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**Our regulation of social housing in Scotland**

**Consultation questions**

We welcome your general feedback on our proposals as well as answers to the specific questions we have raised. You can read our consultation paper on our website at [www.scottishhousingregulator.gov.uk](http://www.scottishhousingreulgator.gov.uk/). Please do not feel you have to answer every question unless you wish to do so.

Send your completed questionnaire to us by **14 December** **2018.**

By email @ consultation@scottishhousingregulator.gsi.gov.uk

Or post to: Scottish Housing Regulator

Buchanan House

58 Port Dundas Road, Glasgow, G4 0HF

**Name/organisation name**

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| Scottish Human Rights Commission |

**Address**

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| --- | --- | --- |
| Governor’s House | | |
| Regent Road | | |
| Edinburgh | | |
|  | | |
| **Postcode**  EH1 3DE | **Phone** 0131 244 3550 | **Email** chloe.trew@scottishhumanrights.com |

**How you would like your response to be handled**

To help make this a transparent process we intend to publish on our website the responses we receive, as we receive them. Please let us know how you would like us to handle your response. If you are responding as an individual, we will not publish your contact details.

**Are you happy for your response to be published on our website?**

**Yes  No**

**If you are responding as an individual …**

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| ****  **Please tell us how you would like your response to be published.** | ***Pick 1*** |
| Publish my full response, including my name |  |
| Please publish my response, but not my name |  |

**Summary of Key Points**

* **There are many elements of a rights based approach within the proposed framework for regulation and the Commission welcomes these. However, a more systematic engagement with international human rights law on housing by the Scottish Housing Regulator could strengthen regulation of social housing, for example through incorporating rights based standards within the regulatory framework.**
* **The Commission recognises the value of landlord self-assurance, but would like to see further opportunities for tenants to test and validate agreed landlord Annual Assurance Statements.**
* **Landlord Annual Assurance Statements should contain an evaluation of landlord performance against the elements of the right to housing set out in General Comment 4 of the Committee on Economic, Social and Cultural Rights, and, where these standards have not been met, should include a summary of plans intended to address these issues.**
* **Recording and monitoring of data under the Equality Act 2010 provides landlords with the information they need to assess which communities are furthest away from realising the right to housing and taking necessary steps to address this.**
* **The Commission recommends that Social Housing Indicators be analysed through the lens of the right to housing under human rights law, to ensure that these indicators are capable of providing information on the realisation of the right to housing. These indicators could be changed and updated to reflect the rights framework if they do not adequately reflect rights; this will be a key way to monitor progress and ensure accountability.**

