Scottish Housing Regulator

# REGULATION OF SOCIAL HOUSING IN SCOTLAND

OUR FRAMEWORK

FEBRUARY 2019

# ABOUT US

We are the independent regulator of social landlords in Scotland.

**We safeguard and promote the interests of:**

Around:

**600,000**

Tenants who live in homes provided by social landlords

Over:

**123,000**

Home owners who receive services of social landlords

Over:

**45,000**

People and their families who may be homeless and seek help from local authorities

Around:

**2,000**

Gypsy/Travellers who can use official sites provided by social landlords

**We regulate:**

Around:

**200** Social landlords

Around:

**160** Registered social landlords

**32** Local authorities

**Our equalities commitment**

Promoting equalities and human rights is integral to all of our work. We set out how we will meet our equalities duties in our Equalities Statement.

**Our role:**

To monitor, assess and report on social landlords' performance of housing activities and RSLs' financial wellbeing and standards of governance. We intervene, where we need to, to protect the interests of tenants and service users.

Our Regulatory Framework explains how we regulate social landlords. It is available from: www.scottishhousingregulator.gov.uk

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# 1. INTRODUCTION

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

## Our statutory objective

To safeguard and promote the interests of current and future tenants, people who are homeless, factored owners and Gypsy / Travellers.

## Our functions

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

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

1.3 For both local authorities and RSLs, we monitor, assess, report and intervene (as appropriate) on their performance of housing activities. This means how they deliver services to:

- tenants;
- people who are homeless;
- Gypsy/Travellers who use official sites provided by these landlords; and
- factored owners.

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

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

1.4 We set out our priorities in our Corporate Plan. We use the regulatory tools in this Framework to focus on and deliver our priorities.

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

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

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

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

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

# 2. HOW WE REGULATE

## IN THIS CHAPTER WE GIVE AN OVERVIEW OF HOW WE REGULATE

2.1 We are committed to the better regulation principles enshrined in the Scottish Regulators' Strategic Code of Practice. This Code also reflects our obligations under section 3 of the 2010 Act. Our regulation is:

- proportionate
- consistent
- accountable
- transparent
- targeted only where needed.

### Landlord self-assurance

2.2 Landlords assuring themselves, their tenants and us is central to our approach.

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

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

### Empowering tenants, people who are homeless and other service users

2.5 We promote a strong tenant voice. It is important that landlords involve tenants and other service users in the scrutiny of their performance, and in discussions about affordability and what they get for their rent.

2.6 We empower tenants and others by publishing landlord performance information in accessible and useful ways, to enable them to ask questions and hold their landlords to account. We give tenants an effective way to bring to us significant performance failures by their landlord.

## Risk-based regulation

2.7 We assess risk in landlords to determine what assurance we need from them and what they may need to improve. We:

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

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

2.9 The **main risks** we consider are:

- poor outcomes for tenants, people who are homeless and other service users
- poor quality of tenants' homes and investment failures
- poor financial performance and management (for RSLs only)
- poor governance (for RSLs only).

2.10 We publish an Engagement Plan for each landlord. Each Plan sets out the information we require from the landlord, what it needs to do, and how and why we will engage with it.

2.11 For local authorities, we work through the risk assessment process with our partner scrutiny bodies, to consider the full range of scrutiny activity for each local authority. More information on this is set out in the Joint Code of Practice.

## Our work

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

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

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

## Equality and human rights

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

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

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

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

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

# 3. REGULATORY REQUIREMENTS

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

3.1 The Regulatory Requirements that we set for landlords are:

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

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

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

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

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

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

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

3.8 Landlords should take account of regulatory advice from us and from other regulators. Advisory guidance may include recommended practice and recommendations from thematic work. Landlords should consider applying any recommendations in advisory guidance, but are not required to follow advisory guidance. Landlords are not required to discuss a departure from advisory guidance with us before acting. A list of our advisory guidance is available on our website.

# REQUIREMENTS FOR LOCAL AUTHORITIES AND RSLs

## EACH LANDLORD MUST:

### ASSURANCE & NOTIFICATION

- ✓ Prepare an Annual Assurance Statement in accordance with our published guidance, submit it to us between April and the end of October each year, and make it available to tenants and other service users.
- ✓ Notify us during the year of any material changes to the assurance in its Assurance Statement.
- ✓ Have assurance and evidence that it is meeting all of its legal obligations associated with housing and homelessness services, equality and human rights, and tenant and resident safety.
- ✓ Notify us of any tenant and resident safety matters which have been reported to, or are being investigated by the Health and Safety Executive, or reports from regulatory or statutory authorities, or insurance providers, relating to safety concerns.
- ✓ Make its Engagement Plan easily available and accessible to its tenants and service users, including online.
- ✓ Register all requirements for providing data to us with the Information Commissioner's Office as a purpose for which they are acquiring data under the Data Protection Act 2018.

### SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE

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

## SCOTTISH SOCIAL HOUSING CHARTER PERFORMANCE (CONTINUED)

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

## WHISTLEBLOWING

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

## TENANTS AND SERVICE USERS REDRESS

- ✓ Make information on reporting significant performance failures, including our leaflet, available to its tenants.
- ✓ Provide tenants and other service users with the information they need to exercise their right to complain and seek redress, and respond to tenants within the timescales outlined in its service standards, in accordance with guidance from the Scottish Public Services Ombudsman (SPSO).
- ✓ Ensure it has effective arrangements to learn from complaints and from other tenant and service user feedback, in accordance with SPSO guidance.

## EQUALITY AND HUMAN RIGHTS

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

# REQUIREMENTS FOR RSLs ONLY

## EACH RSL MUST:

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

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

# THE STANDARDS OF GOVERNANCE AND FINANCIAL MANAGEMENT FOR RSLs

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

## Standard 1

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

### *Guidance*

1.1 The governing body sets the RSL's strategic direction. It agrees and oversees the organisation's business plan to achieve its purpose and intended outcomes for its tenants and other service users.

1.2 The RSL's governance policies and arrangements set out the respective roles, responsibilities and accountabilities of governing body members and senior officers, and the governing body exercises overall responsibility and control of the strategic leadership of the RSL.

1.3 The governing body ensures the RSL complies with its constitution and its legal obligations. Its constitution adheres to these Standards and the constitutional requirements set out below.

1.4 All governing body members accept collective responsibility for their decisions.

1.5 All governing body members and senior officers understand their respective roles, and working relationships are constructive, professional and effective.

1.6 Each governing body member always acts in the best interests of the RSL and its tenants and service users, and does not place any personal or other interest ahead of their primary duty to the RSL.

1.7 The RSL maintains its independence by conducting its affairs without control, undue reference to or influence by any other body (unless it is constituted as the subsidiary of another body).

## Standard 2

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

### *Guidance*

2.1 The RSL gives tenants, service users and other stakeholders information that meets their needs about the RSL, its services, its performance and its future plans.

2.2 The governing body recognises it is accountable to its tenants, and has a wider public accountability to the taxpayer as a recipient of public funds, and actively manages its accountabilities.

2.3 The governing body is open and transparent about what it does, publishes information about its activities and, wherever possible, agrees to requests for information about the work of the governing body and the RSL.

2.4 The RSL 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.

2.5 The RSL is open, co-operative, and engages effectively with all its regulators and funders, notifying them of anything that may affect its ability to fulfil its obligations. It informs the Scottish Housing Regulator about any significant events such as a major issue, event or change as set out and required in notifiable events guidance.

## Standard 3

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

### *Guidance*

3.1 The RSL has effective financial and treasury management controls and procedures, to achieve the right balance between costs and outcomes, and control costs effectively. The RSL ensures security of assets, the proper use of public and private funds, and access to sufficient liquidity at all times.

3.2 The governing body fully understands the implications of the treasury management strategy it adopts, ensures this is in the best interests of the RSL and that it understands the associated risks.

3.3 The RSL has a robust business planning and control framework and effective systems to monitor and accurately report delivery of its plans. Risks to the delivery of financial plans are identified and managed effectively. The RSL considers sufficiently the financial implications of risks to the delivery of plans.

3.4 The governing body ensures financial forecasts are based on appropriate and reasonable assumptions and information, including information about what tenants can afford to pay and feedback from consultation with tenants on rent increases.

3.5 The RSL monitors, reports on and complies with any covenants it has agreed with funders. The governing body assesses the risks of these not being complied with and takes appropriate action to mitigate and manage them.

3.6 The governing body ensures that employee salaries, benefits and its pension offerings are at a level that is sufficient to ensure the appropriate quality of staff to run the organisation successfully, but which is affordable and not more than is necessary for this purpose.

3.7 The governing body ensures the RSL provides accurate and timely statutory and regulatory financial returns to the Scottish Housing Regulator. The governing body assures itself that it has evidence the data is accurate before signing it off.

## Standard 4

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

### *Guidance*

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

4.2 The governing body challenges and holds the senior officer 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.

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

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

## Standard 5

**The RSL conducts its affairs with honesty and integrity.**

### *Guidance*

5.1 The RSL conducts its affairs with honesty and integrity and, through the actions of the governing body and staff, upholds the good reputation of the RSL and the sector.

5.2 The RSL upholds and promotes the standards of behaviour and conduct it expects of governing body members and staff through an appropriate code of conduct. It manages governing body members' performance, ensures compliance and has a robust system to deal with any breach of the code.

