



THE SCOTTISH
HOUSING
REGULATOR

GUIDANCE NOTE

To: All Registered Social Landlords (RSLs)

Subject: RSL Group Structures and Constitutional Partnerships

Issued by: The Scottish Housing Regulator

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Summary

This document sets out regulatory guidance for:

- Registered social landlords (RSLs) in group structures, whether they are the group parent or the subsidiary of another RSL;
- RSLs considering creating or joining a group structure;
- RSLs planning mergers, amalgamations or transfers of engagements.

The guidance also deals briefly with alliances or consortia between RSLs, formed for specific purposes such as joint procurement of goods and services.

This guidance replaces Guidance Note 2000/08 (Group Structures including Non-RSLs and Related Organisations) issued by our predecessor, Scottish Homes. It also replaces guidance on RSL group structures that is contained in Guidance Note 2000/07 (Amalgamations, Transfers of Engagements and RSL Group Structures). It

comes into effect from 31 October 2007 and will apply to all organisations from that date.

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

RSL Group Structures and Constitutional Partnerships

Introduction

This document sets out regulatory guidance for:

- Registered social landlords (RSLs) in group structures, whether they are the group parent or the subsidiary of another RSL;
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The guidance also deals briefly with alliances or consortia between RSLs, formed for specific purposes such as joint procurement of goods and services.

Status of the guidance on group structures and constitutional partnerships

Section 79 (2)(m) of the Housing (Scotland) Act 2001 gives Scottish Ministers the power to issue guidance about the standards of governance and financial accountability of RSLs. This guidance is statutory guidance in terms of Section 79 (2)(m) issued by Scottish Ministers.

Throughout this guidance, references to The Scottish Government should be read as referring to Scottish Ministers and the functions exercised on their behalf.

The guidance begins with a glossary of the main terms used, and has 5 sections:

Section	Title	Overview
1	Policy Context	<ul style="list-style-type: none"> • Describes the policy context for the guidance, and the types of partnerships found in the Scottish RSL sector
2	Regulatory policy principles	<ul style="list-style-type: none"> • Sets out the fundamental principles on which our regulatory policy is based
3	Approval to create or change constitutional partnerships	<ul style="list-style-type: none"> • Describes when RSLs need to obtain statutory consent to set up or change group structures and other types of partnerships
4	Operating requirements for RSLs in group structures	<ul style="list-style-type: none"> • Describes regulatory requirements for RSLs that work within a group structure
5	Regulation of RSLs in constitutional partnerships	<ul style="list-style-type: none"> • Describes how our regulatory processes apply to RSLs in group structures, including how we work with other regulators

The guidance has three appendices:

1	Business case procedures	<ul style="list-style-type: none">• Guidance on the business case that should accompany applications for consent from the Scottish Government
2	Procedures for charities seeking statutory consent	<ul style="list-style-type: none">• The arrangements agreed between the Office of the Scottish Charity Regulator and the Scottish Government, for charitable RSLs
3	Useful references	<ul style="list-style-type: none">• Publications that may be helpful to RSLs in group structures, or considering joining a group structure or other type of constitutional partnership

Links to other guidance

This guidance replaces Guidance Note 2000/08 (Group Structures including Non-RSLs and Related Organisations) issued by our predecessor, Scottish Homes.

It also replaces guidance on RSL group structures that is contained in Guidance Note 2000/07 (Amalgamations, Transfers of Engagements and RSL Group Structures). We will issue revised guidance on amalgamations and transfers of engagements during 2008.

The guidance is based on the current statutory framework for the registration and regulation of RSLs, as set out in the Housing (Scotland) Act 2001. The Act describes:

- The type of bodies that are eligible to be RSLs
- The role of Scottish Ministers in giving consent for constitutional changes
- RSLs' statutory obligations in relation to tenant consultation and participation.

Throughout the guidance, we have referred to other regulatory guidance that applies to RSLs. This includes:

- Performance Standards for Social Landlords
- The Registration Criteria
- The Regulatory Code of Governance for RSLs.

We have also signposted other guidance and legislation that may be relevant, depending on the circumstances of each RSL. For example:

- RSLs should refer to industrial and provident society law and company law, as appropriate.
- RSLs that are charities or that have charitable subsidiaries should refer to charity law and to guidance published by the Office of the Scottish Charity Regulator (OSCR).
- RSLs providing housing support services should refer to guidance published by the Scottish Commission for the Regulation of Care (the Care Commission).

- Our Memoranda of Understanding with OSCR, the Care Commission and the social housing regulator in England explain how we will work with other regulators.

We have issued separate guidance for RSLs, including management-only RSLs, that are involved in second stage transfers from The Glasgow Housing Association Ltd. That guidance describes the particular issues that may arise if RSLs are considering forming or joining a group structure as part of a second stage transfer proposal. It will be updated as the second stage transfer process develops.

We have provided a listing of guidance and good practice information at the end of this document.

Glossary of Terms

The main terms used in the guidance are shown below. The purpose of the glossary is to aid understanding of the guidance, rather than to provide formal legal definitions.

Term	Meaning
Constitutional Partnership	<p>A partnership between RSLs, based on formal constitutional arrangements. The main examples are:</p> <ul style="list-style-type: none"> • Creating or joining a group structure • Mergers, where the partners join forces in a single body.
Efficiency	<p>Cost savings or better ways of using existing resources, to achieve improvements that will benefit an RSL's tenants and service users.</p>
Group structure, or "group"	<p>Any combination of two or more organisations working together where one organisation, the parent, has constitutional control over the other organisation(s), the subsidiaries.</p>
Merger	<p>A situation where two RSLs join forces as a single RSL. We use "merger" as a shorthand term to describe an amalgamation or a transfer of engagements (for industrial and provident societies) or a restructuring (for companies).</p> <p>An amalgamation results in the creation of a new RSL. A transfer of engagements involves one RSL transferring all of its assets and business to its merger partner.</p>
Non-constitutional partnership	<p>A situation where two or more RSLs work together as partners but keep their own legal independence. For example, an alliance or consortium formed to procure or deliver goods and services collectively, or a contract between RSLs to provide or receive services.</p>
Non-registered subsidiary	<p>A subsidiary that is not a registered social landlord. Most RSL subsidiaries are registered as companies under the Companies Acts, but not as registered social landlords.</p>
OSCR	<p>The Office of the Scottish Charity Regulator, responsible for the registration and regulation of charities in Scotland.</p>
Parent	<p>The organisation in a group structure that has constitutional control over the other members of the group. The role of the parent depends on the</p>

Term	Meaning
	nature and purpose of the group. For example, the parent usually owns a group's housing assets but it is also possible for parents to be non asset owning organisations.
Registered social landlord	An organisation whose primary purpose is to provide affordable rented housing and which is registered with The Scottish Government, the social housing regulator in England or the National Assembly for Wales.
RSL	See registered social landlord.
Special Purpose Vehicle	A company whose operations are restricted to the acquisition and financing of specific assets. A Special Purpose Vehicle company can be set up by one RSL, or by a number of RSLs.
Subsidiary	<p>A subordinate organisation in a group structure. A subsidiary may be an RSL or it may be a non-registered organisation.</p> <p>Subsidiaries are controlled by their parent, but have sufficient independence to carry out their business, within limits set by their parent. A formal legal definition of a subsidiary is provided in section 82 of the Housing (Scotland) Act 2001.</p>

1. Policy Context

Partnerships in the RSL sector

- 1.1 The number of Scottish RSLs in group structures has increased since our previous guidance was issued in 2000. There has also been an increase in RSL partnerships as a result of mergers/transfers of engagements. These changes reflect several factors, including growth in the number of charitable RSLs and the wider role many RSLs are playing within their communities.
- 1.2 RSLs join or set up group structures for a number of reasons.

