in an RSL's financial or other affairs; or
  - an RSL's viability is in jeopardy for financial or governance reasons or because it cannot provide housing services to an acceptable standard.
- 4.22 In either case we must also consider that the transfer of assets will improve the management of the assets. SHR can direct some, or all, of an RSL's assets to be transferred.
- 4.23 We have rarely used this power, typically in situations where there were very serious governance and/or financial management weaknesses and the RSL's viability was in jeopardy, and we directed the transfer of all of the RSL's assets.
- 4.24 This guidance sets out the process for the transfer of all assets. The process will vary where only some assets are to be transferred and we will set this out separately to any affected RSLs.
- 4.25 Appendix 4 summarises the process the SHR and RSLs will follow. For simplicity, it refers to the transferor RSL as 'RSL A' and, where relevant, the transferee RSL as 'RSL B'.

- 4.26 Section 67 of the 2010 Act requires that before making a direction SHR must consult the RSL's tenants, its secured creditors, and OSCR if the RSL is a charity. If the RSL is a charity, we will advise OSCR of our intention to direct the transfer of assets and formally consult as required under section 67.
- 4.27 The SHR Board will then consider whether to issue a direction to transfer assets and will have regard to any views expressed by the consultees. At the same time, it may also consider compulsory removal from the Register. Once the transfer of all of RSL A's assets has been completed, and RSL A has confirmed that it has complied with the terms of SHR's direction, RSL A will no longer carry out any activities and will no longer meet the registration criteria. Either of these considerations is a legitimate basis for the removal of RSL A from the Register under section 27.
- 4.28 Where the SHR Board approves the direction to transfer assets, we will issue the direction to RSL A and require the transfer to be completed by a specific date. We will update RSL A's engagement plan to reflect the terms of the direction and our ongoing engagement.
- 4.29 RSL A must then transfer its assets to RSL B in accordance with the direction and following transfer, must confirm that it has complied with the terms of the direction. Should RSL A require removal from the Scottish Charity Register, it should apply to OSCR at this point.
- 4.30 On receipt of confirmation that RSL A has complied with the direction, SHR will issue notice of our intention to de-register RSL A. RSL A, supported by RSL B, should then follow the steps set out in Appendix 3 and sections 4.6 to 4.19 above.

## Appendix 1: List of statutes

### **RSLs: The Housing (Scotland) Act 2010 (as amended) ('the 2010 Act').**

Part 2 (sections 20 to 30) of the 2010 Act sets out the provisions for the registration and removal of social landlords from the Register (also referred to as 'de-registration'):

- Section 20 requires the SHR to keep a public Register of social landlords;
- Section 23 sets out two types of registration criteria: legislative and regulatory;
- Section 24 sets out the legislative registration criteria;
- Section 25 requires the SHR to set regulatory registration criteria, which we do in section 9 of the **Regulatory Framework**. An RSL must meet both sets of criteria to be eligible for registration and to remain registered with SHR;
- Section 27 permits the SHR to remove an RSL from the Register (referred to as 'compulsory de-registration') if SHR considers that the RSL:
  - (a) no longer meets (or has never met) the registration criteria,
  - (b) has ceased to carry out activities, or
  - (c) has ceased to exist.
- Section 28 requires SHR to set de-registration criteria to be applied where an RSL seeks to be removed from the register ('voluntary de-registration').
- Section 29 provides that an RSL can appeal to the Court of Session against a decision of the SHR to remove it from the Register, or a decision of the SHR not to remove it from the Register.
- Sections 96 and 97 set requirements for transfers of engagements.
- Section 67 provides for where SHR directs an RSL to transfer its assets to another RSL.
- Section 109 sets out requirements for the notification of disposals.
- Sections 115 and 115A set out requirements for tenant consultation and approval.

### **Registered Societies: The Co-operative and Community Benefit Societies Act 2014 ('the 2014 Act')**

- Sections 2 to 7 of the 2014 Act set out the provisions for the registration and removal of registered societies.
- The majority of RSL de-registrations follow the transfer of engagements from one registered society to another. The legal process governing the transfer of engagements from one registered society to another is set out in section 110 of the 2014 Act.