5.3 The RSL pays due regard to the need to eliminate discrimination, advance equality and human rights, and foster good relations across the range of protected characteristics in all areas of its work, including its governance arrangements.

5.4 Governing body members and staff declare and manage openly and appropriately any conflicts of interest and ensure they do not benefit improperly from their position.

5.5 The governing body is responsible for the management, support, remuneration and appraisal of the RSL's senior officer and obtains independent, professional advice on matters where it would be inappropriate for the senior officer to provide advice.

5.6 There are clear procedures for employees and governing body members to raise concerns or whistleblow if they believe there has been fraud, corruption or other wrongdoing within the RSL.

5.7 Severance payments are only made in accordance with a clear policy which is approved by the governing body, is consistently applied and is in accordance with contractual obligations. Such payments are monitored by the governing body to ensure the payment represents value for money. The RSL has considered alternatives to severance, including redeployment.

5.8 Where a severance payment is accompanied by a settlement agreement the RSL does not use this to limit public accountability or whistleblowing. The RSL has taken professional legal advice before entering into a settlement agreement.

## Standard 6

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

### *Guidance*

6.1 The RSL has a formal, rigorous and transparent process for the election, appointment and recruitment of governing body members. The RSL formally and actively plans to ensure orderly succession to governing body places to maintain an appropriate and effective composition of governing body members and to ensure sustainability of the governing body.

6.2 The governing body annually assesses the skills, knowledge, diversity and objectivity it needs to provide capable leadership, control and constructive challenge to achieve the RSL's purpose, deliver good tenant outcomes, and manage its affairs. It assesses the contribution of continuing governing body members, and what gaps there are that need to be filled.

6.3 The RSL ensures that all governing body members are subject to annual performance reviews to assess their contribution and effectiveness. The governing body takes account of these annual performance reviews and its skills needs in its succession planning and learning and development plans. The governing body ensures that any non-executive member seeking re-election after nine years' continuous service demonstrates continued effectiveness.

6.4 The RSL encourages as diverse a membership as is compatible with its constitution and actively engages its membership in the process for filling vacancies on the governing body.

6.5 The RSL ensures all new governing body members receive an effective induction programme to enable them to fully understand and exercise their governance responsibilities. Existing governing body members are given ongoing support and training to gain, or refresh, skills and expertise and sustain their continued effectiveness.

6.6 If the governing body decides to pay any of its non-executive members then it has a policy framework to demonstrate clearly how paying its members will enhance decision-making, strengthen accountability and ownership of decisions, improve overall the quality of good governance and financial management and deliver value for money.

6.7 The governing body is satisfied that the senior officer has the necessary skills and knowledge to do his/her job. The governing body sets the senior officer's objectives, oversees performance, ensures annual performance appraisal, and requires continuous professional development.

## Standard 7

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

### *Guidance*

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

7.1 The governing body discusses and scrutinises any proposal for organisational change and ensures that the proposal will benefit current and future tenants.

7.2 The RSL ensures that its governance structures are as simple as possible, clear and allow it to meet the Standards of Governance and Financial Management, Constitutional Requirements, and Group Structures guidance.

7.3 The RSL ensures adequate consultation with, and support from, key stakeholders including tenants, members, funders (who may need to give specific approval) and local authorities as well as other regulators**.**

7.4 The governing body is satisfied that the new (or changed) organisation will be financially viable, efficient and will provide good outcomes for tenants.

7.5 The RSL establishes robust monitoring systems to ensure that delivery of the objective of the change and of commitments made to tenants are achieved (for example in relation to service standards, operating costs and investment levels).

7.6 Charitable RSLs seek consent/notify OSCR of changes to their constitution and other changes as appropriate.

7.7 The governing body ensures that disposals, acquisitions and investments fit with the RSL's objectives and business plan, and that its strategy is sustainable. It considers these taking account of appropriate professional advice and value for money - whether as part of a broader strategy or on a case by case basis.

7.8 The RSL complies with regulatory guidance on tenant consultation, ballots and authorisation**.**

7.9 The RSL notifies the Regulator of disposals in accordance with regulatory guidance.

7.10 The RSL only agrees fixed or floating charges where the assets are used to support core activities. This should exclude providing security in relation to staff pensions.

# CONSTITUTIONAL REQUIREMENTS FOR RSLs

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

1. It sets out clearly the RSL's purpose, objects and powers.

2. The RSL is able to fulfil its obligations in terms of its legal status and (if relevant) its obligations as a registered charity. These obligations and how they will be met are set out in the constitution.

