



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 1

#### REGISTRATION OF PROPERTY FACTORS

##### *Establishment of register etc.*

#### **1 Register of property factors**

- (1) The Scottish Ministers are to prepare and maintain a register of property factors for the purposes of this Part (“the register”).
- (2) The register must be available for public inspection at all reasonable times.
- (3) In this Part, “registered” means registered in the register, and “unregistered” means not registered in the register.

#### **2 Meaning of “property factor”**

- (1) In this Act, “property factor” means—
  - (a) a person who, in the course of that person’s business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,
  - (b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned—
    - (i) by two or more other persons, or
    - (ii) by the local authority or housing association and one or more other person,
  - (c) a person who, in the course of that person’s business, manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land), and
  - (d) a local authority or housing association which manages or maintains land which is available for use by—

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- (i) the owners of any two or more adjoining or neighbouring residential properties, or
  - (ii) the local authority or housing association and the owners of any one or more such properties,

but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land.
- (2) Despite subsection (1), the following are not property factors for the purposes of this Act—
  - (a) a person so far as managing or maintaining land on behalf of the Crown that was acquired by virtue of Her Majesty’s prerogative rights in relation to unclaimed or ownerless land,
  - (b) an owners’ association established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) so far as managing or maintaining common parts or land in accordance with the scheme,
  - (c) a person so far as managing or maintaining common parts or land on behalf of another person who is a property factor in relation to the same common parts or land.
- (3) The Scottish Ministers may by order modify either or both of subsections (1) and (2).
- (4) An order under subsection (3) may make such consequential modifications of any other provision of this Act as may be necessary or appropriate.
- (5) An order under subsection (3) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.
- (6) In this Part—
  - “housing association” has the meaning given by section 1 of the Housing Associations Act 1985 (c.69),
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

### *Registration*

## **3 Application for registration**

- (1) A person who is, or intends to become, a property factor may apply to the Scottish Ministers for entry in the register.
- (2) An application under subsection (1) must specify—
  - (a) the full name and business address of the person, and if formed and registered under the Companies Acts, the company’s registered number,
  - (b) whether the person is trading as a sole trader, partnership or company or has some other legal status,
  - (c) where the person is not trading as a sole trader, the full name and business address of the individual who holds the most senior position within the management structure of the partnership, company or body which is (or is to be) directly concerned with the control or governance of the property factor,

- (d) the full name and address of any other person who is (or is to be) directly concerned with the control or governance of the property factor,
  - (e) any dwelling houses, flats or land in relation to which the person acts, or expects to act, as a property factor, and
  - (f) such other information as the Scottish Ministers may by regulations prescribe.
- (3) An application under subsection (1) must be—
- (a) signed by the responsible person, and
  - (b) subject to subsection (4), accompanied by such fee as the Scottish Ministers may determine.
- (4) Subject to subsection (5), the Scottish Ministers may by regulations prescribe for the purposes of subsection (3)(b)—
- (a) fees,
  - (b) how fees are to be arrived at,
  - (c) cases in which no fee is payable.
- (5) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section and section 7 does not exceed the total cost incurred in exercising their functions under this Part.
- (6) A person who, in an application under this section—
- (a) specifies information which the person knows is false in a material particular, or
  - (b) knowingly fails to specify information required by subsection (2),
- is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) For the purposes of subsection (2)(d) and section 5, persons who are directly concerned in the control or governance of a property factor include any person who owns 25% or more of the equity in a business which is a property factor.
- (9) In this Part, the “responsible person” is—
- (a) where the person making the application under subsection (1) is a sole trader, that person,
  - (b) in any other case, the person specified in the application by virtue of subsection (2)(c).

#### **4 Registration**

- (1) This section applies where a person makes an application to the Scottish Ministers in accordance with section 3.
- (2) In any case where the Scottish Ministers are considering refusing to enter a person in the register, they must before doing so—
- (a) give notice to the responsible person that refusal is under consideration, and
  - (b) allow the person who made the application under section 3(1) an opportunity to make representations to them.
- (3) Notice under subsection (2) must be accompanied by a written statement of the Scottish Ministers’ reasons for proposing to refuse to enter the person in the register.