### **Registered Companies: The Companies Act 2006**

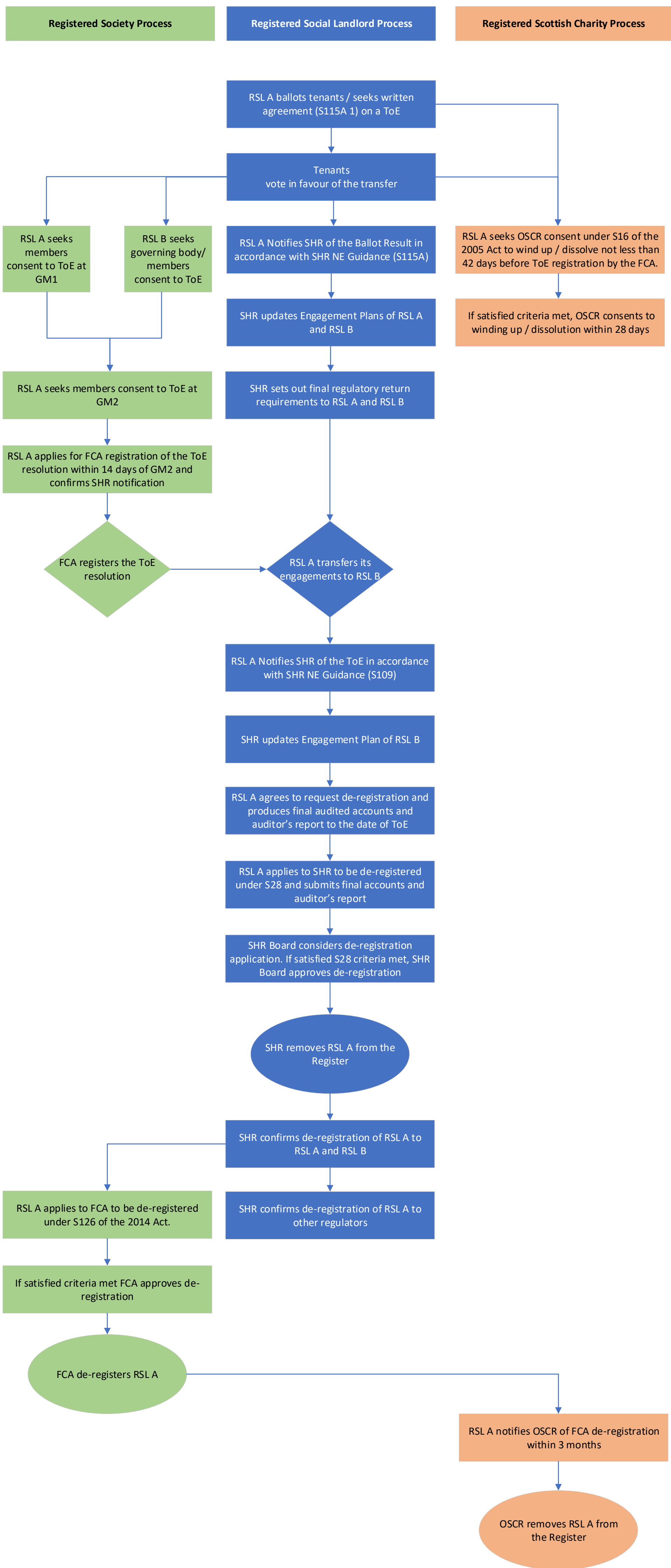
- The Companies Act 2006 ('the 2006 Act').