3. There is a system for keeping accounts and ensuring an independent audit by an appropriately qualified person. There is a proper procedure for appointing an auditor. The governing body should take whatever measures are necessary to ensure the continuing independence of the auditor including periodic review of the need for audit rotation. The RSL must send a copy of its accounts and the auditor's report to us within six months of the end of the period to which they relate.

4. It is clear what investments and borrowing the governing body can authorise.

5. There is a procedure for dealing with disputes on matters contained within the constitution.

6. It is clear how changes can be made to the constitution.

7. It is clear how the RSL can be closed down.

8. The RSL can demonstrate its governance and financial arrangements are such as to allow the Regulator to regulate effectively, and exercise our full regulatory powers.

***In relation to an RSL within a group structure:***

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

10. If any of the organisations within the group are charities, the RSL's role and relationships with other group members are consistent with charity law.

11. The constitutions of group members must enable the parent to exercise control and to take corrective action where required.

12. There are procedures in place designed to avoid conflicts of interest, particularly where members of the subsidiary's governing body are also members of the parent's governing body.

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

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

14. Recruitment to the governing body is open and transparent. It is clear who is eligible to become a member of the governing body and how to become a member of the governing body whether by election, nomination, selection, etc and how membership is ended. There is a procedure for removing members from the governing body.

15. There is a procedure by which members stand down from the governing body to allow for a turnover in membership. Governing body members are appointed for specific terms subject to re-election or re-appointment.

16. The membership of the governing body must be no fewer than seven and not normally exceed 15 members, including co-opted members. Names of the governing body members must be accessible to the public.

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

18. The roles, powers and responsibilities of governing body office bearers are set out. And any delegation to committees or staff are clearly set out in standing orders and delegated authorities.

19. There are provisions for the RSL to remove a governing body member who does not sign up to the code of conduct and to take action against or remove a governing body member in breach of the code.

20. Where the constitution allows executive staff on to the governing body, they must be excluded from holding office, and cannot form a quorum or a majority. Executive members of the governing body should not receive any additional payment for their governing body role over and above what they are entitled to under their contract of employment.

21. It is clear what types of meetings can and should be held and their purpose. There are clear procedures to call all meetings, and it is clear what the quorum of meetings should be, how resolutions will be passed, and decisions recorded, and how many meetings should take place each year, subject to a minimum of six governing body meetings a year.

22. The governing body cannot act for longer than two months if its membership falls below seven. If at the end of that period it has not found new members then the only power it will have is to act to bring the governing body members up to seven.

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

24. The Chairperson's role is set out formally; the Chairperson is responsible for the leadership of the governing body and ensuring its effectiveness in all aspects of its role. There is a clear process to select the Chairperson, who cannot be an executive member, and must not hold office continuously for more than five years.

25. If the RSL pays any of its non-executive governing body members then it must ensure that:
    a) the governing body takes account of independent guidance in setting payment amounts and can demonstrate value for money;
    b) the payments are linked to specified duties and there is a clear process for assessing performance in carrying out these duties;
    c) details of governing body payments are published in the RSL's annual accounts; and
    d) where an RSL has subsidiaries it must ensure any payments and benefits to subsidiary governing body members are included in the policy.

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

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

***With regard to the general membership of the RSL:***

27. It is clear who is eligible to become a member of the RSL and who cannot, and it is clear how to become a member and how membership is ended. Names of the members must be accessible to any other member or anyone with an interest in the RSL's funds.

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

29. There is a clear procedure, including the quorum and voting procedure, for the membership of the RSL to meet and it is clear what business the membership can discuss and what decisions it can make, subject to a minimum of one annual meeting.

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

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

4.1 We publish a range of information to allow tenants, people who are homeless, other service users, landlords, funders and policy makers to understand each landlord's performance and compare landlords' performance.

4.2 This includes information about landlords' performance against the Scottish Social Housing Charter, rent levels, costs and other contextual information.

4.3 By doing this, we aim to:

- help tenants to ask questions and hold their landlord to account
- help tenants and others to assess whether their landlord is well run and they are getting value for the rent that they pay
- support meaningful discussions between landlords and their tenants about performance, rent levels, service levels, and future plans
- support landlords to compare their performance with others and drive their own improvement.

4.4 This is alongside the work that landlords and others do to develop and support tenant engagement and tenant-led scrutiny.

