

**Scottish Housing
Regulator**

Regulation of Social Housing in Scotland

Our Framework



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Chair's foreword

I am pleased to introduce the new regulatory framework for social housing. Its publication marks the end of a significant first year for the independent Scottish Housing Regulator and the move into a new era for social housing regulation.

We consulted widely on our regulatory proposals. The scale of the response to our consultation demonstrates the critical importance of social housing regulation. The feedback was helpful and has been taken into account when finalising our approach.

This approach, which is risk-based and proportionate, focuses on promoting good service outcomes, effective governance and sustained financial health in social landlords. I believe this emphasis will enable us to safeguard and promote the interests of tenants, homeless people, Gypsies/Travellers and owners who receive services from social landlords.

Our overall philosophy is to add value, be more streamlined and reduce complexity where we can. We will operate as transparently as possible, providing appropriate information about regulatory decisions and sharing and promoting good practice. Our powers and tools will enable us to be both firm and bold, able to intervene at an early stage to tackle risks and take appropriate action.

Social landlords make a crucial contribution to local communities and to the fabric of Scottish society. Our work will play a key part in creating the environment for a successful and sustainable social housing sector.

I look forward immensely to leading the new Regulator and working with my fellow Board members, staff and those with an interest in social housing regulation.



Kay Blair

Chair, Scottish Housing Regulator
February 2012



The Scottish Housing Regulator



1. The Scottish Housing Regulator

About us

1.1. The Scottish Housing Regulator is created by the Housing (Scotland) Act 2010 (“the Act”). The Act sets out our statutory objective, functions, powers and duties. It establishes us as an independent regulator directly accountable to the Scottish Parliament. You can read more about us on our website .

Our statutory objective is to safeguard and promote the interests of current and future tenants, homeless people and other people who use services provided by social landlords. The groups we identify as service users are:

- » **Tenants and their families:** just under 600,000 households live in homes owned and managed by social landlords. This is around a fifth of all households in Scotland;
- » **People who are homeless:** around 55,000 people seek help from local authorities each year as a result of homelessness or potential homelessness;
- » **Gypsies/Travellers:** over 500 Gypsy/Traveller families use the services of official sites provided by social landlords; and
- » **Owners and occupiers who receive factoring services from a local authority or RSL:** Around 100, 000 people who own their home receive services from social landlords.

We refer to these groups throughout this document as **tenants and other service users**.

1.2. We will monitor, assess, compare and report on social landlords’ performance of housing activities and registered social landlords’ (RSLs) financial well-being and standards of governance. We will intervene, where appropriate, to secure improvement and protect the interests of tenants and other service users.

1.3. We will keep a register of social landlords and publish it to give access to accurate and transparent information about the social landlords registered and regulated by us. We will approve which organisations can be listed on the register and can access the benefits and responsibilities that come with registration. We will also remove RSLs from the register under certain circumstances.

1.4. This document sets out the regulatory framework we use to work with our powers and duties.

How we involve tenants and other service users

1.5. Engaging with tenants and other service users is key to effective regulation and helps to make our work accountable, relevant and targeted. The Act requires us to consult and involve bodies who represent service users in the delivery of our general functions. The Public Services Reform (Scotland) Act 2010 also places a duty of user focus on us.

1.6. We will publish separately a Consultation and Involvement Strategy that explains our approach to engaging with and involving service users in the development of our regulatory approach and in carrying out our scrutiny work.

How we work with other regulators and scrutiny bodies

1.7. We are the lead regulator for RSLs in Scotland. We have statutory obligations from both the Act and the Public Services Reform (Scotland) Act 2010 to co-operate with relevant regulators. We meet these duties by engaging with other scrutiny bodies to ensure we have a co-ordinated approach, characterised by co-operation, collaboration and information sharing. We aim to ensure that there is no potential for regulatory gaps or duplication. We meet regularly with partner scrutiny bodies to discuss operational and strategic issues of mutual interest. We will have Memoranda of Understanding with relevant scrutiny bodies that set out clear operational arrangements for working with our new role.

1.8 The Act places a specific duty on us to consult the Accounts Commission for Scotland about the performance of our general functions in relation to local authority landlords. All our local authority scrutiny work is directed through a joint framework and shared risk assessment agreed with other scrutiny bodies. We are a signatory to the Local Government Scrutiny Joint Code of Practice. This governs how we undertake our scrutiny of local authorities' landlord and homelessness functions. The Code establishes processes for sharing information, jointly assessing risk, collaborative working, and sets out relationship management arrangements and processes for resolving disputes.

How we involve landlord bodies and other sector interests

1.9. Effective engagement with social landlords and their representatives helps us direct our focus, ensures we address regulatory issues arising from joint scrutiny and understand the impact we have on regulated bodies. We have constructive relationships with a range of bodies and we will further build our relationships with the main bodies who represent landlords (the Scottish Federation of Housing Associations, Glasgow and West of Scotland Forum of Housing Associations, the Convention of Scottish Local Authorities and the Association of Local Authority Chief Housing Officers). We will also have effective working relationships with a number of professional and representative bodies, such as the Council of Mortgage Lenders, Shelter, the Scottish Housing Best Value Network, sector auditors and the Chartered Institute of Housing.

1.10. We will have regular liaison arrangements with these bodies. These will include individual meetings and bringing larger groupings together to discuss issues of relevance to the sector as a whole. We will consult widely with landlords, representative bodies and other sector interests before publishing new or revised guidance on our statutory powers and duties.

Our commitment to equalities and diversity

1.11. We are committed to mainstreaming equality and diversity and working in a way which meets our statutory requirements as a public authority under the Housing (Scotland) Act 2010 and the Equality Act 2010.

1.12. We regulate to safeguard and promote the interests of tenants and other service users. These are diverse groups with different needs and priorities. We expect social landlords to comply with equalities legislation, to work to understand the individual needs of their customers, and to deliver services that recognise and meet these needs. We promote and monitor equal opportunities across social landlords in Scotland. We do this through:

- » using our inquiry powers to gather and collect information and get assurance from social landlords;
- » gathering and collecting information on equalities through annual returns on the Scottish Social Housing Charter;
- » conducting thematic inquiries on equalities issues where appropriate;
- » highlighting and sharing good and poor practice where we see it;
- » providing accessible and comparable information about each landlord's performance to help tenants and other service users hold them to account; and
- » participation in the 'Happy to translate' scheme and ensuring that all our corporate communications, including our website, are fully accessible.

1.13. As part of our consultation and involvement strategy, we will engage members or representatives of equalities groups as part of consultative groups or research activities.

How we regulate



2. How we regulate

Introduction

2.1. We regulate to protect the interests of tenants, homeless people and others who use the services provided by social landlords. To do this we focus on securing good outcomes for tenants and other service users, help them to hold their landlords to account and drive improvement in the provision of social housing. Our regulation of social landlords will be tenant-focused, intelligent and proportionate.

2.2. Through our risk-based and proportionate approach to the regulation of social landlords we:

- » focus our attention on the important risks and key aspects of landlord performance;
- » have different levels of engagement with different landlords depending on their risk and performance profile and our need for assurance;
- » use our discretion and knowledge to ensure we use the right level of scrutiny and intervention to get the level of assurance and type of improvement we need;
- » have landlords' own assessment of their performance as a central part of our regulatory framework;
- » help tenants to hold their landlord to account;
- » publish accessible information to encourage better comparison, performance management, public accountability and drive improvement;
- » highlight good innovation and best practice in achieving outcomes;
- » give landlords the opportunity to self-improve where we have identified problems, unless immediate regulatory action is needed;
- » use our powers in a proportionate and fair way, to secure improvement or to protect the interests of tenants; and
- » help to ensure an orderly transition that protects tenants' interests if a landlord is failing and going out of business.

Overall approach

2.3. When we talk about risk, we mean the risk to the interests of tenants and other service users. This may not always be the same as a landlord's own detailed assessment of the operational risks it faces. Risk-based regulation is a way for us to prioritise our use of resources and plan how to engage with social landlords through further scrutiny, engagement and intervention. Our approach is based on regulated bodies giving us the right type and level of assurance – backed by appropriate evidence – that tenants' and others' interests are protected. We will require social landlords to give us only the data and information we need to get this assurance. We will set out clearly what information each landlord needs to give us and what other forms of engagement and scrutiny we will undertake.

Identification and assessment of risk

2.4. We will identify the risks to our regulatory objective.

In general terms, the following are likely to be the main risks to our objective:

- » poor outcomes for tenants and other service users (for councils and RSLs);
- » poor stock quality and investment failures (for councils and RSLs);
- » poor financial performance and management (for RSLs only); and
- » poor governance (for RSLs only).

2.5. When we consider the risks to our objective we assess and prioritise them to determine what strategy to adopt on a sector wide basis or for an individual organisation. We use our knowledge of the environment in which social landlords operate to inform our assessment.

2.6. For RSLs, we do this by assessing the impact and probability of the risks materialising and their manageability. When we consider impact, we assess the scale and significance of the problem if that problem were to arise. When we consider probability we assess the likelihood of the event happening. When we consider manageability we assess the ability of the tools at our disposal to deal with the risk and, ultimately, in a worst-case scenario, the potential for a suitable rescue partner or partners.

2.7. We consider a range of impact factors, including:

- » the landlord's stock size, quality and age and number of tenancies;
- » the landlord's turnover and the amount of public money it is receiving;
- » the level of private finance it is servicing or has committed by lenders; and
- » the degree of local community dependence on the landlord and the nature of its business.

2.8. A small number of RSLs may have such a profile across several of these impact factors – particularly stock size, turnover and size of debt – that they would present the greatest risk to our objective should they experience business failure. Given this, we consider such RSLs to have 'systemic importance'.

2.9. We consider a range of probability factors, including:

- » our confidence in the governing body and senior management team;
- » how new the organisation is;
- » the track record of the organisation in handling challenging issues and making difficult decisions;
- » the financial profile and performance of the organisation and its ability to absorb volatility and change;
- » the level of expenditure on non-landlord services and activities;
- » the stability of the funding streams available to the organisation and its reliance on that funding; and
- » the organisation's track record in dealing with the issues we have raised through our regulatory engagement.

2.10. The type of RSL is an important factor in our assessment of risk and our regulatory engagement. We consider each landlord's organisational complexity – including its use of subsidiaries and its dependencies on these – and its number of employees, legal status and governance arrangements.

2.11. To obtain assurance we will use, wherever possible, the information we collect from landlords and from our scanning of the broader environment that they operate in. For service outcomes we will use the information that will become available on landlords' progress towards the Scottish Social Housing Charter. During the transition to the Charter, we will use the annual performance and statistical return (APSR), which requests information against particular performance indicators and contextual statistical data. We also collect annually the following financial information from every RSL:

- » annual accounts (including accounts of subsidiaries and group accounts), which show historic financial position and performance;
- » financial forecasts from which we derive forward financial ratios and form a view about future financial viability;
- » auditor's management letter; and
- » loan portfolio information, which gives data on an organisation's private borrowings.

2.12. In addition to this, we use information from:

- » past or current engagements with landlords, including business plans, inspections and follow-up improvement work;
- » thematic work;
- » the landlord's tenants and other service users;
- » whistleblowing;
- » patterns of notifiable events;
- » applications for our statutory consent;
- » landlords' auditors;
- » landlords' websites and published information;
- » complaints, including information from the Scottish Public Services Ombudsman; and
- » our partner scrutiny bodies.

2.13. For councils, we work through the joint scrutiny framework and shared risk assessment agreed with other scrutiny bodies. We carry out an annual risk assessment and feed this into the shared risk assessment, together with our recommended scrutiny response. We co-ordinate and schedule our scrutiny activity with other bodies, and identify opportunities for joint scrutiny where appropriate. Our planned scrutiny is detailed within the Assurance and Improvement Plan that is shared and discussed with each council, and which Audit Scotland publishes annually on its website. Full details of this collaborative approach are contained within the Joint Code of Practice which can be found on our website.

2.14. We will use the information that is available on councils' progress towards the Scottish Social Housing Charter. We will also have access to the information and intelligence available through our participation in the shared risk assessment. In addition to this, we will use information from:

- » the council's tenants and service users;
- » past engagements with councils, including inspections and follow-up improvement work;
- » thematic work;
- » landlords' websites and published information;
- » complaints, including information from the Scottish Public Services Ombudsman; and
- » our partner scrutiny bodies.

