

PROPERTY FACTORS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT

Part 2 – Dispute Resolution

Section 23 – Effect of failure to comply with property factor enforcement order

79. Under subsection (1), it is for the homeowner housing committee which made a property factor enforcement order to decide whether the property factor has failed to comply with the order.
80. Subsection (2) requires the homeowner housing committee to serve a notice on the Scottish Ministers in any case where it decides that a property factor has failed to comply with an property factor enforcement order. This will enable this fact to be taken into account, for example, when the Scottish Minister are considering an application from the property factor for re-registration or removal from the register under section 8(1).
81. The homeowner housing committee is prohibited from deciding that a property factor has failed to comply with a property factor enforcement order until the period within which the order requires the work to be completed has ended (subsection (3)(a)). In addition, the committee may not decide that property factor has failed to comply with the order if it is satisfied that the property factor is unable to comply with the order due to having been unable to acquire the rights (for example, access rights) necessary to take the action required (despite having taken reasonable steps to acquire those rights) or that the action required is likely to endanger any person (subsection (3)(b)).
82. Under subsection (4), if the committee would, but for the circumstances in subsection (3)(b), have decided that the property factor had failed to comply with the property factor enforcement order, the committee must instead notify the Scottish Ministers that the committee considers the property factor to be unable to comply with the property factor enforcement order.