

Our regulation of social housing in Scotland

Consultation questions

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

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

By email @: regulatoryframeworkreview@shr.gov.scot

Or post to: Scottish Housing Regulator
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How you would like your response to be handled

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

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

Yes

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

Yes, provided specific requirements are highlighted before 31 March and provided the assurance requirement relates to current compliance requirements and not aspirational ones

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

Yes. Data provided annually must be meaningful for both the Scottish Housing Regulator and the landlord

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

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

Yes, agree. Need to be clear where there are cross overs with SPSO requirements

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

Yes, but the guidance needs to be clear and uniformly applied

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

Yes, but it needs to be clear from the guidance where compliance with the regulatory standards starts and ends

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

Yes

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

Yes but care needs to be taken to ensure the statements deal with current compliance requirements and not aspirational requirements for the future

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

In the main yes.

However, it would be good to see an overarching statement that confirms all decision making and action taken by the Scottish Housing Regulator has the protection of tenants' interests at its heart. Also the Regulator will be mindful of the impact, financial or otherwise, any burdens placed on social landlords will have on their tenants, and the Scottish Housing Regulator will work constructively with all Scottish social landlords to ensure the homes and services delivered are of high quality.

It would be helpful to ensure the tenants involved fully understand the reasoning behind the transfer and what they will gain from the transfer itself.

1.1 – 'after making enquiries' – does this need to be a stronger statement given the possible consequences?

2.4 – what about other stakeholders e.g. local authorities with a strategic role

2.7 – 'taking into account any professional opinion provided' – does this need to be added at this stage?

4.1 – should this be 'Scottish RSL'?

Section 4 – at the end, does there need to be a statement similar to that of 3.4

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

Yes

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

Yes

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

Yes

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

Yes

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

No.

Given the implications of any Regulatory decision making, the appeals process must be above reproach. Please see question 14 for a more detailed response.

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

No

4 - There is limited scope for the SPSO to consider a complaint regarding the Scottish Housing Regulator.

4 - Best practice is for any review / appeal / complaint against a decision or person, to be heard independently of those making the original decision.

In the interests of fairness and given the possible consequences of Regulatory decision making, it would be beneficial for an external process to be introduced where the decision could impact the future viability / independence of an organisation. This may or may not involve a body that has the power to overrule a decision made by the Regulator.

For context the HSE has a three tier complaint process that does not involve the original decision maker:

Tier 1: the complaint is handled by the manager of the team you've been dealing with

Tier 2: your complaint is reviewed by a manager not previously involved

Tier 3: the Chief Executive arranges an independent review of your complaint and how it was handled.

The Financial Regulators Complaints Commissioner provides an independent assessment of complaints against the Financial Conduct Authority

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

Yes

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

Yes

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

Yes

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

3.16 – should this section require evidence to be provided?

4.2 – should the equalities principles be repeated here?

5.13 – In addition the RSL ~~should~~ must?

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

No

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

Additional feedback:

Regulation of social housing in Scotland: Our framework

Should there be an overarching statement at the beginning of the document to state that all decision-making and action taken by the SHR has tenants' interests at its heart. Also the SHR will engage and work with RSLs / all social landlords in a positive way to affect positive change and will be mindful of the financial impact any of their decisions will have on tenants

Page 13, 4.2 – is this the right place for this? Or should it be that the governing body takes into account feedback and concerns raised by tenants to guide its decision-making

Page 26, 5.26 – should non-compliant be 'the RSL materially breaches regulatory requirements, including the standards of governance and financial management, and is working towards compliance

Page 28, 6.2 – Should the first sentence be stand alone with the second sentence a new paragraph which reads 'we may ask for further information and may take further action when'

Page 29, 6.5 – would this read better if 'failures by social landlords' was changed to 'failures by their landlord'??

Page 34, 6.35 – do we need to define what is covered by intervention – or at least at what stage intervention should be at prior to a funder / lender being approached?

Consultation where the Regulator is directing a transfer of assets

Should there be an overarching statement that puts the needs of tenants will be taken into account both when considering a transfer and when choosing a receiving RSL.

Page 1, 1.1 – given the consequences of a transfer for all those involved, should more than "if, after making inquiries" be said. Also, is there a need for professional advice to be taken?

Page 2, 2.4 – should local authorities be added to the list of stakeholders to be consulted?

Page 3, 2.7 – should there be a need for professional advice to be taken before a transfer is advanced

Page 4, 4.6 – following professional advice?

Page 5 – end of section 4 – should a statement similar to 3.4 be added to ensure consultation is advanced

Page 5, 5.2 first bullet point – should this be 'or' not 'of'

Group Structures

Page 5, 4.7 – figure missing

How to request an appeal of a regulatory decision

Should the term regulated bodies be defined for clarity?

Where the possible sanctions are significant e.g. a transfer of assets or compulsory de-registration, in the interests of fairness, an external route for appeal should be available

Page 1, 4 – a review by the decision maker goes against all other forms of guidance. Equally it is not great if the only option is for the original decision maker to review (along side a more senior person) the decision, or for a complaint to be raised (where the process is not defined within this document) which may or may not be appropriate for the SPSO to decide upon

How to request a review of a regulatory decision

Where the impact of significant sanctions are being imposed, an independent review process would be advantageous

Tenant consultation and approval

Page 7, 3.16 – last bullet point – should this be evidenced i.e. ‘setting aside the requirements to consult and ballot, where there is clear evidence this would substantially reduce the likelihood of a person taking such a step’

Page 7, 4.2 – should the equalities principles not be repeated here?

Page 11, 5.13 – ‘should’ should be ‘must’??