Regulatory response - deciding our regulatory engagement

2.15. Each year we assess and prioritise the risks each landlord presents to our objective, and then decide what our response should be. We keep the principles of good regulation in mind as we determine which regulatory response is most appropriate. Our regulatory response is based on the level of assurance we need. We may review our assessment during the year in response to new information or events. This may lead us to vary the level of engagement we have with a landlord. And we can adjust the intensity of our regulatory interest for a temporary period until a particular event or situation has been resolved satisfactorily. Our regulatory cycle is outlined in figure 1 overleaf.

Figure 1: Our Regulatory Cycle



2.16. In deciding our regulatory response, and where we need to go beyond requesting the standard submission of information, we can make use of our powers to request information and make inquiries (see 6), to set targets (see 3 and 5), and to intervene (see 7).

2.17. For RSLs, once we have assessed a landlord we categorise the level of engagement we need with it. Our level of engagement depends on the level of assurance we need, taking account of the impact, probability and manageability of potential or actual risks. We categorise these levels of engagement as low, medium or high (see the table below). We focus more of our resources on those RSLs in the medium and high engagement categories. We communicate the level of engagement to the regulated body.

Level of engagement	Definition
<p>Low</p>	<p>Where we generally have sufficient assurance, and:</p> <ul style="list-style-type: none"> » we need little additional contact with the landlord unless other events arise; or » we want to highlight areas for improvement to the RSL. <p>We will not have a regulation plan for any RSL in this category and will continue to monitor these landlords through our annual information gathering and our scanning of the environment they operate in.</p>
<p>Medium</p>	<p>Where the profile indicates we need further assurance than we can get from information returns alone. For example, we may need more information or a closer engagement with the RSL's senior management and governing body.</p> <p>We may define some additional assurance requirements because an RSL has systemic importance.</p> <p>We will develop and publish an individual regulation plan for each landlord in this category.</p>
<p>High</p>	<p>Where the profile indicates we need the most intensive or continuous relationship. This may mean engaging in a more sustained way to develop a detailed understanding of current and potential areas of risk and the RSL's approach to managing them. Our regulation plan may involve a broader range of regulatory tools. We may also need a high regulatory engagement where specific risks are likely to materialise, or have materialised, and we need to support an organisation to improve its performance or help to find a rescue partner.</p> <p>We will develop and publish an individual regulation plan for each landlord in this category.</p>

2.18. Our regulation plans set out any action we require the RSL to carry out, the engagement we plan to have with it, and the timeframes involved. Each plan will identify a member of our staff as the main contact with primary responsibility for managing the plan and the relationship with the organisation.

2.19. It is important to bear in mind that higher levels of regulatory engagement cannot be assumed to equate to poor performance. For example, we may have relatively high levels of regulatory engagement with RSLs that are newly registered, or expanded through stock transfer or merger, or that have large development programmes.

2.20. For councils, we work with our partner scrutiny bodies to produce an Assurance and Improvement Plan to set out the full range of scrutiny activity that will happen in each council. More information on this is set out in the Joint Code of Practice and can be found on our website.

An informed regulator

2.21. As a regulator we are proactive in identifying and managing the risks social landlords present to our objective, but we will also react to events that happen from time to time. The four main types of events we will react to are:

- » concerns raised with us by tenants about significant performance failures;
- » concerns raised with us by others about an organisation (for example, whistleblowing and serious allegations);
- » notifiable events – material events which an organisation itself is required to tell us about; and
- » concerns raised with us by an RSL’s auditors under section 72 of the Housing (Scotland) Act 2010 (“the Act”).

Tenant concerns

2.22. We place tenants’ interests at the heart of what we do. We see empowered tenants as an important part of the regulatory framework. It is important that tenants should be able to raise issues about their landlords directly with us, and the Act gives a statutory basis for this.

2.23. 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; or
- » has materially failed to meet the Regulatory Standards on governance and financial accountability.

2.24. It is important to stress that we do not deal with an individual’s service-related complaint about an RSL or council. This is the role of the RSL or council in the first place, and then the Scottish Public Services Ombudsman. The Ombudsman can raise with us any concerns he may have that a social landlord, or the sector as a whole, has systemic problems and we will consider what action we need to take in response. More details on making complaints about an RSL or council can be found in our information on whistle-blowing and complaints.

2.25. Landlords need to have effective arrangements for proper dialogue with tenants. Landlords should provide tenants with the information they need to exercise their rights to complain and seek redress, and to raise their concerns with the landlord. Tenants should always raise their concerns with the landlord first, and give the landlord a reasonable time to consider the issue and take remedial action where appropriate. Although some matters will take longer to resolve than others we expect landlords to respond to tenants within the timescale outlined in their service standards, and to keep tenants informed of the decision.

2.26. 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 impacts on tenants and other service users; and
- » they have raised it with the landlord and that the landlord has not resolved the issue in a reasonable time as outlined above.

2.27. We set out how tenants can tell us about significant performance failures on our website and in a leaflet. We have a dedicated email address and point of contact for tenants to use to give us information about significant performance failures. Landlords must make this information easily available to tenants.

2.28. We will consider the information provided by tenants as part of our assessment of the landlord's achievement of the Charter and in our regulatory assessment of risk. 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.

2.29. We will keep our arrangements for tenant concerns under review, and we may issue further guidance on this.

Whistleblowing and allegations

2.30. When a person such as a member of staff of the landlord or a governing body member of an RSL believes there has been improper conduct within the landlord they should be able to report this to someone who is in a position to deal with it within their organisation. It should be possible to raise concerns of improper conduct in confidence with an appropriate person within the landlord. It is also possible to raise concerns directly with us.

2.31. We have published guidance on whistleblowing and allegations on our website.

Notifiable events (RSLs only)

2.32. We expect RSLs to tell us promptly about any significant or exceptional issue, event, or change within their organisation and how they intend to deal with it. We are interested in 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; or
- » the good governance and reputation of an individual RSL or the RSL sector.

2.33. We have published guidance on notifiable events on our website. The guidance sets out the events that we expect RSLs to notify us about, and explains what we will do with the information RSLs give us.

Auditors (RSLs only)

2.34. An RSL's auditor or reporting accountant is obliged under section 72 of the Act to disclose information to us where they have reasonable cause to believe that the information is likely to be of material significance in relation to the performance of our function to monitor, assess and report regularly on (and, where appropriate, to make regulatory interventions relating to) social landlords' performance of housing activities and RSLs' financial well-being and standards of governance.

2.35. In addition, an auditor may disclose information to us (and express an opinion on it) where they have reasonable cause to believe that the information is likely to be relevant to the performance of any of our functions.

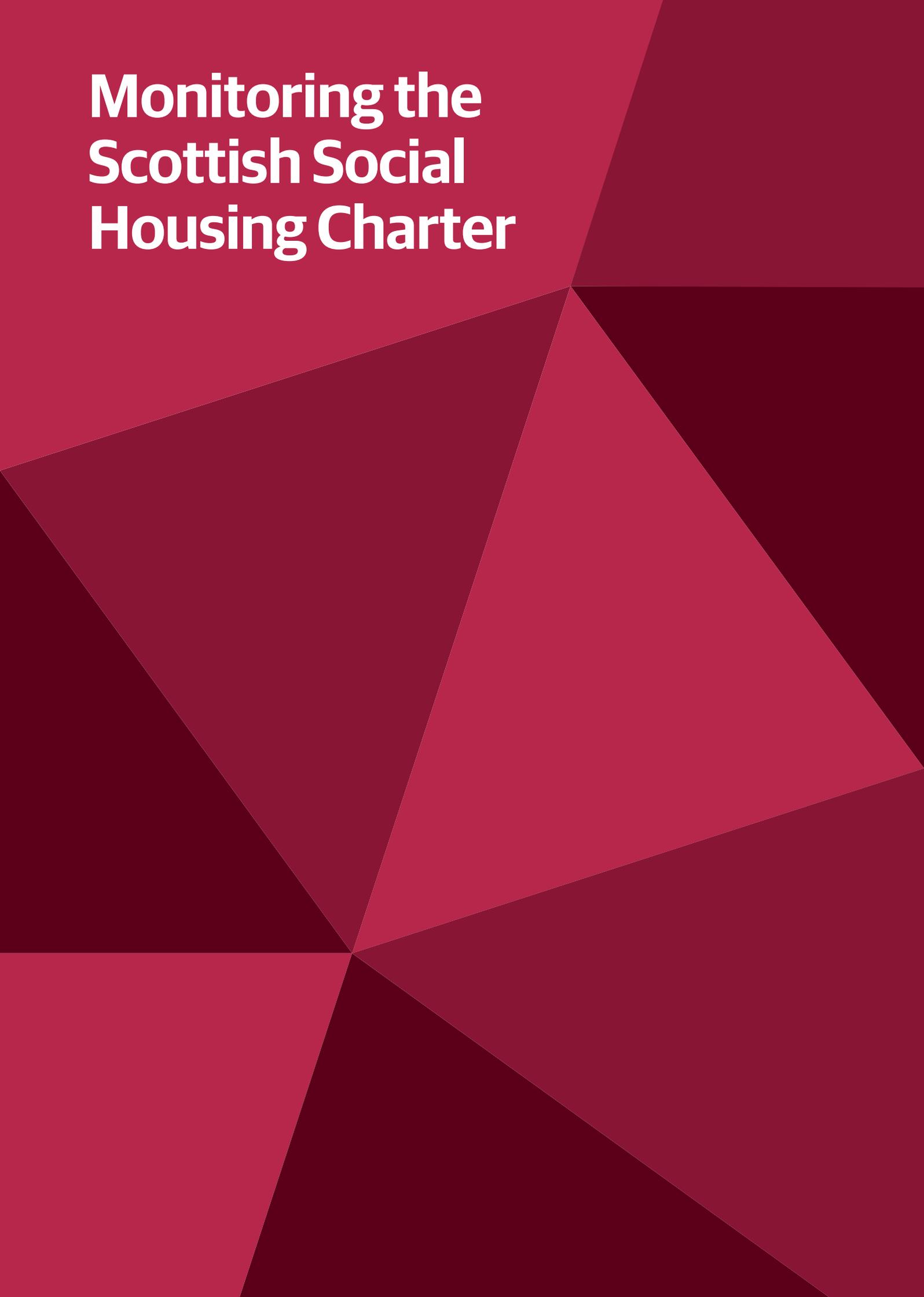
2.36. The section 72 reporting obligations work in partnership with the notifiable events requirements. While it is auditors' judgment that ultimately determines what information falls within section 72, we would consider it to be materially significant if an auditor becomes aware that the notifiable events guidance has not been complied with. We also expect auditors to be aware of any published regulation plan for the audited body and use this information to inform their judgement in determining whether something is likely to be of material significance or relevance.

Regulation and funders

2.37. One of the ways that we achieve our regulatory objective is by helping to maintain the confidence of funders in social housing. This is important if RSLs are to continue to have access to funds at affordable costs to provide new housing and support their businesses. When we talk about maintaining the confidence of funders we mean that public funders and private lenders continue to have confidence in our system of regulation and the reputation and credit-worthiness of social landlords.

2.38. Public funders and private lenders need to carry out due diligence in advance of their investment decisions, and public funders need to evaluate and review the specific use of public funds. We will make it clear where, in our opinion, a social landlord does not represent a suitable investment partner or recipient of public funds. This means that we may decide to share relevant information and analysis on landlords with public and private investors.

Monitoring the Scottish Social Housing Charter



3. Monitoring the Scottish Social Housing Charter

Introduction

3.1. The Housing (Scotland) Act 2010 ("the Act") requires Scottish Ministers to set standards and outcomes which social landlords should aim to achieve, and to publish these in a Scottish Social Housing Charter. It is the responsibility of each landlord to meet these outcomes and standards. It is our role to monitor and report on landlords' performance in achieving the outcomes and standards in the Charter.

Overview

3.2. In line with our regulatory principles, our approach to monitoring landlords' achievement of the outcomes and standards in the Charter is based on landlords' performance information and their own assessment of their performance.

3.3. For each year ending on 31 March, landlords should:

- » measure and assess their performance in progressing towards or achieving the Charter outcomes and standards;
- » provide us with some key performance information on their achievement of the outcomes and standards; and
- » report their performance to their tenants and other service users who use their services.

3.4. Each year we will publish a range of accessible information to allow tenants, homeless people, other service users, other landlords, funders and policy makers to understand and compare landlords' performance in achieving the Charter outcomes and standards. This will help tenants to hold their landlords to account and service users and other groups to understand the performance of social landlords.

3.5. Importantly, we use this information to inform our view of landlords' service quality in our regulatory assessments for RSLs and in the shared risk assessment for councils. The timetable for monitoring reporting and submitting information to us is set out opposite.