For example

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| <ul style="list-style-type: none"> a) To support business diversification, beyond core landlord activities; b) To improve services to tenants and other service users, or to provide a wider range of services; c) For taxation purposes; d) To carry out “trading activities”, if the RSL is a charity; e) To share expertise and/or spread risks; f) To promote greater efficiency; g) To achieve a separation between an RSL’s landlord role and the provision of housing support services registered with the Care Commission; h) To establish separate internal business units for service delivery or other activities; i) To broaden the range of governance expertise; j) To establish special purpose vehicles (for example, for borrowing purposes). |
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- 1.3 A lower proportion of RSLs in Scotland than in England are part of a group structure. Scottish RSL groups are typically smaller and simpler than their English counterparts. The most common model in Scotland is one RSL parent with one or more non-registered subsidiaries, although greater use is now being

made of other models. Groups with more than one RSL are still uncommon, whereas most RSL housing in England belongs to groups of this type.

- 1.4 Mergers and transfers of engagements have been widely used to set up constitutional partnerships in Scotland. A number of mergers have taken place for positive reasons; in other cases they have been used to address situations where one of the RSL partners has run into serious difficulties.
- 1.5 RSLs are making more use of non-constitutional partnerships, to share resources or expertise and to achieve greater efficiency. Such partnerships have generally been set up for procurement purposes or to deliver housing services. Looking to the future, The Scottish Government has stated its intention of targeting a greater share of the Affordable Housing Investment Programme to groupings of RSLs working collaboratively.

Key factors shaping this guidance

- 1.6 Our 2000 guidance emphasised two overriding themes:
 - The need for subsidiaries to operate with an appropriate degree of independence from their parents.
 - The need for RSLs to protect their assets from risks that might result from the activities of their subsidiaries.
- 1.7 These themes are still an important part of our regulatory guidance. But we also recognise that a more rounded view should be taken of the benefits and risks of partnership working. For example, group structures and other types of partnerships can enhance the ability of RSLs to achieve their strategic objectives relating to community regeneration and neighbourhood management. In the right circumstances, partnership working can also help achieve greater efficiency.
- 1.8 Research in England and our own experience show that group structures and mergers can help improve efficiency, but that this is not automatic. For example,

group structures can involve some potential risks. These include over-complicated governance structures, a reduction in accountability to tenants and communities, and failure in some instances to achieve anticipated improvements in the cost and quality of services.

- 1.9 Throughout the guidance, we have emphasised that decision-making about partnerships needs to be based on a rigorous examination of the specific circumstances and options involved. Our regulatory expectations are based on how an RSL's structures contribute to the outcomes it is achieving. We do not regard particular types of structures as being inherently better or more efficient than others.
- 1.10 In Section 4 of the guidance, we have placed a stronger emphasis on the role parent RSLs should play within group structures, for example by determining the group's strategy and objectives, monitoring the performance of subsidiaries, and taking action where objectives and standards are not being met. We have also emphasised that getting the right balance between strategic control by parents and operational independence for subsidiaries is a matter for individual groups, based on their objectives and the particular risks they need to manage.
- 1.11 Finally, the guidance reflects the re-focusing of our regulatory relationships with RSLs, to ensure that regulation is proportionate and risk-based.

Keeping our guidance up to date

- 1.12 Our guidance is based on the statutory arrangements for the registration and regulation of RSLs described in the Housing (Scotland) Act 2001. It also reflects our regulatory objectives, as set out by Scottish Ministers¹. These objectives are founded on protecting the interests of current and future tenants, providing assurance to the taxpayer, and maintaining the confidence of funders in RSLs.

¹ See the [Regulatory code of practice for Communities Scotland](#), published by The Scottish Government (November 2006).

- 1.13 Many RSLs have made changes to the structure of their business within the existing statutory arrangements. This has produced positive results for tenants and communities, as well as improving organisational efficiency and effectiveness.
- 1.14 We also recognise that there is keen interest in the future role of the social housing sector among policy-makers and the sector itself. We are therefore committed to reviewing this guidance regularly, so that it takes account of Ministers' policy priorities and/or any changes in the current statutory arrangements for RSL registration and regulation.

2. Regulatory Policy Principles

Introduction

2.1 We are firmly of the view that simple constitutional structures are likely to be better understood and to promote strong governance and control. Appendix 3 provides signposts to information about different types of constitutional arrangements, and the broad pros and cons of different approaches.

2.2 We insist that an RSL's constitutional arrangements must meet the following conditions:

- a) Constitutional arrangements must meet the conditions for registration specified in Part 3 of the Housing (Scotland) Act 2001. Constitutional arrangements must also be consistent with the RSL's obligations as an industrial and provident society or company limited by guarantee, and (if relevant) its obligations as a registered charity.
- b) A registered social landlord may only be constituted as the subsidiary of another organisation if its parent is also an RSL. The parent RSL may be registered with The Scottish Government, the social housing regulator in England or the National Assembly for Wales.
- c) All social housing, whether publicly funded or not, must be owned by a registered social landlord that is registered with The Scottish Government. In groups consisting of more than one RSL, ownership of social housing assets can lie with either the parent or subsidiaries, provided that the owner is an RSL registered in Scotland.
- d) The provision of social housing should be a primary purpose of the group.

2.3 For the purposes of these conditions, we define social housing as housing that is let using a Scottish Secure Tenancy or Short Scottish Secure Tenancy, and where services provided by the landlord are subject to regulation by The Scottish Government. We do not require that other types of affordable housing within a group (for example, mid-rent or market-rent housing) should be owned by an RSL.

2.4 We insist on these conditions for two reasons:

- To ensure that all RSL tenants in Scotland have the same statutory rights, for example in relation to the terms of their tenancy and their rights to participation, consultation and information;
- To ensure that there is ultimate protection for tenants' homes, through the regulatory powers we exercise on behalf of Scottish Ministers.

2.5 Provided that these fundamental conditions are met, we will be flexible in considering the constitutional proposals put forward by RSLs. We will consider the strength of the business case put to us, applying the following regulatory principles.

Regulatory principles

2.6 **RSLs rather than The Scottish Government are responsible for determining appropriate constitutional and structural arrangements, in consultation with their tenants and other stakeholders. All RSLs should review regularly how well they are delivering services for tenants and what they may need to do to improve their efficiency and effectiveness.**

As lead regulator for the RSL sector, we neither encourage nor discourage group structures, mergers or other forms of partnerships, nor do we prescribe or recommend any particular model.

We recognise that RSLs should be in control of developing structures that support achievement of their objectives in an efficient and effective way. We expect the governing body to be in full control of any changes proposed, informed by appropriate professional advice, consultation with tenants and other stakeholders, and based on a full examination of the RSL's options.

2.7 **In regulating RSLs and considering proposals for new structures, our main interest is in the outcomes achieved, or potentially achievable.**

Our primary interest is in standards and results. In examining an RSL's structures for management and delivery, we will want to see evidence of how these contribute to the following outcomes:

- a) High-quality results in relation to "Performance Standards for Social Landlords", so that service quality for tenants and others is maximised;
- b) Continuous improvement in the efficiency and effectiveness of the RSL and its services, based on clear targets and performance indicators for the areas where improvements are planned;
- c) Sound governance, where roles and responsibilities for decision-making are clear and there is a high level of accountability to the RSL's tenants and stakeholders;
- d) Promoting opportunities for tenant and service user involvement in decision-making at local level;
- e) Ensuring that the RSL will meet all of its statutory and contractual obligations;
- f) Safeguarding tenants' homes and public and private investment, through effective management of risks.

