

# Final Business and Regulatory Impact Assessment

## **Title of Proposal**

The Property Factors (Registration) (Scotland) Amendment Regulations 2015

## **Purpose and intended effect**

### **Background**

The Property Factors (Scotland) Act 2011 (the Act) contains provision for Scottish Ministers to set a fee to apply for entry onto the Property Factors Register. Registration lasts three years and the fee is currently set at a lower rate of £100 for factors with a portfolio of 100 properties or fewer and £370 for factors with a portfolio over 100 properties. The purpose of the Regulations is to increase the fees to £200 for factors with 100 properties or fewer and £750 for factors with more than 100 properties.

### **Objective**

The overall objective of these Regulations is to reduce the burden on the public purse for the registration system. However, this is balanced against the wish to encourage factors to register which will in turn reduce the costs associated with pursuing unregistered factors.

### **Rationale for Government intervention**

This forms part of the Scottish Government's work on improving standards and quality within private sector housing and contributes to the national outcomes "We live in well-designed, sustainable places where we are able to access the amenities and services we need" and "We value and enjoy our built and natural environment and protect it and enhance it for future generations".

## **Consultation**

### **Within Government**

A range of relevant Scottish Government Directorates including Housing, Justice and Legal colleagues were consulted in order to inform the development of this Business and Regulatory Impact Assessment.

## Public Consultation

Scottish Ministers already have the power to set fees for applications for registration. There is no requirement to consult in using this power but an informal consultation seeking views from a cross section of around 40 factors (of various portfolio sizes) was undertaken. This took place between 7-17 April 2015. Stakeholder bodies including Royal Institution of Chartered Surveyors, CoSLA, Association of Local Authority Chief Housing Officers, Chartered Institute of Housing Scotland, Scottish Federation of Housing Associations, Glasgow West of Scotland Federation of Housing Associations, Scottish Best Value Housing Network and the Citizens Advice Service were invited to contribute.

A total of 13 responses were received. The majority of respondents were not in favour of any increase in fees however it was acknowledged that a balance needed to be struck between funding the registration regime from public funds and recouping of running costs via registration fees. There were also calls for the introduction of a more complex three tier structure or a progressive fee structure with the intention that factors with larger portfolios be charged a higher fee.

The Scottish Government also raised the proposal to increase fees at a factoring forum organised by the Scottish Best Value Housing Network on 22 April 2015. This was attended by representatives from registered social landlords, local authorities and private factors.

## Business

A total of 6 businesses were interviewed as part of the consideration of the Scottish Firms Impact Test. Further information is detailed below in the relevant section.

## Options

The following three options were considered in relation to amending fee levels:

### ***Option 1 – Do Nothing***

This option would maintain the two fee levels for factoring organisations. The fee level applied would continue to depend on the size of the organisation as follows:

- **£100** registration fee for property factors with a portfolio size of 100 or fewer properties
- **£370** registration fee for property factors with a portfolio size of more than 100 properties

Maintaining this fee level would enable the Scottish Government to recoup some of the cost associated with the running of the register. The remainder would be absorbed by the Scottish Government.

### ***Option 2 – Increase the fees and maintaining the current fee structure***

This option would increase the two fee levels for factoring organisations however the fee level applied would continue to depend on the size of the organisation as follows:

- **£200** registration fee for property factors with a portfolio size of 100 or fewer properties
- **£750** registration fee for property factors with a portfolio size of more than 100 properties

Maintaining this fee level would enable the Scottish Government to recoup more of the costs associated with the running of the register. The remainder would be absorbed by the Scottish Government.

### ***Option 3 – Increase the fees, maintain the current fee structure and make additional provision which would require property factors to pay fees calculated on the basis of those properties which they do not own.***

This option would increase the two fee levels for factoring organisations as outlined at option 2, with a slight alteration as to how fees are calculated. Under this option, for the purposes of calculating the fee payable by property factors on registration, account would not be taken of properties owned by the property factor.

### **Sectors and groups affected**

Property factors – including private sector property factors and land maintenance companies, housing associations and local authorities. Homeowners who use the services of a property factor – including both owner-occupiers and owners who rent out their property.

### **Benefits**

#### ***Option 1 – Do Nothing***

The Scottish Government would be able to recoup some of the costs associated with Part 1 of the Act. Based on current projections, fees will recoup around 31% of the anticipated running costs and the remaining 69% would be required from public funds. The current fee level would continue to recognise the impact on smaller businesses as a lesser, more manageable registration fee should encourage these businesses to register. It reflects the fact that they have a smaller customer base and therefore if any costs are passed on to homeowners they will not be as high compared to those organisations with a large customer base. The higher rate for larger businesses would be fairly low and any on-costs resulting should not be significant.

