



Llywodraeth Cymru
Welsh Government

The Regulatory Framework for Housing Associations Registered in Wales



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Further information on regulation and the regulatory framework is available from:

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1 Background and introduction

This Regulatory Framework applies to housing associations¹ registered and regulated by the Welsh Ministers under Part 1 of the Housing Act 1996.

It has been updated to reflect changes in regulatory practice and revised regulatory statuses and standards which have been developed in partnership with key stakeholders.

The Regulatory Framework (2021) replaces the Regulatory Framework for Housing Associations Registered in Wales (May 2017) with effect from January 2022.

2 What is regulation?

The purpose of regulation of housing associations is to protect tenants and investment in housing associations. It is undertaken by the Welsh Government, and largely takes the form of oversight and monitoring with intervention only where necessary.

While recognising the autonomy and independence of housing association boards, effective regulation ensures each housing association is:

- **Well-governed** – led effectively and well managed by boards, executives and staff, and working with tenants and partners to make and implement effective business decisions.
- **Delivering high quality homes and services** - providing homes and services that meet people's diverse needs and expectations, with an emphasis on high quality services and continuous improvement.
- **Financially viable** – with well-managed finances, and the resources and cash flow to meet current and future business commitments.

The Regulatory Standards set out in more detail the outcomes expected. These can be found in **Appendix 3**.

3 Who does what?

When we use the term **Regulator**, we mean the Welsh Ministers.

In practical terms, the **Housing Regulation Team** (part of the Housing and Regeneration Directorate within the Welsh Government) carries out the activity of regulation on behalf of the Welsh Ministers.

There is also a range of other non-operational groups and bodies which have various consultative or advisory roles:

The **Regulatory Board for Wales (RBW)** is an advisory board set up by the Welsh Government to advise ministers about the activities of the Regulator and the regulatory

¹ We use the term housing association (or association) in this document. Housing associations can also be referred to as registered social landlords (see Appendix 1 definitions) and usually are referred to in this way in a legal context (see Appendix 2 legal basis for regulation).

performance of the housing association sector. The Board is made up of independent members.

The **Regulatory Advisory Group (RAG)** is a forum made up of stakeholder representative bodies. It is a collaborative and consultative forum which provides an opportunity for members and their networks to raise, discuss and learn from issues relating to regulation as well as discuss and test regulation policy development and thinking. Any relevant feedback from RAG is forwarded to the RBW. RAG members include: Tenant Participation Advisory Service Cymru, Welsh Local Government Association, Shelter Cymru, Community Housing Cymru and its various groups, Tai Pawb, UK Finance, CIH Cymru,

The **Tenant Participation Advisory Service (TPAS) Cymru** provides periodic reports to the RBW setting out the views of a sample of social housing tenants on various issues and priorities. RBW and the Regulator meet regularly with TPAS Cymru to hear about the main concerns of tenants.

4 Overall approach

Hearing the Tenants' Voice

Tenants' needs and interests are vitally important to regulation and so the Regulatory Standards place clear expectations on housing associations to demonstrate that:

- tenants are enabled and supported to influence strategic decision-making
- tenants are enabled and supported to influence and shape the delivery of services
- high quality services are delivered to tenants

Co-regulation

This Regulatory Framework is built upon the principle of co-regulation. Co-regulation means the Regulator and housing associations taking responsibility together for ensuring that the sector and individual organisations are well regulated.

This approach requires constructive relationships between the Regulator and housing associations, working on the basis of 'no surprises'.

The Regulator expects associations to:

- be open and honest about risks, issues and challenges they identify and how they plan to address these
- raise relevant matters with the Regulator promptly
- work with the Regulator constructively to resolve challenges
- act voluntarily to address any material concerns identified through regulation.

Associations can expect the Regulator to:

- be open and honest about any risks, issues or challenges it identifies through regulation and how it plans to respond to these
- raise any issues of concern with individual housing associations promptly
- be clear about how Regulatory Judgements are reached
- ensure Regulatory Judgements and any regulatory action are proportionate and consistent
- work with individual associations constructively to resolve challenges
- share learning from regulatory activity with the sector.

Risk-based regulation

The way that risk shapes the approach to regulation continues to develop. As part of a commitment to proportionality, we use a contextual assessment (including perceived risk) to determine how resources and activity should be focused. Sector-wide risks are identified through a periodically updated sector risk profile, while the response of individual housing associations to these risks and any specific risks they face individually, is assessed via self-evaluations, formal and informal regulatory contact and regulatory assessments.