We regard all of these outcomes as important. We also recognise that the specific information needed to demonstrate how the outcomes will be achieved may vary from case to case. RSLs seeking our approval to establish or change a constitutional partnership should provide a well-evidenced business case that demonstrates how their proposal will contribute to the outcomes described.

2.8 Our regulatory focus will be on the registered social landlord(s) within a group structure. This means that we will focus on the role and performance of the registered organisation(s) within a group structure.

We expect RSLs to manage relationships and performance within a group structure, so that any risks to the RSL and to tenants' interests are managed effectively. Our regulatory focus is on how RSLs do this. As described later in this guidance, our focus may extend to the work of non-registered subsidiaries in particular circumstances:

- We will take a closer interest in an RSL's relationships with a non-registered subsidiary, if the RSL has contracted core landlord functions and services to that subsidiary.
- The Charities and Trustee Investment (Scotland) Act 2005 provides Scottish Ministers with statutory powers of intervention in relation to the non-registered subsidiaries of charitable RSLs. Further information is provided in the Act itself, and in our Memorandum of Understanding with the Office of the Scottish Charity Regulator.

2.9 In carrying out our regulatory functions, our approach will be proportionate. We will take account of RSLs' individual circumstances and the regulatory risks involved. We will also work closely with other regulators to ensure that our respective statutory duties are met while minimising the burden of regulation for RSLs.

We recognise that the scale and purpose of partnerships varies greatly, and that this should be reflected in our approach.

For example

- a) We will always consider closely the impact a proposed merger or restructure will have on tenants. However, for **smaller-scale and straightforward transfers**, we will scale down other information requirements, where there is a clear rationale for the changes proposed.
- b) For **larger-scale and/or more complex merger/restructuring proposals**, we will expect to see particularly clear and robust evidence to demonstrate:
 - How the proposal will promote greater efficiency;
 - How efficiency savings will be used to enhance the quality of service to tenants;
 - What measures will be adopted to ensure that governance and control arrangements are clear and simple;
 - How accountability to tenants and other stakeholders will be achieved;
 - How tenant involvement and participation will be promoted;
 - How the anticipated benefits of the proposal will be monitored by the RSL and what reporting to the governing body, tenants and other stakeholders is

planned, after the proposal has been implemented.

- c) In **regulating existing groups**, we will generally apply a lesser degree of scrutiny to an RSL's relationships with non-registered subsidiaries whose activities are small scale and low risk. We will take a greater interest in how groups are working if they contain:
- More than one RSL;
 - Non-registered organisations responsible for core landlord services;
 - Non-registered organisations whose activities involve risks that may have a material and adverse impact on an RSL's ability to fulfil its obligations to tenants and/or funders.

3. Regulatory Approvals for Groups and Mergers

Registration of new registered social landlords

- 3.1 Any organisation seeking registration must meet our registration criteria which we publish on behalf of Scottish Ministers. For the purposes of this guidance, the registration criteria would be relevant if:
- A new registered social landlord is being created and will be constituted as the parent or subsidiary of another RSL;
 - existing RSLs propose to create a new registered social landlord to prepare for a future amalgamation or other type of constitutional arrangement.
- 3.2 The second of these options has not yet occurred. Existing RSLs going into partnerships have chosen the more straightforward option to transfer engagements from one RSL to the other.
- 3.3 Several of the registration criteria relate specifically to proposed RSLs that will be subsidiaries of another RSL. These are shown below:

- a) 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, The Scottish Government or the National Assembly for Wales.
- b) A subsidiary organisation must have a written undertaking from its parent organisation that the parent will ensure that:
 - i. All members of the subsidiary's governing body understand their duty to act in the interests of the subsidiary;
 - ii. 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
 - iii. Its subsidiary will operate in accordance with Performance Standards.

- c) Any services being provided for the subsidiary must be detailed in a written contract and the charges clearly stated.
- d) If the subsidiary's parent is a social landlord which is not registered in Scotland with The Scottish Government, it is expected to obtain from its parent a written undertaking that:
 - i. The office where the subsidiary's business is conducted will be in Scotland;
 - ii. All the subsidiary's records, files and other documents will be kept (or be available) in Scotland; and
 - iii. All meetings involving the subsidiary's governing body will be held in Scotland.

We have produced web-based guidance giving more information about the registration criteria.¹

- 3.4 We will ensure that the information which we ask RSLs to give us for registration and our assessment process are proportionate. For example, our assessment may focus on certain particularly relevant aspects of the registration criteria, where two or more existing RSLs are seeking to amalgamate.
- 3.5 RSLs seeking registration as a charity must get the approval of the Office of the Scottish Charity Regulator (OSCR). Applications for charitable status are considered and approved directly by OSCR. RSLs providing housing support services must follow the Care Commission's separate registration process.

When existing registered social landlords need our consent

- 3.6 RSLs must get our consent in the circumstances stated in Schedule 7, Part 2 of the Housing (Scotland) Act 2001. These include:

¹ Available at www.communitiesscotland.gov.uk, Regulation and Inspection, Registration.

- a) Changes to your Rules or Memorandum and Articles. This includes any changes that result in your becoming the subsidiary of another RSL.
- b) An amalgamation or transfer of engagements between RSLs that are industrial and provident societies.
- c) A transfer of undertaking or property for the purposes of reconstruction or amalgamation, for RSLs that are companies registered under the Companies Act 1985.

3.7 RSLs that are charities also need to get consent from OSCR to make each of these changes. We have agreed joint procedures¹ with OSCR for granting consents and notifying requests. This will help to streamline the way statutory consents are dealt with.

3.8 We also draw your attention to the [Guidance on Notification Reporting](#) issued by the Care Commission. RSLs will have a legal obligation to follow these procedures, for example if a group structure or merger proposal results in a change of provider for a registered care service.

Our consent is not needed to set up non-registered subsidiaries and non-constitutional partnerships

3.9 You do not need our consent to establish a non-registered subsidiary. We expect you to make a full appraisal of objectives, options and risks before proceeding, and to follow specialist legal and financial advice before making decisions. RSLs that are charities should always get their own legal advice, and have regard to OSCR's guidance.

¹ The arrangements are described in the Memorandum of Understanding and accompanying Briefing Note, published jointly by OSCR and The Scottish Government in July 2006. The documents are available on our website, www.communitiesscotland.gov.uk, Regulation and Inspection, Publications and on OSCR's website at www.oscr.org.uk/MemorandaofUnderstanding.

Alliances, consortiums and partnerships

- 3.10 An RSL may choose to work in partnership with other RSLs through an alliance or consortium. A group structure or merger creates a permanent constitutional relationship. However, alliances and consortiums typically involve a time-limited contract agreed for specific purposes.
- 3.11 RSLs do not need our consent to enter into contractual arrangements with other RSLs, unless the law requires you to do so. For example, you will need consent if:
- A contract involves a change to the governing “instruments” of any of the RSLs involved;
 - The proposed contract involves a sale or transfer of property covered by Section 66 of the Housing (Scotland) Act 2001;
 - Scottish Ministers use their powers under Section 68A of the Housing (Scotland) Act 2001¹.
- 3.12 At the time of issuing this guidance, The Scottish Government² and many RSLs are considering major changes in “procurement”. These changes may involve groups of RSLs co-operating to deliver new affordable housing or other types of investment such as planned maintenance. Possible partnership models include:
- alliances or consortiums, set up by contract;
 - the creation of a special-purpose vehicle or joint-venture company, with each RSL being a shareholder.
- 3.13 You will need to consider the particular issues that your preferred approach to such partnerships will raise. For example, a partnership may affect your duties as an employer, your tax liabilities and your charitable status.