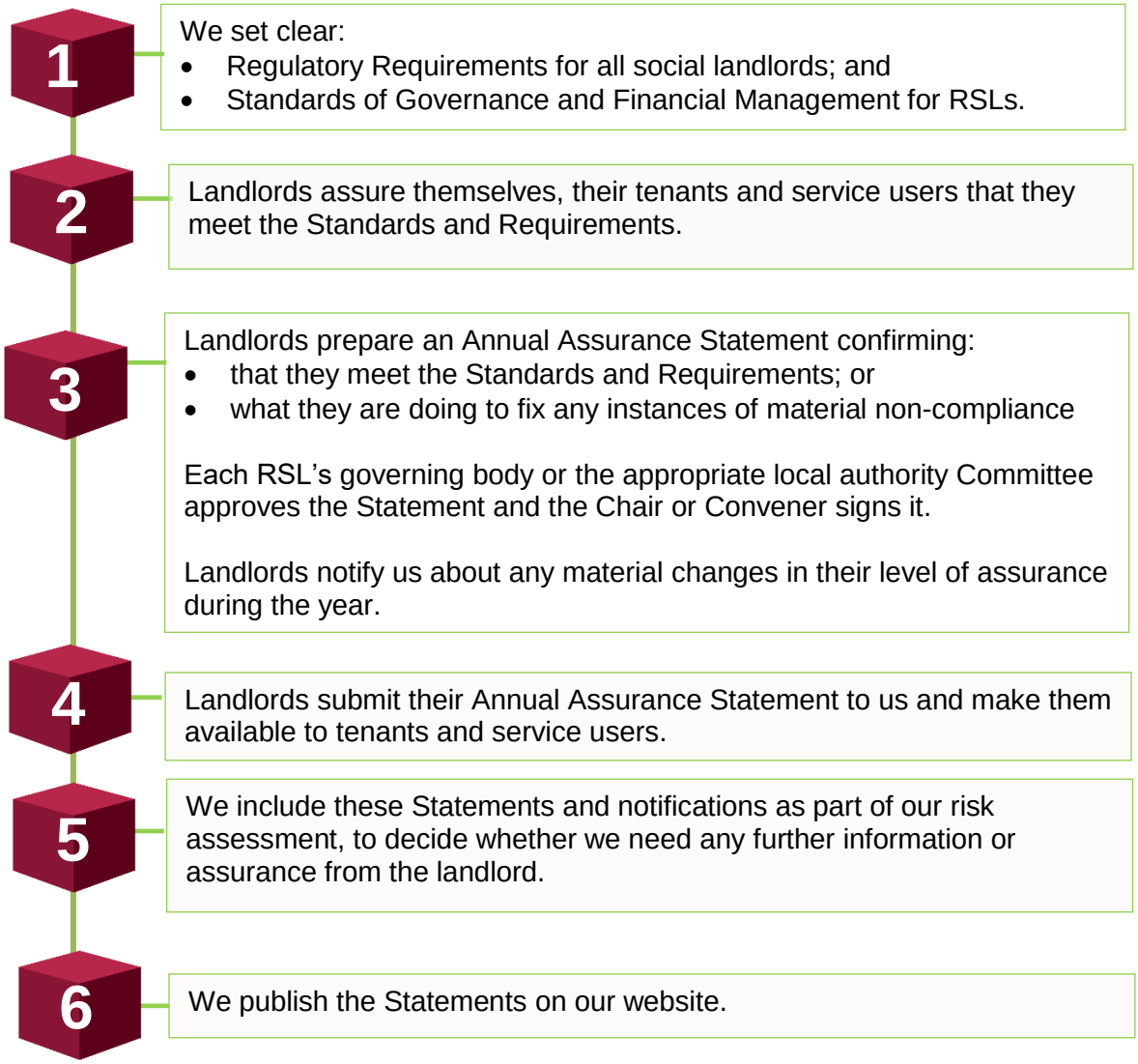
4.5 Every year we provide a comprehensive picture of landlords' achievement of the Charter. We do this by publishing on our website:

- a report for each landlord with key information from its Annual Return on the Charter
- online, interactive tools to allow users to compare landlords' performance and find out more
- an annual report summarising all landlords' progress against the outcomes and standards in the Charter
- reports and analysis on the Charter related thematic work that we do.

# 5. GETTING ASSURANCE

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

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



5.2 Landlords must prepare and submit to us an **Annual Assurance Statement** in accordance with our published statutory guidance. They must make it available to their tenants and other service users.

5.3 Each landlord should determine the most effective way for it to obtain the necessary assurance, and it must have evidence to support its Statement. Landlords must submit this evidence to us if we ask for it.

5.4 Landlords must also notify us of any material changes in their level of assurance during the year.

5.5 We may ask for more information on how a landlord has assured itself, and we may carry out work to verify a landlord's Statement and check the accuracy of information and data it has submitted to us. We may also ask a landlord to get external verification. We will then decide if we need to engage with the landlord.

5.6 Where a landlord tells us that it does not fully meet the Standards or Requirements, and we are assured that it has effective plans and the capacity and willingness to improve or resolve the issue, it is for the landlord to take forward the improvement. In these circumstances we will not engage with the landlord unless the issue presents such a significant risk to the interests of tenants and service users that we need to monitor it closely, or take action, to ensure it is resolved successfully.

