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Welsh Government

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Welsh Government Housing Regulation

The Regulatory Framework for Housing Associations Registered in Wales

May 2017

Protecting Tenants and Investment in Welsh Housing Associations

Definitions

This Regulatory Framework applies to those social landlords registered and regulated by the Welsh Ministers under Part 1 of the Housing Act 1996)

For the purposes of the Regulatory Framework: -

“Performance Standard” means the standards of performance made under section 33A of the Housing Act 1996 (as amended by the Housing (Wales) Measure 2011) and contained in Appendix 2;

“Housing association” and “association” mean a registered social landlord;

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

“Regulator” means the Welsh Ministers;

“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”);

“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.

Further information on the regulation of, and the regulatory framework for, housing associations is available from:

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1. Introduction and Purpose

This revised Regulatory Framework seeks to improve and strengthen Welsh Government's approach to regulation.

The new framework has been developed in partnership with key stakeholders, including the RSL sector, its tenants and funders, and is an evolution of the risk based approach to regulation set out in the 2011 Regulatory Framework. In response to a changing and more challenging environment, it aims to ensure that Wales continues to have well governed, financially robust RSLs providing high quality, and improving, landlord services to tenants and service users

Key elements of the risk based approach of the 2011 Framework remain unchanged

- Tenants remain at the heart of regulation with improved accountability and transparency to tenants and other stakeholders
- The underpinning principles of proportionality, transparency and openness, consistency and promotion of learning and development, are unchanged
- The approach to regulation continues to be founded on co-regulation

The revised approach provides a focus on continuous improvement and a clear regulatory judgement. New performance standards place a stronger focus on decision making, leadership and financial viability aligned with the way effective organisations actually run their businesses. There is a new requirement for Associations to provide an annual statement of compliance with the performance standards.

The new Framework recognises the autonomy and independence of Housing Association Boards with an increased focus on good governance, specifically on how the Board is assured that its primary responsibility of ensuring the effective running of the RSL is fully and properly discharged.

The Regulatory Framework (2017) withdraws and replaces the Regulatory Framework for Housing Associations Registered in Wales (December 2011) with effect from 1st June 2017.

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The purpose of the Regulatory Framework is to ensure that Housing Associations provide good quality homes and high quality and improving services to tenants and others who use their services. Welsh Ministers regulate by ensuring that each Association is:

- Well governed - led effectively and well managed by boards, executives, staff, and works with tenants and partners to make and implement effective business decisions.
- Delivering high quality services - providing services that meet people's needs and expectations and compare well with the quality of services delivered by other Associations.
- Financially viable - has the money to meet current and future business commitments and effectively manages its finances.

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Housing Associations are required to take full responsibility for their actions and the way they operate. Boards are independent and autonomous, responsible for the effective running of associations and are accountable to their tenants, to people who use their services, to those who lend them money and to other organisations that play a vital role in meeting local housing needs, such as local authorities.

2. Principles of the Regulatory Framework

Tenants at the heart of regulation

Tenants are central to the regulation of housing associations in Wales. The Regulatory Framework places clear expectations on Housing Associations to demonstrate tenants are involved and shape services and decisions taken by associations and how services provided are of a high quality and improving.

The Regulatory Board for Wales

The Regulatory Board for Wales is an advisory board set up by the Welsh Government to oversee the operation of the Regulatory Framework. It also reports to the Welsh Ministers on the way in which the Housing Regulation Team of the Welsh Government carries out its work.

The Board is independent of the government and Board appointments are made through the Public Appointments process.

Co-regulation

The Regulatory Framework is predicated on Co-regulation, a relationship based approach where both parties will work on the basis of “no surprises”. Associations must be open and honest about risks, issues and challenges they face and the regulator will be open and honest as it forms its judgements or needs to discuss matters of concern with the association. In the first instance, the regulation team’s response to matters of concern will be to provide help and support and to work with the association on a voluntary basis to resolve matters.