Regulated self-assurance

At the centre of a co-regulatory approach is the boards' absolute responsibility for the effective governance, performance and financial viability of the housing associations they lead. This includes each board:

- obtaining assurance that its primary responsibility of ensuring the effective running of the housing association is fully and properly discharged
- demonstrating accountability to the housing association's tenants, to people who use its services, to those who lend it money, and to other key stakeholders such as Welsh Government and local authorities

To underpin these activities, as well as undertaking a robust self-evaluation (see section 5), boards must satisfy themselves by obtaining and scrutinising assurance they comply with the Regulatory Standards and report on how they have done so. The role of the Housing Regulation Team is to assess and report on the adequacy and effectiveness of both the process and substance of self-assurance through their ongoing regulatory oversight and issuing of regulatory judgements.

5 Components of the Regulatory Framework

The key components of the Regulatory Framework are:

- Regulatory Standards
- Self-Evaluation
- Regulatory Assessment
- Regulatory Judgements
- Regulatory Oversight and Powers

Each of these is explained in more detail below.

Regulatory Standards

The Welsh Ministers set Regulatory Standards (Appendix 3) which are the standards, expressed as outcomes, housing associations must comply with. How the outcomes are achieved is for each association to decide, working with tenants and other stakeholders.

The Regulatory Standards require housing associations to adopt an appropriate Code of Governance. The Regulatory Standards have been developed in alignment with the Code of Governance published by Community Housing Cymru (CHC) in May 2021 in order to minimise duplication between the two.

Self-Evaluation

A robust, evidence based and challenging self-evaluation is fundamental and integral to all associations' strategic corporate planning processes, providing an assessment of how the organisation is performing against its plans and whether it is delivering successful outcomes for tenants and service users and whether it complies with the regulatory standards. It is therefore a key element of the Regulatory Framework and assessment process.

At least once each year, every housing association must therefore produce and submit a self-evaluation which evaluates the quality of the organisation's governance, service delivery and financial viability in delivering its purpose and objectives. It must also include a summary of any material changes relating to those aspects since the last judgement was issued.

There is no prescribed format or process for carrying out a self-evaluation but, as a minimum, the submission must:

- include an account of how the Board knows the organisation complies with each regulatory standard including reference to key performance data and sources of assurance
- assess compliance with the Code of Governance that the organisation has adopted
- explain the principal evidence which has been relied upon in conducting the evaluation
- demonstrate that the process of evaluation has been robust
- explain how the needs and views of tenants have been understood and considered as part of the self-evaluation
- identify key strategic risks and associated controls or signpost to other documentation where the key risks are articulated
- include a continuous improvement plan which identifies any gaps or areas for improvement and shows how these will be addressed (this replaces the Regulatory Assurance Plan)

The self-evaluation must consider the association as a whole. In a group structure, subsidiaries, whether registered or not, should be included. A number of associations act as trustees or managing agents for separate very small associations. These should also be included within a self-evaluation, in effect treating them as a "subsidiary" for this purpose.

Associations are required to publish self-evaluations in a format and manner that is readily accessible to tenants and other audiences, giving consideration to people without access to digital channels.

Regulatory Assessment

Regulatory assessment and oversight has been light touch over the last 18 months or so due to the pandemic. At the same time, the regulatory standards and judgements have been under review, work on developing a new regulatory assessment model to provide increased rigour, consistency and proportionality in reaching judgements has also been ongoing.

With the adoption of the new regulatory standards and judgements, it's the right time to implement the new approach to assessment. We recognise however, the sector and the regulation team will need time to adjust to the revised standards and self-evaluation requirements and therefore, during a bridging period before implementation of the new model, we will implement a programme of Transition Regulatory Reviews.

Transition Regulatory Review (TRR)

The transition regulatory review programme will commence immediately on publication of this framework. Key features of a TRR:

- Assessment of self-evaluation and improvement plans – compliance with new regulatory standards
- Financial viability – longer term
- Oversight of governance and service delivery
- New Judgement

The new assessment model – Full Regulatory Assurance Review (FRAR)/ Regulatory Assurance Review (RAR)

It is anticipated the new assessment model will be implemented in the 2022/23 financial year at a point to be determined in conjunction with the sector, when conditions are right.

Under the new model, each year, we will either undertake a FRAR or RAR of every association which will involve an assessment of compliance against the Regulatory Standards.

Periodically, we will carry out a Full Regulatory Assurance Review (FRAR) of each association, assessing the strength and accuracy of the association's self-evaluation in depth. The frequency of the FRAR will be decided on a case-by-case basis.

