



THE SCOTTISH HOUSING REGULATOR

A guide to how we regulate

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# 1. Introduction

- 1.1 This guide explains how we regulate. It is published as part of our commitment to transparency and so that regulated bodies and other stakeholders can understand our approach and engage effectively with us. It provides an overview and signposts other more detailed material where appropriate.

## 2. About the Scottish Housing Regulator

- 2.1 The Scottish Housing Regulator (SHR) was established on 1 April 2008 to perform the regulatory functions previously carried out by the Scottish Government's housing and regeneration agency, Communities Scotland. The Scottish Government has abolished the agency Communities Scotland and has absorbed most of its other functions into the centre of government.
- 2.2 Three key documents explain our governance and operating arrangements as a regulator:
- a) A [framework agreement](#) with the Scottish Government that sets out our management and resource arrangements.
  - b) A [ministerial code of practice](#) that sets ministers' high-level expectations about the way we will exercise regulatory powers on their behalf.
  - c) A corporate plan that sets out the strategic objectives we have agreed with ministers. These documents are, or will be available, on our website. Our corporate plan will be agreed during the early months of the new agency. We are governed by a Regulation Board made up of senior managers and non-executive directors.
- 2.3 The SHR regulates registered social landlords (RSLs) and the landlord and homelessness functions of local authorities. RSLs are independent bodies and local authorities have a set of local democratic accountabilities. Both are responsible for their own performance and management. However, Scottish Ministers have recognised the unequal bargaining power exercised by social tenants and others, like homeless people, in relation to their landlords and to homelessness authorities and have established a regulator to protect the interests of tenants and other service users. We have regulated housing associations for over thirty years in various organisations (The Housing Corporation, Scottish Homes, Communities Scotland and now the SHR). The Housing (Scotland) Act 2001 introduced a new regulatory relationship with local government. The 2001 Act sets out our current regulatory powers and duties, which we exercise and undertake on behalf of Scottish Ministers.
- 2.4 Regulation has changed significantly in the last five years:
- We no longer complete a routine cycle of inspections at standard three or five- yearly intervals in the RSL sector.
  - We introduced evidence-based and outcome-focused inspections and our inspection reports are published.
  - We have increasingly moved to a more principles-based approach to regulation, setting out our expectations, but with less prescription about how things must be done.
  - We are enabling greater public access to information and key documents about RSLs – particularly through the development of the on-line register and our web-based performance data.

- We now have significant engagement with other regulators and policy makers, to manage demands on the sector and to influence policy developments.

2.5 The SHR's powers, governance and structure will be the subject of further consultation and debate. The Scottish Government consulted into early 2008 on its social housing policy. This included a commitment to the continued importance of regulation and an outline of possible reforms to its legislative basis and intervention powers. In addition, an independent review of scrutiny bodies in Scotland has recommended changes that the Scottish Government is considering in line with a more streamlined approach to the overall system of scrutiny. These are likely to affect how housing regulation operates in future.

2.6 What matters most to regulated bodies and their service users and funders is the way the SHR carries out the business of regulation. This document sets out the regulatory approach the SHR will follow for the foreseeable future. It takes account of the way the policy environment is shifting, and how the principles of a risk-based approach to regulation will work in social housing. In general, our future direction can be summarised in these terms – we will:

- implement a risk-based approach to regulation;
- complete the baseline inspections of local authorities and newly registered RSLs;
- follow up the improvement plans from earlier inspection activity;
- consider the implications of a risk-based approach to local authorities;
- have different levels of engagement with different RSLs depending on their risk and performance profile and our need for assurance;
- encourage and require self-assessment as an increasingly important part of our regulatory engagement;
- publish more user-friendly information to encourage better benchmarking, performance management, and public accountability; and
- continue to use our intervention powers in a proportionate and fair way, to secure improvement or to protect the interests of tenants.

