

Internal Procedure Note: Notifiable Events

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1 Introduction

This IPN provides advice about handling a Notifiable Event (NE) from a social landlord. You can find detailed portal guidance for processing Notifiable Events here.

Please also see our statutory guidance on [Notifiable Events](#) (NE guidance) and [Tenant consultation and approval](#) (TC guidance).

2 What are notifiable events?

2.1 A NE is a material, significant or exceptional issue affecting an RSL. As set out at part 2.4 RSLs are required to notify us about some events, for other NE's it is for the RSL to decide whether an event is notifiable. Appendix 1 of our NE guidance gives examples of events that we consider to be notifiable. This isn't a comprehensive list and RSLs should decide when a serious event happens whether it is notifiable.

2.2 The RSL should consider the risk and potential impact on the RSL to decide if an event is notifiable. The RSLs size, complexity and context will be important factors affecting whether an event is notifiable.

2.3 A change to an RSL's Annual Assurance Statement is a NE. We say in our Annual Assurance Statement statutory guidance that an RSL should notify us if there has been a material change to the level of assurance in its Annual Assurance Statement. This can be a positive change such as completing planned improvement work to address non-compliance with regulatory standards, or a negative one such as identifying a new area of material non-compliance with regulatory standards. We say the RSL should notify us about the issue and if applicable, tell us what they are doing to resolve it.

2.4 NE's are also events that RSLs are required by the Housing (Scotland) Act 2010 as amended (the 2010 Act) to notify us about such as the outcome of tenant consultation, disposals, constitutional changes and organisational changes. Appendix 2 of our NE guidance explains what events RSLs need to notify us about and the timescales. Our TC guidance gives detailed information about our notification requirements regarding tenant consultation including the timing of notification and the information we need.

3 Who should notify us?

3.1 In our NE guidance we say:

- The senior officer should tell us about performance and service delivery issues
- The chair should tell us about governance or organisational issues and about any changes to the annual assurance statement
- Any member of staff can tell us about disposals and the other changes set out in appendix 2 of our NE guidance as long as they are authorised to do so.

We say these arrangements for notifying us should be set out in the RSLs scheme of delegation or other document which sets out delegated authorities. RSLs must also ensure that staff have the relevant portal permissions to submit a notifiable event.

3.2 In practice most chairs don't notify us about governance or organisational issues because of the need to upload the event through the portal and we are happy to accept this as long as the person uploading the event has the authority to do so and the chair is aware that the event is being reported to us. There is no need to check on a routine basis that the person has the authority to upload the NE.

3.3 The chair should however notify us about events where it would be inappropriate for the senior officer (or another staff member) to contact us such as a serious complaint about the senior officer, or the senior officer leaving the organisation. These events tend to be notified to us via an email, letter or phone call and the chair may contact us before the event has been communicated to others.

If the event is not a confidential event, for example the senior officer leaving the organisation and this has been announced to staff then we should ask the chair or staff member to have the event uploaded to the portal

If the event is a confidential matter, such as a complaint about the senior officer, our engagement with the RSL will normally be handled via meetings, emails and phone calls. Confidential information should not be uploaded to the portal. We have issued guidance to landlords which explains how to submit NE's, this landlord portal guidance advises an RSL to contact us before submitting a confidential NE. When the chair contacts us we should advise the chair to have the NE submitted via the portal but not to include any confidential information. We can advise the chair to simply include words to the effect of 'I refer to my email/telephone call/ etc of xx date' and not to add any detail about what the event relates to. The chair should also be advised not to upload any confidential documents via the portal and to send these by email. The information about the NE should be saved in the internal documents section of sharepoint, if the information is highly confidential the regulation analyst should ask the Business Information Officer to create a restricted access folder on sharepoint with access given to staff who are handling the NE and the AD. All records relating to the NE should be marked as 'confidential' and treated accordingly.

3.4 If the RSL is part of a group structure where the parent is a Scottish RSL the parent of the group should notify us about any NE's in its subsidiaries. If the parent is an English RP then the Scottish subsidiary should notify us themselves.