3. Approach to Regulation

The Welsh Ministers, in their regulatory role are committed to:

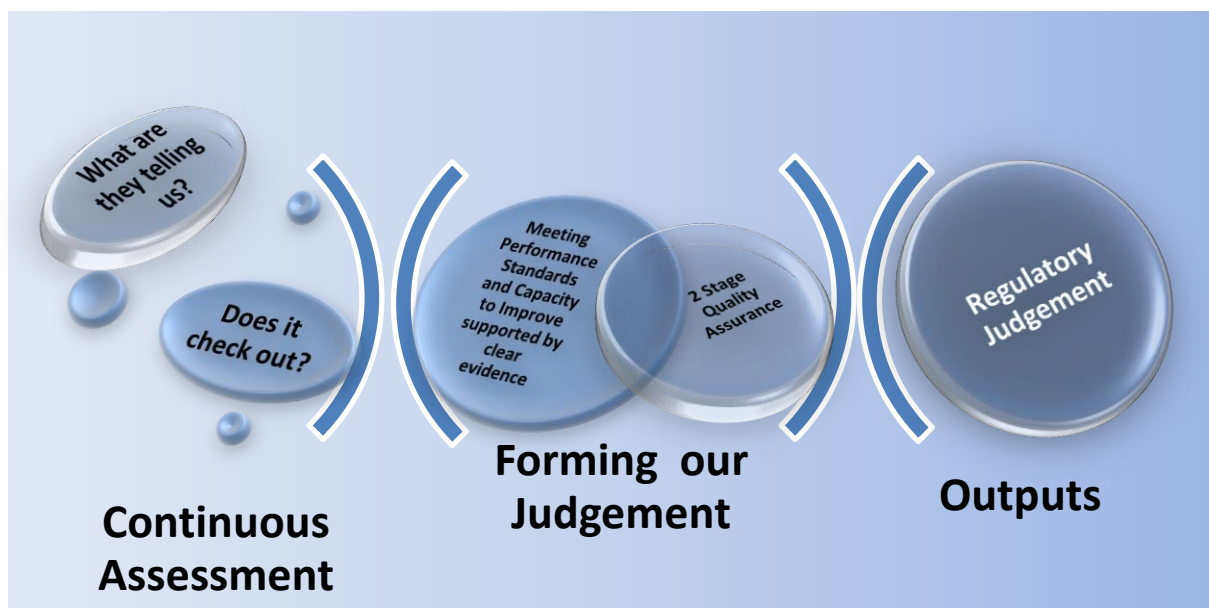
- **Proportionality** - taking an approach that is based on risk and which takes into account local circumstances, local challenges and the track record of an association. It is not a “one size fits all” approach. The extent of regulatory activity and oversight at each housing association can and does vary.
- **Transparency and openness** - being clear on how regulatory judgements are made and action taken, working in a way that encourages sharing of information in an open and constructive manner;
- **Consistency** - ensuring that regulatory judgements and action are consistent

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across the housing association sector whilst taking due account of local circumstances; and

- **Promoting continuous improvement and learning** - providing insight and challenge to help individual associations to improve and sharing learning from regulatory activity to promote improvement by associations as a whole.

4. Key Features of the Regulatory Framework



The key features of the Regulatory Framework are:

- Performance Standards
- Self Evaluation
- Annual Statement of Compliance
- Meeting the Performance Standards and Capacity to Improve
- Regulatory Judgements
- On going Regulatory Assurance and Oversight – Continuous Assessment
- Regulatory Powers

Performance Standards

The full set of Performance standards is set out in Appendix 2. The Performance Standards are set by the Welsh Ministers in accordance with section 33A of the Housing Act 1996. Failure to meet the Performance Standards is one of the grounds for the Welsh Ministers to use regulatory and enforcement powers contained under the Housing Act 1996, as amended by the Housing (Wales) Measure 2011.

The Performance Standards focus on the key risks and strategic issues facing housing association businesses and are closely aligned with the way the businesses are run. The

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Welsh Ministers expect Housing Associations to meet the Performance Standards but it is the Association's job to decide how it will achieve them, working with its tenants and other stakeholders.

Self Evaluation

All Associations are expected to carry out a regular self assessment which evaluates their performance. Detailed requirements and expectations are set out in Welsh Government advice and guidance which you can find here:

<http://gov.wales/topics/housing-and-regeneration/services-and-support/managing-social-housing/circulars/rsl-02-15/?lang=en>.

References in Circular RSL 02/15 to the 2011 Regulatory Framework, and “delivery outcomes” should be read as references to this Regulatory Framework and the performance standards set out in Appendix 2.

The Welsh Ministers expect Housing Associations to publish their self evaluations in a way that is readily accessible to tenants.

