

# PROPERTY FACTORS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### THE ACT

#### Part 1 – Registration of Property Factors

##### *Section 4 – Registration*

15. This section provides for applications to be determined by the Scottish Ministers by either entering the person making the application in the register or refusing to so enter them.
16. Subsection (2) is concerned with circumstances where the Scottish Ministers are considering refusing to enter a person into the register. It requires the Scottish Ministers to give the responsible person notice that refusal of registration is under consideration and ensures that the person who made the application for registration has an opportunity to make representations to them. Under subsection (3), the notice under subsection (2) must be accompanied by a statement of the Scottish Ministers' reasons for proposing to refuse to enter the person in the register.
17. Subsection (4) requires the Scottish Ministers to enter the person in the register if, having considered the application and taken account of any representations made under subsection (2), they are satisfied that the relevant conditions specified in either paragraph (a) or paragraph (b) have been met.
18. Paragraph (a) relates to cases where the person has not previously been registered as a property factor. In such cases, the only condition for entry in the register is that the Scottish Ministers are satisfied that the person is a fit and proper person to be a property factor. Section 5 provides more detail on particular information that must be considered by the Scottish Ministers in making this judgement.
19. Paragraph (b) is concerned with cases involving persons who are or have previously been registered as a property factor. In such circumstances, the Scottish Ministers must be satisfied that the person is a fit and proper person to be a property factor. In addition, though, the person must have demonstrated compliance with: section 13(3) (which relates to the use of property factor registered numbers); the property factor code of conduct (see section 14); and any property factor enforcement order made against the person by a homeowner housing committee (see sections 19 and 20).
20. Subsection (5) provides that where Scottish Ministers are not satisfied as described in subsection (4)(a) or, as the case may be, (4)(b), they must refuse to enter the person into the register.
21. Subsection (6) requires that an entry in the register under subsection (4) must include the information included in the application by virtue of section 3(2)(a) to (f).
22. Subsection (7)(a) requires that, where the Scottish Ministers have made an entry in the register under subsection (4), the entry must be removed on the expiry of the period of 3 years beginning with the day on which the entry is made. The effect of this is that property factors must apply for re-registration every 3 years. If an application for re-

*These notes relate to the Property Factors (Scotland) Act  
2011 (asp 8) which received Royal Assent on 7 April 2011*

registration is still under consideration when the 3 year period expires, subsection (7) (b) provides that the property factor remains registered until the application is finally determined. Subsection (8) provides additional information on what constitutes final determination of an application for re-registration.