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- (4) The Scottish Ministers must enter the person in the register if, having considered the application and taken account of any representations made by virtue of subsection (2), they are satisfied—
- (a) where the person has not previously been registered, that the person is a fit and proper person to be a property factor,
  - (b) where the person is, or has previously been, registered, that—
    - (i) the person is a fit and proper person to be a property factor,
    - (ii) the person has demonstrated compliance with section 13(3),
    - (iii) the person has, while registered, demonstrated compliance with the property factor code of conduct, and
    - (iv) the person has demonstrated compliance with a property factor enforcement order made against the person by a homeowner housing committee.
- (5) Otherwise, the Scottish Ministers must refuse to enter the person in the register.
- (6) An entry under subsection (4) must include the information specified in the application by virtue of paragraphs (a) to (f) of section 3(2).
- (7) Subject to section 8, where the Scottish Ministers make an entry under subsection (4), they must remove the entry from the register—
- (a) on the expiry of the period of 3 years beginning with the day on which the entry is made, or
  - (b) where the person to whom the entry relates—
    - (i) has made a further application for entry in the register under section 3(1), and
    - (ii) that application has not been determined on the expiry of the period mentioned in paragraph (a),
 on the determination of that further application.
- (8) For the purposes of—
- (a) subsection (7)(b), an application is determined only when—
    - (i) the period within which any appeal under section 11(2) in relation to the application may be made expires (without such an appeal being made), or
    - (ii) any such appeal is concluded,
  - (b) paragraph (a)(ii), an appeal is concluded only when—
    - (i) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
    - (ii) any such appeal has been concluded.

## **5 Section 4: considerations**

- (1) In deciding for the purposes of section 4(4)(a) or (b)(i) whether a person is a fit and proper person to be a property factor, the Scottish Ministers are to have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that any person who is (or is to be) directly concerned with the control or governance of the property factor, has—
- (a) been convicted of any offence involving—

- (i) fraud or other dishonesty,
    - (ii) violence, or
    - (iii) drugs,
  - (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15), or
  - (c) contravened any provision of the law relating to tenements, property or debt.
- (3) Material falls within this subsection if it shows the extent to which any other property factor with which the person (or any other person who is, or is to be, directly concerned with the control or governance of the property factor) is or has previously been involved demonstrates or demonstrated compliance with—
- (a) the property factor code of conduct, and
  - (b) any property factor enforcement order made against that other property factor by a homeowner housing committee.
- (4) Where the person is, or has previously been, registered, material falls within this subsection if it shows that the person has failed to pay any charges imposed by virtue of section 26.

## **6 Notification of registration, refusal to register or removal**

Where the Scottish Ministers—

- (a) enter a person in the register under section 4(4),
- (b) refuse to enter a person in the register under section 4(5), or
- (c) remove an entry under section 4(7),

they must, as soon as practicable after doing so, give notice to the responsible person of that fact and, in a case mentioned in paragraph (a) or (c), the date of entry or, as the case may be, removal.

## **7 Duty of responsible person to provide information**

- (1) This section applies where a property factor is registered.
- (2) Where in consequence of a change in circumstances any information provided by the property factor to the Scottish Ministers by virtue of section 3(2)(a) to (d) or, as the case may be, this subsection, becomes inaccurate, the responsible person must, as soon as practicable after the inaccuracy arises, give notice to the Scottish Ministers of the change that has occurred.
- (3) The property factor must, no later than three months after the end of each financial year, give notice to the Scottish Ministers—
- (a) of any dwelling houses, flats or land in relation to which the property factor has acted as property factor during that financial year, or
  - (b) if there has been no change in that information since—
    - (i) the date of the last notice given under this subsection, or
    - (ii) if the person became registered as a property factor during the financial year, the date on which the person provided the information referred to in section 3(2)(e),that there has been no change in that information.

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- (4) Subject to subsection (5), any notice given under subsection (2) or (3) must be accompanied by such fee as the Scottish Ministers may determine.
- (5) Subject to section 3(5), the Scottish Ministers may by regulations prescribe for the purposes of subsection (4)—
  - (a) fees,
  - (b) how fees are to be arrived at,
  - (c) cases in which no fee is payable.
- (6) A person who, without reasonable excuse, fails to comply with subsection (2) or (3) is guilty of an offence.
- (7) A person who, in a notice under subsection (2) or (3), provides information which the person knows is false in a material particular, is guilty of an offence.
- (8) A person guilty of an offence under subsection (6) or (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Removal from register etc.*