4 Submitting a notifiable event

4.1 All events should be reported by landlords via the portal. The landlord portal guidance explains how to upload an NE. Some NE's require careful handling to ensure confidential information is not uploaded to the portal, as set out at 3.3 a confidential NE should be

uploaded without disclosing details and all other information about the event should be handled via phone calls/email/meetings.

4.2 All landlords should be asked to submit the event via the portal even if initial contact about the event is made by telephone or email. This ensures all notifiable events are recorded on the portal.

5 When should we be notified?

We say in the NE guidance that an RSL should notify us as soon as reasonably practical. The timescales for statutory notifications are set out at 5.1 to 5.3 and in appendix 2 of our NE guidance. For other NE's we don't specify in our NE guidance what we mean by 'reasonably practical' because it very much depends on the event. Sometimes this will be before an event happens so we are aware in advance, for example when an RSL becomes aware that an adverse media story will happen. We say there should be no delay in notifying us, for example waiting until after a scheduled governing body meeting or until the event has been concluded.

When an NE is received we should check when the event happened and engage if there appears to have been a delay in notifying us to seek assurance about the reason for the delay.

5.1 Notification about tenant consultation.

Our TC guidance explains the tenant consultation and notification process for RSLs. RSLs considering the disposal of tenanted property, becoming the subsidiary of another body or considering proposals to restructure eg transfer of engagements, etc are required to consult tenants.

In our TC guidance we say RSLs should contact us at an early stage and **before** the tenant consultation has begun to give us assurance about the process. There is no statutory requirement on an RSL to contact us before it begins the tenant consultation exercise but given we have asked RSLs to get in touch before consulting tenants we anticipate the vast majority will. When an RSL contacts us before it begins its tenant consultation exercise we should seek assurance that the consultation will comply with the TC guidance.

There is a statutory requirement (from the 2010 Act as amended) to notify us of the **outcome** of a tenant ballot or written agreement 'as soon as reasonably practicable' after the ballot or written agreement period has ended. We have defined this as within 10 working days. Appendix 2 of the NE guidance confirms this timescale for notification.

This is therefore a two stage process, RSLs should contact us before the tenant consultation begins, and are then required to notify us when it ends. This will result in one notification which the RSL should create when it contacts us to notify us about the outcome of the consultation process. This will ensure one NE is created for each tenant consultation exercise.

5.2 Notification about disposals, constitutional changes and organisational changes.

We may have already been alerted to a proposed disposal, constitutional change or organisational change if there was a requirement to consult tenants. As set out at the beginning of section 5 we expect RSLs to contact us as soon as reasonably practical and where possible before the event happens so we are aware in advance. We anticipate the vast majority of RSLs will contact us in advance of a disposal, constitutional change or

organisational change that it is required to notify us about. But we cannot require an RSL to do so.

RSLs are however required under the 2010 Act to notify us about disposals, constitutional changes and organisational changes **after they have taken place**. Appendix 2 of the NE guidance sets out the disposals and constitutional and organisational changes that an RSL must notify us about. The appendix also confirms the timescales for notifying us about these events. The statutory requirement is therefore to notify us after the disposal, constitutional change etc has taken place.

5.3 Step towards insolvency.

RSLs are required under s73 of the 2010 Act to notify us where a notice of a proposal of a resolution for the winding up of an RSL is given to members, or if it takes certain other steps towards insolvency such as presenting a petition for the winding up of the RSL, etc.

RSLs are required to notify us before taking the step and as soon as reasonably practical after such a step is taken. Appendix 2 of the NE guidance gives more information.

In terms of when an RSL should submit a NE to notify us under s73 of the 2010 Act, an RSL should submit a NE before it gives the notice of a proposal for the winding up of the RSL to members, and before it takes certain steps towards insolvency. If the RSL does not notify us in advance the step it has taken has no effect. An RSL is also required to notify us after it has taken the step. But if it does not notify us after it has taken the step the step is still valid. So the RSL should notify us before and after and should therefore submit two separate NE's.

