

Welsh Government Regulation Governance Development Project

March 2020

Reminder of the brief

Develop regulatory approach to assessing governance, enhance skills and knowledge of regulation team



What we've been up to



What we learned I



- Currently 'regulated self-assurance'
- Not shared clarity about how it works
- Self-assessment central to current model; some triangulation
- Broadly consistent process for each RSL, each year
- Risk-based approach shapes follow-up engagement (based on RAP)
- Other regulatory models suggest scope to do this differently

What we learned II



- RSLs think current model is broadly fit for purpose but worry about capacity of regulation team to deliver it
- Some RSLs would welcome more challenge – a deeper level of engagement
- Some RSLs want more guidance, others don't
- Sector concerned to make sure any new model is proportionate
- Real, shared appetite for focus on culture and behaviours

Overall...

The **regulator** needs confidence that:

- RSLs are well governed
- RSLs will tell the regulator if there are things it needs to know

And to obtain that confidence in ways which are resource efficient and get to the heart of key issues

The **sector** needs:

- Effective regulation to provide confidence to its key stakeholders
- Regulators who understand them, and add value through challenge and knowledge transfer
- Processes which don't confer too great a regulatory burden

Everybody would benefit from a shared understanding of how regulation works

So what does this tell us?

- There is no perfect model we can parachute in
- Regulated self-assurance model fundamentally ok
- Continues to be important for regulator to test the evidence underpinning self-evaluation – and scope to change how this is done
- Focus of regulation team should always be on what's material
- Opportunity to tailor regulatory engagement even more to be proportionate and make best use of resources
- Good shared understanding of the constraints the regulation team work within



The new model



What's changing:

1. The evidence underpinning self-evaluations will be tested through regular Regulatory Assurance Reviews (RARs) and periodic Full Regulatory Assurance Reviews (FRARs)
2. Up front assessment of contextual factors – including risk profile – will determine frequency of FRARs
3. No more RAP – alternative approach to assurance plans (RSLs to submit improvement plan with self-evaluation instead)

#1 Regulated self-assurance is here to stay.

- Common model – and it seems to work
- Bedrock of co-regulation

‘Regulated self-assurance... is different from self-regulation. In many of the highly-regulated sectors, regulatory frameworks make substantial use of the internal quality assurance and reporting processes of regulated entities: for example, the Drinking Water Inspectorate (DWI) takes this approach with water companies’.

Regulatory Futures Review, Cabinet Office, 2017

#2 RSLs will continue to be required to evaluate their own performance each year

- ...and will be asked to report process and findings to regulator annually
- Required to consider compliance with performance standards and adopted code of governance, in context of The Right Stuff and The Right Stuff (Hearing the Tenants' Voice)
- Gaps/areas for improvement to be reflected in **improvement plan** submitted with self-evaluation
- If regulator has material concerns about improvement plan, changes may be required

The way the regulator thinks needs to complement everything else [already] in the regulatory eco-system

#3 The regulator will undertake a regulatory assurance review (RAR) of each RSL each year

- A RAR will involve assessing evidence of compliance in order to reach a regulatory judgement (RJ)
- Relatively light-touch process: using self-evaluation report and regulatory intelligence to re-confirm RJ
- May ask for some core documentary evidence to support the self-evaluation report
- Focus on any potentially material issues
- Concerns investigated further

We want the regulator to focus its attention on the big ticket issues rather than having very detailed lists of things to do and tick off

