



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 2 **S**

#### DISPUTE RESOLUTION

#### *Application and referral*

#### 17 **[<sup>F1</sup>Application to the First-tier Tribunal] **S****

- (1) A homeowner may apply to the [<sup>F2</sup>First-tier Tribunal] for determination of whether a property factor has failed—
  - (a) to carry out the property factor's duties,
  - (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).
- (2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.
- (3) No such application may be made unless—
  - (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and
  - (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.
- (4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.
- (5) In this Act, “property factor's duties” means, in relation to a homeowner—
  - (a) duties in relation to the management of the common parts of land owned by the homeowner, or
  - (b) duties in relation to the management or maintenance of land—
    - (i) adjoining or neighbouring residential property owned by the homeowner, and

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

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(ii) available for use by the homeowner.

#### Textual Amendments

- F1** S. 17 title substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 3**
- F2** Words in s. 17(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 2**

#### Commencement Information

- I1** S. 17 in force at 1.10.2012, see s. 33(2)

## 18 **[<sup>F3</sup>Referral to the First-tier Tribunal]** **S**

- (1) The [<sup>F4</sup>Chamber President] must decide whether to—
- (a) refer an application under section 17(1) to [<sup>F5</sup>the First-tier Tribunal] , or
  - (b) reject the application.
- (2) The [<sup>F6</sup>Chamber President] may reject an application only if the [<sup>F6</sup>Chamber President] considers—
- (a) that it is vexatious or frivolous,
  - (b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute,
  - (c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications, or
  - (d) that the dispute to which the application relates has been resolved.
- (3) The [<sup>F7</sup>Chamber President] must make a decision under subsection (1)—
- (a) within 14 days of the [<sup>F8</sup>First-tier Tribunal’s] receipt of the application concerned, or
  - (b) where the [<sup>F7</sup>Chamber President] considers—
    - (i) that the decision cannot be made without further information, or
    - (ii) that there is a reasonable prospect of the dispute being resolved by the parties,
 by such later date as the [<sup>F7</sup>Chamber President] considers reasonable.
- (4) The [<sup>F9</sup>Chamber President] must, as soon as practicable after rejecting an application, give notice of the rejection—
- (a) to the homeowner, and
  - (b) where the [<sup>F9</sup>Chamber President] is aware of the name and address of a person who acts for the homeowner in relation to the application, to that person.
- (5) Such a notice must—
- (a) set out the reasons for the rejection, and
  - (b) explain the procedure for appealing against it.
- [<sup>F10</sup>(6) In this Act, “Chamber President” means Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber.]

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

#### Textual Amendments

- F3** S. 18 title 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. 6** (with sch. 1 para. 5)
- F4** Words in s. 18(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(a)**
- F5** Words in s. 18(1)(a) 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. 5** (with sch. 1 para. 5)
- F6** Words in s. 18(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F7** Words in s. 18(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F8** Words in s. 18(3)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(c)**
- F9** Words in s. 18(4) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F10** S. 18(6) inserted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(d)**

#### Commencement Information

- I2** S. 18 in force at 1.10.2012, see s. 33(2)

### [<sup>F11</sup>18A. Delegation of Chamber President's powers **S**

- (1) The Chamber President may delegate the Chamber President's functions under section 18 to any legal or ordinary member of the First-tier Tribunal.
- (2) A delegation under this section does not affect the Chamber President's—
  - (a) responsibility for the carrying out of delegated functions, or
  - (b) ability to carry out delegated functions.]

#### Textual Amendments

- F11** S. 18A inserted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 5**

**Changes to legislation:**

There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011,  
Cross Heading: Application and referral.