



**Scottish Housing
Regulator**

Our regulation of social housing in Scotland: a consultation

October 2023

1. Introduction

In June 2023 we launched a discussion paper on the future of social housing regulation in Scotland. In the discussion paper we set out our emerging thinking on potential changes to our regulation of social landlords in Scotland, and we invited our stakeholders to give us their views on our early ideas.

We had a great response to the discussion paper. We received 64 written responses from tenant groups and individual tenants, organisations who work with tenants, landlord representative and membership bodies, individual social landlords, lenders and other individuals and organisations with an interest in social housing and regulation.

We held discussions with tenant representatives, social landlords, organisations who work with people who are homeless and other service users, and with our wider stakeholders including lenders and funders. We spoke about the discussion paper at conferences and events.

Thank you to everyone who has shared their views on the ideas we set out in the discussion paper. Your feedback has been invaluable. The Regulatory Framework and statutory guidance we are now proposing has been shaped by your feedback, and will continue to be shaped by your responses to this consultation.

In this paper we describe the proposals we are consulting on. We set out the changes we are proposing to make to the Regulatory Framework and statutory guidance. We invite your views and suggestions.

2. Giving us your feedback

We welcome feedback on the proposed Regulatory Framework and statutory guidance from organisations and individuals with an interest in our work. We will be meeting with stakeholders during the consultation period to discuss our proposals further, as well as considering written responses.

You can **respond with feedback by 15 December 2023**. We welcome general feedback on our proposals as well as answers to the specific questions we have raised. Please do not feel you have to answer every question unless you wish to do so.

If you wish to respond on a question by question basis, you can find a form to use [here](#). Otherwise please email or post your feedback to the address below. Please include your contact details in case we need to check anything with you.

To help make this a transparent process we intend to publish on our website the responses we receive, as we receive them. If you do not wish your response to be made public please let us know. If you are responding as an individual please let us know if you are happy for us to publish your name.

You can send your feedback to us by email at:
regulatoryframeworkreview@shr.gov.scot

You can send your feedback to us by post to:

Scottish Housing Regulator
2nd Floor George House,
36 North Hanover Street,
Glasgow G1 2AD

If you have any queries please contact us on the above email address.

3. Our regulatory priorities

Our discussion paper invited views and suggestions on what our future priorities should be. We suggested that the priorities for our future work should focus on social landlords:

- listening and responding effectively to tenants and service users
- providing good quality and safe homes
- keeping homes as affordable as possible
- doing all they can to reduce the number of people who are experiencing homelessness

We also proposed to continue our focus on equality and human rights in all landlords and governance and financial management in Registered Social Landlords (RSLs).

Most respondents agreed that these priorities are important. There was a strong message that we should broaden our priorities to include specific reference to net zero and decarbonisation. A significant number of respondents asked that our priorities reflect the current economic climate and the impact that this is having on landlords' ability to provide services and improve homes while keeping rents as low as possible. Some respondents asked that we be as clear as possible on what our expectations will be on how landlords contribute to reducing the number of people who are experiencing homelessness.

Landlords and their representatives also gave feedback and suggestions about our relationship with them. We will explore ideas to build on the regular face to face engagements we have with groups and forums of landlords and with their representative bodies. We will also continue to discuss opportunities for sharing and promoting good practice and learning.

We will use the discussion paper feedback on our priorities to inform our Strategy for 2024 onwards. Our Strategy will set out our priorities, where we will focus our work and how we will communicate and engage with stakeholders. We will aim to publish our Strategy in April 2024.

4. The Regulatory Framework: our proposals

We set out in the discussion paper our belief that the current Regulatory Framework has generally worked well and remains relevant and appropriate. We also recognised a clear appetite from many involved in social housing for a period of stability and continuity. We set ourselves the aim of maintaining the current approach, with some change to reflect the learning from the last five years and to ensure the Framework remains up to date.

Many respondents echoed the sentiment that social housing needs a period of stability and that changes to the Framework should be kept to a minimum. There was general support from tenants, landlords, investors and representative bodies for the approach that we set out in the discussion paper and for the changes we proposed. There were mixed views on some aspects of the Regulatory Framework where we asked more open questions.

We provide a version of the Regulatory Framework with our proposals shown in tracked changes at Annex 1. In the sections below we summarise the feedback stakeholders gave us on the potential changes we proposed in the discussion paper, and we set out our formal proposals and consultation questions

Annual Assurance Statements

In the discussion paper we proposed to add a provision to the statutory guidance to enable us to require landlords to include explicit assurance in the Annual Assurance Statement (AAS) on a specific issue or issues. We also proposed that we would communicate any specific assurance requirements to landlords in advance of their submission of the AAS.

Most respondents supported this proposal, while stressing the importance of us providing adequate advance notice of any additional assurance required. Some landlords suggested that we could use engagement plans to ask for specific assurance from specific landlords rather than using the AAS for all landlords.

We propose to maintain the requirements in the Regulatory Framework on the AAS, and to amend the statutory guidance on AAS to include a provision to enable us to require landlords to include explicit assurance in the AAS.

Question 1: Do you agree with our proposed approach on specific assurance in Annual Assurance Statements?

Annual Return on the Charter

In the discussion paper we proposed to develop and introduce to the Annual Return on the Charter (ARC) specific indicators on tenant and resident safety. We also proposed to develop appropriate monitoring of the effectiveness of landlords' approach to managing reports and instances of mould and dampness. We also invited views on the continuing appropriateness of existing ARC indicators. We highlighted that we would bring forward revised indicators for the Energy Efficiency Standard for Social Housing (EESH) when the Scottish Government's EESH Review Group concludes its work.

There was general support from respondents for indicators on tenant and resident safety, although some noted that they did not feel they could comment until we gave more information on the specific indicators we were thinking of including. Some respondents highlighted that these matters are already included in the Scottish Housing Quality Standard or may be difficult to define and operate effectively. There was a strong view, especially amongst landlords, that indicators on damp and mould will need to be carefully developed and defined – a number suggested that we establish a cross-sector working group with

appropriate experts to develop these. Respondents highlighted a number of existing indicators which they felt were of limited value.

Taking account of this feedback, and recognising that the Scottish Government's EESSH Review Group has not concluded its work, we believe that there is merit in taking the time to undertake a comprehensive review of the ARC indicators involving relevant experts and people from the social housing sector. We propose to establish an appropriate working group, or groups, to work with us to consider all of the indicators in the ARC and advise us as we develop appropriate indicators for tenants and resident safety, damp and mould, and EESSH. We would then use the input from these groups to determine what indicators to include in a revised ARC. We would aim to consult formally on the revised ARC indicators next year with the new ARC being in place for collection year 2025/26. In the meantime, we would continue with the existing ARC. We would use the AAS to require landlords to give us specific assurance on their compliance with their tenant and resident safety obligations, including their performance in dealing with instances of mould and damp.

Question 2: Do you agree with our proposal to initiate a comprehensive review of the Annual Return on the Charter which we will consult on next year?

Regulatory requirements

In the discussion paper we proposed to strengthen the emphasis on landlords listening to tenants and service users. We signalled a requirement that landlords provide tenants, residents and service users with appropriate ways to provide feedback and raise concerns, and ensure that they consider such information and provide quick and effective responses. We also proposed to amend the title of this part of the Framework to Listening and Responding to Tenants and Service Users.

There was broad support amongst respondents for this proposal, although some noted that social landlords already have a robust approach to tenant consultation. Some questioned the use of the word "safe" in the proposed wording of the amendment to requirements, as its use suggests that currently available routes are not safe.

We propose to amend the relevant parts of the Regulatory Framework, with some adjustment to the language in response to feedback.

Question 3: Do you agree with our proposed amendments to strengthen the emphasis on landlords listening to tenants and service users to include a requirement that landlords:

- provide tenants, residents and service users with appropriate ways to provide feedback and raise concerns, and
- ensure that they consider such information and provide quick and effective responses?

Notifiable events

In the discussion paper we proposed to streamline our approach to Notifiable Events to ensure that landlords bring the most critical issues to our attention while not being overburdened by notification requirements.

While respondents welcomed the principle of streamlining the Notifiable Events process, many respondents noted that the current process works well, with some suggesting a range of relatively minor changes, for example, that some events could simply be a notification and rather than being reported as a notifiable event.

We propose to make some changes to the statutory guidance on Notifiable Events to ensure it is clear that we require landlords to notify us of the most significant issues only. We will further emphasise the importance of landlords contacting their lead regulation manager if

they are determining whether something is a Notifiable Event. We will also look to develop ways to share more information with landlords on the type of Notifiable Events we receive and what we do with those.

Question 4: Do you agree with our proposed approach to Notifiable Events?

Regulatory Status

In the discussion paper we set out that the regulatory status for RSLs has been an effective addition to the regulatory framework, delivering greater transparency on our regulatory view of RSLs. We highlighted that some stakeholders had suggested more direct language around the *working towards compliance* status and some suggested an additional regulatory status between the *compliant* status and the *working towards compliance* status. We asked for views on the value in using more direct language in the *working towards compliance* status or in introducing an intermediary regulatory status between *compliant* and *working towards compliance*.

There was a mix of responses and no clear consensus amongst respondents on changing the format of the regulatory status, with some supporting the current approach while others supported further development of the approach to regulatory status. More respondents supported a shift to more direct language in the *working towards compliance* status.

We propose to maintain the current approach of having three regulatory statuses, and to amend the language in the second and third statuses to make clear that these are non-compliant statuses.

Question 5: Do you agree with our proposed approach to regulatory status?

Significant Performance Failures

In the discussion paper we asked for views on whether there are any changes we should make to how we define significant performance failures (SPFs).

There were a range of responses to this question, with most supporting the current approach. There were also clear themes – particularly from tenants – around increasing clarity about what is an SPF, about the use of jargon and about how SPFs relate to landlords' complaints procedures and to the role of the Scottish Public Service Ombudsman (SPSO).

We propose to amend the Regulatory Framework to enhance clarity on when and what tenants can bring to us and how this fits with the other routes for tenants to complain to their landlord and the SPSO. Our aim is to set out a clear, plain language statement of the routes of redress available to tenants, to include:

- complaining to their landlord;
- complaining to the SPSO; and,
- what, how and when to bring to us.

Following the consultation, we will update our factsheet for tenants to reflect this approach and to include illustrations of what is a complaint and what should be brought to us.

Question 6: Do you agree with our proposed approach to Significant Performance Failures?

5. Statutory guidance for consultation

We are also consulting on proposed changes to the statutory guidance which accompanies the Regulatory Framework. Most of these are simple updates to reflect changes in relevant legislation and regulations that have happened over the last five years. They are designed to improve the cross referencing between the Regulatory Framework and the guidance, to reflect our application of guidance over the last five years, and to ensure that equalities are appropriately referenced in guidance that is relevant to tenants and service users.

We set out below a summary of the changes we are proposing to make to each piece of statutory guidance and we provide versions of the guidance with our proposals shown in tracked changes at Annex 2.

Annual Assurance Statement

We propose to amend the statutory guidance on the *Annual Assurance Statement* (AAS) to include a provision to enable us to require landlords to include explicit assurance in the AAS. We have also added some more detail on how we use the AAS.

Question 7: Do you agree with our proposed changes to the guidance on *Annual Assurance Statements*?

Consultation where the Regulator is directing a transfer of assets

We propose to amend the statutory guidance on *Consultation where the Regulator is directing a transfer of assets*. The proposals aim to improve its clarity, to strengthen the references to relevant statutory provisions and to incorporate lessons learned from the two occasions on which we have used the relevant statutory powers.

Question 8: Do you agree with our proposed changes to the guidance on *Consultation where the Regulator is directing a transfer of assets*?

Determination of accounting requirements for RSLs

The Determination of accounting requirements for RSLs (*the Determination*) is based on the Statement of Recommended Practice (SORP): Accounting by Registered Social Landlords. The SORP is issued by the Scottish Federation of Housing Associations, the English National Housing Federation, and the Welsh Federation of Housing Associations. The review of the current SORP will not be completed until 2024 in order to reflect changes to Financial Reporting Standard 102, following which we will consult on a revised *Determination*. Given this, we do not propose to amend *the Determination* at this time.

Question 9: Do you agree with our proposal to maintain *the Determination* at this time?

Determination of what is meant by a step to enforce a security over an RSL's land

We propose to amend the statutory guidance on *Determination of what is meant by a step to enforce a security over an RSL's land* to clarify and update references to relevant legislative provisions.

Question 10: Do you agree with our proposed changes to the guidance on *Determination of what is meant by a step to enforce a security over an RSL's land*?

Financial viability of RSLs

We do not propose to amend the statutory guidance on *Financial viability of RSLs*.

Question 11: Do you agree with our proposal to maintain the guidance on *Financial viability of RSLs*?

Group structures

We propose to amend the statutory guidance on *Group Structures* to reflect our experience of the development of more complex Group structures in the sector and to ensure that our guidance aligns more clearly with the Regulatory Framework.

Question 12: Do you agree with our proposed changes to the guidance on *Group structures*?

How to request an appeal of a regulatory decision

We propose to amend the statutory guidance on *How to request an appeal of a regulatory decision* to make a minor clarification on deregistrations.

Question 13: Do you agree with our proposed changes to the guidance on *How to request an appeal of a regulatory decision*?

How to request a review of a regulatory decision

We do not propose to amend the statutory guidance on *How to request a review of a regulatory decision*.

Question 14: Do you agree with our proposal to maintain the guidance on *How to request a review of a regulatory decision*?

Notifiable events

We propose to amend the statutory guidance on *Notifiable events* to improve clarity and to emphasise that we require landlords to notify us of the most critical issues only.

Question 15: Do you agree with our proposed changes to the guidance on *Notifiable events*?

Preparation of financial statements

We propose to amend the statutory guidance on *Preparation of financial statements* to include minor updates and improvements to clarity.

Question 16: Do you agree with our proposed changes to the guidance on *Preparation of financial statements*?

Section 72 reporting events of material significance

We do not propose to amend the statutory guidance on *Section 72 reporting events of material significance*.

Question 17: Do you agree with our proposal to maintain the guidance on *Section 72 reporting events of material significance*?

Tenant consultation and approval

We propose to amend the statutory guidance on *Tenant consultation and approval* to include minor updates and to ensure that equalities are appropriately referenced.

Question 18: Do you agree with our proposed changes to the guidance on *Tenant consultation and approval*?

6. Impact Assessments

We have considered the potential impacts that our proposals could have on tenants, people who are homeless, other service users and landlords. Alongside the draft Framework and guidance for consultation, we set out at Annex 4 our combined Impact Assessment covering:

- Equalities Impact Assessment;
- Fairer Scotland Duty Assessment;
- Island Communities Impact Assessment;
- Children's Rights and Wellbeing Impact Assessment; and
- Business and Regulatory Impact Assessment.

We will use this consultation process as an opportunity to seek feedback on potential impacts and any steps that we might take. We welcome your thoughts and suggestions on both of these assessments and will consider this when we finalise the Framework and guidance. We will publish final assessments when we publish the new Framework.

Question 19: Would you like to give feedback on any aspect of our impact assessments? Are there other potential impacts that we should consider?

7. What happens next?

Once we have reflected on your feedback, we will publish final versions of the Regulatory Framework and statutory guidance.

We aim to publish the new Framework and guidance at the end of February 2024, to go live from 1 April 2024. We also aim to publish a new Strategy in April 2024.



Annex 1: The Regulatory Framework



Scottish Housing
Regulator

REGULATION OF SOCIAL HOUSING IN SCOTLAND

OUR FRAMEWORK

~~FEBRUARY 2019~~

PUBLISHED FEBRUARY 2024
EFFECTIVE FROM APRIL 2024

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1. INTRODUCTION

- 1.1 The Housing (Scotland) Act 2010 (the “2010 Act”) sets our statutory objective, functions, duties and powers.

Our statutory objective

To safeguard and promote the interests of current and future tenants, people who are or may become homeless, factored owners and Gypsy Travellers who are provided with housing services by social landlords.

Our functions

To monitor, assess, report and intervene (as appropriate) in relation to social landlords' performance of housing activities and RSLs' financial well-being and standards of governance.

- 1.2 This Framework is our Statement on Performance of Functions and sets out how we regulate both Registered Social Landlords (RSLs) and the housing and homelessness services provided by local authorities.

- 1.3 For both local authorities and RSLs, we monitor, assess, report and intervene (as appropriate) on their performance of housing activities. This means how they deliver [housing](#) services to:
- tenants;
 - people who are homeless;
 - Gypsy/Travellers who use official sites provided by these landlords; and
 - factored owners.

For RSLs, we also monitor, assess, report and intervene (as appropriate) on their governance and financial wellbeing. We do not have this role with local authorities.

When we talk about landlords, we mean both RSLs and local authorities. When we are referring to either local authorities or RSLs only we make this clear.

- 1.4 We set out our priorities in [Our Strategy](#) ~~Corporate Plan~~. We use the regulatory tools in this Framework to focus on and deliver our priorities.

- 1.5 Across all of our work we want to communicate clearly, work effectively with our stakeholders and raise awareness of important issues and risks. We actively involve tenants and other service users in our work, as we set out in our published strategy. We engage with them to help make our work accountable, relevant and targeted.

- 1.6 We coordinate our work and share information with other scrutiny bodies and regulators. We aim to reduce the potential for gaps or duplication in regulation. We have Memoranda of Understanding [or similar agreements](#) with them setting out how we work together.

- 1.7 We work constructively with the main bodies who represent and work with social landlords. These relationships help us understand the impact of our work and explore issues and risks for landlords.

- 1.8 We also engage with public funders and private lenders [/ investors](#) to landlords. One of the ways that we achieve our objective is by helping to maintain their confidence in social housing. This is important if landlords are to continue to have access to funds at affordable costs, to provide new housing and support their businesses.

- 1.9 We will consult with tenants, landlords, representative bodies and others interested in social housing before publishing new or revised guidance on our statutory powers and duties.

2. HOW WE REGULATE

IN THIS CHAPTER WE GIVE AN OVERVIEW OF HOW WE REGULATE

- 2.1 We are committed to the better regulation principles enshrined in the Scottish Regulators' Strategic Code of Practice. This Code also reflects our obligations under section 3 of the 2010 Act. Our regulation is:
- proportionate
 - consistent
 - accountable
 - transparent
 - targeted only where needed.

Landlord self-assurance

- 2.2 Landlords assuring themselves, their tenants and us is central to our approach.
- 2.3 Each landlord is responsible for delivering good outcomes and services for its tenants and service users and ensuring that their tenants have warm, safe and affordable homes. Landlords need to be self-aware, analytical, open and honest about their performance, and identify and drive improvement. When we engage with landlords, we look first at what they have done to assure themselves that they are meeting regulatory requirements. We set out these requirements in Chapter 3. We have also issued a suite of statutory guidance to assist landlords to understand their responsibilities and what they need to do.

- 2.4 All landlords must prepare and publish an Annual Assurance Statement, to confirm to their tenants and us that they are meeting regulatory requirements for local authorities and RSLs. For RSLs, this includes meeting the Standards of Governance and Financial Management. The Statements support openness and a culture of continuous assurance and improvement.

Empowering tenants, people who are homeless and other service users

- 2.5 We promote a strong tenant voice. It is important that landlords involve tenants and other service users in the scrutiny of their performance, and in discussions about affordability and what they get for their rent.
- 2.6 We empower tenants and others by publishing landlord performance information in accessible and useful ways, to enable them to ask questions and hold their landlords to account. We give tenants an effective way to bring to us serious concerns about significant performance failures by their landlord.

Risk-based regulation

- 2.7 We assess risk in landlords to determine what assurance we need from them and what they may need to improve. We:
- focus on the most significant risks to tenants, people who are homeless and other service users
 - continually assess each landlord to understand its performance and risks
 - engage with landlords at different levels depending on their risk and performance profile
 - engage with landlords in the least intrusive way possible to get the assurance we need
 - are transparent about why and how we engage with landlords
 - give landlords the opportunity to improve where there are problems, unless we need to act quickly
 - use our powers in a proportionate way
 - take decisive, effective action to safeguard the interests of tenants and other service users when a landlord does not have the capacity or willingness to improve.

- 2.8 Our assessment of risk may not always be the same as a landlord's own detailed assessment of the risks it faces. Risk-based regulation is a way for us to prioritise our resources and plan how to engage with landlords through further scrutiny, engagement and intervention.

- 2.9 The **main risks** we consider are:
- poor outcomes for tenants, people who are homeless and other service users
 - poor quality **or safety** of tenants' homes ~~and investment failures~~
- For RSLs, we also consider:
- poor financial performance and management ~~(for RSLs only)~~
 - poor governance ~~(for RSLs only)~~.

- 2.10 We publish an Engagement Plan for each landlord. Each Plan sets out the information we require from the landlord, what it needs to do, and how and why we will engage with it.
- 2.11 For local authorities, we work through the risk assessment process with our partner scrutiny bodies, participating in the Scrutiny Coordination Group led by Audit Scotland, to consider the full range of scrutiny activity for each local authority. More information on this is set out by Audit Scotland on its website in the Joint Code of Practice.

Our work

2.12 There are four broad ways we carry out our work with both local authorities and RSLs:

- gathering and publishing data in ways that tenants and others can use
- getting assurance from landlords
- taking action where we need to
- thematic work to look in depth at specific areas of landlords' work.

2.13 In these ways we deliver the priorities we set out in [Our Strategy Corporate Plan](#). We use our inquiry and information gathering powers as the basis for much of our work, including our routine annual requests to landlords for information.

Equality and human rights

2.14 Promoting equality and human rights is integral to all of our work. These rights mean that everyone should be treated fairly and with dignity and respect. All landlords must ensure that they fully comply with their responsibilities under relevant human rights and equalities legislation.

2.15 We are committed to meeting our equality duties and working in a way that promotes equality and human rights. We set out our duties, how these will be met and the indicators for success in our [Equalities Statement](#).

2.16 We promote equality and human rights by monitoring, assessing and reporting on landlords' work to:

- achieve, or have effective plans in place to achieve, the equalities outcome in the Scottish Social Housing Charter and outcomes for Gypsy/Travellers
- meet their legal duties in relation to equality and human rights, including the requirement in section 39 of the 2010 Act to encourage equal opportunities in how they perform their housing activities and deliver homelessness services
- collect and use equalities data effectively in how they plan and deliver services.

2.17 We require landlords to confirm through their Annual Assurance Statement that they meet these requirements, or what they are doing to improve their compliance. We seek assurance that landlords are giving due regard to equality and human rights in their decision-making. We consider this through our engagements with individual landlords. We may also carry out thematic work on specific equality issues, for example considering access to housing and homelessness services.

3. REGULATORY REQUIREMENTS

IN THIS CHAPTER WE SET OUT REGULATORY REQUIREMENTS FOR ALL SOCIAL LANDLORDS AND THE STANDARDS OF GOVERNANCE AND FINANCIAL MANAGEMENT FOR RSLs

3.1 The Regulatory Requirements that we set for landlords are:

-  Requirements for local authorities and RSLs
-  Requirements for RSLs only
-  The Standards of Governance and Financial Management for RSLs
-  Constitutional Requirements for RSLs

3.2 All of these requirements are based in the powers given to us in the Housing (Scotland) Act 2010.

3.3 We do not replicate here the range of duties, obligations and responsibilities placed on landlords by legislation and through statutory guidance. These include achieving the standards and outcomes in the Scottish Social Housing Charter, duties to help people who are homeless, duties around the safety of tenants' homes, and promoting equality and human rights.

3.4 Landlords also have requirements placed on them by other regulatory bodies, including the Office of the Scottish Charities Regulator, the Equality and Human Rights Commission, the Care Inspectorate, Audit Scotland and the Scottish Public Services Ombudsman.

3.5 Landlords must ensure that they meet all of their legal duties and responsibilities and that they adhere to relevant guidance and the requirements of other regulators.

3.6 For local authorities, this includes ensuring that they meet their statutory duties to prevent and alleviate homelessness. Local authorities must confirm that they meet these duties in their Annual Assurance Statement, or set out how they are addressing any material non-compliance (see page 9 and Chapter 5).

3.7 Landlords should adhere to our statutory guidance. In certain cases, where exceptional circumstances exist, it may be appropriate for a landlord to depart from our statutory guidance. Where a landlord is considering departing from statutory guidance, it should discuss with us why a departure from the guidance is necessary before acting. The landlord should keep a record of the reasons for the departure. A list of our [statutory guidance is available on our website](#).

3.8 Landlords should take account of regulatory advice from us and from other regulators. Advisory guidance may include recommended practice and recommendations from thematic

work. Landlords should consider applying any recommendations in advisory guidance, but are not required to follow advisory guidance. Landlords are not required to discuss a departure from advisory guidance with us before acting. A list of our [advisory guidance is available on our website.](#)

REQUIREMENTS FOR LOCAL AUTHORITIES AND RSLs

EACH LANDLORD MUST:

ASSURANCE & NOTIFICATION

- ✓ Prepare an Annual Assurance Statement in accordance with our published guidance, submit it to us between April and the end of October each year, and make it available to tenants and other service users.
- ✓ Notify us during the year of any material changes to the assurance in its Assurance Statement.
- ✓ Have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services, equality and human rights, and tenant and resident safety.
- ✓ Notify us of any tenant and resident safety matters which have been reported to, or are being investigated by the Health and Safety Executive, or reports from regulatory or statutory authorities, or insurance providers, relating to safety concerns.
- ✓ Make its Engagement Plan easily available and accessible to its tenants and service users, including online.

SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE

- ✓ Submit an Annual Return on the Charter to us each year in accordance with our published guidance.
- ✓ Involve tenants, and where relevant other service users, in the preparation and scrutiny of performance information. It must:
 - agree its approach with tenants
 - ensure that it is effective and meaningful – that the chosen approach gives tenants a real and demonstrable say in the assessment of performance
 - publicise the approach to tenants
 - ensure that it can be verified and be able to show that the agreed approach to involving tenants has happened
 - involve other service users in an appropriate way, having asked and had regard to their needs and wishes.
- ✓ Report its performance in achieving or progressing towards the Charter outcomes and standards to its tenants and other service users (no later than October each year). It must agree the format of performance reporting with tenants, ensuring that it is accessible for tenants and other service users, with plain and jargon-free language.

SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE (CONTINUED)

- ✓ When reporting its performance to tenants and other service users it must:
 - provide them with an assessment of performance in delivering each of the Charter outcomes and standards which are relevant to the landlord
 - include relevant comparisons – these should include comparisons with previous years, with other landlords and with national performance
 - set out how and when the landlord intends to address areas for improvement
 - give tenants and other service users a way to feed back their views on the style and form of the reporting.
- ✓ Make our report on its performance easily available to its tenants, including online.

WHISTLEBLOWING

- ✓ Have effective arrangements and a policy for whistleblowing by staff and governing body/elected members which it makes easily available and which it promotes.

TENANTS AND SERVICE USERS REDRESS LISTENING AND RESPONDING TO TENANTS AND SERVICE USERS

- ✓ Provide tenants, residents and service users with easy and effective ways to provide feedback and raise concerns, and ensure that it considers such information and provides a quick and effective response.
- ✓ Make information on raising serious concerns with us reporting significant performance failures, including our leaflet, available to its tenants.
- ✓ Provide tenants and other service users with the information they need to exercise their right to complain and seek redress, and respond to tenants within the timescales outlined in its service standards, in accordance with guidance from the Scottish Public Services Ombudsman (SPSO).
- ✓ Ensure it has effective arrangements to learn from complaints and from other tenant and service user feedback, in accordance with SPSO guidance.