When	Who	What
Throughout year	Landlord	Assesses performance against the Charter
May	Landlord	Completes and submits Annual Return on the Charter (ARC) to SHR
August	SHR	Publishes on the SHR website a report about each landlord with key data from its ARC
October	Landlord	Reports its performance to all its tenants
By March	SHR	Publishes regulation plans for RSLs and contributes to Assurance and Improvement Plans for councils
By March	SHR	Publishes a report on the analysis of the sector's performance in achieving the Charter

Annual Return on the Charter

3.6. From April 2013 we require all social landlords to collect and provide us with key information on their performance in achieving the outcomes and standards in the Charter. We will use landlords' Annual Return on the Charter (ARC) to report publicly on their progress in achieving the Charter outcomes and standards and we will also use this to inform our regulatory assessments.

3.7. The ARC replaces the Annual Performance and Statistical Return (APSR) from RSLs and the Scottish Housing Quality Standard (SHQS) return from councils. RSLs will also provide us with information related to their governance arrangements from year 2013/14. Audit Scotland will stop collecting statutory performance information on housing from councils from year 2013/14.

3.8. We will publish separate guidance on the measures we will use to assess landlords' achievement of the outcomes and standards in the Charter. We will continue to collect and use the APSR and SHQS returns for year 2012/13 and access the information that councils provide to the Accounts Commission and the Scottish Government for that year.

3.9. Landlords must provide us with their completed ARC by the end of May each year starting in May 2014 for the performance year 2013/14. By the end of the August of that year we will publish a report for each landlord with key information from its ARC. We will make this available for tenants and other service users through our website. We also require landlords to make this available in appropriate ways to all of their tenants.

Landlord reporting on the Charter

3.10. For each year ending on 31 March, social landlords must report their performance in achieving or progressing towards the Charter outcomes and standards to their tenants and other service users who use their services. They should do this as soon after the end of the reporting year as is practicable and reasonable, but no later than the October of each year.

3.11. We do not intend to be prescriptive about the form of this performance reporting; this is for landlords to decide in discussion with their tenants. Landlords may choose to incorporate this in their current annual reporting arrangements if they agree this with their tenants.

3.12. When reporting performance landlords should include:

- » an assessment of performance in delivering each of the Charter outcomes and standards which are relevant to the landlord and drawing on the information provided to us in the ARC;
- » relevant comparisons – these should, through time, include comparisons with previous years, with other landlords and with national performance; and
- » how and when the landlord intends to address areas for improvement.

3.13. Landlords should consider the place of benchmarking, peer review and external accreditation in their assessment of performance. Landlords will also want to consider how their assessments will fit with currently used performance management frameworks.

3.14. Landlords should use a reporting style and format that is accessible for tenants and other service users and should use plain and jargon-free language. Landlords should give tenants and other service users a way to feed back their views on the style and form of their reporting. If a landlord has a website, it should use this to report its performance, as well as using other appropriate ways of getting the information to tenants and other service users.

3.15. Assessment of performance that is embedded in a landlord's culture and delivery of services is critical to achieving good outcomes and continuous improvement. This assessment of performance should be a continuous process. Each landlord should determine the best approach to effective performance assessment, taking account of its approach to service planning, performance management and the local context. Indeed, landlords should wholly integrate their approach to Charter assessment and reporting with their own performance management frameworks. It is important that landlords' Charter monitoring and reporting becomes an effective tool that landlords use for the delivery of good quality services; it should not be seen as a process that is additional or for regulatory purposes only.

3.16. Landlords' approach to performance assessment and reporting should be:

- » objective and evidence-based;
- » transparent;
- » about the landlord's achievements, as well as areas for improvement; and
- » (for RSLs) owned, promoted and driven by the landlord's governing body.

The involvement of tenants and other service users

3.17. Section 50 of the Act requires us to issue guidance setting out the extent to which social landlords must seek to involve tenants and other service users in the preparation of information to be given to us.

3.18. Our approach to monitoring landlords' achievement of the Charter outcomes and standards emphasises the importance of tenants being involved in the scrutiny of landlords' performance. This is firmly rooted in the principle that a landlord should: understand its tenants' priorities and needs; involve them in setting policies, objectives and standards; involve them in the implementation of decisions; and then support them to hold the landlord to account.

3.19. There are a broad range of ways in which tenants can be involved in a landlord's assessment of its performance, and there will be different levels at which tenants want to be involved. We are not prescriptive about the form of tenant involvement in landlords' assessment and reporting of performance, but we require landlords to:

- » have agreed their 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; and
- » ensure that it can be verified – that landlords can show that the agreed approach to involving tenants has happened.

3.20. Landlords must have regard to a range of other service users who are not tenants. These may be harder to reach, but it is important that they are given the opportunity to have their views heard and that landlords can demonstrate that they are responding to them. Landlords should therefore be able to demonstrate that they have appropriate ways to involve, where relevant, those who are not tenants but receive services from them, including:

- » homeless people;
- » owners; and
- » Gypsies/Travellers who use sites provided and managed by councils and RSLs.

3.21. For these groups of service users, landlords should determine how they intend to involve them where this is relevant, including what they will do to involve those that are harder to reach and seldom heard. Landlords should be able to demonstrate that they are involving these service users in an appropriate way having had regard to the needs and wishes of these people.

3.22. Where tenants fundamentally disagree with their landlord's assessment of its performance, or where they consider that their landlord has not involved them as agreed, they can use the arrangements we have put in place to enable tenants to tell us about significant performance failures by their landlord (see Tenant Concerns at 2.22).

Our role

3.23. We will use the information that landlords are required to give to us each year as the basis for our monitoring of their achievement of the Charter outcomes and standards. We will publish this information to help tenants and other service users to compare different landlords and to hold their landlord to account.

3.24. Landlords should provide us with their completed ARC in May each year. We may require additional information from some landlords where our review of their ARC does not provide us with the level of assurance we need. This may include getting information and assurance on how the landlord reported its performance to tenants and other service users. We will then publish by the end of August a report for each landlord with key information from its ARC. These reports will be:

- » concise and set out the landlord's performance on some of the key measures with relevant comparisons (including any performance targets we set for all landlords or an individual landlord); and
- » web-based and interactive with users being able to select different benchmarks they can use to compare landlords.

3.25. We will make this available for tenants and other service users through our website. We also require landlords to make this information available in appropriate ways to all of their tenants.

3.26. It is important that we get accurate information from landlords, as it is this information that informs our regulatory assessments. Each year we will carry out visits to a number of landlords to verify the information they have provided to us in the ARC. We may ask for the landlords' performance reports to their tenants before carrying out these visits. We will select the landlords for these visits in a number of ways:

- » across a range of reported performance;
- » where we have previously identified issues through a verification visit; and
- » if we see significant variations in reported performance from year to year.

We will publish the findings from these visits to help improve the quality and consistency of the information provided to us by landlords.

3.27. Importantly, we will use our analysis of landlords' ARC, including the findings and outcomes from our verification visits, to inform our view of landlords' service quality in our regulatory assessments for RSLs and in the shared risk assessment for councils. It is through these assessments that we decide what further scrutiny or intervention action we will have with each landlord. We will set out the output from these assessments in our regulation plans for RSLs and the assurance and improvement plans for councils. We will state clearly in these plans whether we consider the landlord to have failed or to be at risk of failing to achieve the Charter standards and outcomes, together with details of our intended engagement.

3.28. We may also use our collected data to identify areas of service delivery that may benefit from a thematic scrutiny approach. This could result in us doing national studies or inquiries that involve a number of landlords or that we do jointly with other scrutiny bodies.

3.29. Taken together, this means that every year we will publish a range of information so that tenants and other service users can understand and compare landlords' achievement of the Charter outcomes and to see our regulatory response. The suite of products that we will make available about each landlord through our website will be:

- » our analysis of each landlord's ARC;
- » for RSLs, our regulation plan when we decide to have medium or high engagement with the landlord, or a link to the council's assurance and improvement plan; and
- » reports on further Charter-related scrutiny or thematic studies we may do.

3.30. The Act places a duty on us to publish a report, at least annually, setting out our assessment of social landlords' performance in achieving the standards and outcomes set out in the Charter, and naming any landlord we consider to have failed or to be at risk of failing to achieve the standards and outcomes. Each year we will publish a report that summarises the position on all landlords' progress on the Charter. Together with our publication of the suite of products we set out above, this will provide Parliament, Scottish Ministers, the general public, tenants, homeless people, other service users, landlords, lenders and funders with a comprehensive picture of landlords' achievement of the outcomes and standards in the Charter.

3.31. Section 34 of the Act empowers us to set performance improvement targets specifying the level or quality of housing services or the standard of housing activities which social landlords must aim to provide by a specified time. These targets may be set for different landlords or at different times or for different cases – so the target may relate to a single landlord, all landlords or groups or types of landlords depending on the issue.

3.32. When we set a target for one landlord, we will specify what is to be achieved and by when. The purpose of an individual target depends on the individual circumstances of the landlord and the nature of the issue to be addressed.

3.33. Where we propose a target for more than one landlord, normally we will consult Scottish Ministers, tenants and other service users or their representatives, social landlords, secured creditors of RSLs or their representatives and the Accounts Commission for Scotland setting out the objective for setting the target and the form of the target. We may not consult where there is an urgent need to set the target.

The Register of Social Landlords



4. The Register of Social Landlords

Introduction

4.1. We keep a public Register of social landlords available on our website which we update regularly with the information which RSLs provide to us. The Register provides accurate and transparent information about RSLs that is easily accessible for anyone with internet access. The Register does not include local authority landlords or local authorities which provide housing services.

4.2. We provide key information on this public Register about each of the social landlords registered and regulated by us, including their registered address, contact details, legal status, and associated organisations. We also use the online Register to provide access to other information about the RSLs such as the published annual accounts, annual information returns, inquiry reports, regulation plans, and each RSL's constitution which will detail its purposes, objects and powers. We expect RSLs to make this information available and accessible to their own tenants and other service users.

We retain on the Register details of formerly registered organisations which have been de-registered, giving reasons for the de-registrations.

Registration of new social landlords

4.3. We will not be a barrier to new organisations which can contribute to the social rented sector and support the increased supply of social housing and provide greater choice for tenants. Any new organisation which wishes to register with us must meet our criteria for registration and demonstrate that it will be a viable and well-run RSL, able to deliver good outcomes for tenants and other service users and meet our regulatory standards in relation to governance and financial management. We must also be assured that we are able to effectively regulate any organisation that proposes to register with us.

4.4. Our registration criteria establish a threshold which prospective RSLs must achieve. We will also have regard to the particular circumstances of each application. We will assess each application to determine whether it will be a viable organisation that can meet the demands of managing a social landlord's business and, where appropriate, providing services to tenants.

4.5. If the RSL is registered to carry out certain activities, for example build new houses, and subsequently wishes to carry out additional activities, for example, manage houses for let, then it will need to seek our consent to the changes to its purpose, objects and powers in its constitution. In seeking our consent for any such expansion in its constitution the RSL will need to demonstrate that it is able to deliver its additional activities and comply with the Regulatory Standards and the Scottish Social Housing Charter.

4.6. 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. 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.

Our approach to registration

4.7. We tailor our registration assessment to the activities of the applicant. We will assess the applicant's achievement of the registration criteria which are relevant to the type of RSL the applicant intends to be. The applicant must ensure that the purpose, objects and powers in its constitution reflect its proposed activities. In all cases we require applicants to demonstrate that they have a sustainable role within the existing social housing network and that they are properly constituted and governed and financially viable.

Criteria for registration

4.8. There are two types of registration criteria: legislative and regulatory. The Housing (Scotland) Act 2010 (“the Act”) sets out the legislative criteria and requires that we set out regulatory criteria.

4.9. The legislative criteria in summary are:

An applicant must:

- (i)** not trade for profit;
- (ii)** have purposes, objects and powers which conform with section 24(1)(b) and, if relevant 24(1)(d) of the Act; and
- (iii)** carry out or intend to carry out its purposes, objects or powers in Scotland.

4.10. The Act also establishes that we may set regulatory registration criteria about:

- (a)** a body’s financial situation;
- (b)** the arrangements for a body’s governance and financial management; and
- (c)** the manner in which the body provides housing services.

Different criteria can be set for different types of bodies or cases.

Our regulatory registration criteria and guidance on how we assess applicants against each criterion are set out below.

Criterion 1:

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

4.11. We will assess whether an applicant is able to demonstrate that it adds value to the established social landlords in its area of operation. Our role is not to act as a barrier to entry for landlords wishing to enter the sector. We will, however, 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 our Regulatory Standards on governance and financial management and our constitutional requirements.

