

Inquiries and information



6. Inquiries and information

Introduction

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

6.2. It is these powers that we use to:

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

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

Who can be the subject of an inquiry?

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

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

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

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

Routine information requests

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

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

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

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

Beyond routine information requests

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

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

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

To obtain the additional information we need

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

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

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

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

To get more assurance and investigate matters of concern

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

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

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

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

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

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

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

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

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

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

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

To inspect to hold to account

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

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

6.20. When we inspect we:

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

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

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

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

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

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

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

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

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

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

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

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

Who will carry out inquiries?

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

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

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

Access to information

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

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