



THE SCOTTISH
HOUSING
REGULATOR

GUIDANCE NOTE

To: All Registered Social Landlords (RSLs)

Subject: Criteria for registration as a Registered Social Landlord

Issued by: The Scottish Housing Regulator

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Summary

This guidance note advises on the revised criteria for admission to and removal from the statutory Register of social landlords. It supersedes SHGN 99/07 “Criteria for Registration as a Registered Social Landlord” and SHGN 2001/12 “Criteria for Registration as a Registered Social Landlord – Additional Guidance”.

Scottish Ministers have delegated the authority to set criteria for the admission to or removal from the Register to the Regulation Board of the Scottish Housing Regulator. Revised criteria will be effective from 1 April 2002 and are set out in Annexes A and B.

A detailed Guide to Registration, covering the application of the criteria for admission to the Register, is available to accompany this guidance note. This sets out the process undertaken by the Scottish Housing Regulator when working with potential registered social landlords and assessing registration applications. The purpose of the Guide to Registration is to make the registration process as transparent as possible and assist potential registered social landlords.

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For any references to Communities Scotland (or Scottish Homes) please read the Scottish Housing Regulator.

If you have any questions about this guidance, you should direct them to:

The Scottish Housing Regulator
Highlander House
58 Waterloo Street
GLASGOW
G2 7DA
Tel: 0141 271 3810
Email: shr@scottishhousingregulator.gsi.gov.uk

Introduction

- 1 From 1 November 2001 the regulatory provisions of the Housing (Scotland) Act 2001 (the 2001 Act) came into force. These provisions included the requirement for a Register of Social Landlords to be kept, and for criteria for admission to and removal from the Register to be established by Scottish Ministers. Where relevant, this Guidance Note makes reference to specific sections in the 2001 Act.
- 2 The setting of criteria for admission to and removal from the Register has been delegated by Scottish Ministers to the Regulation Board of Communities Scotland.
- 3 Communities Scotland inherited the Registration Criteria established by Scottish Homes and set out in SHGN99/07 and SHGN 2001/12. These needed to be reviewed, therefore we consulted on new criteria for both admission to and removal from the Register over September to December 2001 in the paper "*The Register of Social Landlords*". The results of this consultation have been published on our web site.
- 4 Following consideration of the responses received as a result of this consultation, the new registration criteria were agreed by the Regulation Board, and will be effective for all new registrations from 1 April 2002.
- 5 Criteria for admission to the Register are set out in **Annex A**. Criteria for voluntary removal from the Register are set out in **Annex B**.
- 6 This Guidance Note supersedes SHGN 99/07 "Criteria for Registration as a Registered Social Landlord" and SHGN 2001/12 "Criteria for Registration as a Registered Social Landlord - Additional Guidance".

The Statutory Framework

- 7 Part 3, Chapter 1 of the 2001 Act sets out the criteria that determine the eligibility of organisations which may seek to become registered social landlords (Section 58). Furthermore, the Act includes requirements for Scottish Ministers to:
 - maintain a Register of social landlords (Section 57); and
 - establish, and from time to time vary, criteria to be satisfied by eligible organisations seeking to become registered social landlords, or who wish to be removed from the Register (Section 61).

- 8 These duties are carried out on behalf of Scottish Ministers by the Regulation & Inspection Division within Communities Scotland through the Regulation Board. The role and delegated authority of the Regulation Board are described in the Scottish Ministers' Regulatory Code of Practice.

The Benefits of Registration

- 9 On becoming registered with Communities Scotland, a social landlord is subject to a framework of regulation. This means that a registered social landlord (RSL) has to:
- meet challenging Performance Standards;
 - allow us access to any records and information about or related to the organisation;
 - be subject to periodic inspections and risk reviews; and
 - be subject to statutory action by us should it fail to meet the standards required.
- 10 Registration with Communities Scotland also brings benefits to social landlords and to other stakeholders:
- **RSLs** can offer their tenants, private lenders and other partners the reassurance that they are externally regulated bodies that are expected to meet nationally agreed standards of performance;
 - **Tenants** will know the standards that are expected of an RSL and can be assured that the regulator has powers to intervene if their landlord fails to operate in accordance with these standards;
 - **Private lenders** can take comfort from the safeguards that regulation provides; and
 - **Local authorities** will know that any stock they transfer will remain in the social rented sector and will be well managed.
- 11 If RSLs are to be able to meet our regulatory requirements, and fulfil the expectations of tenants, lenders, local authorities and other stakeholders the registration criteria should therefore ensure that RSLs:

- are set up to operate in an open and accountable manner;
- will empower communities and allow tenants to be involved in the management of their homes;
- have the potential to provide high standards of service; and
- can demonstrate that they will be financially viable and sustainable.