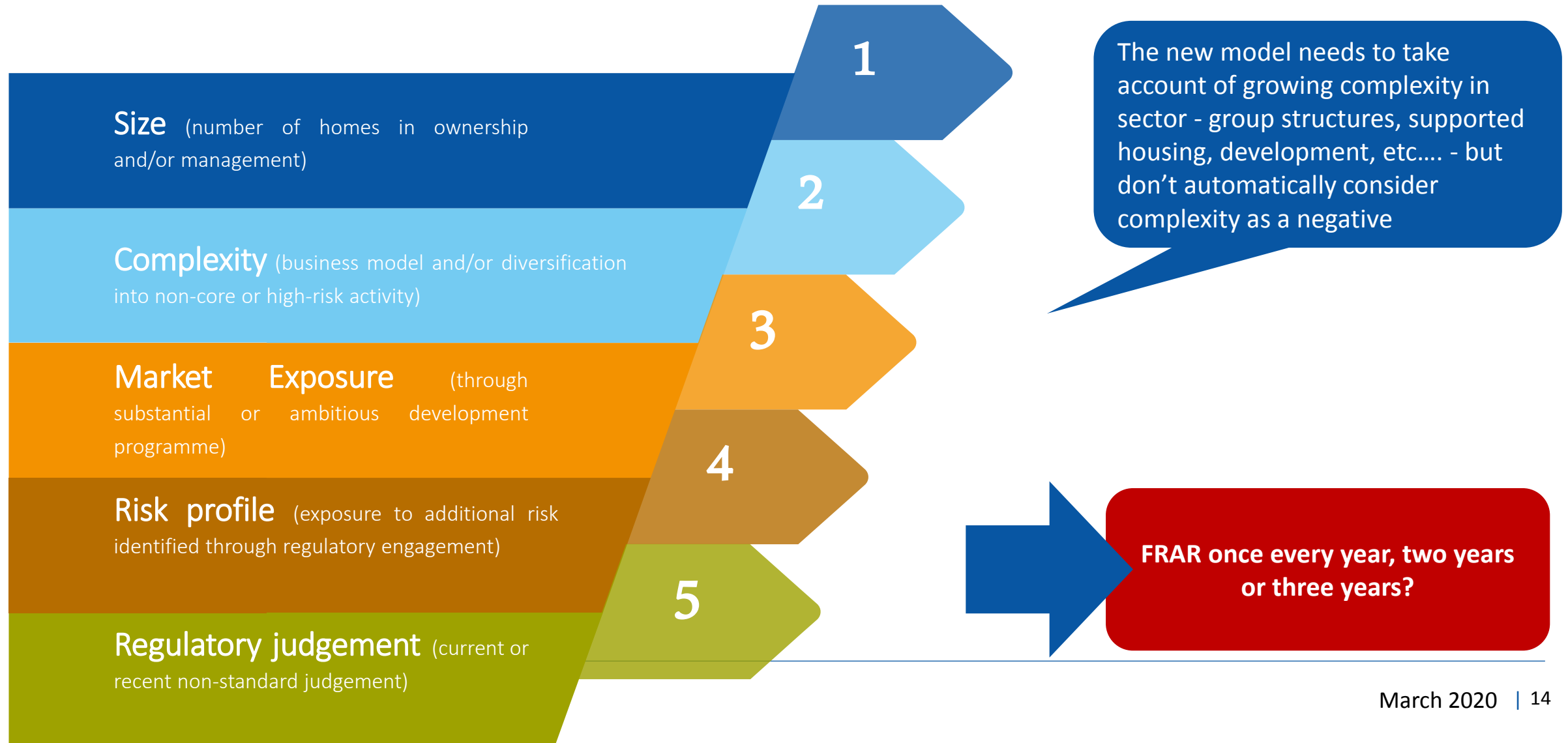
#4 Periodically, this will be a Full Regulatory Assurance Review (FRAR)

- This will involve assessing in more depth the substance of a self-evaluation
- Probably (some) documents, (more) conversations, observations of Board and Audit Committee
- Will help to:
 - *Target resources*
 - *Ensure key risk areas are periodically subject to deeper scrutiny*
 - *Spot emerging issues*
 - *Result in richer conversations*
 - *Generate learning for the RSL, the regulator, and ultimately the sector*

Don't assume all HAs will report self-identified shortcomings. Some won't.