A robust, evidence based, challenging self evaluation is therefore an important element of the Regulatory Framework. It may well be the primary source of evidence for the compliance statement demonstrating the performance standards are being met. Associations are, however, also free to adopt a different way of assessing compliance if they wish to but will still need to comply with Welsh Government advice and guidance.

Annual Statement of Compliance

The compliance statement is a statement by the Board it is satisfied or assured it meets all of the Performance Standards or, if compliance cannot be fully evidenced, it will set out an explanation and a summary of actions it will take to improve compliance which the regulator will appraise.

The compliance statement is one of the most important documents a Board will sign each year. The Board is certifying it does or does not meet the Performance Standards and the statement, backed up by the regulators continuous assessment, will form the basis of the regulatory judgement.

An Association must ensure it has a comprehensive evidence base to support its compliance statement. The evidence base may be assessed in detail as part of ongoing regulatory oversight.

Meeting the Performance Standards and Capacity to Improve - A focus on continuous improvement

The Regulator will make a judgement of each Association's “capacity to improve”. Our judgement will be reflected in an annual published judgement on governance (including service quality) and on financial viability.

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The judgement of the organisation's capacity to improve is based on the Housing Association fully meeting the Performance Standard. If it does not meet the Performance Standard there must be credible, achievable and time bound plans in place to manage and improve their performance and comply.

When there are new and emerging (or materialising) risks, the Association will be judged on its ability to manage and mitigate those risks

The regulator will be asking four key questions:

- What does the compliance statement say?
- Does the intelligence, continuous assessment and regulatory work to triangulate provide verification of the compliance statement?
- Is the co-regulation status right for the RSL?
- Is there enough clear and recorded evidence to support the judgement and is it robust enough if challenged by an external third party?

The judgement statuses are set out below:

Governance and service delivery

Standard – Identifies and Manages new and emerging risks appropriately

Increased – A risk, or combination of risks, are presenting a significant challenge to the RSL and increased regulatory oversight is required

Intervention – A significant risk (single or combination) has not been effectively managed and regulatory intervention is required to effect necessary change

Statutory Action - A significant risk (single or combination) has not been managed and statutory action is required to effect necessary change

Financial viability

Standard – Meets viability requirements and has the financial capacity to deal with scenarios appropriately

Increased – Meets viability requirements but has limited financial capacity to deal with adverse scenarios effectively and increased regulatory oversight is required

Intervention – Does not meet viability requirements and regulatory intervention is required to improve its financial capacity

Statutory Action - Does not meet viability requirements and statutory action is required to effect necessary change

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Regulatory Judgements

At least annually, the Welsh Ministers will publish a Regulatory Judgement for each Housing Association in Wales. The judgement only references areas of performance and risk which are not being appropriately managed at the time of publication.

Any changes in judgement outside of the annual cycle, to or from “Intervention” or “Statutory Action” will result in an additional publication. The publication will include a narrative to explain the reasons for the change. “In year” changes between “standard” and “increased” status will, in the first instance, be a matter for the regulation team and the Association. Each Housing Association will publish its Regulatory Judgement report in full on its website on the same day it is published on the Welsh Government website. There will be a clear sign posting link/access for web users. The report must be on the website continually until the next report is issued. In addition, Associations are expected to inform tenants and service users of its publication.

On going Regulatory Assurance and Oversight – Continuous Assessment

As Housing Associations continue to respond to a changing and increasingly complex operating environment, regulatory focus will concentrate on strategic risks and business viability issues. There will be increased focus on how the Board is assured its primary responsibility of ensuring the effective running of the association is fully and properly discharged. Primarily, this will relate to the Boards assurance on the association meeting the performance standards.

As mentioned above, key evidence for the Regulatory Judgement is provided by the annual statement of compliance and the self assessment. This is combined with other information and intelligence obtained from a wide variety of sources and forms part of the continuous assessment process.

Regulatory Powers

It is expected, given their clear commitment to providing quality homes and services, Housing Associations will act voluntarily to address any matters of concern identified through regulatory activity. However, should this not be the case, the Welsh Ministers have the powers to intervene, to require appropriate action to be taken. These powers are contained in the Housing Act 1996, as amended by the Housing (Wales) Measure 2011.