A step taken under s73 of the 2010 Act by an RSL triggers a moratorium on the disposal of an RSL's land, our insolvency manual gives more information about handling an RSL insolvency.

This section covers the statutory requirement to notify us of insolvency, in practice we would expect an RSL to contact us as soon as it becomes aware of a potential insolvency situation.

6 What information should be submitted to us?

6.1 The information we ask for will depend very much on the particular event. The RSL portal guidance prompts an RSL to give as much information as possible about the event and to upload documents.

6.2 Our practice is to ask for information the RSL has or will develop for its own purposes, such as board reports and minutes, to avoid the RSL producing information specifically for us. The RSL governing body should receive a report about the NE so we should ask to see the board report and minute which should in most situations set out full details of the NE. This shouldn't delay an RSL notifying us, the RSL can notify us and send us the governing body paper when that is available.

6.3 We should only ask for further information about the NE if we require it to give us assurance about the event and how it is being handled. The details submitted in the NE form and the report to the Board may give us the information we need. If we require additional information the Regulation Analyst should, where appropriate, discuss and agree our information requirements with the Regulation Manager before approaching the RSL.

6.4 When notifying us about disposals, constitutional and organisational changes the RSL should confirm they have complied with regulatory standard 7 and send us the information

set out in appendix 2 of the NE guidance. We can ask for additional information if we require further assurance. Or, we can ask for information to be given to us in advance of the change being implemented, for example an RSL undertaking a substantial change such as becoming a subsidiary of another body or transferring its engagements should develop a business case for its own purposes and this may be helpful for us to see to gain assurance about the rationale for the proposal.

7 What should we do when we receive a notifiable event?

The regulation analyst will process the NE according to the attached portal guidance. Financial and funding NE's will be dealt with by the finance team.

When deciding what if any action to take in relation to an NE it is helpful to consider:

- the seriousness of the event and the risks presented to:
 - our purpose of protecting the interests of tenants, homeless people and other service users,
 - The financial health of the RSL, public investment in the RSL or the confidence of lenders,
 - The good governance and reputation of the RSL and the sector.
- Has the RSL given us enough information about the event? Do we require any further information to explain the nature of the event or to give us assurance about the RSLs plans to manage it.
- Are we assured that the RSLs proposals to manage the event are credible and robust?
- Does the event raise concerns for us about the RSLs compliance with regulatory requirements?

The Regulation Analyst should consider these points and where appropriate, discuss the event with the Regulation Manager to agree if we are satisfied that we have sufficient information about the event or if we require further information or assurance from the RSL about the event or how the RSL plans to manage it. The Regulation Analyst should ensure the Regulation Manager is kept informed about the handling of NE's.

7.1 Governance and organisational notifiable events

Our NE guidance gives examples of governance notifiable events. Here are some points to note about particular governance NE's:

- Material change to the assurances and supplementary information contained in the RSL's annual assurance statement.

RSLs must tell us if anything happens which materially changes the level of assurance in their Annual Assurance Statement, for example if they have found that they no longer meet one of the regulatory standards of governance and financial management.

We should consider the material non-compliance, how serious it is, and the action the RSL is proposing to take to address it. When we have applied a regulatory status to each RSL (in March 2020), consider if the issue will affect the RSL's regulatory status (we will produce internal guidance for staff to guide them in this decision making process). If we are satisfied that the RSL has effective plans and the capacity and willingness to address the issue it will

be for the RSL to take forward the improvement. In this situation we can ask the RSL to contact us when it has completed its improvement actions.

We will not engage with the RSL unless the issue presents a significant risk to the interests of tenants and service users that we need to monitor it closely or take action to ensure it is resolved successfully.

- Serious complaint, investigation or disciplinary action about an RSL senior officer.

Appendix 3 of the NE guidance gives advice for RSLs about appropriately handling a serious complaint about a senior officer. We should seek assurance that the governing body is aware of our regulatory guidance and that the matter is being handled in accordance with that unless there is a good reason to deviate from our guidance. It is important to look for assurance in the information submitted that conflicts of interest are being handled and that the governing body is taking appropriate professional advice to support it. Section 3.3 of this IPN gives more information about recording and storing information about confidential NE's.