### ***Option 2 – Increase the fees and maintaining the current fee structure***

The Scottish Government would be able to recoup more of the costs associated with Part 1 of the Act. This would recoup around 62% of the anticipated running costs and the remaining 38% would be required from public funds. This option would reduce the current costs on the public purse by 31%. Maintaining the current fee structure would continue to recognise the impact on smaller businesses.

### ***Option 3 – Increase the fees, maintain the current fee structure and make additional provision which would require property factors to pay fees calculated on the basis of those properties which they do not own.***

The benefits of option 3 are as outlined at option 2.

In addition, this option would make a slight amendment to the procedure followed when calculating fees. Currently, property factors must include all properties – including those owned but let by them when providing the list of properties for the purposes of sections 3 and 7 of the Act. This means that all of these properties are included for the purposes of calculating the fee which brings some property factors that own a large number of properties within the higher fee bracket (e.g. property owned and let by housing associations and local authorities who act as property factors). This would change under this option so that the fee would only be calculated in accordance with the number of properties factored by the property factor, which they do not own. This would mean that the level of fee payable would more accurately reflect the size of the property factoring business but would not alter the information property factors would be required to give on registration. They would still need to list all properties, including those which they own.

### **Costs**

#### ***Option 1 – Do Nothing***

It is estimated that running costs for the register will be around £306K over the next three years. This takes into account the broad level of costs incurred over the first three years as well as additional staffing and IT improvement costs to strengthen the operation of managing the register. The fee income received from factors over the next three years is estimated to be around £94K based on the current level of existing factors. The cost to the public purse would therefore be estimated at around £212K over the next three years if option 1 was progressed.

The cost to property factors would not increase as they would pay the same fee on application to the register.

The average cost to homeowners is not expected to increase (if the property factor chose to pass on the cost of the registration fee). The average annual cost would amount to £1.29 per homeowner over a three year period.

All calculations are based on the current level of existing factors and those factors remaining in the tier they are currently within.

### ***Option 2 – Increase the fees and maintaining the current fee structure***

It is estimated that running costs for the register will be around £306K over the next three years. This takes into account the broad level of costs incurred over the first three years as well as additional staffing and IT improvement costs to strengthen the operation of managing the register. If the fees were increased, the fee income received from factors over the next three years is estimated to be around £190K based on the current level of existing factors. The cost to the public purse would therefore be estimated at around £116K over the next three years if option 2 was progressed. This brings estimated savings of 96K to the public purse.

The cost to property factors would be £200 for those factors with a portfolio size of 100 or fewer properties over a three year period. This represents an increase of £100 for each factor in the lower tier over a three year period.

The cost to property factors would be £750 for those factors with a portfolio size of more than 100 properties over a three year period. This represents an increase of £380 for each factor in the higher tier over a three year period.

The average annual cost to homeowners is expected to increase (if the property factor chose to pass on the cost of the registration fee). The average annual cost including the increase would amount to £2.59 per homeowner. This would amount to an increase in the average annual cost of £1.30 per homeowner over a three year period if option 2 was progressed.

All calculations are based on the current level of existing factors and those factors remaining in the tier they are currently within.

### ***Option 3 – Increase the fees, maintain the current fee structure and make additional provision which would require property factors to pay fees calculated on the basis of those properties which they do not own.***

The costs and savings would be estimated to be the same as option 2. There may be a slight reduction in income received by the Scottish Government if some factors moved from the higher tier to the lower tier however this is not expected to generate a significant decrease in the overall estimated income received and this could be absorbed through existing budgets.

The average annual cost to homeowners is estimated to slightly decrease (if the property factor chose to pass on the cost of the registration fee). This is due to some factors moving to the lower tier therefore a potential reduction in the costs passed on. The average annual cost including the increase would amount to £2.59 per homeowner. This would amount to an increase in the average annual cost of £1.28 per homeowner if option 3 was progressed.

All calculations are based on the current level of existing factors and those factors remaining in the tier they are currently within. The calculations also take into account where a factor would move to the lower tier based on current information available.

## **Scottish Firms Impact Test**

Interviews were conducted with the industry to gather evidence of the various issues that may affect them in relation to the proposed increase in fees.

