



# Property Factors (Scotland) Act 2011

## 2011 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 3rd March 2011 and received Royal Assent on 7th April 2011**

An Act of the Scottish Parliament to establish a register of property factors and require property factors to be registered; to make provision in relation to the resolution of disputes between homeowners and property factors; and for connected purposes.

### PART 1

#### REGISTRATION OF PROPERTY FACTORS

##### *Establishment of register etc.*

#### **1 Register of property factors**

(1) The Scottish Ministers are to prepare and maintain a register of property factors for the purposes of this Part (“the register”).

(2) The register must be available for public inspection at all reasonable times.

[<sup>F1</sup>(2A) The Scottish Ministers may omit any material which falls within section 5(2) from the register made available for public inspection if they consider it appropriate to do so.]

(3) In this Part, “registered” means registered in the register, and “unregistered” means not registered in the register.

#### **Textual Amendments**

**F1** S. 1(2A) inserted (3.10.2012) by [The Property Factors \(Scotland\) Act 2011 \(Modification\) Order 2012 \(S.S.I. 2012/269\)](#), arts. 1, 2

#### **Commencement Information**

**I1** S. 1(1) in force at 1.7.2012 by [S.S.I. 2012/149](#), art. 2, [sch.](#) (with art. 3)

**I2** S. 1(2) in force at 1.10.2012, see s. 33(2)

**I3** S. 1(3) in force at 23.9.2011 by [S.S.I. 2011/328](#), art. 2, [sch.](#)

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*Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011. (See end of Document for details)*

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## 2 Meaning of “property factor”

(1) In this Act, “property factor” means—

- (a) a person who, in the course of that person's business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,
- (b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned—
  - (i) by two or more other persons, or
  - (ii) by the local authority or housing association and one or more other person,
- (c) a person who, in the course of that person's business, manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land), and
- (d) a local authority or housing association which manages or maintains land which is available for use by—
  - (i) the owners of any two or more adjoining or neighbouring residential properties, or
  - (ii) the local authority or housing association and the owners of any one or more such properties,

but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land.

(2) Despite subsection (1), the following are not property factors for the purposes of this Act—

- (a) a person so far as managing or maintaining land on behalf of the Crown that was acquired by virtue of Her Majesty's prerogative rights in relation to unclaimed or ownerless land,
- (b) an owners' association established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) so far as managing or maintaining common parts or land in accordance with the scheme,
- (c) a person so far as managing or maintaining common parts or land on behalf of another person who is a property factor in relation to the same common parts or land.

(3) The Scottish Ministers may by order modify either or both of subsections (1) and (2).

(4) An order under subsection (3) may make such consequential modifications of any other provision of this Act as may be necessary or appropriate.

(5) An order under subsection (3) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

(6) In this Part—

“housing association” has the meaning given by section 1 of the Housing Associations Act 1985 (c.69),

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“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

**Commencement Information**

**I4** S. 2 in force at 23.9.2011 by S.S.I. 2011/328, art. 2, sch.

*Registration*

**3 Application for registration**

- (1) A person who is, or intends to become, a property factor may apply to the Scottish Ministers for entry in the register.
- (2) An application under subsection (1) must specify—
  - (a) the full name and business address of the person, and if formed and registered under the Companies Acts, the company's registered number,
  - (b) whether the person is trading as a sole trader, partnership or company or has some other legal status,
  - (c) where the person is not trading as a sole trader, the full name and business address of the individual who holds the most senior position within the management structure of the partnership, company or body which is (or is to be) directly concerned with the control or governance of the property factor,
  - (d) the full name and address of any other person who is (or is to be) directly concerned with the control or governance of the property factor,
  - (e) any dwelling houses, flats or land in relation to which the person acts, or expects to act, as a property factor, and
  - (f) such other information as the Scottish Ministers may by regulations prescribe.
- (3) An application under subsection (1) must be—
  - (a) signed by the responsible person, and
  - (b) subject to subsection (4), accompanied by such fee as the Scottish Ministers may determine.
- (4) Subject to subsection (5), the Scottish Ministers may by regulations prescribe for the purposes of subsection (3)(b)—
  - (a) fees,
  - (b) how fees are to be arrived at,
  - (c) cases in which no fee is payable.
- (5) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section and section 7 does not exceed the total cost incurred in exercising their functions under this Part.
- (6) A person who, in an application under this section—
  - (a) specifies information which the person knows is false in a material particular, or
  - (b) knowingly fails to specify information required by subsection (2),is guilty of an offence.