EQUALITY AND HUMAN RIGHTS

- ✓ Have assurance and evidence that it considers equality and human rights issues properly when making all of its decisions, in the design and review of internal and external policies, and in its day-to-day service delivery.
- ✓ To comply with these duties, landlords must collect data relating to each of the protected characteristics for their existing tenants, new tenants, people on waiting lists, governing body members and staff. Local authorities must also collect data on protected characteristics for people who apply to them as homeless. Landlords who provide Gypsy/Traveller sites must collect data on protected characteristics for these service users.

REQUIREMENTS FOR RSLs ONLY

EACH RSL MUST:

- ✓ Comply with the Standards of Governance and Financial Management and associated statutory guidance.
- ✓ Comply with, and submit information to us in accordance with, our guidance on:
 - notifiable events
 - group structures
 - consulting tenants where tenant consent is required
 - financial viability of RSLs: information requirements
 - determination of accounting requirements
 - preparation of financial statements.
- ✓ Keep up to date organisational details in the Register of Social Landlords, by maintaining the information provided through the Landlord Portal.
- ✓ Make publicly available, including online, up to date details of:
 - who is on its governing body
 - the date when they first became a member/office holder
 - how to become a member of the RSL and of the governing body, and
 - minutes of governing body meetings.

Note: We refer in this Framework to RSL governing bodies. For the avoidance of doubt, this term encompasses whatever name an RSL chooses to use for its governing body (for example Board or Management Committee).

THE STANDARDS OF GOVERNANCE AND FINANCIAL MANAGEMENT FOR RSLs

Section 36 of the 2010 Act requires us to issue a Code of Conduct setting out Standards of Governance and Financial Management for RSLs. These Standards represent that Code.

Standard 1

The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.

Guidance

- 1.1 The governing body sets the RSL's strategic direction. It agrees and oversees the organisation's business plan to achieve its purpose and intended outcomes for its tenants and other service users.
- 1.2 The RSL's governance policies and arrangements set out the respective roles, responsibilities and accountabilities of governing body members and senior officers, and the governing body exercises overall responsibility and control of the strategic leadership of the RSL.
- 1.3 The governing body ensures the RSL complies with its constitution and its legal obligations. Its constitution adheres to these Standards and the constitutional requirements set out below.
- 1.4 All governing body members accept collective responsibility for their decisions.
- 1.5 All governing body members and senior officers understand their respective roles, and working relationships are constructive, professional and effective.
- 1.6 Each governing body member always acts in the best interests of the RSL and its tenants and service users, and does not place any personal or other interest ahead of their primary duty to the RSL.
- 1.7 The RSL maintains its independence by conducting its affairs without control, undue reference to or influence by any other body (unless it is constituted as the subsidiary of another body).

Standard 2

The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.

Guidance

- 2.1 The RSL gives tenants, service users and other stakeholders information that meets their needs about the RSL, its services, its performance and its future plans.
- 2.2 The governing body recognises it is accountable to its tenants, and has a wider public accountability to the taxpayer as a recipient of public funds, and actively manages its accountabilities.
- 2.3 The governing body is open and transparent about what it does, publishes information about its activities and, wherever possible, agrees to requests for information about the work of the governing body and the RSL.
- 2.4 The RSL actively seeks out the needs, priorities, views, concerns and aspirations of tenants, service users and stakeholders. The governing body listens to its tenants and service users and takes account of this information in its strategies, plans and decisions.
- 2.5 The RSL is open, co-operative, and engages effectively with all its regulators and funders, notifying them of anything that may affect its ability to fulfil its obligations. It informs the Scottish Housing Regulator about any significant events such as a major issue, event or change as set out and required in notifiable events guidance.

Standard 3

The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.

Guidance

- 3.1 The RSL has effective financial and treasury management controls and procedures, to achieve the right balance between costs and outcomes, and control costs effectively. The RSL ensures security of assets, the proper use of public and private funds, and access to sufficient liquidity at all times.
- 3.2 The governing body fully understands the implications of the treasury management strategy it adopts, ensures this is in the best interests of the RSL and that it understands the associated risks.
- 3.3 The RSL has a robust business planning and control framework and effective systems to monitor and accurately report delivery of its plans. Risks to the delivery of financial plans are identified and managed effectively. The RSL considers sufficiently the financial implications of risks to the delivery of plans.
- 3.4 The governing body ensures financial forecasts are based on appropriate and reasonable assumptions and information, including information about what tenants can afford to pay and feedback from consultation with tenants on rent increases.
- 3.5 The RSL monitors, reports on and complies with any covenants it has agreed with funders. The governing body assesses the risks of these not being complied with and takes appropriate action to mitigate and manage them.
- 3.6 The governing body ensures that employee salaries, benefits and its pension offerings are at a level that is sufficient to ensure the appropriate quality of staff to run the organisation successfully, but which is affordable and not more than is necessary for this purpose.
- 3.7 The governing body ensures the RSL provides accurate and timely statutory and regulatory financial returns to the Scottish Housing Regulator. The governing body assures itself that it has evidence the data is accurate before signing it off.

Standard 4

The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.

Guidance

4.1 The governing body ensures it receives good quality information and advice from staff and, where necessary, expert independent advisers, that is timely and appropriate to its strategic role and decisions. The governing body is able to evidence any of its decisions.

4.2 The governing body ensures that the RSL provides tenants, residents and service users with easy and effective ways to provide feedback and raise concerns, and ensures that the RSL considers this and provides a quick and effective response.

4.24.3 The governing body challenges and holds the senior officer to account for their performance in achieving the RSL's purpose and objectives.

4.34.4 The governing body identifies risks that might prevent it from achieving the RSL's purpose and has effective strategies and systems for risk management and mitigation, internal control and audit.

4.44.5 Where the RSL is the parent within a group structure it fulfils its responsibilities as required in our group structures guidance to:

- a) control the activities of, and manage risks arising from, its subsidiaries;
- b) ensure appropriate use of funds within the group;
- c) manage and mitigate risk to the core business; and
- d) uphold strong standards of governance and protect the reputation of the group for investment and other purposes.

4.54.6 The RSL has an internal audit function. The governing body ensures the effective oversight of the internal audit programme by an audit committee or otherwise. It has arrangements in place to monitor and review the quality and effectiveness of internal audit activity, to ensure that it meets its assurance needs in relation to regulatory requirements and the Standards of Governance and Financial Management. Where the RSL does not have an audit committee, it has alternative arrangements in place to ensure that the functions normally provided by a committee are discharged.

4.64.7 The governing body has formal and transparent arrangements for maintaining an appropriate relationship with the RSL's external auditor and its internal auditor.

Standard 5

The RSL conducts its affairs with honesty and integrity.

Guidance

- 5.1 The RSL conducts its affairs with honesty and integrity and, through the actions of the governing body and staff, upholds the good reputation of the RSL and the sector.
- 5.2 The RSL upholds and promotes the standards of behaviour and conduct it expects of governing body members and staff through an appropriate code of conduct. It manages governing body members' performance, ensures compliance and has a robust system to deal with any breach of the code.
- 5.3 The RSL pays due regard to the need to eliminate discrimination, [harassment and victimisation, and](#) advance equality [of opportunity](#) and human rights, and foster good relations across the range of protected characteristics in all areas of its work, including its governance arrangements.
- 5.4 Governing body members and staff declare and manage openly and appropriately any conflicts of interest and ensure they do not benefit improperly from their position.
- 5.5 The governing body is responsible for the management, support, remuneration and appraisal of the RSL's senior officer and obtains independent, professional advice on matters where it would be inappropriate for the senior officer to provide advice.
- 5.6 There are clear procedures for employees and governing body members to raise concerns or whistleblow if they believe there has been fraud, corruption or other wrongdoing within the RSL.
- 5.7 Severance payments are only made in accordance with a clear policy which is approved by the governing body, is consistently applied and is in accordance with contractual obligations. Such payments are monitored by the governing body to ensure the payment represents value for money. The RSL has considered alternatives to severance, including redeployment.
- 5.8 Where a severance payment is accompanied by a settlement agreement the RSL does not use this to limit public accountability or whistleblowing. The RSL has taken professional legal advice before entering into a settlement agreement.

Standard 6

The governing body and senior officers have the skills and knowledge they need to be effective.

Guidance

- 6.1 The RSL has a formal, rigorous and transparent process for the election, appointment and recruitment of governing body members. The RSL formally and actively plans to ensure orderly succession to governing body places to maintain an appropriate and effective composition of governing body members and to ensure sustainability of the governing body.
- 6.2 The governing body annually assesses the skills, knowledge, diversity and objectivity it needs to provide capable leadership, control and constructive challenge to achieve the RSL's purpose, deliver good tenant outcomes, and manage its affairs. It assesses the contribution of continuing governing body members, and what gaps there are that need to be filled.
- 6.3 The RSL ensures that all governing body members are subject to annual performance reviews to assess their contribution and effectiveness. The governing body takes account of these annual performance reviews and its skills needs in its succession planning and learning and development plans. The governing body ensures that any non-executive member seeking re-election after nine years' continuous service demonstrates continued effectiveness.
- 6.4 The RSL encourages as diverse a membership as is compatible with its constitution and actively engages its membership in the process for filling vacancies on the governing body.
- 6.5 The RSL ensures all new governing body members receive an effective induction programme to enable them to fully understand and exercise their governance responsibilities. Existing governing body members are given ongoing support and training to gain, or refresh, skills and expertise and sustain their continued effectiveness.
- 6.6 If the governing body decides to pay any of its non-executive members then it has a policy framework to demonstrate clearly how paying its members will enhance decision-making, strengthen accountability and ownership of decisions, improve overall the quality of good governance and financial management and deliver value for money.
- 6.7 The governing body is satisfied that the senior officer has the necessary skills and knowledge to do his/her job. The governing body sets the senior officer's objectives, oversees performance, ensures annual performance appraisal, and requires continuous professional development.

Standard 7

The RSL ensures that any organisational changes or disposals it makes safeguard the interests of, and benefit, current and future tenants.

Guidance

Where an RSL is considering organisational or constitutional change, or acquisition or disposal of land or assets:

- 7.1 The governing body discusses and scrutinises any proposal for organisational change and ensures that the proposal will benefit current and future tenants.
- 7.2 The RSL ensures that its governance structures are as simple as possible, clear and allow it to meet the Standards of Governance and Financial Management, Constitutional Requirements, and Group Structures guidance.
- 7.3 The RSL ensures adequate consultation with, and support from, key stakeholders including tenants, members, funders (who may need to give specific approval) and local authorities as well as other regulators.
- 7.4 The governing body is satisfied that the new (or changed) organisation will be financially viable, efficient and will provide good outcomes for tenants.
- 7.5 The RSL establishes robust monitoring systems to ensure that delivery of the objective of the change and of commitments made to tenants are achieved (for example in relation to service standards, operating costs and investment levels).
- 7.6 Charitable RSLs seek consent/notify OSCR of changes to their constitution and other changes as appropriate.
- 7.7 The governing body ensures that disposals, acquisitions and investments fit with the RSL's objectives and business plan, and that its strategy is sustainable. It considers these taking account of appropriate professional advice and value for money - whether as part of a broader strategy or on a case by case basis.
- 7.8 The RSL complies with regulatory guidance on tenant consultation, ballots and authorisation.
- 7.9 The RSL notifies the Regulator of disposals in accordance with regulatory guidance.
- 7.10 The RSL only agrees fixed or floating charges where the assets are used to support core activities. This should exclude providing security in relation to staff pensions.

CONSTITUTIONAL REQUIREMENTS FOR RSLs

The constitution of the RSL must comply with all legislative requirements under the 2010 Act (which are not replicated here) and the following regulatory requirements:

1. It sets out clearly the RSL's purpose, objects and powers.
2. The RSL is able to fulfil its obligations in terms of its legal status and (if relevant) its obligations as a registered charity. These obligations and how they will be met are set out in the constitution.
3. There is a system for keeping accounts and ensuring an independent audit by an appropriately qualified person. There is a proper procedure for appointing an auditor. The governing body should take whatever measures are necessary to ensure the continuing independence of the auditor including periodic review of the need for audit rotation. The RSL must send a copy of its accounts and the auditor's report to us within six months of the end of the period to which they relate.
4. It is clear what investments and borrowing the governing body can authorise.
5. There is a procedure for dealing with disputes on matters contained within the constitution.
6. It is clear how changes can be made to the constitution.
7. It is clear how the RSL can be closed down.
8. The RSL can demonstrate its governance and financial arrangements are such as to allow the Regulator to regulate effectively, and exercise our full regulatory powers.

In relation to an RSL within a group structure:

9. Each organisation within the group must have a distinct legal identity and separate constitution. The constitutional and financial relationships between all organisations in the group (registered or non-registered) must be documented formally and in terms that are transparent and understandable.
10. If any of the organisations within the group are charities, the RSL's role and relationships with other group members are consistent with charity law.
11. The constitutions of group members must enable the parent to exercise control and to take corrective action where required.
12. There are procedures in place designed to avoid conflicts of interest, particularly where members of the subsidiary's governing body are also members of the parent's governing body.

13. Where it is constituted as a subsidiary of another body, the RSL's constitution permits control by the parent but with sufficient independence to carry out its business, within limits set by the parent.

With regard to the governing body of the RSL and the members of the governing body:

14. Recruitment to the governing body is open and transparent. It is clear who is eligible to become a member of the governing body and how to become a member of the governing body whether by election, nomination, selection, etc and how membership is ended. There is a procedure for removing members from the governing body.
15. There is a procedure by which members stand down from the governing body to allow for a turnover in membership. Governing body members are appointed for specific terms subject to re-election or re-appointment.
16. The membership of the governing body must be no fewer than seven and not normally exceed 15 members, including co-opted members. Names of the governing body members must be accessible to the public.
17. The powers and responsibilities of the governing body are clearly set out.
18. The roles, powers and responsibilities of governing body office bearers are set out. And any delegation to committees or staff are clearly set out in standing orders and delegated authorities.
19. There are provisions for the RSL to remove a governing body member who does not sign up to the code of conduct and to take action against or remove a governing body member in breach of the code.
20. Where the constitution allows executive staff on to the governing body, they must be excluded from holding office, and cannot form a quorum or a majority. Executive members of the governing body should not receive any additional payment for their governing body role over and above what they are entitled to under their contract of employment.
21. It is clear what types of meetings can and should be held and their purpose. There are clear procedures to call all meetings, and it is clear what the quorum of meetings should be, how resolutions will be passed, and decisions recorded, and how many meetings should take place each year, subject to a minimum of six governing body meetings a year.
22. The governing body cannot act for longer than two months if its membership falls below seven. If at the end of that period it has not found new members then the only power it will have is to act to bring the governing body members up to seven.
23. There is a clear process to identify and address any conflicts of interest on the governing body.

24. The Chairperson's role is set out formally; the Chairperson is responsible for the leadership of the governing body and ensuring its effectiveness in all aspects of its role. There is a clear process to select the Chairperson, who cannot be an executive member, and must not hold office continuously for more than five years.
25. If the RSL pays any of its non-executive governing body members then it must ensure that:
 - a) the governing body takes account of independent guidance in setting payment amounts and can demonstrate value for money;
 - b) the payments are linked to specified duties and there is a clear process for assessing performance in carrying out these duties;
 - c) details of governing body payments are published in the RSL's annual accounts; and
 - d) where an RSL has subsidiaries it must ensure any payments and benefits to subsidiary governing body members are included in the policy.

Charitable RSLs must comply with the Charities and Trustee Investment (Scotland) Act 2005 and any associated guidance from the charity regulator when considering payments or benefits to charity trustees.

26. The role and status of co-optees is set out. Co-optees do not form part of any quorum required for meetings of the governing body and may not vote on matters directly affecting the constitution and membership of the organisation or the election or appointment of its office bearers.

With regard to the general membership of the RSL:

27. It is clear who is eligible to become a member of the RSL and who cannot, and it is clear how to become a member and how membership is ended. Names of the members must be accessible to any other member or anyone with an interest in the RSL's funds.
28. Membership of the RSL should reflect the purpose and objects of the RSL.
29. There is a clear procedure, including the quorum and voting procedure, for the membership of the RSL to meet and it is clear what business the membership can discuss and what decisions it can make, subject to a minimum of one annual meeting.

4. GATHERING AND PUBLISHING DATA IN WAYS TENANTS AND OTHERS CAN USE

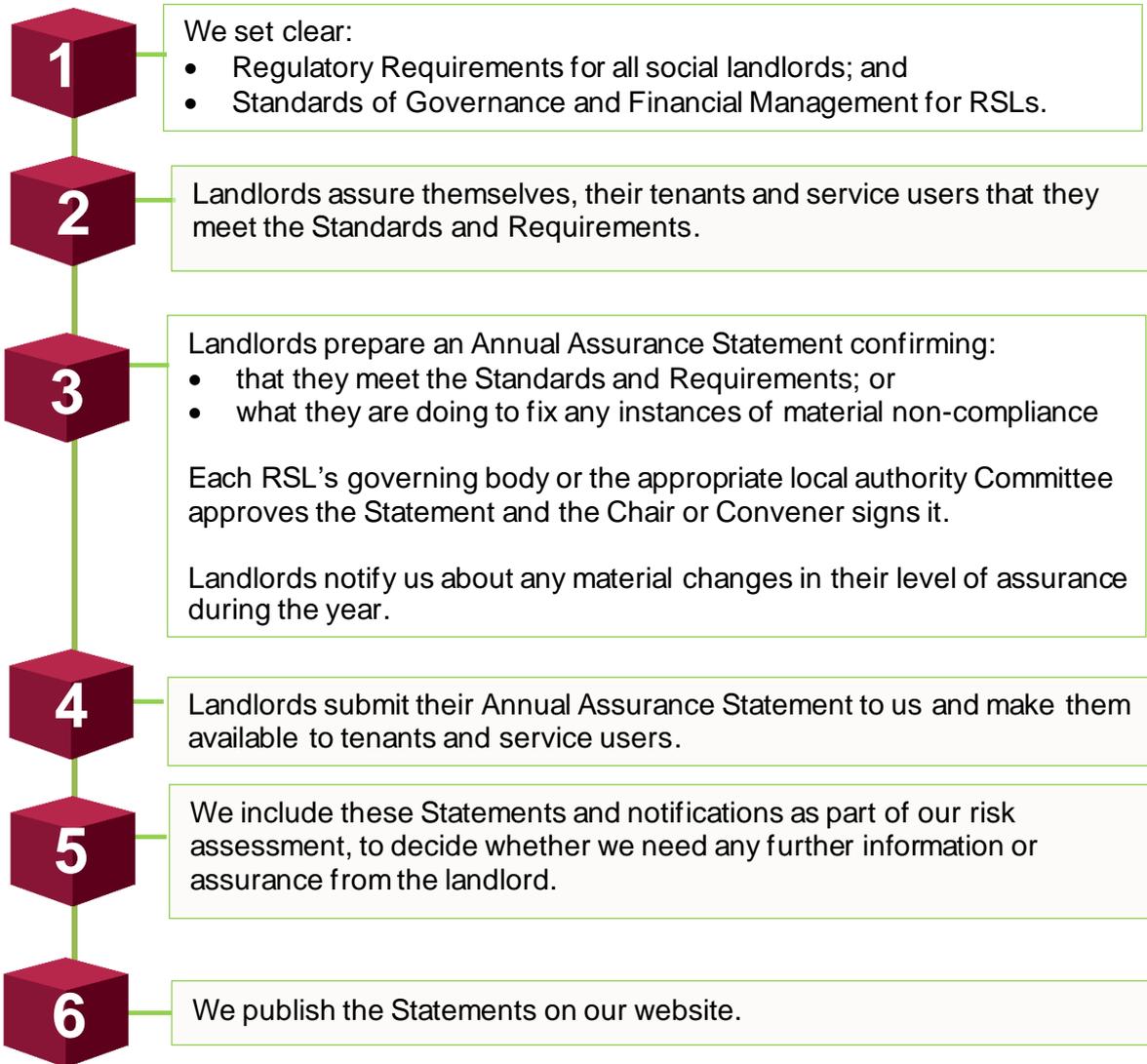
IN THIS CHAPTER WE EXPLAIN HOW WE PUBLISH THE INFORMATION THAT LANDLORDS GIVE US

- 4.1 We publish a range of information to allow tenants, people who are homeless, other service users, landlords, funders and policy makers to understand each landlord's performance and compare landlords' performance.
- 4.2 This includes information about landlords' performance against the Scottish Social Housing Charter, rent levels, costs and other contextual information.
- 4.3 By doing this, we aim to:
- help tenants to ask questions and hold their landlord to account
 - help tenants and others to assess whether their landlord is well run and they are getting value for the rent that they pay
 - support meaningful discussions between landlords and their tenants about performance, rent levels, service levels, and future plans
 - support landlords to compare their performance with others and drive their own improvement.
- 4.4 This is alongside the work that landlords and others do to develop and support tenant engagement and tenant-led scrutiny.
- 4.5 Every year we provide a comprehensive picture of landlords' achievement of the Charter. We do this by publishing on our website:
- a report for each landlord with key information from its Annual Return on the Charter
 - online, interactive tools to allow users to compare landlords' performance and find out more
 - an annual report summarising all landlords' progress against the outcomes and standards in the Charter
 - reports and analysis on the Charter related thematic work that we do.

5. GETTING ASSURANCE

IN THIS CHAPTER WE EXPLAIN HOW WE ASSESS RISK, GET ASSURANCE THAT LANDLORDS ARE MEETING REGULATORY REQUIREMENTS AND COMMUNICATE OUR ENGAGEMENT WITH LANDLORDS

5.1 Landlords assuring themselves, their tenants and us is central to our approach. This means:



- 5.2 Landlords must prepare and submit to us an **Annual Assurance Statement** in accordance with our published statutory guidance. They must make it available to their tenants and other service users.
- 5.3 Each landlord should determine the most effective way for it to obtain the necessary assurance, and it must have evidence to support its Statement. Landlords must submit this evidence to us if we ask for it.
- 5.4 Landlords must also notify us of any material changes in their level of assurance during the year.
- 5.5 We may ask for more information on how a landlord has assured itself, and we may carry out work to verify a landlord's Statement and check the accuracy of information and data it has submitted to us. We may also ask a landlord to get external verification. We will then decide if we need to engage with the landlord.
- 5.6 Where a landlord tells us that it does not fully meet the Standards or Requirements, and we are assured that it has effective plans and the capacity and willingness to improve or resolve the issue, it is for the landlord to take forward the improvement. In these circumstances we will not engage with the landlord unless the issue presents such a significant risk to the interests of tenants and service users that we need to monitor it closely, or take action, to ensure it is resolved successfully.
- 5.7 Where a landlord has told us that it is meeting the Standards and Requirements and we find that it is not, we will engage with the landlord to determine the significance of the non-compliance and any action we may need to take. We set out our approach to responsive work in Chapter 6. For local authorities, we engage with Audit Scotland and our other scrutiny partners to determine our response.

Risk assessment

5.8 We consider what a landlord has told us in its Annual Assurance Statement as part of our risk assessment, alongside the other information we receive from it, our engagement with the landlord, and other sources of information about the landlord. This includes Charter performance information, homelessness data, information from past or current engagements, thematic work, significant performance failures and whistleblowing. For RSLs, we also consider finance returns, notifiable events and information from auditors.

5.9 We set out more on our approach to risk assessment in our How we work publications.

5.10 Each year we publish information about the areas our risk assessment will focus on. We also publish summary information on the outcome of our assessments.

5.11 We assess and prioritise risks and then decide what our regulatory engagement should be. For local authorities, we work through this process with our partner scrutiny bodies, to consider the full range of scrutiny activity for each local authority. More information on this is set out [by Audit Scotland on its website, in the Joint Code of Practice](#).

Our risk assessment process



Engagement Plan

5.12 We set out how we will engage with each local authority and RSL in an **Engagement Plan**, published on our website. Where an RSL is the subsidiary of another Scottish RSL, we will publish a single Engagement Plan for the group.

- 5.13 Each landlord's Plan will include:
- the information we require from that landlord
 - what it needs to do
 - how we will engage with it
 - why we are engaging, with reference to any material non-compliance with regulatory requirements
 - our member of staff as the main contact for engaging with the landlord
 - Its regulatory status (RSLs only).

5.14 Through this engagement, we require landlords to give us the right type and level of assurance – backed by appropriate evidence –

that they are complying with regulatory requirements and so protecting tenants' and others' interests. We will ask only for data and information we need to get this assurance.

5.15 Chapter 3 sets out our regulatory requirements, which include the routine annual information landlords need to give us. Where we require further, or enhanced, assurance from a landlord, we set this out in its Engagement Plan. We can make use of our powers to request information and make inquiries (see Chapter [87](#)), to set targets (see page 31), and to intervene (see Chapter 6).

5.16 We keep our Engagement Plan for each landlord under continuous review, and we may vary our engagement in response to new information or events. We update a landlord's Plan when we change our assessment or engagement.

Assessing governance and financial risk in RSLs

- 5.17 We monitor, assess and regularly report on RSLs' financial well-being and governance. By governance we mean the arrangements for the leadership, strategic direction and control of an RSL. We consider the Standards of Governance and Financial Management in our risk assessment of RSLs. We do not have this role with local authorities; Audit Scotland is the lead regulator for governance and finance in local authorities.
- 5.18 Each year we publish the risks and factors we will assess for every RSL. These risks and factors can change in response to developments in the operating environment for RSLs. We include in our assessment how long it has been since we last engaged with the landlord.
- 5.19 We use the risk assessment to determine what assurance we need from each RSL.
- 5.20 We also consider each RSL's size, organisational complexity – including its use of subsidiaries and its dependencies on these – and its number of employees, legal status and governance arrangements.
- 5.21 Some RSLs would present more significant challenges if they experienced business failure, for example because of how many tenants they provide homes for or the size of the debt they have. Given this, we consider these RSLs to have **systemic importance**. We will set out in our Engagement Plans the additional information and assurance we require from them in relation to their business plans and financial sustainability.
- 5.22 We may share relevant information and analysis about landlords with public and private investors. We will make it clear where we consider an RSL is not a suitable recipient of private or public funds.
- 5.23 Each year we carry out a programme of visits, driven by our risk assessment, to RSLs where we need more assurance. This is to help us decide if we need to have more engagement with them. This can range from meeting the RSL's Chair and senior officer to ask about how they carried out their self-assurance and observing a Board meeting, to more comprehensive on-site assessment.

Presenting our regulatory judgements on RSLs

- 5.24 We communicate the outcome of our risk assessment for RSLs by publishing a 'regulatory status' for each RSL alongside its Engagement Plan on our website. Where an RSL is the subsidiary of another Scottish RSL, we will publish a single regulatory status for the group.
- 5.25 The regulatory status provides a single view of the RSL's governance, financial well-being and performance. It summarises our judgement on its level of compliance with the Standards of Governance and Financial Management and regulatory requirements. We base our judgement on the outcome of

our risk assessment and we consider the materiality of any issues. A landlord will have Compliant status unless we judge any areas of non-compliance to be so material and significant, and of such risk to tenants' interests, that we need to give it a different regulatory status. If a landlord has told us about non-compliance through its Assurance Statement or otherwise, and we are assured that it is addressing the issue, we will take account of this when we determine its regulatory status.

