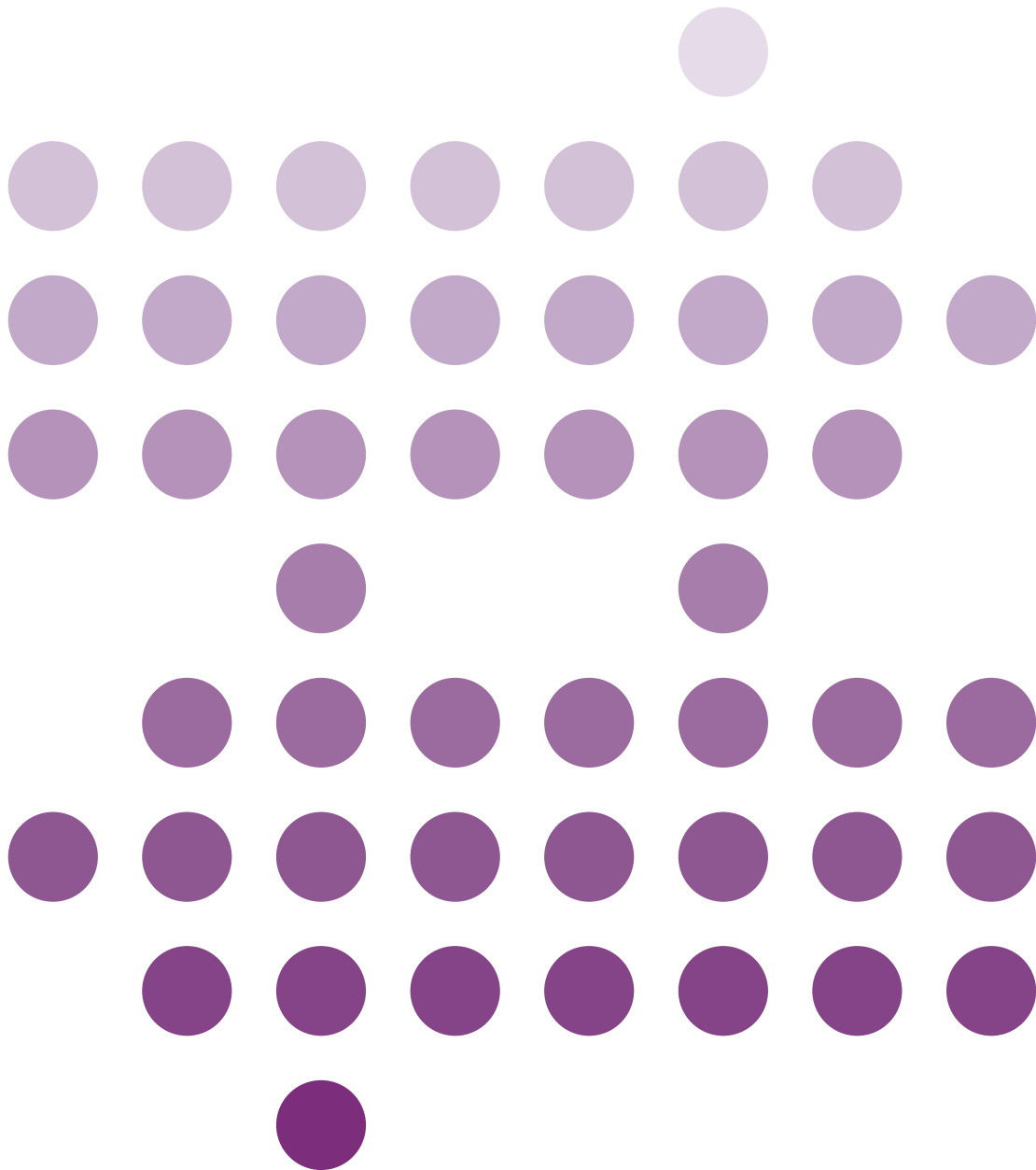


INTERVENTION STRATEGY



Communities Scotland

Intervention Strategy

March 2004

THIS document is also available on tape, in Braille, moon, large print and community languages.
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INTERVENTION STRATEGY

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INTRODUCTION

- 1 This document sets out Communities Scotland's strategy for applying the powers of intervention contained in the Housing (Scotland) Act 2001. Throughout this document, we refer to the Housing (Scotland) Act 2001 as 'the 2001 Act'.
- 2 The 2001 Act provides Scottish Ministers with powers to take action to address poor performance by providers of social housing services. These powers differ according to whether the provider of services is a registered social landlord (RSL) or a local authority.
- 3 As an executive agency, Communities Scotland is directly accountable to Scottish Ministers. Under the [Regulatory Code of Practice](#) issued in November 2001, Scottish Ministers have delegated to Communities Scotland the use of the statutory intervention powers contained in the Act. Therefore, while relevant provisions of the 2001 Act refer to the powers conferred on Scottish Ministers, this document refers to Communities Scotland, acting on behalf of Scottish Ministers. The Regulation Board of Communities Scotland is responsible for approval of statutory action.
- 4 The existence of statutory powers of intervention does not mean that Communities Scotland expects to apply these powers routinely as part of its role in regulating and inspecting housing services.
- 5 We believe that RSLs, local authorities and Communities Scotland have a shared interest in minimising statutory interventions, and this underpins our intervention strategy.
- 6 Statutory interventions lie at one end of a spectrum of methods available for addressing performance issues. Because they will not take place unless serious performance problems are present, statutory interventions will never be the most rapid or efficient approach to achieving improvements. Our strategy is therefore founded on encouraging maximum use of other approaches, including:
 - actions taken by RSLs and local authorities themselves to review and improve their performance, as part of their own management activities;
 - support and liaison work by Communities Scotland, to assist housing providers' own efforts to achieve continuous improvement.
- 7 Our strategy is also founded on working in partnership with other audit and inspection agencies to support and encourage improvements in housing and homelessness services and in taking intervention action, where appropriate. The interests of tenants and other service users are paramount in our strategy.
- 8 To accompany the intervention strategy, we have produced a set of information notes. These describe in more detail how we would anticipate specific statutory powers being applied in practice, if there is a need to use them. Both the strategy and intervention notes were subject to consultation. We have prepared a separate report on the consultation exercise. All of these documents are available on our website at www.communitiesscotland.gov.uk.
- 9 The strategy is colour-coded to signpost general information relevant to all service providers (black text), information specific to local authorities only (purple text) and information specific to RSLs

(purple italicised text).

¹⁰ The web version of the strategy document also contains links to a range of key policy documents and legislation which have informed our approach.

THE CONTEXT FOR OUR INTERVENTION STRATEGY

The Single Regulatory Framework

- 1 Under the Single Regulatory Framework, providers of housing and homelessness services¹ are now working within a single set of regulatory performance criteria. Communities Scotland's approach to regulating and inspecting housing services is designed to complement service providers' own strategies for continuous improvement, to help achieve better quality services for tenants and other service users.
- 2 RSLs, local authorities and tenants' organisations have all made a substantial contribution to the development of the Single Regulatory Framework. As a result, there is a strong consensus among stakeholders that the key to achieving high quality services lies with service providers themselves taking a proactive approach to assessing and improving their performance, with full involvement by tenants and other service users.
- 3 We wish regulation by Communities Scotland to support a culture of critical self-assessment and improvement by regulated organisations. While statutory powers to intervene will be deployed where necessary, they are not central to Communities Scotland's vision of how housing service standards can best be improved.

Communities Scotland's regulatory role

- 4 Our approach to statutory interventions recognises the different systems of governance, accountability and financial management present in the RSL and local authority sectors, and the resulting differences in the scope of Communities Scotland's regulatory role.
- 5 For local authorities, our role is focused on the regulation and inspection of housing, homelessness and factoring functions. The Accounts Commission (through Audit Scotland) audits, monitors and reports on all local authority services. The Commission covers all matters relating to financial management, corporate governance and management arrangements, and best value for public services. Communities Scotland's interest in these areas will be focused on how they impact on the quality of the housing service outcomes the authority is achieving.
- 6 The overlap in responsibilities between the Accounts Commission and Communities Scotland is addressed in a [Memorandum of Understanding](#) between the two organisations published in November 2001. The Memorandum of Understanding commits the two regulatory bodies to close co-operation in the exercise of their duties, including statutory interventions. Audit Scotland works on behalf of the Accounts Commission and is responsible for adopting the principles reflected in the Memorandum of Understanding.

¹ To simplify terminology, we have referred throughout this document to 'providers of housing and homelessness services', abbreviated to 'service providers'. These terms should be assumed to cover all of the activities undertaken by RSLs and local authorities which are regulated by Communities Scotland (for example, local authority homelessness strategies and RSL governance and financial management), which go beyond the provision of housing and homelessness services.

- 7 For RSLs, the scope of regulation by Communities Scotland is considerably wider. For many RSLs, Communities Scotland has the status of 'sole regulator'. For some RSLs, our role is complemented by the work of other regulators such as the Scottish Commission for the Regulation of Care (the Care Commission), the Housing Corporation and from April 2005 the Office of the Scottish Charities Regulator (OSCR).
- 8 Our regulatory role extends to RSLs' governance and financial management, as well as the planning and delivery of housing services. This is reflected in the intervention powers contained in the 2001 Act, which are wider than those applicable to local authorities.
- 9 The Care Commission is responsible for the registration, regulation and inspection of Scottish care services. It has distinct statutory responsibilities for housing support services provided by local authorities and RSLs. However, there are areas where the duties of the Care Commission and those of Communities Scotland overlap. We have agreed a Memorandum of Understanding to support joint working arrangements between Communities Scotland and the Care Commission.
- 10 The Housing Corporation regulates RSLs which are registered in England. Communities Scotland has a cross-border agreement with the Corporation which sets out how we will liaise closely in dealing with cross-border groups and linked organisations.

The Housing (Scotland) Act 2001

- 11 The 2001 Act provides Scottish Ministers with a range of intervention powers. Reflecting the different systems of corporate governance, accountability and financial management already described, these powers are different for local authorities and RSLs.
- 12 Whereas the 2001 Act provides a comprehensive set of possible statutory interventions for RSLs, it is only part of the statutory framework for the regulation of local authorities' housing functions. For local authorities, the intervention powers contained in the 2001 Act need to be viewed alongside the powers available to the Accounts Commission and the Care Commission under other legislation. The Care Commission also has a locus with both RSLs and local authorities which provide housing support services.
- 13 The full range of intervention powers contained in the 2001 Act and delegated to Communities Scotland in the subsequent [Regulatory Code of Practice](#) is summarised in Figure 1 below, which is followed by a brief commentary on the main provisions within the Act.
- 14 The remainder of this Intervention Strategy describes our approach to applying the powers contained in the Act. Further details are provided in the accompanying Information Notes about when and how specific intervention powers might be exercised.

Figure 1: summary of intervention powers in the Housing (Scotland) Act 2001

Type of statutory intervention	Source of powers (2001 Act)
<ul style="list-style-type: none"> Instructing a local authority to prepare a remedial plan 	Section 74
<ul style="list-style-type: none"> Appointment of a manager to a local authority to exercise specified functions relating to the provision of housing accommodation and related services 	Section 75
<ul style="list-style-type: none"> General power to remove a member of the governing body of an RSL 	Schedule 7 (Part 2, para. 4)
<ul style="list-style-type: none"> Appointment of a new governing body member or director to an RSL 	Schedule 7 (Part 2, paragraphs 5&6)
<ul style="list-style-type: none"> Appointment of a manager to an RSL, to ensure that the management of its affairs is of an appropriate standard 	Section 71
<ul style="list-style-type: none"> Appointment of a person to conduct an inquiry into the affairs of an RSL 	Schedule 7 (Part 4, para. 16)
<ul style="list-style-type: none"> Instructing an extraordinary audit for the purposes of an inquiry into the affairs of an RSL 	Schedule 7 (Part 4, para. 17)
<ul style="list-style-type: none"> General powers which may be exercised following an inquiry into the affairs of an RSL 	Schedule 7 (Part 4, para. 18)
<ul style="list-style-type: none"> Power to direct an RSL to transfer its land to another RSL, following an inquiry into its affairs 	Schedule 7 (Part 4, para. 19)
<ul style="list-style-type: none"> Power to declare a moratorium on creditors' rights of 56 days in the event of RSL insolvency 	Schedule 8

Local authorities

15 For local authorities, the 2001 Act provides Scottish Ministers with two possible methods of statutory action. The Act enables Ministers to:

- **Require a local authority to produce a remedial plan** following an inspection of its housing, homelessness and factoring services, to demonstrate how it will address any aspects of the services which were found to be unsatisfactory during the inspection.
- **Appoint a manager** where Ministers are not satisfied with the authority's performance in implementing the remedial plan.

The role of the manager is to exercise control over those aspects of the authority's housing and related functions which are of concern to Ministers. Ministers may give directions to the manager regarding the discharge of his/her functions and the manager is required to comply with any such directions.

16 Before using these powers, Ministers are required to consult with the authority. Before a manager is appointed to a local authority, the Act also requires Ministers to consult with the Accounts

Commission and with organisations representing local authorities.

- 17 Aside from the powers described in the Housing (Scotland) Act 2001, local authorities are also potentially subject to a range of statutory actions which may be taken or initiated by either the Accounts Commission or the Care Commission.
- 18 Ongoing follow-up work by auditors is the main method used to address any performance issues arising from the Accounts Commission's programme of audit work and its other statutory duties.
- 19 In certain circumstances, the Controller of Audit may follow up matters arising from an audit and prepare a public interest report for the Accounts Commission. The Commission has statutory powers to hold a hearing and to make recommendations. The Commission can make findings including recommendations to local authorities or Ministers on the way forward. Where there has been illegality or loss the Controller can make a special report to the Accounts Commission which, ultimately, can lead to the suspension or disqualification of members.
- 20 The Local Government in Scotland Act 2003 extends the public interest reporting powers to cover local authorities' statutory duty to achieve best value. The Act places local authorities under a statutory duty to achieve best value, and in relation to this, the Commission can:
 - direct the Controller of Audit to make further investigations;
 - hold a hearing; and
 - state its resulting findings – these may include recommendations to the local authority and to Ministers.
- 21 The [Memorandum of Understanding](#) agreed in 2001 provides a framework for joint working by Communities Scotland and the Accounts Commission in discharging their respective statutory duties. The importance of achieving a co-ordinated approach to statutory interventions has been further emphasised by the Local Government in Scotland Act 2003, and by the increasing role which organisations such as Communities Scotland and the Care Commission are playing alongside the Accounts Commission in scrutinising the activities of local authorities.
- 22 Within our Intervention Strategy and the related Information Notes, we have further developed the provisions of the Memorandum of Understanding on statutory interventions, in consultation with Audit Scotland.
- 23 Where a local authority provides housing support services which are registered with the Care Commission, it may also initiate statutory action under the Regulation of Care (Scotland) Act 2001. It has powers to issue an improvement notice where services substantially or seriously fail to meet the Care Standards. If this does not result in improvement then the Commission can cancel the registration of the service. In extreme cases (ie where there is serious risk to a person's life, health or well-being) the Care Commission can take immediate steps to cancel the registration of a service without first issuing an improvement notice. Communities Scotland and the Care Commission have agreed a [Memorandum of Understanding](#) which sets out how the two organisations will work together.

Registered social landlords

24 For RSLs, the 2001 Act provides Ministers with more wide-ranging powers of statutory intervention. Ministers have the power to:

- **Appoint persons to the governing body of an RSL for a variety of reasons, including for the purpose of improving the management of the organisation.**
- **Appoint a manager to an RSL, or require the RSL to appoint a manager.**

The powers to appoint a manager to an RSL are different to the powers relating to local authorities in several respects:

- the power extends to all of the affairs of an RSL, not just its role in providing housing and related services;
 - there is no statutory provision for a remedial plan to be completed before a manager can be appointed;
 - there is no statutory requirement that the appointment of a manager must be directly related to the results of an inspection, or to the inspection of the implementation of a remedial plan, as defined in the Act;
 - the Act enables a manager to be appointed by an RSL, under statutory direction by Scottish Ministers, as well as direct appointment by Scottish Ministers.
- **Instruct a statutory inquiry into the affairs of the RSL, and (if required) a related extraordinary audit of its finances.**

If this power is used, Ministers will consider a report prepared by an independent Inquirer. If Ministers conclude that there has been mismanagement or misconduct by the RSL, the Act allows them to exercise a further range of powers, which include directing the RSL to transfer its land to another RSL, following consultation with tenants.