## 3. Our purpose

3.1 Our overall purpose is to regulate to:

- protect the interests of current and future tenants, and other service users;
- ensure the continuing provision of good quality social housing in terms of decent homes, good services, value for money and financial viability; and
- maintain the confidence of funders.

3.2 When we talk about protecting the interests of tenants and other service users, we mean making sure:

- equality of opportunity exists for all;
- we look at things from the service user's perspective;
- providers are responsive to their tenants and service users;
- service users receive the information they need from their service provider to exercise rights and choice;
- we act to improve services or housing conditions where providers are failing to secure these now and for the future; and
- we intervene to minimise the risks to tenants of a landlord that is no longer financially viable, exhibits poor governance and management, or cannot make required improvements.

We do not step in on behalf of an individual customer with a service-related complaint about an RSL or local authority. Action in these cases is taken by the Scottish Public Service Ombudsman.

3.3 When we talk about the continuing provision of good quality social housing we mean that we have a role in ensuring that housing providers meet the Scottish Housing Quality Standard, are managing and maintaining their assets to best effect now and into the future; are financially sustainable businesses; have a value for money focus in all that they do; and are contributing effectively to the development of new housing supply and the quality of local neighbourhoods. When we talk about securing good services we mean, amongst other things, services that are accessible; affordable and value for money; responsive to their customers, treating them with respect and offering opportunities for participation and to exercise choice; and compliant with legal requirements.

3.4 When we talk about maintaining the confidence of investors we mean that public and private funders continue to have confidence in our system of regulation and the reputation and credit-worthiness of social landlords. This should enable them to continue to make funding available to provide new housing and support business development, while undertaking their own, necessary, due diligence.

## 4. Principles of good regulation

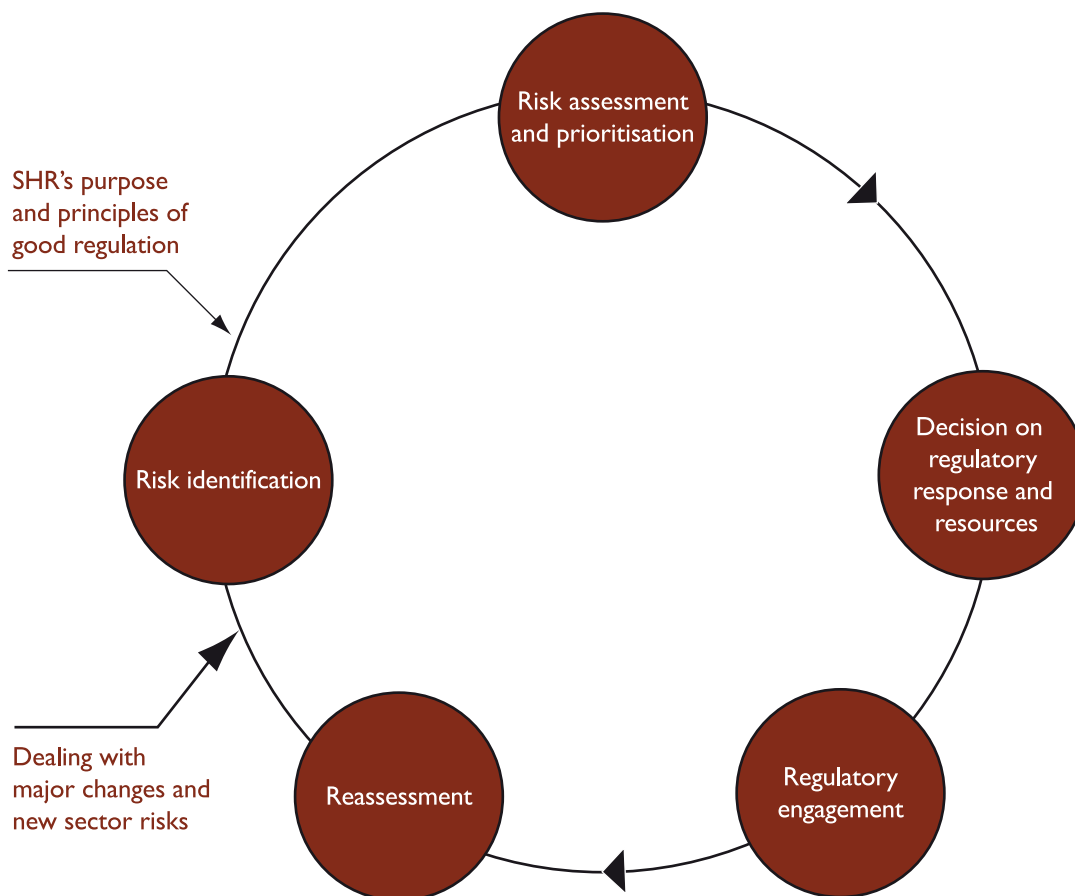
4.1 These principles underpin the way we regulate:

