

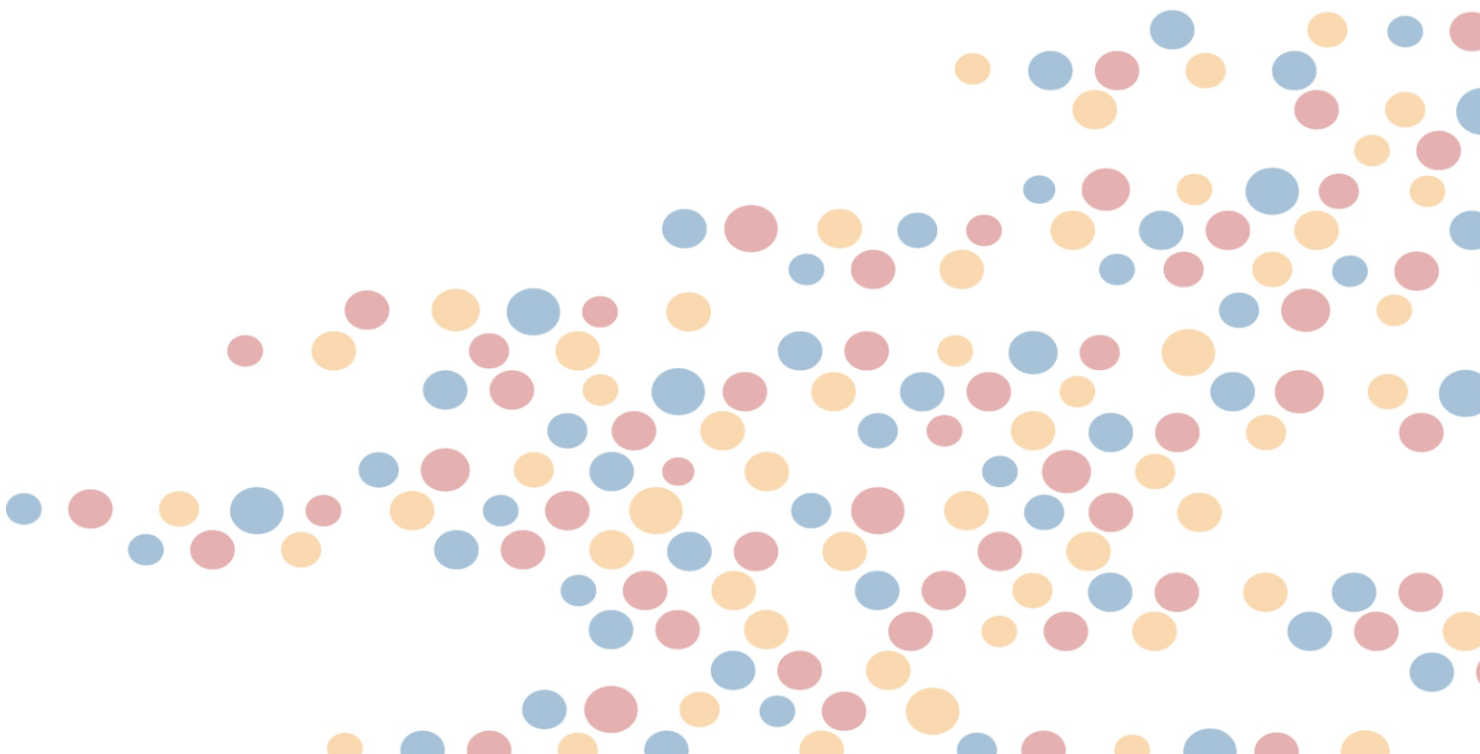


Scottish Housing Regulator

Regulatory Framework  
Review Consultation

Report

January 2024





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## 1. INTRODUCTION

The Scottish Housing Regulator (SHR) is the independent regulator of Registered Social Landlords (RSLs) and local authority housing services in Scotland. Their statutory objective is to safeguard and promote the interests of current and future tenants, people who are homeless, factored owners and Gypsy/Travellers.

The current regulatory framework was introduced in 2019. In June 2023 SHR launched a discussion paper on the future of social housing regulation in Scotland. In the discussion paper they set out their emerging thinking on potential changes to the regulation of social landlords in Scotland, and they invited their stakeholders to share their views on the early ideas.

A total of 64 written responses were received from tenant groups and individual tenants, organisations who work with tenants, landlord representative and membership bodies, individual social landlords, lenders and other individuals and organisations with an interest in social housing and regulation. SHR also held discussions with tenant representatives, social landlords, organisations who work with people who are homeless and other service users, and with wider stakeholders including lenders and funders. Plus, they spoke about the discussion paper at conferences and events.

In light of the feedback received to the discussion paper, The Regulatory Framework and statutory guidance have been revised and the proposed changes were subject to formal consultation with SHR stakeholders to gather their response. JRS was commissioned to help review this formal consultation. This paper sets out the findings from the responses received to the proposed changes.

## 2. CONSULTATION REVIEW & ANALYSIS APPROACH

The following process was used to process and analyse the 52 responses received:

1. SHR forwarded responses as they were received to JRS along with the appropriate categorisation of each respondent
2. JRS then transferred each response into a survey tool to collate and analyse the response data. As part of this process the JRS team coded each response in terms of:
  - o The type of respondent and the area they are located in
  - o The required Yes, Partial or No response
3. Then, on a question by question basis, the JRS team reviewed and analysed all the responses to identify the underlying themes and specific issues reflecting any differences between those in agreement with the proposed change versus those not in agreement.
4. A summary analysis, table and chart for each question were prepared and incorporated into the final report.

## 3. OVERALL RESPONSE

Overall there was a good mix of respondents to the consultation. Out of a total of 52 respondents, 32 were from RSLs serving tenants across all areas of Scotland. Included were 6 stakeholders, 4 representative groups and 10 local authorities.

Table 1: No. of consultation respondents and their location of tenant base / focus

Respondent type	No. of respondents	Aberdeen and North East	Highland and Islands	Tayside, Central and Fife	Edinburgh and Lothians	Glasgow and Strathclyde	Scotland South	Scotland wide
Registered Social Landlord (RSL)	32	2	3	4	1	12	3	7
Landlord Representative Body	2	0	0	0	0	1	0	1
Local Authority	10	2	0	2	1	4	1	0
Stakeholder	6	0	0	0	0	0	0	6
Tenant/tenant representative group	2	0	0	0	0	1	0	1
<b>Total</b>	<b>52</b>	<b>4</b>	<b>3</b>	<b>6</b>	<b>2</b>	<b>18</b>	<b>4</b>	<b>15</b>



Across the breadth of the consultation, respondents were generally in agreement with the amendments proposed by SHR. Partial agreement was a more frequent response than outright disagreement, with respondents typically agreeing with the intention or aim behind the proposed amendments, even where they suggested an alternate means of achieving these. Overall, SHR’s clear intention to improve transparency and clarity across all areas of guidance was acknowledged and welcomed by respondents. Among the queries or issues raised, the most common themes across all responses included adding examples to illustrate the guidance in action, suggested minor changes to wording for further clarity, and queries relating to the impact of amendments on specific groups.

## 4. FINDINGS

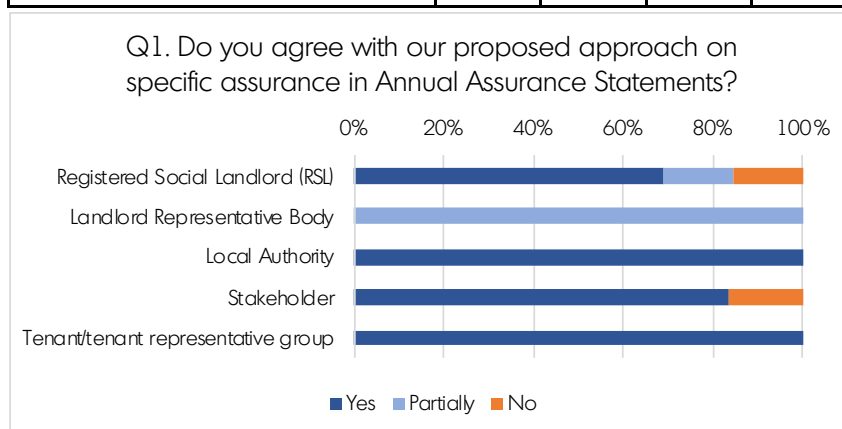
### 4.1 Annual Assurance Statements

In the June discussion paper SHR proposed to add a provision to the statutory guidance to enable them to require landlords to include explicit assurance in the Annual Assurance Statement (AAS) on a specific issue or issues. They also proposed that they would communicate any specific assurance requirements to landlords in advance of their submission of the AAS. Most respondents supported this proposal, while stressing the importance of SHR providing adequate advance notice of any additional assurance required. Some landlords suggested that SHR could use engagement plans to ask for specific assurance from specific landlords rather than using the AAS for all landlords.

In light of the feedback SHR propose to maintain the requirements in the Regulatory Framework on the AAS, and to amend the statutory guidance on AAS to include a provision to enable SHR to require landlords to include explicit assurance in the AAS.