- An RSL senior officer resignation or dismissal

When a senior officer resigns or is dismissed the governing body should refer to its business plan and make a decision about its strategy based on its business plan. Regulatory standard 3.3 requires each RSL to have an a robust business planning and control framework. So each RSL should have an up to date business plan it can use to make a decision about its strategy for either replacement of the senior officer or considering another option such as sharing services, or a partnership or a transfer of engagements. The RSL should ensure its decision and handling of the event are in line with its policies and appropriately manage conflicts of interest. We should ask if the RSL has an up to date business plan, if this includes an options appraisal, and what action the RSL plans to take, eg recruit to the post, seek a partnership, etc. We can ask to see the RSL's business plan if we decide we need assurance about whether it complies with regulatory standard 3. If the RSL does not have an up to date business plan we should engage with it about the lack of a business plan and seek assurance about how it will agree its strategy to handle the resignation or dismissal of the senior officer.

- Serious complaint, allegation or investigation about a governing body member

An RSL should have a process in place to follow when handling a serious complaint about a governing body member. The SFHA governing body model code of conduct sets out a process for RSLs to follow when there is a potential breach of the code of conduct. It is important to look for assurance in the information submitted that the matter is being handled in accordance with the code of conduct and how any conflicts of interest are being managed.

7.2 Performance and service delivery events

Our NE guidance sets out examples of performance and service delivery issues. Here are some points to note about particular NE's:

- Adverse reports by statutory agencies, other regulators or inspectorates

This can include an SPSO decision or a Care Inspectorate report. We should ask to see the report if it has not already been published. The report may raise concerns for us, for example if it highlights material non-compliance with our requirements.

The Regulation Analyst should, where appropriate, discuss this with the Regulation Manager and decide if the matter is serious and if we need to engage further. If we have an MoU with the agency or regulator then refer to that, speak to the lead SHR staff member for the agency or regulator, and then make contact with the agency or regulator to discuss the report and to find out next steps including any engagement it plans to have with the RSL. We should not duplicate the engagement the body will have with the RSL but should seek assurance from the RSL that areas for improvement identified in the report will be addressed. If the report does not raise concerns for us about material non-compliance with our requirements our engagement may be for the RSL to tell us when it has completed the improvement actions. If the report does raise concerns for us then we should engage with the RSL about areas of concern.

- Serious or significant adverse media reports or social media interaction which may affect tenants confidence in the RSL or damaging to the reputation of the RSL.

Given the potential impact on the reputation of the RSL and perhaps the sector we should seek assurance about the RSL's strategy for handling the media reports. If the reports are very serious and the RSL does not have the capacity and resources to manage this in-house it may wish to consider seeking speciality advice to help it to handle the media reports.

7.3 Financial and funding events

Financial and Funding NEs (FNEs) fall into two categories:

- Those relating to the disposal of heritable security,
- Other financial and funding issues.

All FNEs should be submitted through the portal. Where an RSL contacts us about an FNE outside of the portal, we will ask it to re-submit the FNE and any supporting documents through the portal. As set out at part 3.3 if the event is a confidential one the NE should be submitted without giving any confidential details and supporting documents should be sent by email and saved in sharepoint. By whichever route an FNE is received the processing of the FNE is the same.

All FNEs should be recorded on the tracker which can be found at :



Notifiable Events -
Tracker - March 2015

- Heritable Security FNEs (HS FNE)

The information requirements for HS FNEs are set out in Appendix 2 of the NE Guidance: *“a copy of the report(s) to the governing body and minutes(s) of the meetings(s) where the disposal was agreed.”*

If the necessary supporting information is not provided the RSL should be informed and asked to submit the necessary information within 10 working days.