It is anticipated that the powers will rarely be used. However, they exist as a further safeguard to the interests of tenants and others. By way of examples, the Welsh Ministers’ action(s) could include:

- **Appointing an interim manager.**
- **Commissioning additional inspections to obtain evidence.**
- **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**

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- **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.**

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

Appendix 1: 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 and to exercise supervision and control over such persons. 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 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 may amplify the standard. Section 33C of the 1996 Act requires the Welsh Ministers to consult various bodies before setting section 33A standards or issuing section 33B guidance. The Regulatory Framework sets Standards of Performance under section 33A of the 1996 Act and gives guidance under section 33B, both set out in Appendix 2.

Appendix 2: Performance Standards

The “Standards of Performance” are set by the Welsh Ministers in accordance with section 33A of the Housing Act 1996. Failure to meet a “performance standards is potentially a ground for exercising regulatory powers including a revised Co-regulation status and can lead to exercising enforcement powers contained in the Housing Act 1996.

Ref	Performance Standard	Guidance
PS.1	Effective Board and executive management with a clear and ambitious vision for the Registered Social Landlord	<ul style="list-style-type: none"> ▪ Sets a clear vision and values for the organisation which deliver and progress the core purpose of the business ▪ Governance arrangements establish and maintain clear roles, responsibilities and accountabilities for the board, chair and chief executive and ensure appropriate probity arrangements are in place ▪ Complies with governing documents including adopting, and complying with, an appropriate code of governance ▪ Adheres to all relevant law
PS.2	Effective and appropriate tenant involvement and high quality and improving services	<ul style="list-style-type: none"> ▪ Demonstrates how tenants are effectively involved in strategic decision making and shaping services in ways appropriate for tenants and the organisation ▪ Demonstrates how the board assures itself of current service performance, including tenant satisfaction, and drives continuous improvement ▪ Ensures that all homes meet required standards of design and quality ▪ Meets all applicable statutory requirements providing for the health and safety of the occupants in the home
PS.3	Comprehensive assessment of the business impacts of current and emerging risks, including new business and development opportunities, with robust risk management arrangements	<ul style="list-style-type: none"> ▪ Safeguards taxpayers interests and the reputation of the sector and protects social housing assets ▪ Assessment of capacity to take on new business and development opportunities is robust ▪ Carries out detailed and robust stress testing of financial plans against a range of scenarios, identifying appropriate mitigation strategies ▪ Before taking on any new liabilities, ensures obligations are fully understood and demonstrates consideration of how the likely impact on current and future business and regulatory compliance will be managed
PS.4	Clearly evidenced self evaluation and statement of compliance	<ul style="list-style-type: none"> • Compliance with Circular02/15 - the core principles of self evaluation for use by Housing Associations Registered in Wales, or any subsequent guidance which replaces this Circular
PS.5	A track record of achieving positive outcomes, responding appropriately to new challenges and performance issues	<ul style="list-style-type: none"> ▪ Demonstrates how the board assures itself of current performance and drives continuous improvement ▪ Demonstrates how lettings make the best use of available housing, compatible with the core purpose of the Registered Social Landlord

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PS.6	Delivering value for money in all areas of the business	<ul style="list-style-type: none"> ▪ Demonstrates a strategic approach to and delivery of value for money across the business
PS.7	Compliance with regulatory and statutory requirements and guidance	<ul style="list-style-type: none"> ▪ Communicates in a timely manner with the regulator on material issues that relate to non-compliance ▪ Adheres to all regulatory requirements
PS.8	A financial plan which delivers and supports the business plan and effective monitoring of financial performance	<ul style="list-style-type: none"> ▪ Ensures that the organisation is financially sound ▪ Effective systems and controls are in place to monitor and accurately report delivery of the Registered Social Landlords plans ▪ Monitors, reports on and complies with all covenants
PS.9	Effective management of treasury operations ensuring sufficient liquidity at all times	<ul style="list-style-type: none"> ▪ Ensures sufficient funding is available to deliver the business plan ▪ Ensures financial forecasts are based on appropriate and reasonable assumptions
PS.10	A clear understanding of liabilities and asset performance	<ul style="list-style-type: none"> ▪ Maintains a thorough, accurate and up to date record of assets and liabilities including all liabilities which have recourse to social housing assets ▪ Data on the financial and social performance of assets is accurate and used to inform investment decisions ▪ Ensures data on the condition of their assets is up to date and is able to demonstrate consideration of the short and long term costs of maintenance, repair and renewal ▪ Ensures that publicly funded homes meet the standards set out in the Welsh Housing Quality Standard