

Intervention

The background of the slide is an abstract composition of overlapping triangles in various shades of red, pink, and magenta. The triangles are arranged in a way that creates a sense of depth and movement, with some triangles appearing to be in front of others. The overall effect is a vibrant, geometric pattern.

7. Intervention

Introduction

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

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

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

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

Legislation

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

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

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

- » the desirability of social landlords being free to choose how to provide housing services and manage their financial and other affairs;
- » the speed with which the failure or other problem needs to be dealt with; and
- » our Code of Practice.

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

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

The following intervention powers apply to all RSLs:

- » appointment of a manager for financial or other affairs to a RSL in order to ensure that the RSL manages its financial or other affairs to an appropriate standard;
- » remove a member of the governing body of an RSL;
- » suspend a governing body member or an agent of an RSL during or following inquiries;
- » remove a governing body member or an agent of an RSL following inquiries;
- » appointment of a new governing body member or director to an RSL;
- » restrictions on dealings in an RSL during or following inquiries; and
- » direct an RSL to transfer some or all of its assets to another RSL, if, following an inquiry into its affairs, there has been mismanagement or misconduct in the RSL's financial or other affairs, or its viability is in jeopardy, or it cannot provide housing services to an acceptable standard.

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

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

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

When we will intervene

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

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

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

Criteria for statutory intervention

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

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

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

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

How we intervene

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

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

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

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

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

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

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

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

What we expect regulated organisations to do

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

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

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

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

Other regulators and statutory bodies

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

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