Statutory vs Contractual Registration

- 12 All RSLs registered with the former Scottish Homes under contract have been advised that they are now registered with Communities Scotland under statute. It is now possible for companies to register with Communities Scotland under statute.

Criteria for Admission to the Register

- 13 The new criteria for admission to the Register are summarised in Annex A and are set out under three headings:
- Constitutional criteria;
 - Governance criteria ; and
 - Viability and Sustainability criteria.
- 14 To help organisations seeking to become RSLs we have developed a detailed Registration Guide. The purpose of this Guide is to ensure that our approach to registration and the assessment process are transparent.

A Single or Two Stage Approach to Registration

- 15 In addition to the single-stage approach to the registration process, we have developed a two-stage registration process consisting of Provisional Registration, followed by Final Registration. The two-stage registration process was developed in recognition of the more complex and demanding nature of wholesale local authority transfers to community ownership. Both approaches to registration are set out in detail within the Registration Guide which is available to accompany this Guidance Note.
- 16 Whether the single stage or two stage registration process is used, all registration criteria must be complied with by applicants. The main difference is that timing of compliance with the registration criteria is phased under the two-stage approach.

- 17 Organisations undertaking the two-stage process will be entered onto the Register at the point of being given Provisional Registration status. This will mean that they will be able to describe themselves as a “registered social landlord”.
- 18 Provisional Registration means the RSL will be subject to conditions which will only be lifted when we confirm registration as being Final which are that the RSL:
- cannot own or let houses;
 - should make its provisional status clear in any communications with tenants or other third parties; and
 - is required to apply for removal from the Register in the event that there is no progress towards Final Registration.

Provisionally registered RSLs will be subject to our full statutory and intervention powers. However, they will not normally be subject to an Inspection. They will be included in the Inspection programme once Final Registration has been confirmed. The first Inspection of a new RSL will typically take place 12-18 months after completion of the registration process.

- 19 The two-stage registration process is primarily intended for the registration of new organisations set up to take ownership and management of local authority houses. This reflects the normally complex nature of local authority stock transfers and the volume of information and planning which needs to be undertaken. We expect that the majority of new registrations will continue to follow the more traditional single-stage process. We will consider applicant organisations other than those taking ownership of local authority houses using the two-stage registration process if it can be demonstrated that the single-stage process would not be appropriate for their circumstances.

Management or Development RSLs

- 20 Our guidance has been made more flexible to take account of the fact that an RSL might initially not provide the full range of typical RSL services:
- an RSL might not own any houses but intends to provide services on behalf of another housing organisation (a Management RSL); or
 - an RSL may start by building its own houses, and will not be in a position to let houses for the first twelve to eighteen months (a Development RSL).

- 21 Management RSLs can choose to apply for registration based on their initial non-ownership role. In this case the prospective RSL must demonstrate its compliance with the Constitutional and Governance Criteria. Application of the Viability and Sustainability Criteria will be tailored to reflect the scope of their intended activities.
- 22 If registered on this basis, a further assessment of viability and sustainability would be needed at the appropriate time, prior to the RSL assuming a full ownership or development role in its own right.
- 23 From the outset Management RSLs can apply for registration to cover both their initial role of providing housing management services, and their intended roles of development and ownership of stock. In this event, however, they would need to provide a full registration application, business plan, and supporting documentation. Application of the Viability and Sustainability Criteria would not be tailored.
- 24 Prospective Development RSLs must demonstrate their compliance with the Constitutional, Governance and Viability and Sustainability Criteria. The application of the Viability and Sustainability Criteria will reflect the scope of initial development activities and ensure that the planned housing development project is viable and sustainable. In addition, there must be a clear strategy to deliver community empowerment and opportunities for participation of future tenants and residents. We will follow up delivery of the development programme and implementation of housing services by the Development RSL over 12-18 months following registration.