The submitted information should provide sufficient detail to allow us to understand whether the disposal affects our assessment of the risk facing the RSL. As a minimum the report(s) to the governing body should cover:

- The value of the asset(s) to be disposed of and the date and basis of the valuation;
- The purpose of the disposal;
- Who the disposal is in favour of (e.g. the name of the lender or security trustee);
- The date of the disposal, and;
- Details of any special features of the disposal or the liability it is to provide security for (e.g. does the security support lending through a revolving credit facility that will be subsequently transferred to another loan, lender or investor and then re-drawn).

It is not necessary for the RSL to provide a list of properties or other assets being disposed of unless the disposal is considered to be unique or unusual in some way and we determine that this information is necessary to gain a proper understanding of the impact of making the disposal.

Note: As they are not heritable securities negative pledges are not covered under this section but under the “Other” section.

On receipt of a HS FNE we will:

- Review the information provided to ensure that it meets the minimum requirement to provide a good understanding of the arrangements and the risk they may present to the RSL or the wider sector;
- Review the most recent FYFP, Business Plan (if available), LP and Financial Health Summary to see whether this disposal is in line with the current expectations or varies from them;
- Review the most recent LP return to determine whether a revised return is required. If a revised return is required we will remind the RSL of the requirement to complete a new LP return to reflect material changes in their borrowing or security arrangements;
- Consider whether the lender / trustee is new to the sector and whether this represents an increased risk to the RSL or sector;
- Where the lender / trustee is new to the sector make arrangements to add them to the appropriate list in the Loan Portfolio system;
- Consider whether the disposal, or the information provided through the HS FNE, affects our view of the financial risk facing the RSL;
- Where we believe there is a material change to our assessment of the financial risk we will inform the lead officer for the RSL for them to determine whether our regulatory assessment of the RSL needs to be amended;
- Where we believe that there is no material change to our assessment of the financial risk we will confirm to the RSL that the NE has been noted and that no further action is required at this time, informing the lead officer at the same time, and;
- Ensure that all correspondence and analysis is recorded in line with normal working practices.

- Other FNEs

Appendix 1 to the NE Guidance provides a non-exhaustive list of financial and funding issues that RSLs are required to notify us of. The list covers a wide variety of events and it is not possible to determine exactly the information that will be required in each set of circumstances. However the action we will take will share some common elements. We will:

- Review the information provided to ensure that it provides a good understanding of the event and the risk it may present to the RSL, or the wider sector;
- If the information provided does not allow us to form a good understanding of the risk the event may present to the RSL then we will reply to the RSL seeking additional information;
- Consider whether the event or the information provided affects our view of the financial risk facing the RSL. This assessment to consider both the impact and proximity of the potential financial impact of the notifiable event and will take into account all relevant information;
- Where initial considerations suggest that there may be immediate and serious financial loss or penalties we will advise the lead officer for the RSL immediately and provide a fuller assessment of our view of the risks the event presents to the RSL in due course, and;
- Where we believe there is a material change to our assessment of the financial risk we will inform the lead officer for the RSL for them to determine whether our regulatory assessment of the RSL needs to be amended.
- Where we believe that there is no material change to our assessment of the financial risk we will confirm to the RSL that the NE has been noted and that no further action is required at this time, informing the lead officer at the same time.
- Ensure that all correspondence and analysis is recorded in line with normal working practices unless the specific exceptions provided for in the guidance apply.

7.4 Notification of tenant consultation, disposals, constitutional and organisational changes.

Our NE guidance covers the requirements on landlords to notify us about these events. Particular points to note are:

- Tenant consultation

Our TC guidance sets out the requirements to consult tenants under the 2010 Act. In that guidance we ask RSLs to contact us before beginning a tenant consultation exercise to consult us about its proposals for tenant consultation so we can assess if the consultation will provide sufficient safeguards for tenants. When an RSL contacts us we should ask for assurance that it has adopted the requirements set out in our guidance. If it does not plan to follow the guidance we should ask why it considers a departure from the guidance is necessary, the RSL should report the departure from the guidance to its tenants.