¹ There is an important exception when The Scottish Government, on behalf of Scottish Ministers, uses powers under Section 68A of the Housing (Scotland) Act 2001. These powers relate to directing an RSL to delegate housing management functions to another RSL, as in the case of The Glasgow Housing Association Ltd. and the delegation of housing management functions to designated registered social landlords. Further information is provided in the Communities Scotland Guidance Note 2006/04.

² Information is available at www.communitiesscotland.gov.uk, Our Teams, Investment

- 3.14 As regulator, we expect you to carefully assess all the options, benefits and risks and to take specialist professional advice before forming any kind of partnership. We also expect you to have binding and enforceable agreements in place between the parties, to manage risk and to cover situations in which there is deadlock or dispute.

The information we need and the approval criteria

- 3.15 **Appendix 1** sets out what information we ask for and the assessment criteria we apply if you need our consent to establish or change constitutional partnerships. Please regard Appendix 1 as a guide only. We may adjust the information we ask for to suit each case. This will enable our approach to be proportionate and targeted at the key risks for individual proposals.
- 3.16 **Appendix 2** summarises requirements for all consents that need the approval of both OSCR and The Scottish Government. RSLs should apply to OSCR, which will grant consent first. OSCR's approval will be conditional on The Scottish Government also granting its consent.

4. The Operation of Group Structures: Regulatory Requirements

Introduction

4.1 This section sets out regulatory requirements for RSLs that are part of a group structure, either as group parent or as a subsidiary of another RSL.

4.2 The guidance addresses the following aspects of how group structures work:

- Governance
- Roles and relationships within group structures
- Financial management issues
- Managing risk
- Ensuring transparency in the way group structures work.

4.3 The regulatory requirements focus on key principles and potential risk areas. We encourage RSLs to incorporate the requirements in their own systems for management and self-assessment. We will refer to these requirements when we assess regulatory risks for RSLs in group structures, but they are not a checklist for how we will regulate. This would be incompatible with our broader purpose of proportionate regulation, based on outcomes and risks.

Regulatory Requirements: Governance

4.4 We want to encourage RSLs to adopt governance structures that are:

- as simple as possible, minimising areas of overlapping responsibilities;
- clear about responsibility and accountability for decision-making. This is essential, to prevent responsibility for decisions from becoming fragmented or blurred as a result of the governance relationships between members of a group;
- fully accountable to the RSL's tenants and stakeholders;
- successful in attracting governing body members with the skills that meet the

varying needs of each part of the group; and

- sustainable and cost-effective.

4.5 Devising the right constitutional arrangements within a group structure is a matter for careful judgment, informed by expert legal advice. These are our regulatory expectations :

- All RSLs within a group structure should comply with the Regulatory Code of Governance¹, as reproduced below.
- Each organisation within the group should have a distinct legal identity and separate constitution.
- The constitutional relationships between all organisations in the group (registered or non-registered) should be documented formally and in terms that are transparent and understandable.
- If any of the organisations within the group are charities, an RSL's role and relationships with other group members are consistent with charity law.
- The constitutions of group members should enable the parent RSL to exercise control and to take corrective action, where required.

4.6 The Regulatory Code of Governance and the accompanying Supporting Guidance state some particular requirements for the governance of RSLs in group structures.

¹ Published on our website at www.comunitiesscotland.gov.uk, [Regulation and Inspection, Guidance](#).

4.7 The Regulatory Code of Governance states that:

Unless it is constituted as the subsidiary of another RSL within a group structure:

- The RSL maintains its independence by conducting its affairs without control, undue reference to or influence by any other body;
- The composition of its membership and governing body do not compromise the RSL's independence.

This means that we expect all RSLs to have governance arrangements that allow them to be fully independent organisations, unless they are part of a group structure. By definition, an RSL that is a subsidiary in a group structure cannot be fully independent and autonomous, because it is constituted as the subsidiary of another RSL.

4.8 We have updated the Supporting Guidance as shown below, to reflect comments we received on the consultation draft of this guidance on group structures.

Supporting guidance on governance within group structures

Constitutional control by the group parent

Within group structures, the parent RSL must have constitutional control over its subsidiaries. Constitutional control should not be confused with control over operational decisions. Subsidiaries should exercise control over operational matters, within the limits that have been set by their parent organisation.

Constitutional control by parents should normally be exercised through:

- Powers to control the majority of votes at a general meeting of a subsidiary; and/or
- Powers to appoint and remove a majority of the subsidiary's governing body.

The RSL's powers of control should be enshrined in the subsidiary's governing instrument, taking account of the legal status of members of the group. For example, if a parent RSL has a charitable subsidiary, it may only exercise these powers in the best interests of the charity. In addition, a charitable subsidiary must have operational independence while it is properly carrying out its charitable purposes.

Neither constitutional arrangements nor board membership should allow a subsidiary to exercise control or undue influence over its parent.

Governing body membership: parent RSLs

Parent governing bodies should always be able to make objective decisions about the RSL's relationships with its subsidiaries. Most RSLs address this by ensuring that all of their governing body members do not also serve on the board of a particular subsidiary. This means the parent RSL always has governing body members who are free from any potential conflict of interest.

Governing body membership: subsidiaries that are RSLs

Subsidiaries of this type generally have their own board members, with only a small number of members also serving on the board of the parent RSL. We require that if a subsidiary is an RSL, its governing body should as a minimum have sufficient members to form a quorum independently of any members who are also governing body members of the parent organisation. This regulatory requirement does not restrict any constitutional rights a parent RSL may have to appoint or remove governing body members of a subsidiary or to use any other step-in rights.

Governing body membership: non-registered subsidiaries

There is no reason why governing body members or employees of a parent RSL should not also be directors of a non-registered subsidiary. Indeed, this may form part of an RSL's approach to achieving its overall group objectives and managing any risks resulting from the activities of the subsidiary.

We prefer (but do not insist) that the governing body of a non-registered subsidiary should include some members who are not also members of the parent's governing body. This is consistent with good governance practice, since:

- It can promote governing body membership by a subsidiary's service users and by people with expertise in the subsidiary's business activities.
- If the composition of parent and subsidiary boards is identical, it may become difficult for members to keep clearly in mind whether they are taking a decision as directors of the parent or the subsidiary.

Managing conflicts of interest

It is always advisable for each group member to have a different chairperson.

People who are governing body members in more than one organisation within a group should have a clear understanding of their governance responsibilities.

Governing body members must act in the interests of the committee or board on which they are serving at the time of any meeting, subject to the additional obligations which apply to governing body members of charities to always act in the interest of the charity.¹ RSLs must provide their governing body members with clear guidance on declaring and managing any conflicts of interest which may arise, based on the group's objectives and structure.

Other governance requirements

RSLs which are the subsidiary of another RSL must operate in accordance with "Performance Standards".² If the parent RSL is not registered with The Scottish Government, the subsidiary registered in Scotland must obtain the undertakings from its parent stated in our Registration Criteria (see section 3.3 above).

RSLs in group structures should regularly review the effectiveness of governance and control arrangements within the group. This is particularly important in more complex group structures where there may be higher levels of governance risks.

The operation of RSL group structures

4.9 Most of the requirements we have specified on the following pages apply to all types of group structure. However:

- Some additional requirements apply to groups containing non-registered subsidiaries.

