

Regulatory Code of Practice

Consultation Draft

Subject to legislation

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SCOTTISH EXECUTIVE

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Please contact Gordon West, Housing Bill Team, Scottish Executive, telephone number 0131 244 7954.



Minister's Foreword

When we launched our consultation on the Housing (Scotland) Bill we said that we would build on the achievements of Scottish Homes and its staff to create a new Executive Agency responsible for regulating all social landlords. The work of this new Agency will mark a significant change in the way in which housing regulation is undertaken in Scotland. The new Agency will work with social landlords to drive up standards across the whole sector. The new Agency's role in regulating both local authorities and registered social landlords will require new methods of working. It is important that tenants, landlords, lenders and other stakeholders are confident that the new Agency's regulatory operations are clearly focused on improving standards.

To this end, I am pleased to publish the draft Code of Practice for the new Agency. The Code of Practice sets out how the new Agency will exercise its regulatory operation in a way that promotes quality and improvement while being free of political interference.

I believe this Code of Practice provides the basis for regulation that will be accountable, transparent, targeted, consistent and proportional. This will provide a robust regulatory framework which everyone can trust and which will drive up standards.

I look forward to receiving your views on this Code of Practice. It is by working together that we can tackle the real problems of Scottish housing and deliver better homes for all Scotland's communities.

A handwritten signature in blue ink, appearing to read 'JMBaillie', enclosed in a circular scribble.

Jackie Baillie MSP
Minister for Social Justice

Regulatory Code of Practice

[Section 71] of the [Housing (Scotland) Act 2001] requires that Scottish Ministers publish a statement that sets out how they propose to exercise their functions as referred to in Part 3 of that Act. This Code of Practice fulfils that requirement by detailing how the Scottish Ministers intend to use their powers to regulate and inspect Registered Social Landlords (RSLs) and the landlord, homelessness and factoring functions of local authorities.

Rationale and Purpose

- 1 In providing for the statutory regulation of RSLs and the landlord, homelessness and factoring functions of local authorities, Scottish Ministers wish to ensure that these organisations can benefit from an independent external evaluation that is rigorous and fair and is informed by existing best practice. They also wish to ensure that statutory powers provided in the Housing Act are used appropriately and consistently and are not subject to undue influence.
- 2 Scottish Ministers expect that tenants, future tenants and other consumers will benefit from a regulatory service which promotes quality, continuous improvement and good practice in the social housing sector.
- 3 Scottish Ministers expect that the five principles of good regulation; accountability; transparency; targeting; consistency and proportionality will be observed in all aspects of the regulation of housing and related services.

The Role of the New Executive Agency

- 4 As a matter of general policy Scottish Ministers shall delegate to the new Agency all aspects of the regulation of RSLs and the landlord, homelessness and factoring functions of local authorities.
- 5 In carrying out these regulatory duties the new Agency will operate in accordance with this Code of Practice.

Openness and Accountability

- 6 Scottish Ministers will expect the new Agency to operate to the highest standards of openness and accountability. The new Agency will be accountable to Scottish Ministers and through them to the Scottish Parliament.
- 7 The new Agency will be required to maintain a separation between its regulatory activities and its other responsibilities. There will be a Division within the new Agency's structure

which will have sole responsibility for the delivery of the Agency's regulatory role. The Director of Regulation and Inspection will report directly to the new Agency's Chief Executive.

- 8 The work of the new Agency's Regulation and Inspection Division will be overseen by a separate Regulation Board. The new Agency's management board will include three non-executive directors and these three non-executives plus the Agency's Chief Executive will form the Regulation Board. The Regulation Board will be chaired by a non-executive director and its duties will include:

- ◆ ensuring that the new Agency's regulatory work is free from any inappropriate influence;
- ◆ ensuring that the new Agency acts in the best interests of tenants, future tenants and other consumers of housing and related services;
- ◆ ensuring that the new Agency protects public and private investment in social housing;
- ◆ approving any major changes to regulatory policy; and
- ◆ approving the use of statutory powers.