1. Is our overall approach, set out in Chapter 2 of the Framework, right? Do you have any other comments?

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| The Scottish Human Rights Commission (the Commission) welcomes the opportunity to provide feedback on the Scottish Housing Regulator’s (the Regulator) Draft Framework for Regulation of Social Housing in Scotland. We are heartened that a commitment to promoting equality and human rights feature centrally within the Draft Framework; in our view, the promotion and protection of tenants’ human rights, and particularly the right to housing is core to the Regulator’s statutory objective to safeguard and promote the interests of current and future tenants, homeless people and other service users. However, as we explain in greater detail below, a more systematic engagement with the standards and requirements of international human rights law with respect to housing, but also in terms of participation, access to justice and remedy for tenants, could further strengthen the Regulator’s approach across its functions.  We are pleased to see the approach to regulation adopts many of the principles which underpin human rights based approaches. These principles set out how any organisation can adopt a human rights based approach to their work and are based on internationally agreed human rights standards [for more information about the PANEL principles, please visit our [website](http://www.scottishhumanrights.com/rights-in-practice/human-rights-based-approach/)]. The principles are as follows:  **Participation** - People should be involved in decisions that affect their rights. In this context, this means that tenants should be meaningfully involved in decisions which affect their housing, with the right support to participate. Tenants also have a role to play in defining, monitoring and enforcing the standards set out for landlords in domestic and international law and holding landlords to account when these standards are not met. We are pleased that the Regulator has been engaging widely with tenants across Scotland and that there are tenants within the governance structure of the organisation who are able to provide a lived experience perspective within the Board’s decision-making.  **Accountability** – Accountability is core to a human rights based approach, since public authorities have legal duties towards respecting, protecting and fulfilling human rights. Public authorities must acknowledge their responsibility towards these rights, be accountable when things go wrong and there must be appropriate and proportionate remedies which must be enforced. The work of regulatory bodies in monitoring and holding public authorities to account is critical. The Regulator has a vital role in ensuring accountability according to domestic law and policy. The Commission advocates that the Regulator should broaden the scope of its regulatory work to incorporate and include international human rights law standards, as well as reviewing whether its processes conform to the principles of rights based approaches.  **Non-discrimination** – No-one should experience direct or indirect discrimination in their access to housing or their enjoyment of the right to housing. Furthermore, this element of rights based approaches requires landlords, local authorities (whether in their role as landlord or in the provision of housing related services) and the regulator itself to examine critically which groups of people are furthest away from realising their right to housing, for example through deprivation, because of discrimination or because of homelessness. It is also important to acknowledge that the equality and human rights framework, while complementary, can be distinct. For example, while many breaches of human rights law are inextricably intertwined with discrimination, it is possible for breaches of human rights to take place without a discrimination element.  **Empowerment** – In this context, this means that tenants should know and understand the standards which are expected of landlords both in domestic law and in international human rights law. Tenants should have clear and accessible information about these standards and should know what to do in the event that something goes wrong. In some of our work on housing, it has been the Commission’s experience that tenants are not well-informed about the role of the Regulator or opportunities to draw systemic issues and problems to the attention of the Regulator.  **Law** – This element of a human rights based approach recognises that there are a set of standards in relation to housing enshrined in international human rights law and that public authorities in Scotland are bound by the obligations under international human rights law. The realisation of the standards set out in international human rights law should be the aim of all public authorities, including in their capacity as landlords, and in their role of providing public services, for example support to homeless people. These standards have a critical role to play in informing the work of regulatory bodies. The Commission would advocate that:   * these standards should be included within the Regulator’s assessment framework; * the Regulator should set the expectation that landlords should meet these standards or should demonstrate how they will work to achieve this; * these standards should be incorporated into the mainstream standards of assessment, rather than being elements of the Equality and Human Rights requirements.     We set out the international obligations in connection to the right to housing below.  While the Human Rights Act 1998 (the Act) provides a robust set of standards for the protection of civil and political rights, it does not contain any direct, formal protection of the right to housing. While it is evident that landlords could act, or omit to act, in some ways which could constitute a breach of the civil and political rights set out within the Act, **in the context of the right to housing,** the Act is not the most appropriate yardstick against which to measure landlords’ compliance with the human rights framework. A much more vivid and detailed articulation of the right to housing can be found within [General Comment No 4 of the Committee on Economic, Social and Cultural Rights](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGEC%2f4759&Lang=en), which articulates the right to housing (Article 11) under the [International Covenant on Economic, Social and Cultural Rights](https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx) (ICESCR), which the UK signed and ratified in 1976. This General Comment sets out seven standards which define **adequate** housing, all of which are relevant to the provision of social housing in Scotland and to the assessment framework used by the Regulator. In summary, these are:  1. **Legal security of tenure** - “All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”  2. **Availability of services, materials, facilities and infrastructure** – “An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”  3. **Affordability** – “Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised…. In accordance with the principle of affordability, tenants should be protected by appropriate means against unreasonable rent levels or rent increases.”    4. **Habitability** – “Adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors. The physical safety of occupants must be guaranteed as well…Inadequate and deficient housing and living conditions are invariably associated with higher mortality and morbidity rates”  5. **Accessibility** – “Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”  6. **Location** – “Adequate housing must be in a location which allows access to employment options, health care services, schools, childcare centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.”  7. **Cultural adequacy** – “The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”  The Committee also sets out the critical importance of the right to housing in meeting other rights:  “the full enjoyment of other rights such as the **right to freedom of expression**, the **right to freedom of association (such as for tenants and other community based groups)**, the **right to freedom of residence** and the **right to participate in public decision making** is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the **right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence** constitutes a very important dimension in defining the right to adequate housing.”  In addition to the specific norms around housing itself, there are a number of general expectations which should inform the policy context around public authorities providing housing. These include:   * **Immediate obligations** around non-discrimination and in connection with the proper monitoring of need and planning for provision * **Progressive realisation** – the gradual and continuous improvement of the elements described above * **Non-retrogression** – Taking steps to make sure that tenants’ outcomes do not deteriorate, that if they do this should be on a temporary basis and that particular groups of people are not disproportionately affected by policy decisions brought about by, for example, a reduction in resources. * **Maximum of available resources** – dedicating as high a level of financial and other resources as possible to the realisation of the right to housing.   Integration of these standards within the regulatory framework is critical if the Regulator is to adopt a human rights based approach to its mandate. |