- 5.26 We review the regulatory status after we engage with the RSL, or when we receive new information.

Status	What this means
Compliant	The RSL meets <u>regulatory requirements, including</u> the Standards of Governance and Financial Management <u>and regulatory requirements</u> .
<u>Non-compliant - Working towards compliance</u>	The RSL does not meet <u>regulatory requirements, including</u> the Standards of Governance and Financial Management <u>and regulatory requirements</u> , and it is working to achieve compliance.
<u>Non-compliant - Statutory action</u>	The RSL does not meet <u>regulatory requirements, including</u> the Standards of Governance and Financial Management <u>and regulatory requirements</u> , and we are using statutory powers to address the non-compliance.

(Under Review) means: We have identified or received information that means we are reviewing the regulatory status of the RSL. We will update the regulatory status as soon as this review is complete.

- 5.27 We will use 'Non-compliant - working towards compliance' where the RSL is materially non-compliant but we are satisfied that it has the capacity and willingness to resolve the issue within a reasonable time, without us taking statutory action at that time. If at any point we consider that the RSL is not addressing the issue effectively, we may move to statutory action.
- 5.28 Where we have identified or received new information that leads us to review an RSL's **compliant** regulatory status, we communicate this by attaching an *Under Review* indicator to the status. This is a way to flag that the status may change. We apply this flag while we establish the facts, or while the RSL is complying with our request for it to establish the facts. We remove this status when we confirm that the RSL is compliant or we change its status.

6. TAKING ACTION WHERE WE NEED TO

IN THIS CHAPTER WE SET OUT WHAT WE WILL DO IF WE NEED TO ACT TO SAFEGUARD THE INTERESTS OF TENANTS OR OTHER SERVICE USERS

This Chapter includes our code of practice for regulatory intervention as required by section 54 of the 2010 Act.

- 6.1 Sometimes we need to act to protect tenants' and other service users' interests. Landlords may fail to respond effectively to unexpected events, or we have to react where there is poor decision-making or evidence of mismanagement or misconduct. In such circumstances it is important that we respond effectively and appropriately.
- 6.2 We may decide to take action with a landlord following our assessment of risk. We may also take action when:
- serious concerns are raised with us by tenants ~~about significant performance failures~~
 - serious concerns are raised with us by others about a landlord (for example, whistleblowing and serious allegations)
 - the landlord tells us about material events
 - concerns are raised with us by an RSL's auditors under section 72 of the 2010 Act.
- 6.3 Where concerns are brought to our attention we respond and engage in a proportionate way. In most cases this does not involve the use of our intervention powers. We will not normally need to intervene if we are satisfied that the landlord is able and willing to investigate and resolve any issues, and it engages constructively with us.

- 6.4 Where a landlord does not assure us that it can address the issue, we may decide to take further action, up to and including statutory intervention.

Significant performance failures

- ~~6.5 Tenants can raise significant concerns about their landlord with us. This is an important safeguard for tenants. By significant performance failures, we mean where a landlord:~~
- ~~consistently and repeatedly fails to achieve outcomes in the Scottish Social Housing Charter or those agreed locally with tenants~~
 - ~~has not reported its performance annually to its tenants, or the annual reported performance does not reflect actual performance~~
 - ~~has materially failed to meet the Standards of Governance and Financial Management~~
 - ~~has acted, or failed to take action, in a way which puts tenants' interests at risk and this significantly affects a number of the landlord's tenants.~~

~~6.6—Our remit does not include dealing with an individual's service-related complaint about a landlord. This is the role of the landlord in the first place, and then the Scottish Public Services Ombudsman. More details on **making complaints about a landlord** can be found on our website.~~

~~6.7—In providing us with information about a significant performance failure, we ask tenants to show that:~~

- ~~• the issue is a significant performance failure as defined above~~
- ~~• the issue significantly affects tenants and other service users~~
- ~~• they have raised it with the landlord and the landlord has not resolved the issue within a reasonable time.~~

~~6.8—We set out how tenants can tell us about **significant performance failures** on our website and in a leaflet.~~

~~6.9—We will normally discuss the issue with the landlord in the first instance. We may take immediate regulatory action in response to information from tenants if we feel this is necessary and appropriate. We will tell those tenants who provided the information how we will use it, and may give them advice on how to take the matter forward with their landlord. We also consider information provided to us by tenants as part of our assessment of the landlord's achievement of the Charter and in our risk assessment.~~

~~6.10—We will publish the outcome of significant performance failures on our website.~~

Ways for tenants to complain or raise concerns about their landlord

~~6.46.5—This section of the Framework meets our duty under section 47 of the Housing (Scotland) Act 2010 to publish a statement on arrangements to enable and assist tenants of social landlords to provide SHR with information on significant performance failures by social landlords.~~

6.6 Tenants and service users can complain or raise concerns about their landlord in a number of ways.

1. Complain to their landlord

A tenant or service user can complain directly to their landlord. A landlord must provide tenants and service users with the information they need to complain. Landlords should make their complaints process available on their website and to anyone who contacts them directly. Landlords must respond within the timescales outlined in their service standards, in line with guidance from the Scottish Public Services Ombudsman (SPSO).

2. Complain to SPSO

A tenant or service user can complain about their landlord to the SPSO. They can do this if they have followed the landlord's complaints procedure but are still not satisfied. The SPSO provides information on its website on what tenants and service users can complain about and how to make a complaint, and includes examples of what a tenant or service user can complain about. The SPSO's website also has information on ways for people to complain about care services and factoring services provided by social landlords.

3. Bring a serious concern to us

A tenant or group of tenants can tell us about us about a serious concern about their landlord. The concern:

- must affect a group of its tenants; and
- must be something that the landlord has not put right

Before raising the concern with us, the tenant or group of tenants should have raised the concern with their landlord and given it the chance to respond.

This route is for serious concerns which affect a group of a landlord's tenants or all of its tenants. We cannot deal with a complaint between an individual and a landlord – that is the role of the SPSO. We will direct people to the SPSO where that is the right way for them to complain.

Tenants can use this route to contact us where their landlord:

- has acted in a way which puts tenants' interests at risk and this affects, or could affect, a group of tenants or all tenants; or
- repeatedly fails to achieve outcomes in the Social Housing Charter or outcomes agreed with tenants; or
- has not reported its performance annually to its tenants or has reported it inaccurately; or
- does not meet our standards for how an RSL should govern itself and manage its finances; or
- has not met any targets we have set it.

We consider serious concerns of this nature to be "significant performance failures" under the 2010 Act.

What we will do

6.426.7 We will ask tenants to provide us with information about the serious concern to show:

- why they believe the concern is serious;
- the affect of the problem on tenants;
- that they have raised it with the landlord; and
- the landlord has not resolved the issue within a reasonable time

6.8 We explain in our leaflet how tenants can tell us about a serious concern.

6.9 We will normally discuss the concern with the landlord in the first instance. We may take immediate regulatory action if we feel this is necessary.

6.10 We will tell the tenants who provided the information how we will use it, and we may give them advice on how to take the matter forward with their landlord. We will also tell the tenants the outcome from the information they have given us, and we may publish this.

6.11 We will also consider the information provided to us by tenants as part of our assessment of the landlord's achievement of the Charter and in our risk assessment.

Whistleblowing and allegations

~~6.136.12~~ A member of staff of a landlord, or a governing body member of an RSL, can raise concerns with us if they believe there has been improper conduct or mismanagement at their landlord.

~~6.146.13~~ We consider each whistleblowing concern or allegation on its merits, looking at the evidence provided. If we consider that the concern is credible and relates to a potentially serious issue, we contact the landlord concerned.

~~6.156.14~~ Where we do decide to take the matter further, we determine whether we work with the landlord to investigate the concern or allegation, and address the issue if the concerns or allegations are substantiated, or use our statutory intervention powers. Where the concern is about a local authority, we will agree an appropriate response with Audit Scotland.

Notifiable events (RSLs only)

~~6.166.15~~ RSLs must tell us promptly about any material, significant or exceptional issue, event, or change within their organisation and how they intend to deal with it. We are interested in significant events which put at risk:

- the interests or safety of tenants and other service users
- the financial health of the RSL, public investment or the confidence of lenders
- the good governance and reputation of an individual RSL or the RSL sector.

~~6.176.16~~ We set out the events that we require RSLs to notify us about, and explain what we will do with the information they give us in statutory guidance on our website.

Auditors (RSLs only)

~~6.186.17~~ An RSL's auditor or reporting accountant is obliged under section 72 of the 2010 Act to disclose certain information to us. This is where they have reasonable cause to believe that the information is likely to be of material significance in relation to the performance of our statutory functions.

~~6.196.18~~ We have published guidance for auditors on our website to explain what we regard as being of material significance.

Performance improvement, financial management and governance targets

~~6.206.19~~ We may set targets that landlords must achieve by a specified time, to respond to specific concerns or to drive improvement across all landlords.

~~6.216.20~~ Under section 34 of the 2010 Act we can set performance improvement targets specifying the level or quality of housing services or the standard of housing activities which landlords must aim to provide by a specified time. Section 37 allows us to set financial management and governance targets specifying standards which RSLs must aim to achieve by a specified time.

6.226.21 We may set these targets for a single landlord, all landlords or groups or types of landlords. Where the target relates to more than one landlord, we will consult the landlords, their tenants and other stakeholders in accordance with the 2010 Act.

6.236.22 When we set a target for one landlord, we will specify in its Engagement Plan what it must achieve and by when. When we set a target for all landlords or groups or types of landlords we will notify the affected landlords and publish the target.

When and how we use our intervention powers

6.246.23 Section 52 of the 2010 Act provides that we may intervene on a statutory basis in a number of ways. Specific powers are provided for in subsequent sections of the Act.

6.256.24 We can use our statutory powers to require action from a landlord where it is failing to provide services or manage its affairs to an appropriate standard. This may be non-compliance with regulatory requirements and/or the Standards of Governance and Financial Management or a failure to achieve the standards and outcomes in the Charter. We have flexible and graduated interventions so we can respond in the most proportionate and effective way.

6.266.25 As required by section 53 of the 2010 Act where we are considering intervention we will always consider:

- the desirability of social landlords being free to choose how to provide housing services and manage their financial and other affairs,
- the speed with which the failure or other problem needs to be dealt with, and
- our code of practice issued under section 54 of the 2010 Act.

This is our code of practice for regulatory intervention as required by section 54 of the 2010 Act.

6.276.26 We use our intervention powers to:

- address the problem or failure to protect the interests of tenants and other service users
- act as a catalyst for change within the organisation to bring about the necessary improvements and identify a sustainable solution
- protect public investment and guard against the misuse of public funds
- reassure lenders and maintain their confidence in investing in social landlords.

6.286.27 We have different intervention powers for RSLs and local authorities. This reflects the differences in the constitutional and governance arrangements of these organisations. For RSLs in a group structure, we can use our powers in any organisation within the group that is an RSL.

6.296.28 The powers we can use with all social landlords are:

- require a performance improvement plan (section 55)
- an enforcement notice (section ~~56~~6)
- appoint a manager for housing activities (section 57).

6.306.29 The powers we can use with RSLs only are:

- appoint a manager for financial or other affairs to ensure the RSL manages its financial or other affairs in a way that will rectify any failure to comply with regulatory requirements or other duties (section 58)
- remove a member of the governing body of an RSL (section 60)
- suspend a governing body member or an agent of an RSL during or following inquiries (section 61)
- remove a governing body member or an agent of an RSL following inquiries (section 62)
- appoint a new governing body member or director to an RSL (section 65)
- restrict dealings in an RSL during or following inquiries (section 66)
- direct an RSL to transfer some or all of its assets to another RSL if, following an inquiry into its affairs, there has been mismanagement or misconduct in the RSL's financial or other affairs, or its viability is in jeopardy, or it cannot provide housing services to an acceptable standard (section 67).

6.316.30 We set out how we appoint managers and governing body members, and dealing with potentially serious issues in RSLs, in separate publications on our website. Our guidance on how we consult tenants when transferring a landlord's assets is available on our website. We have also set out in separate guidance what we determine to be steps to enforce a security over an RSL's land.

6.326.31 When deciding whether and how to intervene, we consider the factors set out in section 53 of the 2010 Act and:

- the seriousness of the problem or failure, in relation to the Scottish Social Housing Charter, regulatory requirements and the Standards of Governance and Financial Management for RSLs
- the actual or potential impact on tenants and other service users, or on people seeking access to the landlord's services
- for RSLs, the impact on governance, management and financial viability
- whether the landlord is willing and able to resolve the problem or failure, and to engage constructively with us
- the effect on the reputation of the landlord, and the potential effect on stakeholders' confidence in the sector as a whole
- all other material considerations.

6.336.32 We develop a strategy for each intervention and publish this in the landlord's Engagement Plan setting out our reasons for intervention, what power we are using, what we require of the organisation, the outcomes we expect, and the timescale.

6.346.33 We publish any enforcement notice we serve on a landlord and we send a copy to every Registered Tenant Organisation (RTO) associated with the landlord. Where there is no RTO we communicate the existence of the enforcement notice to the landlord's tenants, and may communicate to service users other than tenants if relevant.

6.356.34 We may use individual intervention powers, or a combination of powers, depending on the circumstances and issues of each case. When deciding how to intervene, we consider the roles and functions of other regulatory and statutory bodies. We discuss any case for intervention in a local authority with the Accounts Commission and Audit Scotland.

6.366.35 We tell public funders and private lenders when we are taking intervention action in a landlord.

6.376.36 We report matters to the appropriate authorities if we suspect that an offence may have been committed.

6.386.37 We monitor intervention cases and keep our strategy for each individual landlord under review. We end a statutory intervention when we are satisfied that the key failures have been rectified and the landlord complies with, or has made sufficient progress towards, regulatory requirement and/or the Standards of Governance and Financial Management.

6.396.38 We report on the use of intervention powers in our annual report.

What we require the landlord to do when we intervene

6.406.39 The landlord must:

- comply with any requirements or recommendations we place on it
- co-operate with us to achieve the required outcomes and to make our intervention effective and for as short a period as possible
- publish and send a copy of any performance improvement plan we may require of it to any RTO associated with it, and communicate this information to its tenants and other relevant service users
- work constructively with any statutory appointees and/or appointed manager to help resolve the landlord's problems
- obtain our approval for what it will tell its tenants and other service users, staff, lenders and other key stakeholders about our intervention and how it will keep them informed about progress
- obtain our approval for any public or press statements or responses to press enquiries about our intervention.

7. THEMATIC WORK

IN THIS CHAPTER WE SET OUT HOW WE LOOK IN DEPTH AT SPECIFIC AREAS OF LANDLORDS' ACTIVITIES

- 7.1 We use thematic work to:
- raise awareness of significant issues and risks
 - focus on areas that tenants, people who are homeless and other service users have told us matter to them
 - explore topics from an equality and human rights perspective
 - make recommendations for landlords and for others at a national level
 - share positive practice.
- 7.2 We undertake thematic work using our powers to obtain information and carry out inquiries, as set out in Chapter [89](#).
- 7.3 We may undertake thematic work with a selected group of landlords or all landlords. We discuss the arrangements and timescales with the landlords involved.
- 7.4 We take a flexible approach to how we publicise and promote our findings and messages. We target our communications to make sure they reach the right audiences.
- 7.5 We draw on intelligence from thematic work to inform our risk assessment and engagement with individual landlords.

8. INQUIRIES AND INFORMATION

IN THIS CHAPTER WE SET OUT HOW WE USE OUR POWERS TO COLLECT INFORMATION AND MAKE INQUIRIES

This is our code of practice for inquiries as required by section 51 of the Act.

8.1 Part 4 of the 2010 Act gives us powers to obtain information and carry out inquiries.

Obtaining information

8.2 We use our powers to collect information through, for example:

- the Annual Return on the Charter from all landlords
- the Annual Assurance Statement from all landlords
- Annual Accounts from RSLs
- Financial Projections from RSLs
- Loan Portfolio from RSLs
- Auditor's Management Letter from RSLs
- notifiable events from RSLs and other notifications from local authorities
- surveys of all social landlords or a group of landlords
- a specific request to a landlord, a group of landlords or all landlords
- a visit to a landlord.

8.3 We use the information we collect to monitor, assess and report on the performance of landlords, and to:

- help us make regulatory assessments and judgements
- do broader analysis of landlords and their performance
- assess an issue or concern with a landlord
- look at the performance of one landlord or more in greater depth

- determine if we need to use our powers to intervene in a landlord.

8.4 In the course of our work we have access to personal information. We are committed to treating this information lawfully, in accordance with data protection legislation. We publish our ***data protection policy and privacy statement*** on our website.

Inquiries

8.5 Our inquiries range from a simple request for information to an in-depth look at any aspect of a landlord's housing activities and an RSL's governance and financial well-being. We also use our inquiry powers to validate and verify the information that landlords give us and to undertake thematic work as set out in Chapter 7.

8.6 The scope of an inquiry will depend on the issue we are aiming to monitor, assess and report on or get assurance about. We may target an inquiry on a specific aspect of a landlord's activities or look at a whole area of service, or all of the landlord's activities. We may also look at a number of landlords' activities through thematic work.

8.7 An RSL, a local authority, or a 'connected body' can be the subject of an inquiry. A connected body is:

- a landlord's subsidiary;
- a landlord's parent in a group structure;
- another subsidiary in a group to which the landlord belongs; or
- any other body over which the landlord has control.

8.8 We may make inquiries of more than one landlord as part of thematic work.

8.9 Inquiries can be carried out by our staff and/or by an appropriately qualified person appointed by us. We may work with other regulators and scrutiny bodies to undertake joint work on aspects of landlords' performance.

What happens in an inquiry

8.10 Our approach will depend on the nature of the inquiry. Normally, we will tell the landlord or landlords involved when we are undertaking an inquiry. There may be exceptional occasions when we have to act quickly to protect the interests of tenants and other service users. In those circumstances, we may need to do an inquiry without notifying the landlord in advance, or at short notice.

8.11 When we start an inquiry we will normally set out what it means for the landlord or landlords involved.

This will include:

- why we are carrying out an inquiry
- the information we need and when we need it
- the timescales for the inquiry
- how we will engage with the landlord
- whether we will publish a report following the inquiry.

8.12 We may change an inquiry as it develops and we will update the landlord or landlords on any change to our planned approach.

8.13 During an inquiry we may:

- review a landlord's policies, processes and systems
- carry out case reviews
- review a landlord's actions, contracts and transactions
- observe and shadow the organisation's activities
- interview staff, governing body members or elected members
- speak with the landlord's tenants and others who use its services
- request information from or meet with other stakeholders and relevant third parties
- undertake surveys.

8.14 We can arrange a survey of a landlord's houses if we consider that the landlord is, or is at risk of, failing to achieve a standard or outcome in the Charter, to meet a target we have set or to implement a performance improvement plan. We may require the landlord to meet some or all of the expenses of this survey. We must give the landlord at least 28 days' notice of the intention to carry out the survey. The landlord must give the occupiers of the property 7 days' notice of our intention to carry out the survey. ~~We may require the landlord to meet some or all of the expenses of this survey.~~

8.15 We can instruct a qualified auditor to conduct an exceptional audit as part of our inquiries about a landlord's financial or other affairs. This involves audit of the RSL's accounts and balance sheet and the auditor reporting back to us. We would be responsible for the costs of any exceptional audit.

8.16 When we undertake an inquiry we will:

- minimise any disruption to the landlord's business
- use the lowest level of inquiry to get the additional information we need
- share our assessment with the landlord and discuss any next steps with them
- where a report is being published, send a copy of the draft report to the landlord before we publish it, for it to check for factual accuracy
- for thematic work, we will share the findings relating to the landlord with them before we publish the report
- send a copy of the final published report to the landlord(s) involved, and to every registered tenant organisation associated with the landlord(s).

8.17 Landlords must:

- co-operate with our requests for information
- make any necessary arrangements to enable us to conduct and complete an inquiry
- make any published report available to its tenants and other stakeholders.

8.18 It is a criminal offence to fail to comply, without reasonable excuse, with our request for information relevant to an inquiry, to comply with the obligations in relation to a survey or to prevent an exceptional audit from taking place.

9. REGISTER OF SOCIAL LANDLORDS

IN THIS CHAPTER WE SET OUT THE REGISTRATION AND DE-REGISTRATION CRITERIA FOR RSLs

9.1 We keep a public Register of landlords that are RSLs on our website, as required by the Act. We also publish an online directory providing information on both RSLs and local authority landlords.

Registration of new social landlords

9.2 There are two types of registration criteria: legislative and regulatory. The 2010 Act sets out the legislative criteria and we set regulatory criteria [under section 25 of the 2010 Act](#). A prospective RSL must meet both sets of criteria to be eligible for registration.

Legislative criteria for registration

9.3 Section 24 sets out the legislative criteria for registration:

- the social landlord must be an organisation that does not trade for profit
- the organisation must be established for the purpose of, or have amongst its objects and powers, the provision, construction, improvement or management of:
 - houses available for letting
 - houses for occupation by members of the body where the rules of that body restrict persons entitled or prospectively entitled to occupy a house provided or managed by the body, or
 - hostels

- the organisation must be established to carry out or intends to carry out those purposes, objects or powers in Scotland
- any additional purposes or objects of the body must fall within the approved purposes set out in section 24 (d) of the 2010 Act. The eligible purposes relate to the provision of land or housing. The Scottish Ministers have power to amend the eligible purposes.

9.4 Any new organisation wishing to register with us must demonstrate that it will:

- meet the legislative and regulatory criteria for registration
- be a viable and well-run RSL, able to deliver good outcomes for tenants and other service users
- meet the Standards of Governance and Financial Management
- have a sustainable role within the existing social housing network
- be able to be effectively regulated by us.

9.5 We provide [application forms](#) and guidance on our website.

- 9.6 If an applicant body intends to be part of a group structure, either as the parent or a subsidiary, then it will need to set out the proposed group arrangements. It must be clear what the roles and relationships are between each part of the group structure and that the parent has ultimate responsibility and effective control over any subsidiary. We need to be assured that we will be able to regulate the group parts effectively to protect the interests of tenants and other service users, the social housing assets, and public and private investment.
- 9.7 We require the applicant to have regard to our guidance on [group structures](#) and demonstrate compliance with our requirements of group structures. We will take account of the applicant's role within the group when assessing it against registration criterion 2, particularly with regard to the relevant constitutional requirements relating to group structures.

Regulatory criteria for registration

Criterion 1: **The applicant must demonstrate that it has a sustainable role within the existing social landlord network in Scotland.**

We will assess whether an applicant is able to demonstrate that it adds value to the established social landlords in its area of operation. We will test what housing needs the applicant seeks to meet, what additional benefits it brings to the sector and that it has support from the relevant local authorities and funding bodies.

Criterion 2: **The applicant must demonstrate it can meet the Standards of Governance and Financial Management and constitutional requirements.**

The eligible body must have appropriate constitutional governance arrangements for the organisation. We will test that these arrangements meet the Standards of Governance and Financial Management and constitutional requirements and allow the organisation to achieve its objectives for tenants and prospective tenants. The body's constitution and governance arrangements must support the organisation to adhere to all relevant legislation, including equalities duties, be accountable to its stakeholders and safeguard taxpayers' interests and the reputation of the sector. The eligible body must be able to demonstrate its governance arrangements are such as to allow the Regulator to regulate effectively, and exercise our full regulatory powers.

Criterion 3: **The applicant must 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.**

We require the applicant to demonstrate that it can achieve the Scottish Social Housing Charter and any other standards in place at the time of application. We will test whether the applicant organisation has the management and operational arrangements in place that allow it to achieve these. We will assess the applicant's understanding of the requirements for assessing its performance, engagement with tenants and annual reporting on outcomes. We will consider the applicant's approach to

equality and human rights, and how it will ensure that it meets its duties in these areas by understanding and taking account of the diverse needs and protected characteristics of its customers.

Criterion 4:
The applicant must be able to demonstrate it is and will remain financially viable.

We require the applicant to have a business plan that demonstrates it will be financially viable, and we will test the business plan to check it complies fully with our financial requirements and our advisory guidance on business planning. We will assess that the organisation is able to comply with the financial standards in the Standards of Governance and Financial Management and other regulatory guidance, and can demonstrate it has effective financial management, planning, and controls within the organisation.

De-registration

We may remove an organisation from the Register. We can do this as a compulsory de-registration or as a voluntary de-registration.

We may compulsorily remove a body from the register in accordance with section 27 of the 2010 Act if we consider that the body:

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

Before we compulsorily de-register an organisation we will ask it for information demonstrating that it still meets the registration criteria and we will have regard to its views before we make a final decision. We will take all reasonable steps to allow an organisation at least 14 days' notice before removal.

We can agree to an organisation de-registering voluntarily. [We are required to set de-registration criteria under section 28 of the 2010 Act.](#) A landlord can ask us to remove it from the Register. This is usually after the RSL merges with, or transfers its engagements to another RSL. Our sole objective in considering a request to be de-registered is to safeguard the interests of tenants. We assess a request for de-registration against the criteria below. We will consider each case on its merits and if we are satisfied that the interests of tenants are safeguarded and the de-registration criteria are met we will remove the RSL from the Register.

Regulatory criteria for voluntary deregistration

[These are the de-registration criteria under section 28 of the 2010 Act.](#)

Criterion 1:
It does not own or manage any houses which are or will be used for the purposes of social renting.

If an RSL does not own or manage any houses used for social renting then we will no longer have a regulatory interest, unless it is the registered parent of another RSL. Our presumption is that houses and assets that are provided for social renting will remain within the social rented sector or will be managed out in a way that is acceptable to us and ensures that the interests of tenants are protected.

Criterion 2:

The RSL's de-registration does not materially affect the interests of its tenants.

Where an RSL proposes to de-register but still has tenants, the RSL must demonstrate that the proposed de-registration does not materially affect the interests of its tenants. In most circumstances, we would consider a tenant's loss of status as a social tenant to be material. Where we do not consider it to be material, the RSL must consult with its tenants and ensure the tenants are provided with independent advice about the implications of de-registration on their interests. The RSL must provide us with evidence of tenants' views when it is seeking de-registration and we will take the views of tenants into account when we consider an application for de-registration.

Criterion 3:

It has repaid all borrowings or obtained the consent of its lenders to de-register.

Lenders invest in registered social landlords at favourable rates because of their confidence in effective regulation to help protect their funds. It is important that lenders' confidence is maintained in order to retain the availability of lending and favourable investment rates for the sector. Any RSL proposing to de-register must confirm to us that it has repaid all outstanding borrowings or obtained the consent of its lender(s) to be removed from the Register.

Criterion 4:

It has repaid any public funding or has the agreement of the funder that no payment is required.

Many RSLs have benefited from public grants, loans and guarantees to invest in improving and building new homes. The RSL must demonstrate that it has agreement to the deregistration from any public funding body which has provided it with grants, loans, and guarantees and it must confirm that it has repaid the public funding or that the funding body has agreed that it requires no, or a reduced, repayment.

Criterion 5:

The applicant has consulted the relevant local authorities in their capacity as strategic housing authorities.

Where an RSL proposes to de-register, it must confirm that it has consulted the relevant local authority or local authorities. We will take into account the views of the relevant local authorities, in their capacity as strategic housing authorities, in making our de-registration decision.