- 9 The new Agency's annual report will include a statement from the Regulation Board that the new Agency has carried out its regulatory duties in accordance with this Code of Practice. In addition, the Regulation and Inspection Division will be expected to publish a separate annual report which will include details of:

- ◆ registrations, deregistrations, amalgamations, mergers and transfers of engagement approved during the year;
- ◆ statutory consents;
- ◆ use of statutory powers;
- ◆ inspections undertaken during the years;
- ◆ performance of the regulated sector;
- ◆ performance of the Regulation and Inspection Division; and
- ◆ any changes in operational policy.

This report – which will be to Scottish Ministers – will be published and made available to the Scottish Parliament.

- 10 Scottish Ministers consider that, in addition to the regulated organisations (and their representative bodies), key stakeholders in the regulatory process are:

- ◆ tenants, future tenants and other service users; and
- ◆ funders of social housing.

Setting Standards

- 11 Scottish Ministers require that the new Agency will publish national Performance Standards aimed at ensuring that tenants, and other consumers of housing and related services, are aware of the standard of service they can expect from all RSLs and local authorities.
- 12 Performance Standards will be developed in consultation with the representative bodies of those who are to be regulated and may be jointly published by the new Agency and those representative bodies. Representatives of other key stakeholders will also be consulted on Performance Standards and their views will be taken into account in setting those standards.
- 13 Performance Standards should cover all regulated activities and should ensure that the following key principles are observed:
 - ◆ equality of opportunity exists across all aspects of social housing and related services;
 - ◆ tenants and other service users are encouraged and supported to participate in the management of the services they receive;
 - ◆ regulated bodies provide high quality services;
 - ◆ regulated bodies observe the highest ethical standards and operate in an open and accountable manner; and
 - ◆ value for money is achieved.
- 14 Performance Standards will be reviewed at a maximum three-year interval; any changes proposed will be the subject of consultation with representative bodies of those being regulated together with other key stakeholders.

Inspections

- 15 The new Agency will undertake a programme of inspections designed to ensure that all regulated bodies are visited and assessed against Performance Standards at least once every five years. In setting its annual programme of visits the new Agency will have regard to a number of factors:
 - ◆ whether or not the organisation has been visited previously or the date of the previous visit;
 - ◆ the findings from any previous visits (poorer performers will be revisited more regularly); and
 - ◆ the risk profile presented by the organisation concerned.
- 16 Scottish Ministers require the new Agency to publish details of its inspection process which should incorporate the following:
 - ◆ the minimum period of notice that will be given to RSLs and local authorities in advance of routine inspections;

- ◆ Details of the notice that will be given to RSLs and local authorities of any key briefing material that will be required in advance of the visit.

- 17 In addition to routine visits the new Agency may undertake other inspections or reviews of RSL and local authority services. The nature of these inspections and reviews and the circumstances in which such an inspection or review would be appropriate should be covered by the new Agency's guidance on inspections.

Reports

- 18 At the end of an inspection the new Agency will provide the RSL or the local authority with a written report. This report will be provided to the RSL or the local authority in draft form in order that any factual inaccuracies can be corrected before the report is finalised.
- 19 The final report will be made available to the inspected body within a published timescale set by the new Agency, this will not be more than three months after the final date of the inspection. The final report will be posted on the new Agency's web-site and hard copies will be made available on request to interested parties.
- 20 The inspection report will include grades which will reflect the quality of the inspected body's compliance with national performance standards. Performance grades will be one of a range of tools that can be used by key stakeholders to make comparisons between one service provider and another.
- 21 The new Agency will ensure that adequate arrangements are made to follow-up on any major issues arising from the inspection process.

Appeals

- 22 The new Agency will have a procedure whereby inspected bodies can appeal against the outcome of the inspection process. This procedure should allow for the final stage of the appeal process to be heard by the Regulation Board.

Intervention

- 23 The Housing (Scotland) Act 2001 provides Scottish Ministers with a range of powers which can be used to intervene to secure improvements in the performance of an RSL or local authority.
- 24 The powers available to Scottish Ministers are different for RSLs and local authorities; this is to reflect the differences in constitution and governance arrangements. Regardless of the different remedies available Scottish Ministers will expect intervention powers to be applied consistently.
- 25 Scottish Ministers require that the scale of intervention will be proportionate to the nature of the problem with a graduated use of possible interventions. The new Agency will be expected to develop and publish an Intervention Strategy together with procedures that will govern the use of statutory powers.