- a) Independence – making sure we maintain our operational independence and exercise regulatory judgements impartially, without fear or favour.
- b) Public focus – making sure the service user’s perspective is at the heart of our work.
- c) Accountability – for the conduct of our work, our impact, costs and decisions.
- d) Transparency – being open about how we regulate and the decisions we make.
- e) Targeting – making sure we focus on areas of performance, risk and service delivery that are important to fulfilling our regulatory purpose and objectives.
- f) Consistency - in how we apply our regulatory approach, while taking account of local context and the diversity of the sector.
- g) Proportionality – matching our response and expectations appropriately to the nature of the issue and the regulated body concerned.

## 5. Our approach to risk-based regulation

5.1 We have a risk-based approach to regulation. When we talk about risk, we mean the risk that we might not achieve our overall regulatory purpose and objectives. Risk-based regulation is a way for us to prioritise our regulatory activities and our use of resources in order to assess the risks that regulated bodies pose to our objectives and to plan how to address these risks in our regulatory approach. Through this we aim to target our resources appropriately, proportionately and consistently. Our approach is based on regulated bodies providing the right sort of assurance to us. By and large we will rely on the standard information we routinely receive. But where we need greater assurance, we will agree other pieces of information that need to be supplied to us and other forms of engagement that we will undertake. The approach is summarised in Figure 1.

Figure 1



## Risk identification

5.2 We will identify the risks to our regulatory purpose. In general terms, the following are likely to be the main risks to our purpose:

- Financial failure
- Stock quality and investment failures
- Governance failures leading to, and arising from, mismanagement and misconduct
- Poor service quality

## Risk assessment and prioritisation

5.3 When we consider the risks to our purpose we will assess and prioritise them to determine what strategy to adopt on a sector wide basis or in terms of an individual organisation. In order to do this, we will assess the impact and probability of the risks crystallising and their manageability. When we consider impact, we are assessing the scale and significance of the problem if that problem were to arise. When we consider probability we are assessing the likelihood of the event happening. When we consider manageability we are assessing the ability of the tools at our disposal to deal with the risk and, ultimately, in a worst case scenario, the ease with which we could find a suitable rescue package or partner.

5.4 We will consider a range of impact factors, including:

- stock size and number of tenancies as a landlord;
- the amount of public money the provider is receiving;
- the level of private finance it is servicing or has committed by lenders; and
- the degree of local community dependence on the provider for broader services and amenities

5.5 We will 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 of the organisation, performance in financial ratios 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 providers and their reliance on that funding; and
- the organisation's track record in dealing with the issues we have raised through our regulatory engagement – for example, response to inspection findings, complaints.

5.6 We will rely, wherever possible, on information we collect routinely. Our standard annual information returns are:

- The annual performance and statistical return, which requests information against particular performance indicators and contextual statistical data
- Annual accounts, which shows an organisation's historic financial position
- Five year financial forecasts, from which we derive particular forward financial ratios and form a view about future financial viability
- Auditor's management letter
- Loan portfolio information, which outlines data about an organisation's private lending profile

5.7 In addition to these routine returns, we will have information from:

- inspections;
- thematic work;
- audits of improvement plans or other follow-up inspection work;
- complaints and whistleblowing; and
- patterns of notifiable events.