#### Question 1: Do you agree with our proposed approach on specific assurance in Annual Assurance Statements?

<b>Table 1: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	22	5	5	32
Landlord Representative Body	0	2	0	2
Local Authority	10	0	0	10
Stakeholder	5	0	1	6
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>39</b>	<b>7</b>	<b>6</b>	<b>52</b>
	75%	13%	12%	100%



The majority of respondents (46) generally support the idea of incorporating specific assurance in Annual Assurance Statements (AAS) but along with those not in agreement (6 respondents), they raised important considerations related to timing/notice, clarity/guidance, potential unwieldiness, and the need for consistency and standardisation across the sector.



### Timing/Notice/Guidance

- **Need for advance notice and guidance** - Respondents emphasised the importance of receiving reasonable lead time and clear guidance in advance of regulatory submissions. Eleven respondents expressed concerns about the timing of specific assurance requests. The issue raised is that the submission period for Annual Assurance Statements spans from April to October, and if specific assurance requirements are communicated by the end of April, some organisations may have already prepared/submitted their statements. This could impact the feasibility of incorporating additional requirements.
- **Need for context and rationale** - Three respondents also requested that SHR provides context and rationale for specific assurance requirements. They argue that understanding the reasons behind the additions would help organisations in preparing effective responses.
- **Call for consultation and collaboration** - Linked to the above points, four respondents highlighted the need for consultation with the sector before any additions are made each year. They suggest that a collaborative approach would ensure that any additional requirements are reasonable and proportionate.

### Concerns about AAS potentially becoming unwieldy

- **Risk of AAS becoming unwieldy** - Eight respondents expressed concern about the potential for the Annual Assurance Statements to become overly large and less accessible if numerous specific assurance requirements are added each year. They suggest that additions should be carefully considered to avoid making the AAS burdensome.
- **Concerns about reporting duplication** - Linked to this two respondents expressed concerns about potential reporting duplication and emphasised the need to avoid a narrowly focused return.

### Other

- **Consistency and Standardisation** - One respondent suggested the importance of consistency across all RSLs on core critical governance and financial viability aspects. Another respondent called for a standardised format and clear communication to promote consistency and clarity across the sector.
- **Homelessness** - There was a call from two stakeholders for the future inclusion of specific assurances around homelessness prevention actions once new Homelessness Prevention Duties have been clarified following their proposed introduction in the forthcoming Housing Bill.

For the 6 respondents that explicitly said 'No' to the question/expressed reservations about the proposed approach, there was a preference for existing mechanisms and a cautious approach to avoid negatively impacting the AAS process. They cited concerns about potential unintended consequences, additional burden/duplication, and the need for prior consultation and notice.

## 4.2 Annual Return on the Charter

In the discussion paper SHR proposed to develop and introduce to the Annual Return on the Charter (ARC) specific indicators on tenant and resident safety. They also proposed to develop appropriate monitoring of the effectiveness of landlords' approach to managing reports and instances of mould and dampness, and invited views on the continuing appropriateness of existing ARC indicators. They also highlighted that they would bring forward revised indicators for the Energy Efficiency Standard for Social Housing (ESSH) when the Scottish Government's ESSH Review Group concludes its work.

There was general support from respondents for indicators on tenant and resident safety, although some noted that they did not feel they could comment until SHR gave more information on the specific indicators they were thinking of including. Some respondents highlighted that these matters are already included in the Scottish Housing Quality Standard or may be difficult to define and operate effectively. There was a strong view, especially amongst landlords, that indicators on damp and mould

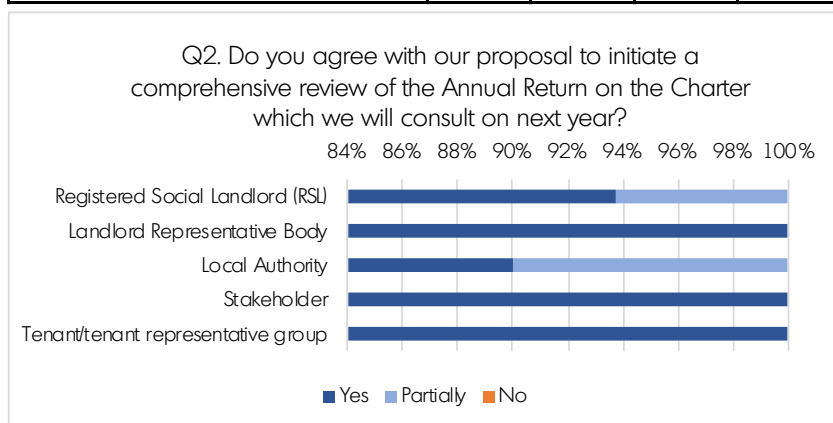


will need to be carefully developed and defined – a number suggested that SHR establish a cross-sector working group with appropriate experts to develop these. Respondents highlighted a number of existing indicators which they felt were of limited value.

Taking account of this feedback, and recognising that the Scottish Government’s EESSH Review Group has not concluded its work, SHR believe that there is merit in taking the time to undertake a comprehensive review of the ARC indicators involving relevant experts and people from the social housing sector. SHR propose to establish an appropriate working group, or groups, to work with them to consider all of the indicators in the ARC and advise SHR as they develop appropriate indicators for tenants and resident safety, damp and mould, and EESSH. SHR would then use the input from these groups to determine what indicators to include in a revised ARC. SHR would aim to consult formally on the revised ARC indicators next year with the new ARC being in place for collection year 2025/26. In the meantime, SHR would continue with the existing ARC. SHR would use the AAS to require landlords to give them specific assurance on their compliance with their tenant and resident safety obligations, including their performance in dealing with instances of mould and damp.

**Question 2: Do you agree with our proposal to initiate a comprehensive review of the Annual Return on the Charter which we will consult on next year?**

<b>Table 2: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	30	2	0	32
Landlord Representative Body	2	0	0	2
Local Authority	9	1	0	10
Stakeholder	6	0	0	6
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>49</b>	<b>3</b>	<b>0</b>	<b>52</b>
	94%	6%	0%	100%



The responses to the proposal for a comprehensive review of the Annual Return on the Charter (ARC) are generally supportive, with some qualifications and specific suggestions. The majority (49) of participants wholly agree with the need for a review, emphasising the importance of considering outcomes for tenants and residents. They welcome establishing an appropriate working group(s) to facilitate/guide the process.

**Planning and implementation**

- **Timing and lead-in period** - There was concern about the timing and lead-in period for the proposed changes. Six respondents emphasised the need for sufficient time to consult with the sector, make necessary adjustments, and implement changes. Suggestions were made for a transition year to allow landlords to gather and test data before implementing new indicators.
- **Clarity of purpose and alignment with the rest of the regulatory framework** – Seven respondents emphasised the importance of consultation with the sector, clarity on the



purpose/rationale and benefits of any changes, and alignment with the existing regulatory framework.

- **Temporary accommodation** – the conditions in temporary accommodation were highlighted as another area of consideration whilst reviewing the indicators.
- **Homelessness** – two stakeholders also suggested SHR should consider the data concerning the provision of homelessness services that are needed - to ensure that councils and landlords are effectively meeting their commitments under section 12 of the Charter.

### 4.3 Regulatory requirements

In the discussion paper SHR proposed to strengthen the emphasis on landlords listening to tenants and service users. SHR signalled a requirement that landlords provide tenants, residents and service users with appropriate ways to provide feedback and raise concerns, and ensure that they consider such information and provide quick and effective responses. SHR also proposed to amend the title of this part of the Framework to Listening and Responding to Tenants and Service Users.

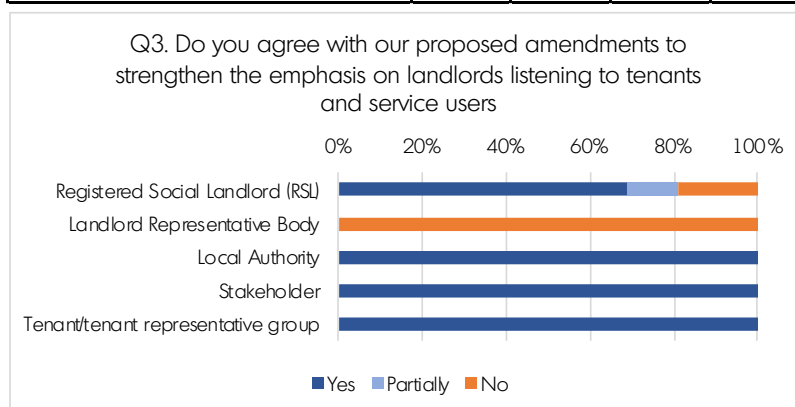
There was broad support amongst respondents for this proposal, although some noted that social landlords already have a robust approach to tenant consultation. Some questioned the use of the word “safe” in the proposed wording of the amendment to requirements, as its use suggests that currently available routes are not safe.

SHR propose to amend the relevant parts of the Regulatory Framework, with some adjustment to the language in response to feedback.

**Question 3: Do you agree with our proposed amendments to strengthen the emphasis on landlords listening to tenants and service users to include a requirement that landlords:**

- provide tenants, residents and service users with appropriate ways to provide feedback and raise concerns, and
- ensure that they consider such information and provide quick and effective responses?

Table 3: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	22	4	6	32
Landlord Representative Body	0	0	2	2
Local Authority	10	0	0	10
Stakeholder	6	0	0	6
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>40</b>	<b>4</b>	<b>8</b>	<b>52</b>
	<b>77%</b>	<b>8%</b>	<b>15%</b>	<b>100%</b>



The majority of respondents (40 fully and 4 partially) agreed with the proposed amendments to strengthen the emphasis on landlords listening to tenants and service users. They support the importance of strengthening the tenant voice and engagement, and they acknowledge the





significance of providing clear avenues for feedback, quick responses, and the need for a robust approach to tenant engagement.