Criteria for removal from the Register

- 25 The 2001 Act requires Scottish Ministers to set criteria for RSLs seeking to be removed from the Register (see 7 above). Regulation & Inspection, on behalf of Scottish Ministers, has set these criteria. They are summarised in Annex B and come into effect from 1 April 2002.
- 26 Removal of an RSL from the Register can come about in a number of ways. The RSL :
- (a) no longer satisfies the eligibility criteria set out in the 2001 Act (Section 58 and Section 60 (2)(c)), such that it ceases to have a constitution which defines it as a not-for-profit organisation, or its principal objects cease to be the provision of social housing; or
 - (b) no longer exists or operates (Section 60 (2) (b)), such as would be the case following a transfer of engagements; or
 - (c) seeks voluntary removal from the Register.

- 27 If Conditions (a) or (b) apply, then Communities Scotland will take action to remove the RSL from the register. If condition (c) applies, then the RSL will need to make application to Communities Scotland.

Complaints and Appeals

- 28 The process undertaken by organisations applying for admission to the Register can be complex and demanding. Our aim is to work collaboratively with applicants and achieve registration.
- 29 Applicant organisations which are dissatisfied about our conduct have the right to make a complaint under Communities Scotland's service charter.
- 30 Organisations which have their application for admission to or removal from the Register refused, have the right of appeal to the Court of Session (Section 62).

Charging

- 31 Communities Scotland does not currently charge for the regulation and inspection service. However, we intend to keep this under review and may decide to introduce charges at a future point in time. Any proposals for charging will be published for consultation before being introduced.

Further Information

- 30 Further information about registration with Communities Scotland and admission to or removal from the Register of Social Landlords can be obtained by contacting the following:

Business Analysis Team
Regulation & Inspection Division
Rosebery House
9 Haymarket Terrace
Edinburgh EH12 5YA

Tel: (0131) 313-3700 (from Mid-April 2002)

Annex A

CRITERIA FOR ADMISSION TO THE REGISTER OF SOCIAL LANDLORDS

A CONSTITUTIONAL CRITERIA

1. An organisation seeking registration as a Registered Social Landlord (RSL) must be eligible for registration in terms of the criteria set out in Part 3, Chapter 1, Section 58 of the Housing (Scotland) Act 2001 (the 2001 Act). This means it must:
 - (a) be a society registered under the Industrial and Provident Societies Act 1965 or a company registered under the Companies Act 1985, having its registered office in Scotland;
 - (b) not trade for profit; and
 - (c) have objects which conform with Sections 58(2), 58(3) and 58(4) of the 2001 Act.
2. If an applicant organisation is a subsidiary, it must have a constitution which defines it as the subsidiary of another social landlord registered with the Housing Corporation, Communities Scotland or the National Assembly for Wales.

B GOVERNANCE CRITERIA

3. The membership of the governing body must be no fewer than seven.
4. The applicant organisation should not be under the control or subject to the undue influence of another body or organisation, unless that body or organisation is its parent and a social landlord registered with the Housing Corporation, Communities Scotland or the National Assembly for Wales.
5. The applicant organisation must demonstrate that it has a commitment to embracing diversity, promoting equal opportunities for all and eliminating unlawful discrimination in all areas of its work. All aspects of its business, and its policies and procedures should have been tested against this commitment.
6. The applicant organisation must demonstrate that it is committed to encouraging

and supporting tenants, residents and service users to participate actively in all areas of its work and at a local level. It must allow for decision-making to be devolved to community level.

7. The governing instrument for the applicant organisation should ensure that membership of the governing body is not open to anyone who:
 - (a) is apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985;
 - (b) has made an arrangement with his or her creditors;
 - (c) has been convicted of a criminal offence;
 - (d) is in litigation with the organisation;
 - (e) has been removed from the governing body of another social landlord by a regulatory body; or
 - (f) has been disqualified from being a company director.

8. The governing instrument of the applicant organisation should also ensure that:
 - (a) the process for membership of the governing body reflects the composition of the community that the organisation serves; enables tenants and the wider community to influence the governing body; and enables tenants and the wider community, if they wish, to participate in the management of the organisation;
 - (b) there is a process by which members stand down or are removed from the governing body to allow for a turnover in membership;
 - (c) membership of the governing body is not permissible for anyone with whom the applicant organisation has a contract of employment, or close relatives of such people. The only exception permitted is that the constitution may allow the governing body to co-opt one existing senior employee onto the governing body; and
 - (d) co-optees do not form part of any quorum required for meetings of the governing body and may not vote on matters directly affecting the constitution and membership of the organisation or the election or appointment of its office bearers.