4.12. The eligible body must have appropriate constitutional governance arrangements for the organisation. We will test that these arrangements meet our Regulatory 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, 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.

4.13. We require the applicant to demonstrate that it can achieve any standards of performance in place at the time the application is made. From April 2012 this will be the Scottish Social Housing Charter. 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.

Criterion 4:

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

4.14. 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 is robust and prudent, and complies fully with our financial requirements and our guidance on business planning. We will assess that the organisation is able to comply with the financial standards in the Regulatory Standards on governance and financial management and other regulatory guidance, and can demonstrate it has effective financial management, planning, and controls within the organisation.

De-registration

4.15. The Act establishes that we may remove an organisation from the Register. A body can be removed from the Register as a compulsory de-registration or as a voluntary de-registration.

4.16. The Act establishes that we may compulsorily remove a body from the register if we consider that the body:

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

4.17. Before any compulsory de-registration however we will ask the organisation involved for information demonstrating that it still meets the registration criteria. We will also have regard to its views before any final decision is made.

4.18. The Act also establishes that we can set de-registration criteria in relation to voluntary de-registration. This can be when a landlord asks us to be removed from the Register, usually after the RSL merges or transfers its engagements to another RSL. When we consider a request for de-registration we are guided by our statutory objective and the criteria below. We will consider each case on its merits and if we are satisfied that the de-registration criteria are met we will remove the RSL from the register.

Criterion 1:

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

4.19. Our objective is to safeguard and promote the interests of tenants and other service users and regulate RSLs to provide good tenant outcomes. If an RSL does not own or manage any houses used for social renting then we will no longer have a regulatory interest. Our presumption is that houses and assets provided for the social rented sector will remain within the 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.

4.20. Where an RSL proposes to de-register but still has tenants then we require the RSL to 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, we require the RSL to consult with its tenants and ensure the tenants are provided with independent advice about the implications of de-registration on their interests. We expect the RSL to provide 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:

All borrowings have been repaid or the consent of the lender to de-register has been obtained.

4.21. Lenders invest in registered and regulated 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 these favourable investment rates for the sector. We require any RSL proposing to de-register to confirm that it has repaid all outstanding borrowings or obtained the consent of its lender(s) to be removed from the Register.

Criterion 4:

Any public funding has been repaid or an agreement has been obtained from the funding body that no payment is required.

4.22. Many RSLs have benefited from public grants and loans to invest in improving and building new homes. We require the RSL to demonstrate that it has agreement from any public funding body which has provided it with grants or loans that it has repaid the public funding or that the funding body has agreed that no, or a reduced, repayment is required.

Criterion 5:

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

4.23. Where an RSL proposes to de-register, we require it to confirm that it has consulted the local authority. 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.

Regulatory Standards of Governance and Financial Management



5. Regulatory Standards of Governance and Financial Management

Introduction

5.1. This section sets out our Regulatory Standards of Governance and Financial Management and our guidance. All RSLs must comply with these standards and guidance and, by doing so, demonstrate effective governance and sound financial management and deliver good outcomes for tenants. The standards are such that any RSL can apply them flexibly to suit their individual organisations. We expect RSLs to use these standards and guidance to assess, confirm and improve their governance and financial management policies and practice and be accountable to their tenants and other service users.

5.2. Our Regulatory Standards and the associated guidance meet our duties under Part 3 of the Housing (Scotland) Act 2010 (“the Act”).

5.3. We will refer to the standards and guidance when we fulfil our statutory function to monitor, assess, and report on RSLs’ financial well-being and standards of governance. It is for each RSL to govern and manage its own business and performance and decide how it will comply with these standards and guidance and be accountable for its actions.

5.4. Charity trustees (governing body members of RSLs with charitable status) need to adhere to the particular restrictions or requirements relating to charity law and regulation and take account of the implications of charitable status in each decision they make.

5.5. When we refer to the governing body we mean the management committee or board of management of an RSL. When we refer to the senior officer we mean the most senior member of staff employed by the RSL, usually the Chief Executive or Director. Some RSLs do not employ staff but use agents on their behalf; the references to staff should be applied appropriately to agents. We also use the term “executive” to refer to the employees of the RSL to distinguish them from the “non-executives” who are the members of the governing body who are not employees.

5.6. When we refer to governance we mean the arrangements for the leadership, strategic direction and control of an RSL. A well-governed RSL delivers good tenant outcomes; demonstrates strong and effective leadership; manages and mitigates risk sensibly; is open and accountable; and maintains high ethical standards. An RSL with poor governance can experience problems with achieving good tenant outcomes, and put at risk the viability of the organisation, stakeholders’ confidence, and the good reputation of the sector.

Regulatory Standards

5.7. Our six Regulatory Standards and the respective guidance are applicable to every type of RSL and we require all RSLs to comply with them from 1 April 2012 (other than our specific requirement about governing body members seeking re-election after nine years which takes effect from April 2015).

5.8. It is for each RSL to decide how it meets the standards and complies with guidance, based on its local context and individual circumstances. RSLs are responsible for the standards of conduct within their own organisations and are publicly accountable to their tenants, other service users, funders and other stakeholders for the governance decisions they make.

5.9. We require RSLs to assess their governance structures and arrangements against the standards and identify and take any actions needed to comply with the standards. RSLs should continue to assess compliance with the standards and guidance and report its performance to its tenants. We require RSLs to notify us formally of any area of non-compliance and tell us how this will be addressed. When we assess compliance with the standards and guidance we will take account of the RSL’s own assessment of its compliance, and the evidence of compliance. Periodically, or where we have potential concerns, we will carry out an inquiry and review an RSL’s assessment in order to form a view about the standards of governance and financial management within the RSL and across the sector. We may publish our findings from reviews and inquiries.

5.10. We will focus strongly on governance in individual RSLs with the aim of improving and strengthening the effectiveness of governance across the sector. When we engage with RSLs about governance we will engage directly with the governing body. We will hold the governing body to account in meeting these standards and, where appropriate, use our regulatory intervention powers to ensure compliance.

Constitutional requirements

5.11. Every RSL is formally constituted, to date either as a registered society (a society registered under the Co-operative and Community Benefit Societies and Credit Unions Act 1965) or as a company limited by guarantee, but other constitutional models are possible. The constitution of the RSL (usually called the Rules in a registered society and the Memorandum and Articles in a company) establishes the organisation and its purpose, and sets out the details of how the organisation is to be governed.

5.12. We publish our constitutional requirements so that it is clear what we have regard to when we consider an application from an RSL to amend its existing constitution or when we assess applications from organisations to register as a social landlord.

Payments and benefits

5.13. The Act does not restrict or prohibit payments and benefits to governing body members and employees. So it is for each RSL to decide if, and how, it wants to manage payments and benefits to its governing body members, staff, and their close relatives. Where an RSL exercises its discretion and does decide to make such payments we require it to do so within a clear policy framework to make sure it acts with transparency, honesty and propriety and avoids any public perception of improper conduct. Where an RSL has subsidiaries it must ensure any payments and benefits to subsidiary governing body members are included in the policy. Charitable RSLs also need to be mindful of complying 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.

5.14. We require any RSL intending to pay its governing body members to take account of independent guidance and good practice in setting payment amounts and linking payments to specified duties. There must also be a clear process for assessing performance in carrying out these duties. The RSL must also publish details of all governing body payments in its annual accounts.

5.15. The Act also permits employees to become executive members of the governing body (if the RSL's constitution permits that). In such a case, we require these executive governing body members to be in the minority, not to hold any office and not to be able to form a quorum. The Chair must always be a non-executive member. 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.

5.16. Governing body payments and employee remuneration are matters for the governing body. But RSLs use significant sums of taxpayer money and this comes with responsibilities around restraint and economic effectiveness. We will hold an RSL to account and may take regulatory action if we consider, with regard to industry standards and set scales, that an RSL has made excessive payments to either its governing body members or employees.

5.17. We require any concerns raised by auditors to an RSL about its approach to this area to be treated as "of material significance" in terms of section 72 of the Act and reported to us.

The governing body

5.18. The people on the governing body, and the skills and knowledge they collectively have, are the most significant contributors to the good governance of the RSL. Poor governance presents a corporate risk to an RSL. Therefore each RSL needs to be confident that it has the appropriate mix of experience and objectivity on its governing body which best enables it to give effective strategic direction and deliver good tenant outcomes.

5.19. We require RSLs to formally and actively plan to ensure orderly succession to governing body places to maintain an appropriate balance of skills and experience and to ensure progressive refreshing of the governing body. Most RSLs are subject to a democratic process, as set out in their constitution, to fill any vacancies on the governing body at the annual general meeting (AGM) of the RSL. This can involve an election of candidates to vacancies on the governing body which is subject to the votes of members attending the AGM. To maximise the opportunities for accountability that this process offers, we expect RSLs to encourage as diverse and strong a membership as is compatible with their constitutions and to actively engage this membership.

5.20. To ensure a continuity of good governance each governing body needs to assess annually the skills, knowledge, diversity and objectivity that it needs for its decision-making, what is contributed by continuing governing body members, and what gaps there are that need to be filled. Based on this assessment the RSL can then openly publicise to its full membership, and to others who may wish to become governing body members, what skills it needs and what vacancy opportunities there are. This will encourage the election of governing body members from the strongest pool of available talent. The RSL, by its active participation in the democratic process, can work towards ensuring its governance is as strong and effective as it needs to be.

5.21. All governing body members need to be subject to annual performance reviews to assess their contribution and effectiveness. The governing body needs to take account of these annual performance reviews in its succession planning.

5.22. Having a mix of established and new members on the governing body is key to achieving good governance because the RSL benefits from both experience and new ideas. The in-depth knowledge and understanding of experienced members is vital. However, new members can bring an essential objectivity and independent challenge to familiar practices and thinking. So, in terms of good governance practice, we consider that the RSL should review whether a governing body member who has been in place for nine years – which would in most cases be three, three-year terms – is still able to demonstrate this objectivity and independent challenge. The governing body must be assured that any member seeking re-election after nine years' continuous service is able to demonstrate their continued effectiveness in this regard. We require full compliance with this requirement as set out in Regulatory Standards 6.1 and 6.2 from 1 April 2015.

5.23. Irrespective of how governing body members are selected, the RSL must ensure they are capable of exercising their role effectively – in the interests of tenants and other service users and to protect public investment. This will often require governing body members to gain, or refresh, skills and expertise. This in turn creates an obligation on RSLs to communicate responsibilities to prospective and current governing body members and to take all necessary steps to assist new members. Consequently we require RSLs to ensure there are effective induction programmes in place for new governing body members which give them the necessary information and support to understand their role, powers and duties as non-executive members in the governance of the organisation. The RSL also needs to provide existing governing body members with ongoing support and training to sustain their continued effectiveness.

5.24. An RSL's code of conduct sets out the standards of conduct expected of their governing body members, both individually and collectively. We require RSLs to adopt and comply with an appropriate code of conduct.

Governance and financial management targets

5.25. Section 37 of the Act states that we may set financial management and governance targets specifying standards of financial management and governance which RSLs must aim to achieve by a specified time. These targets may be set for different RSLs or at different times or for different cases – so the target may relate to all RSLs or groups or types of RSLs depending on the issue to be addressed. If we consider it necessary to issue a target for the sector we will, as required by section 37 of the Act, carry out consultation.

5.26. The requirement to consult does not apply where the financial management or governance target affects only one RSL or where we consider that there is an urgent need to set the financial management or governance target.

5.27. When we set a target for one RSL, we will specify the standard to be achieved and the timescale. The purpose of an individual target depends on the individual circumstances of the RSL and the nature of the issue to be addressed. Where we consider it necessary to set a governance or financial management target for an individual RSL, we will make reference to the Regulatory Standards which apply. We will also reflect this in a published Regulation Plan for that organisation.

Upholding regulatory standards

5.28. We will take action and may, if necessary, use regulatory intervention powers to safeguard the interests of tenants and other service users where a failure to achieve the Regulatory Standards or guidance indicates poor governance or poor financial management. Our decision on what action or intervention to take will be based on the extent and nature of the failure to comply with the Regulatory Standards and guidance.

5.29. RSLs must notify us immediately if there is, or is likely to be, a failure to comply with the Regulatory Standards and guidance or a breach of the governing body's own code of conduct. The RSL should take its own actions to deal effectively with the event and to satisfy us that its actions protect the interests of the organisation and its tenants and comply with Regulatory Standards.

5.30. We also expect auditors to consider a significant failure to comply with the Regulatory Standards and guidance or a significant breach of the governing body's own code of conduct as of material significance under section 72 of the Act.