¹ Detailed guidance has been published by the Office of the Scottish Charity Regulator, in its [Guidance for Charity Trustees \(2006\)](#). Joint guidance is also being prepared by the Scottish Federation of Housing Associations and The Scottish Government.

² If a non-registered subsidiary provides services that are part of an RSL's obligations under "Performance Standards", we expect the RSL to ensure that its subsidiary also operates in accordance with "Performance Standards".

This is because we do not usually have a direct regulatory relationship with non-registered subsidiaries. Therefore, we have set out how we expect RSLs to manage relationships with this type of subsidiary, to ensure that any risks to the RSL's assets and tenants' homes are safeguarded effectively.

- We have also specified some additional requirements for groups that contain more than one RSL.

We expect RSLs that are subsidiaries of another RSL to have sufficient operational independence to allow them to be accountable and responsive to the needs of their tenants and service users. Subject to this principle the parent and subsidiary should agree the powers, roles and responsibilities of group members in a way that recognises the scale and purpose of the subsidiary, and the agreed arrangements for risk management.

- 4.10 We have shown each set of regulatory requirements in a format that takes account of these differences.

Regulatory Requirements: Roles and relationships within group structures

All RSL Group Structures

- ❖ Parent RSLs should exercise strategic high-level control, by monitoring the activities and performance of their subsidiaries. Parent RSLs should take timely and effective action if their subsidiaries do not operate within approved limits or fail to meet agreed standards of performance.
- ❖ The balance between strategic control by the parent and operational independence for subsidiaries is for the group members to decide, and should reflect the group's objectives, the legal status of its members and the risks involved.

For example

- An RSL whose subsidiaries deliver core landlord services to tenants would typically exercise a higher level of control over its subsidiaries.
- This might also apply to an RSL's relationship with a subsidiary providing factoring services. However, this would need to be balanced against the specific legal obligations associated with factoring activity, and the need to be properly accountable to factoring service users.
- A subsidiary set up to deliver entirely commercial activities is likely to operate on more of an arm's-length basis, to minimise risk to its parent.

- ❖ Subsidiaries should have sufficient independence to manage their affairs without undue interference in operational matters by the parent organisation. Parent RSLs should establish clear financial and other limits within which their subsidiaries should work.

For example

- By establishing a group strategy and objectives;
- By the parent RSL approving its subsidiaries' business plans;
- Through an independence agreement or similar procedural document;
- By making clear what group policies, if any, subsidiaries are expected to apply;
- Through board composition (see section on governance).

- ❖ Service provision between group members should be set out in written service level agreements or contracts. The efficiency and effectiveness of service provision within the group should be reviewed regularly. Where service contracts are of a larger scale, we expect this to be reflected in the process used to test the value of the services provided/received. It is for RSLs to establish whether there is a requirement to expose existing services to competition, in their particular circumstances.

RSLs with non-registered subsidiaries	Groups with more than one RSL
<ul style="list-style-type: none"> ❖ We still expect the parent RSL to be in control and to manage the risks involved. ❖ Some of OSCR’s functions have been delegated to Scottish Ministers (The Scottish Government), including powers to conduct inquiries etc. in respect of the non-registered subsidiaries of charitable RSLs. This provides us with a direct regulatory role in relation to the subsidiaries of charitable RSLs. 	<ul style="list-style-type: none"> ❖ All RSLs registered in Scotland within a group must individually meet the obligations described in “Performance Standards for Social Landlords”. This does not preclude the use of shared group policies, services or other resources. ❖ We expect control by parent RSLs to focus on approval of group objectives and policies, and approval of subsidiaries’ business plans. ❖ Within these limits, subsidiary RSLs should have sufficient autonomy to plan, manage and deliver their housing services in a way which is responsive to their local context and the views of their tenants. ❖ We also expect the governing bodies of subsidiary RSLs to have sufficient rights and resources to be able to meet these obligations effectively.
	<div data-bbox="860 1262 1378 1797" style="border: 1px solid black; background-color: #f0e6ff; padding: 10px;"> <p>For example</p> <p>The governing bodies of subsidiary RSLs should have:</p> <ul style="list-style-type: none"> • The right to negotiate and agree the terms of legal and procedural documents that govern roles and responsibilities within the group; • The power to prepare the RSL’s own business plan; • The right to be consulted about any group policies that will apply to the subsidiary RSL; • Access to independent professional advice, where appropriate. </div>

Regulatory Requirements: Financial issues within group structures

All RSL Group Structures	
<ul style="list-style-type: none"> ❖ Financial relationships and responsibilities within a group structure are complex matters. RSLs should always obtain and act in accordance with specialist professional advice (including advice on taxation and accounting requirements). ❖ If providing financial support to a subsidiary, an RSL must have legal capacity to do so and must manage the arrangements and the risks effectively. 	
<p>For example</p> <ul style="list-style-type: none"> • An RSL lending to or investing in another organisation should ensure that it is legally able to do so (for example, if the RSL is a charity). • Any on-lending within a group must meet the conditions specified in our guidance on consent for disposals under Section 66 of the Housing (Scotland) Act 2001. The relevant parts of this guidance are reproduced overleaf. • Any cross-collateralisation, guarantees, equity investment or lending should be clearly identified in the group members' business plans, budgets, financial reports and annual accounts. 	
RSLs with non-registered subsidiaries	Groups with more than one RSL
<ul style="list-style-type: none"> ❖ A non-registered subsidiary should not expose the parent to risks that are unreasonable or unmanageable, in relation to the parent RSL's viability or reputation. ❖ Any financial support or guarantee provided by the RSL should not threaten its financial viability or its ability to meet its obligations towards tenants and funders. ❖ Funding or lending provided should be surplus to what is needed for current or 	<ul style="list-style-type: none"> ❖ To maximise assurance for tenants, we expect each RSL within a group to demonstrate financial viability on a stand-alone basis. <div style="background-color: #ffe6ff; padding: 5px;"> <p>For example</p> <ul style="list-style-type: none"> • Each registered organisation should have or be able to borrow sufficient funds to meet its current and future commitments and funding obligations. • If a registered organisation will not be viable on a stand-alone basis in the </div>

RSLs with non-registered subsidiaries	Groups with more than one RSL
<p>future social housing purposes.</p> <ul style="list-style-type: none"> ❖ A parent RSL should not take general financial responsibility for its non-registered subsidiary, nor imply to third parties that it will do so. ❖ The extent of an RSL's liabilities for the debts of a non-registered subsidiary should not exceed any guarantees it has provided and/or its available resources. ❖ All financial and contractual arrangements must be on arm's-length terms and minimise the risks to which the RSL is exposed. <div data-bbox="261 1136 773 1925" style="border: 1px solid black; background-color: #fce4ec; padding: 10px; margin-top: 20px;"> <p>For example</p> <ul style="list-style-type: none"> • The parent should formally define the scope of the subsidiary's activities, describing any limits that apply. The parent should document the financial and other limits within which the subsidiary must operate. • Contractual limits should be in place for any guarantees entered into by the parent RSL on behalf of the subsidiary. • Banking arrangements should ensure that the parent RSL's financial exposure is limited. </div>	<div data-bbox="849 260 1382 674" style="border: 1px solid black; background-color: #fce4ec; padding: 10px; margin-bottom: 20px;"> <p>short term, the reasons for this should be explicit and justifiable. Sustainability in the long term should be demonstrated.</p> <ul style="list-style-type: none"> • The parent RSL should have the legal capacity and financial resources to deliver the support required. </div>

RSLs with non-registered subsidiaries	Groups with more than one RSL
<ul style="list-style-type: none"> • Funding or lending by the parent RSL to the subsidiary should be formalised, with appropriate arrangements for monitoring and control. • Any letters to funders issued by the parent RSL in relation to the subsidiary should be drafted with professional advice, so that they are not considered to be general assurances in respect of the debts or liabilities of the subsidiary. <p>❖ The governing body should consider any risks to the RSL, and be satisfied that providing support is in the RSL's best interests, and will make a demonstrable contribution to achieving its objectives.</p>	

Extract from Communities Scotland [Guidance Note 2005/05, Section 66 of the Housing \(Scotland\) Act 2001](#)

Conditions relating to heritable security in respect of private finance

RSLs must certify that they have met several criteria before we will approve a consent application for the granting of a security for private finance. These are:

The loan facility will be used by the RSL itself or if on-lent will be:

- to an RSL within the same group;
- to a non-RSL within the same group, following approval of a specific business case by The Scottish Government;
- imposing no cost on RSL tenants;
- where the funding agreement specifically allows on-lending;

- in accordance with the RSL's constitution;
- at arm's length, and at terms that can demonstrate no loss to the RSL;
- in terms that make it a 'qualifying loan' in accordance with Revenue and Customs rules, if the RSL is charitable.