Along with support for the principle of strengthening tenant and service user engagement, there were a number of specific concerns and requests for further details and clarification.

### The sector already has robust tenant engagement mechanisms

Eleven respondents, particularly those who did not agree with the proposed amendments (8 respondents), highlighted that the social housing sector already has robust mechanisms for tenant and customer engagement, questioning the need for additional changes - asking how the proposed changes will improve outcomes/where is the evidence that current arrangements are ineffective? This was an overarching factor for the respondents that said no to the proposed amendments.

### Clarification was asked on some of the terms

Clarifications were sought on the definition and/or expectation of some of the amended/additional wording:

- **'A quick and effective response'** – *'Regarding the proposal for landlords to provide 'a quick and effective response' we would welcome more clarification about what this means, e.g. is this in response to complaints or other enquiries?'* (RSL)
- **'Actively seek'** – Specific clarification was sought from the SHR as to its expectations on RSLs to meet the amended requirement to 'actively seek' within Standard 2.4 i.e. what further is required to meet this aspect?. *'We would like to know what is behind the definition of "actively seeking". There many ways in which complaints can be raised and perhaps an improved overview can be provided – RSL own complaints process, SPSO option, SHR with Significant Performance Failures and of course Whistleblowing.'* (RSL)
- **'Service user'** – *'We would also welcome clarification on "service user" engagement so that this relates to regulated services under the auspices of the SHR as a number of RSLs will have service users who do not fall under this category and who may be otherwise supported by separate regulation and reporting requirements (for example SSSC).'* (RSL)

### Specific concern about the amendment of Standard 4.2

There was concern from two respondents that the proposed new 4.2 standard could lead to governing bodies becoming more directly involved in operational matters and increased tenant interaction that should be with staff – they called for it being amended or removed.

### Points tabled for inclusion

Two respondents tabled/requested amendments making specific reference to:

- **Tenant Committee members** – *'Tenant Committee members should also be valued as they reflect the views on tenants.'* (RSL)
- **Those using homelessness services** – *'...we would also like to see a specific requirement to engage with those with experience of using homelessness services. For example, on page 7 of the new draft framework, in the second box, under bullet point 2 it might be useful to specify those using homelessness services and provide guidance on how this group can be involved.'* (Stakeholder)

## 4.4 Notifiable events

In the discussion paper SHR proposed to streamline their approach to Notifiable Events to ensure that landlords bring the most critical issues to their attention while not being overburdened by notification requirements.

While respondents welcomed the principle of streamlining the Notifiable Events process, many respondents noted that the current process works well, with some suggesting a range of relatively



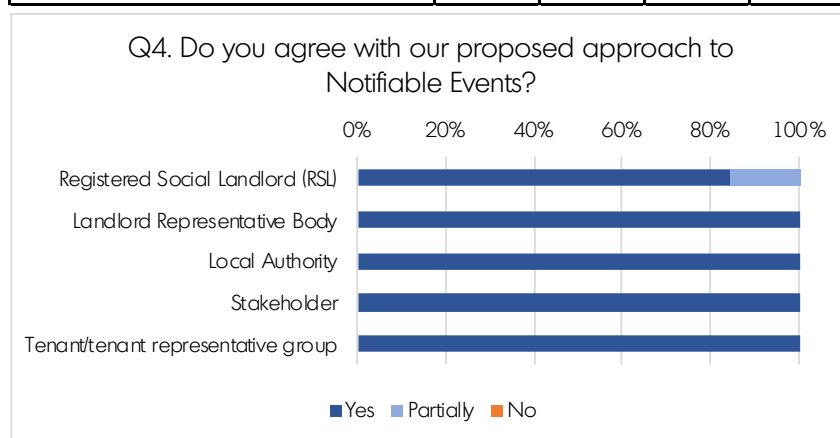


minor changes, for example, that some events could simply be a notification and rather than being reported as a notifiable event.

SHR propose to make some changes to the statutory **guidance** on Notifiable Events to ensure it is clear that they require landlords to notify them of the most significant issues only. SHR will further emphasise the importance of landlords contacting their lead regulation manager if they are determining whether something is a Notifiable Event. SHR will also look to develop ways to share more information with landlords on the type of Notifiable Events they receive and what they do with those.

#### Question 4: Do you agree with our proposed approach to Notifiable Events?

<b>Table 4: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	27	5	0	32
Landlord Representative Body	2	0	0	2
Local Authority	6	0	0	6
Stakeholder	3	0	0	3
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>40</b>	<b>5</b>	<b>0</b>	<b>45</b>
	<b>89%</b>	<b>11%</b>	<b>0%</b>	<b>100%</b>



The proposed streamlined approach to Notifiable Events was supported by respondents, with five indicating partial agreement and the remaining (40) all in favour. The responses to the question often expressed support for the general idea of reviewing and streamlining the guidance around Notifiable Events, with some respondents suggesting specific areas of the guidance they felt would benefit most from a review.

#### Current Notifiable Events guidance was viewed positively

Responses frequently noted that the current guidance around Notifiable Events was effective and well understood among RSLs. However, the prevailing view was that the proposed amendments would further improve clarity and ease of understanding.

#### Suggested further amendments

Some specific areas were highlighted by respondents for further amendment to maximise ease of understanding:

- One respondent requested further amendments to Appendix 1 of the guidance. They note that if SHR are only to receive notification of events considered to be serious, the guidance leaves this open to interpretation. The respondent would prefer guidance to include more information on the material circumstances surrounding a Notifiable Event, and for guidance to account for differences in how Regulation Managers may interpret and apply the standard for Notifiable Events



- One respondent suggested that guidance should note that the number of Notifiable Events recorded may not correlate directly to the RSL's performance (for example, if a change of auditor occurs)
- One respondent called for housing association staff to be able to notify SHR about governance failures rather than this being restricted to the Chair.
- One respondent called for further refinement/streamlining of the guidance, as they felt the guidance remained "lengthy and confusing" even after the proposed amendments
- One respondent felt guidance should reflect the fact that Notifiable Events are not inherently a negative, and should stress that RSLs should not be trying to limit their reporting of Notifiable Events to the regulator.
- One respondent asked for examples of what should and should not be considered a reportable issue to be included in guidance, to ensure only relevant issues are reported to the regulator as Notifiable Events.
- One respondent reiterated their point from the Discussion Paper, calling for a change to how settlement agreements were reported. They argued that a summary would be sufficient instead of having to submit detailed information for each settlement.

#### Support for increased transparency from SHR

One respondent noted that the proposals will result in greater transparency from SHR on what the regulator does with the information they receive. This was seen as a positive development for RSLs.

#### Support for risk-based and proportionate approach

One respondent highlighted the amendments to section 6.1 as being particularly encouraging. As an RSL, they welcomed the adoption of a risk-based and proportionate approach to Notifiable Events.

### 4.5 Regulatory Status

In the discussion paper SHR set out that the regulatory status for RSLs has been an effective addition to the regulatory framework, delivering greater transparency on their regulatory view of RSLs. SHR highlighted that some stakeholders had suggested more direct language around the working towards compliance status and some suggested an additional regulatory status between the compliant status and the working towards compliance status. SHR asked for views on the value in using more direct language in the working towards compliance status or in introducing an intermediary regulatory status between compliant and working towards compliance.

There was a mix of responses to the discussion paper proposal and no clear consensus amongst respondents on changing the format of the regulatory status, with some supporting the current approach while others supported further development of the approach to regulatory status. More respondents supported a shift to more direct language in the working towards compliance status.

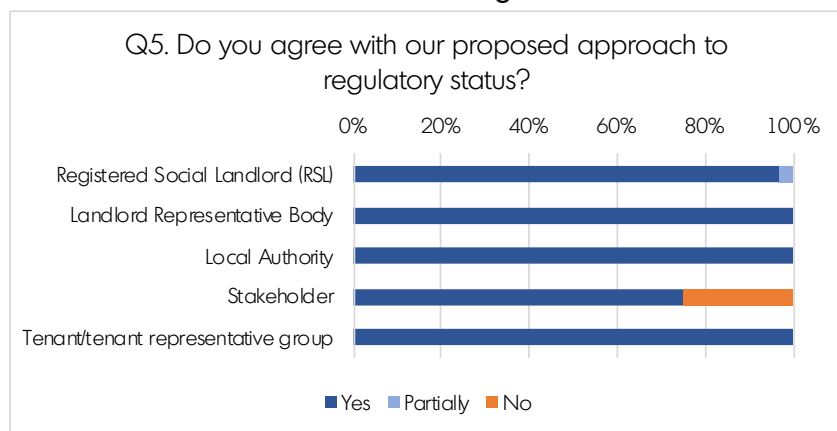
SHR propose to maintain the current approach of having three regulatory statuses, and to amend the language in the second and third statuses to make clear that these are non-compliant statuses.