Audit guidance

5.31. For RSLs that we identify as having systemic importance we require a tailored level of assurance which goes beyond that which we specify for all RSLs in the Regulatory Standards.

5.32. We will require an RSL of systemic importance to have a clear focus on, and a defined approach to, the management of risk and to have an audit committee as part of its risk management and internal control systems; to carry out internal scrutiny and give necessary assurance to the governing body.

5.33. Our additional audit guidance is at Regulatory Standard 3 (3.8 to 3.12) for RSLs with systemic importance and is set out separately. We require RSLs of systemic importance to implement and comply with this additional guidance. As part of our risk assessment and regulation planning process we may also identify other RSLs where we need to require the RSL to implement the audit guidance. We will note these requirements in the published regulation plan for the RSL.

5.34. While compliance with our audit guidance is not mandatory for all RSLs, we encourage those RSLs not directly affected by these provisions to consider their merits.

Regulatory Standards of Governance and Financial Management

Regulatory Standards

1. The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.
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.
3. The RSL manages its resources to ensure its financial well-being and economic effectiveness.
4. The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.
5. The RSL conducts its affairs with honesty and integrity.
6. The governing body and senior officers have the skills and knowledge they need to be effective.

Regulatory Standards and Guidance

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 strategic and financial plans 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.** Decision-making complies with the RSL's constitution (which adheres to Regulatory Standards and constitutional requirements) and its legal obligations.
- 1.4.** All governing body members accept collective responsibility for their decisions.
- 1.5.** Governing body members and senior officers understand their respective roles, and working relationships are constructive and effective. The governing body provides the necessary challenge and holds the senior officer to account for his/her performance.
- 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. 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. It is open 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.
- 2.3.** The RSL seeks out the needs, priorities, views and aspirations of tenants, service users and stakeholders. The governing body takes account of this information in its strategies, plans and decisions.
- 2.4.** 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 our notifiable events guidance.

Standard 3

The RSL manages its resources to ensure its financial well-being and economic effectiveness.

Guidance

3.1. The RSL has effective financial and treasury management controls and procedures, to achieve the right balance between costs and outcomes. 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. Where the RSL makes use of financial derivatives it applies the guidance at 3.13.

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 RSL bases its financial forecasts on appropriate and reasonable assumptions and information.

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 sets the employee remuneration levels at a level to be sufficient to ensure the appropriate quality of staff to run the organisation successfully but avoid paying more than is necessary for this purpose.

3.7. The RSL provides accurate and timely statutory and regulatory financial returns to the Scottish Housing Regulator.

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 challenges and holds senior officers to account for their performance in achieving the RSL's purpose and objectives.

4.3. 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.

4.4. 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.

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, advance equality 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.

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 governing body annually assesses the skills, knowledge and diversity it needs to provide capable leadership, control and constructive challenge to achieve the RSL's purpose, deliver good tenant outcomes, and manage its affairs.
- 6.2.** The RSL plans effectively to achieve the appropriate and effective composition and profile of governing body members through ongoing performance evaluation and active succession planning. The governing body is able to assure that any non-executive member seeking re-election after nine years' continuous service can demonstrate their continued effectiveness.
- 6.3.** The RSL supports new governing body members with effective induction to enable them to exercise their governance responsibilities. Existing governing body members are given ongoing support and training to sustain their continued effectiveness.
- 6.4.** 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, and improve overall the quality of good governance and financial management.
- 6.5.** The governing body is satisfied that the senior officer has the necessary skills and knowledge to do his/her job.

Audit guidance

This guidance on audit requirements supplements Regulatory Standard 3 for RSLs of systemic importance:

3.8. The governing body has formal and transparent arrangements for maintaining an appropriate relationship with the RSL's external auditor and its internal auditor (where it has one).

3.9. The governing body has an audit committee of at least three non-executive members. The Chair of the audit committee is a non-executive member. The Chair of the governing body may be a member, but not the Chair, of the audit committee. The non-executive members are in the majority. The governing body is satisfied that at least one non-executive member of the audit committee has recent and relevant financial experience.

3.10. The main role and responsibilities of the audit committee are set out in publicly available terms of reference. These responsibilities include:

- (a)** monitoring the integrity of the financial statements of the RSL and any formal announcements relating to the organisation's financial performance, and reviewing significant financial reporting judgements contained in them;
- (b)** reviewing the RSL's internal financial controls (and also reviewing the RSL's internal control and risk management systems, unless this is expressly carried out by the governing body itself or a separate risk committee composed of non-executive members);
- (c)** monitoring and reviewing the effectiveness of the RSL's internal audit function (where one exists);
- (d)** making recommendations to the governing body in relation to the appointment, re-appointment and removal of the external auditor;

- (e)** approving the remuneration and terms of engagement of the external auditor, and the internal auditor (if there is one);
- (f)** reviewing and monitoring the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements;
- (g)** developing and implementing the RSL's policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and
- (h)** reporting to the governing body, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken.

3.11. The audit committee monitors and reviews the effectiveness of the internal audit activities, including the use of the internal audit function to carry out non-audit duties, and reports this to the governing body on an annual basis. Where there is no internal audit function, the audit committee considers annually whether there is a need for an internal audit function and makes a recommendation to the governing body, and the reasons for the absence of such a function are explained in the relevant section of the annual report.

3.12. The audit committee must have primary responsibility for recommending the appointment, re-appointment and removal of the external auditor and the internal auditor (where one exists).

Financial derivatives

Our guidance on the use of financial derivatives supplements Regulatory Standard 3:

3.13. When an RSL makes use of financial derivatives the governing body ensures:

- (a) it only makes use of derivatives where the constitution allows this;
- (b) it obtains independent advice from a suitably qualified person registered with the Financial Services Authority (or relevant successor bodies) before entering into derivatives transactions; and it is aware of the independent adviser's actual or potential (current or future) conflicts of interest in providing advice;
- (c) it obtains legal advice before entering into an International Swaps and Derivatives Association master agreement with a counterparty;
- (d) derivatives are used to reduce or manage treasury risk and not for speculative purposes;
- (e) any product is denominated in sterling;
- (f) the RSL has carried out appropriate due diligence into the counterparty providing the derivative and is satisfied with the credit rating of the counterparty;
- (g) the RSL has the necessary systems of reporting and control in place so that it can demonstrate that it is not exposing itself to unnecessary risks by entering into derivative transactions; and
- (h) the RSL does not enter into a derivative when the nominal amount is in excess of its total outstanding and committed debt. For example, if the RSL has variable rate debt of £20 million and an additional £10 million of committed facilities, the maximum permitted nominal value of a variable to fixed rate swap would be £30 million;

3.14. In the case of Forward Rate Agreements, loans do not have to be drawn down prior to a derivative being entered into, but there must be a loan commitment in place and an expectation backed up by a business plan projecting that debt will be drawn down to match the derivative that is to be entered into.

Constitutional Requirements for Registered Social Landlords

The constitution of the RSL must ensure that the RSL complies with all statutory requirements (which are not replicated here) and that:

- 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 the Scottish Housing Regulator 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. If the RSL wishes to make use of financial derivatives then it can do so provided the constitution sets these out, they are restricted to Caps, Collars and Interest Rate Swaps, and the Regulatory Standards guidance at 3.13 is met in full.
- 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 and that the Scottish Housing Regulator's consent is needed before a change can be made (other than a change of name, or change of registered or principal office, although notification to us will still be required).
- 7.** It is clear how the RSL can be closed down.

In relation to an RSL within a group structure:

- 8.** 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.
- 9.** 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.
- 10.** The constitutions of group members must enable the parent to exercise control and to take corrective action, where required.
- 11.** 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.
- 12.** 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:
 - 13.** 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.
 - 14.** 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.

15. 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.

16. The powers and responsibilities of the governing body are clearly set out.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. There is a clear process to identify and address any conflicts of interest on the governing body.

23. 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.

24. 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;

(b) the payments are linked to specified duties and there is a clear process for assessing performance in carrying out these duties; and

(c) details of governing body payments are published in the RSL's annual accounts.

25. 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:

26. 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 the public.

27. Membership of the RSL should reflect the purpose and objects of the RSL.

28. 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.

Inquiries and information



6. Inquiries and information

Introduction

6.1. The Housing (Scotland) Act 2010 ("the Act") gives the Regulator powers to obtain information and carry out inquiries. These powers are set out in Part 4 of the Act.

6.2. It is these powers that we use to:

- » get the information that we will collect routinely from social landlords to help us to carry out our regulatory assessments and our broader analysis of the social landlords' composition and performance;
- » get more information and a higher level of assurance from landlords, following our regulatory assessment of RSLs and our shared risk assessment of local authorities;
- » assess an issue or concern with a landlord; and
- » scrutinise or investigate one or more landlord's performance in greater depth.

6.3. This means that an inquiry can range from a simple request for information to an inspection of any aspect of a landlord's housing activities and governance and financial well-being for RSLs.

Who can be the subject of an inquiry?

6.4. The following may be the subject of an inquiry:

- » an RSL;
- » a local authority; and
- » bodies which are, or were, connected to a social landlord at the material time.

We may also make inquiries of more than one of the above as part of a single thematic inspection.

6.5. The provisions outlining who is a connected body are contained within section 164 of the Act. This section includes the provision that a connected body may be a subsidiary of the social landlord or the parent of a social landlord. We may ask a subsidiary or parent body for information, if we need assurance that its operations are not impacting on the affairs of the social landlord.

Routine information requests

6.6. Effective and intelligent regulation flows from us having good information about social landlords available at the right time. Our risk based approach is based on us obtaining the information we need from landlords and from our scanning of the wider environment that they operate in. It is this information and intelligence that allows us to make our regulatory assessments and direct our regulatory attention.

6.7. We will use our inquiry powers to make our routine requests for information from social landlords. These include:

- » annual returns on the Scottish Social Housing Charter, when this is defined; and until then, the annual return on the Scottish Housing Quality Standard for councils and the Annual Performance and Statistical Return for RSLs;
- » annual accounts (RSLs only);
- » financial forecasts (RSLs only);
- » auditor's management letter (RSLs only); and
- » loan portfolio information (RSLs only).

6.8. We will also use our inquiry powers to validate and verify the information that landlords provide to us. As part of this we may conduct checks of a selection of landlords to review the information and the supporting evidence.

Beyond routine information requests

6.9. Where we identify through our regulatory assessments, or in response to events, that we need to go beyond the collection of routine information, we will use our inquiry powers to:

- (a) obtain the additional information we need;
- (b) get more assurance and to investigate matters of concern; and
- (c) inspect to hold landlords to account.

6.10. At the outset of such inquiries we will normally set out what it means for the social landlord. We will outline any timescales and be clear if and what we will publish. The nature of an inquiry may change as it develops and we will update the landlord on any change to our planned approach.

To obtain the additional information we need

6.11. This will generally be where we require information or clarity to make an assessment. It will usually follow receipt of routine information in relation to social landlords' returns on Charter outcomes or financial returns from RSLs, or may relate to initial investigations into governance issues in RSLs. To get more information we may use a number of methods including:

- » asking the organisation to provide us with defined information;
- » discussing issues with the organisation's staff or governing body;
- » asking tenants for their views;
- » asking third parties for information; or
- » using market research techniques.

6.12. We will outline the timescales for providing any information and talk to the social landlord about any requirements we may have, in relation to access to premises and assistance. We will minimise any disruption to the landlord's business and use the lowest level of inquiry to get the additional information we need. If we do not need access to the premises then we will not ask for this.

6.13. We will not normally publish a report as a result of seeking information and instead will use this to make our assessment, including whether we need to do further scrutiny. If we assess that we need to do any further scrutiny, we will set this out in the regulation plan for RSLs or the assurance and improvement plan for local authorities. We will always share our assessment with the social landlord and we will discuss any next steps with them.

To get more assurance and investigate matters of concern

6.14. We may have issues of concern following the receipt of information from social landlords, or resulting from information provided to us from other sources or matters that come to our attention. In such cases we will seek more assurance from a landlord so that we can complete our risk assessment and determine the appropriate level of engagement to have with the landlord. We will do this by:

- » verifying information;
- » asking the organisation to carry out general or specific self assessment activities; or
- » having more direct engagement with a social landlord, including more in-depth discussions and investigation.

We will always use the lowest level of regulation to get the assurance we need, and where possible we will agree mutually convenient times to do this to minimise the impact on a landlord's business.

