



**Scottish Housing  
Regulator**

# **How to request an appeal of a regulatory decision**

**Statutory Guidance**  
**February 2019**

# About us

We are the independent regulator of social landlords in Scotland.

## We safeguard and promote the interests of:

Around:

**600,000**

Tenants who live in homes provided by social landlords

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Over:

**123,000**

Home owners who receive services of social landlords

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Over:

**45,000**

People and their families who may be homeless and seek help from local authorities

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Around:

**2,000**

Gypsy/Travellers who can use official sites provided by social landlords

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## We regulate:

Around:

**200**

Social landlords

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Around:

**160**  
**32**

Registered social landlords

Local authorities

## Our equalities commitment

Promoting equalities and human rights is integral to all of our work. We set out how we will meet our equalities duties in our Equalities Statement.

## Our role:

To monitor, assess and report on social landlords' performance of housing activities and RSLs' financial wellbeing and standards of governance. We intervene, where we need to, to protect the interests of tenants and service users.

Our Regulatory Framework explains how we regulate social landlords. It is available from: [www.scottishhousingregulator.gov.uk](http://www.scottishhousingregulator.gov.uk)



HAPPY TO TRANSLATE

## Why have an appeals process?

1. Our appeals process enables individuals and regulated bodies to request a formal re-examination of certain regulatory decisions we have made, considered by people who are independent of the original decision-making. Our aim is for this process to be simple, proportionate and cost-effective, minimising the extra call on resources for all involved and enabling us to consider appeals quickly. This guidance sets out which decisions can be appealed and how the process works.
2. We are committed to being as transparent, open and accessible as we can be in our work, having regard to the legislation within which we operate. The Housing (Scotland) Act 2010 (which we refer to as the '2010 Act') sets our objective, functions, duties and powers. It established a statutory right of appeal to the Court of Session for specific decisions. These relate to the registration and deregistration of a social landlord and the suspension or removal of an individual from a registered social landlord (RSL). Beyond this, our enabling legislation has not established any wider specific statutory right of appeal against our regulatory decisions.
3. Our non-statutory appeals process covers a wider range of regulatory decisions and therefore offers additional opportunities for challenge, beyond those set out in the 2010 Act. This demonstrates our commitment to best practice in regulation and to the [Scottish Regulators' Strategic Code of Practice](#).
4. Appealing a regulatory decision is just one possible avenue of challenge. Those affected by our work also have two other avenues to challenge us directly, depending on the circumstances. These are:
  - **review** - the quickest, most informal route, which we would encourage as the method of initial challenge in most cases, where the decision-maker and a more senior person look again at the decision; and
  - **complaint** - using our existing two-stage internal process with the potential for recourse to the Scottish Public Services Ombudsman (SPSO) subject to the SPSO's consideration of whether it is able to take action in the specific circumstances of the case.
5. Further information about how to request a review, or how to make a complaint can be found on our website.

6. Alongside these routes, an individual or organisation may also seek a judicial review of our decisions or actions. Our appeals, review and complaints processes do not prejudice any subsequent judicial review or statutory appeal to the Court of Session. In other words an individual or organisation is not prevented from raising legal proceedings either because they have or have not decided to ask for a review or a non-statutory appeal of a decision issued by us.
7. There are time limits for making a statutory appeal and for raising an action of judicial review. These time limits start running from the date on which we issue our decision. However, where an organisation asks for a review or a non-statutory appeal of a decision (and provided the appeal is valid) the time limit for raising legal proceedings will not start to run until we have issued a decision as a consequence of the review or the appeal.
8. This process is part of our [Regulatory Framework](#).