Regulatory Requirements: Managing Risk

All RSL Group Structures	
<ul style="list-style-type: none"> ❖ RSLs should identify and manage the risks associated with the operation of the group structure. Tenants' homes and services and the RSL's assets and reputation should not be put at risk by the operation of the group. ❖ The basis for interventions by the parent RSL should be clearly described and applied. 	
<p>For example</p> <ul style="list-style-type: none"> ○ If a subsidiary does not adhere to financial or other agreed limits, the parent should have clearly defined rights to step in and take action. ○ Parent RSLs should have unrestricted step-in rights where a subsidiary or its governing body is experiencing serious problems (for example, relating to the governance, financial management or performance of the subsidiary). Step-in rights should include the power to appoint and where necessary remove members of the subsidiary's governing body. ○ Where the group contains members that are charities, this should be reflected in the way step-in rights are defined and exercised, since governing body members must always act in the interests of the charity. 	
RSLs with non-registered subsidiaries	Groups with more than one RSL
<ul style="list-style-type: none"> ❖ The RSL's risk-management strategy should address any risks arising from its relationships with non-registered subsidiaries. 	<ul style="list-style-type: none"> ❖ If major problems occur within a subsidiary RSL, we expect the parent RSL to take whatever action is needed to resolve these, so that tenants' homes and services are not placed at risk. ❖ We expect parent RSLs to support their registered subsidiaries, to the extent that they are legally and financially able to do so.
<p>For example</p> <ul style="list-style-type: none"> • RSLs should always obtain legal and financial advice on how they can minimise and manage risks to the registered organisation, and reflect this advice in group documentation and working practices. 	

Regulatory Requirements: Ensuring transparency and accountability in the way groups work

All RSL Group Structures

- ❖ RSLs should ensure transparency about identities, responsibilities and relationships within groups.

For example

- Each member of a group (whether or not it is an RSL) must always ensure that tenants, service users and other stakeholders receive clear information about which organisation they are dealing with; which group member owns assets, issues tenancies and delivers services; how relationships work within the group; and about the accountability of each group member.
- Governing body proceedings and operational procedures and working practices should be clear about the identity of each organisation in the group.
- Group relationships and transactions between group members should be described in individual and group accounts, as required by accounting standards, the RSL Accounting Order and the RSL Statement of Recommended Practice.
- RSLs are required to disclose related party transactions within their accounts, in the circumstances specified in Financial Reporting Standard 8. For charities, disclosure in accounts for related party transactions is also detailed in the Charities accounting Statement of Recommended Practice.

5. How we will regulate RSLs in a group structure

Introduction

- 5.1 The Scottish Government aims to regulate RSLs in a proportionate way that reflects our assessment of regulatory risks. We will be flexible in deciding how regulatory activity can be focused most effectively, to make good use of our resources and the resources of RSLs.
- 5.2 In this section, we describe how we will apply these principles to RSLs in group structures.

Tailoring the regulatory process for RSLs in group structures

- 5.3 We expect all RSLs to be open in their dealings with us about relationships and transactions within a group structure.
- 5.4 Our approach to regulating RSLs in group structures will be determined by each RSL's risk profile. Depending on the outcomes an RSL is achieving, the major issues likely to be of most interest to us are:
- The overall risk profile and risk-management strategy for the group;
 - How the operation of a group structure is contributing to improvements in service quality and efficiency;
 - The quality of governance and control, if there are any worrying indicators.
- 5.5 Our approach will also take account of the composition of group structures, as described below.

Groups containing more than one RSL

- 5.6 Some RSLs are constituted as subsidiaries of parent RSLs that are registered in England. We will shape our approach to regulating these RSLs in accordance

with our published [Memorandum of Understanding](#) with the social housing regulator in England.

5.7 We anticipate that groups of this kind may become more common in future. At present, we will maintain regulatory relationships with each RSL in groups of this type, for the purposes of:

- Financial and performance/statistical returns and the submission of annual accounts¹;
- Risk assessments and regulatory statements (these will also be made available to the group parent);
- Inspections (full-scale inspections, where required, and more focused responsive inspections).

5.8 We may change our approach as this type of group becomes more common. For example, it may be possible to streamline regulatory processes in future by introducing group-based returns and risk assessments.

Groups containing non-registered subsidiaries

5.9 Our regulatory interest in the role of non-registered subsidiaries will often be very limited. We recognise that many non-registered subsidiaries are small in scale and that their purpose is often to undertake activities that are closely related to the community-regeneration and neighbourhood-management objectives of their parents.

5.10 There are two main situations where we will take a closer regulatory interest in an RSL's relationship with its non-registered subsidiaries.

5.11 Firstly, where our regulatory assessments indicate that the activities of a non-registered subsidiary represent a significant risk to an RSL's performance,

¹ Where group accounts are produced, these should be submitted to us by the parent organisation.

governance, or its ability to meet its obligations towards tenants, funders or other stakeholders.

- 5.12 Secondly, if an RSL contracts with a non-registered subsidiary to deliver some or all of the landlord services we regulate directly, as described in “Performance Standards”. We prefer (but do not insist) that core landlord services such as housing management should be provided by a registered organisation. Some RSLs provide these services through non-registered subsidiaries. In these circumstances, we expect the RSL to have a strong framework for monitoring the performance of subsidiaries, to ensure they work in accordance with Performance Standards.
- 5.13 We will require an RSL to provide access to information about its relationships with non-registered subsidiaries (for example, in the event of governance, financial or performance problems within the group), if this is needed to assess the RSL’s own performance and risk profile.

Support and Intervention

- 5.14 The circumstances in which The Scottish Government will agree a support strategy or use formal intervention powers are described in our [Intervention Strategy](#).
- 5.15 If a subsidiary RSL is experiencing governance or performance problems, we expect the parent RSL to take action to resolve these, using its own powers of intervention where appropriate.
- 5.16 Depending on the nature of the problems, we might decide to provide support or take intervention action in respect of all members of the group. Support and intervention will be considered on a case-by-case basis.

- 5.17 We will work closely with other regulators if serious problems occur within groups that include RSLs. The basis for joint working and action is described in the Memoranda of Understanding we have agreed with other regulators¹:
- The Housing Corporation, where problems occur within a group whose members are registered separately in Scotland and England;
 - The Office of the Scottish Charity Regulator (OSCR), where problems occur within an RSL or group whose members include a charitable RSL;
 - The Scottish Commission for the Regulation of Care, where problems occur within a group whose members include RSLs that provide housing support or care services.