At the end of the consultation exercise when it has the results of the tenant ballot or written agreement the RSL must notify us of the outcome. Our TC guidance explains the information that should be provided to us. The RSL cannot proceed with its proposal unless it has complied with its obligations to notify us and a majority of tenants agree to the proposal. The important considerations for us in deciding what to do are that the majority of tenants who responded to the consultation exercise support the proposal and we are satisfied that the

RSL has complied with the TC guidance. If the answer is yes to both questions the RSL can proceed with its proposal unless we have a very serious concern about the RSL's proposal, for example a serious financial implication has come to light, in which case we will engage with the RSL.

- Disposals

Disposals of heritable security are covered under section 7.3.

Our NE guidance sets out the information that an RSL should submit when notifying us about a disposal it has made. When notifying us the RSL should also confirm it has complied with regulatory standard 7. Issues to consider are:

- Is it a disposal that we should be notified to us, see the NE guidance for a list.
- When did the disposal happen, has the RSL contacted us within 10 working days?
- Is the disposal of tenanted or untenanted property, if it was tenanted the RSL should have been in touch with us about its consultation exercise before it made the disposal. If the RSL did not contact us the Regulation Analyst should discuss this with the Regulation Manager and engage with the RSL about why it did not get in touch in line with part 8 of this IPN.
- The rationale for the disposal and how that fits with the RSL's objectives and business plan, this should be referred to in the report to the governing body.
- The number of properties being disposed of, does it involve a large number of social rented properties (normally more than 10 properties) or a high value property?
- The impact of the disposal on the RSL's business plan and financial well-being, this should be set out in the report to the governing body.
- If the RSL is charitable that the disposal was at market value.
- How the disposal will affect current and future tenants.
- Are we satisfied the RSL has complied with regulatory standard 7?

The Regulation Analyst should, where appropriate, discuss the disposal with the Regulation Manager and decide if we require further assurance from the RSL about the disposal.

- Constitutional changes

Our NE guidance again covers the information an RSL should send us. The RSL should confirm it has complied with regulatory standard 7. Issues to consider are:

- What is the rationale for the change, this should be set out in the report to the governing body.
- Has the RSL adopted the SFHA model rules with no amendments? If not what changes were made to the model and do these fit with our constitutional requirements and regulatory standards?
- There is no model constitution for companies which complies with our constitutional requirements and regulatory standards so each Memorandum and Articles will be specific to that RSL. Check the report to the governing body for confirmation that the M&A complies with constitutional requirements and allows the RSL to comply with regulatory standards. If this isn't clear we should seek assurance about this from the RSL.
- Is the purpose of the constitutional change to become a subsidiary of another body? If so the RSL is required to have consulted its tenants and notified us

about the outcome. Are we satisfied the RSL has complied with the TC guidance?

- Are we satisfied the RSL has complied with regulatory standard 7?
- Organisational changes

Our NE guidance covers the information an RSL should send us. Again the RSL should confirm it has complied with regulatory standard 7. Issues to consider are:

- Has the RSL previously contacted us about the proposal. Given the potential impact of the change in the vast majority of cases the RSL will have been in touch about the change and we would be concerned if the RSL had not alerted us to the proposal.
- Was the RSL required to consult tenants about the change, this should be covered in the report to the governing body. If so the RSL should have been in touch with us regarding the tenant consultation exercise.
- What is the rationale for the change?
- Does the change fit with the RSL's objectives and business plan?
- How does the change impact on current and future tenants?
- The impact of the change on the RSLs business plan and financial well-being.

8. What if an RSL doesn't notify us?

8.1 An RSL may fail to notify us or may reach a different view about whether an event is notifiable. For some NE's it will be a matter of judgement. In these situations the most important considerations for us when deciding whether to engage further would be:

- Whether the governing body is fully aware of the issue and had taken a decision about whether it was an NE,
- Whether the RSL is taking effective action to resolve the issue within an appropriate timeframe.

8.2 If an RSL fails to notify us about matters it is required to under the 2010 Act, eg for tenant consultation, disposals and constitutional and organisational changes this will be very serious and we must engage with the RSL about the reasons for failing to notify us and the impact of this failure.

9. Review

We will keep this IPN under review and update it as required. The IPN will be reviewed in April 2022.