## Which decisions can be appealed and who can appeal?

9. Our Regulatory Framework explains how we regulate, with the 2010 Act's powers and duties as the keystone. Our appeals process is available for those regulatory decisions that have the most significant and immediate impact on a regulated body or individual. These decisions all flow from our statutory powers; some can have a very significant impact on a landlord's services and, for RSLs, their governance or finance.
10. Appendix 1 sets out which specific decisions are appealable and who can appeal, with reference to the relevant sections in the 2010 Act, as amended by the Housing (Amendment) (Scotland) Act 2018.
11. In summary, **regulated bodies** can appeal our decision to:
  - register or de-register an RSL;
  - set performance improvement targets specifying levels or standards of housing services landlords must aim to provide;
  - set financial management or governance targets that RSLs must aim to achieve;
  - arrange for a survey of the condition of a landlord's housing;
  - require a landlord to submit a performance improvement plan setting out how, and by when, it proposes to rectify or avoid a failure or other problem;
  - serve an enforcement notice requiring the landlord to take action to rectify or avoid a failure or other problem, or to protect its tenants or assets;
  - appoint, or require a landlord to appoint, a manager to manage its housing activities;
  - appoint, or require an RSL to appoint, a manager to manage its financial affairs;
  - appoint an individual to the governing body of an RSL;
  - restrict an RSL's dealings; and
  - transfer an RSL's assets following inquiries.
12. Landlords can also appeal our inquiry reports.

13. For some decisions, **the individual who is directly affected** can request an appeal, rather than the regulated body. An individual can appeal our decision to:
  - remove them from the governing body of an RSL; and
  - suspend them from an RSL during or following inquiries.
14. Appeals need to co-exist with our ability to take regulatory action quickly where necessary to protect tenants' and service users' interests. As such, our regulatory decision stands pending the appeal, and we will normally proceed to implement it. The one exception to this position is deregistration of an RSL. Because of the nature of this decision, we will put implementation on hold pending the outcome of an appeal.

## How can I appeal and on what grounds?

15. If you wish to challenge one of the decisions set out above, as an individual (where applicable) or on behalf of your regulated body, you can submit an appeal to us. Your appeal must be submitted in writing. It should reach us within **15 working days** of you receiving formal notification of our decision. If you believe the 15 day deadline will prove challenging, for example because of your internal governance arrangements, you should let us know as early as possible to help us plan and respond flexibly. In particular, please let us know in advance of the expiry of the 15 days whether you are likely to need more time.
16. You should send your appeals submission by email to [appeals@shr.gov.scot](mailto:appeals@shr.gov.scot) or by recorded delivery post to the address on page six. We will write to acknowledge that we have received your appeal within **5 working days**.
17. Your submission must clearly state which decision or decisions you are appealing. For regulated bodies, you must confirm in writing that the submission has been authorised by your governing body (for RSLs) or relevant committee (local authorities).
18. Regulatory decisions often require us to exercise professional judgement and discretion within the constraints of the legislation, our published regulatory framework and guidance. In order to fulfil our statutory objective, our appeals process must not compromise our ability to use evidence-based judgement and exercise regulatory discretion.
19. For this reason, for an appeal to be admissible for consideration it must be based on something more than disagreement with the decision. The appeal must meet one or more of the grounds set out on page 4.
20. You must explain clearly in your submission why you think the decision is wrong and which ground or grounds you believe are relevant. You must also provide all the supporting evidence you consider we need. This is what will be reviewed during the appeal. An appeal is not normally a fresh consideration of all the evidence relevant to the decision.