The type of industries consulted included public sector factoring organisations (three registered social landlords), and three private property factor organisations from the private sector:

East Lothian Housing Association  
Glasgow Housing Association (Your Place)  
Graham and Sibbald  
Home in Scotland  
Speirs Gumley  
Your Place Property Management

The businesses interviewed were asked whether they thought the proposed increase was appropriate. The majority of responses were not in favour of the proposed increases however some recognised the need to reduce the burden on the public purse. One factor was completely supportive of the increase in fees and viewed these as reasonable.

The businesses interviewed were asked to consider the impact of an increase in fees on their business. Overall, the feedback received suggested that the impact in financial terms was considered to be low.

The businesses interviewed were asked to consider what they perceived as the fairest way to set fees. Feedback was received which suggested that consideration should be given to exempt housing associations from paying a fee, particularly those with charitable status who are not running their business on a competitive basis. Some feedback suggested that there should be a flat rate for all factors with an additional fee per property and some suggested a progressive fee structure with the larger factors paying a higher fee. One Factor suggested that the current two tier structure was suitable and that the fee structure should not be complex.

The businesses interviewed were asked whether any increase on fees would be passed on to homeowners. Responses varied on this matter. Some suggested that the increase would be absorbed however others suggested that there would be no option but to pass this cost on to their customers.

The businesses interviewed were also asked to consider what they would expect to see implemented in return for an increase in fees. This could include improvements to the functionality and operation of the property factor register. This would generally be welcome, particularly a more advanced search facility and improvements in the way in which information is displayed. Some respondents also indicated that they would like to see an educational programme, and potentially the development of a factoring toolkit to assist existing and potential factors as well as homeowners to comply with the obligations placed on them.

The businesses interviewed were asked to consider the impact of the proposal to amend the current Regulations so that the fee payable by factors would be calculated only on the basis of those properties which they do not own. Generally this was supported, although some feedback suggested that it was considered that it may disproportionately benefit local authorities.

### **Competition Assessment**

Consideration has been given to the Competition and Markets Authority Competition Assessment criteria. The Scottish Government is satisfied that there is no competition aspect to these proposals. The results from the Competition filter questions below confirm these assumptions.

Will the proposal directly limit the number or range of suppliers?

*No*

Will the proposal indirectly limit the number or range of suppliers?

*No*

Will the proposal limit the ability of suppliers to compete?

*No*

Will the proposal reduce suppliers' incentives to compete vigorously?

*No*

### **Test run of business forms**

No new forms will be introduced

### **Legal Aid Impact Test**

It is not expected that implementation of this proposal will result in any increase in expenditure on the legal aid fund.

### **Enforcement, sanctions and monitoring**

All property factors will be expected to pay the required fee on application to the register. A factor will not be admitted to the property factor register until the required background checks are completed and the required fee is paid. A factor who continues to operate whilst unregistered is committing an offence. The Scottish Government will act on any information it holds on unregistered factors and will liaise

with the factor to encourage compliance. It may also pass this information to the Police to pursue enforcement or criminal prosecution.

**Implementation and delivery plan**

The proposal is scheduled to come into force from 1 July 2015. Factors who make an application to the register from that date will be required to pay the increased fee if their application is successful.

The Scottish Government intends to engage with the industry to raise awareness of any agreed increase in fees payable on entry to the property factor register.

**Post-implementation review**

No formal post-implementation review is scheduled to take place however the Scottish Government will continue to monitor the on-going costs of the register and may consider amending fees in future to ensure these are appropriate.

**Summary and recommendation**

The Scottish Government proposes to take forward the implementation of **option 3**.

It considers this approach is the most appropriate because option 1 (do nothing) is currently not sustainable and would continue to create a significant burden on the public purse in terms of funding the operation of the property factor register and facilitating improvements.

Option 2 (Medium Increases in fees and medium public subsidy) is a feasible option however this would not include provision which would require property factors to pay fees calculated on the basis of those properties which they do not own. Currently, property factors must include all properties – including those owned but let by them when providing the list of properties for the purposes of sections 3 and 7 of the Act. This means that all of these properties are included for the purposes of calculating the fee. Feedback from some housing associations indicated that this puts some factors paying the higher fee rate (particularly those who are just above the 100 property threshold) at a disadvantage when they could be within the lower tier if they are only paying a fee calculated on the number of properties they factor which they do not own.