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- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) For the purposes of subsection (2)(d) and section 5, persons who are directly concerned in the control or governance of a property factor include any person who owns 25% or more of the equity in a business which is a property factor.
- (9) In this Part, the “responsible person” is—
- (a) where the person making the application under subsection (1) is a sole trader, that person,
  - (b) in any other case, the person specified in the application by virtue of subsection (2)(c).

#### Commencement Information

- I5** S. 3 in force at 23.9.2011 for specified purposes by S.S.I. 2011/328, art. 2, sch.
- I6** S. 3 in force at 1.7.2012 in so far as not already in force by S.S.I. 2012/149, art. 2, sch. (with art. 3)

## 4 Registration

- (1) This section applies where a person makes an application to the Scottish Ministers in accordance with section 3.
- (2) In any case where the Scottish Ministers are considering refusing to enter a person in the register, they must before doing so—
- (a) give notice to the responsible person that refusal is under consideration, and
  - (b) allow the person who made the application under section 3(1) an opportunity to make representations to them.
- (3) Notice under subsection (2) must be accompanied by a written statement of the Scottish Ministers' reasons for proposing to refuse to enter the person in the register.
- (4) The Scottish Ministers must enter the person in the register if, having considered the application and taken account of any representations made by virtue of subsection (2), they are satisfied—
- (a) where the person has not previously been registered, that the person is a fit and proper person to be a property factor,
  - (b) where the person is, or has previously been, registered, that—
    - (i) the person is a fit and proper person to be a property factor,
    - (ii) the person has demonstrated compliance with section 13(3),
    - (iii) the person has, while registered, demonstrated compliance with the property factor code of conduct, and
    - (iv) the person has demonstrated compliance with a property factor enforcement order made against the person by [F<sup>2</sup>the First-tier Tribunal] .
- (5) Otherwise, the Scottish Ministers must refuse to enter the person in the register.
- (6) An entry under subsection (4) must include the information specified in the application by virtue of paragraphs (a) to (f) of section 3(2).

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- (7) Subject to section 8, where the Scottish Ministers make an entry under subsection (4), they must remove the entry from the register—
- (a) on the expiry of the period of 3 years beginning with the day on which the entry is made, or
  - (b) where the person to whom the entry relates—
    - (i) has made a further application for entry in the register under section 3(1), and
    - (ii) that application has not been determined on the expiry of the period mentioned in paragraph (a),on the determination of that further application.
- (8) For the purposes of—
- (a) subsection (7)(b), an application is determined only when—
    - (i) the period within which any appeal under section 11(2) in relation to the application may be made expires (without such an appeal being made), or
    - (ii) any such appeal is concluded,
  - (b) paragraph (a)(ii), an appeal is concluded only when—
    - (i) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
    - (ii) any such appeal has been concluded.

[<sup>F3</sup>(9) In this Act, “First-tier Tribunal” means the First-tier Tribunal for Scotland Housing and Property Chamber.]

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#### Textual Amendments

- F2** Words in s. 4(4)(b)(iv) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 2(a)** (with sch. 1 para. 5)
- F3** S. 4(9) inserted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 2(b)** (with sch. 1 para. 5)

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#### Commencement Information

- I7** S. 4 in force at 1.7.2012 by [S.S.I. 2012/149](#), art. 2, **sch.** (with art. 3)

## 5 Section 4: considerations

- (1) In deciding for the purposes of section 4(4)(a) or (b)(i) whether a person is a fit and proper person to be a property factor, the Scottish Ministers are to have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that any person who is (or is to be) directly concerned with the control or governance of the property factor, has—
- (a) been convicted of any offence involving—
    - (i) fraud or other dishonesty,
    - (ii) violence, or
    - (iii) drugs,