

POLICY NOTE TO
THE PROPERTY FACTORS (REGISTRATION) (SCOTLAND) AMENDMENT
REGULATIONS 2015

SSI 2015/217

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

Background

2. The Property Factors (Scotland) Act 2011 (“the 2011 Act”) sets minimum standards for the property management industry and provides protections for homeowners who use the services of a property factor.
3. The 2011 Act requires Scottish Ministers to maintain a register of property factors, and requires each factor to be registered and abide by a statutory Code of Conduct. Homeowners who have complaints about the service they are receiving can seek redress via the Homeowner Housing Panel (HoHP) which is an independent body.

Policy Objectives

4. Section 3(4) of the 2011 Act enables Scottish Ministers to set a fee for applications for entry onto the register of property factors. Registration lasts three years and the fee is currently set in the Property Factors (Registration) (Scotland) Regulations 2012¹ at a lower rate of £100 for factors with a portfolio of 100 or fewer properties and £370 for factors with a portfolio over 100 properties. The purpose of this instrument is to increase the amount of fee payable on registration, and make a minor change as to how the fee is calculated.
5. The income from fees contributes to the running costs and administration of the register and any shortfall is made up by the Scottish Government. The current fee levels were set in 2012 prior to the commencement of operation of the register. At that time the exact number of property factors and costs of running the register were not known. The original fee levels reflected the best estimate of the likely costs to the Scottish Government. The original costs have been monitored since then and have been greater than estimated resulting in a higher contribution from the public purse. Further detail is explained in the Business and Regulatory Impact Assessment
6. The instrument sets new fee levels for applications for entry to the register at £200 for property factors who manage 100 or fewer properties and £750 for those who manage

¹ SSI 2012/181.

more than 100 properties. This will more accurately reflect the costs of running the register, and reduce the amount contributed by the Scottish Government.

7. This increase also represents a modest increase per annum, £33 for all property factors who manage a portfolio of 100 or fewer properties and £127 for all property factors who manage a portfolio of more than 100 properties. If this cost is passed directly on to homeowners, it would result in relatively modest increases over a three year period for the majority of households affected.
8. Currently, all properties factored by a property factor are included for the purposes of calculating the fee. Therefore, some property factors will own properties that will be included in the fee calculation, which can then bring those property factors within the higher fee bracket (e.g. property owned and let by housing associations and local authorities who act as property factors). To address this issue, the instrument will make a minor change to the procedure that is followed when calculating the fee due on registration. The fee will now only be calculated in accordance with the number of properties factored by the property factor which they do not own. This will mean that the level of fee payable will more accurately reflect the size of the property factoring business. The relevant provision within the instrument makes clear that owning a share in the common parts or land being managed or maintained is not sufficient for the property to be exempt from the calculation, rather the property must be owned entirely by the property factor.
9. This alteration to the calculation does not alter the information that property factors are currently required to submit under the 2011 Act. Property factors will still need to provide information on all properties which they provide services to, including those that they own.
10. Actual costs for registration will continue to be monitored closely, and fee levels may be revised in future particularly to meet the requirement on Scottish Ministers in 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 2011 Act.

Consultation, Impact Assessments and Financial Effects

11. An informal consultation on the proposed increase in fees was carried out seeking views from a number of property factors representing a cross-section of the industry, local authorities and housing associations. The majority of respondents were not in favour of any increase in fees, though it was acknowledged that a balance needed to be struck between funding from the Scottish Government and recouping of running costs via registration fees.

12. Particular concerns were raised by housing associations in relation to the calculation of the fee. As mentioned above, the Scottish Government acknowledged these concerns and as a result, this instrument changes the calculation of the number of properties for the purposes of the fee as described at paragraph 8 above. Some factors (particularly those who are currently in the higher fee bracket by virtue of the number of properties they own) may find themselves moving to the lower tier as a result of this.
13. A Business and Regulatory Impact Assessment (BRIA) has been completed and is available on the Scottish Government website. 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.
14. The projected costs of managing the register over the next three years is £306,000. The estimated fee income generated 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. Therefore the cost of public subsidy would be around £119,000 over a three year period. In percentage terms the cost of public subsidy would be around 38% which is a 31% decrease on the current rate of public subsidy. Further information is available in the BRIA.
14. An Equality Impact Assessment (EQIA) has been completed and is available on the Scottish Government website. There are no equality impact issues.

Housing Services Policy Unit
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