5.7 Where a landlord has told us that it is meeting the Standards and Requirements and we find that it is not, we will engage with the landlord to determine the significance of the non-compliance and any action we may need to take. We set out our approach to responsive work in Chapter 6. For local authorities, we engage with Audit Scotland and our other scrutiny partners to determine our response.

## Risk assessment

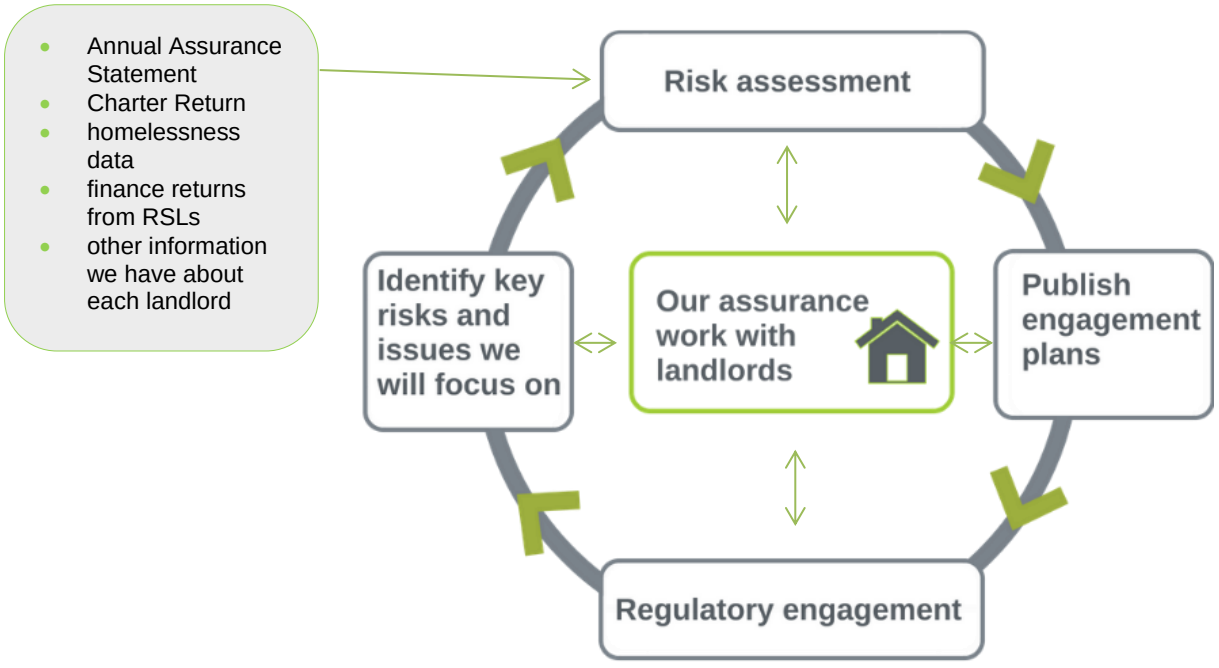
5.8 We consider what a landlord has told us in its Annual Assurance Statement as part of our risk assessment, alongside the other information we receive from it, our engagement with the landlord, and other sources of information about the landlord. This includes Charter performance information, homelessness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

### Our risk assessment process

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

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

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



## Engagement Plan

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

5.13 Each landlord's Plan will include:

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

5.14 Through this engagement, we require landlords to give us the right type and level of assurance – backed by appropriate evidence – that they are complying with regulatory requirements and so protecting tenants' and others' interests. We will ask only for data and information we need to get this assurance.

5.15 Chapter 3 sets out our regulatory requirements, which include the routine annual information landlords need to give us. Where we require further, or enhanced, assurance from a landlord, we set this out in its Engagement Plan. We can make use of our powers to request information and make inquiries (see Chapter 7), to set targets (see page 31), and to intervene (see Chapter 6).

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

## Assessing governance and financial risk in RSLs

5.17 We monitor, assess and regularly report on RSLs' financial well-being and governance. By governance we mean the arrangements for the leadership, strategic direction and control of an RSL. We consider the Standards of Governance and Financial Management in our risk assessment of RSLs. We do not have this role with local authorities; Audit Scotland is the lead regulator for governance and finance in local authorities.

5.18 Each year we publish the risks and factors we will assess for every RSL. These risks and factors can change in response to developments in the operating environment for RSLs. We include in our assessment how long it has been since we last engaged with the landlord.

5.19 We use the risk assessment to determine what assurance we need from each RSL.

5.20 We also consider each RSL's size, organisational complexity – including its use of subsidiaries and its dependencies on these – and its number of employees, legal status and governance arrangements.