6.15. Other types of inquiries we carry out to get more assurance are included in sections 44 and 45 of the Act.

6.16. Section 44 of the Act gives us the power to arrange a survey of any social landlord's housing accommodation if we suspect that the standard to which it is being maintained means that the landlord is, or is at risk of, failing:

- » to achieve a standard or outcome in the Charter;
- » to meet a performance improvement target;
- » to meet a financial management or governance target; or
- » to implement an approved performance improvement plan.

We may require the landlord to meet some or all of the expenses of this survey.

6.17. Section 45 of the Act applies to RSLs only. It gives us the power to conduct an exceptional audit as part of our inquiries about a landlord's financial or other affairs. We may arrange for a qualified auditor to:

- » audit the RSL's accounts and balance sheet; and
- » report to us about matters we have specified.

We will pay for any expenses associated with this form of inquiry.

6.18. We will not normally publish a report as a result of getting more assurance and instead will use the information to make our assessment. If we intend to publish a report we will generally tell the social landlord at the beginning of the inquiry. We will share this with the social landlord and any engagement or scrutiny that we plan to do as a result will be included within the regulation plan for RSLs or the assurance and improvement plan for local authorities. Following our inquiries we will outline any further engagement we intend to have with the landlord and this may also include the use of our regulatory intervention powers (see section 7).

To inspect to hold to account

6.19. We will use this type of inquiry to obtain evidence to hold landlords to account for their performance and conduct or to focus our regulatory attention on particular themes. We will normally publish a report following this type of inquiry. We will have two main types of this form of inquiry:

- » inspection of individual landlords; and
- » thematic inspections involving more than one landlord.

6.20. When we inspect we:

- » focus on outcomes from the viewpoint of tenants and other service users and, where appropriate, involve them in the inspections;
- » reach and report impartial and independent assessments;
- » base our judgements on sound evidence and clear criteria, with the opportunity for review;
- » give credit for landlords demonstrating that they are aware of where they need to improve their performance and having a track record of continuous improvement; and
- » understand the organisation and its local context and priorities.

6.21. Our inspection of an individual landlord will be prompted by our regulatory assessments, earlier inquiries or in response to other information that comes to our attention. We may also inspect newly registered organisations after they have been operating for a time.

6.22. From time to time, we will undertake thematic inspections to allow tenants and other service users to compare landlords or to assist our understanding of a particular issue across a group of landlords or the sector. The focus of our thematic work is likely to change from year to year. Many of the factors that drive our assessments of organisation-specific risks will mirror our assessment of broader consumer or sector-wide risks. When considering which themes to explore we are likely to take into account these particular factors:

- » the possible systemic nature of the issue – how widespread it is and its likely effect on many consumers and the sector as a whole;
- » the connection with broader policy developments or evaluations and the need to inform or respond to Scottish Government policy; or
- » the degree of significance attached to the issue from external sources (for example, the sector itself, lenders, or tenant and consumer groups).

6.23. For both individual and thematic inspections, we may inspect the full range of activities undertaken by landlords including service outcomes, stock quality, governance in RSLs or financial well-being in RSLs. Our thematic work may be organised in a number of different ways. For example, it may cover a number of organisations, one particular geographical area, one or many consumer groups, or all organisations in the sector. We will discuss the arrangements for a thematic inspection with the social landlords to be involved, including anticipated timescales.

6.24. Both types of inspection will involve time spent with the landlord or landlords. An inspection may include carrying out case reviews, observation and shadowing of the organisation's activities, interviewing staff, governing body members or elected members, other stakeholders and third parties. Landlords are expected to make any necessary arrangements to accommodate the inspection. We will target our activity to the specific areas or aspects of performance, to gain the assurance we need, or may undertake an inspection across a whole area of service if we consider that is the appropriate level of scrutiny to deliver the assurance we need. We will normally discuss the scope of the inspection, the timescales and stages for the inspection, and our requirements with the social landlord.

6.25. There may be exceptional occasions when we have to act quickly to protect the interests of tenants and other service users. If we consider that we need to do an unannounced inspection, we will not discuss this with the social landlord in advance. We may also do short notice inspections. Where we do an unannounced inspection of a council's housing service we will follow the Joint Code of Practice agreed with other scrutiny bodies. This means that we will take the action required and communicate this and the rationale for it to the Controller of Audit within 10 working days. This is to allow the National Joint Scrutiny Plan to be kept up to date.

6.26. We will normally publish a report following our inspection of individual landlords and following our thematic inspections. We will not continue the existing practice of grading inspected landlords, and instead we will use the following language consistently to describe the outcomes that we have assessed.

Assessment	Characteristics
Excellent	Outstanding and delivering excellent outcomes
Very good	Major strengths and delivering very good outcomes
Good	Important strengths and delivering good outcomes
Satisfactory	Strengths and weaknesses finely balanced and not always able to demonstrate delivering good outcomes
Weak	Important weaknesses and not always delivering good outcomes
Unsatisfactory	Major weaknesses throughout that are so significant that they undermine the delivery of good outcomes

6.27. These descriptions help us to deliver transparency in our assessments and any follow up activities. The language we use is common across other regulators.

6.28. Where we intend to publish a report we will usually give regular feedback during an inspection about what we are finding and we will give the landlord opportunities to tell us if we have misunderstood an issue. We will send the landlord the report that we intend to publish and discuss this with them. We will then send a final report to the landlord, and if the landlord is unhappy it can request a review within one week of receiving this. The Chief Executive and a non-executive Board member of the Scottish Housing Regulator will conduct any requested formal review of the final inspection report.

6.29. When we publish a report we will send a copy to the social landlord, including all the landlords involved in thematic inspections, and to every registered tenant organisation associated with the social landlord. We expect landlords to make an inspection report available to anyone that wants it, report our findings to tenants and other stakeholders and publish it on their website. Landlords should do this effectively and as quickly as possible. We will also publish it on our website.

Who will carry out inquiries?

6.30. Depending on the nature of the issue inquiries may be undertaken by:

- » our staff; or
- » another person appointed by us who brings the skills and knowledge to assist us to deliver robust scrutiny.

We are committed to delivering joint scrutiny of councils with other scrutiny bodies and may undertake joint work with other regulators from time to time.

Access to information

6.31. We expect organisations to co-operate with our requests for information so that we can maintain a professional and productive relationship with the sector. If we undertake an inquiry we do have formal powers to access premises occupied by social landlords and to access documentation or other information relating to the social landlord which are relevant to the inquiry. This includes relevant information held by third parties, for example, the parent or subsidiaries of the social landlord. The Act makes it a criminal offence to fail to comply, without reasonable excuse, with our request for information relevant to an inquiry.

6.32. Social landlords must register all requirements for providing data to us as a purpose under the Data Protection Act 1998.

Intervention



7. Intervention

Introduction

7.1. It is one of our functions to make regulatory interventions, where appropriate, relating to the performance of housing activities by both local authorities and registered social landlords, and RSL's financial well-being and standards of governance.

7.2. Intervention is when we use a statutory power to require action from a social landlord to improve or address a problem in its organisation. We will only intervene where we need to and will always be proportionate, using the most appropriate power to target the problem effectively.

7.3. Our overall aim in taking any intervention is to achieve our regulatory objective to safeguard and promote the interests of tenants and other service users. The specific aim of intervention is to ensure that the social landlord makes the changes needed to bring its performance, governance or financial management to an acceptable level and deal with its problems.

7.4. The Housing (Scotland) Act 2010 ("the Act") provides flexible and graduated interventions so that we can apply the most effective intervention when we need to, to protect the interests of tenants and other service users, or protect an RSL's assets.

Legislation

7.5. The Act requires us to issue a code of practice on regulatory interventions setting out how we intend to make decisions about:

- » whether to make a regulatory intervention;
- » which regulatory intervention to make; or
- » how to make a regulatory intervention.

7.6. When deciding to exercise regulatory intervention powers we are also required to 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.

7.7. The intervention powers are different for RSLs and local authorities; this reflects the differences in the constitutional and governance arrangements of these organisations. The following regulatory powers apply to all RSLs and local authority housing or homelessness service providers:

- » requiring submission of a performance improvement plan;
- » serving an enforcement notice; and
- » appointment of a manager for housing activities.

The following intervention powers apply to all RSLs:

- » appointment of a manager for financial or other affairs to a RSL in order to ensure that the RSL manages its financial or other affairs to an appropriate standard;
- » remove a member of the governing body of an RSL;
- » suspend a governing body member or an agent of an RSL during or following inquiries;
- » remove a governing body member or an agent of an RSL following inquiries;
- » appointment of a new governing body member or director to an RSL;
- » restrictions on dealings in an RSL during or following inquiries; and
- » 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.

7.8 When we use our regulatory intervention powers we take account of:

- » the specific requirements in the Act relating to the use of intervention powers;
- » our statutory objective, and
- » the standards and outcomes set in the Scottish Social Housing Charter and our Regulatory Standards, codes and guidance.

We present here the principles and objectives that underpin our approach to intervention. We also set out the criteria for when we will intervene and how we will manage any intervention.

When we will intervene

7.9. We will not normally need to intervene if we are satisfied that the landlord is able and willing to address our concerns. We need to be confident that the regulated body is taking its problems seriously, is committed to tackling them, and engaging constructively to satisfy us that it is able to deal effectively and speedily with its problems. We want to give the regulated body the opportunity to resolve problems or secure improvement itself. However, in some cases, prompt and early intervention is more effective. We have a suite of graduated intervention powers which we are able to deploy to more proportionate effect to remedy problems at an early stage. We will intervene where the organisation's own attempts are unsuccessful or we are not confident that the organisation is able or willing to tackle its problems. If a regulated body does not co-operate, is obstructive, and does not comply with our requirements then it leaves us with no alternative but to intervene.

7.10. Our intervention will be proportionate to the nature of the problem and targeted only where action is needed. We will take into account the seriousness of the issue, the nature of the risk, the actual or potential impact on tenants, the organisation's operating context, and its response. We may use individual intervention powers or a combination of powers depending on the circumstances and issues of each case.

7.11. Where we have concerns relating to a service delivered by a local authority we will decide the appropriate regulatory intervention that we need to take. We will discuss our proposed action with scrutiny colleagues within the shared risk assessment process.

Criteria for statutory intervention

7.12. We will assess the risk to our regulatory objective and consider the need for intervention, based on these criteria:

- » the seriousness of the performance problem or failure, in relation to the Scottish Social Housing Charter, and the impact of the performance problem or failure on tenants and other service users, or on people seeking access to the organisation's services; and
- » the seriousness of the problem or failure in relation to the Regulatory Standards for RSLs and the impact on the RSL's governance, management and financial viability.

We will assess the problem against the criteria and decide the form of intervention by considering:

- » what risks the organisation is exposed to as a result of the failure or problem;
- » the actual or potential detriment to tenants and other service users;
- » the urgency with which the problem or failure needs to be addressed;
- » whether the organisation can give us the confidence that it is willing and able to address regulatory concerns and resolve the problem or failure;
- » the most effective and proportionate level of intervention necessary to address the problem; and
- » the effect on the reputation of the social landlord and the potential effect on stakeholders' confidence in the sector as a whole.

How we intervene

7.13. We will always set out our reasons for intervention in writing and will explain at the outset what power is being used, what we require of the organisation, the outcomes we expect, and the timescale.

7.14. In any intervention our specific objectives will vary from case to case. Broadly, we will use the most appropriate and proportionate intervention to:

- » address the presenting problem, failure, or risk and any related or contributory problems to achieve a sustainable solution;
- » protect the interests of tenants and other service users by requiring landlords to improve performance to deliver the outcomes and standards in the Scottish Social Housing Charter;
- » address the risk to the financial viability of the RSL so that the organisation is able to meet its financial commitments and achieve the required standards of financial management in line with the Regulatory Standards for governance and financial management;
- » protect the governance reputation of RSLs so that the RSL is properly governed in line with the Regulatory Standards for governance and managed to deliver good tenant outcomes;
- » act as a catalyst for change within the organisation to bring about the necessary improvements or strategic solutions;
- » protect public investment and guard against the misuse of public funds; and
- » reassure lenders and maintain their confidence in the integrity of the sector as creditworthy and a good vehicle for investment.

7.15. We will monitor intervention cases and keep our strategy for each individual organisation under review. We need to be satisfied that sufficient progress is being made, there is a sustainable solution in place and key risks have been addressed, before deciding to end statutory intervention. If we are not satisfied that there is sufficient improvement, or if the circumstances of the case make it necessary, we will consider using further intervention powers to initiate the required changes.

7.16. We will tell public funders when we are taking intervention action in an RSL. We will inform them whether or not we consider the RSL which is subject to intervention to be a suitable recipient of public funds.

7.17. We will also make sure private lenders are told about our intervention in order to maintain their confidence in our regulatory process with the RSL.