- **Declare a moratorium on creditors' rights of 56 days in the event of RSL insolvency.**

If this power has to be invoked then we will develop a tailored approach to deal with the particular circumstances. The RSL will be subject to close supervision and a plan developed to ensure that the interests of all stakeholders are safeguarded. The interests of tenants will be paramount.

25 Our Intervention Strategy states that we may exercise statutory powers of intervention to address serious performance problems in RSLs, whether or not these come to light during a cyclical inspection by Communities Scotland. For example, Communities Scotland might consider taking statutory action if an RSL got into serious financial difficulties in between cyclical inspections, or if there were serious problems with the governance of the RSL.

26 Our Strategy also includes a policy commitment to ensuring consistent treatment of RSLs and local authorities in relation to remedial plans. We will therefore, as a matter of policy, give RSLs the opportunity to submit a remedial plan before statutory action is taken, unless the proposed statutory action relates to serious governance or financial management problems and action needs to be taken as a matter of urgency.

INTERVENTION STRATEGY

Aims and objectives

27 Communities Scotland wishes to provide active encouragement to RSLs and local authorities to identify and act themselves upon any issues which are impairing the performance of their organisation or the quality of the services they provide.

28 Accordingly, the aim of our intervention strategy is:

To use our statutory powers to intervene only where performance problems are serious, and where the service provider is not willing to take action, or its actions have failed or will not succeed without external intervention.

29 To help achieve this aim, the objectives of our strategy are as follows:

Figure 2: strategy objectives

The objectives of our intervention strategy are:

- To recognise the different statutory and operating contexts within which RSLs and local authorities work.
- To provide local authorities, RSLs and other stakeholders with a clear description of the statutory intervention powers we may exercise, and the regulatory context within which they may be applied (eg where other regulatory bodies also have intervention powers).
- To minimise the use of statutory interventions, by:
 - providing active encouragement to local authorities and RSLs to act themselves upon any issues which are impairing the performance of their organisation or the quality of the services they provide;
 - supervising the progress made by service providers, where this is required;
 - basing interventions on a detailed assessment of the performance and operating context of the organisation concerned;
 - ensuring that interventions are graduated and proportionate to the issues and risks involved in each case;
 - consulting stakeholders.
- To work closely with other regulators to achieve a co-ordinated approach to statutory interventions in the housing services provided by local authorities and RSLs:
 - the Accounts Commission and Care Commission in relation to local authorities, and
 - the Care Commission in relation to RSLs.
- To exercise statutory intervention powers in an open and accountable way.

Our proposed approach to intervention

A graduated approach: minimising the use of statutory interventions

30 We will use our statutory intervention powers only where absolutely necessary, to tackle specific, serious performance issues. The most efficient way of addressing performance issues is for housing service providers to identify and act upon any such issues themselves. We therefore expect that landlords will regularly assess their own performance and work towards continuous improvement.

- 31 We will encourage (and expect) housing service providers to be proactive in responding to organisational or service delivery problems before they reach a critical stage. It is unlikely that we will consider any form of statutory intervention, without the service provider first having had the opportunity to remedy problems or failures itself. Our approach will therefore enable service providers to resolve performance problems, without the requirement for statutory intervention.
- 32 Where we believe that statutory action needs to be considered, we will assess the performance and operating context of the service provider, and the options which are available for addressing the areas which are of concern to us.
- 33 The diagram at [Annexe 1](#) shows how the different elements of our strategy relate to each other, to ensure that our approach is graduated and based on constructive joint working with service providers.
- 34 We will use a range of methods to assist housing service providers' efforts to achieve continuous improvement, and to address performance issues within their organisation or service.

Performance standards

- We have published [Performance Standards](#) jointly with the Convention of Scottish Local Authorities (COSLA) and the Scottish Federation of Housing Associations (SFHA). We will provide clear guidance to all regulated organisations about Performance Standards and how they might assess their achievements in relation to the Standards.

Sharing good practice

- We will promote and disseminate good practice and other information, for example data to assist benchmarking, to help regulated organisations to achieve high standards of management.

Working with representative bodies

- We will work with representative bodies such as COSLA, SFHA and Employers in Voluntary Housing (EVH) to help them equip their members with practical tools which can help achieve good standards of management and service delivery.

Ongoing contact with local authorities and RSLs

- We will develop an approach to ongoing regulatory contact between Regulation & Inspection and individual RSLs and local authorities, which reflects the individual circumstances of each organisation.

- In deciding the right level of regulatory contact with each organisation, we will take into account the information we have about their performance and, for RSLs, their governance arrangements and financial viability.
- We will be explicit about the level of regulatory contact we propose. Where there are issues of poor performance, we will monitor the situation closely and encourage the organisation to make improvements on a voluntary basis.

Inspections

- We will inspect all regulated organisations once every five years. Inspections will involve a comprehensive assessment of regulated services, as described in our [Guide to Inspection](#).

Improvement plans

As part of our inspection process, we will require all inspected organisations to submit and implement improvement plans after inspections, to demonstrate how they will address the issues raised in the inspection report and work towards continuous improvement.

- Improvement plans are different from 'remedial plans'. If a local authority or RSL is required to provide a remedial plan, this means that Communities Scotland considers the organisation's performance problems to be serious, and that statutory intervention may follow unless satisfactory progress is made in addressing these problems. Communities Scotland would make a formal assessment of the results achieved in implementing a remedial plan, before deciding to take statutory action.
- Other than in very exceptional circumstances, an inspection will be followed by preparation of the landlord organisation's own improvement plan. However, if an inspection indicated grave performance problems and no willingness or capacity to improve, Communities Scotland could require a remedial plan to be prepared immediately after the inspection.

Follow-up work after inspections

- We will vary the level of follow-up activity after inspections, to reflect the results of the inspection and the content of the improvement plan.
- Where organisations are performing well and/or show clearly their commitment and ability to make improvements, follow-up activity after inspections will be reduced.
- Follow-up activity will be more intensive where organisations are experiencing serious difficulties in addressing Performance Standards or where there are difficulties with the quality of their improvement plan or its implementation.

- In these circumstances, we will put in place supervision arrangements. These arrangements may take the form of additional inspection work and/or formal monitoring of progress. Supervision does not involve any statutory intervention by Communities Scotland, and the emphasis of our approach will be supportive.

Financial viability of RSLs

- *For RSLs, we will implement systems for assessing their financial viability to provide ‘early warnings’ of any significant financial difficulties which individual RSLs may be experiencing.*
- *Our systems will be designed to ensure an appropriate, risk-based approach to assessing the financial performance of individual RSLs and at inspection we will assess how well RSLs are managing risk and its impact on their business.*
- *Where we have significant concerns about an RSL (for example, due to governance or financial viability issues), we will categorise the RSL as a priority supervision case. We will work closely with RSLs in such circumstances, but will not take statutory intervention action as long as the RSL shows a willingness and ability to deal effectively with the issues at stake.*

Support for new RSLs

- *For prospective new RSLs, we will provide clear guidance as to the registration criteria and the standards to which the organisation will be expected to operate.*
- *We will also agree any conditions attached to new registrations, and put in place follow-up arrangements over the 12–18 months following registration.*

External sources of support

- We will refer housing service providers experiencing difficulties to external sources of support and assistance, where appropriate.

Criteria for considering statutory action

35 Where we believe that statutory intervention needs to be considered, we will base our assessment on the criteria shown in Figure 3.

36 Our assessment will be based on the service provider’s specific operating context, and will be informed by discussions with the organisation itself. We will also take into account any information presented by people who use or are trying to access services.

Figure 3: criteria for considering statutory intervention

The criteria we will use are:

- The seriousness of the performance problem or failure, in relation to Performance Standards, the law, and the organisation's operating context.
- The urgency with which the problem or failure needs to be addressed.
- Whether the service provider has had previous opportunities to resolve the problem or failure, and the outcome of its efforts.
- What voluntary action is proposed by the service provider, and whether this provides sufficient assurance that it is capable of partly or wholly resolving the problem or failure.
- What risks the organisation is exposed to as a result of the performance failure or problem.
- The impact of the performance problem or failure on service users, or on people seeking access to the organisation's services.
- Whether the service provider is facing legal action as a result of the performance problem or failure.

Circumstances leading to statutory interventions

37 It is not possible to define specific performance scenarios which represent serious problems or failures. The circumstances most likely to result in statutory intervention are essentially failures in corporate governance or management, even though these may also manifest themselves in poor service outcomes. For example:

- mismanagement or serious misconduct by an RSL's governing body or senior staff;
- mismanagement by a local authority's members or senior staff in relation to the authority's housing, homelessness or factoring functions;
- serious problems in a service provider's senior management arrangements, if these are impairing the performance of the organisation or service;
- sustained failure by the service provider to address underperformance in service delivery, in meeting Performance Standards, or in meeting its statutory obligations;
- serious cause for concern about an RSL's financial performance.

38 Any statutory action relating to poor performance in service delivery will always be preceded by the service provider having the opportunity to make improvements, unless service users are being placed at risk and their landlord is unwilling to act. More typically, our strategy for addressing service

improvements will be based on inspections, improvement plans and, where required, follow-up audits and monitoring of improvement plans.

- 39 *The Regulatory Code of Practice issued by Scottish Ministers in November 2001 highlights one specific scenario where Ministers expect Communities Scotland to exercise statutory powers of intervention. This scenario is where an RSL fails to implement an arbiter's decision that a homeless person nominated by a local authority should be housed by the RSL. Communities Scotland will therefore use the powers contained in Section 71 of the 2001 Act by appointing a manager to the RSL to ensure that an arbiter's decision is enforced, and to review the RSL's overall approach to meeting its obligations towards homeless persons if this is required.*
- 40 *In the examples given above, the broader scope of Communities Scotland's role in relation to RSLs will generally enable us to identify directly whether statutory action is appropriate. In some cases, we may need to liaise with other regulators, such as the Care Commission or the Housing Corporation (where the RSL is the subsidiary of a parent RSL registered in England).*
- 41 For local authorities, we will work closely with the Accounts Commission (through Audit Scotland) to assess whether problems in the housing service may have wider implications, and to discuss any course of statutory action proposed by Communities Scotland as the inspector of the authority's housing services. For example, problems within the housing service might be partly attributable to broader corporate failures in the authority's governance or financial management arrangements. Alternatively, issues identified by Communities Scotland in housing services might also be present in other service areas. In these circumstances it may be appropriate for Audit Scotland to investigate and report. Where there are housing support services we will also liaise closely with the Care Commission as the statutory regulator of housing support services.
- 42 Where Communities Scotland makes use of statutory intervention powers, we will ensure that the scale and type of intervention is proportionate to the nature of the problem, with a graduated use of possible interventions, wherever possible. At the start of the process we will:
- agree timescales for each type of intervention;
 - clarify the roles of key stakeholders; and
 - agree who will be responsible for liaison with individual stakeholders.
- 43 More detailed information about the circumstances in which Communities Scotland will consider using specific statutory powers contained in the 2001 Act is provided in the Information Notes published with our Intervention Strategy.

Joint working with the Accounts Commission (through Audit Scotland), the Care Commission and other regulators

The Accounts Commission

- 44 Effective joint working between Communities Scotland and the Accounts Commission is critical to the success of the Single Regulatory Framework. Since statutory intervention is an exceptional rather than a routine measure, the need for such co-operation should be infrequent, in comparison with the other areas of joint working described in the Memorandum of Understanding.
- 45 Our Intervention Strategy recognises the broad scope of the Accounts Commission's statutory duties in relation to Scottish local authorities. It is likely that circumstances which might give rise to statutory interventions by Communities Scotland will have a corporate as well as a service-specific dimension. Accordingly, we intend that the statutory intervention powers in the Housing (Scotland) Act 2001 should be exercised only after full discussion and consultation with the Accounts Commission.
- 46 [Annexe 2](#) provides a detailed illustration of how we will work with the Accounts Commission, in relation to following up inspections and statutory interventions. We have a separate protocol with the Accounts Commission which deals with our joint working on inspections – both during planning and the actual inspection.

The Care Commission

- 47 Effective joint working with the Care Commission is also critical in relation to registered housing support services. Statutory intervention will be an exceptional measure, therefore the principal focus of our co-operation will be the inspection process. We have agreed a Memorandum of Understanding with the Care Commission. [Annexe 3](#) sets out how we will work together.
- 48 Our Intervention Strategy recognises the dual regulatory role of the Care Commission in relation to housing support services registered under the Regulation of Care (Scotland) Act 2001 (including homelessness services) provided by both local authorities and RSLs. In these circumstances, we will exercise the statutory intervention powers in the 2001 Act after discussion with the Care Commission.

Other regulators

- 49 Statutory interventions could potentially arise for Scottish RSLs which are subsidiaries of an English-based parent RSL, or in other scenarios which involve both Communities Scotland and the Housing Corporation in their regulatory roles. We will therefore regularly review our existing cross border agreement with the Housing Corporation, and we will liaise with the Corporation on proposed interventions, wherever relevant. [Annexe 4](#) sets out how we will work with the Housing Corporation.

Ensuring openness and accountability in statutory interventions

- 50 We will aim to work constructively with individual local authorities and RSLs to help deliver improvements in performance.
- 51 Where we believe that a regulated organisation needs to achieve improvements in performance, we will communicate this clearly and directly. In discussing the possible use of intervention powers with local authorities and RSLs, we will emphasise that the overriding objective is to achieve improvements, rather than to apply punitive measures.
- 52 We will ensure that RSLs and local authorities inform registered tenants organisations (RTOs) of any statutory action and that they consult with RTOs before submitting a remedial plan. We will also ensure that service providers inform their tenants of any statutory action and keep them updated with progress.
- 53 Statutory intervention powers will be used only with the approval of the Regulation Board of Communities Scotland, unless otherwise allowed for in the Board's [remit and delegated authorities](#). We will provide regulated bodies with a written statement explaining why action is being proposed, and the form the proposed action would take, before the Regulation Board meets.
- 54 We will meet our obligations under the [Regulatory Code of Practice](#), by notifying Scottish Ministers of any decision by Communities Scotland to make use of the statutory powers we exercise on their behalf. In doing so, we will provide a full briefing about the nature of the problem underlying the decision to intervene, and we will provide Ministers with regular progress reports at appropriate intervals.
- 55 We will meet the information needs of other stakeholders by:
- Publishing our inspection reports on Communities Scotland's website.
 - Ensuring that those who need to know that statutory action has been taken (for instance, registered tenants organisations) can access this information timeously, and can then obtain further information from the housing service provider. We will develop an information protocol with the Council of Mortgage Lenders to address the information needs of funders.
- We will normally also issue press statements or publish reports about statutory interventions.
- 56 Communities Scotland will report on its use of statutory intervention powers by publishing information in:
- Communities Scotland's annual report;
 - Regulation & Inspection division's annual report.
- 57 Communities Scotland will review the intervention strategy after three years.

ANNEXE 1: OVERVIEW OF OUR APPROACH TO SUPPORT AND INTERVENTION

Levels of intervention

See attached fold-out chart.