#### Question 5: Do you agree with our proposed approach to regulatory status?

<b>Table 5: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	29	1	0	30
Landlord Representative Body	2	0	0	2
Local Authority	4	0	0	4
Stakeholder	3	0	1	4
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>40</b>	<b>1</b>	<b>1</b>	<b>42</b>
	<b>95%</b>	<b>2%</b>	<b>2%</b>	<b>100%</b>



In contrast to the responses to the discussion paper, the responses to maintaining the current statuses but changing the language were almost entirely supportive of the proposed changes. There was general agreement that the existing three regulatory statuses were sufficient, and that clearer or more direct language was needed to ensure the three categories were clearly understood by RSLs. The one respondent who indicated partial agreement was in favour of amending the wording to increase clarity but suggested alternative titles for the status categories.



#### Further clarity on the two non-compliant status categories would be welcomed

There was widespread agreement that adding a fourth status category would not be necessary. Specific points which were raised tended to be more focused on the proposed changes to wording:

- **Emphasising which statuses were considered to be non-compliant** was a key requirement, and respondents typically agreed that this issue was addressed by the proposed changes to wording
- **Additional guidance was requested** to set out how the two non-compliant categories will be measured and assessed. This will also help to reassure tenants that their landlord is meeting the agreed standard (or that they are taking the correct action to remedy this)
- **The potential impact on lenders was queried** as two respondents were concerned that stronger wording around non-compliance could give the impression that issues were more serious, and that this might negatively impact their relationship with lenders (with one mentioning the potential to trigger a breach of covenant). These respondents felt that SHR should consider providing additional clarity around how non-compliance can be addressed to reduce lenders' concerns.

#### Consistency of approach across the wider UK was highlighted as a potential issue

The respondent who disagreed with the proposed changes raised two points:

- **SHR's proposed system of three status categories does not match the approach used in England**, creating potential confusion for overseas investors and putting Scottish RSLs at a disadvantage
- **Adding a fourth category as an intermediary compliant status could help to make the differences between compliant and non-compliant RSLs less of a stark contrast**

*'While we appreciate the rationale of the three regulatory statuses which the SHR intends to maintain, we remain of the view that this approach will perpetuate confusion, and a lack of clarity about the meaning of "working towards compliance" in particular... Further consideration should be given to introducing a new intermediary compliant regulatory status (equivalent to G2V2 in England), which would be useful to flag where an RSL does not have exemplary governance/viability but is still not considered non-compliant. This would help reduce the cliff edge between compliant and non-compliant.'* (Stakeholder)

## 4.6 Significant Performance Failures

In the discussion paper SHR asked for views on whether there are any changes they should make to how they define significant performance failures (SPFs). There were a range of responses to this question, with most supporting the current approach. There were also clear themes – particularly from



tenants – around increasing clarity about what is an SPF, about the use of jargon and about how SPFs relate to landlords’ complaints procedures and to the role of the Scottish Public Service Ombudsman (SPSO).

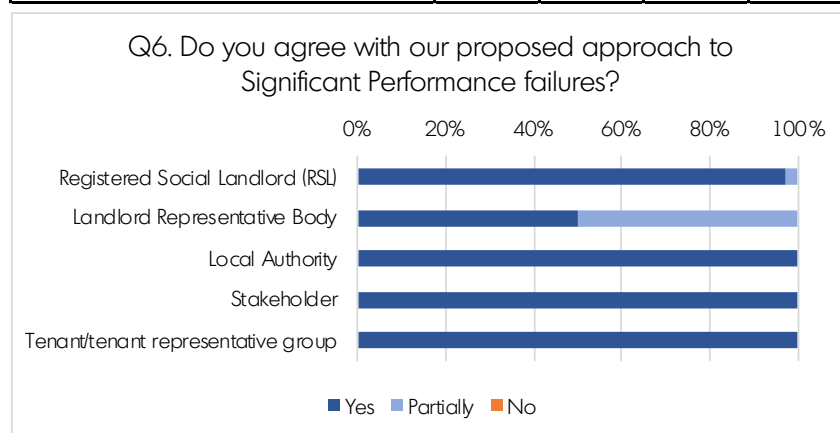
SHR propose to amend the Regulatory Framework to enhance clarity on when and what tenants can bring to them, and how this fits with the other routes for tenants to complain to their landlord and the SPSO. The aim of the proposed amendments is to set out a clear, plain language statement of the routes of redress available to tenants, to include:

- complaining to their landlord;
- complaining to the SPSO; and
- what, how and when to bring to SHR.

Following the consultation, SHR will update their factsheet for tenants to reflect this approach and to include illustrations of what is a complaint and what should be brought to them.

#### Question 6: Do you agree with our proposed approach to Significant Performance Failures?

<b>Table 6: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	31	1	0	32
Landlord Representative Body	1	1	0	2
Local Authority	9	0	0	9
Stakeholder	4	0	0	4
Tenant/tenant representative group	2	0	0	2
<b>Total</b>	<b>47</b>	<b>2</b>	<b>0</b>	<b>49</b>
	<b>96%</b>	<b>4%</b>	<b>0%</b>	<b>100%</b>



All respondents were at least partially in agreement with the proposed approach to Significant Performance Failures, with 96% backing the proposed amendments completely. The amended language was generally viewed as clearer and easier to understand for both RSLs and their tenants. In particular, the switch from “significant performance failure” to “serious concern” was seen as an effective use of plain language. The suggestion of distributing updated factsheets or other guidance was also welcomed by respondents as a way to ensure tenants fully understood their options in the event they wished to make a complaint. Some specific queries or suggestions were raised in response to this question, with these primarily being requests for examples or queries about specific aspects of the proposed amendments.

#### Further clarification or detail on specifics

While the proposed changes to language were broadly felt to have provided much needed clarity, there were some requests for further information or guidance to be provided on specific aspects of the new wording, or on the implementation of new guidance linked to the amendments:



- Three respondents believed guidance should be more closely aligned with SPSO guidance on complaints handling procedures, or that further detail was needed to outline when an SPSO process complaint would be appropriate, versus reporting a significant performance failure.
- One respondent sought clarification on the timescales for SHR to update their leaflets to reflect the amendments.
- There was one query around whether failures in homelessness services would be considered significant performance failures. Further guidance was requested for users of homelessness services who wished to make a complaint.
- There was one suggestion that published guidance around significant performance failures should clearly quantify what constitutes a significant performance failure, and whether a failure was systemic, isolated, inadvertent, or careless. Ideally the SHR should include examples to illustrate this for RSLs and tenants.

#### Suggestions on how significant performance failures should be handled by SHR

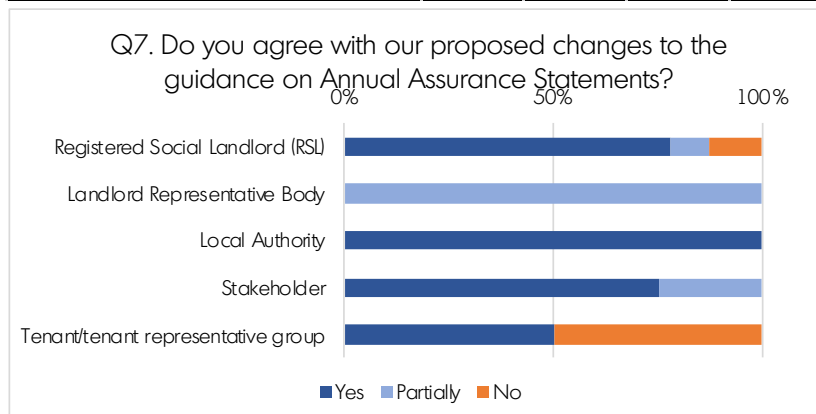
- One respondent noted that there was currently no way of reporting a significant performance failure online, with the process requiring a hard copy to be printed and scanned or posted. The respondent suggested that offering the form in an online format would make it easier for tenants to report issues to SHR.
- There was also one request for SHR to ensure that any changes made around significant performance failures did not inadvertently provide a way for tenants to circumvent an RSL's existing complaints procedures instead of using these channels first.

### 4.7 Annual Assurance Statement (Guidance)

SHR are also consulting on proposed changes to the statutory **guidance** which accompanies the Regulatory Framework. SHR propose to amend the statutory guidance on the Annual Assurance Statement (AAS) to include a provision to enable them to require landlords to include explicit assurance in the AAS. SHR have also added some more detail on how they use the AAS.

**Question 7: Do you agree with our proposed changes to the guidance on Annual Assurance Statements?**

<b>Table 7: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	25	3	4	32
Landlord Representative Body	0	1	0	1
Local Authority	10	0	0	10
Stakeholder	3	1	0	4
Tenant/tenant representative group	1	0	1	2
<b>Total</b>	<b>39</b>	<b>5</b>	<b>5</b>	<b>49</b>
	<b>80%</b>	<b>10%</b>	<b>10%</b>	<b>100%</b>





The majority (44) of respondents generally support the idea of amending the statutory guidance on the Annual Assurance Statement (AAS), and agree that the proposed changes are in line with the approach set out in the Regulatory Framework and help to formalise the current approach.

In line with responses to Q1. Do you agree with our proposed approach on specific assurance in Annual Assurance Statements? (note respondent feedback to Q1 was referred to throughout) the need for clearer guidance and communications was a common theme throughout responses, along with emphasising the need for appropriate lead-in times and notice, a suitable rationale for the change, the prevention of a lengthy AAS, and the development of a standardised format.