## Regulatory response – deciding our regulatory engagement

5.8 When the risks have been assessed and prioritised we will decide what our response should be and what level of engagement we need to have with an organisation. We will keep the principles of good regulation in mind as we evaluate which regulatory response is most appropriate. Our regulatory response will be based on the level of assurance we need.

5.9 Where we need to go beyond requesting the routine submission of information, these are examples of the regulatory responses we may deploy whether singly or in combination:

- Requesting additional information
- Verifying information
- Requesting that the organisation carries out general or specific self-assessment activity, which may include an evidence-based submission to us or the development of an improvement plan, with further engagement around that submission or plan
- Business plan or financial capacity reviews, where we need more comprehensive financial and business analysis to supplement our annual viability review work
- Inspection – either service specific, tailored to a particular area of concern, or more generally of the organisation and its outcomes as a whole

- Instructing a provider to conduct an independent investigation
- Tailored engagement with the senior management or governing body
- Requesting the involvement of another regulatory body
- Statutory intervention

5.10 Once we have assessed an organisation we will categorise the level of engagement we will need, as high, medium or low. The level of engagement depends on the level of continuous assurance we need. We will focus more of our resources where we receive poor assurance around higher risks or where risks materialise. We will communicate the level of engagement we intend to have with each RSL. For medium and high levels of engagement we will develop a regulation plan, which will explain the sort of information and engagement we need, and we will share this with an RSL. We may also develop a regulation plan for low levels of engagement where we may want an RSL to address an issue, but with limited input from us.

## Low regulatory engagement

5.11 We will have low level of regulatory engagement with a provider where the impact of problems occurring is low and the probability of the problems occurring is low. In these cases we are likely to request standard monitoring information and routine returns, and we will plan to have limited contact with the organisation, unless other events arise. So, monitoring will be more desk-based. In some cases we may highlight and monitor areas for improvement, but in ways that are less intensive for medium or high engagement organisations.

## Medium regulatory engagement

5.12 We will have a medium level of regulatory engagement with organisations where their profile indicates we need further assurance than we can get from desk-based monitoring or information returns. For example, we may need more information or a closer engagement with the organisation's senior management and/or governing body.

## High regulatory engagement

5.13 We will have a high level of engagement with organisations where their profile indicates we need the most tailored, intensive or continuous relationship. This may mean engaging in a more sustained way with an organisation to develop a detailed understanding of current and potential areas of risk and their approach to managing them. Our engagement 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 to find a rescue partner.

## About our levels of engagement

5.14 These points are important to bear in mind:

- a) When we talk about risk, we mean the risk to our regulatory purpose – this may not always be the same as an organisation’s own detailed assessment of the operational risks it faces.
- b) Higher levels of regulatory engagement cannot be assumed to equate to poor performance. For example, we are likely to have relatively high levels of regulatory engagement with new stock transfer RSLs in the first two years following transfer or with RSLs that have large development programmes.
- c) Inspection findings and grades will be only one factor in our assessment of risk and our decisions about future levels of engagement. For example, organisations with a satisfactory inspection grade may still fall into the high or medium engagement category because of their scale, complexity or funding profile and our need for on-going assurance. Monitoring inspection improvement plans may, similarly, form only one element of the regulation plan we will develop with medium and high engagement organisations.
- d) We may vary the level of engagement we have with an individual organisation over time and in response to certain events. So, we may adjust the intensity of our regulatory interest for a temporary period until a particular event or situation has been resolved satisfactorily.
- e) We aim to meet our regulatory purpose in a world of imperfect information and with finite resources. Therefore, we need to make judgements and set priorities. And we take responsibility for the requirements we impose on the regulated sector and the limits to innovation we may inadvertently place on the sector by trying to minimise risk. This means we are not identifying or tracking every risk to our purpose, simply the most significant ones and we are careful about the information we request. It also means we will not always identify every failing organisation or every lapse in conduct or management by regulated bodies. This does not represent a regulatory failure. The main issue for us is to ensure we have a rigorous process for determining our priorities, that responsibility for tackling the issues we raise is seen to lie squarely with regulated bodies themselves, and that we make sensible regulatory decisions on the information available at a given point in time.