Support and Intervention

Triggers for action

Communities Scotland's action

Sector-wide support

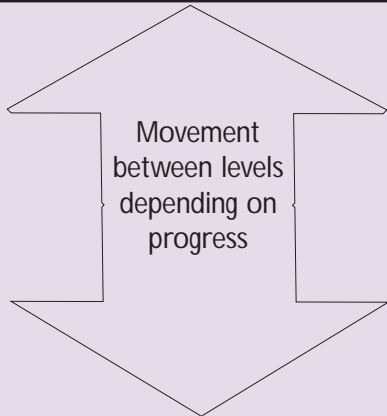
- Publication of Performance Standards
- Registration criteria for new RSLs
- Promotion/dissemination of good practice
- Information and statistical analysis, to assist benchmarking etc.
- Joint working with representative bodies (COSLA, SFHA, EVH)
- Specialist Inspection, Support and Business Analysis teams within R&I

IMPROVING STANDARDS

Level 1
Individual support

Applies to all regulated bodies where needed – can follow inspection or arise from general contact through sector-wide support

- Agreed contact arrangements between R&I and regulated bodies
- R&I will respond to queries and provide general advice
- RSL financial analysis and risk assessment by R&I
- Inspections of local authorities and RSLs
- Post-inspection improvement plans agreed
- Feedback on improvement plans
- Flexibility in level of follow-up to inspections, to reflect findings
- Close liaison with external auditor, following local authority inspections



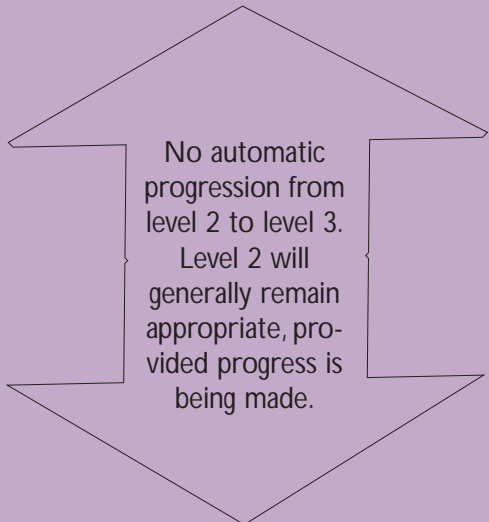
Level 2
Supervision

Applies to all regulated bodies where there are significant performance issues, either unresolved risks following level 1 support or new risks identified following inspection or other contact. Additionally, supervision applies to RSLs dependent upon:

- Outcomes of R&I financial viability assessment*
- Post-registration follow up for new RSLs*
- Investigation of whistleblowing*

* In these circumstances, an inspection or special investigation may take place

- More intensive follow-up will take place where inspections indicate serious performance issues
- Initial inspection may be supplemented by further inspection work and/or more formal arrangements to monitor progress
- Cases involving serious concerns about RSL viability or governance may be categorised as priority supervision cases
- Will focus the landlord organisation on making the necessary improvements itself
- R&I may suggest the organisation considers external sources of support on a voluntary basis
- For local authorities, ongoing information exchange between R&I and the external auditor/Audit Scotland
- Depending on progress, monitoring by R&I may be ended; it may continue until the next inspection; or statutory action may be considered



Level 3
Statutory intervention

- Applies where the prerequisites for statutory action have occurred:
- Performance issues are serious and/or sustained
- The landlord is unable and/or unwilling to address the issues effectively
- For RSLs, the organisation's financial or operational viability is exposed to serious risks
- RSL insolvency
- For local authorities, the need for statutory intervention has been agreed with the Accounts Commission – with agreement reached about whether this should be instigated by the Commission and/or Communities Scotland

- For local authorities:
- Instruct local authority to prepare a remedial plan
 - Appoint a manager to exercise specified functions to the provision of housing accommodation related services
- For RSLs
- Remove/ appoint a member of the governing body
 - Appoint a manager, to ensure that management of the RSL's affairs are of an appropriate standard
 - Appoint a person to conduct an inquiry into the RSL's affairs
 - Instruct an extraordinary audit for the purposes of an inquiry into an RSL's affairs
 - Direct an RSL to transfer its land to another RSL, following an inquiry into an RSL's affairs
 - Declare a moratorium on creditors' rights of 56 days in the event of RSL insolvency

P R O B L E M S O L V I N G

ANNEXE 2: JOINT WORKING BETWEEN COMMUNITIES SCOTLAND AND AUDIT SCOTLAND (ON BEHALF OF THE ACCOUNTS COMMISSION)

Stage	Action
<p>Stage 1 Follow-up to inspections by Communities Scotland</p>	<ul style="list-style-type: none"> • Communities Scotland will lead on any follow-up action required as a result of an inspection as it relates to a local authority's housing, homelessness and factoring functions. • The local authority's external auditor will lead on following up any issues which lie beyond Communities Scotland's remit, and will keep Communities Scotland advised of any action or issues arising from this follow-up.
<p>Stage 2 Monitoring of improvement plans produced after inspections</p>	<ul style="list-style-type: none"> • We will keep the Accounts Commission informed of proposals for follow-up inspections to assess the implementation of improvement plans, or to monitor progress in addressing performance problems relating to housing, homelessness and related services. • We will do so in liaison with the external auditor, and Audit Scotland.
<p>Stage 3 Formal monitoring</p>	<ul style="list-style-type: none"> • Where Communities Scotland or Audit Scotland have significant concerns about a local authority's performance in housing, homelessness and related services, the two bodies will convene periodic meetings. These concerns may arise from audits or inspections, or from follow-up work completed after audits or inspections. • These meetings will be used for the following purposes: <ul style="list-style-type: none"> – to exchange information; – to 'diagnose' whether the performance problems present in the housing service are service-related and/or corporate issues. • On the basis of these discussions, roles and responsibilities will be agreed for working with the local authority, to support it in making improvements.
<p>Stage 4 Consideration of statutory action</p>	<ul style="list-style-type: none"> • Officers from Communities Scotland and Audit Scotland will also convene joint meetings, with involvement by the local authority, before either body decides to take statutory intervention action. • These meetings will be used to reach agreement about: <ul style="list-style-type: none"> – whether statutory intervention by Communities Scotland is the most appropriate response, or whether matters should be referred instead to the Accounts Commission; – whether further investigation by the external auditor is required (eg to assess the impact of 'cross-cutting' or corporate issues on the housing service and/or whether problems in the housing service are also present in other service areas).

<p>Stage 5 Statutory action</p>	<ul style="list-style-type: none">• Communities Scotland will consult with the Accounts Commission, through Audit Scotland, before requiring a local authority to prepare a remedial plan.• We will advise the external auditor and Audit Scotland whether we consider that a remedial plan has been successfully implemented.• If it has not, there will be further liaison between the parties to determine further action.• Communities Scotland will not appoint a manager to exercise the duties of the local authority in housing management or related services, without consultation with the Accounts Commission.• We will liaise further with the Accounts Commission if such an appointment is made, but does not deliver the desired improvement.• If statutory action is being considered or is being taken by the Accounts Commission for a housing or related function, the Controller of Audit and the Accounts Commission will advise Communities Scotland, and will keep Communities Scotland informed of progress.• Where statutory interventions are made by Communities Scotland in local authority housing services, we will liaise with the authority and with the Accounts Commission regarding external communications about such interventions.
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ANNEXE 3: JOINT WORKING BETWEEN COMMUNITIES SCOTLAND AND THE CARE COMMISSION

Stage	Action
<p>Stage 1</p> <p>Follow-up to inspections by Communities Scotland</p>	<ul style="list-style-type: none"> • Communities Scotland will lead on any follow-up action required as a result of an inspection as it relates to local authority and RSL housing, homelessness and factoring functions. • The Care Commission will lead on following up any issues which relate to housing support. They will keep Communities Scotland advised of any action or issues arising from this follow-up.
<p>Stage 2</p> <p>Monitoring of improvement plans produced after inspections</p>	<ul style="list-style-type: none"> • We will keep the Care Commission informed of proposals for follow-up inspections to assess the implementation of improvement plans, or to monitor progress in addressing performance problems relating to housing, homelessness and related services where these impact on registered housing support services.
<p>Stage 3</p> <p>Formal monitoring</p>	<ul style="list-style-type: none"> • Where either Communities Scotland or the Care Commission have significant concerns about the performance of a local authority or RSL which provides registered housing support, the two bodies will convene periodic case conference meetings. These concerns may arise from inspections, or from follow-up work completed after inspections. • Case conference meetings will be used for the following purposes: <ul style="list-style-type: none"> – to exchange information. – to agree roles and responsibilities for working with the service provider to support it in meeting improvements.
<p>Stage 4</p> <p>Consideration of statutory action</p>	<ul style="list-style-type: none"> • Officers from Communities Scotland and the Care Commission will also convene joint case conference meetings, with involvement of the service provider, before either body decides to take statutory intervention action.
<p>Stage 5</p> <p>Statutory action</p>	<ul style="list-style-type: none"> • Communities Scotland will advise the Care Commission, before requiring a local authority or RSL which provides registered housing support, to prepare a remedial plan. • The Care Commission will notify Communities Scotland of its intention to issue an S10 improvement notice on a local authority or RSL, and of any subsequent related action. • We will advise the Care Commission whether we consider that a remedial plan has been successfully implemented. • If it has not, there will be further liaison between the parties to determine further action.

Stage 5 (cont)	<ul style="list-style-type: none">• Where registered housing support services are provided Communities Scotland will inform the Care Commission of its intention to:<ul style="list-style-type: none">– appoint a manager to exercise the duties of the local authority or RSL in housing management or related services;– appoint a board member to an RSL.• We will ensure that managers appointed by Communities Scotland, and appointees to governing bodies are ‘fit persons’ as required by the Regulation of Care (Scotland) Act 2001.• We will liaise further with the Care Commission if such appointments are made, but do not deliver the desired improvement.• If statutory action is being considered or is being taken by the Care Commission for registered housing support services provided by a local authority or an RSL, they will consult with Communities Scotland, and will keep Communities Scotland informed of progress.• Where statutory interventions are made by Communities Scotland in local authority housing services or in an RSL, where registered housing support is provided, we will liaise with the service provider and with the Care Commission regarding external communications about such interventions.
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ANNEXE 4: JOINT WORKING BETWEEN COMMUNITIES SCOTLAND AND THE HOUSING CORPORATION

The arrangements outlined below only relate to Communities Scotland's regulatory role in respect of an RSL which is part of a group structure, and where the linked organisation is registered with the Housing Corporation.

Parent and subsidiary organisations are referred to as 'linked organisations' in this document.

Stage	Action
<p>Stage 1</p> <p>Follow-up to inspections by Communities Scotland</p>	<ul style="list-style-type: none"> • Communities Scotland will lead on any follow-up action required as a result of its inspection of a linked organisation and will keep the Housing Corporation advised of any action or issues arising from this follow up. • The Housing Corporation will lead on any appropriate follow-up action with the linked organisation, where they are the regulator and it is appropriate to do so. They will keep Communities Scotland advised of any action or issues arising from this follow-up.
<p>Stage 2</p> <p>Monitoring of improvement plans produced after inspections</p>	<ul style="list-style-type: none"> • Communities Scotland and the Housing Corporation will keep each other informed of proposals for follow-up inspections to assess the implementation of improvement plans, or to monitor progress in addressing performance problems relating to linked organisations.
<p>Stage 3</p> <p>Formal monitoring</p>	<ul style="list-style-type: none"> • Where Communities Scotland or the Housing Corporation have significant concerns about the performance of a linked organisation, the two bodies will convene periodic case conference meetings. These concerns may arise from inspections, or from follow-up work completed after inspections or from ongoing performance and financial viability monitoring. • Case conference meetings will be used for the following purposes: <ul style="list-style-type: none"> – to exchange information; – to agree roles and responsibilities for working with the linked organisations to support them in achieving improvements.
<p>Stage 4</p> <p>Consideration of statutory action</p>	<ul style="list-style-type: none"> • Where either Communities Scotland or the Housing Corporation are considering the use of statutory intervention powers, the two organisations will liaise closely before either body goes ahead with statutory action.

<p>Stage 5</p> <p>Statutory action</p>	<p>Communities Scotland will advise the Housing Corporation before requiring a linked organisation to prepare a remedial plan.</p> <ul style="list-style-type: none">• We will advise the Housing Corporation whether we consider that a remedial plan has been successfully implemented.• Communities Scotland will inform the Housing Corporation of its intention to use its statutory powers in a linked organisation.• We will liaise further with the Housing Corporation if such statutory actions are taken, but do not deliver the desired improvement.• The Housing Corporation may assist Communities Scotland by carrying out any investigations required by Communities Scotland into the linked organisation which it regulates, for the purposes of Communities Scotland's statutory action. Communities Scotland will take into account any findings which the Housing Corporation makes in respect of the linked organisation.• Specifically, where a subsidiary RSL is undergoing a statutory inquiry by Communities Scotland, the Housing Corporation will use its regulatory powers, if it determines that their use is justified, over the parent organisation (if necessary this may be to the extent of holding a statutory inquiry into the affairs of the parent). If this situation occurs both regulators will liaise closely on progress. <p>If statutory action is being considered, or is being taken, by the Housing Corporation into an RSL registered with it which is part of a linked group, it will advise Communities Scotland and keep them informed of progress.</p> <ul style="list-style-type: none">• Where Communities Scotland uses its statutory intervention powers in respect of a linked organisation we will liaise with the Housing Corporation regarding external communications about such interventions.
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INFORMATION NOTE 1

APPOINTMENT AND REMOVAL OF MEMBERS OF THE GOVERNING BODY OF AN RSL

Introduction

- 1 This information note describes how Communities Scotland (acting on behalf of Scottish Ministers) will use the powers in the Housing (Scotland) Act 2001 ('the 2001 Act') which relate to the removal or appointment of:
 - committee members, for RSLs which are Industrial and Provident Societies, or
 - board members (referred to as directors in the 2001 Act), for RSLs which are registered as Companies.

PART 1: STATUTORY PROVISIONS

Removing members from an RSL's governing body ¹

- 2 Scottish Ministers have a general power to remove a governing body member of an RSL, as set out in [Schedule 7, Part 2](#) paragraph 4 of the 2001 Act.

Figure 1: general power to remove an RSL governing body member

The Act allows this power to be applied in five specific circumstances, where a governing body member:

- is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985;
- is subject to a disqualification order under the Company Directors Disqualification Act 1986;
- is incapable of acting by reason of mental disorder;
- has not acted; or
- cannot be found or does not act and the person's failure to act is impeding the proper management of the RSL's affairs.

- 3 The Act requires that 14 days' notice be given of the intention to remove a person. If removed, the person subject to this action has a right to appeal to the Court of Session.

¹ Throughout this information note, we have used the term 'governing body' as a generic term for the managing committees of RSLs which are Industrial and Provident Societies and the boards of management of RSLs which are companies limited by guarantee.

- 4 Scottish Ministers also have powers under [Schedule 7, Part 4](#) paragraph 18(1) of the 2001 Act to remove or suspend governing body members from an RSL where:
- the RSL has been subject to an inquiry or associated extraordinary audit; and
 - it is satisfied as a result of the inquiry or audit that there has been mismanagement or misconduct in the affairs of the RSL; and
 - the governing body member being removed or suspended has been responsible for, or has been privy to, misconduct or mismanagement in the affairs of the RSL.

A person who is removed or suspended in these circumstances may appeal to the Court of Session.

- 5 Appointing members to an RSL's governing body. Scottish Ministers' powers to make appointments are described in [paragraphs 5–6 of Schedule 7, Part 2](#) of the 2001 Act.
- 6 The powers in the 2001 Act replace those conferred by Section 17 of the Housing Associations Act 1985, now repealed. The 1985 Act only covered appointments to RSLs registered as Industrial and Provident Societies. The 2001 Act enables appointments to be made to all RSLs, whether they are Industrial and Provident Societies or Companies. The 2001 Act also contains new provisions about the rights of appointed members at general meetings of an RSL.

Figure 2: appointing a governing body member to an RSL

The 2001 Act allows appointments in the following circumstances:

- in place of a committee member or director who has been removed; or
- where there are no committee members or directors; or
- where it is considered necessary for the proper management of the RSL's affairs to have an additional committee member or director.

There is no limit to the number of appointments – a person can be appointed even if it causes the maximum number of committee members allowed in the RSL's constitution to be exceeded or if its constitution normally prohibits the appointment of non-members.

Appointees can resign from office at any time in accordance with the RSL's constitution. They have a statutory entitlement to:

- attend, speak and vote at any general meeting of the RSL and to receive all notices of and other communications relating to any general meeting which a member is entitled to receive;
- to move a resolution at any general meeting;
- to require a general meeting or extraordinary general meeting to be convened within 21 days of a written request being made to the committee or directors respectively.

PART 2: COMMUNITIES SCOTLAND'S POLICY AND PROCEDURES

Removal of governing body members

7 Powers to remove RSL governing body members were available to, but never exercised by, Scottish Homes under the Housing Associations Act 1985. The circumstances described in Schedule 7 paragraph 4(2), of the 2001 Act would generally represent grounds for an RSL itself to remove a member. Accordingly, primary responsibility for managing the circumstances described in this part of the Act rests very much with RSLs. We do not expect to exercise the powers in the 2001 Act, but they provide a statutory basis for addressing the circumstances described in the Act, if necessary.

Appointments to the governing body of an RSL

8 Statutory appointments can be made for such period and on such terms as Scottish Ministers may specify. In applying the powers, Communities Scotland's approach will be to use appointments as a supportive or protective measure for RSLs.