Key Features – FRAR

- In depth assessment of the strength and accuracy of the association's self-evaluation and improvement plan – compliance
- Frequency to be determined by contextual assessment process
- The scope and focus determined by factors including sector risk profile, size, complexity, self-evaluation and regulatory intelligence.
- Can also be triggered at any time if material concerns identified
- New Judgement

RAR's will be a light touch process, carried out in the intervening years between FRARs.

Key Features – RAR

- Light touch – intervening years between FRAR
- Assessment of self-evaluation and improvement plan/compliance
- Financial viability assessment
- Confirmation judgement

Regulatory Judgements

Regulatory judgements are issued for Governance (including Service Delivery) and Financial Viability. The statuses are described in the same way in both cases, and are set out in the table below:

| Judgement | | |
|---------------|--------|---|
| Compliant | Green | The association meets the regulatory standards and will receive routine regulatory oversight. |
| | Yellow | The association partially meets the regulatory standards and has the potential to be able to achieve the required improvements with increased regulatory oversight. |
| Non-compliant | Amber | The association partially meets the regulatory standards and is unlikely to be able to achieve the required improvements without regulatory intervention. |
| | Red | The association partially or wholly does not meet the regulatory standards and it is necessary for the regulator to take statutory action. |

In reaching judgements, we consider the following questions:

- What does the self-evaluation (and improvement plan) tell us about how well the association is achieving the Regulatory Standards?
- How robust does the evidence underpinning the self-evaluation appear to be?
- Are there material issues or concerns which need to be explored or addressed?
- Based on our findings, what would an appropriate and proportionate Regulatory Judgement be?

All judgements go through an internal moderation and quality control process prior to publication. If material issues which require improvement are identified, we determine whether an association has the potential to be able to achieve the required improvements with increased regulatory oversight (compliant yellow), is unlikely to be able to do so without regulatory intervention (non-compliant amber) or if statutory action is required (non –compliant red) by taking into consideration factors including:

- The understanding within the organisation of the issues and associated risks in relation to the relevant Regulatory Standard(s)
- The organisation's approach to co-regulation
- The credibility of the organisation's improvement plan
- The capability of the organisation to deliver improvement (e.g. magnitude and materiality of issues and risks, capacity, overall risk profile, track record)

We acknowledge the operating and financial environment for associations is both dynamic, challenging and uncertain and that it may be appropriate for associations to take greater financial risks to achieve priority objectives for the sector. For this reason, viability thresholds vary from organisation to organisation and their circumstances. However, the outcomes required under the standards are very clear and the financial viability assessments ensure that we are satisfied that where there is an identified material financial risk, appropriate assurance is in place.

A confirmation judgement issued under a RAR, means the previous judgement remains valid on the basis that no issues have come to light which materially change the risk profile of the association. Full judgement reports will not be issued, but a short summary statement will be published on our website.

Each housing association is required to publish its Regulatory Judgement in full on its website on the same day it is published on the Welsh Government website. It must be well sign-posted and inform tenants and service users of its publication. Confirmation judgements must also be published but the last full judgement must remain accessible on the website until the next full report is issued.

Judgement Under Review

If material concerns about an association come to our attention by any route outside of the cycle of assessments, we may issue a “Judgement Under Review” notice. A Judgement Under Review notice will be recorded on the register and be published on the Welsh Government website. The notice will include a summary of the issues being looked into and associations will be required to publish the notice on their website until such time as the matter is resolved and the notice discharged.

Regulatory Oversight and Powers

Dependent on the Regulatory Judgement for an individual association, the amount of formal regulatory oversight will vary. In all cases, the overall focus will be on strategic risks, business viability issues and issues of material concern. Our first response to matters of concern will be to understand the issues in more depth and agree an appropriate response. Wherever possible, we will provide help and support and work with an association on a voluntary basis to resolve matters.

In addition to formal regulatory oversight, we will continue to have informal contact with housing associations (referred to as ‘relationship management’). We will agree the frequency of contact with each association, noting that frequency can change in response to circumstances.

The routine expectations for regulatory oversight under the different judgements are set out below although these may vary depending on circumstances:

Compliant – Green: Routine regulatory oversight

Routine regulatory oversight means regular routine contact, for example this might include attending Board and other meetings. This will include looking at progress on implementation of the association’s improvement plan.

Compliant – Yellow: Increased regulatory oversight

Increased regulatory oversight may involve, as well as more frequent check-ins, a focus on specific issues of concern. For example, concerns identified in relation to the nature or level of improvement required.

In the course of increased regulatory oversight, housing associations may be asked to provide the Regulator with more detailed or specific assurance (e.g. in relation to action being taken to address specific issues, or its effectiveness), and may also be required to provide regular updates on specific issues.