5.21 Some RSLs would present more significant challenges if they experienced business failure, for example because of how many tenants they provide homes for or the size of the debt they have. Given this, we consider these RSLs to have ***systemic importance***. We will set out in our Engagement Plans the additional information and assurance we require from them in relation to their business plans and financial sustainability.

5.22 We may share relevant information and analysis about landlords with public and private investors. We will make it clear where we consider an RSL is not a suitable recipient of private or public funds.

5.23 Each year we carry out a programme of visits, driven by our risk assessment, to RSLs where we need more assurance. This is to help us decide if we need to have more engagement with them. This can range from meeting the RSL's Chair and senior officer to ask about how they carried out their self-assurance and observing a Board meeting, to more comprehensive on-site assessment.

## Presenting our regulatory judgements on RSLs

5.24 We communicate the outcome of our risk assessment for RSLs by publishing a 'regulatory status' for each RSL alongside its Engagement Plan on our website. Where an RSL is the subsidiary of another Scottish RSL, we will publish a single regulatory status for the group.

5.25 The regulatory status provides a single view of the RSL's governance, financial well-being and performance. It summarises our judgement on its level of compliance with the Standards of Governance and Financial Management and regulatory requirements. We base our judgement on the outcome of our risk assessment and we consider the materiality of any issues. A landlord will have Compliant status unless we judge any areas of non-compliance to be so material and significant, and of such risk to tenants' interests, that we need to give it a different regulatory status. If a landlord has told us about non-compliance through its Assurance Statement or otherwise, and we are assured that it is addressing the issue, we will take account of this when we determine its regulatory status.

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

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

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

5.27 We will use 'working towards compliance' where the RSL is materially non-compliant but we are satisfied that it has the capacity and willingness to resolve the issue within a reasonable time, without us taking statutory action at that time. If at any point we consider that the RSL is not addressing the issue effectively, we may move to statutory action.

5.28 Where we have identified or received new information that leads us to review an RSL's ***compliant*** regulatory status, we communicate this by attaching an *Under Review* indicator to the status. This is a way to flag that the status may change. We apply this flag while we establish the facts, or while the RSL is complying with our request for it to establish the facts. We remove this status when we confirm that the RSL is compliant or we change its status.

# 6. TAKING ACTION WHERE WE NEED TO

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

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

6.1 Sometimes we need to act to protect tenants' and other service users' interests. Landlords may fail to respond effectively to unexpected events, or we have to react where there is poor decision-making or evidence of mismanagement or misconduct. In such circumstances it is important that we respond effectively and appropriately.

6.2 We may decide to take action with a landlord following our assessment of risk. We may also take action when:

- concerns are raised with us by tenants about significant performance failures
- concerns are raised with us by others about a landlord (for example, whistleblowing and serious allegations)
- the landlord tells us about material events
- concerns are raised with us by an RSL's auditors under section 72 of the 2010 Act.

6.3 Where concerns are brought to our attention we respond and engage in a proportionate way. In most cases this does not involve the use of our intervention powers. We will not normally need to intervene if we are satisfied that the landlord is able and willing to investigate and resolve any issues, and it engages constructively with us.

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

## Significant performance failures

6.5 Tenants can raise significant concerns about their landlord with us. This is an important safeguard for tenants. By significant performance failures, we mean where a landlord:

- consistently and repeatedly fails to achieve outcomes in the Scottish Social Housing Charter or those agreed locally with tenants
- has not reported its performance annually to its tenants, or the annual reported performance does not reflect actual performance
- has materially failed to meet the Standards of Governance and Financial Management
- has acted, or failed to take action, in a way which puts tenants' interests at risk and this significantly affects a number of the landlord's tenants.

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

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

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

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

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

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

### Whistleblowing and allegations

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

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

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

## Notifiable events (RSLs only)

6.14 RSLs must 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
- the good governance and reputation of an individual RSL or the RSL sector.

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

## Auditors (RSLs only)

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

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

## Performance improvement, financial management and governance targets

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

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

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

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

## When and how we use our intervention powers

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

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

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

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

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

6.25 We use our intervention powers to:

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

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

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

- require a performance improvement plan (section 55)
- an enforcement notice (section 66)
- appoint a manager for housing activities (section 57).

6.28 The powers we can use with RSLs only are:

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

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

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

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

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

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

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

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

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

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

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

### What we require the landlord to do when we intervene

6.38 The landlord must:

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

# 7. THEMATIC WORK

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

7.1 We use thematic work to:

- raise awareness of significant issues and risks
- focus on areas that tenants, people who are homeless and other service users have told us matter to them
- explore topics from an equality and human rights perspective
- make recommendations for landlords and for others at a national level
- share positive practice.