9 Our policy in making appointments is described below.

Appointments to replace persons removed from an RSL's governing body

Reason for appointments

- To replace a member who has been removed under Schedule 7 (Part 2) of the Act, or following an inquiry or extraordinary audit.

Number of appointments

- Replacement on a 'one for one' basis, if appointments are needed to maintain the capacity of the governing body to operate effectively.

Appointments to improve the management of an RSL

Reason for appointments

- Serious weaknesses have been identified in an RSL's governance arrangements and this is affecting the RSL's governance and/or operational performance and/or financial viability.
- The governing body itself is unable or unwilling to resolve these issues.

Number of appointments

- More than one appointment will normally be made.
- There is no statutory restriction on the number of persons who may be appointed.

or

Reason for appointments

- An RSL fails to select the minimum number of governing body members required by its constitution;
- Membership of the governing body falls below the number required by the RSL's constitution (usually seven).

Number of appointments

- Sufficient temporary appointments would be made to enable the business of the RSL to continue to be conducted.

- 10 The most likely reason for Communities Scotland wishing to make appointments to an RSL's governing body will be where we are concerned about weaknesses in the governance of an RSL, as described above.
- 11 It is open to RSLs to consider at any time whether they wish to address any emerging governance issues directly, through voluntary appointments to their governing body. With financial support from Communities Scotland, the Scottish Federation of Housing Associations maintains a register of volunteers who may be available to provide additional membership of RSL governing bodies. Access to this register is open to anyone and is not restricted to SFHA members.
- 12 Where Communities Scotland identifies governance problems (eg during an inspection), RSLs may wish to propose voluntary appointments as an alternative to statutory appointments by Communities Scotland. We will consider whether any proposals to make appointments on a voluntary basis will be sufficient to strengthen the governing body and/or to remedy the failures in performance which have been identified.
- 13 It is not possible to define in detail the circumstances which might lead to statutory appointment of additional governing body members. However, relevant factors could include:
 - factionalism within the governing body which is impeding its ability to operate effectively;
 - poor control of the RSL's strategic direction, service standards or finances;
 - failure to maintain appropriate and constructive relationships between governing body and staff members;
 - failure by governing body members to observe the organisation's standards of conduct;
 - failure to act upon previous recommendations by Communities Scotland to address weaknesses in the composition or performance of the governing body.
- 14 Within these parameters, statutory appointment of governing body members to improve the management of an RSL will be used where particularly serious deficiencies are found. Figure 3 shows when Communities Scotland will consider making statutory appointments, where it is concerned about weaknesses in the governance of an RSL:

Figure 3: criteria for making appointments to improve the management of an RSL

A cyclical inspection or special investigation by R&I has indicated one or more of the following performance failures:

- serious weaknesses have been identified either in the control exercised by the governing body or in the conduct of the RSL;
- unsatisfactory progress has been made in addressing serious performance issues following an inspection or investigation by Communities Scotland;
- deferring statutory action until the RSL's next full inspection represents an unacceptable risk to the RSL and its tenants;
- there are serious concerns about the financial viability of the RSL (eg emerging from the annual assessments of financial viability conducted by Regulation & Inspection), and the governing body requires support in reviewing the options for addressing this.

Role of Communities Scotland's Regulation Board

- 15 In normal circumstances the decision to make appointments will be made at a meeting of Communities Scotland's Regulation Board. Where it is essential that appointments are made between meetings, the chief executive and the chair of the Regulation Board have delegated authority to approve appointments to an RSL's governing body. Use of this delegated authority will be reported to the first meeting of the Regulation Board following the appointments.
- 16 Before deciding to make appointments, Communities Scotland will issue a written report to the RSL. This will normally be a draft of an inspection report, but may also be a report on the findings of a special investigation². The RSL will be able to comment on any factual inaccuracies and to challenge any findings stated in the report.
- 17 We will notify an RSL if Communities Scotland intends to make appointments. The RSL may, if it wishes, make written representations to challenge Regulation & Inspection's proposed course of action. The timescale for making such representations will be determined by the date of the next meeting of the Regulation Board and/or the urgency of the situation.
- 18 Any representations by the RSL should be made to the Regulation Board, or to Communities Scotland's chief executive, if the decision is to be made under the delegated authority arrangements already described. Having considered any representations from the RSL, a final decision will be made by the Regulation Board (or the chief executive and chair of the Regulation Board). No appointees will be introduced to the governing body until this process of approval has been completed.
- 19 Scottish Ministers will be advised of the decision to make appointments, and will get a copy of the report to the Regulation Board.

Joint working with other regulators

- 20 We will liaise closely with the Care Commission where an RSL provides housing support services which are registered with them. We will ensure that any appointees to such RSLs are 'fit persons' as defined in the Regulation of Care (Scotland) Act.
- 21 Where the RSL is part of a group, or parent/subsidiary structure, which operates in both England and Scotland, we will liaise closely with the Housing Corporation throughout this process.

² A 'special investigation' is a formal review by Regulation & Inspection outside the programme of cyclical inspections. Such a review may be triggered by information that becomes available between inspections – eg as a result of ongoing assessments of financial viability, or if serious complaints about the RSL are made to Regulation & Inspection.

Selection and appointment procedures

- 22 Before selecting people to serve as appointees on the governing body of an RSL, Communities Scotland will draw up criteria setting out the range of skills and experience needed to address the problems of the RSL concerned.
- 23 Where a single appointment is being made, the person appointed must meet all the relevant criteria. Where a number of appointments are being made, individual appointees must meet at least some of these criteria and the appointees collectively must satisfy all the criteria.
- 24 We will refer initially to the register of potential appointees developed in partnership with the Scottish Federation of Housing Associations (SFHA). The register is a list of people who have expressed an interest in serving as an appointee on the governing body of an RSL, and who have been assessed as possessing skills and experience which would make them suitable for consideration as appointees.
- 25 The skills, experience and availability of the people on the register will be matched to criteria drawn up for appointments to the RSL in question. Where specific skills or abilities are required that cannot be found within the register, Communities Scotland may use other methods to identify additional appointees. Normally this will involve a direct approach being made to people who are known to have the skills required.
- 26 Potential appointees will be given sufficient information, in confidence, about the RSL to allow them to decide if they are able and willing to take up the appointment. Care will be taken not to appoint anyone who would thereby be placed in a conflict of interest situation. Proposed appointees may need to obtain their employer's approval to the appointment, and will need to do so where their employer is another RSL.
- 27 Communities Scotland will provide formal notification of the appointments to the RSL. A member of Regulation & Inspection's support team will contact the RSL to arrange to attend the earliest possible governing body meeting to introduce the appointees, to explain their role, and to answer any questions the governing body may have.
- 28 Prior to joining the governing body, the appointees will be briefed by Regulation & Inspection and will be given copies of:
- the RSL's rules, or memorandum and articles of association;
 - its most recent accounts;
 - its most recent annual performance and statistical return;
 - its most recent inspection report; and
 - any other documents relevant to their role as appointees.
- 29 The appointees will be provided with a formal brief and remit by Regulation & Inspection, and this will be shared with the governing body.

- 30 The appointees' brief will require them to notify any issues of concern to Communities Scotland, even if such issues do not form part of their original remit.
- 31 Communities Scotland will ensure that the RSL notifies registered tenants organisations and its tenants of the appointment and provides them with information detailing:
- why the appointment has been made;
 - the experience of new appointees;
 - the role of new appointees;
 - how tenants will be kept informed of progress made.
- 32 Communities Scotland will regularly review the RSL's progress and the remit of the appointees. We will consult with the RSL's governing body as a whole as part of this process.

The role of an appointed governing body member

- 33 An appointed governing body member's primary duty is to the RSL. An appointee will bring specialist knowledge, experience or skills to the governing body, however, their functions and responsibilities are identical to those of other members. Appointed members have the same rights as other governing body members to receive notices and papers for all meetings. They are entitled to attend, speak at and vote at all meetings including annual and special general meetings. Appointees also have the right to convene general meetings.
- 34 Although appointed governing body members will contribute specialised knowledge, experience or skills, their role is not to act as consultants. Governing bodies should decide if consultants are needed and, if so, take steps to engage them.
- 35 Equally it is not part of the duties of appointed governing body members to undertake the work of the staff or agents of an RSL. If the RSL's performance failures are attributable to the performance of staff and/or agents, it is the governing body's responsibility to take the necessary steps to remedy the situation.
- 36 Where ordinary governing body members are unwilling to recognise and act upon failures at an operational level, statutory appointees may recommend that Communities Scotland should appoint a manager under Section 71 of the 2001 Act. Communities Scotland will consider any such recommendations in accordance with the arrangements for appointing a manager, described in Information Note 3 in this series.

Rights of appointed governing body members

- 37 Appointed governing body members are entitled to be reimbursed by the RSL for expenses incurred in

acting as a governing body member. No other remuneration is payable. Payment of expenses should be made in accordance with the RSL's policy.

38 Appointed governing body members are entitled to be sure they will not be put at personal or financial risk where they have acted reasonably, responsibly and in good faith in fulfilling their duties as governing body members. Where RSLs have insurance in place for governing body members, the insurance company should be notified, and Communities Scotland should be advised whether the appointees are covered by the RSL's insurance arrangements. If they are not, Communities Scotland will take the action considered necessary to provide appropriate protection.

Relationship of appointees to Communities Scotland

39 The day-to-day point of contact for Communities Scotland with an RSL is with the senior member of staff. This will continue to be the case, unless there are particular reasons why it would be more appropriate for the chairperson or the secretary of the RSL to be the point of contact.

40 Communities Scotland will ask for the appointees' views on the RSL's performance on a regular basis. Appointees will inform the governing body if such a report is being made, but their report may be confidential, if the appointees think this is appropriate.

41 Appointees are free to contact Communities Scotland at any time for advice. They will have a named point of contact in the Regulation & Inspection support team.

42 We appreciate that the governing body as a whole may want to discuss the role of the appointees and the performance of the RSL. We will periodically offer the governing body as a whole the opportunity to discuss with us the intervention strategy for their organisation.

Ending appointments

43 Communities Scotland will set the length of appointments when they are made but may extend them if the RSL's performance takes longer than expected to improve. Appointees can retire from the governing body at any time, in accordance with the rules of the RSL.

44 If appointees retire, or do not wish to continue if Communities Scotland proposes an extension of their appointments, replacement appointments may be made. Communities Scotland will give formal notification of the ending of appointments to both the appointees and the RSL.

45 At the end of their appointments, appointees are free to be co-opted by the governing body or to fill casual vacancies in accordance with the RSL's governing instrument, should the governing body wish. Former appointees can also seek membership of the RSL and election to the governing body if they wish, provided that they meet the relevant eligibility criteria in the RSL's governing instrument.

INFORMATION NOTE 2

REMEDIAL PLANS (REGISTERED SOCIAL LANDLORDS)

Introduction

- 1 The Housing (Scotland) Act 2001 ('the 2001 Act') provides Scottish Ministers with powers to require a local authority to produce a remedial plan following an inspection. This information note describes how Communities Scotland will, as a matter of policy, make comparable arrangements for RSLs.

PART 1: STATUTORY PROVISIONS

- 2 [Sections 74 and 75 of the 2001 Act](#) describe the statutory procedure for local authority remedial plans. In summary:
 - a local authority can be required to submit a remedial plan in relation to any aspects of its role in providing housing accommodation and related services which have been identified as unsatisfactory during an inspection;
 - the remedial plan will be subject to acceptance or rejection by Scottish Ministers;
 - implementation of the remedial plan may be subject to a further inspection;
 - submission of a remedial plan, and assessment of its implementation, is required before a manager may be appointed under Section 75 of the 2001 Act.
- 3 There is no equivalent statutory provision for the appointment of a manager to an RSL under Section 71 of the 2001 Act to be preceded by a remedial plan.

PART 2: COMMUNITIES SCOTLAND'S POLICY AND PROCEDURES

General policy

- 4 As a matter of policy, Communities Scotland will provide RSLs with similar rights as local authorities have under the 2001 Act in relation to remedial plans.
- 5 This policy means that:
 - RSLs will have the opportunity, in certain circumstances, to submit a remedial plan, and for the implementation of the remedial plan to be subject to a formal inspection, before a manager is appointed under Section 71 of the 2001 Act.
 - The circumstances in which the submission of a formal remedial plan will be applicable are where:

- the performance problems which are of concern to Communities Scotland relate to an RSL's performance in planning or delivering housing and related services, and
- the form of statutory action being considered by Communities Scotland is the appointment of a manager under Section 71 of the 2001 Act.

- 6 The procedures relating to remedial plans described in this Information Note will not be applicable if:
- the RSL's performance problems involve the governance or financial management of the RSL; and/or
 - Communities Scotland considers that the appointment of a manager without the submission and inspection of a remedial plan is needed as a matter of urgency, because of the seriousness of the risks presented to the RSL, its service users, and the interests of other stakeholders.

Improvement plans and remedial plans – a graduated approach to intervention

- 7 Our Intervention Strategy is based on enabling regulated bodies to take a proactive approach to achieving improvements, without external intervention.
- 8 Where RSLs embrace this approach, we anticipate they will be able to resolve problem areas without any need for statutory intervention.
- 9 Our strategy is based on a clear distinction between post-inspection improvement plans and remedial plans.

Improvement plans are a document produced by every RSL after an inspection by Communities Scotland.

The purpose of an improvement plan is to demonstrate how the RSL will address the issues and recommendations raised in the inspection report. Improvement plans are not part of Communities Scotland's intervention strategy. However, they are an important mechanism for addressing problems. They are mentioned here to illustrate our graduated approach to intervention.

Remedial plans, by contrast, are an exceptional measure.

A requirement to submit a remedial plan means that an improvement plan has not resolved serious service delivery failures identified during the original inspection.

As with improvement plans, the purpose of a remedial plan is to set out an RSL's proposals and programme for making improvements. However, the requirement to submit a remedial plan will indicate that Communities Scotland considers the RSL's performance in service delivery needs to be improved urgently, and that the appointment of a manager under Section 71 of the 2001 Act will be considered if the implementation of the remedial plan does not deliver significant improvements.

Follow-up work after inspections

- 10 Regulation & Inspection will monitor progress by RSLs in submitting and implementing improvement plans. Our aim is that this process should support RSLs' own plans and programmes to achieve continuous improvement.
- 11 Several factors will influence what happens after an inspection:
 - the materiality and significance of any performance problems identified during the original inspection;
 - the impact of any such problems on the quality of service or performance outcomes;
 - the quality of the RSL's improvement plan;
 - the RSL's progress in implementing the improvement plan.
- 12 Regulation & Inspection will exercise a lighter touch to post-inspection work, where an inspection has indicated no significant performance problems, or where an RSL demonstrates clearly its willingness and ability to make improvements.
- 13 If an inspection demonstrates significant weaknesses and/or an RSL's improvement plan or subsequent performance in making improvements is unconvincing, a higher level of post-inspection monitoring will take place. This may take the form of further focused inspection work, including on-site inspection activity and discussions with officers as required, ahead of the RSL's next scheduled full inspection.

'Triggers' for requiring submission of a remedial plan

- 14 A requirement for submission of a remedial plan will indicate that:
 - the issues of serious concern to Communities Scotland relate to the RSL's performance in service planning and delivery;
 - the RSL has not made satisfactory progress in addressing these concerns, eg through the content or implementation of a post-inspection improvement plan;
 - we do not have confidence in the RSL's ability to make the necessary improvements on a voluntary basis.
- 15 A remedial plan should set out the RSL's detailed proposals for making improvements. The RSL should consult with registered tenants organisations on its proposals. The plan is subject to approval by Communities Scotland, and its implementation will be subject to a formal inspection. If the inspection indicates that the remedial plan has not been implemented satisfactorily, the appointment of a manager under Section 71 of the 2001 Act may follow.

16 As stated earlier in this information note, remedial plans will not be applicable if:

- the RSL's performance problems involve the governance or financial management of the RSL; and/or
- Communities Scotland considers that the appointment of a manager under Section 71 is needed as a matter of urgency because of the risks involved.

However, other than in crisis situations, RSLs experiencing governance or financial management problems are still likely to have ample opportunities to make improvements voluntarily, before the appointment of a manager is considered.

Role of Communities Scotland's Regulation Board

17 Since there is no statutory basis for RSL remedial plans, decisions to instruct an RSL to submit a remedial plan do not need the prior approval of the Regulation Board of Communities Scotland.