1. Do the proposed regulatory requirements cover the right things, and are they framed in the right way?

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| Requirements to consider equality and human rights are welcome and reflect the legal framework in place for landlords. However, in order to take a human rights based approach to its regulatory function, the Commission would advocate that the Regulator engages with a broader set of international human rights standards (set out in our response to Question 1) than those we have available domestically to inform their assessment framework, guidance to landlords and the outcomes expected for tenants.  It is possible that in the near future, the Scottish Parliament may choose to incorporate additional rights from ICESCR and from other of the international treaties into our domestic law in Scotland, at which point public authority landlords could be held to account on the basis of their performance in delivering the right to housing in a court of law in Scotland. It would therefore be an appropriate time for the Regulator to set the expectation that landlords should comply with human rights standards, thus preparing the ground and avoiding costly litigation.  Our sister NHRI, the Equality and Human Rights Commission will provide detailed feedback with respect to the relevant Equality Act 2010 obligations. However, the Commission would like to note that a human rights based approach advocates identifying and working alongside groups of people who are furthest away from realising their right to housing, and that robust data collection, analysis and use would underpin that activity. |

1. Is there anything missing? Or any other comments?

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| As we have articulated in our response to Questions 1 and 2, the Commission is of the view that internationally agreed human rights standards in relation to the right to housing should be incorporated within the regulatory framework. |

1. Should we add to, amend, or remove anything from the proposed Standards?

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5. Is the new Standard 7 useful, and is it framed in the right way?

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6. Would you like to make any other comments about the Standards?

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7. Is the approach we have set out in Chapter 4 right? Any other comments?

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| The Commission welcomes the Regulator’s engagement with tenants on the kind of information which they would find useful and the most accessible and appropriate formats for this information. We also recognise that the provision of this kind of information empowers tenants to ask critical questions and to hold landlords to account; the comparisons available between an individual landlord’s performance and the national average provide tenants and tenants’ organisations with relevant information for accountability purposes. However, while these summaries rightly demonstrate strengths, the non-reporting of data relating to low satisfaction/poor scoring means there is also a tendency to elide tenants’ negative experiences. For example, data might demonstrate 85% satisfaction, but has little to say about the experiences of the other 15% and why these have been less positive. This is a core plank of accountability, and it would be useful if annual reports could summarise in which areas a landlord may be working towards compliance/performing less well. |