## 6. Risk-based regulation in practice

6.1 This is the sequence of events in our risk-based assessment process:

- Once a year we review available data from a range of sources and returns (for example, the annual performance and statistical return, financial ratios from five year projections, stock quality monitoring, patterns of complaints, other regulatory engagement in the previous year etc). We will apply regulatory judgement to the information and analysis we use.
- We will decide what level and type of engagement we need to have with an organisation, based on this review.
- We will publish the level of engagement we will have with each organisation – high, medium and low and will only do so having already notified the individual RSLs of our decision.
- A senior management panel within the SHR will review judgements on assessments of medium and high engagement and our regulation plans, to ensure consistency and fairness.
- For each medium and high engagement organisation we will develop an individual regulation plan. This will clearly set out any action we require the organisation to carry out, the engagement we plan to have with the organisation, and the timeframes involved. We will write to the organisation outlining the level of engagement and the regulation plan.
- Each medium or high engagement organisation will have an identified member of regulation staff as their main contact, who will have primary responsibility for managing the relationship with the organisation, delivering the regulation plan and reviewing it in the light of events or the level of assurance received.

## 7. Thematic work

- 7.1 The sections above deal with our assessments of individual providers. To complement this work we may also undertake sector-wide analysis that will identify organisations or areas of weaker performance, develop an understanding of good performance, test our benchmarks, result in guidance or self-assessment frameworks for the sector, and refresh our view of regulatory risks. 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.
- 7.2 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.
  - The degree of significance attached to the issue from external sources (for example, the sector itself, lenders, or tenant and consumer groups).

## 8. Inspection

- 8.1 Inspection is one of our possible regulatory responses. A decision to inspect an RSL will be as a result of our risk assessment work, although we may choose to inspect an organisation even when we have decided on low engagement, as part of our thematic work or to balance our inspection programme. Inspection is a systematic, in-depth, evidence-based examination of an organisation or some aspect of its work at a particular point in time. It results in a public report. When we inspect we aim to:
- help drive improvement in housing services, while making sure minimum standards are met and resources are used to best effect;
  - champion and protect the interests of service users;
  - hold service providers to account;
  - promote equal opportunities;
  - share good practice; and
  - inform policy development and delivery.
- 8.2 Our inspections will be based on an assessment of how well [Performance Standards](#) are being met. In line with our commitment to being targeted and proportionate in our inspection work, we will decide what Performance Standards are relevant to the scope and focus of any particular inspection and how they will be grouped for reporting purposes. A [separate guide](#) sets out more detailed information about the inspection process. We are keen to ensure that over the next few years regulated bodies take the primary responsibility for monitoring their compliance with Performance Standards – so, our focus has shifted to developing [self-assessment](#) material, and requesting submissions based on self-assessment where appropriate. That said, we may choose to inspect where we believe that is the best way to get the assurance we need.
- 8.3 We may revise our engagement categorisation and regulation plan with an RSL following an inspection. We may require an organisation to submit an improvement plan to us following an inspection. Arrangements for on-going monitoring will be set out in the regulation plan.

## 9. Smaller organisations

- 9.1 We have developed a less onerous regulatory regime for landlords with fewer than 250 houses. They do not submit forward financial projections. They are required to submit audited annual accounts. We are unlikely to inspect smaller organisations, but when we do inspect, we will publish our findings, but will not issue gradings. We are reviewing whether we should extend our definition of small RSLs to those with fewer than 500 houses and what sort of information we should request from small RSLs. We may take a different approach to smaller RSLs that are receiving development funding or acquiring stock from another RSL either direct or as part of a partnership.

