

PROPERTY FACTORS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT

Part 2 – Dispute Resolution

Section 24 – Property factor enforcement order: offences

83. Subsection (1) makes it an offence for a person to fail to comply with a property factor enforcement order without reasonable excuse.
84. Subsection (2) sets out particular situations where a person will be considered to have a reasonable excuse for the purposes of subsection (1), although this does not prevent other circumstances also being considered to constitute a reasonable excuse (subsection (3)).
85. Subsection (4) provides that a property factor may not be found guilty of the offence under subsection (1) unless a homeowner housing committee (which made the property factor enforcement order) has decided that the property factor has failed to comply with it. However, such a decision does not establish any presumption that the property factor has committed an offence. This is because to be found guilty of an offence it would have to be shown, *beyond reasonable doubt*, that the property factor had failed to comply with the property factor enforcement order, whereas the homeowner housing committee would only have to be satisfied *on the balance of probabilities* that the property factor had failed to comply with a property factor enforcement order to make a decision to that effect.
86. Under subsection (5), the penalty for the offence under subsection (1) is a fine not exceeding level 3 on the standard scale.