- 26 The Minister for Social Justice should be notified immediately of any decision by the new Agency's Regulation Board to make use of statutory powers. This notification should include a full briefing on the nature of the problem which has given rise to the decision to intervene and a commitment to provide Scottish Ministers with progress reports at appropriate intervals.

Use of statutory powers in respect of registered social landlords

- 27 The power to make appointments to the governing body of an RSL will be used in response to weaknesses in governance of the RSL concerned. The new Agency will be expected to ensure that there is a register of potential appointees who have the level of skills and experience necessary to provide organisational support.
- 28 The power to appoint a manager will be used in response to problems that are primarily operational. For example,
- ◆ to implement an arbiter's decision in respect of a homeless applicant;
 - ◆ in tandem with appointees to the governing body who believe that they need support at an operational level in order to make the required improvements within a reasonable timescale; and
 - ◆ to support organisations who are undergoing a transfer of engagements or directed transfer.

The new Agency's intervention procedures will be expected to expand on the use of appointees at an operational level within an RSL.

- 29 Statutory Inquiries and any subsequent statutory action should be used in response to suspected mismanagement or misconduct where the governing body is either unwilling or unable to take the action necessary to address the problems of the organisation.

Use of statutory powers in respect of local authorities

- 30 Scottish Ministers require the new Agency to work closely with the Accounts Commission in order that the statutory powers of both organisations can be used in a complementary way. It will be the role of the Accounts Commission to address problems of corporate governance within a local authority while the new Agency will have responsibility for dealing with failure at an operational level within housing and related services.
- 31 The Housing Act already incorporates a number of conditions that must be met before Scottish Ministers will require a local authority to produce a remedial plan. The new Agency will be expected to publish procedures that set out how these conditions will be applied in practice. An instruction to prepare a remedial plan is likely to be made where a local authority has failed to put adequate arrangements in place to deal with problems to which it has previously been alerted.

- 32 The new Agency will also be expected to publish procedures relating to the appointment of a manager or managers to exercise functions in relation to the provision of housing accommodation and related services. These procedures should incorporate arrangements for consulting with the authority; the Accounts Commission and any other relevant bodies before such an appointment is made. This power will only be used where a local authority has failed to implement its remedial plan.

Joined-up Regulation

- 33 Scottish Ministers recognise the importance of good working relationships between the new Agency and the Accounts Commission (whose remit includes the corporate governance of local authorities). The new Agency and the Accounts Commission will be expected to enter into a Memorandum of Understanding that will ensure:
- ◆ the use of regulatory resources is optimised;
 - ◆ the regulatory burden on local authorities is kept to a minimum; and
 - ◆ there are good communication arrangements and information flows.
- 34 Scottish Ministers will also expect the new Agency to set up effective working arrangements with other inspectorates. These arrangements should facilitate information sharing and where appropriate joint working on cross-cutting issues.

Data Demands

- 35 The new Agency will be expected to minimise its data demands on regulated organisations. In making data demands the new Agency should have regard to the following principles:
- ◆ the new Agency should work with the Accounts Commission to ensure harmonisation of Performance Indicators for RSLs and local authorities;
 - ◆ before asking an RSL or a local authority for information the new Agency should satisfy itself that this information cannot be obtained more suitably from another source; and
 - ◆ in normal circumstances briefing material requested in advance of an inspection should comprise only of information that a well run business could be reasonably expected to produce for its own purposes.

Review of Code of Practice

- 36 This Code of Practice will be reviewed from time to time and any proposed amendments will be subject to consultation with RSLs, local authorities and other key stakeholders.

Next steps

- 37 We welcome comments on our proposals. We are allowing 12 weeks for this consultation. Please send your written comments, by 17th August 2001, to:

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- 38 We aim to have our approach to the single regulatory framework ready by vesting day of the Housing (Scotland) Bill, and be able to implement it from April 2002.
- 39 You can get more copies of this paper by contacting Gordon West at the address above. This paper will also be available on the Scottish Executive website at: www.scotland.gov.uk or the Scottish Homes website at: www.scot-homes.gov.uk.
- 40 We may make your comments available to the public, unless you ask to keep them confidential. We will publish a report on the comments we receive.

Notes