Option 3 (Medium Increases in fees and medium public subsidy) therefore adopts the same principles of option 2 however would also include an additional provision which would require property factors to only pay a fee calculated on the basis of those properties which they do not own. Feedback from some housing associations who contributed to the informal consultation undertaken suggested this may be a fairer way to calculate the fee payable.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
<b>Option</b>	• There are no benefits from	• The projected costs of

<p><b>One:</b> Do Nothing</p> <p>Medium to High public subsidy</p> <table border="1" data-bbox="209 450 389 591"> <tr> <td>Lower Tier Fee £100</td> </tr> <tr> <td>Higher Tier Fee £370</td> </tr> </table>	Lower Tier Fee £100	Higher Tier Fee £370	<p>implementation of this option.</p> <ul style="list-style-type: none"> <li>• There would be limitations in relation to the scope to introduce improvements to the technological and operational aspects of the registration system based on current resources.</li> </ul>	<p>managing the register over the next three years is expected to be around £306,000. This equates to an average annual cost of £102,000.</p> <ul style="list-style-type: none"> <li>• The fee income generated by option 1 is expected to be around £94,000 over a three year period. This equates to an annual cost to the industry of around £31,000.</li> <li>• Therefore the cost of public subsidy would be around £212,000. This equates to an annual cost to the public purse of £71,000.</li> <li>• In percentage terms the cost of public subsidy would be around 69% over three years</li> </ul>
Lower Tier Fee £100				
Higher Tier Fee £370				
<p><b>Option 2:</b></p> <p>Medium Increases in fees and medium public subsidy</p> <table border="1" data-bbox="209 1408 389 1550"> <tr> <td>Lower Tier Fee £200</td> </tr> <tr> <td>Higher Tier Fee £750</td> </tr> </table>	Lower Tier Fee £200	Higher Tier Fee £750	<ul style="list-style-type: none"> <li>• Reduction on the public purse by 31% (based on option 1)</li> <li>• This would contribute to ensuring the effective enforcement of factors who are not complying with the Act, and introducing improvements to the technological aspects of the registration system.</li> <li>• These measures are intended to facilitate improvements, addressing the expectations of the industry and homeowners but also within the context of reducing the burden on the public purse for the registration system.</li> </ul>	<ul style="list-style-type: none"> <li>• The projected costs of managing the register over the next three years is £306,000. This equates to average annual cost of £102,000.</li> <li>• The fee income generated by option 2 is expected to be around £190,000 over a three year period. This equates to an annual cost to the industry of around £63,000.</li> <li>• Therefore the cost of public subsidy would be around £116,000. This equates to an annual cost to the public purse of around £39,000.</li> <li>• In percentage terms the cost of public subsidy would be around 38% over three years.</li> </ul>
Lower Tier Fee £200				
Higher Tier Fee £750				
<p><b>Option 3:</b></p>	<ul style="list-style-type: none"> <li>• Reduction on the public purse by 31% (based on</li> </ul>	<ul style="list-style-type: none"> <li>• The projected costs of managing the register over</li> </ul>		

<p>Medium Increases in fees and medium public subsidy</p> <table border="1" data-bbox="209 416 387 555"> <tr> <td data-bbox="209 416 387 483">Lower Tier Fee £200</td> </tr> <tr> <td data-bbox="209 483 387 555">Higher Tier Fee £750</td> </tr> </table> <p>Make additional provision which would require property factors to pay fees calculated on the basis of those properties which they do not own.</p>	Lower Tier Fee £200	Higher Tier Fee £750	<p>option 1)</p> <ul style="list-style-type: none"> <li>• The 100 property threshold was introduced to reduce the burden on smaller factors having to pay a relatively expensive fee in proportion to the size of their business. This option will allow some factors to move to the lower tier therefore paying a lower fee.</li> <li>• This would contribute to ensuring the effective enforcement of factors who are not complying with the Act, and introducing improvements to the technological aspects of the registration system.</li> <li>• These measures are intended to facilitate improvements, addressing the expectations of the industry and homeowners but also within the context of reducing the burden on the public purse for the registration system.</li> </ul>	<p>the next three years is £306,000. This equates to average annual cost of £102,000.</p> <ul style="list-style-type: none"> <li>• The fee income generated by option 2 is expected to be around £187,000 over a three year period. This equates to an annual cost to the industry of around £62,000.</li> <li>• Therefore the cost of public subsidy would be around £119,000. This equates to an annual cost to the public purse of around £40,000.</li> <li>• In percentage terms the cost of public subsidy would be around 39% over three years.</li> </ul>
Lower Tier Fee £200				
Higher Tier Fee £750				

**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**

**Date: 27 May 2015**

**Margaret Burgess MSP  
Minister for Housing and Welfare**

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