10. APPEALS, REVIEWS AND COMPLAINTS

IN THIS CHAPTER WE OUTLINE HOW THOSE AFFECTED BY OUR WORK CAN ASK US TO RE-EXAMINE OUR DECISIONS

- 10.1 Individuals and landlords can ask us to formally re-examine certain regulatory decisions we have made. We ensure that appeals are considered by people who are independent from the original decision.
- 10.2 Appealing a regulatory decision is just one possible avenue of challenge. Those affected by our work also have two other avenues to challenge us directly, depending on the circumstances. These are:
- **review** - the quickest, most informal route, which we encourage as the method of initial challenge in most cases, where the decision-maker and a more senior person look again at the decision; and
 - **complaint** - using our existing two-stage internal process with the potential for recourse to the Scottish Public Services Ombudsman (SPSO).
- 10.3 We give more information on our website about how to:
- **request a review**
 - **make an appeal**
 - **make a complaint.**
- 10.4 An individual or organisation can seek a judicial review of our decisions or actions. Our appeals, review and complaints processes do not prejudice any subsequent judicial review or statutory appeal to the Court of Session.



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Annex 2: Statutory Guidance



Scottish Housing
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Annual Assurance Statement

Statutory Guidance

Published February 2024

Effective from 1 April 2024

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1. Introduction and purpose

- 1.1 Social landlords must submit to us an Annual Assurance Statement providing assurance that their organisation complies with the relevant requirements of chapter 3 of the [Regulatory Framework](#). This includes regulatory requirements that apply to all social landlords and the Standards of Governance and Financial Management that apply to Registered Social Landlords (RSLs). [We provide further information about Annual Assurance Statements and how we use the information landlords submit to us in chapter 5 of the Regulatory Framework.](#)
- 1.2 The Statement should be made and submitted by the RSL's governing body, or the relevant local authority committee which has been delegated authority to complete the Statement by the local authority. This guidance is for members of governing bodies and local authority committees.
- 1.3 This guidance sets out how landlords should prepare their Statement and submit it to us. In complying with this guidance landlords will meet the requirements on Annual Assurance Statements in chapter 3 of the [Regulatory Framework](#).
- 1.4 Each landlord should confirm in its Statement its compliance with all of the relevant requirements at chapter 3 of the Framework. Where a landlord does not fully comply, it should set out in the Statement how and when it will make the necessary improvements to ensure compliance.
- 1.5 [From time to time we may also ask landlords to provide assurance about specific areas or issues in their Statement. If we plan to ask for any specific assurance we will communicate this to landlords by the end of April each year.](#)

2. How should you assure?

- 2.1 It is for you to determine the most appropriate and effective way to get the necessary assurance on your organisation's compliance with regulatory requirements. Your approach should enable you to reach an objective and evidence-based judgement on compliance, ensuring sufficient evidence and information, and where necessary independent assurance.
- 2.2 In determining your approach for each requirement at Chapter 3 in the Regulatory Framework, you should consider:
- what level of assurance is proportionate, considering your organisation's business and context;
 - the sources of assurance and evidence you have and whether they are sufficient and reliable; and
 - whether you need independent assurance, and what that should be.
- 2.3 It is for each governing body and local authority committee to consider the timeframe and process for getting assurance.
- 2.4 You should keep a record of the evidence you have used, and how you got the assurance you needed. We do not require landlords to send this evidence to us, as it is your evidence for you to reach a judgement on compliance. But we may ask to see it, or elements of it, if we are engaging with your organisation.

Internal Audit

- 2.5 Landlords should consider how to best use internal audit as a source of independent assurance when making their Annual Assurance Statements on whether they are meeting regulatory requirements, including the Standards of Governance and Financial Management for RSLs.

Tenants and other service users

You should consider feedback from tenants and other service users as part of your assurance framework. This feedback is an important, objective view of how your organisation is performing and in particular, whether you are achieving the Charter outcomes. Each governing body and local authority committee should take account of tenant and service user feedback when assuring itself against the requirements.

3. What should you do if you find you don't comply?

- 3.1 Where you identify areas for improvement, your governing body or committee should agree appropriate actions. But they do not all necessarily need to be recorded in the Assurance Statement. The key question is whether these issues are of such materiality and significance that they mean you cannot say confidently that your organisation is complying with a particular requirement. Any areas of material non-compliance should be disclosed in the Statement.
- 3.2 It is for each governing body and committee to weigh up the evidence and seriousness of the issue and reach a judgement on whether it is material and should be disclosed.
- 3.3 When you consider materiality, you should look at whether the issue could:
 - seriously affect the interests and safety of tenants, people who are homeless or other service users;
 - threaten the stability, efficient running or viability of service delivery arrangements;
 - bring the landlord into disrepute, or raise public or stakeholder concern about your organisation or the social housing sector; and
 - in the case of RSLs, put at risk the good governance and financial health of the organisation.
- 3.4 If we are engaging with your organisation at a later date, it is possible that we might reach a different view about whether an issue is material. This is a matter of judgement. In these circumstances, the most important considerations for us when deciding whether to engage further would be:
 - whether your governing body or committee is fully aware of the issue and has taken a view on materiality and disclosure; and
 - whether you are taking effective action to resolve the issue within an appropriate timeframe.

4. What should the Statement cover?

- 4.1 Your Statement should be short and succinct. It should confirm compliance, or otherwise, with relevant regulatory requirements at the date of signing (but note that section 5 explains that there is an ongoing requirement to notify us of changes in-year).
- 4.2 The Statement should be completed and agreed by your governing body or local authority committee. Your governing body or committee should:
- Confirm that you have appropriate assurance that you comply with:
 - all relevant regulatory requirements set out in Chapter 3 of the Regulatory Framework
 - all relevant standards and outcomes in the Scottish Social Housing Charter
 - all relevant legislative duties
 - the Standards of Governance and Financial Management (RSLs only)
 - any specific assurance requirements we have asked landlords to cover in their Statement

Example wording:

We comply with the regulatory requirements set out in Chapter 3 of the Regulatory Framework.

- Set out any areas where you do not materially comply, and describe briefly how you are planning to improve in those areas and the timeframe for improvement.

Example wording:

We achieve all but the following standards and outcomes in the Scottish Social Housing Charter for tenants, people who are homeless and others who use our services:

- <AREA WHERE YOU DO NOT MATERIALLY COMPLY>:<HOW WE PLAN TO IMPROVE>
- <AREA WHERE YOU DO NOT MATERIALLY COMPLY>:<HOW WE PLAN TO IMPROVE>

- Confirm that you have seen and considered appropriate evidence to support the level of assurance you have.
 - Confirm the date of the meeting of your governing body or committee at which you considered and agreed the Statement.
 - Sign the Statement. This should be by your Chairperson or Chair of the committee.
- 4.3 If your RSL is part of a group structure, and the parent is a Scottish RSL, the parent should submit one Statement on behalf of the whole group. The Statement must clearly explain which RSLs it relates to, and disclose any material non-compliance in subsidiary RSLs.
- 4.4 You may wish to produce a more detailed version of the Statement for your tenants and other stakeholders, with additional information about how you obtained assurance and your work during the year. It is up to each governing body and committee to decide whether you wish to do so, in the context of the other performance information that you publish and taking account of any feedback from your tenants. You do not need to send us any additional Statement you produce.

5. What happens next?

- 5.1 You must submit your Statement to us between April and October each year through the landlord portal. Instructions on how to do this can be found on the [portal](#). You should also make the Statement easily available to your tenants.
- 5.2 We will publish each landlord's Statement.
- 5.3 [We will consider what you have told us in your Statement in our risk assessment alongside other sources of information such as your landlord's Charter performance information.](#) Your Statement will form part of the overall regulatory view that we have of your organisation. [We set out how we engage with each landlord in its Engagement Plan which is published on our website. If you are an RSL we will also communicate the outcome of our risk assessment by publishing a 'regulatory status' alongside your Engagement Plan.](#)
- 5.4 Where you have told us about an area of non-compliance, and we are assured that you have effective plans and the capacity and willingness to improve or resolve the issue, it will be for you to take forward the improvement. We may ask you to keep us updated.
- 5.5 In these circumstances we will not engage with you unless the issue presents such a significant risk to the interests of tenants and service users that we need to monitor it closely, or take action, to ensure it is resolved successfully. We will contact you if we require any further information or assurance. [If you are an RSL, we will also consider whether the non-compliance is material and significant and means we need to review your regulatory status. If so, and you have told us about the non-compliance and we are assured you are addressing the issue we will take this into account when determining your regulatory status.](#)
- 5.6 You must notify us during the year if anything happens which materially changes the level of assurance in your Statement. This could be a positive development, such as completion of planned improvement work. Or it could be that you have found a new area of material non-compliance. If so, you must tell us about the issue and what you are doing to resolve it. For RSLs, you should do this in accordance with our [notifiable events guidance](#). Local authorities should write to the SHR contact person named in your Engagement Plan.

This guidance has been issued under section 35 of the Act and is intended to ensure that all social landlords understand the purpose of the Annual Assurance Statement as it relates to housing activities.

This guidance has also been issued under section 36 of the Act and is intended to ensure that RSLs understand the purpose of the Annual Assurance Statement as it relates to governance and financial management.



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Consultation where the Regulator is directing a transfer of assets

Statutory Guidance

~~February 2019~~

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1. Introduction

1.1 Section 67 of the Housing (Scotland) Act 2010 (“the 2010 Act”) gives us the power to direct a transfer of the assets of a Registered Social Landlord (RSL) to another RSL if, after making inquiries, we ~~are satisfied~~ consider that:

- there has been misconduct or mismanagement in a 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.

~~there has been mismanagement or misconduct in an RSL's affairs, or its viability is in jeopardy.~~

1.2 Before making such a direction we must be satisfied that a transfer of some or all of the RSL's assets would improve the management of the assets and we must consult with:

- the tenants of the houses we propose to transfer (section 67(4a(i)):
- any secured creditor whom we know holds security over those houses (section 67(4a(ii)); and
- where the RSL is a charity, with the Office of the Scottish Charity Regulator (OSCR) (section 67 (7 and 8).

~~4.1.1.3~~ ~~The 2010 Act requires us to consult the tenants of any houses we propose to transfer and any secured creditors before we direct a transfer. Financial jeopardy is not defined in legislation but we would need to be satisfied that there is either a potential or real, significant and imminent risk that the RSL will be unable to meet its liabilities as they fall due and face insolvency.~~

~~4.21.4~~ We must then take account of the views of these statutory consultees when considering whether to direct a transfer of an RSL's assets to another RSL

~~4.31.5~~ Our objective when considering a directed transfer is to ~~protect tenants'~~ interests and ensure they have the security of having their homes managed by a well-run social landlord which provides good services. ~~safeguard and promote tenant and service user interests, by ensuring they benefit from being served by an RSL that complies with regulatory requirements and there is improved management of their homes.~~

~~4.41.6~~ Section ~~97 of the Housing (Scotland) Act 2014 (“the 2014 Act”)~~ ~~67(4A) of the 2010 Act~~ gives us ~~powers~~ sets out that, in certain circumstances, ~~to we can~~ set aside the requirements to consult tenants and secured creditors under section 67 of the 2010 Act. ~~This does not include the requirement to consult OSCR. The 2014 Act requires that~~ Section 67 (4B) requires us to we issue guidance on how we will exercise our powers when deciding whether or not to set aside the requirement to consult where we are considering directing a transfer of assets.

~~4.51.7~~ This guidance sets out:

- our overall approach to consultation about a transfer of assets:
 - how we will consult tenants, ~~and~~ secured creditors, OSCR and other stakeholders about a proposed transfer of assets;
 - ~~the circumstances in which we will set aside the requirement to not~~ consult;
 - ~~the actions we would take in those circumstances; and including~~
 - how we intend to communicate with the statutory consultees, tenants, RSLs and secured creditors in those situations in which we do not consult; and
 - our communication with other stakeholders.

2. Our approach

~~2.1~~ The 2010 Act sets out our intervention powers, including the power to direct a transfer of assets from one RSL to another in certain circumstances. Having made inquiries, we can direct a transfer of assets if we consider that:

- there has been misconduct or mismanagement in a RSL's financial or other affairs; or
- if the RSL's viability is in jeopardy for financial or governance reasons, or because it cannot provide housing services to an acceptable standard.

~~2.42.2~~ We will inform the RSL of this decision in line with our Regulatory Framework which sets out how we will use our intervention powers. When intervening, we will set out our reasons in writing to the RSL.

~~2.3~~ Where we intend to intervene under section 67 of the 2010 Act we will ordinarily seek the views of the RSL before doing so. We will provide the RSL with an opportunity to respond to our proposals. The timing and length of any consultation with the RSL will depend on the outcome of our inquiries. An RSL may request that we direct a transfer of its assets to another RSL.

~~2.4~~ Section 67 of the 2010 Act requires that before directing a transfer of assets, we must consult ~~the tenants of any houses affected by the transfer and that we also consult with any secured creditors.~~

- a. the tenants of the houses we propose to transfer (section 67(4a));
- b. any secured creditor whom we know holds security over those houses (section 67(4)(a)(ii); and
- a. where the RSL is a charity, with the Office of the Scottish Charity Regulator (OSCR) (section 67 (7) and (8).

~~2.32.5~~ ~~When we are considering a directed transfer we will engage with tenants to provide full information on the proposed directed transfer. Parts 3-54 of this guidance gives provides~~ more information on how we will consult tenants, secured creditors and OSCR.

~~2.42.6~~ Section ~~97 of the 2014 Act~~ 67 4(A) of the 2010 Act, however, gives us the power to set aside the requirement to consult with tenants and secured creditors on the direction of a transfer of assets where all four of the following requirements are met:

- the RSL's viability is in jeopardy for financial reasons;

- a person could take a step in relation to the RSL which we would require to be notified of under Section 73 of the 2010 Act (a notification of a step towards insolvency);
 - the direction to transfer assets would substantially reduce the likelihood of a person taking such a step under Section 73; and
 - there is insufficient time to comply with the duty to consult and make a direction which would substantially reduce that likelihood.
 -
- Each of these tests must be met before we can decide not to consult with tenants s and secured creditors in advance of the asset transfer.

2.7 Financial jeopardy is not defined in legislation but we would need to be satisfied that there is either a potential or real, significant and imminent risk that the RSL will be unable to meet its liabilities as they fall due and face insolvency.

2.52.8 Within Section 73 of the 2010 Act there are certain actions, referred to as steps, which parties can take and which would lead to a formal insolvency situation. These actions vary depending on an RSL's constitution. The yse include but are not limited to a winding up order or enforcement of a security for a Registered Society, or an administration order, appointment of a receiver or enforcement of a security for a limited company.

2.62.9 ~~In summary the actions listed~~ The actions listed in Section 73 are actions that are likely to lead to the dissolution or winding up of the RSL. Once these actions have been taken it may be difficult to halt or reverse the winding up process even if an alternative to winding up is available. It may be necessary in some cases to act quickly in order to prevent the winding up process from getting in the way of an asset transfer that might be in the best interests of affected tenants.

3. Consultation with Ssecured creditors

3.1 We will consult secured creditors when we are considering directing a transfer of an RSL's assets. When considering the decision to direct a transfer of assets, we will ordinarily discuss with the secured creditors the proposed recovery strategy. Where appropriate and where practicable these discussions will normally involve the RSL. We will take account of the views of secured creditors when considering whether to direct a transfer of an RSL's assets.

3.2
3.43.3 We may also include other creditors, for example unsecured lenders or investors, in the consultation process where appropriate. Where we do this we will consider their views, but recognise that they do not have the same interest in the transfer as secured creditors who are statutory consultees.

3.23.4 When we are considering whether to direct a transfer without such consultations in accordance with section 67(4A) of the 2010 Act, we must consider separately whether there is time for us to consult the tenants and time for us to consult the secured creditors. If we conclude that there would be time to consult one group but not the other, we must consult that group. ~~Section 97 of the 2014 Act provides that, the decision to set aside the requirement to consult with tenants is separate from the decision to set aside the requirement to consult with secured creditor/lenders.~~ We cannot foresee any circumstances in which we would seek to set aside the duty to consult secured creditors. This is because of the implications for existing loan

agreements and covenant compliance, and because there is likely to be a small number of secured creditors involved so it should ordinarily be possible to conclude the consultation process within a reasonable timescale. It is also likely that we will have been engaging with secured creditors in the course of our inquiries.

4. Consultation with Tenants

- 4.1 In every case we will seek to engage as fully as possible with tenants where we are considering directing a transfer of an RSL's assets. Where possible the consultation process will as a minimum take the form of a written notice, advising of the proposed transfer of assets to another RSL and seeking feedback on the proposal. We will provide clear information about:
- the reasons for the proposed transfer;
 - the potential transferee landlord;
 - what the proposed transfer will mean for tenants particularly in relation to the services they will receive; and
 - the consultation process and how tenants can give us their views.
- 4.2 We will determine what form the consultation will take based on the circumstances of each case, taking into account the number of consultees, the time available for consultation and what is reasonable in each case.
- 4.3 We will provide tenants with an opportunity to consider the proposals and to give us their response. Ordinarily we will aim to ensure the consultation period is for at least 28 days. Where possible the consultation process should as a minimum take the form of a written notice, advising of the proposed transfer of assets to another landlord and seeking feedback on the proposal.
- 4.4 We will carry out an equalities impact assessment on the consultation process to ensure that it is as accessible as possible. We will also consider whether it might be helpful to include additional methods of consultation. This may include for example meeting with tenants, the use of email, text and other social media.
- 4.5 We will provide free, independent advice to maximise opportunities for tenants to fully engage in the consultation process. However, we will retain responsibility for ensuring the consultation is conducted appropriately and in accordance with this guidance.
- ~~4.6~~ We will consider tenants' views before making a decision about a proposed directed transfer. We may also include other stakeholders, for example factored owners or other service users, in the consultation process where appropriate. Where we do this we will consider their views, but recognise that they do not have the same interest in the transfer as tenants who are statutory consultees.
- ~~4.74.6~~ There may be a limited number of cases where it is clear that there is an imminent threat to the landlord's financial viability, the statutory tests set out in section 2.6 above are all met, and where we ~~may~~ judge that we need to use our statutory powers to direct a transfer of assets to another landlord-RSL.
- ~~4.84.7~~ In these situations there may not be sufficient time to consult tenants and we may need to set aside the requirement to consult tenants. We anticipate that in most cases, we will have both the time and the capacity to carry out statutory consultation with tenants. However, where there is insufficient time to consult with tenants and to protect

their interests it is vital that that we are able to act swiftly to protect the interests of tenants and prevent insolvency.

4.94.8 In cases where we have not consulted with tenants in advance of taking the decision to direct a transfer of assets to another RSL landlord, we will set out our reasons for having decided that it was not appropriate to consult.

4.9 Whether or not we consult with tenants, we will always ensure that tenants are made aware that we have taken the decision to direct a transfer of assets to another RSL landlord, the reasons for this decision and the implications of this for tenants. We may communicate directly with tenants, or we may work with the landlord to ensure that tenants are made aware of the decision to transfer assets and are given information about the implications of this decision for them.

5. Consultation with OSCR

5.1 We will consult OSCR when we are considering directing a transfer of a charitable RSL's assets. It is likely that we will have been engaging with OSCR in the course of our inquiries about the RSL. When considering the decision to direct a transfer, we will ordinarily discuss the proposed regulatory strategy with OSCR. We will set out the reasons for considering whether a direction may be the appropriate strategy.

5.2 Section 67 (7) and (8) of the 2010 sets out that we may direct a transfer of assets from a charitable RSL only if:

- the recipient RSL is a charity which we, after consulting OSCR, consider has the same or similar charitable purposes (within the meaning of section 7(2) of the Charities and Trustee Investment (Scotland) Act 2005; or
—following consultation with OSCR, we consider the recipient RSL will secure the proper application of the assets for the purposes which were set out in the transferor RSL's entry in the Scottish Charity Register, following consultation with OSCR.

5.3 For charitable RSLs, we will consult ~~to~~with OSCR prior to making a decision about directing a transfer of assets. We will only direct the transfer of a charitable RSL's assets where OSCR confirms that either of the above statutory tests are met.

5.6. Communication with other stakeholders

6.1 We may also engage with other stakeholders when considering proposals to direct a transfer. This may include the Scottish Government and relevant local authorities, in their capacity as strategic planning and funding authorities. Where a direction involves the transfer of employees we will engage with the RSL as employer to ensure that it informs all relevant stakeholders, including pension providers.



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Determination of Accounting Requirements

Statutory Guidance

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1. Introduction

- 1.1 This Determination of Accounting Requirements is issued in terms of section 68(1) of the Housing (Scotland) Act 2010 (“the Act”). Section 69 of the Act places a statutory duty on Registered Social Landlords (RSLs) to comply with the Determination.
- 1.2 In complying with this Determination, RSLs will meet the requirement to submit information in chapter 3 of the Regulatory Framework.
- 1.3 If you have any questions about this Determination, please contact the SHR contact person named in your Engagement Plan.

2. Interpretation

- 2.1 In this Determination:

“**accounting policies**” means the specific accounting policies selected and followed by an RSL which are, in the opinion of the governing body of the registered social landlord, appropriate to its circumstances and best suited to present a true and fair view of its results and financial position and which conform with generally accepted accounting practice;

“**affordable letting**” includes all properties let below market levels along with those that are let for social benefit;

“**book value**” means the value of an asset as it appears on the statement of financial position;

“**costs**” means costs net of any recoverable VAT;

“**depreciation**” means the cost or value of an asset which is used or consumed during the reporting period;

“**general needs housing**” means housing that is not shared ownership accommodation or supported housing accommodation;

“**governing body**” means in the case of a company, the board and in the case of a registered society, the management committee;

“**historical cost surplus or deficit**” means the surplus or deficit if no revaluation has taken place during the reporting period;

“**impairment**” means a reduction in the recoverable amount of an asset below its carrying value;

“**key management personnel**” includes those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity. This will include governing body members.

“**operating costs**” means all the direct and indirect costs associated with an activity, including cost of sales;

“**operating surplus or deficit**” means the surplus or deficit incurred after running costs are taken into account and before any interest or other finance costs are taken into account;

“**person**” includes incorporated and unincorporated organisations;

“**planned and cyclical maintenance**” means costs incurred by the registered social landlord to maintain property that can be planned or contracted for;

“**reactive maintenance**” means costs incurred by the registered social landlord to maintain property that cannot be planned for;

“**registered society**” means a society registered under the Co-operative and Community Benefit Societies Act 2014;

“**reporting period**” means the period to which the statement of comprehensive income relates;

“**shared ownership accommodation**” means accommodation that is owned jointly by the RSL and the occupant;

“**the SORP**” means the current Statement of Recommended Practice: Accounting by Registered Social Landlords, issued by the National Housing Federation, the Welsh Federation of Housing Associations and the Scottish Federation of Housing Associations as updated;

“**statement of comprehensive income**” means the revenue account required for the purposes of:

- (a) Section 80(1) of the Co-operative and Community Benefit Societies Act 2014; or
- (b) the profit and loss account referred to in section 396(1) of the Companies Act 2006

“statement of financial position” means the balance sheet required for the purposes of:

- (a) Section 80(3) Co-operative and Community Benefit Societies Act 2014; or
- (b) Section 396(1)(a) of the Companies Act 2006;

“**subsidiary**” has the same meaning as in section 164 of the Housing (Scotland) Act 2010;

“**supported housing accommodation**” means accommodation owned by an RSL and allocated to an individual requiring support to live independently, which is occupied by that individual as the individual’s sole or main residence, but does not include accommodation the primary purpose of which is to provide care rather than housing, or which aims to fulfil a statutory duty other than under housing legislation;

“**unit of accommodation**” means in the case of supported housing or a hostel accommodation which is provided for one individual and, in any other case, a dwelling;

“**voids**” means the monetary value of rent lost by an RSL for properties that are not let.

3. Application of Determination

- 3.1 This Determination applies to all RSLs with a reporting period which begins on or after 1 January 2015.

4. Information in specified form

- 4.1 Any requirement in this Determination to prepare information in a specified form shall be satisfied if it is prepared in a form substantially to the same effect.

5. Materiality

- 5.1 Unless stated otherwise, amounts which, in a particular context of any provision of this Determination, are not material may be disregarded for the purpose of that provision.

6. General accounting requirements

- 6.1 The financial statements of an RSL shall comply with the requirements of this Determination, SORP (where applicable) and applicable financial reporting standards with respect to the form and content of the statement of financial position, statement of comprehensive income, additional statements and any additional information to be provided by way of notes to the financial statements.
- 6.2 Nothing in this Determination shall prevent the financial statements giving more information than is required by this Determination.

7. True and fair view

- 7.1 The statement of financial position shall give a true and fair view of the state of affairs of the RSL as at the end of the reporting period and the disposition of funds and assets which it holds, or has held, in connection with its housing activities.
- 7.2 The statement of comprehensive income shall give a true and fair view of the surplus or deficit incurred by the RSL for the reporting period.
- 7.3 Where it is necessary to depart from the requirements of this Determination so as to give a true and fair view of the state of affairs of an RSL and of its statement of comprehensive income in accordance with the duties imposed by:
- (a) section 396(2) of the Companies Act 2006 in the case of a registered social landlord that is a company, or
 - (b) section 80(1) and (3) of the Co-operative and Community Benefit Societies Act 2014 in the case of a registered social landlord that is a registered society, then:

nothing in this Determination shall prevent such a departure but particulars of any such departure, the reasons for it, and its effect, shall be stated in the notes to the financial statements.

8. Housing activities

8.1 If in the course of the reporting period an RSL has engaged in housing activities in two or more types of accommodation that in the opinion of the governing body differ substantially from each other, the supporting notes to the statement of comprehensive income shall state, in respect of each type:

- (a) the amount of the turnover attributable to that type;
- (b) the costs attributable to that type; and
- (c) the amount of operating surplus or deficit which is in the opinion of the governing body attributable to that type.

8.2 For the purposes of paragraph 8.1, the type of accommodation includes general needs housing, supported housing accommodation and shared ownership accommodation.

9. Signature on and dating of statement of financial position

9.1 The statement of financial position shall:

- (a) show the date on which the financial statements have been authorised for issue by the governing body of the RSL;
- (b) be signed on behalf of the governing body by:
 - (i) a member of the governing body in the case of a company, or
 - (ii) two members and the secretary of the governing body in the case of a registered society.

10. Notes to the financial statements

10.1 Every RSL shall include in the notes to its financial statements the information shown in the Schedule to this Determination, together with the corresponding information for its previous reporting period.

10.2 Items listed in the Schedule to this Determination shall not be included if there is no amount to be shown in respect of both the reporting period and the previous reporting period.

11. Additional statements

11.1 Every RSL must include in the financial statements a statement of cash flows prepared in accordance with the format specified in the SORP.