Enquiries etc. into charitable RSLs and their subsidiaries

- 5.18 The Charities and Trustee Investment (Scotland) Act 2005 delegates to Scottish Ministers some of OSCR's functions with respect to charities that are also RSLs and bodies controlled by them. This includes non-registered subsidiaries. The delegated functions relate to inquiries; suspensions and directions; and inquiry reports.
- 5.19 The primary purpose of an inquiry is to ensure that charity assets are protected from abuse and remain available for use in the furtherance of a charity's objects.
- 5.20 Any inquiries carried out by The Scottish Government on behalf of Scottish Ministers under these delegated arrangements will be conducted on the basis of OSCR's [Inquiry and Intervention Policy](#).

¹ Copies of each Memorandum of Understanding are available on our website (www.communitiesscotland.gov.uk, Regulation and Inspection, Publications/Links with other Regulators).

Appendix 1

Procedures for Creating or Changing Constitutional Partnerships between RSLs

1. Introduction

These procedures apply to:

- Proposed mergers, amalgamations and transfers of engagements;
- Proposals to make constitutional changes, to become the subsidiary of another RSL.

RSLs should seek The Scottish Government's approval by submitting a **business case**. Where more than one organisation is involved, we will agree with the parties involved which RSL should submit the business case.

The purpose of the business case is to demonstrate the rationale for the proposal, and to provide an evidence-based assessment of the costs, benefits and risks involved. As well as financial and organisational benefits, the business case must clearly describe the benefits for tenants in relation to service delivery, and how these will be achieved. We will also be looking for evidence of how the RSL has consulted with stakeholders (for example, tenants, Registered Tenants Organisations, funders, local authorities, care-provider partners, other regulators), and how their views have been reflected in the proposals.

We expect RSL governing bodies to be in overall control of the process, by obtaining appropriate professional advice, and by exercising due skill and care in overseeing the development of the proposals.

Appendix 3 provides signposts to sources of information and advice which may be useful when developing proposals and/or preparing a business case.

2. Information Requirements

Our experience has been that every proposal is different, based on the objectives and circumstances involved. To ensure that our scrutiny is proportionate and effective, we tailor the information needed to individual cases.

From an RSL perspective, the key stages in a transfer or restructuring proposal are likely to include:

- Option Appraisal
- Development of Business Case
- Development of Business Plan, including financial and risk plan
- Tenant Consultation
- Production of an Implementation Plan.

RSLs should contact us at an early stage in developing their proposals. This will allow us to understand the key features of the proposal, and agree what supporting information is needed. Just as important, early contact and discussion about the proposal will help RSLs manage the process of obtaining our consent in an efficient and effective way.

The following table illustrates typical information requirements. These will help us identify the rationale for the proposal, the intended outcomes, and the supporting evidence.

Information required	Comments
Strategic objectives	The rationale for the proposal should be described.
Options appraisal report	This should describe the options the RSL(s) have considered and demonstrate the anticipated costs and benefits for the options considered. We would normally expect the appraisal to address <u>a range of options</u> , based on the strategic objectives involved.

Information required	Comments
	<p>For example</p> <ul style="list-style-type: none"> ○ A proposal designed to achieve greater efficiency should demonstrate the outcomes that different partnership models (constitutional and non-constitutional) might realise.
<p>Proposed governance structures and responsibilities</p>	<p>If a proposal involves creating or joining a group structure, it should show where responsibility and control will lie within the group. Key requirements are:</p> <ul style="list-style-type: none"> • Proposed governing instruments • An initial draft of the proposed independence/intra-group agreement.
<p>Intended benefits of the proposal, and supporting evidence</p>	<p>The benefits the proposal is intended to deliver should be described, with appropriate supporting evidence. We recognise that the specific issues a proposal is intended to address will influence the range of benefits involved. Issues to address might include some or all of the following, or additional factors that we have not listed:</p> <p>For example</p> <ul style="list-style-type: none"> • Improvement/stabilisation of service delivery standards • Expansion in the range of services the RSL partners are able to provide • Impact on tenants and service users • Impact on opportunities for tenant involvement/participation • Improvement of physical quality of the housing stock • Rent levels • Potential for efficiency savings (for example in relation to overhead costs; procurement savings; improved borrowing margins/costs) and how these will be utilised • Enhanced borrowing capacity • Enhanced financial viability • Risk reduction

Information required	Comments
	<ul style="list-style-type: none"> • Improvements in governance and/or management control • Impact on staffing and governance • Impact on opportunities to expand development and wider role activity • Long-term support for a partner RSL experiencing significant difficulties.
Business Plan and financial issues	Explanation of key assumptions, demonstrating how the objectives and intended benefits of the proposal will be met.
Employment and pensions issues	<p>Description of the impact the proposal will have on employment and pensions obligations.¹ The business case should include a report by the RSL's professional advisers, describing the key issues and proposed methods for managing these issues.</p> <p>From experience, we do not recommend joint employment and joint ownership of assets because it can lead to confusion and conflict.</p>
Risk Appraisal and Strategy	Description of key risks affecting the proposal (implementation period and longer-term risks) and methods being used or proposed to manage and mitigate the risks involved.
Legal issues	Confirmation that the proposal will not cause any of the partners to breach their objects and legal status (for example, if the proposal involves one or more charitable RSLs). We request that confirmation should take the form of a letter or report from the RSL's legal advisers.
Tenant Consultation Report	Description of action taken to inform and consult tenants and any Registered Tenants Organisations about the proposals, and

¹ A number of RSLs have highlighted the importance of considering pension issues at as early a stage as possible, in light of The Pensions Act 2004 and subsequent regulations. Briefly, when an employer changes its status or identity, it may need to cover its existing pension liabilities to the full 'buy-out' level. The Pensions Trust has issued guidance on this subject, and it recommends that any RSL considering transfers of engagement or the creation of subsidiaries should seek its advice at as early a stage as possible.

Information required	Comments
	<p>consultation outcomes. This should reflect the RSL’s obligations on tenant participation, information and consultation.</p> <p>The law requires an RSL to consult its tenants if a change of landlord is proposed. We also expect tenants to be consulted if the proposal involves no change of landlord but their landlord plans to join a group structure.</p> <p>RSLs should have a clear communications/consultation strategy that allows sufficient time for meaningful tenant consultation on the RSL’s proposals. If a change of landlord is proposed, tenants directly affected should have access to independent advice funded by the RSL.</p> <p>If an RSL formed as a result of an LSVT proposes to create or join a group, it should confirm that there is no detriment to tenants in relation to pre-transfer ballot commitments.</p>
Report outlining consultation with other stakeholders, and outcomes of consultation	Including the RSL’s members, employees, funders, relevant local authorities, any care-provider partners, housing association investment funding bodies and, where relevant, the Scottish Executive. The range of stakeholders should reflect the nature of the RSL’s business.
Consultation with other regulators	Where relevant, a copy of OSCR’s in-principle consent should be provided. In accordance with the procedures we have agreed with OSCR, this will be conditional upon The Scottish Government’s consent also being granted.
Funding and Contracts	A description of how the proposal will affect any contracts/covenants with other parties should be provided, along with confirmation of lender consent to the proposal.
Implementation Project Plan	Implementation plan prepared with input from legal/financial advisers, outlining proposed methods for managing the remaining stages of the process. This should highlight key issues and milestones.

Information required	Comments
	<p>For example</p> <ul style="list-style-type: none"> • Any interim management arrangements; • Timescales for completion of disclosure/due diligence work; conveyancing; finalisation of procedural and service level agreements; applying for Financial Services Authority or Companies House approvals; • Senior staffing arrangements (eg appointment/recruitment issues, any senior staff severance payments proposed).
Governing body approval	<ul style="list-style-type: none"> • Copies of reports to the governing body/bodies concerned, to demonstrate consideration and approval of the proposal.