7.18. We will publish details about our intervention to the public and others on our website. For RSLs, we will set out in a published Regulation Plan our engagement with the RSL, including the concerns we have identified, what we require the organisation to do, and what our intervention will be.

7.19. We will report on the use of intervention powers in our annual report and by a range of means – in case study reports, thematic reports, and other publications and communications including responses to media enquiries. We regard this public communication of our intervention actions to be important in providing assurance about effective and strong regulation and the sanctions that will be taken against unacceptable actions or failures by social landlords. It is also useful to publicise these intervention actions so that other landlords can learn from the issues which have prompted our intervention, address potential failures in their own organisations, and improve the quality of their organisational performance.

What we expect regulated organisations to do

7.20. We hold the governing body/elected members and senior management team accountable and responsible for the effective management of problems in their organisation. We also require them to demonstrate that they are committed to working with us. We require the regulated organisation to:

- » comply with our requirements, co-operate with us, and act on our recommendations for improvement;
- » work positively with us to achieve the required outcomes and to make our intervention effective and for as short a period as possible;
- » work constructively with the statutory appointees and/or appointed manager to help resolve the organisation'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 what it means for them and how it will keep them informed about progress in addressing our concerns; and
- » obtain our approval for any public or press statements or responses to press enquiries about our intervention.

7.21. Where our regulatory intervention takes the form of requiring submission of a performance improvement plan, the social landlord is required to publish it and send a copy of it to any registered tenant organisation (RTO) associated with the social landlord. We also require the landlord to communicate this information to its tenants. We also require the social landlord to communicate the information to service users other than tenants if the improvement plan relates to a performance area affecting other service users who are not tenants. Where the regulatory intervention has taken the form of service of an enforcement notice, we are under a duty to publish it and send a copy to every RTO associated with the social landlord. If no RTO exists, we will communicate the existence of the enforcement notice to the social landlords' tenants, and may communicate to service users other than tenants, if relevant. We also expect social landlords to make their Regulation Plan available and accessible to their tenants and service users and, where they have a website, have a copy of their Regulation Plan in a prominent place on it and have a prominent link to our website.

7.22. If there are problems within a group structure then we will look to the risk that is presented to those parts of the structure where the social assets and investment are and where tenants' interests need to be protected. Where the RSL with problems is the subsidiary of a parent body then it is the responsibility of the parent to take the necessary action to tackle the problems in its subsidiary using its constitutional powers of control to step in where appropriate. If the parent is an RSL and is unable or unwilling to take the necessary action then we will consider if we need to intervene in the parent RSL to ensure it takes the necessary action as parent in its subsidiary. If the subsidiary RSL's parent is not also an RSL, or if the parent RSL's actions are ineffective, then we may need to intervene in the subsidiary directly to protect the interests of tenants and other service users where we cannot rely on the parent to do so.

Other regulators and statutory bodies

7.23. RSLs and local authorities, because of the nature of their organisations or the nature of the services they provide, are of interest to other regulatory and statutory bodies. We have set out our respective areas of interest in working agreements with these bodies to achieve a co-ordinated approach to statutory interventions in the services provided by local authorities and RSLs. This means these bodies can bring to our attention issues of concern which may require intervention. We will collaborate operationally to ensure that the most appropriate regulator is using the most effective intervention powers to deal with the concern.

7.24. As the primary regulator for the social housing sector we will decide when we need to intervene to fulfil our statutory objective. When doing so we will also have regard to the roles and functions of other regulatory and statutory bodies. We will, therefore, consider the charity regulator's interests when we are intervening in an RSL with charitable status. We will take account of the care inspectorate's interests in care services provided by a local authority or RSL. We will also discuss any case for remedial action or intervention in a local authority with the Accounts Commission and Audit Scotland.

Consent to constitutional and organisational change and disposals



8. Consent to constitutional and organisational change and disposals

Introduction

8.1. Under the Act RSLs must apply for our consent to organisational changes and to notify us about some others. RSLs also need to seek our consent to dispose of land or to dispose of any other assets by granting security over them (referred to as disposals).

8.2. We set out below our approach to exercising our powers to give consent. We recognise that organisational and constitutional changes and disposals can be complex and technical. The scale and purpose of organisational changes and disposals are likely to vary greatly and this is reflected in our approach to considering applications for consent in terms of the level of scrutiny involved and the type and amount of information we will ask for.

8.3. RSLs must tell us if they are planning to become part of a group structure so we can discuss the consent requirements which apply to the particular proposal.

8.4. We also set below the types of disposals which are covered by the General Consent and the types of disposals which require our specific consent.

Constitutional change

8.5. The Act requires RSLs to seek our consent to any changes they make to their constitution. The exceptions to this are changes to an RSL's name or registered office, where RSLs are only required to notify us of such changes within 28 days.

8.6. Registered societies (formerly known as Industrial and Provident societies) need to send a copy of our consent letter to the Financial Services Authority (or successor bodies) to enable the change to be registered. Companies must send a copy of our consent letter to Companies House.

8.7. When considering applications for changes to an RSL's constitution we will comply with relevant legislation, consider the risks to our regulatory objective and assess how well the RSL's proposed changes fit with our constitutional requirements.

8.8. We require an RSL to ensure its proposed changes allow it to continue to meet both its legal obligations and the Regulatory Standards of Governance and Financial Management. We also expect the RSL to demonstrate that it has fully considered the benefits and risks attached to any changes.

8.9. Our guidance explains the process RSLs should follow when amending their constitution. This includes the information we require and how long it will take us to assess the application.

8.10. An RSL proposing to change its constitution to become a subsidiary of another body needs to apply to us for consent. Group structures are evolving in ways that may increase our regulatory risk, for example, due to the types of activities subsidiaries become involved in, and our level of scrutiny will reflect this. Given the implications of this type of change we are likely to carry out a more detailed level of scrutiny of the RSL's application than we may carry out for some other applications. More information on this is set out in our guidance on group structures.

Applying for constitutional changes

8.11. The processes below do not apply to constitutional changes which involve an RSL seeking to become a subsidiary of another body.

8.12. The consent process for constitutional changes involves the RSL submitting an application form to us to apply for consent. If we are satisfied with the proposed change, we will grant in principle consent, and then, if the change is approved by the RSL's members, we will confirm our formal consent.

8.13. An RSL seeking to change its charitable objects or an RSL wanting to adopt charitable status, requires OSCR's in principle consent. It must apply to OSCR for this before applying to SHR for in principle approval.

8.14. The Scottish Federation of Housing Associations (SFHA) has a model constitution for its members. We will engage with the SFHA to ensure that the model fully reflects our constitutional requirements.

8.15. An RSL can self certify that it is updating to an agreed SFHA model constitution with no changes. We will then issue our consent and require the RSL to send us a copy of the signed constitution when it has been approved by its members. This will complete our consent process. The only exception to this would be where, in adopting the model constitution, this would result in the RSL changing its objects, purposes or powers. If an RSL is proposing to change any of these, it will need our consent and it will have to provide us with the business case for this in advance.

8.16. Where an RSL does not want to adopt the SFHA model constitution (or another approved model) it needs to apply to us for consent. We will consider the RSL's proposed constitutional arrangements but it must ensure our constitutional requirements are fully reflected in the submitted constitution.

Self certification process

8.17. An RSL can change the following parts of its constitution using the self certification process and self certification forms:

» **Changing the number of governing body meetings:**

An RSL can change the number of times its governing body meets provided the change means the governing body will still meet at least six times per year;

» **Postal voting:** If an RSL has provisions for postal voting for general meetings in its constitution and wishes to remove this. Or if an RSL would like to add this to its constitution;

» **Area committees:** Where an RSL has provisions for establishing area committees within its constitution it can remove these and self certify the change; and

» **Seal:** If an RSL has a provision within its constitution for having a seal and it wishes to remove this then it can do so if it self certifies that it has replaced this provision with suitable wording which confirms deeds and documents will be executed in line with its legal obligations. The RSL should seek suitable professional advice about the alternative wording.

Organisational change

8.18. Sections 96 to 104 of the Act set out the legislative requirements for RSLs seeking to restructure (including amalgamating with another RSL, carrying out a transfer of engagements, or amalgamating with a registered company). It also covers voluntary winding up and dissolution of RSLs. RSLs are required to seek our consent to these changes. Our separate guidance sets out more details about the types of organisational changes which require our consent.

8.19. Every organisational change proposal is different, based on the objectives and circumstances involved. To ensure that our scrutiny is proportionate and effective, we will tailor the information needed and our assessment to individual cases. Our separate guidance details the processes involved when seeking consent to each of these changes, which is based on the principles set out in this framework.

8.20. From an RSL perspective, the key stages in a restructuring proposal, such as a transfer of engagements, are likely to include:

- » option appraisal;
- » development of a business case;
- » development of a business plan, including a risk assessment and financial projections;
- » tenant and other key stakeholder consultation; and
- » production of an implementation plan.

8.21. Our consent process depends on the particular circumstances of the proposal. For example, where the proposal is part of a rescue or recovery strategy for the RSL then the rationale for the change will be clear so the early stages such as an options appraisal and business case may not be required.

8.22. We expect the RSL to contact us at an early stage in developing its proposals. This allows us to understand the key features of the proposal and agree what supporting information is needed; and it helps the RSL manage the process of obtaining our consent in an efficient and effective way.

8.23. Our assessment will reflect the scale and nature of the proposal and will normally include the following criteria:

- » The proposal has been discussed, scrutinised and approved by the relevant governing body/bodies and the governing body has taken appropriate professional advice.
- » Proposed governance structures are simple and clear and allows the RSL to meet our Regulatory Standards.
- » A comprehensive risk analysis has been carried out, covering all aspects of the proposal including financial viability, stress testing of projections and implications for covenants.
- » There has been 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.
- » The new (or changed) organisation is financially viable, efficient and provides good outcomes for tenants.
- » Wherever possible, the proposals benefit current and future tenants.
- » Robust monitoring systems will be established, to ensure that delivery after the proposal takes effect is achieved (for example in relation to service standards, operating costs and investment levels).

8.24. In applying these criteria, we will take account of the individual circumstances of the proposal. For example:

- » For proposals designed to remedy performance failures by one of the partners, we recognise that the immediate priority may be to address those failures while maintaining the performance of the partner RSL.
- » The rationale for a proposal may be to consolidate and safeguard existing standards of performance, with some benefits taking longer to achieve because of the circumstances involved.
- » Proposals may be designed to improve performance or efficiency in specific parts of the business, rather than in every area.
- » Enhancement of tenant interests could potentially include a wide range of factors (for example, increased capacity to invest in the existing housing stock or provide new housing; provision of additional services for tenants; enhanced ability to keep rents at affordable levels). Benefits will vary from case to case, and the partners' current performance will also be relevant. We will aim to take a rounded view of each proposal, based on the business case and views expressed by tenants.

Regulator's power to petition for winding up and asset transfer on dissolution or winding up

8.25. Section 105 of the Act covers our powers to petition for the winding up of an RSL. We can apply this power to an RSL which is a registered society or a registered company.

8.26. When serious problems are identified with an RSL, we will step in to support the RSL to resolve these. It is likely that most problems can be resolved through support or intervention but if this is not possible and where particular conditions exist, we can petition the court under the Insolvency Act 1986 to wind up an RSL. The Act sets out the specific grounds on which we can present a petition for the winding up of an RSL. We will use this power only in very exceptional circumstances. In using these powers our primary interest is to safeguard the interests of tenants and other service users.

8.27. Section 106 of the Act gives us powers to transfer the assets of an RSL which has been dissolved under section 55 (a) or (b) of the Co-operative and Community Benefit Societies and Credit Unions Act 1965 or a registered company which has been wound up under the Insolvency Act 1986. The Act sets out particular steps we must follow before the assets can be transferred, such as consulting the tenants of any houses to be included in the transfer and having regard to those views and consulting with the charity regulator if the RSL is charitable.

8.28. Section 3 of the Act includes general requirements on us to perform all of our functions in a way that is proportionate, accountable, transparent and targeted only where action is needed. These duties apply to how we exercise our powers to transfer assets under the Act.

8.29. Because the Act specifies the circumstances in which we can petition to wind up an RSL or transfer the assets of an RSL and the steps that we need to follow, we will not issue guidance covering these sections of the Act. If we are required to carry out these actions, we will follow the requirements of the legislation. We have set out in separate guidance what we determine to be steps to enforce a security over an RSL's land.

Disposal of land or assets by RSLs

8.30. Section 107 of the Act gives an RSL the power to dispose of its land or to dispose of any other asset by granting security over it. This power is subject to our consent unless this is not required under Section 108 of the Act.

