



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 2

#### DISPUTE RESOLUTION

##### *Exercise of functions under this Part*

#### **16 Naming of panel and re-naming of committees**

- (1) The panel constituted under Schedule 4 to the Rent (Scotland) Act 1984 (c.58), the president of the panel and committees constituted in accordance with that Schedule have, in addition to the functions mentioned in section 21(3) of the Housing (Scotland) Act 2006 (asp 1), the functions conferred on them by this Act.
- (2) When exercising the functions conferred on them by this Act, that panel and those committees are to be known as, respectively, the homeowner housing panel and homeowner housing committees.
- (3) It is for the president to monitor the exercise by those committees of the functions conferred on them by this Act.
- (4) Those committees must comply with any direction, and have regard to any guidance, given by the president in connection with the exercise of those functions.
- (5) But the president may not give any such direction in relation to a particular case.
- (6) Directions or guidance given under subsection (4) may be varied or revoked at any time.
- (7) The president's functions under this Act may, where the president is absent or incapacitated, be exercised by the vice-president of the panel.

##### *Application and referral*

#### **17 Application to homeowner housing panel**

- (1) A homeowner may apply to the homeowner housing panel 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
    - (ii) available for use by the homeowner.

## **18 Referral to homeowner housing committee**

- (1) The president of the homeowner housing panel must decide whether to—
- (a) refer an application under section 17(1) to a homeowner housing committee, or
  - (b) reject the application.
- (2) The president may reject an application only if the 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 president must make a decision under subsection (1)—
- (a) within 14 days of the panel’s receipt of the application concerned, or
  - (b) where the 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 president considers reasonable.

- (4) The president must, as soon as practicable after rejecting an application, give notice of the rejection—
  - (a) to the homeowner, and
  - (b) where the 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.

### *Property factor enforcement orders*

## **19 Determination by homeowner housing committee**

- (1) The homeowner housing committee to which a homeowner's application under section 17(1) is referred must decide—
  - (a) whether 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) if so, whether to make a property factor enforcement order.
- (2) In any case where the committee proposes to make a property factor enforcement order, they must before doing so—
  - (a) give notice of the proposal to the property factor, and
  - (b) allow the parties an opportunity to make representations to them.
- (3) If the committee are satisfied, after taking account of any representations made under subsection (2)(b), 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, the committee must make a property factor enforcement order.
- (4) Subject to section 22, no matter adjudicated on by the homeowner housing committee may be adjudicated on by another court or tribunal.

## **20 Property factor enforcement orders**

- (1) A property factor enforcement order is an order requiring the property factor to—
  - (a) execute such action as the homeowner housing committee considers necessary,
  - (b) where appropriate, make such payment to the homeowner as the committee considers reasonable.
- (2) A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made.
- (3) A property factor enforcement order may specify particular steps which the property factor must take.

## **21 Variation and revocation of property factor enforcement orders**

- (1) The homeowner housing committee which made a property factor enforcement order may, at any time—

- (a) vary the order in such manner as they consider reasonable, or
  - (b) where they consider that the action required by the order is no longer necessary, revoke it.
- (2) Where subsection (3) applies, the committee must vary the property factor enforcement order—
- (a) so as to extend, or further extend, the period within which any action required by the order must be executed, and
  - (b) in such other manner as they think fit.
- (3) This subsection applies where—
- (a) the committee consider, on the submission of the property factor or otherwise, that any action required by a property factor enforcement order has not been, or will not be, executed during the period within which the order requires the work to be executed, and
  - (b) the committee—
    - (i) consider that satisfactory progress has been made in executing the action required, or
    - (ii) have received a written undertaking from the property factor stating that the action required will be executed by a later date which the committee consider satisfactory.
- (4) References in this Act to a property factor enforcement order or to action required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to action required by the order as so varied.

### *Appeals*

## **22 Appeals**

- (1) An appeal on a point of law only may be made by summary application to the sheriff against a decision of the president of the homeowner housing panel or a homeowner housing committee.
- (2) An appeal under subsection (1) must be made within the period of 21 days beginning with the day on which the decision appealed against is made.
- (3) The decision of the sheriff under this section is final.

### *Effect of failure to comply with property factor enforcement order*

## **23 Effect of failure to comply with property factor enforcement order**

- (1) It is for the homeowner housing committee to decide whether a property factor has failed to comply with a property factor enforcement order made by the committee.
- (2) Where the committee decide that a property factor has failed to comply with the property factor enforcement order, the committee must serve notice of the failure on the Scottish Ministers.

- (3) The committee may not decide that a property factor has failed to comply with a property factor enforcement order—
  - (a) unless the period within which the order requires any work to be executed has ended, or
  - (b) if the committee are satisfied, on the submission of the property factor or otherwise—
    - (i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
    - (ii) that any action required by the order is likely to endanger any person.
- (4) Where the committee are prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the committee must serve notice on the Scottish Ministers stating that they consider the property factor to be unable to comply with the property factor enforcement order.

## **24 Property factor enforcement order: offences**

- (1) A person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.
- (2) For the purposes of subsection (1), a person has reasonable excuse for failing to comply with a property factor enforcement order if—
  - (a) the person is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
  - (b) any action required by the order is likely to endanger any person.
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.
- (4) A person cannot be guilty of an offence under subsection (1) unless the homeowner housing committee which made the property factor enforcement order in question have decided under section 23(1) that the property factor has failed to comply with it (but such a decision does not establish a presumption that the person has committed an offence under subsection (1)).
- (5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### *General*

## **25 Power to make further provision about applications etc.**

The Scottish Ministers may by regulations make further provision about the procedure for making applications under section 17 and the making of decisions in relation to such applications.

## **26 Recovery of costs from property factors in relation to certain applications and orders**

- (1) The Scottish Ministers may by regulations make provision about the recovery of relevant costs from property factors where—

- (a) the president of the homeowner housing panel refers an application to a homeowner housing committee under section 18(1)(a),
  - (b) a homeowner housing committee makes a property factor enforcement order against a factor.
- (2) In this section, “relevant costs” means costs incurred by—
- (a) the homeowner housing panel,
  - (b) the president of the panel,
  - (c) homeowner housing committees,
- in relation to the exercise of functions conferred by sections 16 to 25 of this Act.
- (3) Regulations under subsection (1) may in particular—
- (a) provide for charges to be imposed on property factors,
  - (b) provide for charges to be imposed in either or both of the circumstances referred to in subsection (1),
  - (c) provide for different charges to be imposed in different cases or different classes of case,
  - (d) confer functions (including functions relating to the imposition and determination of charges) on—
    - (i) the homeowner housing panel,
    - (ii) the president of the panel,
    - (iii) homeowner housing committees,
  - (e) make provision about how charges may be recovered.
- (4) The Scottish Ministers must, in exercising their functions under subsection (1), secure that the income from any charges imposed by virtue of the regulations does not exceed the relevant costs.
- (5) Regulations under subsection (1) may modify any enactment (including this Act).
- (6) Regulations under subsection (1) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.

## **27 Annual report**

- (1) The president of the homeowner housing panel must, in respect of each reporting year, prepare a report on the exercise of functions by the president and by homeowner housing committees during that year.
- (2) The president must submit each such report to the Scottish Ministers as soon as practicable after the end of the reporting year to which it relates.
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each such report submitted to them.
- (4) A reporting year for the purposes of this section is—
  - (a) the period beginning with the day on which this section comes into force and ending with 31 December next following that date, and
  - (b) each successive calendar year.