8. Are our proposals for the Annual Assurance Statement right?

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| The Commission recognises the value of Landlord Self-Assurance as a proportionate way for the Regulator to undertake its mandate. However, we do have some concerns that this process provides only a limited form of accountability and does little to address the inherent power imbalance which exists between landlords and tenants. We recognise that there are some safeguards in place to address this, for example the ability of tenants to raise a Significant Performance Failure with the Regulator. However, as it stands there are no **systematic** opportunities for tenants to test and validate the landlord’s findings within its Assurance Statement in a meaningful way. The Commission is of the view that this added step would both increase participation and empowerment of tenants, enable landlords and tenants to celebrate successes, but also provide a further avenue for tenants to hold their landlord to account in a meaningful way.  Currently the Regulator is proposing that Annual Assurance Statements should include statements to the effect that “we comply with our legal obligations relating to housing and homelessness, equality and human rights, and tenant and resident safety” or “We comply with all but the following legal obligations relating to housing and homelessness, equality and human rights, and tenant and resident safety.” While the Commission appreciates that the great majority of landlords will undertake self-assurance in the spirit in which it is intended, we are of the view that it would be extremely unlikely that a landlord would openly declare that they were acting in contravention of equality and human rights law. We also suggest that this kind of statement encourages a ‘minimum compliance’ rather than a ‘best practice’ approach. We would advocate instead for a broader statement based on a self-assessment against the set of human rights norms and standards from General Comment 4 outlined in our response to Question 1. Many of these elements are acknowledged within human rights law to be ‘progressively realised’ – that is that the required structural and financial investment may be a process which takes place over time, and that is likely to be acceptable under human rights law. For a landlord to acknowledge that they require to make some improvements in order that tenants’ rights to housing are realised is a more robust, accurate and accountable form of assurance than what is currently being proposed. |

9. Is our approach to risk assessment right?

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10. Should we publish a regulatory status for each RSL as we propose?

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| The Commission agrees with this proposal. |

11. Is it right that we publish an Engagement Plan for every landlord?

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| The Commission agrees with this proposal. |

12. Would you like to make any other comments or suggestions about our approach to getting assurance?

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13. Is the approach set out in Chapter 6 right? Any other comments?

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| The Commission welcomes the Regulator’s approach set out within Chapter 6. However, we would note that an analysis of how people’s human rights are affected could add value to the Regulator’s decision making process as to whether and how to intervene. For example, if the realisation of tenants’ right to housing was jeopardised by the actions or omissions of a landlord, this could inform the Regulator’s decision as the seriousness or significance of a problem and therefore which of its powers may best be put into place to resolve the issue.  In addition, the Commission notes that the definition of a significant performance failure includes circumstances where a landlord ‘consistently and repeatedly fails to achieve outcomes in the SSHC or those locally agreed with tenants.’ The implication of this is that quite a considerable period of time might elapse before tenants could demonstrate that a Significant Performance Failure was or had taken place, which may imply a long gap in accountability. |

14. Is the approach set out in Chapter 7 right? Any other comments?

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| The Commission welcomes the approach set out in Chapter 7. We would advocate that internationally agreed norms and standards in relation to the right to housing, as set out in General Comment 4, are a useful basis upon which to undertake a range of thematic inquiries. For example, [in our own work on the right to housing](http://www.scottishhumanrights.com/economic-social-cultural-rights/housing/), we have found that [issues of habitability have been at the forefront of tenants’ experiences](https://youtu.be/CrSOxT6FUPE) and yet it has been difficult for tenants to achieve redress for these. It is our view that the conditions faced by the group of people we support in Edinburgh are likely to be common, and that tenants across Scotland will face similar barriers to drawing attention to these, getting investment and repairs and holding public authority landlords to account for poor conditions in an environment of austerity budgets. |

15. Is the approach set out in Chapter 8 right? Any other comments?

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16. Are these registration and de-registration criteria the right ones? Any other comments?

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17. Do you have any feedback on the draft Assurance Statement guidance?

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18. Do you have any feedback on the draft notifiable events guidance?

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19. Should we add to, delete or amend anything in the list of proposed indicators? Any other comments?

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| One way to ensure that human rights, and especially the standards set out within the right to housing, are embedded within the regulatory framework would be to undertake an analysis of Charter indicators through the lens of human rights laws and standards. This would ensure that the regulatory framework, monitoring and reporting ‘spoke’ to human rights concerns and was capable of recording relevant information in terms of rights realisation. It would provide the opportunity to update and adapt the indicators to reflect a rights based approach. The Commission recently undertook a similar exercise in relation to the Scottish Government’s National Performance Framework. |

20: Do you have any feedback on the draft group structures guidance?

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21: Do you have any feedback on this guidance?

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22. Would you like to give feedback on any other aspect of the proposals set out in the draft Framework and guidance?

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23. Would you like to give feedback on any aspect of these impact assessments? Are there other potential impacts that we should consider?

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Thank you for taking the time to give us your feedback!