Schedule

Information to be included in the notes to the financial statements

Part 1

Note 1 – Particulars of turnover, operating costs and operating surplus or deficit

	<i>Turnover</i>	<i>Operating Costs</i>	<i>Operating Surplus or Deficit</i>	<i>Operating Surplus or Deficit for Previous Reporting Period</i>
	£	£	£	£
Affordable letting activities				
Other activities				
Total				
Total for previous reporting period				

Note 2 – Particulars of turnover, operating costs and operating surplus or deficit from affordable letting activities

	<i>General Needs Social Housing</i>	<i>Supported Social Housing Accommodation</i>	<i>Shared Ownership Housing</i>	<i>Other (describe)</i>	<i>Total</i>	<i>Total for previous reporting period</i>
	£	£	£	£	£	£
Rent receivable net of service charges						
Service charges						
Gross income from rents and service charges						
Less voids						
Net income from rents and service charges						
Grants released from deferred income						
Revenue grants from Scottish Ministers						
Other revenue grants						
Total turnover from affordable letting activities						
Management and maintenance administration costs						
Service costs						

	<i>General Needs Social Housing</i>	<i>Supported Social Housing Accommodation</i>	<i>Shared Ownership Housing</i>	<i>Other (describe)</i>	<i>Total</i>	<i>Total for previous reporting period</i>
	£	£	£	£	£	£
Planned and cyclical maintenance including major repairs costs						
Reactive maintenance costs						
Bad debts – rents and service charges						
Depreciation of affordable let properties						
Impairment of affordable let properties						
Operating costs for affordable letting activities						
Operating surplus or deficit for affordable letting activities						
Operating surplus or deficit for affordable letting activities for previous reporting period						

Note 3 – Particulars of turnover, operating costs and operating surplus or deficit from other activities

	<i>Grants from Scottish Ministers</i>	<i>Other revenue grants</i>	<i>Supporting people income</i>	<i>Other income</i>	<i>Total Turnover</i>	<i>Operating costs – bad debts</i>	<i>Other operating costs</i>	<i>Operating surplus or deficit</i>	<i>Operating surplus or deficit for previous reporting period</i>
	£	£	£	£	£	£	£	£	£
Wider role activities undertaken to support the community, other than the provision, construction, improvement and management of housing									
Care and repair									
Investment property activities									
Factoring									
Support activities									
Care activities									
Contracted out services undertaken for registered social landlords									

<i>Grants from Scottish Ministers</i>	<i>Other revenue grants</i>	<i>Supporting people income</i>	<i>Other income</i>	<i>Total Turnover</i>	<i>Operating costs – bad debts</i>	<i>Other operating costs</i>	<i>Operating surplus or deficit</i>	<i>Operating surplus or deficit for previous reporting period</i>
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£	£	£	£	£	£	£	£	£
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Contracted out services
undertaken for other
organisations

Developments for sale to
registered social landlords

Developments and
improvements for sale to other
organisations

Uncapitalised development
administration costs

Other activities (describe here*)

Total from other activities

**Total from other activities for
the previous reporting period**

* “Other activities” that are material should be clearly described and a materiality level of 5% of total turnover or costs, or £250 000, whichever is lower, should be applied for item or items included as “other activities”.

Part 2

Other information to be included in the notes to the financial statements

1. Establishment of registered social landlord

- 1.1 A statement of the legislative provisions under which the registered social landlord is established.
- 1.2 Any identifying number allocated to the registered social landlord as part of a registration process by:
 - (a) the registrar of companies for Scotland, under section 1066 of the Companies Act 2006;
 - (b) the Financial Conduct Authority;
 - (c) the Office of the Scottish Charity Regulator; or
 - (d) the Scottish Ministers

2. Administration details

- 2.1 The address of the registered office of the registered social landlord and, if different, the address of the principal office of the registered social landlord.
- 2.2 The name of any person who is a member of the key management personnel at any point during the reporting period and their role in the organisation, and the date of that person's appointment or resignation if during the reporting period.
- 2.3 The names and addresses of the principal professional advisors, including bankers, solicitors, external and internal auditors.

3. Key management personnel emoluments

- 3.1 The aggregate amount of emoluments payable to, or receivable by, the key management personnel and former key management personnel of the registered social landlord whose total emoluments are £60,000 or more, excluding employer's pension contributions, during the reporting period.
- 3.2 The number of key management personnel whose emoluments during the reporting period fall within each band of £10,000 from £60,000 upwards.
- 3.3 If there are no key management personnel with emoluments of £60,000 or more during the reporting period, this should be stated.
- 3.4 The emoluments payable to, or receivable by, the chief executive or equivalent of the registered social landlord split as follows:
 - (a) emoluments excluding employer's pension contributions;
 - (b) employer's pension contributions; and
 - (c) total emoluments payable
- 3.5 The number of governing body members whose emoluments during the reporting period fall within each band of £5,000 from £0 to £5,000 and upwards.

- 3.6 In paragraphs 3.1 to 3.5, “emoluments” means payments in respect of key management personnel services as key management personnel of the registered social landlord or key management personnel services (whilst acting as key management personnel of the registered social landlord) in connection with the management of its affairs or the affairs of any subsidiary undertaking of the registered social landlord, whether those amounts are payable by the registered social landlord or its subsidiary undertakings, and includes:
- (a) wages and salaries, including performance related pay, payable for the reporting period;
 - (b) fees and percentages;
 - (c) sums payable by way of expense allowance (so far as chargeable to United Kingdom tax);
 - (d) non-contractual payments;
 - (e) contributions payable in respect of pensions except where otherwise stated; and
 - (f) the estimated money value of any other benefits otherwise than in cash

Emoluments in respect of a person accepting office shall be treated as emoluments in respect of his or her service as a member of the key management personnel.

- 3.7 The pension contributions payable to, or receivable by, key management personnel of the registered social landlord whose total emoluments (excluding pension contributions) are £60,000 or more during the reporting period, or where no such contribution is payable, a statement to that effect.

4. Compensation payable to key management personnel

- 4.1 The aggregate amount of any compensation payable to, or receivable by, key management personnel and former key management personnel of a registered social landlord for loss of office (whether by retirement or otherwise) during the reporting period, distinguishing between compensation in respect of the office, whether of the registered social landlord or any subsidiary undertaking, and compensation in respect of other offices.

- 4.2 In paragraph 4.1, “compensation” means compensation received or receivable for:

- (a) loss of office of the key management personnel of the registered social landlord, or
- (b) loss, whilst as a member of the key management personnel of the registered social landlord or in connection with ceasing to be a member of the key management personnel of that body, of:
 - (i) any other office in connection with the registered social landlord’s affairs; or
 - (ii) any office or otherwise in connection with the management of affairs of any subsidiary undertaking of the registered social landlord

5. Consideration for services of key management personnel

- 5.1 The aggregate amount of any consideration payable to or receivable by third parties during the reporting period, where the consideration is £60,000 or more, for making available the services of any person to perform in the role of key management personnel of the registered social landlord, or (whilst as a member of the key management personnel of the registered social landlord) in connection with the management of the affairs of the registered social landlord or the affairs of any subsidiary undertaking of the registered social landlord.

- 5.2 For the purposes of paragraph 5.1, “third parties” means persons other than members of the key management personnel of the registered social landlord or any of its subsidiary undertakings.
- 5.3 In paragraphs 3.1 to 5.1, amounts to be disclosed include benefits other than in cash and, in relation to such amounts, reference to the amounts are to be the estimated monetary value of the benefit. The nature of such benefits shall also be disclosed.

6. Employees

- 6.1 The average number of full time equivalent employees of the registered social landlord, as ascertained from the average number of full time equivalent employees employed in each month of the reporting period.
- 6.2 Where the total number of employees differs materially from the number of full time equivalent employees, this should be disclosed.
- 6.3 In paragraphs 6.1 and 6.2, a “full time equivalent” employee means a full time employee working standard hours and includes temporary, seconded and agency staff.
- 6.4 In relation to employees of the registered social landlord, the aggregate amount of each of:
- (a) wages and salaries (including performance related pay) payable for the reporting period;
 - (b) national insurance costs incurred by the registered social landlord;
 - (c) any pension costs incurred; and
 - (d) costs of employing temporary or seconded staff including those engaged through an employment agency
- 6.5 In paragraph 6.4:
- (a) “national insurance costs” means any contributions by the registered social landlord to any state welfare or pension scheme, fund or arrangement; and
 - (b) “pension costs” includes any costs incurred by the registered social landlord in respect of any pension scheme established for the purpose of providing pensions for persons currently or formerly employed by the registered social landlord, any sums set aside for the future payment of pensions directly by the registered social landlord to current or former employees and any pensions paid directly to such persons without having first been set aside.

7. Auditors

- 7.1 The amount of remuneration, including sums payable in respect of expenses, inclusive of non-recoverable VAT, paid or payable to the registered social landlord’s external auditors in their capacity as such.
- 7.2 The amount of any remuneration, including sums payable in respect of expenses, inclusive of non-recoverable VAT, paid or payable to the registered social landlord’s external auditors or their associates in respect of services other than those of external auditors in their capacity as such.
- 7.3 For the purposes of paragraph 7.2, “associate” has the same meaning as in regulations made under section 256 Companies Act 2006.

8. Interest payable and similar charges

8.1 A summary of interest payable and similar charges disclosing:

- (a) deferred interest;
- (b) interest charged on late payment of taxation; and
- (c) any early redemption penalties

9. Taxation

9.1 Particulars of any special circumstances which affect liability in respect of the taxation of surpluses, income, or capital gains for the reporting period, or liability in respect of these items for future reporting periods.

10. Non-current assets

10.1 Details of the accounting policy for works to existing properties and how amounts to be capitalised are determined, including a table of components capitalised and their estimated useful lives for depreciation purposes.

10.2 Specific disclosure of total expenditure each year on works to existing properties, split between the amount capitalised and the amount charged to the statement of comprehensive income. Amounts capitalised should be analysed between the replacement of components and improvements.

10.3 Where any amount is shown in respect of land (including buildings) in the registered social landlord's statement of financial position, there shall be stated:

- (a) how much of that amount relates to land owned by the registered social landlord and how much relates to land which is held on a lease; and
- (b) how much of the amount attributable to land held by the registered social landlord on a lease relates to land held on a long lease and how much to land held on a short lease

10.4 For the purposes of paragraph 10.3, "long lease" and "short lease" have the same meaning as in Paragraph 7 of Schedule 10 to the Large and Medium sized Companies and Group (Accounts and Reports) Regulations 2008 (2008/No 410).

11. Shared equity activity

11.1 Where a registered social landlord participates in shared equity activities, details should be provided of the level of involvement as at the date of the statement of financial position.

12. Rent arrears

12.1 The aggregate amount for each of the following:

- (a) gross rent arrears;
- (b) the amount of any provisions for bad and doubtful debts;
- (c) where material, the net present value adjustment required if there are repayment schedules in place; and
- (d) net rent arrears

13. Deferred income

- 13.1 A reconciliation of the total grant held as deferred income between the balance at the beginning and at the end of the reporting period split between social housing grant and other grants.
- 13.2 A summary of the grant due to be released to the statement of comprehensive income split between social housing grant and other grants for the following:
- (a) amounts due within one year or on demand; and
 - (b) amounts due in one year or more

14. Payables

- 14.1 In respect of each item shown under “payables” in the registered social landlord’s statement of financial position, there shall be stated a profile of the expected repayments for the following time periods:
- (a) amounts due within one year;
 - (b) amounts due in one year or more but less than two years;
 - (c) amounts due in two years or more but less than five years; and
 - (d) amounts due in more than five years

15. Accommodation managed by the registered social landlord

- 15.1 The number of units of different types of accommodation managed by the registered social landlord at the beginning and at the end of the reporting period.
- 15.2 For the purposes of paragraph 15.1 the type of accommodation includes general needs housing, supported housing accommodation and shared ownership accommodation.

16. Accommodation managed by others

- 16.1 Where units of accommodation owned by a registered social landlord are managed on behalf of the registered social landlord by another body:
- (a) the number of units of accommodation managed at the beginning and at the end of the reporting period;
 - (b) the name of each managing body; and
 - (c) the total amount and type of funding, if any, payable to that body in respect of those units.
- 16.2 If it is not practicable to comply with paragraph 16.1 because to do so would result in a statement of excessive length, it shall be sufficient to give details of the main managing bodies and a summary of the number of units of accommodation and amount and type of funding payable.

17. Charges

- 17.1 Particulars of any charge on the assets of the registered social landlord to secure the liabilities of any other person, including, where practicable, the amount secured. For example, this would include any charges which secure a cross-group guarantee obligation.

18. Capital and other commitments

- 18.1 There shall be stated where practicable, the aggregated amount or estimated amount of contracts for capital expenditure, so far as not provided for, together with an indication of the proposed financing of such expenditure.
- 18.2 Particulars of any other financial commitments which have not been provided for and are relevant to assessing the registered social landlord's state of affairs.



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Determination of what is meant by a step to enforce a security over a Registered Social Landlord's land

Statutory Guidance

~~February 2019~~

Published February 2024

Effective from 1 April 2024

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1. Introduction and purpose

1.1 Part 7 of the Housing (Scotland) Act 2010 (the Act) sets out the action to be taken in the event of legislative provisions regarding an insolvency situation in a registered social landlords becoming, or being at risk of becoming, insolvent.

1.2 Section 73(1) of the Act requires specified persons to notify the Scottish Housing Regulator before, and as soon as reasonably practicable after, taking specified steps towards the insolvency of a registered social landlord. The specified steps include a step to enforce a security over a registered social landlord's land. The specified steps include:

- a. a step to enforce a security over a registered social landlords's land;
- b. presenting a petition for the winding up of a registered social landlord;
- c. notice being given of the proposal of a resolution for the winding up of a registered social landlord;
- d. applying for, or making, an administration order in respect of of registered social landlord which is a registered company; and
- e. appointing an administrator in respect of a registered social landlord which is a registered company.

4.21.3 Section 73(2) of the ActPart 7 provides that the Scottish Housing Regulator can determine what is meant by a "step to enforce a security" over a registered social landlord's land" for the purposes of Part 7.

2. Determination of what is meant by a step to enforce a security over a Registered Social Landlord's land

(1) Any formal step, whether or not in terms of any statutory provision, taken by a person with a view to enforcing a security over a registered social landlord's land.

(2) A step referred to in (1) above may include, but is not limited to, the following:

- (a) The issuing of any demand for payment or notice of default in terms of any agreement with the registered social landlord or in terms of the security itself;
- (b) The taking of any step required in terms of Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 for the enforcement of rights under a standard security;
- (c) The taking of any step required in terms of Schedule B1 to the Insolvency Act 1986 for the appointment of an administrator to the registered social landlord;
- (d) The taking of any step required in terms of the Insolvency Act 1986 for the appointment of a receiver or administrative receiver over property of the registered social landlord; ~~or~~
- (e) The intimation of any assignation of rents or other receipts arising from land to the party ~~against from~~ whom the rents or other receipts are due assigned rights are held; or
- (f) The taking of any step required in terms of the Insolvency Act 1986 for the appointment of a liquidator to the registered social landlord.

This guidance has been issued under section 73 of the Act.



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Financial Viability of Registered Social Landlords

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1. Introduction

- 1.1 This guidance sets out the financial information that all Registered Social Landlords (RSLs) must submit to us each year.
- 1.2 In complying with this guidance, (RSLs) will meet the requirement to submit information in chapter 3 of the [Regulatory Framework](#).
- 1.3 If you have any questions, please contact the named SHR contact person in your Engagement Plan.

2. –Annual Information Requirements

- 2.1 RSLs must submit to us Five Year Financial Projections.
- 2.2 Section 70 of the Housing (Scotland) Act 2010 requires RSLs to submit financial statements to the Scottish Housing Regulator, within 6 months of the financial year - end. RSLs ~~should~~ **must** provide ~~these~~ **both a signed and a redacted set of** statements as PDF files.
- 2.3 RSLs must submit to us specific information from their financial statements into our Audited Financial Statements return.
- 2.4 RSLs must submit to us an annual return on our Loan Portfolio system. RSLs must also promptly submit an in-year return where there is a **material** change to borrowing ~~or~~ **lending or security arrangements**.
- 2.5 When submitting their annual financial statements, RSLs must also submit a copy of the Auditor's Management Letter and the report to those charged with governance, along with the RSL's response to them. These should be provided as PDF files.

3. Annual Information Requirements – RSLs Operating in Formal or Informal Groups

- 3.1 Where an RSL is part of a formal or informal group, it must also provide financial statements for related organisations that are not registered with the Scottish Housing Regulator. Some examples of this are:
 - The RSL is a subsidiary and the parent organisation is not registered with SHR.
 - The RSL is a parent organisation with a subsidiary that is not registered with SHR.
 - The RSL is part of a Joint Venture with another organisation that is not registered with SHR.
 - The RSL is part of an informal group and shares staff/services/Committee members with another organisation that is not registered with SHR.
- 3.2 We require this information so that we are aware of factors that might have a bearing on the financial health and the overall viability of RSLs.
- 3.3 It should be noted that a related organisation that is also registered with the Scottish Housing Regulator will submit its own financial information.
- 3.4 RSLs which are part of a formal group must also submit consolidated financial statements unless they are exempt from preparing them. RSLs are expected to take appropriate professional advice on their accounting requirements.

4.4. Additional Information Requirements

4.1 Where we engage with an RSL we may require additional information. Some examples of this additional information may be:

- Long-term projections
- Management accounts
- Information in relation to a particular issue.

This guidance is issued by us under section 36 of the Act. It is intended to clarify what we expect from RSLs when discharging their duty under section 70 of the Act.



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Group Structures ~~and~~ ~~Constitutional~~ ~~Partnerships~~

Statutory Guidance

~~February 2019~~

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1. Introduction

1.1 This guidance ~~is for; relates to:~~

- Registered Social Landlords (RSLs) in group structures, whether they are the group parent or a subsidiary; ~~and~~
- RSLs considering creating a group structure, including setting up unregistered and registered subsidiaries;
- RSLs considering ~~or~~ joining a group structure as a subsidiary; and
- organisations seeking registration with us as part of a group, either as the group parent or a subsidiary.-

1.2 The guidance explains what RSLs and organisations seeking registration need to do to comply with legislative and regulatory requirements in relation to:

- developing group structure proposals and notifying us about this (existing RSLs);
- joining a group structure as a subsidiary (existing RSLs);
- registering a new RSL which will be a parent or a subsidiary in a group; and
- the operation of group structures.

4.21.3 All RSLs, whether constituted as a parent or subsidiary, must comply with the requirements set out in the Regulatory Framework, including the Standards of Governance and Financial Management (the Standards), the Constitutional Requirements and all related guidance.

1.4 In complying with this guidance, RSLs will meet the requirements relating to group structures in chapter 3 of the Regulatory Framework including the Standards ~~of Governance and Financial Management,~~ and Constitutional Requirements and all related guidance.

1.5 This guidance aims to help RSLs comply with the legislative and regulatory requirements relating to forming and operating group structures. It is not legal advice and RSLs should seek their own appropriate, professional advice when operating group structures or considering any of the organisational changes set out in this guidance.

Other guidance

1.6 RSLs considering setting up or joining a group structure, including setting up unregistered subsidiaries, must ensure that they comply with Standard 7 and are satisfied that that the proposed organisational changes safeguard the interests of, and benefit, current and future tenants.

1.7 RSLs considering joining a group structure as a subsidiary of another body must additionally comply with section 104A and 115-120 of the 2010 Act, which sets out regulatory notification and tenant consultation requirements, and our related guidance on Tenant Consultation and Approval.

1.8 In both of the above situations, RSLs must comply with our guidance on Notifiable Events. The guidance explains how and when to notify us about proposals for developing group structures.

4.31.9 Organisations seeking registration with us as a group parent or subsidiary must comply with Chapter 9 of the Regulatory Framework, which sets out the registration criteria for RSLs, and the registration application process.

4.2. Principles

- 2.1 An RSL that is part of a group, as parent or subsidiary, must meet the regulatory requirements set out in Chapter 3 of the Regulatory Framework including:
- the Standards of Governance and Financial Management and related guidance, including this guidance
 - the Constitutional Requirements set out in Chapter 3 of the Regulatory Framework
~~• all regulatory requirements set out in Chapter 3 of the Regulatory Framework.~~
- 2.2 An RSL should not establish an unregistered subsidiary or group structure, or join a group structure where that would impede in any way its ability to meet the above requirements.
- 2.3 RSLs should manage effectively any risks to the RSL and to tenants' and other stakeholders' interests from operating within a group structure.

2.4 When developing group structure proposals RSLs must ensure that they comply with Standard 7, which requires that:

- 7.1: the governing body discusses and -scrutinises any proposal for organisational change and ensures that it will benefit current and future tenants.
- 7.2: the RSL ensures that its governance structures are as simple as possible, clear and allow it to meet the Standards, Constitutional Requirements, and this guidance.
- 7.3: the RSL ensures adequate consultation with, and support from, key stakeholders including tenants, members, funders and local authorities as well as other regulators.
- 7.4: the governing body is satisfied that the new (or changed) organisation will be financially viable, efficient and will provide good outcomes for tenants.
- 7.5: the RSL establishes robust monitoring systems to ensure that delivery of the objective of the change and of commitments made to tenants are achieved.
- 7.6: charitable RSLs seek consent/notify OSCR of changes to their constitution and other changes as appropriate
- 7.7: the governing body ensures that organisational changes fit with the RSL's objectives and business plan, and that its strategy is sustainable.
- 7.8: the RSL complies with all relevant regulatory guidance, for example on notifiable events and tenant consultation.

2.4.2.5 RSLs which are charities or have charitable subsidiaries must ensure that group structure proposals allow the RSL to meet its obligations and duties under charity law and should refer to charity law and to guidance produced by the Office of the Scottish Charity Regulator (OSCR) available on its website. Trustees of charitable RSLs (generally governing body members) will need to take full account of their obligations and duties under charity law when developing proposals to create or join a group structure, and when operating within a group structure.

2.5.2.6 ~~Similarly,~~ RSLs which are registered societies should refer to relevant law and to guidance issued by the Financial Conduct Authority (FCA) available on its website.

2.7 RSLs which are incorporated as companies should refer to relevant law and to guidance issued by Companies House available on its website.

2.6.2.8 ~~The~~ RSLs must ensure that theirits governance and financial arrangements, and those of the group, ~~are such as to~~ allow us to regulate effectively, and exercise our full regulatory powers.

2.7.2.9 Where the parent of a group is an RSL, our main regulatory relationship is with the

parent. The parent should ensure in the first instance that the other RSLs within the group comply with the Regulatory Framework and regulatory guidance. We may on occasion require to engage directly with subsidiary RSLs and will set out the rationale for any direct engagement to the parent, prior to any such engagement.

2.10 Some RSLs are constituted as subsidiaries of Registered Providers in England. In these circumstances, our regulatory relationship is with the subsidiary RSL. We liaise with the social housing regulator in England to get appropriate assurance about the parent Registered Provider.

2.82.11 RSLs must comply with these principles and this guidance when developing proposals for organisational change. Likewise organisations seeking registration with us as part of a group structure must also comply with this guidance and the relevant principles above. Both RSLs and organisations seeking registration must ensure that the proposed group structure can operate in accordance with the guidance set out in section 5.

2.92.12 Where there may be an impact on people – such as tenants, other service users and employees – RSLs should undertake an Equalities Impact Assessment (EQIA). It should be done early in the process and its outcomes taken account of.

2.3. Setting up a group structure with and unregistered subsidiaries

~~3.1~~ ~~An RSL must notify us when it plans to set up or participate in a group structure or set up a new unregistered subsidiary, in line with our Notifiable Events guidance. The RSL should contact us at an early stage in the process.~~

3.1 RSLs considering setting up a group structure with unregistered subsidiaries must ensure that they comply with all regulatory requirements relating to both establishing and operating this type of group. These are set out below.

3.2 When developing group structure proposals, RSLs must ensure that they comply with Standard 7 which requires that any organisational changes safeguard the interests of, and benefit, current and future tenants.

3.3 The governance arrangements of the group must also enable the RSL to comply with all regulatory requirements, including the specific requirements for RSLs which are constituted as parents of another body. These include:

Standard 4.-5 (link):

Where the RSL is the parent within a group structure it fulfils its responsibilities to:

- control the activities of, and manage risks arising from, its subsidiaries;
- ensure appropriate use of funds within the group;
- manage and mitigate risk to the core business; and
- uphold strong standards of governance and protect the reputation of the group for investment and other purposes.

Constitutional Requirements 9-13 and 25(d) (link):

- 9. Each organisation within the group must have a distinct legal identity and separate constitution. The constitutional and financial relationships between all organisations in the group (registered or non-registered) must be documented formally and in terms that are transparent and understandable.

- 10. If any of the organisations within the group are charities, the RSL's role and relationships with other group members are consistent with charity law.
- 11. The constitutions of group members must enable the parent to exercise control and to take corrective action where required.
- 12. There are procedures in place designed to avoid conflicts of interest, particularly where members of the subsidiary's governing body are also members of the parent's governing body.
- 13. Where it is constituted as a subsidiary of another body, the RSL's constitution permits control by the parent but with sufficient independence to carry out its business, within limits set by the parent.
- 25(d). Where an RSL has subsidiaries it must ensure any payments and benefits to subsidiary governing body members are included in the relevant policy.

3.4 Our Notifiable Events guidance sets out that major restructuring within the RSL or group and plans to set up a non-registered subsidiary are notifiable events. RSLs must notify us of proposed organisational change in accordance with this guidance.

3.5 The RSLs should contact us at an early stage in the process of considering setting up a group structure.

~~3.23.6~~ An RSL considering setting up a group structure must ensure that the proposed structure:

- is consistent with, and contributes to, the RSL's purpose and objectives
- does not impede in any way the RSL's ability to meet all regulatory requirements
- allows the RSL to manage effectively any risks to the RSL and to tenants' and other stakeholders' interests
- allows the RSL to meet its obligations and duties under charity law or the law relating to registered societies where appropriate
- is sustainable financially.

~~3.3 The RSL must ensure the proposed group can operate in accordance with the guidance set out in section 5.~~

~~3.4 The RSL's governing body should consider appropriate professional advice when setting up a group structure, and must consult with tenants and other stakeholders as necessary.~~

3.4. Joining a group structure as a subsidiary

4.1 RSLs considering joining a group structure as a subsidiary must ensure that they comply with all legislative and regulatory requirements relating to becoming a subsidiary and joining and operating the group structure. These are set out below.

4.2 RSLs must comply with Sections 104A and 115-120 of the 2010 Act which set out the regulatory notification and tenant consultation requirements for this type of organisational change. RSLs must also comply with our related guidance on Tenant Consultation and Approval and Notifiable Events.

4.3 This means that before making the change to become a subsidiary the RSL must: -consult its tenants in accordance with sections 104A and 115 of the 2010 Act (as amended by the Housing (Scotland) (Amendment) Act 2018); -The RSL must carry out a ballot or seek the written authorisation of its tenants; -before it can make that change

~~4.4 notify us of the results of the ballot or authorisation- as soon as reasonably practicable, which we consider to be within 10 working days; and have regard to our Tenant Consultation and Approval and Notifiable Events guidance on this. . We give further information about the tenant consultation process in our regulatory guidance 'Tenant consultation and approval'.~~

~~4.5 When developing proposals to join a group structure as a subsidiary, RSLs must ensure that they comply with Standard 7 which requires that any organisational changes safeguard the interests of, and benefit, current and future tenants.~~

~~4.6 The governance arrangements of the group must also enable the RSL to comply with all regulatory requirements including the specific requirements for RSLs which are constituted a the subsidiary of another body. These include:~~

~~4.7 Standard 4.5 (link), referenced at section 3.3 above; and Constitutional Requirements 9-13 and 25(d), referenced at section X above.~~

~~An RSL proposing to change its constitution to become the subsidiary of another body must notify us in accordance with our Notifiable Events guidance. It must also notify us of any such arrangement in accordance with s104A of the Housing (Scotland) Act 2010 (the 2010 Act).~~

~~4.8 A charitable RSL seeking to change its constitution to become a subsidiary of another RSL must obtain OSCR's prior consent if the change to the constitution includes a change to the RSL's purposes. RSLs with registered care services must comply with the Care Inspectorate's procedures if the proposed change will affect a registered care service.~~

~~4.9 RSLs must notify us as soon as reasonably practicable after the proposal to become a subsidiary takes effect, and no later than 28 days after, in accordance with our Notifiable Events guidance.~~

~~4.10 An RSL considering joining a group structure must ensure that this:
is consistent with, and contributes to, the RSL's purpose and objectives
does not impede in any way the RSL's ability to meet all regulatory requirements
is in the best interests of its tenants and service users
allows the RSL to manage effectively any risks to the RSL and to tenants' and other stakeholders' interests
allows the RSL to meet its obligations and duties under charity law where appropriate or the law relating to registered societies where appropriate
is sustainable financially.~~

~~The RSL must ensure the arrangement will operate in accordance with the guidance set out in section 5.~~

~~The RSL's governing body should consider appropriate professional advice when considering joining a group.~~

~~The RSL must consult its tenants in accordance with sections 104A and 115 of the 2010 Act (as amended by the Housing (Scotland) (Amendment) Act 2018). The RSL must carry out a ballot or seek the written authorisation of its tenants before it can make that change. We give further information about the tenant consultation process in our regulatory guidance 'Tenant consultation and approval'.~~

4.5. Registering aration of new parent or subsidiary RSLs

5.1 RSLs considering setting up a registered subsidiary, and organisations considering registering as part of a group as parent or subsidiary, must comply with the legislative and regulatory registration requirements. These are set out below.