9. The applicant organisation must be able to demonstrate stability in terms of the membership of its governing body. Members of that body must:
- (a) understand their role and responsibilities for the control and management of the organisation;
 - (b) have the skills and experience to conduct the organisation's affairs effectively and responsibly;
 - (c) understand the constitution of the organisation and if it is a subsidiary, understand their relationship with the governing body of the parent;
 - (d) have the ability and intention to act independently in the best interests of the organisation;
 - (e) understand the need for, have adopted and have each signed up to, an appropriate code of conduct which includes reference to the constitutional provisions designed to prevent conflicts of interest;
 - (f) understand the role of Communities Scotland in relation to the registration, regulation and inspection framework; and
 - (g) understand the standards the organisation is expected to meet as a registered landlord as currently set out in Performance Standards.
10. The applicant organisation must have access to, and be able to exercise direct control over, staff and/or professional advisors with the skills, qualifications and experience to deliver the organisation's aims and objectives. There must be a process for selecting and appointing staff or for procuring staff services which is fair open and accountable and reflects a commitment to equality of opportunity.
11. An applicant organisation must confirm that it has not entered into any contracts or agreements which compromise its ability to comply with the registration criteria or, subsequently, to operate in accordance with Performance Standards.

Criteria 12-14 for Subsidiary Organisations only

12. A subsidiary organisation must have a written undertaking from its parent organisation that the parent will ensure that:
- (a) all members of the subsidiary's governing body understand their duty to act in the interests of the subsidiary;
 - (b) there are procedures in place designed to avoid conflicts of interest,

particularly where members of the subsidiary's governing body are also members of the parent's governing body; and

- (c) its subsidiary will operate in accordance with Performance Standards.
13. Any services being provided for the subsidiary must be detailed in a written contract and the charges clearly stated.
14. If the subsidiary's parent is a social landlord which is not registered in Scotland with Communities Scotland, it is expected to obtain from its parent a written undertaking that:
- (a) the office where the subsidiary's business is conducted will be in Scotland;
 - (b) all the subsidiary's records, files and other documents will be kept in Scotland; and
 - (c) that all meetings involving the subsidiary's governing body will be held in Scotland.

C VIABILITY AND SUSTAINABILITY CRITERIA

15. The applicant organisation must demonstrate that it will add value to the existing social landlord network and that it has the support of Communities Scotland and/or a local authority. In the case of subsidiary organisations it will be sufficient for the organisation to have the support of its parent organisation.
16. The applicant organisation must demonstrate that it is a financially viable and sustainable organisation. It must submit a Business Plan which will demonstrate that:
- (a) the organisation will own sufficient numbers of houses to provide an adequate economic base to secure the future of the organisation or that it will receive sufficient income from the owner to cover its costs;
 - (b) the organisation will have continued financial viability;
 - (c) promises or commitments made to tenants will be met and are fully funded;
 - (d) the operational context and risks faced by the applicant organisation have been fully identified, understood and provided for;
 - (e) the governing body will exercise proper management and control of the organisation and its finances; and
 - (f) there will be full compliance with appropriate Performance Standards.

CRITERIA FOR REMOVAL FROM THE REGISTER

1. Communities Scotland may, after giving the RSL at least 14 days' notice, remove an RSL from the register if it considers that the RSL:
 - (a) is no longer a body eligible for registration in terms of Section 58 of the Housing (Scotland) Act 2001; or
 - (b) has ceased to exist or does not operate.

2. An RSL may apply to Communities Scotland to be removed from the register of social landlords if it meets these criteria:
 - (a) it is provisionally registered with Communities Scotland but will fail or has failed to comply with the requirements for final registration; and/or
 - (b) it does not own or manage any houses which are or will be used for the purposes of social renting; and
 - (c) all borrowings have been repaid or the consent of the lender to de-register has been obtained; and
 - (d) any public funding has been repaid or an agreement has been obtained from the funding body that no repayment is required.