18 The Regulation Board will however be notified of any instructions issued to an RSL to prepare a remedial plan, since this may precede statutory action which the Regulation Board may be asked to approve at a future date.

Communities Scotland's procedures

19 Communities Scotland's procedures for RSLs do not have the same statutory basis as those applicable to local authority remedial plans. There is no statutory requirement for an RSL to co-operate in the remedial plan process, although we anticipate that any RSLs faced with the prospect of a manager being appointed will wish to do so.

20 We will notify an RSL's governing body in writing of any requirement for the submission of a remedial plan. We will call this notification a stage 1 letter, and it will specify:

- **The matters to be addressed by the remedial plan.**

This will generally be in relation to specific matters contained within an inspection report or follow-up report, but could potentially relate to an inspection report in its entirety.

- **The date by which the RSL must make any comments to Communities Scotland on the proposed requirement.**

A period of four weeks from the date of the stage 1 letter to the RSL will generally be allowed. This timescale may be varied by agreement.

- **The proposed timescale for submission of the remedial plan to Communities Scotland.**

A period of six weeks from the date of the stage 2 letter¹ to the RSL will generally be proposed by Communities Scotland. This timescale may be varied by agreement.

- **The timescales for Communities Scotland to respond to comments and to the remedial plan.**

We will generally respond to the RSL within four weeks of receiving comments on the draft notice and within four weeks of receiving the remedial plan. This may be varied by agreement.

21 Communities Scotland will consider any comments made by the RSL in response to the stage 1 letter. Following this consideration, Communities Scotland will confirm in writing the requirement for a remedial plan. This will be provided in a stage 2 letter which may:

- confirm the contents of the stage 1 letter, without amendment
- amend the contents of the stage 1 letter.

Alternatively, Communities Scotland may withdraw the requirement for a remedial plan, eg if the RSL makes satisfactory proposals for voluntary action, and Communities Scotland is satisfied that production of a remedial plan is no longer needed.

- 22 On receipt of a remedial plan, Communities Scotland will approve the plan (with or without modifications), or reject it. Communities Scotland may also attach conditions as to the adoption and implementation of the plan by the RSL.
- 23 The RSL should adopt and implement any remedial plan which is approved by Communities Scotland, taking account of any modifications or conditions attached to the plan. Where a remedial plan is rejected, we may require the RSL to submit a revised plan, or we may proceed to recommend the appointment of a manager.
- 24 In modifying, rejecting, or adding conditions to a remedial plan, Communities Scotland will advise the RSL of its intentions, and we will have regard to any comments the RSL may submit. Since any RSL required to submit a remedial plan will be subject to priority supervision arrangements, we will ensure that information is publicly available about the nature of those arrangements, so that other stakeholders are aware of the arrangements in place, and can then obtain further information from the RSL.
- 25 Where appropriate, we will liaise closely with other regulators – the Care Commission and the Housing Corporation – throughout this process.

¹ See paragraph 21

INFORMATION NOTE 3

APPOINTMENT OF A MANAGER TO AN RSL

Introduction

- 1 [Section 71](#) of the Housing (Scotland) Act 2001 ('the 2001 Act') provides Scottish Ministers with powers to appoint a manager to an RSL. As an executive agency, Communities Scotland has been given authority to exercise the powers in Section 71 on behalf of Ministers.

PART 1: STATUTORY PROVISION

- 2 The powers contained in Section 71 can be summarised as follows:

Section 71 of the 2001 Act

- Scottish Ministers may appoint a manager to an RSL where they consider this is required to ensure that the management of the RSL's affairs is of an appropriate standard.
- A manager may be appointed to conduct all of an RSL's affairs, or such of its affairs as are specified by Scottish Ministers.
- The appointment of a manager can be made directly by Scottish Ministers, or the RSL can be required to make the appointment.
- The period of appointment, terms and conditions, and specific powers are as determined by Scottish Ministers.
- The remuneration and expenses of the manager are to be paid by the RSL.
- The manager must comply with any directions given by Scottish Ministers as to their functions and their implementation.

PART 2: COMMUNITIES SCOTLAND'S POLICY AND PROCEDURES

Possible 'triggers' for the appointment of a manager by Communities Scotland

- 3 Communities Scotland's policy is to encourage regulated bodies to take a proactive approach to identifying and responding to organisational problems before they reach a critical stage. This policy is intended to ensure that problems can be resolved without the need for statutory intervention.
- 4 Use of the power to appoint a manager to an RSL will generally follow on from the graduated process of support and intervention described in our Intervention Strategy. However, the power to appoint a manager may be exercised where crisis situations arise without prior warning, or if we encounter performance problems of such seriousness that immediate intervention is needed to safeguard the interests of the organisation, its tenants and other stakeholders.

- 5 The particular circumstances leading to the appointment of a manager are likely to be unique to the RSL concerned. As a matter of general policy, the main circumstances where we will consider appointing a manager are where any of the following factors apply:
- The RSL is facing critical financial viability problems and urgent action is needed to devise and/or implement a strategy to address these problems. The RSL needs additional professional support to achieve this outcome.
 - The RSL shows sustained serious failures in the delivery of its core services, which may include breach of its statutory and/or contractual obligations, and needs additional professional support to make improvements.
 - The RSL is experiencing serious staffing difficulties which are impeding its efforts to improve performance. For example:
 - staff members have refused to implement the reasonable instructions of the governing body and this has led to serious failures to meet statutory/contractual obligations and Performance Standards;
 - the RSL's existing staff team has broken down and requires urgent support to address serious problems or failures. The RSL itself has been unable to remedy this state of affairs.
 - The RSL has refused to implement an arbiter's decision in respect of the allocation of housing to a homeless applicant.
 - Urgent support is required by an RSL which is undergoing a transfer of engagements or a directed transfer.
- 6 It is not possible to produce a definitive or exhaustive list of the circumstances which could lead to a manager being appointed. The factors described above are intended to provide a general illustration only, but convey the key issues which Communities Scotland will consider before deciding to use the powers provided in Section 71 of the 2001 Act.
- 7 In considering the appointment of a manager, we will have regard to:
- the seriousness of the RSL's performance problems or failures;
 - the urgency with which the problems or failures need to be addressed;
 - what voluntary action has been taken or is proposed by the RSL, and whether this provides sufficient assurance that the RSL is capable of partly or wholly resolving the issues involved;
 - whether the RSL is facing legal action as a result of its performance failures or problems.

- 8 We will assess carefully the underlying reasons for the RSL's performance, to identify whether the appointment of a manager represents the most effective form of intervention. For example:
- if the essential problem is the governing body's conduct or performance, statutory appointments to the governing body will be a more effective strategy;
 - if the governing body is performing effectively but the organisation lacks the capacity at senior staff level to make changes, the appointment of a manager will be more appropriate;
 - in some cases, appointments to the governing body may already have been made, and the appointees may conclude that the RSL also needs additional professional support in the form of a manager;
 - in other cases, the appointment of a manager could be accompanied by appointments to the RSL's governing body, if this is also an area of significant weakness.
- 9 Other than in response to crisis situations, the appointment of a manager will be preceded by an inspection or special investigation¹ by Regulation & Inspection, and the RSL will have had the opportunity to make improvements before statutory action is taken. This may include the submission of a remedial plan, and an inspection of the implementation of the remedial plan (see [Information Note 2](#) in this series, on remedial plans).
- 10 Before making an appointment using this statutory power, Communities Scotland will discuss its proposals with other regulators. Where the RSL provides registered housing support services we will liaise closely with the Care Commission. Where the RSL is linked to an organisation regulated by the Housing Corporation in England, we will liaise with them.

The manager's role

- 11 A manager appointed by Communities Scotland under Section 71 of the 2001 Act may act on behalf of an RSL in relation to whichever aspects of the RSL's affairs are specified by Communities Scotland.
- 12 The Act further provides a manager with a general power to do all that is necessary for carrying out the manager's functions, as well as any powers specified by Communities Scotland. The manager has the ability to act without reference to the RSL's governing body or senior officers, but may not act beyond the powers of the governing body, (ie he/she can only do things which the RSL has legal capacity to do).
- 13 In exercising the powers in Section 71, Communities Scotland will, as a matter of policy, seek to preserve the role played by RSL governing bodies, wherever this is appropriate. Our methods for achieving this are discussed in the section 'Appointing a manager', later in this information note.
- 14 In practical terms, the general role of a manager appointed by Communities Scotland is to provide expert, professional support to the governing body and/or staff of an RSL, to remedy serious problems or failures affecting the organisation's performance.

¹ A 'special investigation' is a formal review by Regulation & Inspection outside the programme of cyclical inspections. Such a review may be triggered by information that becomes available between inspections – eg as a result of ongoing assessments of financial viability, or if serious complaints about the RSL are made to Regulation & Inspection.

- 15 Beyond this general role, the terms of reference for each appointment will be specified by Communities Scotland, and will reflect the reasons for the appointment being made.
- 16 Depending on these reasons, the manager's role could involve any or all of the following:
- providing the RSL with a clear strategy for moving forward on the matters covered by the appointment;
 - implementation of his/her recommendations, if the RSL lacks the senior staff capacity to do this effectively;
 - monitoring the implementation of an agreed strategy;
 - assuming overall senior management responsibility within the RSL, eg if there is no senior staff member performing that role, or if the conduct or performance of existing senior staff are preventing the RSL from operating effectively;
 - allocation of housing to a homeless person(s), or reviewing the RSL's policies and practices relating to homelessness, where the RSL has refused to implement the decision of an arbiter appointed under [Section 6](#) of the Housing (Scotland) Act 2001.
- 17 The role a manager will play will be specified in full in the terms and conditions of his/her employment or secondment
- 18 A manager may identify a need for the RSL to appoint other support staff, for example where the RSL does not employ staff in a particular operational role, or where the manager considers that the RSL's existing staff resources need to be supplemented. Any such additional appointments would be made by the RSL, rather than by Communities Scotland.

Role of the Regulation Board

- 19 The power to appoint a manager to an RSL is vested in the Regulation Board of Communities Scotland. Before the Regulation Board meets, the governing body of the RSL will be provided with a written statement, describing the main grounds on which the appointment of a manager is being proposed, the intended commencement date, and initial period of the appointment.
- 20 Communities Scotland will, where appropriate, also ensure that the RSL notifies the Scottish Federation of Housing Associations of the proposed appointment if the RSL is a member. The purpose of doing so is to establish parity of treatment between RSLs and local authorities before a manager is appointed, since the 2001 Act contains a statutory requirement for bodies representing local authorities to be consulted.
- 21 The RSL will be able to challenge the reasons for recommending the appointment by making representations to the Regulation Board before it makes its decision. Thereafter, the decision of the Regulation Board will be final, and the RSL will not have a further right of appeal to Communities Scotland.

- 22 If the appointment of a manager is being considered in response to an urgent crisis situation within an RSL, the chief executive and the director of Regulation & Inspection have been provided with delegated authority to make an appointment, if this is required. In these circumstances, the RSL will still be provided with the opportunity to make representations before the decision to appoint a manager is taken, but will not have a further right of appeal. Any use of this delegated authority will be the subject of a full written report to the next meeting of the Regulation Board.
- 23 We will advise Scottish Ministers immediately of any decision by Communities Scotland to exercise the powers to appoint a manager.

Appointing a manager

- 24 The manager's contract of employment will usually be with the RSL (acting under direction by Communities Scotland) but it may be that Scottish Ministers acting through Communities Scotland make the appointment.

(i) Appointment of a manager by the RSL

- 25 Unless the conduct or performance of the governing body is a material consideration, Communities Scotland's general policy will be to specify that the RSL should appoint the manager, on terms and conditions approved in advance by Communities Scotland.
- 26 The terms and conditions for the appointment will be framed to enable the governing body to play a full part in working collaboratively with the manager to address the organisation's performance problems. Under this appointment method, our policy is that a manager will be required to:
- report to the RSL's governing body regarding his/her activities;
 - seek the governing body's approval for major decisions he/she wishes to take on the RSL's behalf;
 - report to Communities Scotland on the conduct of his/her appointment.
- 27 A manager appointed by the RSL, under direction by Communities Scotland will be accountable to the governing body of the RSL in terms of his/her contract of employment. The contract will set out the role and remit of the manager and clearly specify the lines of reporting.
- 28 The provision of regular reports to Communities Scotland, and compliance with any directions issued by Communities Scotland, will be essential conditions of the manager's terms and conditions of employment. This reflects the statutory duties placed on the manager under Section 71 of the 2001 Act.
- 29 Formal directions made by Communities Scotland will be binding upon the manager and any actions

by the manager as a result of that direction will be binding on the RSL. Our policy will be to make such directions on an exceptional basis, where formal intervention is required to give effect to critical decisions.

30 If the governing body does not work constructively with the manager, or does not accept the manager's advice, Communities Scotland may make appointments to the governing body of the RSL. In these circumstances, we may also discuss with the RSL whether the manager's appointment should be terminated, with a view to the appointment of a manager by Communities Scotland itself under Section 71 (1)(a) of the 2001 Act.

(ii) Appointment of the manager by Communities Scotland

31 Other circumstances in which Communities Scotland may, as a matter of policy, elect to appoint a manager directly under Section 71(1)(a) of the Act include the following:

- the conduct or performance of the governing body is a material factor in the RSL's performance problems;
- the governing body is unwilling to work constructively with a manager;
- the RSL refuses to comply with a statutory direction to make the appointment itself.

This list is not exhaustive and other situations may arise which would lead to Communities Scotland appointing a manager.

32 Where Communities Scotland appoints the manager any contract will be issued by Communities Scotland, acting on behalf of Scottish Ministers. The terms and conditions of the appointment will not provide the RSL's governing body with the same rights as are described in paragraph 26 above. Otherwise, the terms and conditions of the appointment will contain the same essential features as are described above, ie:

- compliance with any directions issued by Communities Scotland will be an essential condition of the manager's terms and conditions of employment;
- formal directions made by Communities Scotland will be binding upon the manager and any actions by the manager as a result of that direction will be binding on the RSL;
- the provision of regular reports to Communities Scotland on the conduct of the appointment will also be an essential condition of the manager's terms and conditions of employment.

(iii) Other considerations relating to appointments

33 Whichever method of appointment is used, the RSL is responsible under Section 71 of the 2001 Act for

paying for the cost of employing the manager. Where an appointment is made by the RSL, it will be responsible for paying the manager's costs directly. Where Communities Scotland appoints the manager, the costs may be met directly by the RSL, or they may be met initially by Communities Scotland and then recovered from the RSL. Communities Scotland will ensure that these costs will not have an adverse impact on the financial viability of the RSL.

34 The contractual options available in respect of appointing a manager are as follows:

Where the appointment is made by Communities Scotland under Section 71(1)(a) of the Act, the manager's contract will be issued by Scottish Ministers acting through Communities Scotland. The manager could be:

- a consultant engaged by Communities Scotland;
- an employee of another RSL on a secondment basis.

Where the appointment is made by the RSL under direction by Communities Scotland under Section 71(1)(b) of the Act, the manager's contract will be issued by the RSL, subject to prior approval by Communities Scotland. The manager could be:

- a consultant engaged by the RSL;
- an employee of another RSL who is seconded to the RSL which is subject to statutory action.

35 Where the RSL appoints the manager, the RSL will draft a contract, for approval by Scottish Ministers, who will confirm any additional terms and conditions relating to the manager's specific remit for the RSL concerned. Any variations to the contract and any additional terms and conditions the RSL may wish to specify require to be approved in advance by Communities Scotland. We will have regard to any comments the RSL makes about the proposed terms and conditions, before the contract is finalised.

36 The RSL may have responsibilities towards the manager under employment law and other legislation. The RSL is responsible for obtaining its own legal advice to ensure it is complying with all relevant obligations.

37 Communities Scotland will maintain a register of persons whose skills and experience mean they would potentially be suitable to act as managers. We will ensure that the selection of managers for the register is in line with employment legislation and good practice requirements. We will also ensure that appropriate training is delivered to those on the register. We will use the register to identify potential managers for specific assignments. We may also recruit individuals who are not on the register, and we may seek advice from other representative bodies about possible managers.

38 In seeking to match suitable individuals to specific assignments, we may need to discuss the reasons for the proposed statutory action, and to establish that there are no conflicts of interest which would prevent an appointment being made. Any such discussions will be in confidence, and Regulation & Inspection will expect any persons or organisations consulted to sign a confidentiality agreement, before we disclose the identity of the RSL.