7.2 We undertake thematic work using our powers to obtain information and carry out inquiries, as set out in Chapter 9.

7.3 We may undertake thematic work with a selected group of landlords or all landlords. We discuss the arrangements and timescales with the landlords involved.

7.4 We take a flexible approach to how we publicise and promote our findings and messages. We target our communications to make sure they reach the right audiences.

7.5 We draw on intelligence from thematic work to inform our risk assessment and engagement with individual landlords.

# 8. INQUIRIES AND INFORMATION

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

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

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

## Obtaining information

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

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

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

- help us make regulatory assessments and judgements
- do broader analysis of landlords and their performance
- assess an issue or concern with a landlord
- look at the performance of one landlord or more in greater depth
- determine if we need to use our powers to intervene in a landlord.

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

## Inquiries

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

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

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

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

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

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

## What happens in an inquiry

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

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

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

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

8.13 During an inquiry we may:

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

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

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

8.16 When we undertake an inquiry we will:

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

8.17 Landlords must:

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

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

# 9. REGISTER OF SOCIAL LANDLORDS

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

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

## Registration of new social landlords

9.2 There are two types of registration criteria: legislative and regulatory. The 2010 Act sets out the legislative criteria and we set regulatory criteria. A prospective RSL must meet both sets of criteria to be eligible for registration.

## Legislative criteria for registration

9.3 Section 24 sets out the legislative criteria for registration:

- the social landlord must be an organisation that does not trade for profit
- the organisation must be established for the purpose of, or have amongst its objects and powers, the provision, construction, improvement or management of:
  - houses available for letting
  - houses for occupation by members of the body where the rules of that body restrict persons entitled or prospectively entitled to occupy a house provided or managed by the body, or
  - hostels
- the organisation must be established to carry out or intends to carry out those purposes, objects or powers in Scotland
- any additional purposes or objects of the body must fall within the approved purposes set out in section 24 (d) of the 2010 Act. The eligible purposes relate to the provision of land or housing. The Scottish Ministers have power to amend the eligible purposes.

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

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

9.5 We provide application forms and guidance on our website.

9.6 If an applicant body intends to be part of a group structure, either as the parent or a subsidiary, then it will need to set out the proposed group arrangements. It must be clear what the roles and relationships are between each part of the group structure and that the parent has ultimate responsibility and effective control over any subsidiary. We need to be assured that we will be able to regulate the group parts effectively to protect the interests of tenants and other service users, the social housing assets, and public and private investment.

9.7 We require the applicant to have regard to our guidance on group structures and demonstrate compliance with our requirements of group structures. We will take account of the applicant's role within the group when assessing it against registration criterion 2, particularly with regard to the relevant constitutional requirements relating to group structures.

## Regulatory criteria for registration

### Criterion 1:

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

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

### Criterion 2:

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

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

### Criterion 3:

**The applicant must show it can meet the needs of tenants and other service users by demonstrating that it is able to meet any relevant standards of performance the Regulator expects it to meet and all other relevant outcomes, standards, legislation and guidance.**

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

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

### Criterion 4:

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

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

## De-registration

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

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

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

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

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

## Regulatory criteria for voluntary deregistration

### Criterion 1:

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

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

**Criterion 2:**
**The RSL's de-registration does not materially affect the interests of its tenants.**

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

**Criterion 3:**
**It has repaid all borrowings or obtained the consent of its lenders to de-register.**

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

**Criterion 4:**
**It has repaid any public funding or has the agreement of the funder that no payment is required.**

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

**Criterion 5:**
**The applicant has consulted the relevant local authorities in their capacity as strategic housing authorities.**

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

# 10. APPEALS, REVIEWS AND COMPLAINTS

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

10.1 Individuals and landlords can ask us to formally re-examine certain regulatory decisions we have made. We ensure that appeals are considered by people who are independent from the original decision.

10.2 Appealing a regulatory decision is just one possible avenue of challenge. Those affected by our work also have two other avenues to challenge us directly, depending on the circumstances. These are:

- **review** - the quickest, most informal route, which we encourage as the method of initial challenge in most cases, where the decision-maker and a more senior person look again at the decision; and
- **complaint** - using our existing two-stage internal process with the potential for recourse to the Scottish Public Services Ombudsman (SPSO).

10.3 We give more information on our website about how to:

- ***request a review***
- ***make an appeal***
- ***make a complaint.***

10.4 An individual or organisation can seek a judicial review of our decisions or actions. Our appeals, review and complaints processes do not prejudice any subsequent judicial review or statutory appeal to the Court of Session.

Scottish Housing Regulator

www.scottishhousingregulator.gov.uk