## **8 Removal from register**

- (1) Subject to subsections (4) and (6), the Scottish Ministers may remove a property factor from the register if subsection (2) or (3) applies.
- (2) This subsection applies where a property factor is registered by virtue of section 4(4) (a) and the Scottish Ministers consider that—
  - (a) the property factor is no longer a fit and proper person to be registered as a property factor,
  - (b) the property factor has failed to comply with section 13(3), or
  - (c) the property factor has failed to demonstrate compliance with—
    - (i) the property factor code of conduct, or
    - (ii) any property factor enforcement order made against the property factor by a homeowner housing committee.
- (3) This subsection applies where a property factor is registered by virtue of section 4(4) (b) and the Scottish Ministers consider that one or more of the conditions specified in sub-paragraphs (i) to (iv) of that section is no longer met.
- (4) Before removing a property factor from the register under subsection (1) the Scottish Ministers must—
  - (a) give notice to the responsible person that removal under that subsection is under consideration, and
  - (b) allow the property factor an opportunity to make representations to them.
- (5) Notice under subsection (4) must be accompanied by a written statement of the Scottish Ministers' reasons for proposing to remove the property factor from the register under subsection (1).
- (6) The Scottish Ministers must not remove the property factor from the register under subsection (1) unless they are satisfied, after taking account of any representations made to them under subsection (4)(b), that subsection (2) or (3) applies.

- (7) Where the Scottish Ministers decide to remove a property factor from the register under subsection (1), they must, as soon as practicable after doing so, give notice of that fact (and the date of removal, which must be a date no less than 21 days after the date notice is given under this subsection) to the responsible person and give public notice of the date of removal.

## **9 Effect of refusal to enter in register or removal from register**

- (1) Subsection (2) applies where the Scottish Ministers—
- (a) refuse under section 4(5) an application for entry in the register by a person who is operating as a property factor on the day on which section 3 comes into force,
  - (b) remove a property factor from the register under section 4(7), or
  - (c) remove a property factor from the register under section 8(1).
- (2) After the relevant date—
- (a) no costs incurred by the property factor in respect of work instructed after the relevant date are recoverable,
  - (b) no charge imposed by the property factor which relates to a period after the relevant date is recoverable,
  - (c) homeowners may appoint new property factors (or decide to manage their properties without appointing a property factor) in accordance with the procedures made in relation to such decisions in their title deeds or, as the case may be, the Tenement Management Scheme,
  - (d) the property factor may not lodge a notice of potential liability for costs under section 13(1) of the Tenements (Scotland) Act 2004 (asp 11) in respect of work instructed after the relevant date.
- (3) The Scottish Ministers must, as soon as practicable after the relevant date, give public notice of—
- (a) the refusal or removal mentioned in subsection (1)(a), (b) or, as the case may be, (c),
  - (b) the relevant date, and
  - (c) the effect of subsection (2).

## **10 Section 9: interpretation etc.**

- (1) For the purposes of section 9(1)(b), a property factor is not removed from the register where the entry removed under section 4(7) is replaced, before or at the time of the removal, by another entry made by virtue of a further application for entry in the register under section 3(1) by the person to whom the entry removed under section 4(7) relates.
- (2) In section 9, “relevant date” means—
- (a) in relation to a case mentioned in section 9(1)(a) or (c), the day after the day on which—
    - (i) the period within which any appeal under section 11(2) may be made expires (without such an appeal being made), or
    - (ii) any such appeal is concluded (without the Scottish Ministers being required to enter the applicant in the register),

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- (b) in relation to a case mentioned in section 9(1)(b), the day after the day on which the entry in the register is removed under section 4(7).
- (3) For the purposes of subsection (2), an appeal is concluded only when—
  - (a) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
  - (b) any such appeal has been concluded.
- (4) In section 9(2)(c), “Tenement Management Scheme” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004.
- (5) In this Act, “homeowner” means—
  - (a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
  - (b) an owner of residential property adjoining or neighbouring land which is—
    - (i) managed or maintained by a property factor, and
    - (ii) available for use by the owner.

### *Appeals*

## **11 Appeal against refusal to register or removal from register**

- (1) This section applies where the Scottish Ministers—
  - (a) refuse to enter a person in the register under section 4(5), or
  - (b) remove a property factor from the register under section 8(1).
- (2) A person mentioned in subsection (1)(a) or (b) (“the applicant”) may, not later than 21 days after the day on which the responsible person receives notice under section 6 or 8(7), appeal to the sheriff against the refusal or, as the case may be, removal.
- (3) After giving the parties an opportunity to be heard, the court may, if it considers that it is reasonable to do so having regard to the factors mentioned in subsection (4), require the Scottish Ministers to enter the applicant in the register.
- (4) The factors are—
  - (a) in a case where the applicant has not previously been registered, that the applicant is a fit and proper person to be a property factor,
  - (b) in any other case, the conditions mentioned in section 4(4)(b).
- (5) Section 5 applies for the purposes of this section as it applies for the purposes of section 4, but with the references to the Scottish Ministers being read as references to the court.
- (6) The court is to give reasons for its decision under subsection (3) in writing.
- (7) An entry made by virtue of subsection (3) is to be treated as if—
  - (a) in a case where the applicant has not previously been registered, it is an entry made by virtue of section 4(4)(a),
  - (b) in any other case, it is an entry made by virtue of section 4(4)(b).
- (8) An appeal under subsection (2) is to be made by summary application to the sheriff.
- (9) An appeal on a point of law only against the decision of a sheriff on an application under subsection (2) may be made to the sheriff principal.