### Guidance specific concerns

- **Reporting expectations are required** - There was particular mention of the addition of specific assurance requirements at 1.5, which was supported, however, one respondent asked for clear guidance on reporting expectations.
- **Concerns about conflicting guidance** – one respondent flagged a concern that guidance on the Annual Assurance Statement could become contradictory.

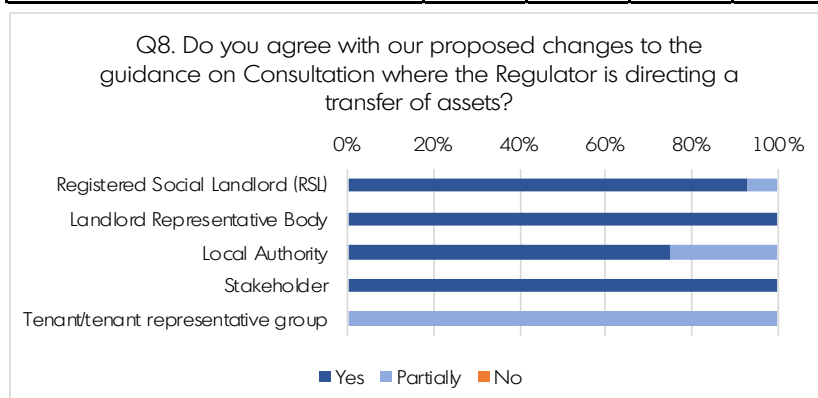
Three out of the five respondents that explicitly said ‘No’ to the question/expressed reservation about the proposed changes to the guidance on AAS, responded to the question by referring to/reiterating their answer for Q1. They cited concerns about potential unintended consequences, the risk of the process becoming more burdensome and narrowly focused, and, in line with previous responses, the need for prior consultation and notice. One respondent’s view was that if an RSL reports non-compliance then should their regulatory status not be changed?

## 4.8 Consultation where the regulator is directing a transfer of assets (Guidance)

SHR propose to amend the statutory guidance on *Consultation where the Regulator is directing a transfer of assets*. The proposals aim to improve its clarity, to strengthen the references to relevant statutory provisions and to incorporate lessons learned from the two occasions on which SHR have used the relevant statutory powers.

**Question 8: Do you agree with our proposed changes to the guidance on Consultation where the Regulator is directing a transfer of assets?**

Table 8: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	26	2	0	28
Landlord Representative Body	1	0	0	1
Local Authority	3	1	0	4
Stakeholder	3	0	0	3
Tenant/tenant representative group	0	2	0	2
<b>Total</b>	<b>33</b>	<b>5</b>	<b>0</b>	<b>38</b>
	<b>87%</b>	<b>13%</b>	<b>0%</b>	<b>100%</b>





Overall, responses indicate general support for the proposed changes. All respondents who answered this question either agreed, or partially agreed with the proposed changes, noting that they provide additional clarity and improve guidance. No respondent disagreed, however fourteen respondents, the majority of whom were Local Authorities, did not comment as the question only applied to Registered Social Landlords and was therefore not relevant to them.

#### A request for robust due diligence

One respondent emphasised the need for a thorough investigation before ownership or control of properties is transferred from one RSL to another. They suggest that instead of immediately transferring properties, other alternatives could be explored such as finding ways to fix any problems in how services are delivered with the goal of protecting and maintaining community housing.

#### Ensuring tenants are part of the process

One respondent supported the changes but recommends including a step to consult the tenants of both landlords when ownership/control of properties is being transferred from one landlord to another in order to ensure their perspectives are considered.

#### Further clarity on certain aspects of the proposed changes is welcomed

One respondent suggested revising the wording of 3.4 (Statutory Guidance – Consultation where the Regulator is directing a transfer of assets) in order to avoid confusion of its true meaning.

*The revised wording of 3.4 (Statutory Guidance - Consultation where the Regulator is directing a transfer of assets) might benefit from review as it's not clear whether the following statement means that there's only time to consult one group, that the group would be the secured creditors, or if the decision will be taken on balance: "If we conclude that there would be time to consult one group but not the other, we must consult that group." (RSL)*

### 4.9 Determination of accounting requirements for RSLs (Guidance)

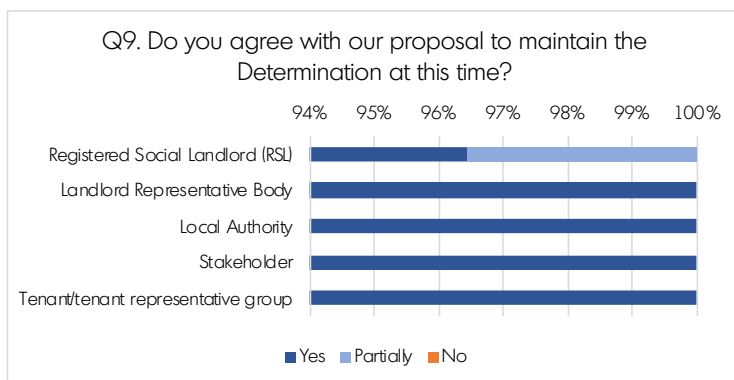
The Determination of accounting requirements for RSLs (the Determination) is based on the Statement of Recommended Practice (SORP): Accounting by Registered Social Landlords. The SORP is issued by the Scottish Federation of Housing Associations, the English National Housing Federation, and the Welsh Federation of Housing Associations. The review of the current SORP will not be completed until 2024 in order to reflect changes to Financial Reporting Standard 102, following which SHR will consult on a revised Determination. Given this, SHR do not propose to amend the Determination at this time.

#### Question 9: Do you agree with our proposal to maintain the Determination at this time?

All respondents who answered this question generally agreed with the proposal to maintain the Determination at this time with most offering little to no comments/changes.

<b>Table 9: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	27	1	0	28
Landlord Representative Body	1	0	0	1
Local Authority	3	0	0	3
Stakeholder	2	0	0	2
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>34</b>	<b>1</b>	<b>0</b>	<b>35</b>
	<b>97%</b>	<b>3%</b>	<b>0%</b>	<b>100%</b>





### Agreement to await the outcomes of the 2024 review

Of those who left any substantive comment, 11 acknowledged and agreed that it was sensible to wait until the review of the current SORP is completed this year before revising the Determination.

One respondent partially agreed in that they agreed with the proposal to maintain the Determination at this time, apart from the following point which they detailed in their response:

*The following change is included in the draft Determination at section 7 True and fair view "7.1 The statement of financial position shall give a true and fair view of the state of affairs of the RSL as at the end of the reporting period and the disposition of funds and assets which it holds, or has held, in connection with its housing activities". The proposed additional text as underlined "and the disposition of funds and assets which it holds, or has held, in connection with its housing activities" is not necessary as a statement of financial position which did not set out the "the disposition of funds and assets which it holds, or has held, in connection with its housing activities" would not be presenting a true and fair view.*

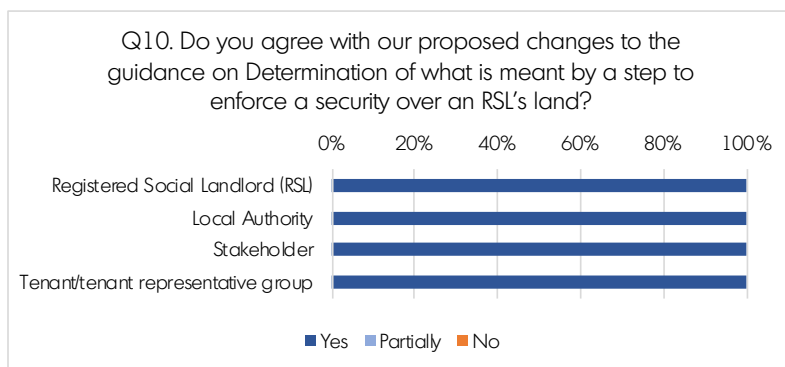
*In terms of simplifying the regulatory landscape is the Determination required at all. If RSLs are required to comply with the "Statement of Recommended Practice (SORP): Accounting by Registered Social Landlords" would it not be more straight forward for that requirement simply to be stated in the Determination. That would avoid any potential gaps/duplication/misalignment or concern over timing of changes to either the Determination or SORP.' (Local Authority)*

### 4.10 Determination of what is meant by a step to enforce a security over an RSL's land (Guidance)

SHR propose to amend the statutory guidance on Determination of what is meant by a step to enforce a security over an RSL's land to clarify and update references to relevant legislative provisions.

Question 10: Do you agree with our proposed changes to the guidance on Determination of what is meant by a step to enforce a security over an RSL's land?

Table 10: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	28	0	0	28
Local Authority	3	0	0	3
Stakeholder	3	0	0	3
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>35</b>	<b>0</b>	<b>0</b>	<b>35</b>
	<b>100%</b>	<b>0%</b>	<b>0%</b>	<b>100%</b>



There was universal agreement to the proposed changes to the guidance, from all respondents who answered this question (35). As this question only applies to RSLs, 16 respondents did not comment as it was not relevant to them.