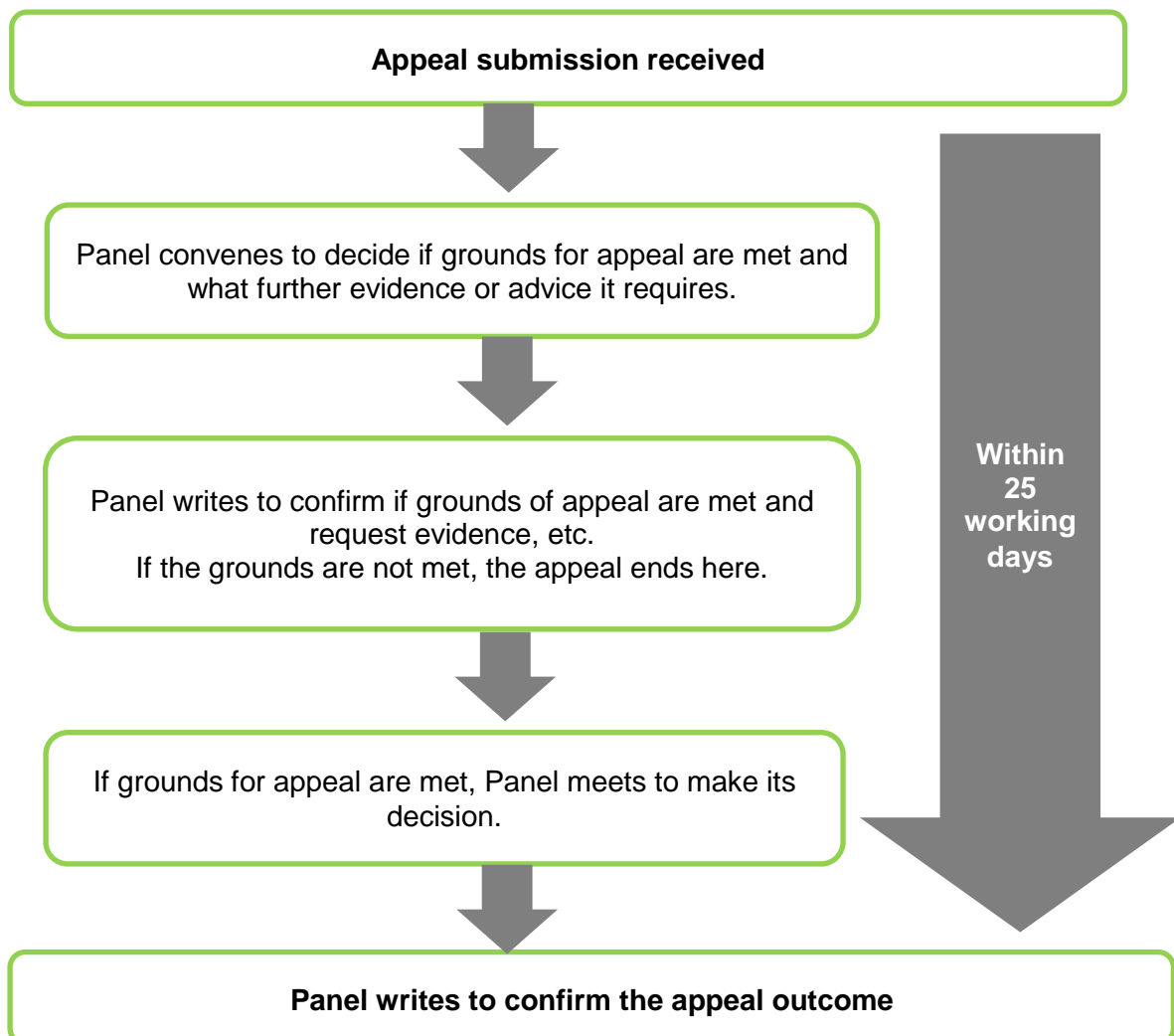
## Grounds for appeal

- **Factual error:** for example the decision is based on an incorrect assumption or factual inaccuracy in our assessment of the issues and the evidence provided demonstrates this.
- **New evidence:** relevant evidence has become available that the body making the appeal and those hearing the appeal agree is material to the decision.
- **Decision did not follow procedures:** for example we made the decision without following our own published procedures, for example not using our powers proportionately as set out in our Regulatory Framework.
- **Decision did not take account of relevant issues and/or took account of irrelevant issues:** for example, we ignored material evidence and placed weight on information that had no bearing on the issue.
- **Decision was so unreasonable that no reasonable person acting properly could have taken it:** this ground recognises that, while decisions are subjective and decision-makers use discretion, it is possible that a decision could be beyond the range of responses open to a reasonable decision-maker.