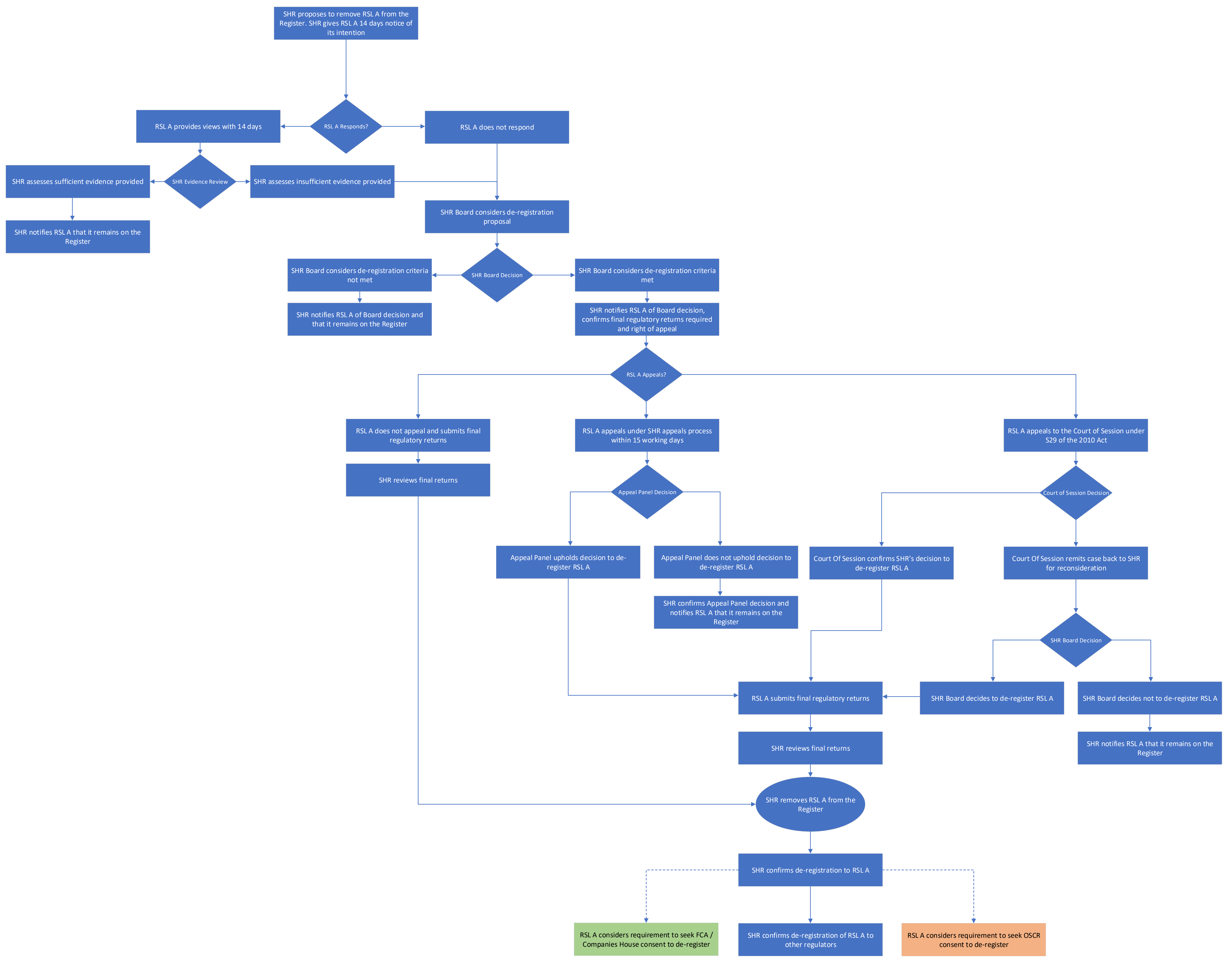
### **Registered Charities: The Charities and Trustee Investment (Scotland) Act 2005**

- Sections 16 to 19 of the 2014 Act set out the provisions for the registration and removal of registered charities.

### **Registered Property Factors: The Property Factors (Scotland) Act 2011**

**Appendix 2: Voluntary removal from the Register under S28 of the HSA2010 following a Transfer of Engagements of Registered Societies**





**Appendix 4: Compulsory removal from the Register under S27 of the HSA2010 following a Direction to Transfer under S67**