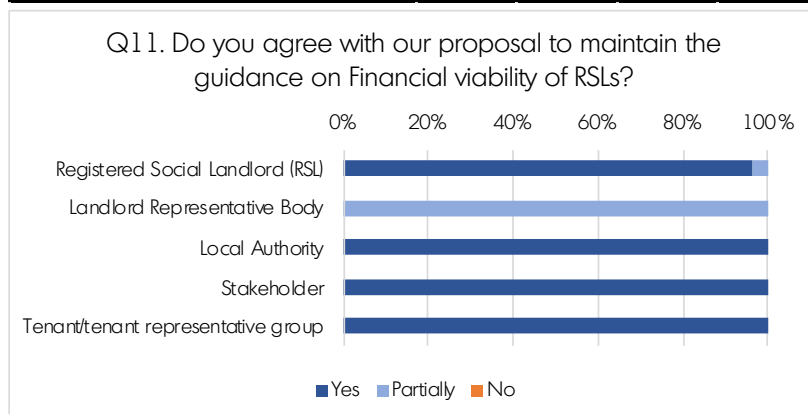
Responses to this question were minimal, with most confirming their agreement and highlighting that the additional wording provides clarity and additional guidance is useful.

#### 4.1.1 Financial viability of RSLs (Guidance)

SHR do not propose to amend the statutory guidance on Financial viability of RSLs.

**Question 11: Do you agree with our proposal to maintain the guidance on Financial viability of RSLs?**

Table 11: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	27	1	0	28
Landlord Representative Body	0	1	0	1
Local Authority	3	0	0	3
Stakeholder	3	0	0	3
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>34</b>	<b>2</b>	<b>0</b>	<b>36</b>
	<b>94%</b>	<b>6%</b>	<b>0%</b>	<b>100%</b>



All respondents (except two partially) were in agreement with the proposal to maintain guidance on RSL's financial viability in its current form. Overall feedback on the current guidance was positive, with some minor requests for additional detail or guidance.

#### Minor clarification points

While the overall response to the consultation strongly favoured the proposal not to amend the guidance, one respondent did raise some points relating to two areas of the Standards of Governance and Financial Management for RSLs where they felt that clarity on required timescales would be beneficial. They suggested adding proposed timescales to:



- Standard 2, Guidance 2.1, which covers the need for RSLs to give “tenants, service users and other stakeholders information that meets their needs about the RSL, its services, its performance and its future plans.”
- Standard 2, Guidance 2.4, which requires RSLs to “actively seek out the needs, priorities, views, concerns and aspirations of tenants, service users and stakeholders” and requires that the governing body “Listens to its tenants and service users and takes account of this information in its strategies, plans and decisions.”

### Potential impact on lenders

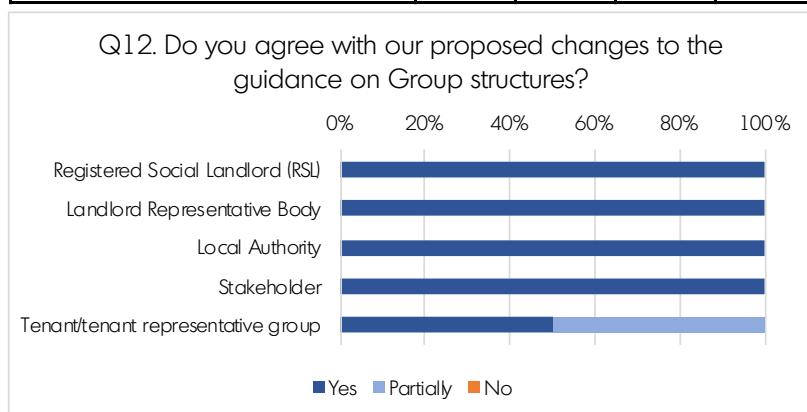
One respondent also requested that SHR provide some form of leverage to help RSLs ensure commercial lenders provided a uniform approach to loan covenants. They suggested removing the impact of major repairs investment from the interest cover calculation basis, and moving towards pre-FRS102 accounting requirements as examples of how this could be achieved.

### 4.12 Group structures (Guidance)

SHR propose to amend the statutory guidance on Group Structures to reflect their experience of the development of more complex Group structures in the sector and to ensure that their guidance aligns more clearly with the Regulatory Framework.

#### Question 12: Do you agree with our proposed changes to the guidance on Group structures?

Table 12: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	25	0	0	25
Landlord Representative Body	1	0	0	1
Local Authority	3	0	0	3
Stakeholder	3	0	0	3
Tenant/tenant representative group	1	1	0	2
<b>Total</b>	<b>33</b>	<b>1</b>	<b>0</b>	<b>34</b>
	<b>97%</b>	<b>3%</b>	<b>0%</b>	<b>100%</b>



Respondents were in favour of the proposed amendments to the statutory guidance on Group Structures, with none disagreeing with the proposal and one respondent indicating partial agreement. Some minor queries or issues were raised in the responses, primarily relating to how Group Structures were applied in practice. One respondent pointed out that these amendments were not trailed in the original discussion paper, but nevertheless agreed with the proposal.

### The proposed amendments offered additional detail and clarity

The most common reason for agreeing with the amended guidance was that it offered improved clarity or provided additional detail on certain aspects of Group Structures.

- Three respondents highlighted the emergence of increasingly complex Group Structures, and felt that the amendments helped guidance to keep pace with this development in the sector.



- One respondent felt that the proposed amendments helped to emphasise the link between the guidance and wider regulatory framework.
- One respondent highlighted the inclusion of cross references to other relevant guidance as a particularly helpful addition.

### The need for consistency of application across different Group Structures

One respondent called for greater consistency in how RSLs apply the Group Structure model in practice.

### The need for regular review of arrangements around Group Structures

One respondent raised a point around the need for governance arrangements relating to Group Structures to be reviewed at the time of a new partnership being created, and regularly thereafter to ensure tenants continue to see the benefits of the partnership(s).

### Suggestion of legal advice

One stakeholder suggested that legal advice should be considered alongside the proposed consideration of housing organisations' experiences and views.

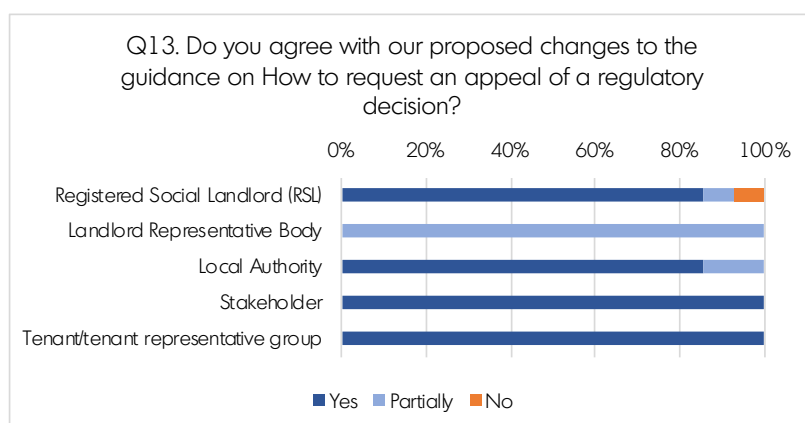
## 4.13 How to request an appeal of a regulatory decision (Guidance)

SHR propose to amend the statutory guidance on How to request an appeal of a regulatory decision to make a minor clarification on deregistrations.

**Question 13: Do you agree with our proposed changes to the guidance on How to request an appeal of a regulatory decision?**

Table 13: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	24	2	2	28
Landlord Representative Body	0	1	0	1
Local Authority	6	1	0	7
Stakeholder	2	0	0	2
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>33</b>	<b>4</b>	<b>2</b>	<b>39</b>
	<b>85%</b>	<b>10%</b>	<b>5%</b>	<b>100%</b>

Overall, respondents were in general agreement with the proposed changes to the guidance on How to request an appeal of the regulatory decision. For those that did agree, additional comments were limited and highlight the minimal changes proposed which help to provide clarity on de-registration.





### Concern related to the timeframe

For **one** respondent, though they agreed with the proposed changes, they expressed concern about the 15-day timeframe for local authorities to appeal decisions and advocated for a more feasible timeframe of 20 working days.

### Merging of appeal and review documents

Three respondents (two of whom partially agree and one of whom did not agree with the proposed changes) suggested combining the appeal and review guidance documents related to regulatory decisions to make it easier for them to be read and linked together.

### Commitment to fairness

One respondent who partially agreed called for a commitment to fairness throughout the appeal process. Additionally, they require further clarification on what determines the independence of those involved in the appeals process.

The other respondent who did not agree provided more detail in response to the following question.

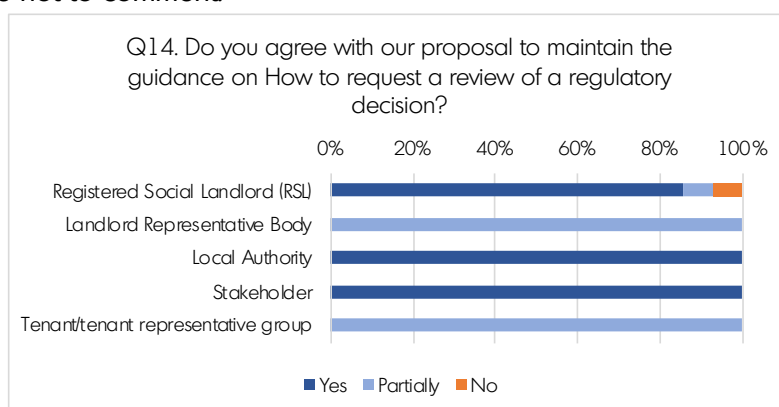
## 4.14 How to request a review of a regulatory decision (Guidance)

SHR do not propose to amend the statutory guidance on How to request a review of a regulatory decision.

