



Property Factors (Scotland) Act 2011

2011 asp 8

PART 2

DISPUTE RESOLUTION

F1 ...

Textual Amendments

- F1** S. 16 cross-heading repealed (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), [sch. 2 para. 9](#)

F2¹⁶

Textual Amendments

- F2** S. 16 repealed (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), [sch. 2 para. 9](#)

Application and referral

17 **[^{F3}Application to the First-tier Tribunal]**

- (1) A homeowner may apply to the [^{F4}First-tier Tribunal] for determination of whether a property factor has failed—
- (a) to carry out the property factor's duties,
 - (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).
- (2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

Status: Point in time view as at 01/12/2016.

Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2. (See end of Document for details)

- (3) No such application may be made unless—
- (a) the homeowner has notified the property factor in writing as to why the homeowner considers that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and
 - (b) the property factor has refused to resolve, or unreasonably delayed in attempting to resolve, the homeowner's concern.
- (4) References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.
- (5) In this Act, “property factor's duties” means, in relation to a homeowner—
- (a) duties in relation to the management of the common parts of land owned by the homeowner, or
 - (b) duties in relation to the management or maintenance of land—
 - (i) adjoining or neighbouring residential property owned by the homeowner, and
 - (ii) available for use by the homeowner.

Textual Amendments

- F3** S. 17 title substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\), reg. 1\(2\), sch. 2 para. 3](#)
- F4** Words in s. 17(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\), reg. 1\(2\), sch. 2 para. 2](#)

Commencement Information

- II** S. 17 in force at 1.10.2012, see s. 33(2)

18 ^[F5]Referral to the First-tier Tribunal

- (1) The ^[F6]Chamber President] must decide whether to—
- (a) refer an application under section 17(1) to ^[F7]the First-tier Tribunal] , or
 - (b) reject the application.
- (2) The ^[F8]Chamber President] may reject an application only if the ^[F8]Chamber President] considers—
- (a) that it is vexatious or frivolous,
 - (b) that the homeowner has not afforded the property factor a reasonable opportunity to resolve the dispute,
 - (c) where the homeowner has previously made an identical or substantially similar application in relation to the same property, that a reasonable period of time has not elapsed between the applications, or
 - (d) that the dispute to which the application relates has been resolved.
- (3) The ^[F9]Chamber President] must make a decision under subsection (1)—
- (a) within 14 days of the ^[F10]First-tier Tribunal's] receipt of the application concerned, or
 - (b) where the ^[F9]Chamber President] considers—
 - (i) that the decision cannot be made without further information, or

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- (ii) that there is a reasonable prospect of the dispute being resolved by the parties,
by such later date as the [F⁹Chamber President] considers reasonable.
- (4) The [F¹¹Chamber President] must, as soon as practicable after rejecting an application, give notice of the rejection—
- (a) to the homeowner, and
 - (b) where the [F¹¹Chamber President] is aware of the name and address of a person who acts for the homeowner in relation to the application, to that person.
- (5) Such a notice must—
- (a) set out the reasons for the rejection, and
 - (b) explain the procedure for appealing against it.

[F¹²(6) In this Act, “Chamber President” means Chamber President of the First-tier Tribunal for Scotland Housing and Property Chamber.]

Textual Amendments

- F5** S. 18 title substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 6** (with sch. 1 para. 5)
- F6** Words in s. 18(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(a)**
- F7** Words in s. 18(1)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 5** (with sch. 1 para. 5)
- F8** Words in s. 18(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F9** Words in s. 18(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F10** Words in s. 18(3)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(c)**
- F11** Words in s. 18(4) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(b)**
- F12** S. 18(6) inserted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 4(d)**

Commencement Information

- I2** S. 18 in force at 1.10.2012, see s. 33(2)

[F¹³18A. Delegation of Chamber President’s powers

- (1) The Chamber President may delegate the Chamber President’s functions under section 18 to any legal or ordinary member of the First-tier Tribunal.
- (2) A delegation under this section does not affect the Chamber President’s—
 - (a) responsibility for the carrying out of delegated functions, or
 - (b) ability to carry out delegated functions.]

Status: Point in time view as at 01/12/2016.

Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2. (See end of Document for details)

Textual Amendments

- F13** S. 18A inserted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 5**

Property factor enforcement orders

19 **[^{F14}Determination by the First-tier Tribunal]**

- (1) The [^{F15}First-tier Tribunal must, in relation to a homeowner’s application referred to it under section 18(1)(a),] decide—
 - (a) whether the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and
 - (b) if so, whether to make a property factor enforcement order.
- (2) In any case where the [^{F16}First-tier Tribunal] proposes to make a property factor enforcement order, [^{F17}it] must before doing so—
 - (a) give notice of the proposal to the property factor, and
 - (b) allow the parties an opportunity to make representations to [^{F18}it] .
- (3) If the [^{F19}First-tier Tribunal is] satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the [^{F20}First-tier Tribunal] must make a property factor enforcement order.
- (4) Subject to section 22, no matter adjudicated on by the [^{F21}First-tier Tribunal] may be adjudicated on by another court or tribunal.

Textual Amendments

- F14** S. 19 title substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 8** (with sch. 1 para. 5)
- F15** Words in s. 19(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(a)** (with sch. 1 para. 5)
- F16** Words in s. 19(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(b)(i)(aa)** (with sch. 1 para. 5)
- F17** Word in s. 19(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(b)(i)(bb)** (with sch. 1 para. 5)
- F18** Word in s. 19(2)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(b)(ii)** (with sch. 1 para. 5)
- F19** Words in s. 19(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(c)(i)** (with sch. 1 para. 5)
- F20** Words in s. 19(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(c)(ii)** (with sch. 1 para. 5)

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F21 Words in s. 19(4) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 7(d)** (with sch. 1 para. 5)

Commencement Information

I3 S. 19 in force at 1.10.2012, see s. 33(2)

20 Property factor enforcement orders

- (1) A property factor enforcement order is an order requiring the property factor to—
 - (a) execute such action as the [^{F22}First-tier Tribunal] considers necessary,
 - (b) where appropriate, make such payment to the homeowner as the [^{F23}First-tier Tribunal] considers reasonable.
- (2) A property factor enforcement order must specify the period within which any action required must be executed or any payment required must be made.
- (3) A property factor enforcement order may specify particular steps which the property factor must take.

Textual Amendments

F22 Words in s. 20(1)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 9(a)** (with sch. 1 para. 5)

F23 Words in s. 20(1)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 9(b)** (with sch. 1 para. 5)

Commencement Information

I4 S. 20 in force at 1.10.2012, see s. 33(2)

21 Variation and revocation of property factor enforcement orders

- (1) [^{F24}Where the First-tier Tribunal has made a property factor enforcement order it] may, at any time—
 - (a) vary the order in such manner as [^{F25}it considers] reasonable, or
 - (b) where [^{F26}it considers] that the action required by the order is no longer necessary, revoke it.
- (2) Where subsection (3) applies, the [^{F27}First-tier Tribunal] must vary the property factor enforcement order—
 - (a) so as to extend, or further extend, the period within which any action required by the order must be executed, and
 - (b) in such other manner as [^{F28}it thinks] fit.
- (3) This subsection applies where—
 - (a) the [^{F29}First-tier Tribunal considers] , on the submission of the property factor or otherwise, that any action required by a property factor enforcement order has not been, or will not be, executed during the period within which the order requires the work to be executed, and

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- (b) the [^{F30}First-tier Tribunal] —
- (i) [^{F31}considers] that satisfactory progress has been made in executing the action required, or
 - (ii) [^{F32}has] received a written undertaking from the property factor stating that the action required will be executed by a later date which the [^{F30}First-tier Tribunal][^{F31}considers] satisfactory.
- (4) References in this Act to a property factor enforcement order or to action required by such an order are, where the order has been varied under this section, to be treated as references to the order as so varied or, as the case may be, to action required by the order as so varied.

Textual Amendments

- F24** Words in s. 21(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(a)(i)** (with sch. 1 para. 5)
- F25** Words in s. 21(1)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(a)(ii)** (with sch. 1 para. 5)
- F26** Words in s. 21(1)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(a)(iii)** (with sch. 1 para. 5)
- F27** Words in s. 21(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(b)(i)** (with sch. 1 para. 5)
- F28** Words in s. 21(2)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(b)(ii)** (with sch. 1 para. 5)
- F29** Words in s. 21(3)(a) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(c)(i)** (with sch. 1 para. 5)
- F30** Words in s. 21(3)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(c)(ii)(aa)** (with sch. 1 para. 5)
- F31** Word in s. 21(3)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(c)(ii)(bb)** (with sch. 1 para. 5)
- F32** Word in s. 21(3)(b) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 10(c)(ii)(cc)** (with sch. 1 para. 5)

Commencement Information

- I5** S. 21 in force at 1.10.2012, see s. 33(2)

Appeals

^{F33}22 Appeals

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Status: Point in time view as at 01/12/2016.

Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2. (See end of Document for details)

Textual Amendments

- F33** S. 22 repealed (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Panel\) Regulations 2016 \(S.S.I. 2016/336\)](#), reg. 1(2), **sch. 2 para. 9**

Effect of failure to comply with property factor enforcement order

23 Effect of failure to comply with property factor enforcement order

- (1) It is for the [^{F34}First-tier Tribunal] to decide whether a property factor has failed to comply with a property factor enforcement order made by the [^{F35}First-tier Tribunal] .
- (2) Where the [^{F36}First-tier Tribunal][^{F37}decides] that a property factor has failed to comply with the property factor enforcement order, the [^{F36}First-tier Tribunal] must serve notice of the failure on the Scottish Ministers.
- (3) The [^{F38}First-tier Tribunal] may not decide that a property factor has failed to comply with a property factor enforcement order—
 - (a) unless the period within which the order requires any work to be executed has ended, or
 - (b) if the [^{F39}First-tier Tribunal is] satisfied, on the submission of the property factor or otherwise—
 - (i) that the property factor is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (ii) that any action required by the order is likely to endanger any person.
- (4) Where the [^{F40}First-tier Tribunal is] prevented by reason only of subsection (3)(b) from deciding that a property factor has failed to comply with a property factor enforcement order, the [^{F41}First-tier Tribunal] must serve notice on the Scottish Ministers stating that [^{F42}it considers] the property factor to be unable to comply with the property factor enforcement order.

Textual Amendments

- F34** Words in s. 23(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 11(a)(i)** (with sch. 1 para. 5)
- F35** Words in s. 23(1) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 11(a)(ii)** (with sch. 1 para. 5)
- F36** Words in s. 23(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 11(b)(i)** (with sch. 1 para. 5)
- F37** Word in s. 23(2) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 11(b)(ii)** (with sch. 1 para. 5)
- F38** Words in s. 23(3) substituted (1.12.2016) by [The First-tier Tribunal for Scotland \(Transfer of Functions of the Homeowner Housing Committees\) Regulations 2016 \(S.S.I. 2016/335\)](#), reg. 1(2), **sch. 2 para. 11(c)(i)** (with sch. 1 para. 5)

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Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2. (See end of Document for details)

- F39** Words in s. 23(3)(b) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(c)(ii)** (with sch. 1 para. 5)
- F40** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(i)** (with sch. 1 para. 5)
- F41** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(ii)** (with sch. 1 para. 5)
- F42** Words in s. 23(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 11(d)(iii)** (with sch. 1 para. 5)

Commencement Information

- I6** S. 23 in force at 1.10.2012, see s. 33(2)

24 Property factor enforcement order: offences

- (1) A person who, without reasonable excuse, fails to comply with a property factor enforcement order commits an offence.
- (2) For the purposes of subsection (1), a person has reasonable excuse for failing to comply with a property factor enforcement order if—
 - (a) the person is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or
 - (b) any action required by the order is likely to endanger any person.
- (3) Subsection (2) does not affect the generality of the defence of reasonable excuse.
- (4) A person cannot be guilty of an offence under subsection (1) unless the [^{F43}First-tier Tribunal] which made the property factor enforcement order in question [^{F43}has] decided under section 23(1) that the property factor has failed to comply with it (but such a decision does not establish a presumption that the person has committed an offence under subsection (1)).
- (5) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Textual Amendments

- F43** Words in s. 24(4) substituted (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Committees) Regulations 2016 (S.S.I. 2016/335), reg. 1(2), **sch. 2 para. 12** (with sch. 1 para. 5)

Commencement Information

- I7** S. 24 in force at 1.10.2012, see s. 33(2)

Status: Point in time view as at 01/12/2016.

Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2. (See end of Document for details)

General

^{F44}**25 Power to make further provision about applications etc.**

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Textual Amendments

F44 S. 25 repealed (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 (S.S.I. 2016/336), reg. 1(2), **sch. 2 para. 9**

^{F45}**26 Recovery of costs from property factors in relation to certain applications and orders**

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Textual Amendments

F45 S. 26 repealed (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 (S.S.I. 2016/336), reg. 1(2), **sch. 2 para. 9**

^{F46}**27 Annual report**

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Textual Amendments

F46 S. 27 repealed (1.12.2016) by The First-tier Tribunal for Scotland (Transfer of Functions of the Homeowner Housing Panel) Regulations 2016 (S.S.I. 2016/336), reg. 1(2), **sch. 2 para. 9**

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Part 2.