3. Assessment Criteria and Timescales

Our assessment will reflect the scale and nature of the proposal, but will normally include the criteria described below. It is important that the business case provides clear evidence relating to these criteria.

We will examine the proposal in overall policy terms. This means that RSLs themselves must ensure that they have received appropriate professional advice that allows them to be fully satisfied about the legality and financial viability of their proposals. If we have significant concerns about a proposal, we may ask the RSL to provide an external validation report, completed by an independent financial consultant or adviser.

The major criteria our assessment will address are as follows:

1. The proposal has been discussed, scrutinised and approved by the relevant governing body/bodies.
2. Proposed governance structures are simple and clear, and will promote high standards of governance and accountability to tenants and other stakeholders.
3. A comprehensive risk analysis has been carried out, covering all aspects of the proposal.

4. There has been adequate consultation with and support from key stakeholders including tenants, members, lenders (who may need to give specific approval) and local authorities.
5. The new organisation will be at least as strong as its predecessors in relation to financial viability, efficiency and quality of service to tenants.
6. Wherever possible, the proposals will enhance the interest of current and future tenants.
7. Robust monitoring systems will be established, to ensure that delivery after the proposal takes effect is achieved (eg in relation to service standards, operating costs and investment levels).
8. If the proposal involves a group structure involving more than one RSL, we will wish to see that each RSL has the potential to meet "Performance Standards".

In applying these criteria, we will take account of the individual circumstances of the proposal. For example:

- For proposals designed to remedy performance failures by one of the partners, we recognise that the immediate priority may be to address those failures while maintaining the performance of the partner RSL.
- The rationale for a proposal may be to consolidate and safeguard existing standards of performance, with some benefits taking longer to achieve because of the circumstances involved.
- Proposals may be designed to improve performance or efficiency in specific parts of the business, rather than in every area.
- Enhancement of tenant interests could potentially include a wide range of factors (for example, increased capacity to invest in the existing housing stock or provide new housing; provision of additional services for tenants; enhanced ability to keep rents at affordable levels etc). But benefits will vary from case to case, and the partners' current performance will also be relevant. We will aim to take a rounded view of each proposal, based on the business case and the views that tenants themselves have expressed.

As described in Section 2 of this guidance, our assessment process may be adjusted for large-scale and/or complex proposals.

RSLs should allow 4 weeks for us to complete consideration of their business case, from the date all agreed information is received.

Appendix 2

Summary of Consent & Notification requirements for Charitable RSLs¹

Action	RSLs required to obtain CS consent?	Charitable RSLs required to obtain OSCR consent?	RSLs required to notify CS?	Charitable RSL required to notify OSCR?
Changing the RSL's name		√	√	
To amend the RSL's constitution in so far as it relates to its charitable purposes	√	√		
A decision to amalgamate with or transfer to another body	√	√		
A decision to wind up or dissolve the RSL	√	√		
A change in the address of the RSL's registered office			√ (within 28 days)	√ (within 3 months)
Any change to the other details held under a charitable RSL's entry in the Charities Register				√ (within 3 months)
Any change to the RSL's constitution (other than the charitable purposes which is dealt with above)	√			√ (within 3 months)
Action taken by the RSL to amalgamate, wind up or dissolve itself	√	√		√ (within 3 months)
Any administration order or an order for winding up is made by the court in respect of the RSL	*			√ (within 1 month)
A receiver is appointed in respect of any of the RSL's property	*			√ (within 1 month)

* Contact should be made with The Scottish Government at an early stage if any of these actions are anticipated.

¹ Source: Joint OSCR/Regulation and Inspection Briefing Note to RSLs, July 2006. More general guidance on seeking approval for constitutional changes (for all types of RSL) is provided in [Scottish Homes Guidance Note 2000/03](#), which is still current.

Appendix 3

Useful References

This appendix provides a listing of publications that may be useful to RSLs if they are part of a group structure or are considering entering into a constitutional partnership.

The information provides signposts to possible sources of information, chosen for their practical focus. The good practice information we have highlighted is not a “must read” list, nor does Regulation and Inspection endorse the detail of their contents.

Where items are publicly available on-line at no cost, we have included hyperlinks to the relevant documents. The hyperlinks are correct as at October 2007, but these may change if the publishing organisations change or update their websites.

We have also provided a listing of guidance published by The Scottish Government and other regulators. All of this material is available on-line.

Good Practice Guidance/Research on establishing constitutional partnerships

(including detailed descriptions of potential models and their possible advantages and downsides)

- ❖ National Housing Federation (2007), Groups, mergers and alliances
- ❖ Chartered Institute of Housing (2006), The Costs and Benefits of Groups, Mergers and Partnerships. The full report is not available on-line, but a [free summary](#) can be downloaded from the Housing Corporation’s website at www.housingcorp.gov.uk
- ❖ The Housing Corporation (2003): [Mergers, Due Diligence and Housing Associations: a Good Practice Guide](#)
- ❖ The Housing Corporation (2002): [Group Structures: A self-assessment Toolkit for the Board Members of Housing Associations](#)
- ❖ Scottish Federation of Housing Associations (2001), Raising Standards in Housing Chapter 14: Subsidiaries and Group Structures

Operational Management within Group Structures (including extensive case study examples)

- ❖ The Housing Corporation (2006), [Good Practice Note: Making Groups Work](#)
- ❖ National Housing Federation (2000), How groups work: Management and accountability in housing groups
- ❖ National Housing Federation (1999), Partnerships and Practicalities

Group Structure Policies and Other Documentation

- ❖ National Housing Federation (2001), Group structures - The Small Print: a Range of Sample Group Structure Documents Covering Key Policy Areas

Regulatory Guidance (The Scottish Government)

- ❖ Communities Scotland (2006), [Performance Standards for Social Landlords and Homelessness Functions](#)
- ❖ Communities Scotland (2006), [Regulatory Code of Governance for registered social landlords](#)
- ❖ Communities Scotland (2006), [Directing the delegation of housing management functions under Section 68A of the Housing \(Scotland\) Act 2001](#) (Guidance Note 2006/04)
- ❖ Communities Scotland (2005), [Web-based guidance on the Registration Criteria](#)
- ❖ Communities Scotland (2003), [Schedule 7 of the Housing \(Scotland\) Act 2001: Control of Payments and Benefits](#) (Guidance Note 2003/02)
- ❖ Communities Scotland (2002), [Criteria for Registration as a registered social landlord](#)

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- ❖ Office of the Scottish Charity Regulator (2006), [Guidance for Charity Trustees](#)
- ❖ Office of the Scottish Charity Regulator (2006), [Becoming a Charity in Scotland \(Guidance and Application Pack\)](#)
- ❖ Office of the Scottish Charity Regulator (2005), [Guidance on Consents and Notifications under sections 11, 16 and 17 of the Charities and Trustee Investment \(Scotland\) Act 2005](#)
- ❖ Scottish Commission for the Regulation of Care (2007), [Guidance on Notification Reporting](#)

Agreements between The Scottish Government and other regulators

- ❖ Office of the Scottish Charity Regulator and Communities Scotland (amended version, 2007), [Memorandum of Understanding and Briefing Note](#)
- ❖ The Housing Corporation and Communities Scotland (2005), [Memorandum of Understanding](#)
- ❖ Scottish Commission for the Regulation of Care and Communities Scotland (2004), [Memorandum of Understanding](#)