39 Communities Scotland and the RSL will brief the manager in detail at the start of the assignment, to provide the required information about:

- the RSL;
- background to the decision to appoint the manager;
- role and responsibilities of the manager;
- relevant timescales;
- reporting requirements;
- arrangements for remuneration and termination of the appointment;
- the vires of the RSL.

40 Communities Scotland will ensure that the RSL notifies registered tenants organisations and its tenants of the appointment and provides an explanation of the manager's role and how tenants will be kept informed of progress. The RSL will be expected to make proposals to Regulation & Inspection within 21 days of receipt of the notification that the appointment will be made, to state its intentions with regard to information for tenants.

Impact on the RSL's existing staff

41 If the RSL does not have a senior officer in post (eg because the previous postholder has left or is absent from work for an extended period), the manager's duties may include performing the senior management role within the RSL.

42 If the RSL has an existing senior officer in post, matters will be more complicated and will need to be carefully managed by the RSL. The appointment of a manager will clearly impinge on the role of the senior staff member, but his/her role is not intended to supplant the day-to-day role of the existing senior staff member, unless:

- the manager's appointment involves running all aspects of the RSL's affairs;
- the conduct or performance of the current postholder has been a material factor in the RSL's poor performance, or is subsequently identified as such by the manager.

43 It should not be generally assumed that the appointment of a manager has resulted from acts or omissions on the part of existing staff, since the facts of each case will vary.

44 Where staff performance or conduct *is* part of the RSL's difficulties, the RSL should manage this according to its normal disciplinary procedures, informed by legal advice if appropriate. It is essential that where a manager is being appointed, the RSL should discuss this fully with existing staff

members, so that they are aware of the reasons for the appointment, the manager's role, and any implications for their own role.

Other accountability issues

45 The RSL should advise the following persons/bodies of the appointment of the manager within 7 days of receipt of the notification that the appointment will be made:

- RSL solicitor;
- RSL external auditor;
- RSL banker;
- RSL lenders;
- registered tenants organisations;
- local authorities with which the RSL has contractual, funding or partnership arrangements.

46 Depending on the circumstances which have led to the appointment of a manager, the RSL should provide a general assessment of the progress which is being made to improve the performance of the RSL, at the next scheduled special general meeting or annual general meeting.

47 Communities Scotland will provide a position statement setting out the regulatory position relating to the RSL's affairs. We will require the RSL to use this statement to brief third parties (including registered tenants groups and funders) that it is subject to statutory action.

48 In addition, we will normally release a press statement or otherwise publicise the action we are taking. We will normally issue a further press statement when the statutory action ends.

Procedures for monitoring the manager's appointment

49 A manager appointed under Section 71 of the 2001 Act will be required as a condition of his/her appointment to submit regular reports to Regulation & Inspection about the conduct of the appointment.

50 Communities Scotland may issue directions regarding the exercise of the manager's functions.

51 The manager's performance will be monitored by Communities Scotland, and may be subject to termination if he/she fails to adhere to the terms and conditions specified by Communities Scotland, on behalf of Scottish Ministers, for example if the manager fails to provide information or to implement instructions.

INFORMATION NOTE 4

STATUTORY INQUIRIES INTO THE AFFAIRS OF RSLs

Introduction

- 1 This information note describes Communities Scotland's powers to instruct an inquiry into the affairs of a Registered Social Landlord (RSL) under [Schedule 7, Part 4](#) of the Housing (Scotland) Act 2001 ('the 2001 Act'). The information note also provides guidance about how these powers may be applied by Communities Scotland.

PART 1: STATUTORY PROVISIONS

- 2 Under Sections 28–32 of the Housing Associations Act 1985, Scottish Homes had powers to instruct a statutory inquiry, and to take specific actions as a result of an inquiry.
- 3 The powers in Schedule 7, Part 4 of the 2001 Act are substantially the same as those contained in the earlier legislation. The main differences are as follows:
 - under the 2001 Act, statutory intervention powers apply to all RSLs, including those that are constituted as companies limited by guarantee;
 - as an executive agency, Communities Scotland will exercise all of the Schedule 7, Part 4 powers on behalf of Scottish Ministers. This includes the power to direct a transfer of some or all of an RSL's land following an inquiry;
 - there is a new statutory duty to consult with the tenants affected and to have regard to their views, if an inquiry results in a proposal to direct the transfer of an RSL's land.
- 4 Figures 1 and 2 summarise the powers in the 2001 Act relating to statutory inquiries.

Figure 1

Conduct of an inquiry

- Scottish Ministers have the power to appoint an independent person to conduct an inquiry into the affairs of an RSL.
- An Inquirer has wide powers to obtain information needed for the inquiry from anyone thought to have such information. The powers extend to any subsidiary or associated organisation of the RSL.
- The Inquirer must make a final report to Scottish Ministers on the matters specified and in the form required by Scottish Ministers. The Inquirer can also make interim reports during the course of the inquiry if he/she thinks fit.
- If required for the purposes of the inquiry, an auditor can be appointed to conduct an extraordinary audit of the RSL's financial accounts.

Figure 2**Powers which can be exercised following an inquiry**

- Where Scottish Ministers are satisfied, as the result of an inquiry, an extraordinary audit, or an interim report by an Inquirer that there has been misconduct or mismanagement in the affairs of an RSL, they may exercise a range of powers described in the Act.
- These powers include removing or suspending officers, committee members, employees or agents of the RSL; and Communities Scotland's approval will be required with regard to some of the RSL's financial transactions.
- As the result of an inquiry or associated extraordinary audit, Scottish Ministers ultimately have the power to direct the RSL to transfer some or all of its land to another RSL, having consulted with tenants and having had regard to the views they have expressed. Ministers have the power to direct a transfer where they are satisfied that:
 - there has been misconduct or mismanagement in the administration of the RSL, or
 - the management of the land belonging to the RSL would be improved if transferred to another RSL.

PART 2: COMMUNITIES SCOTLAND'S POLICY AND PROCEDURES**Delegation by Scottish Ministers**

- 5 Under the [Regulatory Code of Practice](#) published in November 2001, Scottish Ministers have delegated to Communities Scotland the exercise of their powers relating to statutory inquiries. The remainder of this information note describes the policy and procedures which Communities Scotland will follow in implementing these powers, if required.
- 6 Communities Scotland will institute an inquiry only where there has been a long-term performance failure or where there is prima facie evidence of serious or continual misconduct or mismanagement in the affairs or administration of the RSL. An inquiry will only be considered as a last resort. Other strategies, such as statutory appointments to the governing body or the appointment of a manager, should either have been tried and failed or should clearly be inappropriate in the circumstances.
- 7 We will liaise closely with other regulators before we institute an inquiry – the Care Commission where the RSL provides registered housing support and the Housing Corporation where the RSL is linked to an organisation in England.

Circumstances which may trigger an inquiry

- 8 There are a number of situations which might lead to a decision to recommend that an inquiry be held. These are shown in Figure 3.

Figure 3**Possible circumstances leading to an inquiry**

These include:

- Continuous failure by an RSL to meet Performance Standards.
- Failure on the part of staff and/or governing body members to understand and acknowledge that there are performance failures.
- Serious breaches of legislation or Performance Standards which place the tenants or assets of the RSL at serious risk.
- Misuse or misapplication of the assets or funds of the RSL.
- Failure of other methods of intervention to deliver a sustainable solution to the RSL's problems. (For example, previous statutory interventions may have identified a need for the RSL to undertake a voluntary transfer of engagements but this has not been achieved.)

- 9 Depending on the circumstances, Communities Scotland may continue or initiate statutory appointments to the governing body and/or continue or initiate the appointment of a manager, to ensure that the RSL remains capable of operating during the course of an inquiry. However, in this scenario appointees and/or a manager would not make any decisions regarding the long-term future of the RSL, until the inquiry had been concluded and its results considered by the Regulation Board of Communities Scotland.

Role of the Regulation Board of Communities Scotland

- 10 The Regulation Board of Communities Scotland is responsible for making the decision to instruct an inquiry, for considering the Inquirer's report, and for approving any action to be taken following the inquiry.
- 11 The Regulation & Inspection division is responsible for making recommendations to Communities Scotland's Regulation Board on statutory inquiries. We will make a recommendation to the Board that an inquiry be held after notifying the RSL's governing body of our intention to do so and the main areas of concern. The RSL may, if it wishes, make representations to Regulation & Inspection, or direct to the Regulation Board.
- 12 A statutory inquiry is carried out by an independent Inquirer. The Inquirer's final report will be used by the Regulation Board to decide whether or not further statutory action is needed. Communities Scotland will advise Scottish Ministers immediately of any decision by the Regulation Board to appoint an Inquirer.

The inquiry process – overview

Setting up an inquiry

- 13 A person appointed as an Inquirer must meet the independence criteria specified in the 2001 Act (Schedule 7, Part 4, paragraph 16(1)). We will ask prospective Inquirers to confirm that there would be no possible conflicts of interest for them in carrying out the assignment.
- 14 The Inquirer will be appointed by letter. This will set out the terms and conditions, enclosing a notice of appointment which will specify the broad remit for the inquiry, as described in the report to the Regulation Board. Communities Scotland will specify the matters on which it requires the Inquirer to report and the form in which the report should be made.
- 15 A letter enclosing a copy of the notice of inquiry will be sent to the RSL's secretary. All committee or board members of the RSL will be advised individually that an inquiry has been instructed, the broad reasons and estimated timescale for the inquiry, and the name of the Inquirer.
- 16 The RSL will be reminded of the need to notify its lenders about the inquiry and that lenders may contact Communities Scotland for information. Communities Scotland will provide notification of the inquiry to the Financial Services Authority or Companies House, as applicable; the chief executive of any local authority with which the RSL has dealings; the Scottish Public Services Ombudsman; and the Management Board of Communities Scotland. Where appropriate we will also notify the Care Commission and the Office of the Charities Regulator.
- 17 If the RSL is a linked organisation with its parent or subsidiary registered in England, Communities Scotland will inform the Housing Corporation of its intention to set up an inquiry. In these circumstances, the Housing Corporation may carry out an investigation of the linked organisation for the purposes of the inquiry.
- 18 Communities Scotland will normally issue a press statement about the inquiry. The RSL will be informed in advance that this is to be done and will be sent a copy of the statement. We will also record in our annual report any statutory inquiries which have taken place during the preceding year.

Briefing the Inquirer

- 19 The Inquirer will be given a detailed oral briefing by Communities Scotland staff and written briefing material including the following:
 - the RSL's governing instrument;
 - the RSL's most recent annual accounts;
 - the RSL's latest performance and statistical returns to Communities Scotland;
 - inspection reports for the RSL;

- any documentary evidence of the matters under investigation;
- any other relevant background material concerning the RSL;
- copies of Performance Standards and any other relevant documents including guidance notes.

20 Communities Scotland will nominate a senior officer to act as the main contact for the Inquirer. We will agree arrangements with the Inquirer for regular reports on the progress of the inquiry.

Conduct of an inquiry

- 21 It is up to the Inquirer to decide how to carry out the investigation, what records and documents to investigate, who to interview, where and when, and how to make a record of the inquiry.
- 22 The RSL should continue to manage its affairs as usual during the inquiry. If statutory appointees are serving on the governing body or a manager has been appointed, they will be advised that their role during the course of the inquiry is to enable the RSL's day to day operations to continue. Similarly, staff from Regulation & Inspection contacting the RSL's staff and/or governing body while the inquiry is in progress will take care to ensure that this does not interfere in any way with the progress of the inquiry.
- 23 If the Inquirer makes an interim report this will be put to the Regulation Board. The Board will consider if any immediate action should be taken in accordance with paragraph 18(2) of Schedule 7, Part 4 of the Act.
- 24 While not a statutory requirement, Communities Scotland will expect that if the Inquirer intends to criticise anyone individually in the report, the criticisms will have been put to the person(s) concerned for response, and that any responses will be recorded in the report.
- 25 The Inquirer may ask in writing for any information considered necessary for the purposes of the inquiry. Such requests may be made to:
- any present or former officer of the RSL, any member, staff member or agent of the RSL;
 - any present or former officer, member or agent of a subsidiary or associate of the RSL; and
 - any other person the Inquirer believes may have relevant information (eg any other regulators, where they have a locus).
- 26 Failure to comply with a written request for information from an Inquirer without reasonable excuse is a summary offence. The person concerned is liable to a fine if convicted.

Final report

27 The Regulation Board of Communities Scotland will consider the inquiry report (and the report of any extraordinary audit) as quickly as is practicable. The Board may agree with the conclusions contained in the report, or it may come to different conclusions based on the evidence in the report. The report may be referred back to the Inquirer for clarification, or a supplementary report may be requested.

Representations from anyone criticised by the Inquirer

28 If the Regulation Board decides that the report identifies acts and omissions which could be construed as misconduct or mismanagement, it will invite any individual staff or governing body member criticised in the report to make representations to it. The same opportunity may be offered to anyone who appears from the report to have been involved in any matter that could be construed as prima facie evidence of misconduct or mismanagement. Copies of the parts of the report relevant to them will be sent to those criticised to enable them to make responses.

29 Only people sending a written response will be invited to make a personal presentation to the Regulation Board, and the Board may question them about their representations. A record of the meeting will be made and sent to those attending.

30 When the Regulation Board is satisfied that everyone criticised in the report has had a reasonable opportunity to state their case, it will conclude its consideration of the inquiry. The Board will decide what action is to be taken, based on all the information before it and the representations of all the parties involved.

Notification at the conclusion of an inquiry

31 The RSL will be notified by letter of the conclusions reached by Communities Scotland and the action to be taken. Individuals with whom Communities Scotland raised issues arising from the inquiry will be notified of the conclusions reached and any action to be taken on those issues.

32 All organisations originally notified that the inquiry was being set up will be notified of the conclusions reached and the action taken or proposed.

33 A press statement will normally be issued by Communities Scotland confirming the end of the inquiry and any action to be taken. The RSL will be notified in advance and will be given a copy of the statement.

34 Communities Scotland will make public a summary report of the inquiry. The summary report will outline the broad findings of the inquiry and any action taken. The report may be edited, where appropriate, to take account of any need for commercial confidentiality or proper protection of individuals. The summary report may include quotations from the Inquirer's report.

Action following a statutory inquiry

- 35 If the Regulation Board of Communities Scotland concludes that there is no evidence of mismanagement or misconduct or no necessity for further statutory action, the RSL and other bodies originally advised of the inquiry will be so informed.
- 36 If the Regulation Board concludes that there has been misconduct or mismanagement in the RSL's affairs, it will consider which (if any) of the powers described in Schedule 7, Part 4 of the 2001 Act require to be exercised. These powers are summarised in Figure 2 on page 2 of this information note.
- 37 When considering whether it is appropriate to direct a transfer of all or part of an RSL's land following an inquiry, Communities Scotland will have regard to strategic housing issues, as well as the geographical and constitutional circumstances of the RSL.
- 38 The tenants of any houses included in the proposed transfer will be consulted. The Regulation Board will take into consideration the views of those tenants when making a decision to direct the RSL to transfer land.
- 39 Scottish Ministers will be advised of any decision to direct a transfer of land and will be provided with a copy of the report to the Regulation Board.
- 40 Communities Scotland has other powers which are not dependent on an inquiry and which it may be appropriate to use after an inquiry. These powers are:
- to make appointments to the RSL's governing body under Schedule 7, Part 2 of the 2001 Act;
 - to appoint a manager under Section 71 of the 2001 Act; and
 - to take action under Schedule 8 of the 2001 Act, in consultation with the RSL's creditors, in the event that the RSL is unable to pay its debts.
- 41 If the RSL is subject to regulation by either the Care Commission or the Housing Corporation then we will liaise closely with the other regulator(s) and keep them informed throughout the process.

INFORMATION NOTE 5

REMEDIAL PLANS (LOCAL AUTHORITIES)

Introduction

- 1 The Housing (Scotland) Act 2001 ('the 2001 Act') provides Scottish Ministers with powers to require a local authority to produce a remedial plan. This information note describes how these powers will be applied by Communities Scotland, acting on behalf of Scottish Ministers.

