

EXECUTIVE NOTE TO

THE PROPERTY FACTORS (REGISTRATION) (SCOTLAND) REGULATIONS 2012

SSI 2012/181

The above instrument was made in exercise of the powers conferred by sections 3(2)(f) and (4) and 30(2) of the Property Factors (Scotland) Act 2011. The instrument is subject to negative procedure.

Policy Objectives

The Property Factors (Scotland) Act 2011 (“the Act”) aims to create a framework which will provide increased protection for homeowners who use the services of a property factor. It has three main elements:

- a compulsory register for property factors
- a code of conduct with which all registered property factors will be required to comply
- a new statutory dispute resolution mechanism, to be known as the homeowner housing panel.

The provisions of the Act come into force on 1 October 2012, unless they have been commenced earlier.

These regulations have two purposes, both related to the compulsory register of property factors element of the Act:

1. They require applicants to supply (as part of the process of application for registration as a property factor) information relating to the Act’s “fit and proper person” test. This will take the form of a self-declaration of the information referred to in section 5(2) of the Act, which relates to certain criminal convictions (fraud or other dishonesty, violence or drugs) and contravention of the law relating to tenements, property or debt, and unlawful discrimination. The person to whom this information relates will require to be any person “directly concerned with the control or governance of the property factor”. The regulations set out a definition of this person, which reflects the definition contained within the Act. The regulations also require an applicant to the register to supply a criminal conviction certificate (“basic disclosure” which does not disclose any spent convictions or cautions) if this is required by the Scottish Ministers in order to verify the information provided in the application or if they suspect that the information is, or has become, inaccurate.

2. They set fees which applicants must pay when applying to be entered in the compulsory register of property factors. The income from these fees will contribute to the running costs and administration of the register, any shortfall in which will be made up by the Scottish Government. The fees are set at two levels – £100 for property factors who manage 100 or fewer properties and £370 for those who manage more than 100 properties. Registration lasts for three years, so the fee will be payable once every three years. Scottish Ministers have an obligation under section 3(5) of the Act to ensure that the income from fees, taking one financial year with another, does not exceed the total cost incurred in exercising their functions under Part 1 of the Act. From 1 October 2012 actual costs incurred will be closely monitored, and fee levels may be revised in future if this is required in order to meet the section 3(5) obligation.

Consultation, Impact Assessments and Financial Effects

An equality impact assessment has been completed. No negative impacts in relation to equalities were identified.

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. Six Scottish Firms Impact Test interviews were conducted across a range of the industry. The impact of this policy on business is assessed as low, primarily because cost effectiveness has been at the centre of the development of the register, and consequently the fee levels have been set at a low level.

For the Scottish Government: The Scottish Government will meet any shortfall between fee income generated and the actual cost of administering the register of property factors. In the first 3 years of operation this shortfall is projected to be around £5,000 per annum. The actual costs will be monitored closely once the register is operational.

For the industry: Fees will be levied as described above (including the lower level fee for smaller property factors) and will be payable every three years. Consultation with members of the industry has indicated that fees set at this level will not cause problems.

For homeowners: Property factors are likely to pass on the costs of registration to their homeowner clients. However, the registration fees are so low that the cost to any individual homeowner is likely to be negligible.

Scottish Government

Housing, Regeneration, Commonwealth Games and Sport Directorate

31 May 2012