5.2 Any organisation seeking to register as an RSL must meet the legislative and regulatory registration criteria set out at Chapter 9 of the Regulatory Framework. This and our associated registration guidance also explains how to apply to us to become an RSL and the registration process (link).

5.3 Chapter 9 also provides specific guidance for applicants. An organisation seeking to register as an RSL which will be part of a group structure and constituted as the parent or subsidiary of another body. These applicants must set out the proposed group governance arrangements and clearly show: the roles and relationships between each part of the group structure that the parent has ultimate responsibility and effective control over any subsidiary that the subsidiary has sufficient independence to effectively manage its affairs that it complies with this guidance and the proposed group can operate in accordance with the guidance set out in section 5.
that we will be able to regulate effectively to protect the interests of tenants and other service users, the social housing assets, and public and private investment

5.4 All RSLs, whether constituted as a parent or subsidiary, must comply with the requirements set out in the Regulatory Framework, including the Standards, the Constitutional Requirements and all related guidance. These include some specific requirements for RSLs which are constituted as the parent or subsidiary of another body:

5.5 Standard 4.5, referenced at section 3.3 above; and Constitutional Requirements 9-13 and 25(d), referenced at section 3.3 above.

5.6 Chapter 9 explains that we will take account of the applicant's role within the group, and its group governance and arrangements, when assessing it against regulatory registration criterion 2: the applicant must demonstrate it can meet the Standards and Constitutional Requirements.

5.6. Operating group structures

6.1 This section applies to all RSLs in group structures, whether they are the group parent or a subsidiary.

Governance arrangements

6.16.2 The parent RSL must ensure that the group governance arrangements:

- make clear the identities, roles and responsibilities of each part of the group
- assign accountability for decision-making
- ~~where it is the parent,~~ give the parent powers of control through the governing instruments of subsidiaries, taking account of the legal status of members of the group

- have people with the skills and expertise needed in the governance and management of the subsidiary or subsidiaries to successfully take forward and sustain the proposed activities of the subsidiary or subsidiaries
- have people in the RSL with skills and expertise to monitor the activities of the subsidiaries, and to correctly identify and manage any risks arising from the activities of the subsidiaries
- ensure people who are governing body members in more than one organisation in the group have a clear understanding of their governance responsibilities
- ensure that each organisation in the group has a different Chairperson.

6.26.3 The RSL should ensure that the group has a comprehensive Intra Group Agreement (IGA) or similar document, defining all aspects of the parent/subsidiary relationship and how the group is to operate.

6.36.4 The RSL should ensure that the group has an appropriate code of conduct for all governing body members and staff that applies to all organisations within the group.

6.46.5 A parent ~~RSL~~ should ensure that the operation of audit and risk management within the group is effective.

6.56.6 The group must ensure that relationships and transactions between group members are described in individual and group financial statements as required by accounting standards, prescribed by the Determination of Accounting Requirements issued under section 68(1) of the Housing (Scotland) Act 2010, and the ~~Housing RSL~~ Statement of Recommended Practice.

6.66.7 The group should regularly review the effectiveness of governance and control arrangements within the group, and that they comply with statutory and regulatory requirements and reflect current best practice.

Control and independence

6.76.8 The proposed structure must give a parent ~~RSL~~ constitutional control over subsidiaries. Constitutional control is not the same as control over operational decisions: the subsidiary may exercise independent control over operational matters, within the limits set by its parent and to standards agreed between the two bodies. A parent ~~RSL~~ should establish clear financial and other limits within which its subsidiaries should work.

6.86.9 A parent ~~RSL~~ should formally define the scope of a subsidiary's activities, describing any limits that apply, including financial limits.

6.96.10 A parent ~~RSL~~ must give a subsidiary sufficient independence to manage its affairs without undue interference in operational matters by the parent organisation. Subsidiary RSLs must have sufficient autonomy to plan, manage and deliver their services in a way which is responsive to their local context and the views of their tenants.

6.106.11 A parent ~~RSL~~ must ensure a subsidiary cannot exercise control or undue influence over the parent.

6.116.12 Constitutional control by the parent should normally be exercised through:

- powers to control the majority of votes at a general meeting of a subsidiary, and/or

- powers to appoint and remove a majority of the subsidiary's governing body (ensuring that any RSL subsidiary has a quorum of governing body members who are not also members of the parent's governing body).

6.426.13 Parent ~~RSLs~~ should monitor the activities and performance of their subsidiaries. Parent ~~RSLs~~ should take timely and effective action if their subsidiaries do not operate within approved limits or fail to meet appropriate standards of performance.

6.436.14 Parent ~~RSLs~~ must have clearly defined rights to step in and take action if a subsidiary does not adhere to financial or other agreed limits or does not achieve agreed standards.

6.446.15 Parent ~~RSLs~~ must have appropriate step-in rights where a subsidiary or its governing body is experiencing serious problems. Step-in rights must include the power to appoint and, where necessary, remove members of the subsidiary's governing body.

6.456.16 The group must set out service provision between group members in written service level agreements or contracts, with clear costs and charges, and review them regularly. It is for RSLs to decide, taking appropriate professional advice, whether there is a requirement (such as from procurement legislation, directives and regulations) to expose existing services to competition.

Governing body membership

6.466.17 The governing body of a parent ~~RSL~~ must be able to make objective decisions about the RSL's relationships with its subsidiaries. A parent ~~RSL~~ must ensure that not all of its governing body members serve on the governing body of a particular subsidiary, to have members who are free from any potential conflict of interest between the parent and the subsidiary.

6.476.18 Where a subsidiary is an RSL, its governing body must as a minimum have sufficient members to form a quorum independently of any members who are also governing body members of the parent organisation. This does not restrict the constitutional rights a parent may have to appoint or remove governing body members of a subsidiary or to use any other step-in rights.

6.486.19 The governing body of an unregistered subsidiary should include some members who are independent of the parent ~~RSL's~~ governing body.

6.496.20 Governing body members must always act in the interests of the organisation's governing body on which they are serving. The management of conflicts of interest must be governed by the code of conduct and by the terms of the Intra Group Agreement (or similar document). The group must provide governing body members with clear guidance on declaring and managing conflicts of interest which may arise.

Finances

6.206.21 The parent ~~RSL~~ must keep a comprehensive register of loan agreements, conditions and covenants for all borrowing within the group, and a comprehensive and up to date asset register for each organisation within the group. Each organisation within the group must keep appropriate financial and borrowing information in line with regulatory requirements.

~~6.246.22~~ An RSL lending to, investing in, or providing financial support to another organisation within a group must legally be able to do so and must manage the risks effectively. The trustees of an RSL that is a charity must ensure that the terms of any loan, including the interest rates, comply with charitable obligations and duties. The RSL must ensure that such arrangements are formalised, with appropriate arrangements for monitoring and control.

~~6.226.23~~ The RSL should ensure that any on-lending is:

- on terms that impose no additional cost on its tenants
- in accordance with the terms of any funding agreement that relates to the money being provided to the other organisation
- on terms that make it a 'qualifying loan' in accordance with HMRC rules, if the RSL is charitable
- on arm's length terms and minimise the risks to which the RSL is exposed.

~~6.236.24~~ A parent ~~RSL~~ should have contractual limits for any guarantees entered into by the parent ~~RSL~~ on behalf of the subsidiary.

~~6.246.25~~ A parent ~~RSL~~ should ensure that any cross-collateralisation, guarantees (including cross guarantees), equity investment or lending is clearly identified in the group members' business plans, budgets, financial reports and annual accounts.

~~6.256.26~~ A parent ~~RSL~~ should not take general financial responsibility for any non-registered subsidiary, nor imply to third parties that it will do so. The extent of an RSL's liabilities for the debts of a non-registered subsidiary should not exceed any guarantees it has provided and/or its available resources. Governing bodies of RSLs with non-registered subsidiaries must consider any risks to the RSL, and be satisfied that providing financial support is in the RSL's best interests, and will make a demonstrable contribution to achieving its objectives.

6.7. Connected bodies and inquiries

7.1 We also have powers under section 42 of the 2010 Act to make inquiries about bodies which are or were connected to a social landlord, and in the course of an inquiry to have access to information or documentation relating to the social landlord.

7.2 A subsidiary of ~~the social landlord, an RSL~~ or the parent of ~~an RSL, social landlord~~ is a connected body.

7.3 When making inquiries or otherwise for a purpose connected with our functions, we have powers to require any person to provide us with any document or other information relating to ~~an RSL, social landlord~~, or a body which at the material time is or was connected to ~~an RSL, registered social landlord or a local authority landlord~~. These powers are provided for by section 48 of the 2010 Act.

This guidance is issued under section 36 of the 2010 Act.



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How to request an appeal of a regulatory decision

Statutory Guidance

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Why have an appeals process?

1. Our appeals process enables individuals and regulated bodies to request a formal re-examination of certain regulatory decisions we have made, considered by people who are independent of the original decision-making. Our aim is for this process to be simple, proportionate and cost-effective, minimising the extra call on resources for all involved and enabling us to consider appeals quickly. This guidance sets out which decisions can be appealed and how the process works.
2. We are committed to being as transparent, open and accessible as we can be in our work, having regard to the legislation within which we operate. The Housing (Scotland) Act 2010 (which we refer to as the '2010 Act') sets our objective, functions, duties and powers. It established a statutory right of appeal to the Court of Session for specific decisions. These relate to the registration and deregistration of a social landlord and the suspension or removal of an individual from a registered social landlord (RSL). Beyond this, our enabling legislation has not established any wider specific statutory right of appeal against our regulatory decisions.
3. Our non-statutory appeals process covers a wider range of regulatory decisions and therefore offers additional opportunities for challenge, beyond those set out in the 2010 Act. This demonstrates our commitment to best practice in regulation and to the [Scottish Regulators' Strategic Code of Practice](#).
4. Appealing a regulatory decision is just one possible avenue of challenge. Those affected by our work also have two other avenues to challenge us directly, depending on the circumstances. These are:
 - **review** - the quickest, most informal route, which we would encourage as the method of initial challenge in most cases, where the decision-maker and a more senior person look again at the decision; and
 - **complaint** - using our existing two-stage internal process with the potential for recourse to the Scottish Public Services Ombudsman (SPSO) subject to the SPSO's consideration of whether it is able to take action in the specific circumstances of the case.
5. Further information about how to request a review, or how to make a complaint can be found on our website.
6. Alongside these routes, an individual or organisation may also seek a judicial review of our decisions or actions. Our appeals, review and complaints processes do not prejudice any subsequent judicial review or statutory appeal to the Court of Session. In other words an individual or organisation is not prevented from raising legal proceedings either because they have or have not decided to ask for a review or a non-statutory appeal of a decision issued by us.
7. There are time limits for making a statutory appeal and for raising an action of judicial review. These time limits start running from the date on which we issue our decision. However, where an organisation asks for a review or a non-statutory appeal of a decision (and provided the appeal is valid) the time limit for raising legal proceedings will not start to run until we have issued a decision as a consequence of the review or the appeal.
8. This process is part of our [Regulatory Framework](#).

Which decisions can be appealed and who can appeal?

9. Our Regulatory Framework explains how we regulate, with the 2010 Act's powers and duties as the keystone. Our appeals process is available for those regulatory decisions that have the most significant and immediate impact on a regulated body or individual. These decisions all flow from our statutory powers; some can have a very significant impact on a landlord's services and, for RSLs, their governance or finance.
10. Appendix 1 sets out which specific decisions are appealable and who can appeal, with reference to the relevant sections in the 2010 Act, as amended by the Housing (Amendment) (Scotland) Act 2018.
11. In summary, **regulated bodies** can appeal our decision to:
 - register or **compulsorily** de-register an RSL;
 - set performance improvement targets specifying levels or standards of housing services landlords must aim to provide;
 - set financial management or governance targets that RSLs must aim to achieve;
 - arrange for a survey of the condition of a landlord's housing;
 - require a landlord to submit a performance improvement plan setting out how, and by when, it proposes to rectify or avoid a failure or other problem;
 - serve an enforcement notice requiring the landlord to take action to rectify or avoid a failure or other problem, or to protect its tenants or assets;
 - appoint, or require a landlord to appoint, a manager to manage its housing activities;
 - appoint, or require an RSL to appoint, a manager to manage its financial affairs;
 - appoint an individual to the governing body of an RSL;
 - restrict an RSL's dealings; and
 - transfer an RSL's assets following inquiries.
12. Landlords can also appeal our inquiry reports.
13. For some decisions, **the individual who is directly affected** can request an appeal, rather than the regulated body. An individual can appeal our decision to:
 - remove them from the governing body of an RSL; and
 - suspend them from an RSL during or following inquiries.
14. Appeals need to co-exist with our ability to take regulatory action quickly where necessary to protect tenants' and service users' interests. As such, our regulatory decision stands pending the appeal, and we will normally proceed to implement it. The one exception to this position is deregistration of an RSL. Because of the nature of this decision, we will put implementation on hold pending the outcome of an appeal.

How can I appeal and on what grounds?

15. If you wish to challenge one of the decisions set out above, as an individual (where applicable) or on behalf of your regulated body, you can submit an appeal to us. Your appeal must be submitted in writing. It should reach us within **15 working days** of you receiving formal notification of our decision. If you believe the 15 day deadline will prove challenging, for example because of your internal governance arrangements, you should let us know as early as possible to help us plan and respond flexibly. In particular, please let us know in advance of the expiry of the 15 days whether you are likely to need more time.
16. You should send your appeals submission by email to appeals@scottishhousingregulator.gsi.gov.uk appeals@shr.gov.scot -or by post to the address on page six (by recorded delivery). We will write to acknowledge that we have received your appeal within **5 working days**.
17. Your submission must clearly state which decision or decisions you are appealing. For regulated bodies, you must confirm in writing that the submission has been authorised by your governing body (for RSLs) or relevant committee (local authorities).
18. Regulatory decisions often require us to exercise professional judgement and discretion within the constraints of the legislation, our published regulatory framework and guidance. In order to fulfil our statutory objective, our appeals process must not compromise our ability to use evidence-based judgement and exercise regulatory discretion.
19. For this reason, for an appeal to be admissible for consideration it must be based on something more than disagreement with the decision. The appeal must meet one or more of the grounds set out overleaf.
20. You must explain clearly in your submission why you think the decision is wrong and which ground or grounds you believe are relevant. You must also provide all the supporting evidence you consider we need. This is what will be reviewed during the appeal. An appeal is not normally a fresh consideration of all the evidence relevant to the decision.

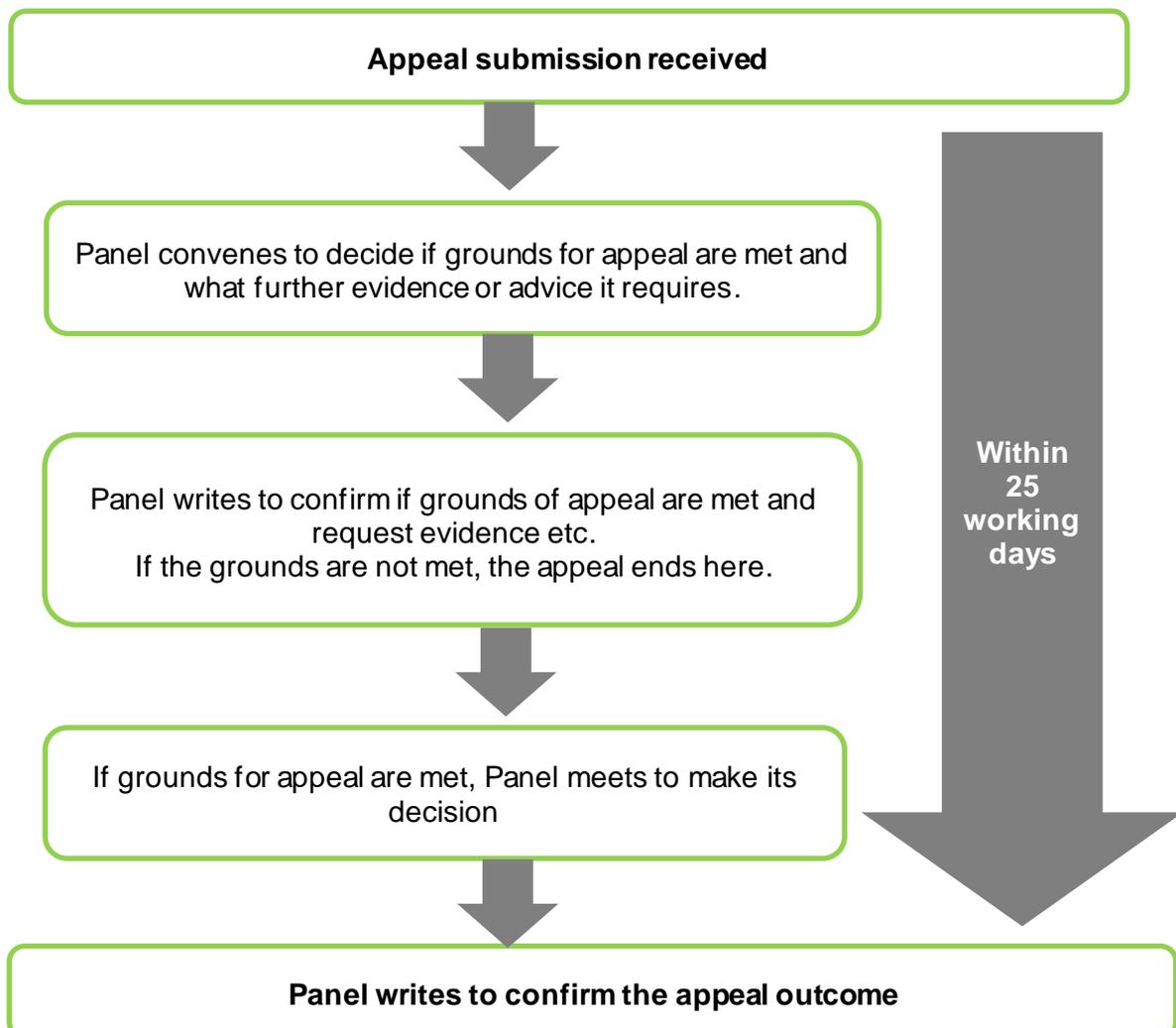
Grounds for appeal

- **Factual error:** for example the decision is based on an incorrect assumption or factual inaccuracy in our assessment of the issues and the evidence provided demonstrates this.
- **New evidence:** relevant evidence has become available that the body making the appeal and those hearing the appeal agree is material to the decision.
- **Decision did not follow procedures:** for example we made the decision without following our own published procedures, for example using our powers proportionately as set out in our Regulatory Framework.
- **Decision did not take account of relevant issues and / or took account of irrelevant issues:** for example, we ignored material evidence and placed weight on information that had no bearing on the issue.
- **Decision was so unreasonable that no reasonable person acting properly could have taken it:** this ground recognises that, while decisions are subjective and decision-makers use discretion, it is possible that a decision could be beyond the range of responses open to a reasonable decision-maker.

What happens once I have appealed?

21. An Appeal Panel will be selected and your submission will be sent to the Panel members. The Panel will be made up of:
 - two Board members, selected by our Board Chair, one of whom will Chair the Panel's discussions; and
 - a third person who is not an SHR staff or Board member will also take part in all Panel meetings and discussions, as an advisory member of the Panel.
22. The selection of the independent advisor to the Panel will be carried out in accordance with our published process. As an external party, this person cannot have any decision-making authority under the 2010 Act. Their role is solely to advise the other two Panel members, who will make the Panel's decision.
23. None of the Panel members will have had any involvement in the original decision, or in any subsequent review of that decision. They will be asked to formally confirm this, and to declare any conflicts of interest, at the outset of the process. Should a member have a conflict of interest, they will step down from the Panel and another person will be selected.
24. The Panel will aim to convene for an initial discussion within **15 working days** of us receiving your appeals submission. This discussion can take place in person or by teleconference. The purpose will be to:
 - decide whether the grounds for appeal have been met; and if so, to
 - identify any further evidence required (either from you or from the decision-maker);
 - identify any legal or other advice required; and
 - decide whether there would be benefit in meeting with you and/or with SHR staff, and in hearing further oral evidence.

25. If the grounds for appeal have not been met, we will aim to write to you within **5 working days** of the Panel's discussion, to confirm this and explain the reasons. The original decision will stand in these circumstances.
26. If the grounds for appeal have been met, we will aim to write to you within **5 working days** of the Panel's discussion, to:
 - confirm who the Panel members are;
 - request any further evidence, with timescales for submission, or a meeting if required; and
 - confirm when the Panel will reconvene to make its decision.
27. The Panel will also write formally to the decision-maker and any other relevant SHR staff to request evidence or a meeting if required. The Panel may ask our Chief Executive or other senior staff to provide expert advice in relation to regulatory policy.
28. Normally the Panel will meet to make its decision, and will communicate its decision to you, within **25 working days** of us receiving your initial appeals submission. However this may take longer depending on the extent of additional evidence requested. If we need longer than 25 days, we will write to you to confirm an alternative timescale.
29. We will confirm the outcome of the appeal in writing. Our letter will explain clearly the reasons for the Panel's decision.



What decisions can the Appeal Panel make?

30. An appeal can have three outcomes:
 - to uphold the original decision;
 - to make a new decision based on the evidence brought forward; or
 - to refer the decision back to the decision-maker to reconsider, for example with a direction for the decision-maker to consider specific new evidence.
31. At the conclusion of an appeal, we would halt the specific regulatory action in light of the second or third outcomes, and reconsider our regulatory engagement.
32. We will publish the outcome of each appeal on our website, with a brief summary of the case and the reasons for the decision made.
33. At the conclusion of an appeal, should you be dissatisfied that we have not acted in accordance with our published policies you may wish to make a complaint. You can take a complaint direct to the Scottish Public Services Ombudsman (SPSO) rather than using our internal complaints process, providing you are not bringing forward new evidence at that point. It is for the SPSO to consider whether it is able to take action about your complaint in the specific circumstances of your case. The complaints process is *not* a mechanism for challenging how we have exercised our judgement in relation to a decision arising from regulatory activity.
34. The SPSO has the power to make recommendations to us once it has concluded its investigation of a complaint. It has no power to overturn our regulatory decisions.

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Appendix 1: Regulatory decisions open to appeal

Statutory decision	Housing (Scotland) Act 2010 section	Who can appeal
Registering an RSL	S23	The applicant
Compulsorily de- De-registering an RSL	S27	The RSL
Setting performance improvement target	S34	The social landlord
Setting financial management or governance target	S37	The RSL
Arranging a survey of a social landlord's housing	S44	The social landlord
An inquiry report	S46	The social landlord
Performance improvement plan	S55	The social landlord
Enforcement notice	S56	The social landlord
Appointing a manager for housing activities	S57	The social landlord
Appointing a manager for financial or other affairs	S58	The RSL
Removing an officer of an RSL	S60	The individual
Suspending a responsible individual from an RSL	S61	The individual
Removing a responsible individual from an RSL	S62	The individual
Appointing an individual	S65	The RSL
Restricting an RSL's dealings	S66	The RSL
Transferring an RSL's assets following inquiries	S67	The RSL



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How to request a review of a regulatory decision

Statutory Guidance

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Why have a review process?

1. Our review process enables an individual, group of tenants or regulated body to ask us to look again at a regulatory decision which affects them. Our aim is for this process to be quick, straightforward and informal. This guidance sets out how the process works.
2. We are committed to being as transparent, open and accessible as we can be in our work, having regard to the legislation within which we operate. The Housing (Scotland) Act 2010 (which we refer to as the '2010 Act') sets our objective, functions, duties and powers. Our review process offers additional opportunities for challenge, beyond those set out in the 2010 Act. This demonstrates our commitment to best practice in regulation and openness in our decision-making.
3. Requesting a review of a regulatory decision is just one possible avenue of challenge. Those affected by our work also have two other avenues to challenge us directly, depending on the circumstances. These are:
 - **appeal** – formal re-examination of certain regulatory decisions, carried out by people who are independent of the original decision-making; and
 - **complaint** – using our existing two-stage internal process with the potential for recourse to the Scottish Public Services Ombudsman (SPSO) subject to the SPSO's consideration of whether it is able to take action in the specific circumstances of the case.
4. We would encourage this review process to be used as the first method of challenge in most cases, as part of an open and constructive dialogue about our decision and the reasons for it. We see the benefits of this in terms of speed and informality. You can also go straight to an appeal, should you wish to do so, for appealable decisions.
5. Further information about how to request an appeal, or how to make a complaint can be found [on our website](#). Please note that this appeal process is non-statutory and does not replace or supersede any statutory right of appeal.
6. Alongside these routes, an individual or organisation may also seek a judicial review of our decisions or actions. Our review, appeals and complaints processes do not prejudice any subsequent judicial review or statutory appeal to the Court of Session. In other words, an organisation or an individual is not prevented from raising legal proceedings either because they have decided to ask, or have decided not to ask, for a review or a non-statutory appeal of a decision issued by us.
7. There are time limits for making a statutory appeal and for raising an action of judicial review. These time limits start running from the date on which we issue our decision. However, where an organisation or an individual asks for a review or a non-statutory appeal of a decision (and provided the appeal or review is valid) the time limit for raising legal proceedings will not start to run until we have issued a decision at the conclusion of the review or appeal.
8. This review process is part of our [Regulatory Framework](#).

Which decisions can be reviewed and who can ask for a review?

9. Our [Regulatory Framework](#) explains how we regulate, with our power and duties under the 2010 Act as the keystone. All of our regulatory decisions can be subject to review.
10. A review can be requested by an individual, group of tenants or regulated body that is directly affected by the decision. The review process is an opportunity for them to tell us their concerns about the decision, ask us to look at it again, and for us to explain our thinking. Some examples of possible situations are provided below. These lists are not exhaustive.