**Question 14: Do you agree with our proposal to maintain the guidance on How to request a review of a regulatory decision?**

<b>Table 14: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	24	2	2	28
Landlord Representative Body	0	1	0	1
Local Authority	8	0	0	8
Stakeholder	2	0	0	2
Tenant/tenant representative group	0	1	0	1
<b>Total</b>	<b>34</b>	<b>4</b>	<b>2</b>	<b>40</b>
	<b>85%</b>	<b>10%</b>	<b>5%</b>	<b>100%</b>

Overall, the respondents generally agreed with the proposal to maintain the guidance on How to request a review of a regulatory decision, commenting that the current guidance is clear. Many respondents chose not to comment.



### Merging of appeal and review documents

- Similarly to responses for Q13, those who partially agreed with the proposed changes suggested combining the appeal and review documents. One respondents made some further minor suggestions:



*In part*

*As per answer to Question 13, it would perhaps be useful to combine appeal and review guidance for ease of use and clarity.*

*Paragraph 12 requires reference to contact details (similar to paragraph 13).*

*Paragraph 16 – providing in writing should be default position rather than having to be requested.’ (RSL)*

- Another respondent also preferred (in paragraph 16) providing in writing rather than having to be requested.
- One of the respondents who did not agree with the proposed changes in Q13 or Q14 provided multiple reasons for this:

*There is limited scope for the SPSO to consider a complaint regarding the SHR.*

*Best practice is for any review / appeal / complaint against a decision or person, to be heard independently of those making the original decision.*

*In the interests of fairness and given the possible consequences of Regulatory decision making, it would be beneficial for an external process to be introduced where the decision could impact the future viability / independence of an organisation. This may or may not involve a body that has the power to overrule a decision made by the Regulator.*

*For context the HSE has a three tier complaint process that does not involve the original decision maker:*

*Tier 1: the complaint is handled by the manager of the team you’ve been dealing with*

*Tier 2: your complaint is reviewed by a manager not previously involved*

*Tier 3: the Chief Executive arranges an independent review of your complaint and how it was handled.*

*The Financial Regulators Complaints Commissioner provides an independent assessment of complaints against the Financial Conduct Authority. (RSL)*

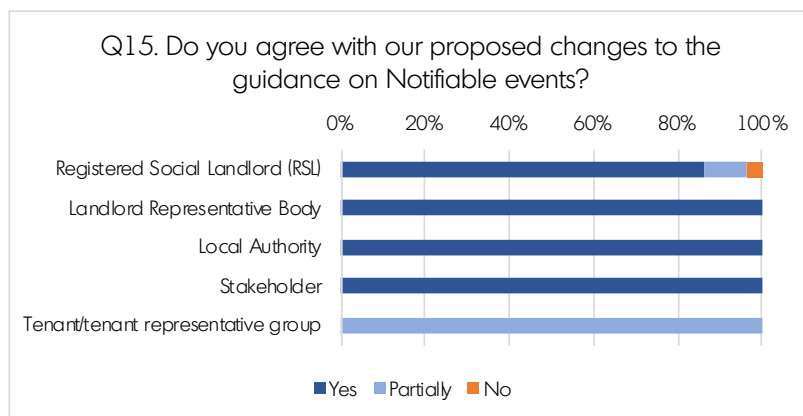
#### **4.15 Notifiable events (Guidance)**

SHR propose to amend the statutory guidance on Notifiable events to improve clarity and to emphasise that they require landlords to notify them of the most critical issues only.

#### **Question 15: Do you agree with our proposed changes to the guidance on Notifiable events?**

Responses to this question generally mirrored the views expressed in Q4, with respondents mostly in favour of the proposed amendments to the guidance, agreeing that they help to streamline and improve clarity for RSLs without excessively changing an area of guidance which is felt to be working well overall. However, one respondent expressed a different view to their Q4 response, as they agreed with the aims of the proposed amendments, but felt that the specific proposed changes fell short of achieving what they set out to do. There were also some additional suggestions relating to specific areas of the guidance.

<b>Table 15: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	25	3	1	29
Landlord Representative Body	1	0	0	1
Local Authority	5	0	0	5
Stakeholder	2	0	0	2
Tenant/tenant representative group	0	1	0	1
<b>Total</b>	<b>33</b>	<b>4</b>	<b>1</b>	<b>38</b>
	<b>87%</b>	<b>11%</b>	<b>3%</b>	<b>100%</b>



### Emphasis on serious issues only was welcomed by RSLs

Four respondents noted that the proposed changes would mean only critical/serious issues would need to be reported as Notifiable Events, which they saw as a positive development which would reduce the burden on RSLs.

### Additional detail or examples (landlord portal, real life examples, update app1)

Requests were raised by respondents who generally agreed with the proposed amendments but felt additional information could further improve the guidance:

- Two respondents asked for Appendix 1 to be updated to reflect proposed changes to the guidance.
- One respondent requested the inclusion of examples to illustrate the type of issue which would be considered serious enough to be reported as a Notifiable Event.
- One respondent asked for additional detail on how the landlord portal could be used to update SHR on previously reported Notifiable Events.
- Two respondents asked for detail on timescales and SHR's actions immediately following an event being reported.

### Specific feedback on wording (2.2, 2.7)

One respondent suggested further amendments to wording on two areas of the new guidance:

- They felt that the term "risk bringing" in paragraph 2.2 was too open to the reader's interpretation.
- They felt paragraph 2.7 was too focused on lenders, and risked being interpreted as instructing RSLs to notify only lenders and SHR, rather than other relevant parties.

### Need for greater consideration of materiality

One respondent reiterated their point from Q4 regarding the need for guidance to address the material aspects of what should qualify as a Notifiable Event, in order to avoid leaving this too open to interpretation.

## 4.16 Preparation of financial statements (Guidance)

SHR propose to amend the statutory guidance on Preparation of financial statements to include minor updates and improvements to clarity.

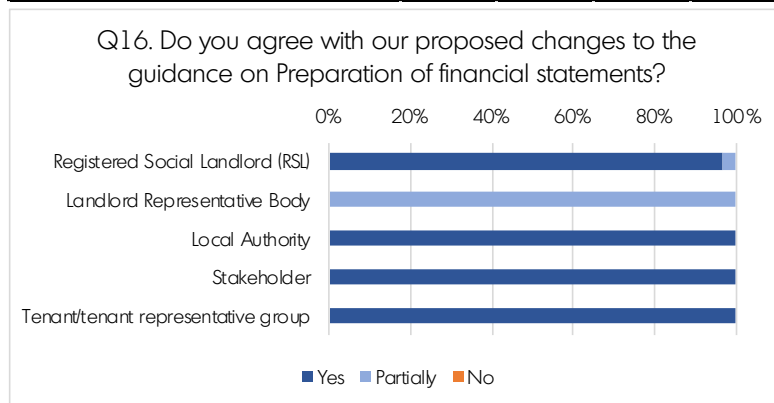
### Question 16: Do you agree with our proposed changes to the guidance on Preparation of financial statements?

Respondents were all in agreement with SHR's proposed changes to the guidance on preparation of financial statements. Responses frequently indicated agreement that the changes had improved clarity for RSLs. Two respondents indicated partial agreement. Respondents did make some minor observations or points based on specific areas of the guidance.





<b>Table 16: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	27	1	0	28
Landlord Representative Body	0	1	0	1
Local Authority	3	0	0	3
Stakeholder	2	0	0	2
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>33</b>	<b>2</b>	<b>0</b>	<b>35</b>
	<b>94%</b>	<b>6%</b>	<b>0%</b>	<b>100%</b>



#### Inconsistency between specific areas of financial statements

This was highlighted by one RSL respondent, who noted that inconsistency in how different RSLs approach their accounting and auditing of certain assets can make it harder to compare performance between RSLs. They suggested that SHR's guidance should include the regulator's recommended approach to help ensure RSLs are more consistent in how they go about auditing their assets.

#### 4.17 Section 72 reporting events of material significance (Guidance)

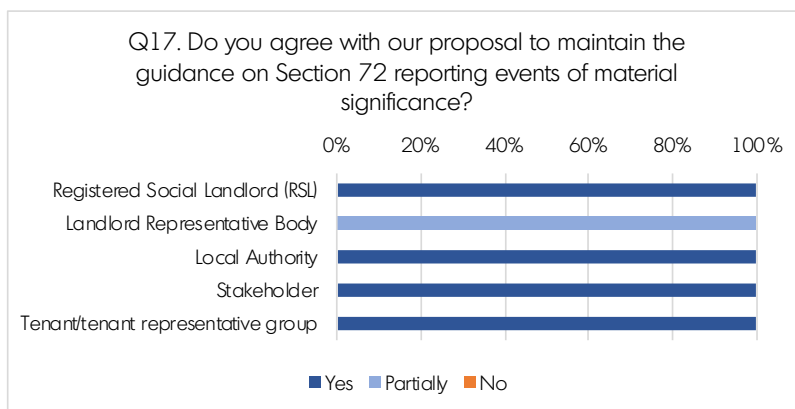
SHR do not propose to amend the statutory guidance on Section 72 reporting events of material significance.

