

PROPERTY FACTORS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT

Part 3 – Miscellaneous and General

Section 28 – Delegation of functions

93. Subsection (1) allows the Scottish Ministers (by order approved by the Scottish Parliament) to delegate any of their functions under the Act. So, for example, they could arrange for another person or body to carry out their functions in relation to receiving and determining applications for entry in the register of property factors.
94. Subsection (3) specifies certain exceptions to this: the excepted functions (which may not be delegated) are those relating to the making of regulations or orders, those relating to fees and those relating to laying documents before the Scottish Parliament.

Section 29 – Ancillary provision

95. Subsection (1) permits the Scottish Ministers (by order approved by the Scottish Parliament) to make such ancillary provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act. Such an order may modify any enactment (including this Act) (subsection (2)).

Section 30 – Orders and regulations

96. Subsection (1) provides that any power of the Scottish Minister to make orders or regulations under the Act is exercisable by statutory instrument, while subsection (2) clarifies that all such powers include power to make different provision for different cases and also power to make ancillary provision.
97. Under subsection (3), as read with paragraphs 4 and 5 of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010, a statutory instrument containing orders or regulations under the Act is subject to the negative procedure of the Scottish Parliament. However, a number of provisions are excepted from this rule – orders under sections 2(3), 14(3)(c), 28(1) and 29(1) and regulations under section 26(1) are instead subject to the affirmative procedure of the Scottish Parliament, while an order under section 33(2) providing for an earlier commencement date than 1 October 2012 is not subject to any procedure.

Section 31 – Interpretation

98. **Section 31** contains a list of definitions of particular terms used in the Act.

Section 32 – Crown application

99. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act binds the Crown. So, for example, the Crown can be a property factor for the purposes of Part 1 of the Bill (although note the exception provided in section 2(2))

*These notes relate to the Property Factors (Scotland) Act
2011 (asp 8) which received Royal Assent on 7 April 2011*

(a) in relation to certain Crown land). However, this section makes it clear that the Crown cannot be held criminally liable for any contravention of any provision of the Act (subsection (1)) – although the Court of Session may, on the application of the Scottish Ministers under subsection (2), declare any act or omission that would constitute such a contravention to be unlawful.

Section 33 – Short title and commencement

100. Subsection (2) provides for Parts 1 and 2 to come into force on 1 October 2012, although the Scottish Ministers are also given power to specify an earlier date (or dates) by order. Under subsection (3), Part 3 came into force on the day after Royal Assent (that is, on 8 April 2011).