A **regulated body** might ask for a review where:

- we have made a statutory regulatory decision, for example using our intervention powers under Part 5 of the 2010 Act, such as to appoint a manager to the landlord;
- it thinks that our approach to assessing risk in relation to its work, including any engagement plan or regulatory status we publish, is not consistent with our [Regulatory Framework](#), our publications [How we assess risk in RSLs](#) or [How we assess risk in local authorities](#);
- it believes our engagement with it is not consistent with the approach we have set out in our publication [How we work - dealing with potentially serious issues in RSLs](#); or
- it believes we have not published data and reports on the Scottish Social Housing Charter in line with what we say we will do in our [Regulatory Framework](#).

An **individual** might ask for a review where we have made a decision to remove or suspend that individual from the governing body of an RSL.

A **group of tenants** might ask for a review where:

- tenants believe that we did not comply with our published approach to considering a reported [significant performance failure](#) when we examined a case they put to us; or
- they believe we have not published data and reports on the Scottish Social Housing Charter in line with what we say we will do in our [Regulatory Framework](#).

11. Reviews need to co-exist with our ability to take regulatory action quickly where necessary to protect tenants' and service users' interests. As such, our regulatory decision stands pending the review, and we will normally proceed to implement it. The one exception to this position is deregistration of an RSL. Because of the nature of this decision, we will put implementation on hold pending the outcome of the review.

How do I request a review?

12. If you wish a review of a regulatory decision, as an individual (where applicable) or on behalf of a group of tenants or your regulated body, you can simply request it by telephone or in writing. You should submit your request within **10 working days** of receiving notification of our decision.
13. You can contact the SHR staff member you have been dealing with directly, or alternatively you can email or write to the addresses on page four. We will write to acknowledge and confirm our understanding of your request. We will help make sure you understand how the review process works and assist you where needed.
14. You should tell us why you believe that the decision is wrong, and refer to any evidence that you think we should consider again.

What happens once I have requested a review?

15. The officer who made the decision will look at it again, along with a more senior person, usually their line manager. They will look at the evidence the officer considered when making their original decision, along with any further information you have provided. They will aim to carry out the review and communicate the outcome within **10 working days** of you having requested it. If we cannot meet this timescale, we will write to you to explain why and confirm an alternative date.
16. When we tell you the outcome of the review we will explain the reasons for our decision. You can request this confirmation in writing.
17. The review can have two possible outcomes:
 - to uphold the original decision; or
 - to make a new decision.
18. At the conclusion of the review, we would halt or change the regulatory action in light of the second outcome.
19. If you remain unhappy with the decision made, and if it is an appealable decision, you can submit a formal request for an appeal in accordance with our published guidance. You can also go straight to submitting an appeal, without requesting a review first, should you wish to do so.
20. Should you be dissatisfied that we have not acted in accordance with our published policies, you may wish to make a complaint. Where a review has already been carried out, we will consider your complaint at stage two of our internal complaints handling process. The complaints process is not a mechanism for challenging how we have exercised our judgement in relation to a decision arising from regulatory activity. Our complaints handling procedure gives more information.

21. If you remain dissatisfied once we have considered your complaint at stage two, you can take your complaint to the Scottish Public Services Ombudsman (SPSO). It is for the SPSO to consider whether it is able to take action about your complaint in the specific circumstances of your case.
22. The SPSO has the power to make recommendations to us once it has concluded its investigation of a complaint. It has no power to overturn our regulatory decisions.

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Notifiable Events

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1. Introduction and purpose

- 1.1 This guidance sets out the events that Registered Social Landlords (RSLs) must tell us about. It explains why we have a regulatory interest in these events, what RSLs must notify us about, and what we will do with the information RSLs give us. We are interested in events which may put at risk:
 - the interests or safety of tenants, people who are homeless and other service users;
 - the financial health of the RSL, public investment in the RSL, or the confidence of private lenders; or
 - the good governance and reputation of an individual RSL or the RSL sector.
- 1.2 The Housing (Scotland) Act 2010 (“the 2010 Act”) also requires that RSLs notify us about certain disposals of land and assets, and constitutional and organisational changes. We make reference to these obligations in this guidance.
- 1.3 In complying with this statutory guidance RSLs will meet the regulatory requirements in chapter 3 of the [Regulatory Framework](#) and their obligations under the 2010 Act.
- 1.4 Our approach to regulation is risk-based and proportionate. This means that we will gather only information that we need to regulate effectively. This also means that we need RSLs to [tell us about](#) ~~alert us to~~ certain events as quickly as possible. RSLs must comply with their wider statutory duties including those duties which are set out in the 2010 Act.
- 1.5 Standard 2.5 of the [Standards of Governance and Financial Management](#) requires RSLs to inform us about any significant events. This guidance sets out what type of events RSLs must tell us about so that RSLs can be clear about what we need to know.

2. What are notifiable events?

- 2.1 An RSL must tell us about any material, significant or exceptional issue, event, or change within its organisation and how it intends to deal with it, or where appropriate provide us with a reasonably detailed explanation as to why a significant change has been implemented.
- 2.2 The lists in Appendix 1 provide examples of the type of notifiable event an RSL must notify us about. The lists are illustrative rather than exhaustive. As a general guideline, notifiable events are those that may:
 - seriously [adversely](#) affect the interests and safety of tenants, people who are homeless or other service users
 - threaten the stability, efficient running or viability of service delivery arrangements
 - put at risk the good governance and financial health of the organisation
 - bring [or risk bringing](#) the RSL into disrepute, or raise public or stakeholder concern about the RSL or the social housing sector.
- 2.3 What is ‘material’, ‘significant’ or “exceptional” will depend on the nature of the event and the particular RSL. Whether an event is ‘material’ or ‘significant’ may depend on factors such as the size or complexity of the RSL; so each RSL should consider the risk and potential impact on the organisation when deciding whether an issue is a notifiable event.

- 2.4 We want to ensure that you bring only the most critical issues to our attention. So, if you are unsure whether an event is a notifiable event, please contact your Regulation Manager-us and whoe will be happy to discuss this with you and give further advice. If in doubt, we recommend that you ~~not~~notify us.
- 2.5 Appendix 1 sets out examples of the type of events RSLs **must** alert us to including:
- governance and organisational issues
 - performance and service delivery issues
 - financial and funding issues
 - additional events that we require systemically important RSLs to notify us about.
- 2.6 RSLs which are group parents must notify us if they are exercising their constitutional powers to 'step-in' to deal with serious problems in a subsidiary RSL.
- 2.7 RSLs should consider the impact of the issue or event on their compliance with the Standards of Governance and Financial Management and other regulatory requirements, including compliance with their legal obligations and may require to notify their lenders in certain circumstances. They must notify us of any material changes to the assurances or supplementary information they reported in their Annual Assurance Statement. Please refer to our guidance in relation to the requirements for the Annual Assurance Statement.
- 2.8 Appendix 2 explains when RSLs must notify us about the outcome of tenant consultation, certain disposals, constitutional and organisational changes, and the timescales for notification.

3. Who should notify us?

- 3.1 An RSL's senior officer should tell us about a notifiable event which relates to performance and service delivery issues or financial and funding issues.
- 3.2 The Chair of the governing body should tell us when the notifiable event relates to a governance or organisational issue, for instance if the senior officer has left the organisation or if there are concerns about the senior officer or the governing body. The Chair must also tell us about any changes relating to the Annual Assurance Statement.
- ~~3.13.3~~ Any staff member who is authorised by the RSL to do so can notify us in relation to the disposals and changes set out in Appendix 2. This is something that should be set out in each RSL's scheme of delegation or equivalent.
- ~~3.23.4~~ The governing body of the RSL is accountable and responsible for the effective management of the organisation. Therefore the governing body should be aware of all notifiable events, even those which the senior officer is responsible for reporting to us. In some cases the RSL may need to notify other organisations of a notifiable event, for instance lenders, if it is a financial issue or where loan documentation specifies that certain events require to be notified to a lender.
- 1.1 Where the issue affects a subsidiary RSL of a Scottish RSL parent, the parent must notify us and tell us what it is doing to ensure that it is resolved. Our Group Structures and Constitutional Partnerships guidance provides further information on requirements relating to groups structures.

4. What information do we need and how is it submitted?

4.1 RSLs should submit a notifiable event to us through the [Landlord Portal](#) ('the portal'). There are user instructions available on this [here](#). The portal includes a template you should complete which sets out the type of information we need about each event. We need to know:

- what the significant event, disposal or change is
- when it happened or is likely to happen
- who is involved and/or affected
- whether there are equalities or human rights implications and how the RSL is ensuring it meets its legal duties in these areas
- what the RSL is planning to do or what action it has already taken
- ~~when the governing body was informed/will be informed.~~

4.2 For notification of tenant consultation, please refer to our statutory guidance Tenant consultation and approval which explains our information requirements.

4.3 When notifying us about disposals, and constitutional or organisational changes, you should include details of the change and confirm you have complied with Regulatory Standard 7. Appendix 2 gives more information about our information requirements.

4.4 When we receive the notifiable event through the portal we will aim to respond within eight working days.

4.5 You may be unsure whether an event should be reported under the notifiable events guidance if it relates to an issue already noted in your Engagement Plan. If so, you should [contact your Regulation Manager](#) ~~call the lead officer as named in the Plan~~ for advice.

5. When should you notify us?

5.1 RSLs should alert us to a notifiable event as soon as is reasonably practical. Sometimes this will mean alerting us before an anticipated event happens so that we are aware in advance. There should be no delay, for instance, until after a scheduled governing body meeting. Where a major incident occurs, you should alert us as soon as possible. You should not wait until an event is completely concluded before you alert us to it. In particular when an RSL is considering a disposal or organisational change which requires it to consult tenants under the 2010 Act, the RSL should notify us at an early stage in its deliberations.

5.2 Where an RSL has told us in its Assurance Statement that it is meeting the Standards of Governance and Financial Management and Requirements and we find that it is not, and it has not notified us of this, we will engage with them to determine the significance of the non-compliance. It is a serious matter if an RSL has failed to tell us about a material or significant event or issue, or has delayed notifying us of it, and we will treat it as such.

5.3 We will engage directly with the RSL to determine any action we may need to take. Where the RSL's regulatory status is shown as 'compliant', we may [have to review this if the issue is sufficiently serious as to impact on the landlord's compliance with regulatory requirements or the Regulatory Standards of Governance and Financial Management](#). ~~amend this to indicate that it is 'under review'~~. We explain how we will respond to serious concerns about an RSL in chapters 6 and 7 of our Regulatory Framework.

- 5.4 We may look at whether an RSL has notified us in accordance with this guidance as part of work to verify its Annual Assurance Statement, or during a visit or other engagement activity.
- 5.5 We provide further information on timescales for notifications of disposals and constitutional changes in Appendix 2.

6. What will we do with the information you give us?

~~6.1 Our approach to regulation is risk-based and proportionate. This means that we will gather only information that we need to regulate effectively. We use the information submitted through notifiable events to inform our regulatory strategy and as part of the annual risk assessment process. Notifiable events allow us to monitor events that occur within RSL's. Often, it is simply enough that we know about the event and have assurance that the RSL is handling any associated risks appropriately. ~~and if required we may ask for further information or increase engagement if we need more assurance.~~~~

~~6.2 We may inform, or ask the RSL to inform, another regulator or authority if that is appropriate. We may also ask the RSL to get professional or impartial advice, for instance, legal, financial, or employment advice. Depending on the nature of the event, the RSL should consider whether there are any matters that it needs to report to the police. We will also report matters to the police if we suspect that an offence may have been committed.~~

~~6.3 Where we have all the relevant information and are assured by the actions taken by the RSL, we will ~~may be able to~~ action and close the event more quickly. This will ~~may vary on a case by case basis depending on factors such as the size or complexity of the RSL or other ongoing regulatory engagement.~~~~

~~5.6.4~~ RSLs are responsible for managing their own organisation and for dealing with the events that occur. Requiring RSLs to tell us about certain events does not transfer that responsibility for dealing with the implications of the event to us. RSLs should have an effective strategy in place to deal with the event, and they should assure us that the action the RSL has taken, or intends to take, will protect the interests of its tenants and other service users.

~~5.7 If we need more assurance about how the RSL is proposing to deal with the event, we will engage with the RSL.~~

~~5.81.1 We may inform, or ask the RSL to inform, another regulator or authority if that is appropriate. We may also ask the RSL to get professional or impartial advice, for instance, legal, financial, or employment advice. Depending on the nature of the event, the RSL should consider whether there are any matters that it needs to report to the police. We will also report matters to the police if we suspect that an offence may have been committed.~~

~~5.96.5~~ If an RSL gives us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the interests of the RSL's tenants or the sector, or breach our legal obligations, for example, under the Data Protection Act and General Data Protection Regulation (GDPR), or where we are concerned that an offence may have been committed.

6.7. RSLs' internal policies and procedures

6.47.1 The RSL's internal policies and procedures should reflect the requirement to alert SHR to notifiable events in accordance with this guidance. No matter how an RSL chooses to reflect notifiable events within its policies and procedures, senior staff and governing body members should understand the notifiable events requirement and assure themselves, and us, that they are complying with this through their Annual Assurance Statement.

6.27.2 If an RSL staff member, or governing body member is aware of a notifiable event which has not been submitted to us, they should report it within the organisation through the RSL's whistleblowing policy. If that is not possible, or the attempt to report internally has been unsuccessful, they can whistleblow to us directly.

7.8. Links to other guidance

7.48.1 Tenant consultation and approval: We have produced separate statutory guidance on tenant consultation and approval for RSLs proposing to, for example, sell or transfer tenanted homes, which require it to consult tenants under the 2010 Act.

7.28.2 Whistleblowing: We have produced separate advisory guidance and a fact sheet about how RSLs should deal with whistleblowing. Whistleblowing is when someone within the RSL believes that there has been improper conduct in the organisation and reports it to someone within the RSL who is in a position to deal with it. If there has been whistleblowing within the RSL, the RSL should notify us about the allegations and tell us about how it is responding to them.

7.38.3 Section 72: We have issued statutory guidance on Section 72 of the 2010 Act. This places a duty on external auditors and reporting accountants to disclose events of material significance to us. If an RSL is aware that an auditor has reported an issue to us under Section 72, it does not need to report this issue as a notifiable event. This is because we will ask for any additional information from the RSL should we need it.

7.48.4 Group Structures ~~and Constitutional Partnerships~~: We have produced separate statutory guidance on Group Structures - Group Structures and Constitutional for Partnerships for RSLs that are part of a group structure and RSLs which are considering joining or setting up a group structure.

7.58.5 Annual Assurance Statement: We have issued statutory guidance for RSLs on how to prepare their Annual Assurance Statement. This includes guidance on how to report any material and significant non-compliance with the Standards of Governance and Financial Management and regulatory requirements.

Appendix 1

Examples of the type of notifiable event RSLs must alert/notify of us to including:

~~Examples of Notifiable Events~~

Governance and organisational issues:

- Any material change to the assurances and supplementary information contained in the RSL's Annual Assurance Statement
- The membership calls a special general meeting
- Removal of any governing body member by the RSL
- Resignation of governing body members for non-personal reasons
- The membership of the governing body falls, or is going to fall, to seven or below
- Serious complaint, allegation, investigation, or disciplinary action about a governing body member
- A breach of the RSL's code of conduct by governing body members
- Resignation or dismissal of the RSL's senior officer
- Severance payment to and/or settlement agreement with a staff member
- Serious complaint, allegation, investigation, or disciplinary action about the senior officer (see Appendix 3).
- The senior officer is absent (or partially absent) for an extended period of time
- Receipt of intimation that a claim has been submitted to an employment tribunal
- Major change or restructuring within the current RSL or group
- Plans to set up a non-registered subsidiary
- Potentially serious breaches of statutory or common law duties by the RSL, including equalities and human rights duties, whether or not these have resulted in the submission of a claim or a legal challenge
- Any legal proceedings taken against the RSL which may have significant consequences for the RSL in the event of success
- Serious failure of governance within an RSL's subsidiary
- Serious issue regarding a parent, subsidiary or connected organisation
- A dispute with another member of an alliance, consortium or non-constitutional partnership which may have significant consequences for the RSL
- Breaches of charitable obligations or no longer meeting the charity test
- Whistleblowing allegations

Performance and service delivery issues:

- Any incident involving the Health & Safety Executive or a serious threat to tenant and resident safety; or where a regulatory or statutory authority, or insurance provider, has advised the RSL of concerns for example the Fire Service Brigade, etc
- Serious accidental injury to, or the death of a tenant in their home or communal areas:
 - where there has been a service failure by the RSL; or
 - where there has been a failure, or perceived failure, in how the RSL has assessed and managed risk; or
 - which could potentially affect other tenants' confidence in the RSL or the RSL's reputation
- Major failure of key service delivery arrangements (for example, repairs cannot be carried out because a contractor goes into liquidation)

- Breaches of ballot commitment to tenants or of any stock transfer contractual agreement
- Adverse reports by statutory agencies, regulators, inspectorates (or similar) about the RSL (for example -a Care Inspectorate report with a 'weak' or 'unsatisfactory' grade or an upheld Care Inspectorate complaint)
- Any significant natural disaster for example, fire, flood or building collapse which affects the RSL's normal business and puts tenants at risk.
- Serious or significant adverse media reports or social media interaction, which could potentially affect tenants' confidence in the RSL or that is damaging to the reputation of the RSL or sector

Financial and funding issues:

- Fraud or the investigation of fraud either internally, by the Police or by an external agency or organisation
- Breach or potential breach of any banking covenants
- Serious financial loss; actual or potential
- Default or financial difficulties of major suppliers or service providers
- Any material reduction in stock or asset values; actual or potential
- Serious concern raised by lenders or auditors
- Serious and imminent potential cash flow issue
- Proposed assignation or transfer of the existing lender's security to another lender
- Notification of the outcome of an adverse financial assessment of the RSL or its parent/subsidiaries/related companies/connected bodies from Pensions Trustees
- A serious or material reduction in the funding for care and support services for example for RSLs with significant care elements in their business, where a local authority withdraws funding
- Change of internal or external auditor

Additional issues that we require systemically important RSLs to notify us about:

- Any change in senior staff
- Any material variation in the business plan or strategic direction of the organisation
- Any problems in relationships with key stakeholders for example local authorities or funders

Please note: This list is illustrative not exhaustive. If you are unsure whether an event is a notifiable event, please contact your Regulation Manager who will be happy to discuss this with you and give further advice. If in doubt, we recommend that you notify us.

•

Appendix 2

Other notifications

~~Notification of tenant consultation, disposals, constitutional and organisational change~~

The 2010 Act, as amended by the Housing (Amendment) Act 2018, requires RSLs to notify us of the outcome of tenant consultation, certain disposals, constitutional and organisational changes.

Tenant consultation

The 2010 Act requires RSLs to notify us of the results of tenant consultation, such as the outcome of a ballot or written agreement. Our statutory guidance Tenant consultation and approval sets out our requirements in relation to notification about tenant consultation.

Disposal of land and assets

The 2010 Act requires RSLs to notify us of any disposal of land or other assets as soon as reasonably practicable after the disposal is made. Where a tenant who has an SST will become the tenant of another landlord as a result of the disposal, the RSL must notify us within 28 days.

The 2010 Act provides for us to determine when we want to be notified and when to dispense with this requirement. The following section is our determination.

RSLs must notify us of:

- disposals by way of sale of tenanted social housing dwellings (and ensure that they comply with their legal obligations to consult tenants under sections 115, 115A and 115B of the 2010 Act)
- disposals by way of granting security over social and non-social housing dwellings land or other assets
- disposals by way of sale or excambion of untenanted social and non-social housing dwellings, land or other (including non-residential) assets over £120,000
- disposals by way of lease of social housing dwelling;
- disposals by way of lease of roof space of residential, tenanted properties for renewable energy sources (for example solar panels) or telecommunications (for example aerials) (and ensure that they comply with their legal obligations to consult tenants under s110 of the 2010 Act)
- disposals by way of lease of residential property to an RSL, group subsidiary or any other body for Market or Mid Market Rent or other non-social housing purposes (except where property is leased to a local authority for temporary accommodation for people who are homeless)
- any other disposals not listed above which could have significant implications for tenants or other service users.

RSLs do not need to notify us of disposals which do not fall into the categories above. If you are unsure whether notification applies, please contact [your Lead Regulation Manager](#) for further advice. If in doubt, we recommend that you notify us.

As part of its notification about disposals by way of sale or transfer the RSL should provide us with:

- a copy of the report to the governing body and minute of the meeting which agreed to the disposal
- details of the property which has been sold or transferred (property addresses)
- if the disposal was by way of a lease, a copy of the lease agreement, and
- the value of the property transferred and if the sale or transfer was at market value (if applicable).

For disposals of heritable security the RSL should provide us with:

- a copy of the report(s) to the governing body and minute(s) of the meeting(s) where the disposal was agreed.

Constitutional and organisational changes

RSLs must notify us in relation to the following constitutional and organisational changes:

~~RSLs must notify us in relation to the following constitutional and organisational changes:~~

- change of name, office or constitution (s92)
- restructuring a society (s97) or company (s101)
- voluntary winding up or dissolution of a society (s98-99)
- converting a company into a registered society (s102)
- entering into a company voluntary arrangement (s103) □ voluntary winding up of a company (s104)
- becoming a subsidiary of another body (s104A).

For constitutional changes the RSL should provide us ~~s with~~ with:

~~□ a signed copy of the new constitution~~

- the date the constitution was or will be adopted

~~• a signed copy of the new constitution~~

~~•~~

- a copy of the report and minute of the governing body meeting which agreed to adopt the new constitution, and
- confirmation if the new constitution complies with the Scottish Federation of Housing Associations model rules.

For organisational changes the RSL should provide us with:

- a copy of the report and minute of the governing body meeting which agreed to the organisational change
- the date the change was or will be made, and
- for registered societies, a copy of the submission made to the Financial Conduct Authority including a copy of the special resolution passed by members (if applicable), or
- for companies, a copy of the submission made to the registrar of companies (including the special resolution passed by members (if applicable).

Steps towards Insolvency

-RSLs must notify us where a notice of a proposal of a resolution for the winding up of an RSL is given to members of the RSL entitled to vote on it (s73 of the 2010 Act).

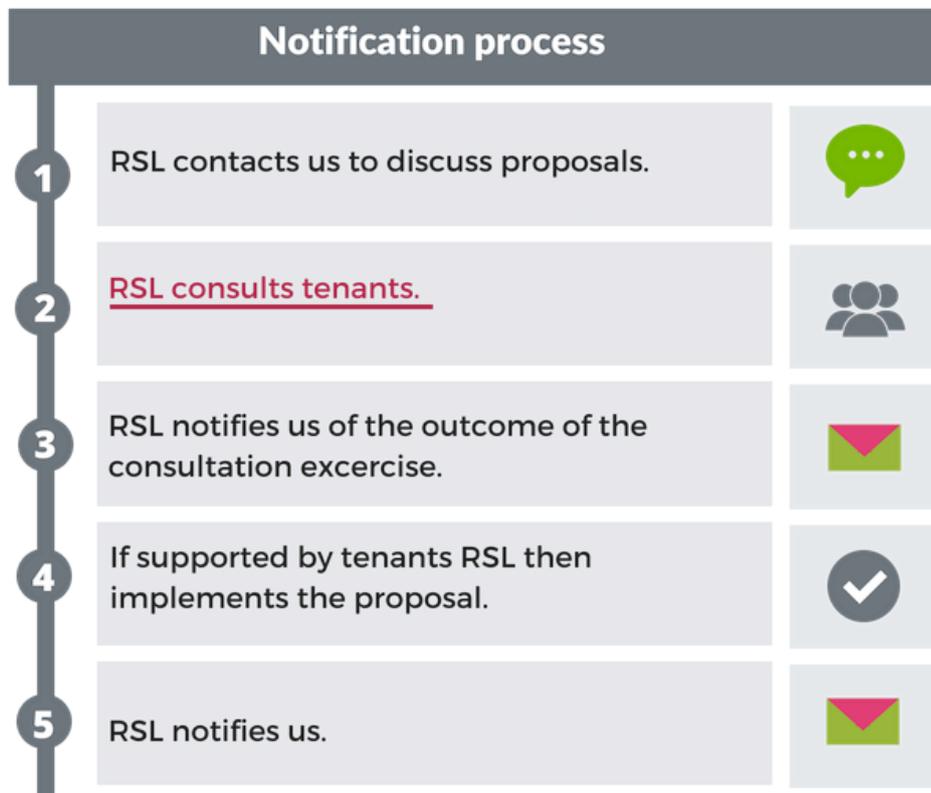
An RSL will also be required to notify us under s73 of the 2010 Act if it takes certain other steps towards insolvency. Those steps are:

- presenting a petition for the winding up of a registered social landlord
- applying for an administrative order in respect of a registered social landlord which is a registered company
- appointing an administrator in respect of a registered social landlord which is a registered company.

The timescales for notification are set out in the 2010 Act and summarised below. RSLs must ensure that they comply with these requirements.

Type of disposal/ change (and section of the 2010 Act)	Timescale for notification
The outcome of tenant consultation (s115, s98, s99, s102)	As soon as reasonably practicable. We consider 'as soon as reasonably practicable' to be within 10 working days.
Change of name, office or constitution (s92)	Within 28 days of when the amendment is made.
Special resolution passed by a society for restructuring (s97)	As soon as reasonably practicable after sending a copy of the special resolution to the Financial Conduct Authority. Where s96A applies (where a tenant of the RSL will cease to be a tenant of that RSL) SHR must be notified within 28 days of the special resolution being sent to the Financial Conduct Authority.
Voluntary winding up of society (s98)	As soon as reasonably practicable after sending a copy of the resolution to the Financial Conduct Authority.
Dissolution of society (s99)	As soon as reasonably practicable after sending the instrument of dissolution to the Financial Conduct Authority.
Restructuring of a company (s101)	As soon as reasonably practicable after the court order is made. Where s100A applies (where a tenant of the RSL will cease to be a tenant of that RSL) SHR must be notified within 28 days of the court order being made.
Conversion of a company into a registered society (s102)	As soon as reasonably practicable after sending the resolution to the registrar of companies.

Company voluntary arrangement under Part 1 of the Insolvency Act 1986 (s103)	As soon as reasonably practicable after the voluntary arrangement takes effect.
Voluntary winding up of a company under the Insolvency Act 1986 (s104)	As soon as reasonably practicable after sending the copy resolution to the registrar of companies.
Becoming a subsidiary of another body (s104A)	As soon as reasonably practicable after the arrangement takes effect, and no later than 28 days after it takes effect.
Disposals of land and assets (s109)	As soon as reasonable practicable (except where SHR has determined that notification is not required - see above) Where s107(4) applies (where a tenant of the RSL will cease to be a tenant of that RSL) SHR must be notified within 28 days of the disposal.
Notification of steps towards insolvency (s73)	Before taking the step and as soon as reasonably practicable after such step is taken.



Appendix 3

Handling a serious complaint against the Director/Chief Executive of an RSL

Purpose

- 1 This note sets out what a governing body should do when dealing with a serious complaint or grievance against the senior member of staff (Director/Chief Executive) of the registered social landlord (RSL).
- 2 We require an RSL to tell us when there is a **serious** complaint, investigation or disciplinary action relating to senior staff. These serious complaints do not arise often but because of their nature and sensitivity and potential impact on leadership arrangements, they have the potential to seriously damage the organisation. Our experience of these cases has shown us that if the governing body does not have a clear process to deal with matters like this then it can get into difficulties and the original issue can be made worse by the complaint being handled inappropriately. This note sets out what RSLs should do to ensure they comply with regulatory standards in dealing with this type of situation.