PART 1: STATUTORY PROVISIONS

- 2 [Section 74 of the 2001 Act](#) describes the statutory procedure for requiring a local authority to submit a remedial plan, and for approval or rejection of remedial plans.
- 3 The requirement for a remedial plan can be specified in relation to housing and related services which have been inspected by Communities Scotland, where an inspection has identified any respects in which "... the exercise of the functions of the local authority in relation to the provision of housing accommodation and related services was found to be unsatisfactory".
- 4 The purpose of a remedial plan is to set out a local authority's proposals for dealing with matters identified as unsatisfactory in the inspection report. Under Section 75 of the Act, implementation of a remedial plan by a local authority will be subject to an inspection.

PART 2: COMMUNITIES SCOTLAND'S POLICY

Improvement plans and remedial plans – a graduated approach to intervention

- 5 Our Intervention Strategy is based on enabling regulated bodies to take a proactive approach to achieving improvements, without external intervention. Where local authorities embrace this approach, we anticipate they will be able to resolve problem areas without any need for statutory intervention. Accordingly, Communities Scotland does not intend to use remedial plans as a routine method of requiring local authorities to address any areas identified as being unsatisfactory during an inspection.
- 6 Our strategy is based on a graduated approach to intervention, and makes a clear distinction between post-inspection improvement plans and remedial plans.

Improvement plans are a document produced by every local authority after an inspection by Communities Scotland.

The purpose of an improvement plan is to demonstrate how the local authority will address the issues and recommendations raised in the inspection report. Improvement plans are not part of Communities Scotland's intervention strategy but they are an important mechanism for addressing

problems. They are mentioned here to illustrate our graduated approach to intervention.

Remedial plans, by contrast, are an exceptional measure.

A requirement to submit a remedial plan means that an improvement plan has not resolved serious performance issues identified during the original inspection. Alternatively, if an inspection demonstrated very serious performance failures, it is possible that Communities Scotland would issue an immediate requirement for a remedial plan to be submitted, omitting the improvement plan stage altogether.

As with improvement plans, the purpose of a remedial plan is to set out an authority's proposals and programme for making improvements. However, the content of a remedial plan will reflect the seriousness of the issues involved. The arrangements for submitting the plan and assessing the quality of its implementation will be subject to the statutory procedures described in the 2001 Act.

If an inspection finds that a remedial plan has not been implemented satisfactorily, the possibility of a manager being appointed under Section 75 of the 2001 Act may arise.

Follow-up work after inspections

- 7 Regulation & Inspection's support team will monitor progress by local authorities in submitting and implementing post-inspection improvement plans. Our aim is that this process should support authorities' own plans and programmes to achieve continuous improvement.
- 8 Several factors will influence what happens after an inspection and may include:
 - the materiality and significance of any performance problems identified during the original inspection;
 - impact of such problems on the quality of service or performance outcomes;
 - the quality of the authority's improvement plan;
 - the authority's progress in implementing the improvement plan.
- 9 Regulation & Inspection will exercise a lighter touch to post-inspection work, where an inspection has indicated no significant performance problems, or where a local authority demonstrates clearly its willingness and ability to make improvements.
- 10 If an inspection demonstrates significant weaknesses and/or a local authority's improvement plan or subsequent performance in making improvements is unconvincing, a higher level of post-inspection monitoring will take place. This may take the form of further focused inspection work, including on-site inspection activity and discussions with officers as required, ahead of the authority's next scheduled full inspection.

‘Triggers’ for requiring the submission of a remedial plan

- 11 A requirement for submission of a remedial plan will generally occur if satisfactory progress is not being made using the improvement plan route. The triggers for requiring a remedial plan include the following:
 - Communities Scotland has serious concerns about the quality of a local authority’s performance in delivering housing and related services;
 - the authority has not made satisfactory progress in addressing these concerns voluntarily;
 - we do not have confidence in the authority’s ability to make the necessary improvements voluntarily.
- 12 Since we intend that the non-statutory methods of follow-up described above will be used wherever possible, failure to fully implement an improvement plan will not automatically lead to statutory action being taken. We will need to assess the seriousness of the performance problems or failures involved, their impact on service users, and the practical constraints which may be affecting progress.
- 13 For example, re-focusing the authority’s own improvement work may be a more appropriate and effective response than progressing to statutory action. In those circumstances, we would continue with supervision of the authority’s improvement plan, with repeat inspections by Communities Scotland to focus on problem areas, rather than step up to statutory action.
- 14 Where we consider there is no alternative to statutory action, this will be because serious performance issues remain unresolved, and the local authority is not willing to make improvements, or its efforts have not been successful. In these circumstances, we will step up our efforts to encourage improvements, by requiring the local authority to submit a remedial plan.
- 15 The remedial plan should set out the local authority’s detailed proposals for making improvements. The local authority should consult registered tenants organisations about its proposals. The plan is subject to approval by Communities Scotland, and its implementation will be subject to a formal inspection. If the inspection indicates that the remedial plan has not been implemented satisfactorily, statutory intervention may follow.

Joint working with the Accounts Commission and Care Commission regarding remedial plans

- 16 As stated in our [Memorandum of Understanding with the Accounts Commission](#), we will maintain close contact with the local authority’s external auditor throughout the inspection process and subsequent follow-up work.
- 17 [Annexe 1](#) to this information note charts the process of discussion and information exchange which will take place between Communities Scotland and Audit Scotland before any decisions are made to exercise the intervention powers in the 2001 Act. The objective of this process is to ensure that use of statutory powers by Communities Scotland has been the subject of consultation with the Accounts Commission as an appropriate method of intervention, reflecting the Commission’s role in auditing, monitoring and reporting on all aspects of the work of Scottish local authorities.

- 18 Where intervention is being considered, it will be critical for Communities Scotland and the Accounts Commission to diagnose the underlying reasons for performance problems or issues within housing, homelessness or related services. Prior to meeting with the Accounts Commission we will notify the local authority.
- 19 Figure 1 illustrates how statutory interventions could vary, depending on the conclusions reached about the underlying causes of the problems to be addressed:

Figure 1: possible approaches to statutory intervention by Communities Scotland

Cause of poor performance

Nature of statutory action by Communities Scotland

Scenario 1

Performance problems are specific to the authority's housing, homelessness and factoring services

- Communities Scotland (CS) would issue a remedial plan notice after liaising with the authority's external auditor and Audit Scotland.
- CS would not use its powers under Section 74 of the 2001 Act, without the agreement of the Accounts Commission, as lead regulator.
- CS would keep the auditor/Audit Scotland closely advised of subsequent progress.

Scenario 2

Performance problems in the housing service involve a combination of service and corporate management issues

- CS will consult with the Accounts Commission on its strategy for addressing the issues raised by CS's inspection work on housing and related services.
- Such a strategy could be co-ordinated by either party, depending on joint analysis of the issues involved and how they require to be dealt with.
- CS would not use its powers under Section 74 of the 2001 Act, without consultation with the Accounts Commission.
- Any remedial plan instructed by Communities Scotland would focus on actions needed to improve the quality of service outcomes or performance in service management.

Scenario 3

Performance problems in the housing service are wholly or largely the product of factors which fall outside the remit of Communities Scotland (eg in relation to the authority's governance arrangements, its corporate policies or its financial management arrangements)

- Statutory action by CS in these circumstances would depend on an overall strategy led by the Accounts Commission.
- Issue of a remedial plan notice by CS would only take place following consultation with the Accounts Commission.
- The remedial plan would focus on tackling problems within housing, homelessness and related services.
- Accounts Commission would involve CS fully in any assessment it subsequently made relating to a housing or related function.
- The Commission would also liaise with CS before deciding to implement the process which could lead to intervention by Ministers as a result of its assessment.

20 Communities Scotland also has a Memorandum of Understanding with the Care Commission which details how we will work together throughout the inspection process and subsequent follow-up work. Where registered housing support services are provided, we will liaise with the Care Commission before we request a remedial plan. Details of how we will do this are at [Annexe 2](#).

Role of Communities Scotland's Regulation Board

21 The decision to instruct a local authority to submit a remedial plan under Section 74 of the 2001 Act will be made by the Regulation Board of Communities Scotland.

Communities Scotland's procedures

22 Subject to the approval of the Regulation Board, Communities Scotland will issue a draft notice specifying the requirement for a remedial plan to the chief executive of the local authority. We will provide a copy of the notice to the Accounts Commission.

23 The draft notice will specify:

- **Communities Scotland's intention to require the local authority to prepare and submit a remedial plan.**
- **The matters to be addressed by the remedial plan.**

This will generally be in relation to specific matters contained within an inspection report or follow-up report, but could potentially relate to an inspection report in its entirety.

- **The date by which the authority must make any comments to Communities Scotland on the proposed requirement.**

A period of four weeks from the date of the draft notice will generally be allowed. This may be varied by agreement.

- **The proposed timescale for submission of the remedial plan to Communities Scotland.**

A period of six weeks from the date of the final notice will generally be proposed by Communities Scotland. This may be varied by agreement.

- **The timescales for Communities Scotland to respond to comments and to the remedial plan.**

We will generally respond to the authority within four weeks of receiving comments on the draft notice and within four weeks of receiving the remedial plan. This may be varied by agreement.

24 Communities Scotland will consider any comments made by the local authority and the Accounts

Commission in response to the draft notice. Following this consideration, Communities Scotland may:

- issue a final notice, without amendment to the draft notice;
- issue a final notice based on the draft notice, with amendments;
- withdraw the draft notice (eg if the authority makes satisfactory proposals for action, and Communities Scotland is satisfied that production of a remedial plan is no longer necessary).

25 On receipt of a remedial plan, Communities Scotland will approve the plan (with or without modifications), or reject it. Communities Scotland may also attach conditions as to the adoption and implementation of the plan by the local authority. We will agree with the local authority the principal contacts for both organisations.

26 The authority has a statutory obligation under Section 74 of the Act to adopt and implement any remedial plan approved by Communities Scotland, taking account of any modifications or conditions attached to the plan. Where a remedial plan is rejected, the authority has a statutory obligation to submit a revised plan in accordance with a timescale set by Communities Scotland.

27 In modifying, rejecting, or adding conditions to a remedial plan, Communities Scotland has a statutory obligation to give the authority notice of its intentions, and to have regard to any comments the authority may submit.

28 Communities Scotland will provide a position statement setting out the regulatory position relating to the local authority's housing and related services. We will require the local authority to use this statement to brief third parties (including registered tenants organisations) that it is subject to statutory action. In addition, we will normally release a press statement to publicise the action we are taking, and we will normally issue a further press statement when the statutory action ends.

Annexe 1: liaison between Communities Scotland and the Accounts Commission

Stage	Action
<p>Stage 1</p> <p>Follow-up to inspections by Communities Scotland</p>	<ul style="list-style-type: none"> • Communities Scotland will lead on any follow-up action required as a result of an inspection as it relates to a local authority's housing and homelessness functions. • The local authority's external auditor will lead on following up any issues which lie beyond Communities Scotland's remit, and will keep Communities Scotland advised of any action or issues arising from this follow-up.
<p>Stage 2</p> <p>Monitoring of improvement plans produced after inspections</p>	<ul style="list-style-type: none"> • We will keep Audit Scotland informed of proposals for follow-up inspection work to assess the implementation of improvement plans, or to monitor progress in addressing performance problems relating to housing and homelessness services. • We will keep the external auditor and Audit Scotland informed about the outcome of inspection follow-up work.

<p>Stage 3</p> <p>Formal monitoring</p>	<ul style="list-style-type: none"> • Where Communities Scotland or Audit Scotland have significant concerns about a local authority's performance in housing and related services, the two bodies will convene periodic meetings. These concerns may arise from audits or inspections, or from follow-up work completed after audits or inspections. • These meetings will be used for the following purposes: <ul style="list-style-type: none"> – to exchange information; – to 'diagnose' whether the performance problems present in the housing service are service-related and/or corporate issues. • On the basis of these discussions, the two bodies will agree roles and responsibilities for working with the local authority to support it in making improvements.
<p>Stage 4</p> <p>Consideration of statutory action</p>	<ul style="list-style-type: none"> • Officers from Communities Scotland and Audit Scotland will also convene joint meetings before either body decides to take statutory intervention action. • These meetings will be used to reach agreement about: <ul style="list-style-type: none"> – whether statutory intervention by Communities Scotland is the most appropriate response, or whether matters should be referred instead to the Controller of Audit; – whether further investigation by the external auditor is required (eg to assess the impact of 'cross-cutting' or corporate issues on the housing service and/or whether problems in the housing service are also present in other service areas).
<p>Stage 5</p> <p>Statutory action</p>	<ul style="list-style-type: none"> • Communities Scotland will consult with the Accounts Commission, through Audit Scotland, before requiring a local authority to prepare a remedial plan. • We will advise the external auditor and Audit Scotland whether we consider that a remedial plan has been successfully implemented. • If it has not, there will be further liaison between the parties to determine further action. We will keep the local authority advised of progress throughout this process. • Communities Scotland will not appoint a manager to exercise the duties of the local authority in housing management or related services, without consultation with the Accounts Commission. We will also consult with the local authority, and have regard to its views, before making a final decision about whether to appoint a manager. • We will liaise further with the Accounts Commission if such an appointment is made, but does not deliver the desired improvement. • If statutory action is being considered or is being taken by the Accounts Commission for a housing or related function, the Controller of Audit and the Accounts Commission will advise Communities Scotland, and will keep Communities Scotland informed of progress. • Where statutory interventions are made by Communities Scotland in local authority housing services, we will liaise with the authority and with the Accounts Commission regarding external communications about such interventions.

Annexe 2: joint working between Communities Scotland and the Care Commission

Stage	Action
<p>Stage 1</p> <p>Follow-up to inspections by Communities Scotland</p>	<ul style="list-style-type: none"> • Communities Scotland will lead on any follow-up action required as a result of an inspection as it relates to local authority and RSL housing, homelessness and factoring functions. • The Care Commission will lead on following up any issues which relate to registered housing support services. It will keep Communities Scotland advised of any action or issues arising from this follow-up.
<p>Stage 2</p> <p>Monitoring of improvement plans produced after inspections</p>	<ul style="list-style-type: none"> • We will keep the Care Commission informed of proposals for follow-up inspections to assess the implementation of improvement plans, or to monitor progress in addressing performance problems relating to housing, homelessness and related services where these impact on registered housing support services.
<p>Stage 3</p> <p>Formal monitoring</p>	<ul style="list-style-type: none"> • Where Communities Scotland or the Care Commission have significant concerns about the performance of a local authority or RSL which provides registered housing support, the two bodies will convene periodic case conference meetings. These concerns may arise from inspections, or from follow-up work completed after inspections. • Case conference meetings will be used for the following purposes: <ul style="list-style-type: none"> – to exchange information; – to agree roles and responsibilities for working with the service provider to support it in meeting improvements.
<p>Stage 4</p> <p>Consideration of statutory action</p>	<ul style="list-style-type: none"> • Officers from Communities Scotland and the Care Commission will also convene joint case conference meetings, with involvement of the service provider, before either body decides to take statutory intervention action.
<p>Stage 5</p> <p>Statutory action</p>	<ul style="list-style-type: none"> • Communities Scotland will advise the Care Commission, before requiring a local authority or RSL, which provides registered housing support, to prepare a remedial plan. • The Care Commission will notify Communities Scotland of its intention to issue an S10 improvement notice on a local authority or RSL, and of any subsequent related action. • We will advise the Care Commission whether we consider that a remedial plan has been successfully implemented. • If it has not, there will be further liaison between the parties to determine further action. Where registered housing support services are provided Communities Scotland will inform the Care Commission of its intention to: <ul style="list-style-type: none"> – appoint a manager to exercise the duties of the local authority or RSL in housing; management or related services; – appoint a board member to an RSL.

Stage 5 (cont)	<ul style="list-style-type: none">• We will ensure that managers and appointees are ‘fit persons’ as required by the Regulation of Care (Scotland) Act 2001.• We will liaise further with the Care Commission if such appointments are made, but do not deliver the desired improvement.• If statutory action is being considered or is being taken by the Care Commission for registered housing support services provided by a local authority or an RSL, they will consult with Communities Scotland, and will keep Communities Scotland informed of progress.• Where statutory interventions are made by Communities Scotland in local authority housing services or in an RSL where registered housing support is provided, we will liaise with the authority and with the Care Commission regarding external communications about such interventions.
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INFORMATION NOTE 6

APPOINTMENT OF A MANAGER TO A LOCAL AUTHORITY

Introduction

- 1 Section 75 of the Housing (Scotland) Act 2001 ('the 2001 Act') provides Scottish Ministers with powers to appoint a manager to a local authority where they consider that a local authority has not implemented a remedial plan satisfactorily.
- 2 As an executive agency, Communities Scotland has been given authority to exercise the powers in Section 75 on behalf of Ministers. This information note sets out our policy and procedures for exercising the power to appoint a manager, if this is required.