Deeper engagement should be issue-based and rooted in discussion and challenge, not counting gas certificates

#5 The frequency of a FRAR for each RSL will be determined by a high-level assessment of contextual factors



#6 The scope and focus of a FRAR will be proportionate and tailored

Determined by a combination of:

- the performance standards
- the sector risk profile
- regulatory intelligence
- discussion with and input from the RSL concerned

Assessment against **five over-arching governance themes** proposed:

- Governance framework
- Strategic leadership
- Culture and behaviours
- Skills, competencies and diversity
- Risk, assurance and compliance

Our experience has been quite positive over the last year with the new processes, but... you don't get a sense of bespoke-ness from the regulation team with regard to each HA and where it is in relation to its own timeline.

Why can't the focus of any 'validation' type activity be co-created with the sector?

#7 Regulatory judgements will be issued at the conclusion of each (F)RAR

...but must firstly be defended through an internal moderation and quality control process

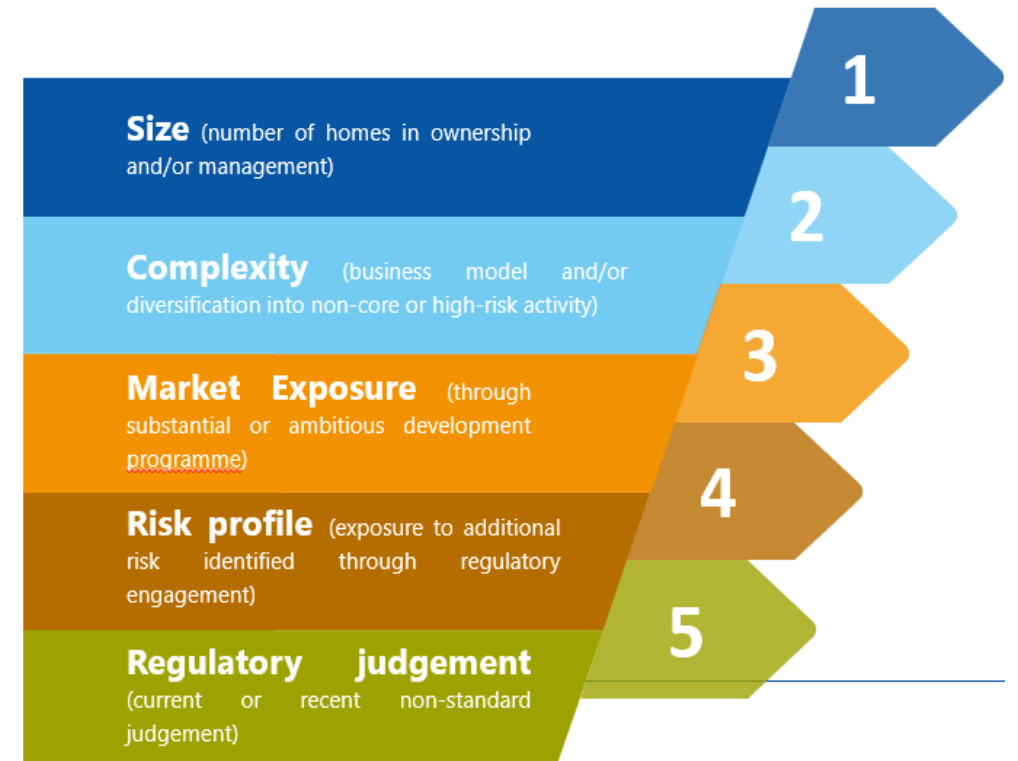
Regulatory Assurance Plan (RAP) replaced by alternative approach (improvement plan)

#8 Ongoing relationship management will continue...

...including regular, routine 'check-ins' by the regulatory team with each RSL as part of ongoing relationship maintenance.

Should precise pattern of regulatory engagement be influenced by contextual assessment?

It matters that the regulator knows the organisations it regulates – this creates trust and openness



Some things you might be left wondering about

- How will assessment of governance dove-tail with assessment of financial viability?
- When will the regulation team adopt the new approach?
- What if you have concerns?



Next steps

- Continue to develop underpinning detail of model
- Pilot and test
- Roll out
- Continue to test, review and improve



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Thank You

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