Notify SHR

- 3 RSLs should deal with and resolve minor issues at a local level, and we do not expect to be notified about those.
- 4 The Chair of the RSL should notify us if there is a formal **serious** complaint against the Director/Chief Executive, for example serious allegations from an individual employee of bullying or harassment by the Director/Chief Executive. The Chair should also tell us how the governing body intends to handle the complaint.
- 5 We recognise the highly sensitive nature of such serious complaints. If RSLs give us information in confidence we will respect that confidentiality, provided it does not compromise our ability to safeguard the overall interests of the RSL or the sector, or breach a legal obligation to disclose that information.
- 6 Employment issues are for the governing body as an employer to resolve with the individual employee. But we do need to be assured that the governing body will handle a serious complaint or grievance about its Director/Chief Executive in a manner that is compliant with regulatory standards and will get appropriate advice and support to help it manage these situations and discharge its employment responsibilities fully and properly.
- 7 RSLs should have effective governance systems that set out clear procedures for dealing with serious complaints or grievances about the Director/Chief Executive and the role of the governing body in those procedures. RSLs should be open and transparent about their decision-making processes for handling such matters.
- 8 When dealing with a serious complaint or grievance about a Director/Chief Executive, the RSL should:
 - tell us about it, in accordance our guidance on notifiable events; and
 - take prompt, independent and professional advice as appropriate to the individual complaint or grievance.

Take prompt, independent and professional advice

- 9 We need to be assured by the governing body that it is seeking independent professional advice to support it to handle the complaint. In normal circumstances it is the Director/Chief Executive who provides advice to the governing body. But where it is the Director/Chief Executive who is the subject of the serious complaint or grievance, he/she has a clear conflict of interest and cannot be involved in any way in managing the complaint made against him/her. In cases like this the governing body should obtain appropriate advice and support to manage the complaint.
- 10 The governing body needs to act quickly when a staff member raises a serious grievance about the Director/Chief Executive. For instance, if the grievance is about bullying or aggressive behaviour then the governing body must take immediate action. Given the likely sensitive nature of the grievance it should be handled carefully with independent, expert support and advice. The RSL may need to get an employment/personnel specialist to assist or a consultant with expertise in investigating such matters. The RSL must ensure that its investigation of the complaint, and any subsequent action, complies with its legal duties, including in those in relation to equalities and human rights.
- 11 Where a serious complaint has been made against the Director/Chief Executive by a governing body member or someone else who is not an employee, then the governing body should ensure that it is taking independent advice about how to handle the complaint and that the Director/Chief Executive takes no part in any investigation other than co-operating with the investigator.

Have clear procedures

- 12 An RSL should have clear procedures setting out how it will investigate serious complaints or grievances against the Director/Chief Executive. RSLs should apply good practice in dealing with the grievance and to meet our requirements as set out in this note.

The governing body's role

- 13 Most RSLs have a standing sub-committee, such as a staffing sub-committee, with delegated authority to deal with human resources matters or consider serious staff complaints. In the case of a serious complaint against the Director/Chief Executive, the staffing sub-committee should be informed and involved, rather than the Chairperson dealing with the complaint alone. The staffing sub-committee is likely to be involved in hearing and deciding on the grievance. But in some cases, it may be more appropriate to commission an independent party to conduct the investigation and report back to the subcommittee. Where there is an investigation then the sub-committee must oversee the investigation and record all decisions to ensure transparency.
- 14 Where the decision is taken to investigate a serious complaint, then the full governing body should be informed. However it should not be told any of the detail. This is to ensure:
 - the full governing body retains control over the RSL's affairs
 - the details of the grievance remain confidential (the individuals at the centre of allegations have the right to confidentiality)
 - the full governing body knows the grievance is being dealt with, for example, by the staffing sub-committee
 - if the RSL needs to bring in outside help, then the full governing body is aware of the situation from the outset and can authorise any associated costs
 - the governing body can monitor if a pattern of grievances emerges and decide what action to take

- by keeping the substance of the grievance confidential then there is a clean route for any appeal to be heard by other members of the governing body who are untainted by detailed knowledge about the issue.

15 At the end of the process, the full governing body should be told about the outcome of the grievance.

SHR involvement

16 If we have concerns about the action the governing body is proposing to take, or it appears that the Director/Chief Executive is involved in advising the governing body or in handling the grievance, then we may need to act to support the governing body to carry out its role in accordance with regulatory standards.

This guidance is issued under section 36 of the 2010 Act.

It provides guidance on what RSLs are required to notify us about so that we can monitor standards of governance and financial accountability. It is also intended to assist RSLs to comply with specific notification duties under the 2010 Act.



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Preparation of Financial Statements

Statutory Guidance

~~February 2019~~

Published February 2024

Effective from 1 April 2024

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1. Introduction

- 1.1. This guidance sets out the reporting requirements that registered social landlords (RSLs) must comply with when they prepare their financial statements. We use RSLs' financial statements to review and analyse performance, so consistent financial reporting within the social housing sector is essential.
- 1.2. In complying with this guidance, RSLs will meet the requirement to submit information in chapter 3 of the [Regulatory Framework](#).
- 1.3. This guidance note should be read in conjunction with our [notifiable events guidance](#) which gives details of financial notifiable events. When preparing financial statements, RSLs should consider whether there have been any notifiable events during the period under review and report any matters to us that have not already been drawn to our attention.
- 1.4. The governing body of an RSL is responsible for preparing its financial statements. It should be aware of changes in applicable accounting standards issued by the Financial Reporting Council, along with any Abstracts issued by the Financial Reporting Council, and must adjust its financial reporting accordingly.
- 1.5. If RSLs are in any doubt about financial reporting requirements, they should consult their auditor or take professional advice.

2. Accounting Determination 2014

- 2.1. The Determination of Accounting Requirements ([the Determination](#)) issued by us under of Section 68(1) of the Act came into force on 1 January 2015 and applies to all RSLs with accounting periods starting on or after 1 January 2015.
- 2.2. All RSLs must prepare financial statements in accordance with the Determination for accounting periods that commence on or after 1 January 2015 and the Notes to the Financial Statements should include confirmation that they comply with the Determination.

3. Statement of Recommended Practice (SORP-2014)

- 3.1. The ~~Statement of Recommended Practice for RSLs Housing SORP~~ ("SORP-2014") interprets UK Generally Accepted Accounting Practice ("UK GAAP") for registered social housing providers ~~and incorporates changes that have occurred to Financial Reporting Standards and to other accounting practices since the last SORP update in 2010. It should be applied to accounting periods beginning on or after 1 January 2015.~~ RSLs should discuss its implications with their auditors in deciding how to prepare their financial statements.
- 3.2. All RSLs except co-ownership societies must prepare financial statements in accordance with the 2014 SORP. There are no exemptions on the basis of size of organisation. For RSLs with charitable status, the 2014 SORP takes precedence over the Charities' SORP.
- 3.3. Notes to the Financial Statements must include confirmation that the statements comply with SORP-2014. The Notes should also cover any material departures from applicable accounting standards and the reasons for any such departure.

4. Statutory Instrument 2009 No. 2331 European Communities – The Financial Transparency (EC Directive) Regulations 2009 (the Regulations)

- 4.1. The purpose of the Financial Transparency Directive (Commission Directive 2006/111/EC) is to enable the European Commission to ensure that public money being granted to public undertakings is being used to pay for providing public services and that there is no cross-subsidy of commercial activities, which may be illegal under European State Aid law. The Regulations give effect to the Directive in the UK.
- 4.2. The provisions of the Regulations, as at the date of enforcement, apply only to RSLs with an annual turnover €40 million or over. Annual turnover includes turnover from all activities, as well as publicly funded activities.
- 4.3. The Regulations require bodies (including not-for-profit ones) which are engaged in commercial activities and which receive public funding to provide a Service of General Economic Interest (“SGEI”), to ensure that their financial statements are sufficiently separate to distinguish between the publicly supported activities of the body and the purely commercial activities it undertakes which are unrelated to the SGEI.
- 4.4. The governing body of an RSL is responsible for reviewing the current scope of the Regulations. If RSLs are in any doubt about whether they must comply with the Regulations, they should consult their auditor. ~~It is possible that as a consequence of the UK’s withdrawal from the EU, the Directive will no longer apply to the UK and that the Regulations will be repealed. In that event we will update this guidance as soon as reasonably practicable.~~

5. Going Concern

- 5.1. As part of their audit, an RSL’s auditors are required to obtain sufficient appropriate audit evidence regarding, and conclude on, whether a material uncertainty related to going concern exists and the appropriateness of management’s use of the going concern basis of accounting in the preparation of the financial statements. However, the RSL’s governing body is still responsible for determining whether it is appropriate to adopt the going concern basis for preparing the financial statements. will test going concern, and will report any issues in the RSL’s audited financial statements. However, the RSL’s governing body is still responsible for determining whether it is appropriate to adopt the going concern basis for preparing the financial statements.
- 5.2. In preparing the financial statements the RSL must make clear disclosures and document a thorough assessment of whether the RSL is a going concern. It also remains the responsibility of the RSL to notify us at an early stage if there are going concern issues within the RSL as detailed in our notifiable events guidance.

This guidance is issued by us under section 36 of the Act. It is intended to clarify what we expect from RSLs when discharging their duty under section 70 of the Act.



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Section 72: Reporting Information of Material Significance

Statutory Guidance

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1. Introduction

- 1.1 Section 72 of the Housing (Scotland) Act 2010 (“the [2010 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 [2010 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 [2010 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 [2010 Act](#).

3.2 The [2010 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 [2010 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 [2010 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 [2010 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@scottishhousingregulator.gsi.gov.ukshr@shr.gov.scot
- Mail: ~~SHR, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF 2nd Floor.~~
[George House, 36 North Hanover Street, Glasgow, G1 2AD](#)

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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Scottish Housing
Regulator

Tenant consultation and approval

Statutory Guidance

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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.

1.9 At all times, RSLs should take account of equalities impacts in their consultation. This should include an equalities impact assessment well before the final decision is made, and to inform their final decision. Landlords should be able to demonstrate this

if asked.

Notifiable events and other guidance

~~4.91.10~~ 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 ~~seven~~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.

~~4.101.11~~ 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.

~~4.441.12~~ 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)~~[Section 115](#) - consult with each tenant included in the proposed disposal;
- ~~(S115A 1)~~[Section 115A \(1\)](#) - conduct a ballot or seek the written agreement of tenants included in the proposed disposal;
- ~~(S115A 2)~~[Section 115A \(2\)](#) - notify us of the results of the ballot or written agreement before making the disposal;
- ~~(S115B 3)~~[Section 115A \(3\)](#) - 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

2.32.4 S115 Section 115 (1) of the 2010 Act (tenant consultation) states that an RSL proposing to make a disposal which will result in a change of landlord must serve a notice on the tenants of each house included in the proposed disposal. The notice should take account of equality considerations such as disability and race (e.g. whether English is the first language) and where necessary, and reasonable adjustments should be made.

2.42.5 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.

2.52.6 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); and
- details of any investment or service consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards).

2.62.7 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 benefits/consequences (including scope and timing of proposed programmes of investment and service delivery scope and standards).

2.72.8 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.

2.82.9 The RSL should consult/engage with 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.

2.92.10 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.

2.402.11 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;
- mitigate any negative impacts that may have been flagged in the equalities impact assessment;
- 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.

2.142.12 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.

2.142.13 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.

2.142.14 The RSL must, after considering ~~the timeous~~ 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.

2.142.15 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. The communication with tenants should again take account of equality characteristics to ensure that all tenants have an equal opportunity to participate.

2.152.17 There is no requirement to ballot or seek tenants written agreement where there is not a change of landlord.

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)~~ [Section 115](#) - consult with its tenants (this extends to all tenants of the RSL);
- ~~(S115A)~~ [Section 115A\(1\)](#) - conduct a ballot or seek the written agreement of its tenants (this extends to all tenants of the RSL);
- ~~(S115)~~ [Section 115A \(2\)](#) - notify us of the results of the ballot or written agreement before implementing the proposal; and
- ~~(S115)~~ [Section 115B \(3\)](#) - 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 ~~Before the proposal arrangements completed, the RSL must service a notice on the tenants in accordance with~~ [Section 115 \(1\)](#) 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;
- mitigate any negative impacts that may have been flagged in the equalities impact assessment;
- 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.

3.16 We can set aside the requirements to consult and ballot tenants in circumstances where we consider that:

- the RSLs viability is in jeopardy for financial reasons;
- a person could take a step towards insolvency in relation to the landlord which would require to be notified to us under Section 73 of the 2010 Act; and

- setting aside the requirements to consult and ballot would substantially reduce the likelihood of a person taking such a step.

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 All of the equalities principles in the sections above also apply here.

4.24.3 Restructuring might include:

- amalgamation; or
- transfer of engagements.

4.34.4 It does not include where a company is being wound up or is in administration.

4.44.5 In the circumstances described above the RSL must comply with the requirements set out in the following sections of the 2010 Act:

- ~~(S~~Section 115) - consult with each tenant affected by the proposal;
- ~~(Section~~ 115A (1) - conduct a ballot or seek the written agreement of tenants affected by the proposal;
- ~~(S115A~~Section 115A (2) - notify us of the results of the ballot or written agreement before implementing the proposal; and
- ~~(S~~Section 115B (3) - have regard to the guidance issued by us when complying with the legislative requirements for tenant consultation and approval.

Assistance for tenants

4.54.6 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.

4.64.7 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 of the Proposed Restructuring

4.74.8 ~~S115~~Section 115 (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.

4.84.9 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.

4.94.10 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.

4.104.11 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.

4.114.12 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.

4.124.13 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.

4.134.14 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;
- mitigate any negative impacts that may have been flagged in the equalities impact assessment;
- 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.

4.144.15 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.

4.154.16 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.

~~4.164.17~~ 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.

~~4.174.18~~ 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.

~~4.184.19~~ 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 in accordance with Section 112 of the 2014 Act.

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:

- ~~(S~~Section 115) - consult with each tenant affected by the proposal;
- ~~(S~~Section 115A (1) - conduct a ballot or seek the written agreement of tenants affected by the proposal;
- ~~(S~~Section 115A (2) - notify the Regulator of the results of the ballot or written agreement before implementing the proposal; and
- ~~(S~~Section 115B (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 stake holders.
- 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;
- mitigate any negative impacts that may have been flagged in the equalities impact assessment;
- 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.

~~6.16.2~~ 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.

~~6.26.3~~ 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

~~6.36.4~~ 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.

~~6.46.5~~ Where the proposal is that the company enters into a voluntary arrangement it must consult its tenants before the arrangement is approved.

~~6.56.6~~ 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.

~~6.66.7~~ 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

~~6.76.8~~ 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.

~~6.86.9~~ 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

~~6.96.10~~ 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.

~~6.106.11~~ 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.

~~6.146.12~~ 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

~~6.126.13~~ 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.

6.136.14 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

6.146.15 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.

6.156.16 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.

6.166.17 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

6.176.18 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.

6.186.19 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.

6.196.20 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.

6.206.21 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.

6-246.22 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

6-226.23 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 it would be best practice for the RSL to do so ~~we would prefer that the RSL does so.~~

6-236.24 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.

6-246.25 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

6-256.26 Where it is proposed that the RSL is wound up the RSL cannot pass a special resolution before it consults with its tenants.

6-266.27 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.

6-276.28 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.

6-286.29 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.

6-296.30 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.

6-306.31 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

~~6.346.32~~ 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.

~~6.326.33~~ 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.

~~6.336.34~~ 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.

~~7.47.2~~ In these circumstances the following sections of the 2010 Act will apply:

- S98 - voluntarily wind up; or
- S99 - dissolution of the registered society.

~~7.27.3~~ 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.

~~7.37.4~~ 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.

~~7.47.5~~ 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

~~7.57.6~~ 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.

~~7.67.7~~ 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

7.77.8 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 up 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.

7.87.9 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.

7.97.10 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.

7.107.11 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.

7.147.12 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

7.127.13 The RSL should notify us of the outcome of the consultation.

7.137.14 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.

7.147.15 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.

8.48.2 The statutory provisions relating to ballots and written agreements are set out in section 115A of the 2010 Act.

8.28.3 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.

8.38.4 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.

8.48.5 We would be happy to discuss detailed proposals in advance of the ballot commencing.

8.58.6 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

8.68.7 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.

8.78.8 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.

8.88.9 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.

8.98.10 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.

~~8.408.11~~ Where we are not satisfied that the majority of tenants wish the proposal to proceed, we will engage with the RSL.

~~8.448.12~~ 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.



**Scottish Housing
Regulator**

www.housingregulator.gov.scot



Annex 3: Consultation Questionnaire

Our regulation of social housing in Scotland

Consultation questions

We welcome your general feedback on our proposals as well as answers to the specific questions we have raised. You can read our consultation paper on our website at www.housingregulator.gov.scot
Please do not feel you have to answer every question unless you wish to do so.

Send your completed questionnaire to us by **15 December 2023**.

By email @: regulatoryframeworkreview@shr.gov.scot

Or post to: Scottish Housing Regulator
2nd floor , George House
36 North Hanover Street, G1 2AD

Name/organisation name

Address

Postcode	Phone	Email

How you would like your response to be handled

To help make this a transparent process we intend to publish on our website the responses we receive, as we receive them. Please let us know how you would like us to handle your response. If you are responding as an individual, we will not publish your contact details.

Are you happy for your response to be published on our website?

Yes No

If you are responding as an individual ...

Please tell us how you would like your response to be published.	Pick 1
Publish my full response, including my name	<input type="checkbox"/>
Please publish my response, but not my name	<input type="checkbox"/>

1. Do you agree with our proposed approach on specific assurance in Annual Assurance Statements?

2. Do you agree with our proposal to initiate a comprehensive review of the Annual Return on the Charter which we will consult on next year?

3. Do you agree with our proposed amendments to strengthen the emphasis on landlords listening to tenants and service users to include a requirement that landlords:

- a. provide tenants, residents and service users with appropriate ways to provide feedback and raise concerns, and
- b. ensure that they consider such information and provide quick and effective responses?

4. Do you agree with our proposed approach to Notifiable Events?

5. Do you agree with our proposed approach to regulatory status?

6. Do you agree with our proposed approach to Significant Performance failures?

7. Do you agree with our proposed changes to the guidance on *Annual Assurance Statements*?

8. Do you agree with our proposed changes to the guidance on *Consultation where the Regulator is directing a transfer of assets*?

9. Do you agree with our proposal to maintain *the Determination* at this time?

10. Do you agree with our proposed changes to the guidance on *Determination of what is meant by a step to enforce a security over an RSL's land*?

11. Do you agree with our proposal to maintain the guidance on *Financial viability of RSLs*?

12. Do you agree with our proposed changes to the guidance on *Group structures*?

13. Do you agree with our proposed changes to the guidance on *How to request an appeal of a regulatory decision*?

14. Do you agree with our proposal to maintain the guidance on *How to request a review of a regulatory decision*?

15. Do you agree with our proposed changes to the guidance on *Notifiable events*?

16. Do you agree with our proposed changes to the guidance on *Preparation of financial statements*?

17. Do you agree with our proposal to maintain the guidance on *Section 72 reporting events of material significance*?

18. Do you agree with our proposed changes to the guidance on *Tenant consultation and approval*?

19. Would you like to give feedback on any aspect of our impact assessments? Are there other potential impacts that we should consider?

Thank you for taking the time to give us your feedback!



Annex 4: Combined Impact Assessment

Initial Impact Assessment Regulatory Framework Review



Purpose

- Here we provide an impact assessment of the suggestions we make for changes to our Regulatory Framework, and the ideas we now test with our stakeholders through consultation. There are various elements to this assessment:
 - [Equalities Impact Assessment](#) (EQIA);
 - [Fairer Scotland Duty assessment](#) (FSDA);
 - [Island Communities Impact Assessment](#) (ICIA);
 - [Children's Rights and Wellbeing Impact Assessment](#) (CRIA); and
 - [Business and Regulatory Impact Assessment](#) (BRIA).
- We welcome feedback on this assessment from our stakeholders.

We prioritise the interests of tenants and other service users

- Tenants and other service users are at the heart of our work. We protect the interests of tenants and other service users by regulating service providers effectively. We do not directly provide services to them or resource those services; we regulate landlords who resource and provide services to tenants and other service users. There are therefore no budgetary changes that we require to impact assess.
- The initial assessment here, and the assessment when we publish the final Regulatory Framework in early 2024, therefore is and will be proportionate to our role. The scope of our assessment here also reflects the small number of material changes we propose to make to our Framework. The changes we assess are as follows:

- 1. A provision added to the statutory guidance to enable us to require landlords to include explicit assurance in the AAS on a specific issue or issues.**
- 2. Initiate a comprehensive review of the Annual Return on the Charter which we will consult on next year. The review will have a focus on indicators for electricity, water, fire, asbestos and lift safety.**
- 3. Strengthen the emphasis on landlords listening to tenants and service users to include a requirement that landlords provide tenants, residents and service users with easy and safe ways to provide feedback and raise concerns, and ensure that they consider such information and provide quick and effective responses.**
- 4. Streamline our approach to Notifiable Events to ensure that landlords bring the most critical issues to our attention while not being overburdened by notification requirements.**
- 5. Amend language to improve transparency and clarity of the regulatory statuses.**
- 6. With regards significant performance failures (SPFs), enhance clarity on when and what tenants can bring to us and how this fits with the other routes for tenants to complain to their landlord and the SPSO.**

- In our proposals we aim for positive impacts on tenants and other service users through our regulation of social landlords. We also aim for positive impacts on our other stakeholders where this does not affect our ability to meet our statutory objective to regulate to protect the interests of tenants and other service users. It is these aims that

will inform our final decisions, and why our impacts assessment is on-going and will help to shape our final approach.

The elements of our assessments

EQIA

- Evidence shows that some of the most vulnerable people in Scotland use landlords' services and many have a range of the protected characteristics that are named in the Equality Act 2010. We also know that some tenants and other service users have a combination of protected characteristics. Intersectionality is the term sometimes used to refer to combinations of protected characteristics.
- We are subject to an equality duty under the Housing (Scotland) Act 2010, which requires us to perform our functions in a way which encourages equal opportunities and in particular the observance of the requirements of the law relating to equal opportunities.
- We are also subject to duties under the Equality Act 2010. This duty requires us, as a public authority, in the exercise of our functions, to have due regard to the need to:
 - eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010;
 - advance equality of opportunity between people who share a relevant characteristic and those who do not; and
 - foster good relations between people who share a protected characteristic and those who do not.
- Homeless people are not specifically named as a protected characteristic group but in our work we often regulate to protect their interests through an equality and diversity lens.
- We have a specific duty to safeguard and promote the interests of Gypsy/Travellers who use official sites provided by social landlords. A great deal of evidence suggests that many Gypsy/Travellers face challenges in their daily lives because of unfair treatment or discrimination.
- Our [Equalities Statement](#) says more about our commitment to equality and diversity, and what we expect of social landlords.

FSDA

- The Fairer Scotland Duty came into force in Scotland from 1 April 2018. It places a legal responsibility on listed public bodies in Scotland to actively consider ('pay due regard' to) how they can reduce inequalities of outcome caused by socio-economic disadvantage, when making strategic decisions.
- We are not a listed body, and so the specific duties do not apply to us. Nevertheless, we aim to act in the spirit of the duty in a way that is relevant and proportionate to our role, status and activities. This is why we undertake this assessment here.
- Socio-economic disadvantage can be described as:
 - low/no wealth;
 - low income;
 - area deprivation;
 - socio-economic background; and
 - material deprivation.

- Evidence shows that many tenants and other service users have one or more of these disadvantages.

ICIA

- The Islands (Scotland) Act was passed by the Scottish Parliament in 2018. The measures it contains, like the ICIA, are designed to improve outcomes for island communities.
- Tenants and other service users living on Scottish islands face particular challenges around distance, geography, connectivity and demography, so our proposals aim to take these into account.

CRIA

- In December 2018 the Scottish Government laid before the Scottish Parliament the Progressing the Human Rights of Children in Scotland: 2018-2021 Action Plan and the Progressing the Human Rights of Children in Scotland: Report 2018, in line with the duties placed on Scottish Ministers under Part 1 of the Children and Young People (Scotland) Act 2014.
- The CRIA element of the legislation and policy in Scotland is a tool for public bodies to assess the extent to which their strategies and policies impacts the interests of children and young people.
- Scottish Government data show that a significant number of children and young people either living in social housing, are waiting for social housing or are in temporary accommodation.

BRIA

- We have consulted – and continue to consult – with landlords and representative bodies who may be affected by our early ideas and proposals for our updated Regulatory Framework.
- BRIAs help to assess the likely costs, benefits and risks of changes to our Framework that may have an impact on the public, private or third sector but tenants, other service users and social landlords in particular.
- In this element of our assessment we aim to take account of the five principles of better regulation. Namely that regulation is:
 - transparent,
 - accountable,
 - proportionate,
 - consistent; and
 - targeted where appropriate.

The impacts of our updated Regulatory Framework

- Below we provide an impact assessment of the proposed key changes to our new Regulatory Framework.

	Equalities		Fairer Scotland		Islands		Young people		Business and regulation	
Proposed change	Impacts									
Require landlords to include assurance in AAS on specific issues	Neutral	-	Neutral	-	Neutral	-	Neutral	-	Negative	Will require further assurance work by landlords
Initiate a comprehensive review of the Annual Return on the Charter which we will consult on next year	Neutral	Impacts will depend on outcome of review	Neutral	Impacts will depend on outcome of review	Neutral	Impacts will depend on outcome of review	Neutral	Impacts will depend on outcome of review	Neutral	Impacts will depend on outcome of review
Strengthen the emphasis on landlords listening to tenants and other service users	Positive	All tenants and service users particularly those with a protected characteristic who may have greater needs	Positive	All disadvantaged tenants and service users particularly those with a protected characteristic who may have greater needs	Positive	All tenants and service users on islands particularly those with a protected characteristic who may have greater needs	Positive	All young tenants and service users particularly those with a protected characteristic who may have greater needs	Neutral	Landlords may have to change their existing methods of communication but benefit from tailoring services based on user feedback
Streamline approach to Notifiable Events	Neutral	-	Neutral	-	Neutral	-	Neutral	-	Positive	Landlords are clearer on our requirements and may require to report less
Improve clarity of the regulatory statuses	Neutral	-	Neutral	-	Neutral	-	Neutral	-	Neutral	Landlords and lenders are clearer on our regulatory view

Enhance clarity on when and what tenants can bring to us in terms of SPFs	Positive	All tenants and service users particularly those with a protected characteristic who may have greater needs	Positive	All disadvantaged tenants and service users particularly those with a protected characteristic who may have greater needs	Positive	All tenants and service users on islands particularly those with a protected characteristic who may have greater needs	Positive	All young tenants and service users particularly those with a protected characteristic who may have greater needs	Neutral	Impact us unclear. Change may lead to fewer, the same or more SPF applications.
	Positive Equalities	Positive Fairer Scotland	Positive Islands	Positive Young people	Neutral Business and regulation					

Our next steps

- At the conclusion of our consultation we will reflect on, and take account of, feedback we receive on this assessment and our proposals more generally.
- We will consider further any mitigations or changes we can put in place that minimise the number of negative impacts, or increase positive impacts.
- We will publish a final impact assessment at the same time as our updated Framework early next year.