PART 1: STATUTORY PROVISION

- 3 The powers contained in [Section 75 of the Housing \(Scotland\) Act 2001](#) can be summarised as follows

Figure 1: summary of Section 75 of the 2001 Act

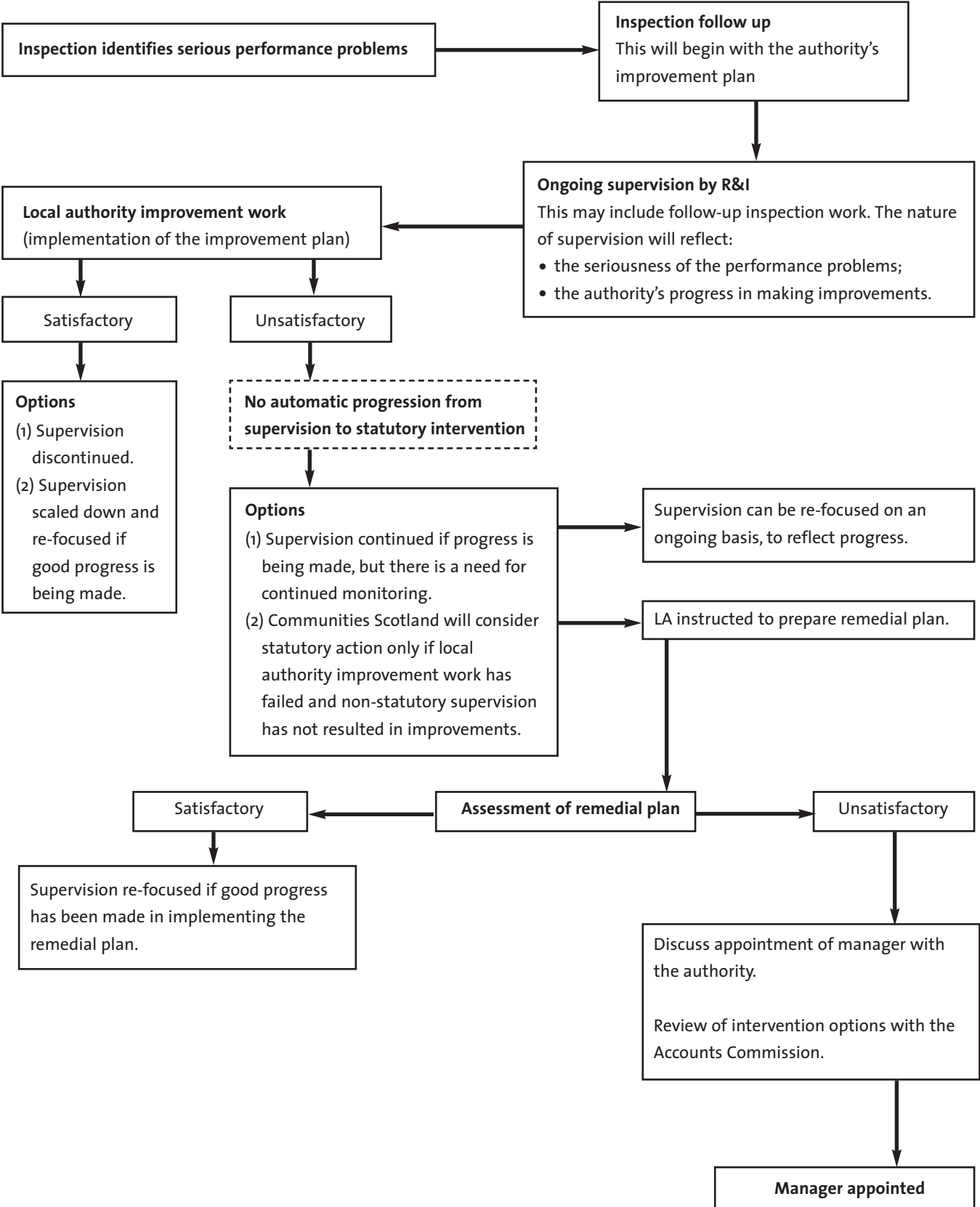
- Before the power to appoint a manager may be exercised:
 - the local authority must already have been required to submit a remedial plan, under Section 74 of the Act;
 - an inspection of the implementation of the remedial plan has concluded that the remedial plan is not being implemented satisfactorily;
 - the local authority, bodies representing local authorities and the Accounts Commission must be consulted, and their comments considered.
- The duration and terms and conditions of the manager's appointment are to be determined by Scottish Ministers.
- A manager appointed under Section 75 may "exercise such functions of the authority in relation to the provision of housing accommodation and related services as the Scottish Ministers may specify".
- The manager must comply with any directions given by Scottish Ministers as to his/her functions and their implementation.
- The local authority is responsible for paying the costs of the manager's appointment.
- The Act states that in carrying out functions, the manager acts as the agent of the authority and is not personally liable on a contract entered into as manager.

PART 2: COMMUNITIES SCOTLAND'S POLICY AND PROCEDURES

Process leading to the appointment of a manager by Communities Scotland

- 4 As described in our Intervention Strategy, we wish to encourage regulated bodies to take a proactive approach to identifying and responding to organisational problems before they reach a critical stage. This approach is intended to ensure that resolution of problems can be achieved without the need for statutory intervention.
- 5 The appointment of a manager under Section 75 of the Act will be triggered by a series of sequential steps, which will involve the local authority and Audit Scotland (on behalf of the Accounts Commission). The process involved is shown in the diagram at [Figure 2](#). The general guidance provided in the following paragraphs, and the following section on joint working with the Accounts Commission, should be borne in mind when reading the diagram.
- 6 The performance problems or failures which could trigger statutory action by Communities Scotland will relate to local authorities' planning and management of their core housing and homelessness services.
- 7 Use of the power to appoint a manager will generally follow on from the graduated process of support and intervention described in our Intervention Strategy, and will also follow on from the statutory procedures contained in the 2001 Act relating to remedial plans (see Information Note 5 in this series).
- 8 In considering the appointment of a manager, we will make an assessment of the authority's own ability to resolve issues, based on implementation of its remedial plan and any other information presented by the authority. In doing so, we will discuss the range of available options with the authority. We will also have regard to:
 - the seriousness of the performance problem or failure;
 - the urgency with which the problem or failure needs to be addressed;
 - what voluntary action is proposed by the authority, and whether this provides sufficient assurance that the authority is capable of partly or wholly resolving the issues involved;
 - whether the authority is facing legal action as a result of performance problems or failures;
 - the results of discussions with the Accounts Commission, via Audit Scotland.

Figure 2: sequence of events which may lead to the appointment of a manager



Joint working with the Accounts Commission

- 9 As at remedial plan stage, Communities Scotland and the Accounts Commission (through Audit Scotland) will make a joint assessment of the underlying reasons for the performance failure. This will be necessary to identify whether formal intervention is required and if so, whether the appointment of a manager is an appropriate form of intervention.
- 10 For example:
 - if the essential problem is one of corporate policy or performance, referral to the Controller of Audit through Audit Scotland will be more appropriate;
 - if the authority lacks the will or ability at senior staff level within the housing service to make changes, the appointment of a manager may be more appropriate.
- 11 Communities Scotland will not appoint a manager to exercise the duties of the local authority in housing management, homelessness or related services, unless this forms part of an intervention strategy agreed with the Accounts Commission. We will liaise further with the Accounts Commission if such an appointment is made, but does not deliver the desired improvement.
- 12 If statutory action is being considered or is being taken for a housing or related function, the Controller of Audit and the Accounts Commission will advise Communities Scotland, and will keep Communities Scotland informed of progress.
- 13 Where statutory interventions are made by Communities Scotland in local authority housing services, we will liaise with the authority and with the Accounts Commission regarding external communications about such interventions.

'Triggers' for the appointment of a manager

- 14 The particular circumstances leading to the appointment of a manager are likely to be unique to the local authority concerned. In general terms, these circumstances are likely to involve some or all of the following factors:
 - the authority has failed to produce and/or implement satisfactorily a remedial plan, as required by Communities Scotland under Section 74 of the 2001 Act;
 - consequently, there is serious and sustained underperformance in the delivery of the authority's core housing, homelessness and related services;
 - urgent action is needed to address these problems;
 - the authority needs additional professional support to remedy the problems involved;
 - Communities Scotland and the Accounts Commission have further reviewed the strategy jointly

agreed at remedial plan stage, to reflect subsequent developments and issues;

- Communities Scotland has consulted with the Accounts Commission about whether the appointment of a manager under Section 75 of the 2001 Act is required, possibly in combination with action by the Accounts Commission to address any underlying corporate issues or governance failures.
 - the options for addressing the issues arising from a remedial plan and any proposed appointment of a manager will also have been reviewed with the authority.
- 15 It is not possible to produce a definitive or exhaustive list of the circumstances which could lead to a manager being appointed. The factors described above are intended to provide a general illustration only, to convey the key judgements which Communities Scotland will make before deciding to use the powers provided in Section 75 of the 2001 Act.

The manager's role

- 16 A manager appointed by Scottish Ministers acting through Communities Scotland under Section 75 of the 2001 Act may act on behalf of the local authority in relation to whichever aspects of the authority's landlord, homelessness and related functions are specified in the notice of appointment issued by Communities Scotland.
- 17 A manager has the capacity to act as the agent of the local authority, ie he/she can discharge the functions of the local authority directly, provided that:
- such actions are within the scope of the matters covered by the appointment issued on behalf of Scottish Ministers;
 - such actions do not exceed the authority's powers.
- 18 This would enable all aspects of a local authority's housing and related functions to be undertaken by a manager. In practice, recognising the focus on service planning and management of Communities Scotland's inspection role, it is more likely that exercise of the power to appoint a manager might be considered in relation to specific aspects of the delivery of housing, homelessness or related services which remain of serious concern following consideration of a remedial plan.
- 19 In general terms, the role of a manager appointed by Communities Scotland is to provide expert, professional support to a local authority, to remedy the problems or failures which are affecting its performance in housing and related services.
- 20 Beyond this general role, the terms of reference for each appointment will be specified by Communities Scotland to reflect the reasons for the appointment being made. In consulting with the authority before the manager is appointed, as required by Section 75(4) of the 2001 Act, Communities Scotland will provide the authority with draft terms of reference for the proposed appointment.

- 21 Depending on the background to the appointment, the manager's role could involve any or all of the following:
- providing the authority with a clear strategy for moving forward on the matters covered by the appointment;
 - playing an executive role in implementing his/her recommendations, if the inspection of the remedial plan has shown that the authority lacks the will or ability to do so effectively;
 - assuming overall senior management responsibility within the areas covered by the appointment.
- 22 A key part of a manager's role will be to secure the active co-operation of managers and members, to achieve effective and sustainable solutions to the issues which have led to the appointment. It will be critical for a manager to build relationships with staff and members, and to establish support for his/her proposed courses of action. Communities Scotland will reflect this in the terms of any manager appointments.
- 23 We recognise that in practice there may be occasions where senior officers and members may not support a manager's recommendations. While the manager will seek to build support for his/her proposed courses of action wherever possible, ultimately he/she is obliged to comply with any directions issued by Communities Scotland relating to the conduct of the manager's functions. If a manager is unable to comply with those directions because of a lack of co-operation from within the local authority, Communities Scotland will review the options for enforcement of statutory directions with the Accounts Commission.
- 24 Should Communities Scotland consider that one person is not sufficient to conduct the role of manager, we may issue more than one appointment under Section 75 of the 2001 Act, provided that the terms and conditions of each appointment are discrete and the appointments are made at the same time.
- 25 A manager appointed under Section 75 may identify a need to appoint additional support staff (for example, if the authority does not employ staff in a particular operational role, or if the manager considers that existing staff resources need to be strengthened). Any such additional appointments would have to be made by the local authority.

Role of the Regulation Board

- 26 The appointment of a manager to a local authority requires the prior approval of Communities Scotland's Regulation Board, which exercises the powers of appointment on behalf of Scottish Ministers. Before the Regulation Board meets, we will provide the authority with a written statement, confirming the main grounds on which the decision to appoint a manager is being proposed, the commencement date, and initial period of the appointment.
- 27 The authority will be able to challenge the reasons for recommending the appointment by making

representations to the Regulation Board before it makes its decision. Thereafter, the decision of the Regulation Board will be final, and the authority will not have a further right of appeal to Communities Scotland.

Appointing a manager

28 Communities Scotland will identify suitable individuals who may be able to carry out the role of a manager. We will select and recruit individuals with relevant skills and experience, to a pool of managers. This will be done in line with employment legislation and good practice to ensure an inclusive approach. We anticipate that senior managers in other local authorities are likely to be the main source of suitable people.

29 In seeking to match individuals to specific assignments, we may need to discuss the reasons for the proposed appointment, and to establish that there are no conflicts of interest which would prevent an appointment being made. Any such discussions will be in confidence, and Regulation & Inspection will ask any persons or organisations consulted to sign a confidentiality agreement, before we disclose the identity of the local authority.

30 The local authority is responsible under Section 75 of the Act for paying for the cost of employing the manager.

31 The manager's employment contract will be issued by Communities Scotland, acting on behalf of Scottish Ministers. The manager could be:

- a consultant engaged by Communities Scotland;
- an employee of another local authority on a secondment basis.

While not directly employing the manager, the local authority will have responsibilities towards the manager under a range of other legislation. The local authority will be responsible for obtaining its own legal advice to ensure it is complying with all such obligations. The manager will receive a detailed briefing from Communities Scotland at the start of the assignment, to provide the required information about:

- the local authority;
- background to the decision to appoint the manager;
- role and responsibilities of the manager;
- relevant timescales;
- reporting requirements;
- arrangements for remuneration and termination of the appointment;
- the vires of the local authority.

Impact on the local authority's existing staff

- 32 The appointment of a manager may impinge on the role of existing senior staff members, but his/her role is not intended to supplant their day-to-day role and responsibilities.
- 33 It should not be generally assumed that the appointment of a manager has resulted from acts or omissions on the part of existing staff, since the facts of each case will vary.
- 34 Where staff performance or conduct *is* part of the authority's performance problems, the authority will be required to manage this in accordance with its normal procedures. It is essential that where a manager is being appointed, the authority should inform existing staff members fully, so that they are aware of the reasons for the appointment, the manager's role, and any implications for their own role.

Accountability issues

- 35 The local authority, the Accounts Commission and Scottish Ministers will be notified immediately of any decision by the Regulation Board to approve the appointment of a manager. Scottish Ministers will receive a full briefing report on the reasons for the appointment, and will receive progress reports at appropriate intervals. We will also notify the Care Commission if the authority provides registered housing support services.
- 36 Within seven days of being notified of the decision to appoint a manager, the local authority should advise:
- registered tenants organisations;
 - RSLs with which the authority has contractual, funding or partnership arrangements which are affected by the appointment.
- 37 Communities Scotland will ensure that the RSL notifies registered tenants organisations and its tenants of why the appointment has been made, provides an explanation of the manager's role and how tenants will be kept informed of progress. The authority will be expected to make proposals to Regulation & Inspection within 21 days of receipt of the notification that the appointment will be made, to confirm its intentions with regard to information for tenants. We will expect such proposals to meet best value requirements.
- 38 Communities Scotland will provide a position statement setting out the regulatory position relating to the local authority's housing and related services. We will require the local authority to use this statement to brief third parties (including registered tenants organisations and any RSLs with which the authority has contractual or partnership arrangements) that it is subject to statutory action. In addition, we will normally release a press statement to publicise the action we are taking, and we will normally issue a further press statement when the statutory action ends.

Monitoring the manager's appointment

- 39 A manager appointed under Section 75 of the 2001 Act will be required, as a condition of his/her appointment, to submit regular reports to Regulation & Inspection about the conduct of the appointment.
- 40 Communities Scotland may issue directions regarding the exercise of the manager's functions. If Communities Scotland provides the manager with specific directions, the manager is obliged to act upon these.
- 41 The manager's performance will be monitored by Communities Scotland, and may be subject to termination if he/she fails to adhere to the terms and conditions specified by Communities Scotland, on behalf of Scottish Ministers, for example if the manager fails to provide information or to implement instructions.