## What happens once I have appealed?

21. An Appeal Panel will be selected and your submission will be sent to the Panel members. The Panel will be made up of:
  - two Board members, selected by our Board Chair, one of whom will Chair the Panel's discussions; and
  - a third person who is not an SHR staff or Board member will also take part in all Panel meetings and discussions, as an advisory member of the Panel.
22. The selection of the independent advisor to the Panel will be carried out in accordance with our published process. As an external party, this person cannot have any decision-making authority under the 2010 Act. Their role is solely to advise the other two Panel members, who will make the Panel's decision.
23. None of the Panel members will have had any involvement in the original decision, or in any subsequent review of that decision. They will be asked to formally confirm this, and to declare any conflicts of interest, at the outset of the process. Should a member have a conflict of interest, they will step down from the Panel and another person will be selected.
24. The Panel will aim to convene for an initial discussion within **15 working days** of us receiving your appeals submission. This discussion can take place in person or by teleconference. The purpose will be to:
  - decide whether the grounds for appeal have been met; and if so, to
  - identify any further evidence required (either from you or from the decision-maker);
  - identify any legal or other advice required; and
  - decide whether there would be benefit in meeting with you and/or with SHR staff, and in hearing further oral evidence.

25. If the grounds for appeal have not been met, we will aim to write to you within **5 working days** of the Panel's discussion, to confirm this and explain the reasons. The original decision will stand in these circumstances.
26. If the grounds for appeal have been met, we will aim to write to you within **5 working days** of the Panel's discussion, to:
  - confirm who the Panel members are;
  - request any further evidence, with timescales for submission, or a meeting if required; and
  - confirm when the Panel will reconvene to make its decision.
27. The Panel will also write formally to the decision-maker and any other relevant SHR staff to request evidence or a meeting if required. The Panel may ask our Chief Executive or other senior staff to provide expert advice in relation to regulatory policy.
28. Normally the Panel will meet to make its decision, and will communicate its decision to you, within **25 working days** of us receiving your initial appeals submission. However, this may take longer depending on the extent of additional evidence requested. If we need longer than 25 days, we will write to you to confirm an alternative timescale.
29. We will confirm the outcome of the appeal in writing. Our letter will explain clearly the reasons for the Panel's decision.



## What decisions can the Appeal Panel make?

30. An appeal can have three outcomes:
  - to uphold the original decision;
  - to make a new decision based on the evidence brought forward; or
  - to refer the decision back to the decision-maker to reconsider, for example with a direction for the decision-maker to consider specific new evidence.
31. At the conclusion of an appeal, we would halt the specific regulatory action in light of the second or third outcomes, and reconsider our regulatory engagement.
32. We will publish the outcome of each appeal on our website, with a brief summary of the case and the reasons for the decision made.
33. At the conclusion of an appeal, should you be dissatisfied that we have not acted in accordance with our published policies you may wish to make a complaint. You can take a complaint direct to the Scottish Public Services Ombudsman (SPSO) rather than using our internal complaints process, providing you are not bringing forward new evidence at that point. It is for the SPSO to consider whether it is able to take action about your complaint in the specific circumstances of your case. The complaints process is *not* a mechanism for challenging how we have exercised our judgement in relation to a decision arising from regulatory activity.
34. The SPSO has the power to make recommendations to us once it has concluded its investigation of a complaint. It has no power to overturn our regulatory decisions.

## Contact us



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## Appendix 1

### Regulatory decisions open to appeal

| Statutory decision                                  | Housing (Scotland) Act 2010 section | Who can appeal      |
|---|-------------------------------------|---------------------|
| Registering an RSL                                  | S23                                 | The applicant       |
| De-registering an RSL                               | S27                                 | The RSL             |
| Setting performance improvement target              | S34                                 | The social landlord |
| Setting financial management or governance target   | S37                                 | The RSL             |
| Arranging a survey of a social landlord's housing   | S44                                 | The social landlord |
| An inquiry report                                   | S46                                 | The social landlord |
| Performance improvement plan                        | S55                                 | The social landlord |
| Enforcement notice                                  | S56                                 | The social landlord |
| Appointing a manager for housing activities         | S57                                 | The social landlord |
| Appointing a manager for financial or other affairs | S58                                 | The RSL             |
| Removing an officer of an RSL                       | S60                                 | The individual      |
| Suspending a responsible individual from an RSL     | S61                                 | The individual      |
| Removing a responsible individual from an RSL       | S62                                 | The individual      |
| Appointing an individual                            | S65                                 | The RSL             |
| Restricting an RSL's dealings                       | S66                                 | The RSL             |
| Transferring an RSL's assets following inquiries    | S67                                 | The RSL             |



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