

PROPERTY FACTORS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT

Part 1 – Registration of Property Factors

Section 3 – Application for registration

9. Subsection (1) states that a person who is a property factor or intends to become a property factor may apply to the Scottish Ministers for entry in the register. Although this does not require property factors to register, it should be read in conjunction with section 12(1), which makes it an offence to act as a property factor without being on the register.
10. Subsection (2) sets out the information that must be included in an application to the Scottish Ministers for entry in the register and allows the Scottish Ministers to specify (by regulations) additional information that must be provided.
11. Subsection (3)(a) requires the application to be signed by the “responsible person”. This term is defined in subsection (9) as the person making the application under subsection (1) where they are a sole trader or, in any other case, the person specified in the application by virtue of subsection (2)(c) (that is, the most senior manager in the partnership, company or body who is (or is to be) directly concerned with the control or governance of the property factor).
12. Under subsection (3)(b), the application must also be accompanied by a fee. Subsection (4) gives the Scottish Ministers the power to prescribe (by regulations) the level of the fee. In addition, regulations may prescribe how fees are to be arrived at and cases in which no fee is payable. Subsection (5) makes clear that, while fees under this section and section 7 (which relates to the provision of updated information) may be set at a level that allows the Scottish Ministers to recoup the costs of exercising their functions under Part 1 of the Act, they may not be set beyond that cost-recovery level.
13. Subsection (6) makes it an offence to provide false information in an application or to fail to provide information required by subsection (2). The penalty for such an offence is a fine not exceeding level 3 on the standard scale (subsection (7)).
14. Under subsection (2)(d), an application for registration as a property factor must include, in addition to information on the responsible person, information on any other person who is (or is to be) “directly concerned with the control or governance of the property factor”. Subsection (8) stipulates that this includes any person who owns 25% or more of the equity in a business which is a property factor.