Non-Compliant – Amber: Regulatory intervention

Regulatory intervention means that the Regulator will work closely with an association to develop an improvement plan that addresses the specific material concerns underlying the amber judgement.

The type of issues which are likely to result in a non – compliant amber judgment and intervention generally require urgent and substantial change to be made in the organisation.

When we take intervention action, it means regulatory concerns are material and significant improvements are required. Although the organisation is still given the opportunity to resolve the issues voluntarily, there is an expectation that it will provide an indication of its commitment to the agreed improvement plan and its implementation. Voluntary undertakings, under S6A of the Housing Act 1996, are one of the ways associations provide this confirmation.

Non-Compliant – Red: Statutory action

Statutory action means that regulatory powers will be used.

It is always expected that housing associations will act voluntarily to address any matters of concern identified through regulation. If this is not the case, the Welsh Ministers have powers, following due process, to take or require appropriate action to be taken.

Appendix 4 sets out examples of actions that Welsh Ministers could take under these powers. It is anticipated that these powers will rarely be used. However, they exist as a further safeguard to the interests of tenants and others.

The circumstances in which particular regulatory and enforcement powers would be used depend on the matter(s) in question. The response will always be tailored to the specific situation and circumstances to get the best outcome for tenants and other stakeholders.

Appendix 1: Definitions

For the purposes of the Regulatory Framework:

“Regulatory Standard” means the standards of performance made under section 33A of the Housing Act 1996 (as amended by the Housing (Wales) Measure 2011)

“Housing associations” and “associations” are what registered social landlords are more commonly known as

“Group” structures are explained in Housing association circular (RSL 05/08)

“Registered social landlord” (RSL) means a Welsh body registered with the Welsh Ministers under Part 1 of the Housing Act 1996 –

“Measure” means the Housing (Wales) Measure 2011

“Landlord” means a registered social landlord

“Service user” means someone who uses the services of a housing association, other than a tenant. It might include, for example, leaseholders, shared owners and users of support services

“the 1996 Act” means the Housing Act 1996

“Welsh Government” means the body set up under section 45 of the Government of Wales Act 2006 (“the 2006 Act”) and

“Welsh Ministers” means the Welsh Ministers appointed under section 48 of the 2006 Act. Under Part 1 of the Housing Act 1996, the Welsh Ministers register and regulate registered social landlords.

Appendix 2: The legal basis for regulation

The Welsh Ministers have general functions under section 75 of the Housing Associations Act 1985 (as amended), such as to facilitate the proper performance of the functions of registered social landlords and to maintain a register of social landlords. The Welsh Ministers must exercise their general functions subject to and in accordance with the provisions of the Housing Associations Act 1985 and Part 1 of the Housing Act 1996 (as amended by the Measure).

The Welsh Ministers have powers under the 1996 Act to regulate registered social landlords in Wales. Part 1 of the 1996 Act is amended by Part 2 of the Measure and provides the Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by registered social landlords and the enforcement action that may be taken against them.

Under section 33A(1) of the Housing Act 1996, the Welsh Ministers may set standards of performance (the regulatory standards) to be met by registered social landlords in connection with their functions relating to the provision of housing and matters relating to their governance and financial management. Under section 33B (1) of the 1996 Act, the Welsh Ministers may issue guidance that relates to a matter addressed by a standard, and amplifies the standard. Section 33A of the 1996 Act requires the Welsh Ministers to consult various bodies before setting section 33A standards or issuing section 33B guidance.

There are enhanced enforcement powers in Chapter 4A of Part 1 of the 1996 Act providing enforcement action the Welsh Ministers can use against registered social landlords.

The Regulatory Framework sets Standards of Performance under section 33A of the 1996 Act. The requirement for the provision of information in connection with compliance with the regulatory standards (levels of performance) and the publication of regulatory judgements is made under section 35 of the 1996 Act.

Appendix 3: Regulatory Standards

The ‘Standards of Performance’ (to be known as Regulatory Standards) and any associated rules are set by the Welsh Ministers in accordance with Section 33A of the Housing Act 1996.

Any statutory guidance will be issued under Section 33B of the 1996 Act and will be consulted upon in accordance with section 33C of that Act. Associations are expected to comply with statutory guidance.