8.31. When we consider disposals we want to focus our regulatory interest and resources on those disposals which either in themselves, or in the context of the RSL's circumstances, might present a risk to our regulatory objective.

General consent

8.32. Section 108 of the Act sets out those disposals which do not need consent. These include, for example, disposals by way of a lease under a Scottish Secure Tenancy. For any other disposal, an RSL must obtain our consent. When we do this, we may give General Consent to certain disposals or we may give consent for particular purposes.

8.33. We aim to make the process for obtaining our consent as straightforward as possible. The types of disposals which are covered by the General Consent under section 107 (2) (a) and when we will give consent for particular purposes in line with section 107 (2) (b) are set out in Table 1. When RSLs dispose under the General Consent they will need to ensure that they maintain an audit trail to ensure accountability to the Regulator, members, tenants and other service users.

8.34. The General Consent covers the following types of disposals with conditions attached. We will set out these conditions in our guidance on consent to disposals:

- » disposal by way of sale of untenanted social housing dwellings to another RSL;
- » disposal by way of sale of untenanted social and non social housing dwellings, land or other assets to another RSL as part of a development agreement made at the development stage. This would include both new build and redevelopment work;
- » sale of untenanted social housing dwellings bought originally for temporary use such as decant accommodation;
- » disposal by way of sale or excambion of social and non social housing land, untenanted social housing dwellings, or other assets up to and including £100,000 (but excluding tenanted social housing dwellings);
- » grant or excambion of right of way, access, wayleaves or servitude over land;
- » subsequent disposals of properties acquired under Section 135 (1) of the Act;
- » granting heritable securities to public bodies over property or land used for social housing;

- » leasing (residential and non-residential) to non-profit making (and in specific instances, profit making) bodies. This includes leasing of commercial properties;
- » disposal by way of sale or standard security for low-cost home ownership, equity sharing or voluntary sales schemes; and
- » disposals by way of sale or excambion of untenanted social and non-social housing dwellings, land or other assets over £100,000 where the RSL has provided us in advance with sufficient assurance on its approach to asset management and its disposals strategy.

8.35. When we consider an RSL's disposal strategy we want to know that:

- » the governing body has considered and agreed the strategy on the basis of appropriate professional advice;
- » it fits with the RSL's objectives and business plans and sets out the anticipated timescales;
- » it covers routine activities such as sales of shares in properties, including final shares in equity type schemes, compulsory purchase, improvement for sale and any voluntary sales policy;
- » it has considered local supply and demand issues in the case of sales;
- » the RSL has a good track record in relation to submission of regulatory returns; and
- » it is sustainable in terms of costs for the business.

8.36. Our approval of an RSL's disposal strategy and the application of the conditional General Consent would last for a fixed period. We will set this period out when we approve the disposal strategy. Thereafter, the RSL would need to make a further application. We envisage these arrangements being appropriate only where there is a significant volume of disposals expected. We require the RSL to agree a defined list of properties for disposal to be covered by the strategy. In the event that there is any material change to the agreed strategy, the RSL is required to submit a new application to us.

8.37. Disposal by way of lease of untenanted properties falls under the General Consent. This is subject to RSLs meeting certain conditions set out in the Schedule of the General Consent. A key condition is that properties cannot be leased to profit making organisations except in very specific circumstances. Other leasing arrangements will be considered under Specific consent and this is discussed further at paragraph 8.38.

Specific consent

8.38. There are four areas where RSLs need to seek our specific consent:

- » disposals by way of sale of untenanted social and non-social housing dwellings, land or other (including non residential) assets where we have not received advance or sufficient assurance from the RSL's agreed disposal strategy;
- » disposal by way of granting security over land or other assets . Where the loan relating to the standard security will be used for on-lending to a subsidiary, we will need additional information on the intra-group lending arrangements to be assured that the RSL's assets are protected. We will allow social housing assets to be used as security for funding required for non-social housing purposes where the RSL has provided us with an appropriate business case;
- » disposals by way of sale of tenanted social housing dwellings; and
- » disposals by way of lease to another organisation, whether profit making or otherwise, which does not fall under the General Consent in current guidance. There are conditions attached to this type of disposal and these are set out in our guidance. Disposals by way of lease of social housing dwellings to support new funding initiatives will require specific consent. In deciding whether or not specific consent will be granted we will want assurance that there are no regulatory impediments to the proposals and that there is a strong business case in terms of our regulatory objective as well as the organisation's objectives.

8.39. The Act makes provision for consultation by landlords in relation to certain types of disposals under Parts 9 and 10 of the Act. What form the consultation takes is dependent on whether the disposal affects tenants with a SST or not. Where the tenant with a SST ceases to be a tenant of the RSL due to the proposed disposal, special procedures are required in terms of tenant consultation under the Act. In particular, landlords would have to obtain tenant authorisation, which may involve either tenant ballot or written agreement of tenants, before we will consider an application for consent. We have set out guidance on when broader consultation would be required and when a ballot rather than a written agreement will be necessary. We will direct a ballot of tenants unless a clear business case for written agreement is made by the RSL. In making our decision about this we will take account of the scale of the proposed disposal and the safeguards in place for tenants.

8.40. The table opposite explains when an RSL requires our consent.

Other issues

8.41. We will not prescribe a required valuation basis for social housing assets being disposed of as security for private finance, but will leave this to negotiation between RSLs and lenders based on the professional advice of valuers. Some RSLs use 'market value with tenancies' as the basis for loans, even if these are secured on social housing stock. We may require to see the valuation when we are considering an application for consent to dispose of assets as security.

8.42. We will only give consent for fixed or floating charges (these only for companies) in respect of lenders, public bodies, voluntary organisations with a financial interest in a development and a builder, or developer, taking a charge limited to the development period. This is in order to make sure RSL assets are used to support core activities.

8.43. We do not give consent for floating charges on RSLs that are registered societies because these have no value as a receiver cannot be appointed.

When RSLs require our consent

Type of Disposal	Consent Required	General Consent	Specific Consent
Sales to Tenants with Statutory Right To Buy	No	-	-
Leases to Tenants under Scottish Secured Tenancy or what would be SST but for Schedule 1 of the 2001 Act	No	-	-
Leases to Tenants under a Short SST	No	-	-
Leases under assured tenancy agreements or assured agricultural occupancies	No	-	-
Leases under what would be an assured tenancy but for any of paragraphs 3 to 8 and 12 of Schedule 4 of the Housing (Scotland) 1988 Act	No	-	-
Occupancy Agreement	No	-	-
Sale of untenanted social housing dwellings to another RSL	Yes	Yes	-
Sale of untenanted social and non social housing dwellings, land or other assets to another RSL as part of a development agreement made at the development stage	Yes	Yes	-
Sale of untenanted social housing dwellings bought originally for temporary use such as decant accommodation	Yes	Yes	-
Sale or excambion of social or non social land, untenanted social housing dwellings or other assets up to and including £100,000	Yes	Yes	-
Grant or excambion of right of way, access, wayleaves or servitude over social or non social housing dwellings and land	Yes	Yes	-
Subsequent disposal of properties acquired under Section 135 (1) of the 2010 Act	Yes	Yes	-
Granting heritable securities to public bodies over property or land used for social housing in exchange for public funding for that housing in favour of named bodies listed in the General Consent	Yes	Yes	-
Leasing – both residential and non residential – to non profit making (and in specific instances, profit making) bodies subject to conditions	Yes	Yes	-
Disposal by way of sale or standard security for low cost home ownership; equity sharing or voluntary sales schemes subject to conditions	Yes	Yes	-
Sale or excambion of untenanted social housing dwellings or land over £100,000	Yes	Yes, if prior agreement with SHR	Yes, if no prior agreement with SHR
Sale or excambion of untenanted non social housing dwellings or land over £100,000	Yes	Yes, if prior agreement with SHR	Yes, if no prior agreement with SHR
Disposal by way of sale of tenanted social housing dwellings	Yes	No	Yes
Granting standard security over social and non social housing dwellings, land or assets	Yes	No	Yes
Disposal by way of lease to another organisation, whether profit making or otherwise, which does not fall under the General Consent (for example to support new funding initiatives)	Yes	No	Yes

Glossary



Glossary

Term	Definition
Asset	Property, rights, or interests.
Asset Management Strategy	A document which shows how a landlord is ensuring that current and future assets (houses, land, etc) support the organisation's objectives – working towards having the right assets, of the right quality, in the right place at the right time.
Benchmarking	A process used by organisations to compare service processes and performance to identify best practice.
Charge or heritable security	A form of security, generally held by a lender, for the payment of a debt or obligation.
Code of Conduct	A written document that sets out the standards of conduct individuals are expected to meet. Most registered social landlords (RSLs) have separate codes of conduct for members of the governing body and for employees.
Constitution	<p>The document that sets out what the RSL is set up to do and who is in control of the RSL and how it will be governed.</p> <p>The constitution is called:</p> <ul style="list-style-type: none"> (a) articles of association in relation to a company; (b) rules in relation to a registered society; and (c) in relation to a body of other status, the instrument which establishes it and states its purpose.
Constitution	A legal agreement between two or more parties which sets out the way in which a housing development project will be delivered and ultimately owned.
Disposal	<p>In relation to property, the disposing (passing on) of property or any interest in it and in particular includes,</p> <ul style="list-style-type: none"> (a) a sale or lease of the property or any interest in it, (b) granting security over the property or any interest in it, and (c) granting an option or otherwise entering into a contract for disposal.
Disposal Strategy	A document, informed by an RSL's asset management strategy which sets out what, how and when the organisation plans to dispose of the land or assets in question.

Term	Definition
Duty of user focus	A requirement of the Public Services Reform Act (2010) which means that scrutiny bodies must work to improve service user involvement in their activities and demonstrate how they are doing this.
Enforcement notice	A document issued by the Regulator in terms of s56 of the 2010 Act which requires a social landlord to take action to rectify or avoid an identified failure or other problem, or to protect its tenants or assets.
Excambion	The exchange of one piece of land or property in return for another.
External accreditation	A process of external quality review used for quality assurance and improvement.
Financial derivatives	A derivative instrument (or contract) is one whose value and other characteristics are derived from those of another asset or instrument.
Floating charge	A type of security granted over all the property in an RSL's ownership.
Group Structure	A legal arrangement where more than one organisation is linked through a parent/subsidiary relationship.
Land	Land, including any physical structures built on the land, for example houses or flats, or any existing or future interest of the landlord in rent or other receipts arising from land.
Liquidity	A measure of the extent to which an organisation has cash to meet immediate and short-term obligations, or assets that can be quickly converted to do this.
Local Government Scrutiny Joint Code of Practice	A document produced by Audit Scotland setting out arrangements for co-operation between all scrutiny bodies in Scotland.
Memorandum of Understanding	A document of agreement between parties setting out areas of joint working or interest.
Micro-manage	The close observation or control of an organisation.
Peer Review	When a landlord asks other qualified individuals in housing or other landlords to review their services and performances and identify areas for improvement.
Prudence	Revenue is recognised only when realised in the form either of cash or of other assets, the ultimate cash realisation of which can be assessed with reasonable certainty. Provision is made for all known probable liabilities (expenses and losses) whether the amount of these is known with certainty or is a best estimate in the light of the information available.

Term	Definition
Public funding	Grant funding by Scottish Ministers, local authorities, or other public bodies.
Quorum	The minimum number of members of the governing body that require to be present before any valid business can be carried out.
Registered Social Landlord (RSL)	A social landlord registered and regulated by the Scottish Housing Regulator.
Registered tenant organisation (RTO)	A tenant group registered with a landlord and meeting certain conditions which have been set down in the Housing (Scotland) Act 2001.
Right of way or servitude	A right given to enable passage over land owned by someone else.
Scottish Housing Quality Standard (SHQS)	A minimum quality standard for all of Scotland's social homes. Landlords should achieve the standard by 2015.
Social Housing Dwellings	Housing owned by a social landlord and let under a Scottish Secure Tenancy or Short Scottish Secure Tenancy.
Systemic problems	Problems which are fundamental to a landlord or present across a range of landlords throughout the sector.
Temporary use	This refers to disposals involving property bought for temporary uses such as decant accommodation.
Validate	A desk top exercise to assess whether the information provided is consistent with previous data submissions and likely to be an accurate entry.
Valuer	A valuer qualified by MRICS, ARICS, FRICS, ASVA or FSVA to determine the value of property or assets.
Verify	A physical check of the evidence in support of the data supplied in the information return. It involves time spent on site, in a landlord's premises to review the evidence.

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