**Question 17: Do you agree with our proposal to maintain the guidance on Section 72 reporting events of material significance?**

<b>Table 17: Respondent type</b>	<b>Yes</b>	<b>Partially</b>	<b>No</b>	<b>Total</b>
Registered Social Landlord (RSL)	28	0	0	28
Landlord Representative Body	0	1	0	1
Local Authority	3	0	0	3
Stakeholder	2	0	0	2
Tenant/tenant representative group	1	0	0	1
<b>Total</b>	<b>34</b>	<b>1</b>	<b>0</b>	<b>35</b>
	<b>97%</b>	<b>3%</b>	<b>0%</b>	<b>100%</b>

All respondents to this question generally agreed with the proposal to maintain the guidance on Section 72 reporting events of material significance, with little to no comments.

One respondent, although in agreement, suggested that their agreement will be determined by the type of information on equality that will be included in the guidance.

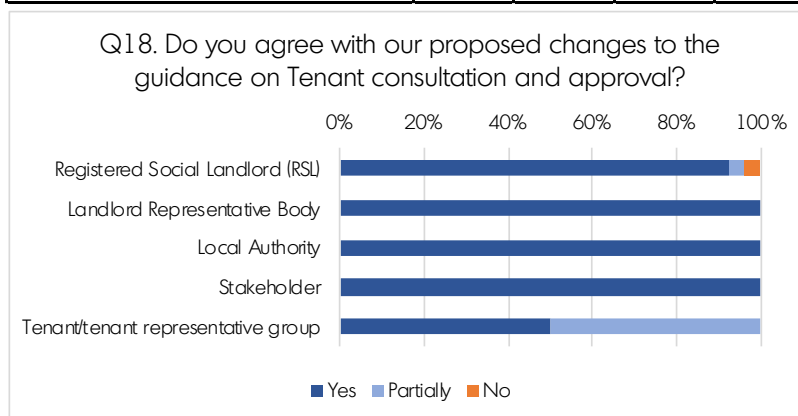


#### 4.18 Tenant consultation and approval (Guidance)

SHR propose to amend the statutory guidance on Tenant consultation and approval to include minor updates and to ensure that equalities are appropriately referenced.

**Question 18: Do you agree with our proposed changes to the guidance on Tenant consultation and approval?**

Table 18: Respondent type	Yes	Partially	No	Total
Registered Social Landlord (RSL)	25	1	1	27
Landlord Representative Body	1	0	0	1
Local Authority	6	0	0	6
Stakeholder	3	0	0	3
Tenant/tenant representative group	1	1	0	2
<b>Total</b>	<b>36</b>	<b>2</b>	<b>1</b>	<b>39</b>
	<b>92%</b>	<b>5%</b>	<b>3%</b>	<b>100%</b>



The majority of respondents (38) agreed with the proposed changes to the guidance on Tenant consultation and approval with minor comments or additions to add. Generally, respondents thought the changes improved clarity and aligned with other guidance.

#### A call for accountability and justification

The two respondents who partially agreed expressed a need for accountability in ensuring promises made by RSLs during the transfer process are delivered. In addition, one disagreed with 3.16 due to a lack of accountability to tenants and justification for decisions. Another respondents commented in a similar vein and called for 'tougher sanctions' for RSLs that don't deliver on their promises.

#### Concern about equalities information

One respondent expressed a concern about the lack of information regarding the benefits and practical use of collecting additional equalities information



### Call for tenant voting

Despite recognising the SHR's limitations, one respondent believed that tenants of a landlord who is planning to take over the assets of another social landlord should have the right to vote. More specifically, they should be entitled to vote on whether they agree with their landlord proceeding with the transfer of assets.

The **one** respondent that disagreed did so with the same comment they responded to Q3 with, calling for a change in wording to the guidance.

### 4.19 Additional feedback or impacts for consideration

**Question 19: Would you like to give feedback on any aspect of our current assessments? Are there any other potential impacts that we should consider?**

A total of 12 respondents took the opportunity to raise additional concerns or make suggestions, which are summarised below:

#### Potential impacts to consider

- Three respondents noted that potential impact on shareholders had not been considered.
- One respondent suggested that rural or very rural communities should be considered in impact assessments, in a similar manner to the way island communities are at present.
- One respondent suggested considering the impact of integrating homeless people in existing communities.
- One respondent suggested considering the impact of proposed changes on elderly people.

#### Suggestions relating to how equalities issues are handled in assessments

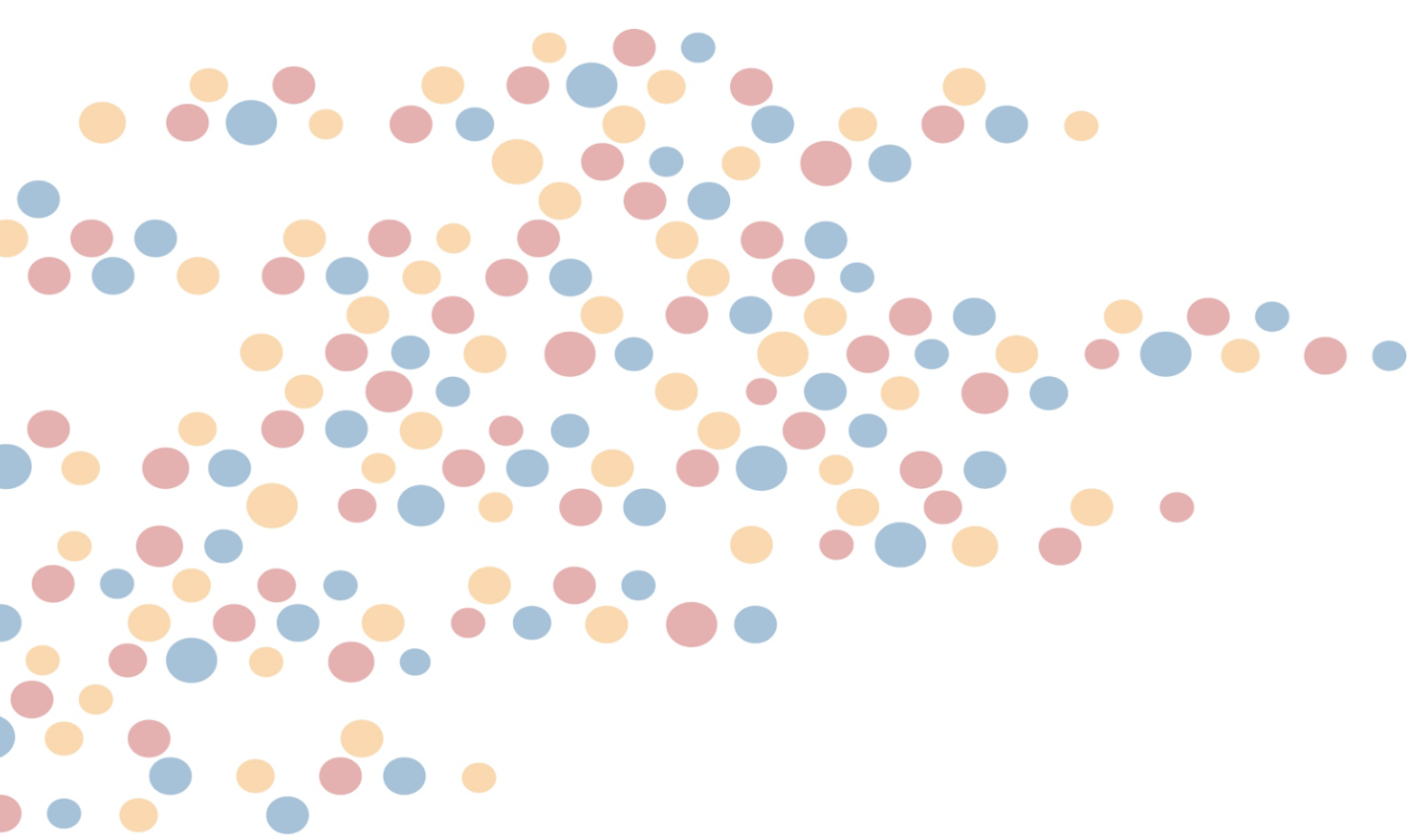
- One respondent highlighted areas where additional detail was required on equalities:
  - Identifying which protected characteristics were more likely to be impacted instead of a blanket statement on all protected characteristics.
  - Further consideration of intersectionality and how it may relate to impact assessments (e.g. for people who have multiple protected characteristics or belong to multiple disadvantaged groups)
- One respondent proposed changing the wording of impacts which refer to "those with a protected characteristic" to better reflect the intended meaning of "those tenants/service users who may be vulnerable or have greater needs because of a protected characteristic".

#### Suggestions relating to accessibility

- One respondent had concerns that the language used in the consultation document was not tenant-friendly, and would have preferred for a more accessible, plain language version to be available.
- Similarly, one respondent highlighted the extensive use of acronyms in Annex 4, which makes it less accessible to readers.

#### Other feedback on current assessments

- One respondent proposed assessing performance on preventing homelessness on a multi-agency basis, in the context of the Scottish Government's Ending Homelessness Together Action Plan.
- One respondent requested more detail and clarity on how Island Communities Impact Assessments are carried out.
- One respondent called for impact assessments to be reviewed regularly to keep abreast of legislative changes.
- One RSL respondent expressed interest in being part of further consultation or the working group for the planned review of the ARC.



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