Advisory guidance may be issued; associations will not be expected to comply with this, but may find it of assistance in identifying how they can achieve the outcomes identified in the Standards.

| Ref | Regulatory Standards |
|-----|---|
| RS1 | <p>The organisation has effective strategic leadership and governance arrangements which enable it to achieve its purpose and objectives</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Has a strategy² which reflects its vision, culture and values and sets out how the organisation will achieve its core purpose as a social landlord b) Complies with its own governing documents and meets the requirements of an appropriate Code of Governance c) Sets and delivers measurable, evidence based commitments across all areas of its business in relation to equality, diversity and inclusion (including anti-racism and tackling hate crime) reflecting the diversity of the communities it works in and with d) Has a diverse Board, reflecting the communities the RSL works in and with, and has the skills and knowledge required to be effective e) Makes logical decisions based on clear, good quality information which includes assessment of risk and, where appropriate, the views of tenants f) Enables and supports tenants to influence strategic decision making g) Complies with all relevant legislation, regulatory requirements and statutory guidance and communicates in a timely manner with the regulator, including on material issues that relate to actual or potential non-compliance |
| RS2 | <p>Robust risk management and assurance arrangements are in place</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Has an effective framework for risk management, internal controls and assurance that enables it to successfully identify and manage existing and emerging risks which threaten delivery of its strategy or compliance with legislative or regulatory requirements b) Does not put social housing assets or tenants at undue risk c) Maintains accessible and up-to-date business continuity, contingency and disaster recovery plans |
| RS3 | High quality services are delivered to tenants |

² The term strategy is used here – individual housing associations may use other terms such as business plan or corporate plan

| Ref | Regulatory Standards |
|------------|--|
| | <p>The social landlord:</p> <ul style="list-style-type: none"> a) Keeps tenants safe in their homes and promptly identifies and corrects any under-performance or non-compliance on landlord health and safety matters b) Delivers services which meet the diverse needs of tenants c) Achieves and maintains high levels of tenant satisfaction with services d) Makes landlord performance information available to tenants |
| RS4 | <p>Tenants are empowered and supported to influence the design and delivery of services</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Creates a culture which values and promotes tenant involvement b) Enables tenants to understand the organisation's approach to tenant involvement, how they can get involved and how the organisation will listen to and act on tenants' feedback and learns from complaints. c) Provides opportunities for tenants to be involved, can demonstrate that tenants are satisfied with them and can demonstrate the difference involvement is making d) Can demonstrate diverse tenant views and expectations inform the development and review of housing and related services, and the response to any under-performance |
| RS5 | <p>Rents and service charges are affordable for current and future tenants</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Ensures all applicable rules and statutory guidance (including the current rent agreement) are complied with |
| RS6 | <p>The organisation has a strategic approach to value for money which informs all its plans and activities</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Determines its strategic approach to value for money, ensuring the approach relates to its social purpose, and makes strategic and operational decisions in line with it b) Can demonstrate to stakeholders, including tenants, that it achieves value for money in delivering its strategy and services |
| RS7 | <p>Financial planning and management is robust and effective</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Sets financial plans which enable it to deliver its strategy and achieve its social purpose, and there is appropriate reporting to the Board against these plans b) Is financially viable in the short, medium and longer-term, and maintains sufficient funding and liquidity to support this c) Monitors, reports on and complies with all covenants it has agreed with funders d) Identifies and effectively manages risks to the delivery of financial plans including appropriate stress testing, scenario planning and use of internal thresholds |

| Ref | Regulatory Standards |
|-----|---|
| | e) Has an effective treasury management strategy and associated processes |
| RS8 | <p>Assets and liabilities are well managed</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Has an accurate and up to date understanding of its assets and liabilities b) Maximises the use of assets to achieve its social purpose and the objectives of the organisation c) Uses accurate information about assets and liabilities to inform strategic and financial decisions |
| RS9 | <p>The organisation provides high quality accommodation</p> <p>The social landlord:</p> <ul style="list-style-type: none"> a) Ensures publicly funded homes meet all applicable standards, rules and statutory guidance issued in connection with quality of accommodation, including the current Welsh Housing Quality Standard |

Appendix 4: Regulatory/Enforcement Powers

Welsh Ministers have various regulatory powers which are provided for in the Housing Act 1996, as amended by the Housing (Wales) Measure 2011.

The following are examples of the powers which can only be exercised following due legal process:

- Appointing an interim manager
- Commissioning additional inspections to obtain evidence
- Commissioning additional surveys
- Issuing an enforcement notice which requires action to be taken to address a problem within a specified timescale
- A financial penalty if an association fails to comply with requirements imposed on it by an enforcement notice
- Payment of compensation to individuals or groups affected by a housing association's failure to meet standards or to comply with undertakings
- Requiring management functions to be put out to tender
- Requiring transfer of management function to a specified person
- Appointing an individual to manage a housing association
- Appointing a new director of an association
- Requiring an amalgamation (merger) of a housing association with another association
- Restricting certain dealings of an association during an inquiry
- Directing an inquiry into an association's affairs
- Petitioning to wind up an association