- (10) An appeal under subsection (9) must be made not later than 21 days after the day on which the decision appealed against is made.
- (11) The decision of the sheriff principal on an appeal under subsection (9) is final.

### *Enforcement*

## **12 Offence of operating as a property factor without registration**

- (1) Except where subsection (2) or (3) applies, a person who operates as a property factor while unregistered is guilty of an offence.
- (2) This subsection applies where—
- (a) a person who is operating as a property factor on the day on which section 3 comes into force has made an application for entry in the register, and
  - (b) the application has not yet been determined by the Scottish Ministers under section 4.
- (3) This subsection applies where a property factor has been removed from the register under section 8(1) but only until—
- (a) the period within which any appeal under section 11(2) in relation to the removal may be made expires (without such an appeal being made), or
  - (b) any such appeal is concluded.
- (4) It is a defence for a person charged with an offence under subsection (1) to show that there was a reasonable excuse for acting in the way charged.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding six months or to both.
- (6) Where—
- (a) an offence under subsection (1) has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual, that individual, as well as the body corporate, Scottish partnership or other unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (7) In subsection (6), “relevant individual” means—
- (a) in relation to a body corporate—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, a member,
  - (b) in relation to a Scottish partnership, a partner,
  - (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
- (8) For the purposes of—
- (a) subsection (2)(b), an application is determined only when—

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- (i) the period within which any appeal under section 11(2) in relation to the application may be made expires (without such an appeal being made), or
- (ii) any such appeal is concluded,
- (b) subsection (3)(b) and paragraph (a)(ii) of this subsection, an appeal is concluded only when—
  - (i) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
  - (ii) any such appeal has been concluded.

*Property factor registered numbers*

**13 Property factor registered numbers**

- (1) The Scottish Ministers must allocate a number to each registered property factor (the “property factor registered number”).
- (2) The property factor registered number may be in such form, consisting of one or more sequences of letters or numbers, as the Scottish Ministers may determine.
- (3) A registered property factor must take all reasonable steps to ensure that the property factor registered number is included in—
  - (a) any document sent to a homeowner,
  - (b) any other document or communication of such type as the Scottish Ministers may by order specify.
- (4) Any person other than a registered property factor who, without reasonable excuse, uses a number purporting to be a property factor registered number in any document or communication commits an offence.
- (5) Subsection (4) does not apply to a person who has been removed from the register under section 8(1) until—
  - (a) the period within which any appeal under section 11(2) in relation to the removal may be made expires (without such an appeal being made), or
  - (b) any such appeal is concluded.
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) For the purposes of subsection (5)(b), an appeal is concluded only when—
  - (a) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
  - (b) any such appeal has been concluded.

*Code of conduct*

**14 Code of conduct**

- (1) The Scottish Ministers must from time to time prepare a code of conduct setting out minimum standards of practice for registered property factors (a “property factor code of conduct”).

- (2) After preparing a property factor code of conduct, the Scottish Ministers—
  - (a) must—
    - (i) publish a draft of the code,
    - (ii) consult with such bodies as they consider appropriate and also with the general public about the draft, and
    - (iii) consider any representations about the draft made to them as a result of such consultation, and
  - (b) may amend the draft accordingly.
- (3) After complying with subsection (2), the Scottish Ministers must, in the following order—
  - (a) lay the property factor code of conduct before the Scottish Parliament,
  - (b) publish the code, and
  - (c) bring the code into force on such day as they may by order appoint.
- (4) An order under subsection (3)(c) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.
- (5) A registered property factor must ensure compliance with the property factor code of conduct for the time being in force.

#### *General*

### **15 Service of notices etc.**

- (1) Any notice to be given to a responsible person under this Part may be—
  - (a) sent by post, by the recorded delivery service, to, or
  - (b) given by personal service by a sheriff officer at,the address specified in the property factor's application for entry in the register by virtue of section 3(2)(a).
- (2) A notice sent as mentioned in subsection (1)(a) is, unless the contrary is proved, to be treated as having been received on the next working day after the day on which it is sent.
- (3) Public notice under this Part is given by—
  - (a) publishing a notice in one or more newspapers circulating in the locality where the property factor operates, and
  - (b) sending a copy of that notice by post, by the recorded delivery service, to each local authority in whose area the property factor operates.