

How we regulate



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Introduction

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

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

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

Overall approach

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

Identification and assessment of risk

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory response - deciding our regulatory engagement

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

Figure 1: Our Regulatory Cycle



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

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

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

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

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

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

An informed regulator

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

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

Tenant concerns

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

2.23. By significant performance failures, we mean where a landlord:

- » consistently and repeatedly fails to achieve outcomes in the Scottish Social Housing Charter or those agreed locally with tenants;
- » has not reported its performance annually to its tenants or the annual reported performance does not reflect actual performance; or
- » has materially failed to meet the Regulatory Standards on governance and financial accountability.

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

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

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

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

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

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

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

Whistleblowing and allegations

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

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

Notifiable events (RSLs only)

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

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

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

Auditors (RSLs only)

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

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

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

Regulation and funders

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

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