## 10. Regulatory activities – reacting to events

- 10.1 As a regulator we need to react to events and activities that arise from time to time. The three main types of reactive activities are:
- a) concerns raised with us about an organisation (for example, whistleblowing, allegations, [serious complaints](#));
  - b) [notifiable events](#) – material events which an organisation itself is required to tell us about; and
  - c) requests for consent to do particular things, where our consent is required by legislation, for example:
    - certain [rule changes](#);
    - [mergers between RSLs through transfers of engagement or amalgamations](#); or
    - [disposals of land and property](#) not covered by the general consent.
- 10.2 We expect an organisation to send us all necessary information and to have obtained its own legal advice in seeking our consent. This is set out in relevant guidance notes. In many cases an organisation must tell us about its intentions and consult us at the earliest possible stage. We may need to stay close to events where we consider the activity to be significant and where the RSL ultimately needs our consent.
- 10.3 As a result of some of these events we may review our assessment of an organisation and adapt our level and type of regulatory engagement to reflect the particular circumstances involved.

## 11. Registration and regulating new organisations

- 11.1 We have set out the [registration criteria](#) that must be met by an organisation wishing to register with us. A separate guide explains our [registration process](#).
- 11.2 We aim to have a relatively close relationship with newly registered organisations and we usually inspect them within 18 months to two years after they have been established. Until then at least, they are likely to be categorised as medium or high engagement organisations.

## 12. Intervention

12.1 We have a range of possible intervention powers (for example, placing appointees onto RSL governing bodies, putting an operational manager into an organisation, setting up an independent enquiry into mismanagement or misconduct). We will use them primarily where serious performance concerns have been identified and where an organisation is either unwilling or unable to deal with them. So, an organisation's response to the concerns identified, and its capacity and willingness to tackle the issues, are key factors in determining the level and nature of the engagement that follows and whether statutory intervention is necessary. Our overriding concern in these cases will be to protect the interests of tenants, and any public funds invested in the organisation. A separate guide sets out our [intervention strategy](#).

## 13. Regulation and investment

13.1 Our purpose as a regulator involves maintaining the confidence of investors – public and private – and ensuring the continued provision of good quality social housing. Our activities will ensure that investment resources and public money are not spent in a way that puts this purpose at risk. It is not our job to do the sort of due diligence public and private lenders will require to carry out in advance of their investment decisions, or to evaluate and review the specific use of public funds. We will, however, make it clear when an organisation does not represent a suitable investment partner or recipient of public funds or stock.

## 14. Regulatory documents

14.1 We will publish four types of material setting out:

- a) our regulatory expectations, where we require regulated organisations to take the necessary action to meet our expectations. We generally apply a principles-based approach, which means we do not usually set out the detailed operational ways a body should organise itself to satisfy our expectations. Examples of our regulatory expectations are:
  - [Performance Standards](#)
  - [The Regulatory Code of Governance](#)
  - [Guidance Notes](#)
- b) Self-assessment support material, to help regulated bodies meet Performance Standards, to strive for continuous improvement, and take responsibility for complying with our reasonable expectations. This may involve signposting to other good practice, or it may be designed to help organisations ask the right sort of questions of themselves. Our risk-based approach to regulation places increased reliance on an organisation's self-assessment and on keeping us informed about material changes in circumstances.
- c) publications assessing performance, for example:
  - [Inspection reports](#)
  - [Annual statistical reports](#)
  - [Performance indicator information](#)
  - [Financial summaries](#)
  - [Thematic reports](#)
- d) publications about how we regulate and go about our work. Examples of these sort of publications are:
  - [Intervention Strategy](#)
  - [Guide to Inspection](#)

## 15. Conclusion

- 15.1 This is a guide to how we regulate. It is not a consultative paper. However, we welcome comments on it from regulated organisations, tenants, lenders and other stakeholders. We will continue to develop our approach to regulation, consulting on major changes in our policy, and working with our advisory groups in our day to day work.



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