

*Draft Order laid before the Scottish Parliament under section 14(4) of the Property Factors
(Scotland) Act 2011, for approval by resolution of the Scottish Parliament.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

PROPERTY FACTORS

The Property Factors (Code of Conduct) (Scotland) Order 2021

Made - - - - 2021
Coming into force - - 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14(3)(c)(1) of the Property Factors (Scotland) Act 2011(2) (“the Act”) and all other powers enabling them to do so.

In accordance with section 14(1) and (2) of the Act, they have prepared a property factor code of conduct, published a draft of the code, consulted with such bodies as they consider appropriate and also with the general public about the draft, considered representations about the draft made to them and amended the draft accordingly.

In accordance with section 14(3) of the Act, they have laid the property factor code of conduct before the Scottish Parliament and published the code.

In accordance with section 14(4) of the Act(3), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Property Factors (Code of Conduct) (Scotland) Order 2021 and comes into force on the day after the day on which it is made.

Code of Conduct

2. The Scottish Ministers appoint 16 August 2021 as the day on which the property factor code of conduct entitled “Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors” laid before the Scottish Parliament on 15 January 2021 comes into force.

(1) Section 30(2)(b) provides that any power of the Scottish Ministers to make an order or regulations under the Act includes power to make such saving provision as the Scottish Ministers think necessary or expedient.
(2) [2011 asp 8](#).
(3) Section 14(4) has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act [2010 \(asp 10\)](#).

Revocation

3. The Property Factors (Code of Conduct) (Scotland) Order 2012(4) is revoked.

Saving provision

4.—(1) Paragraph (2) applies in relation to an application made to the First-tier Tribunal under section 17(1) of the 2011 Act prior to 16 August 2021.

(2) Where this paragraph applies, articles 2 and 3 have no effect until the date on which the application is determined.

(3) An application is determined when—

- (a) the application is rejected under section 18(1)(b) of the 2011 Act,
- (b) the First-tier Tribunal decides that the property factor to whom the application relates has not failed to—
 - (i) carry out the property factor’s duties, or
 - (ii) comply with the duty under section 14(5) of the 2011 Act,
- (c) the First-tier Tribunal revokes a property factor enforcement order it has made in respect of the application, or
- (d) an appeal against the making of a property factor enforcement order in relation to the application is withdrawn or finally determined.

(4) In this article, “the 2011 Act” means the Property Factors (Scotland) Act 2011.

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force a revised code of conduct setting out minimum standards of practice for property factors registered in the register of property factors (the “property factor code of conduct”). The property factor code of conduct was prepared under section 14(1) of the Property Factors (Scotland) Act 2011 (“the Act”).

The previous Code of Conduct, brought into force by the Property Factors (Code of Conduct) (Scotland) Order 2012, is revoked by article 3. The previous code is saved by article 4 for the purposes of applications made to the First-tier Tribunal under section 17(1) of the Act until those applications are finally determined.

The register of property factors is to be prepared and maintained by the Scottish Ministers in accordance with section 1(1) of the Act. A registered property factor is obliged to comply with the revised property factor code of conduct (in terms of section 14(5) of the Act).

The Scottish Ministers will consider compliance with the revised property factor code of conduct in deciding whether or not to accept an application for entry in the register of property factors (in accordance with section 4 of the Act) and any removal of a property factor from the register (in accordance with section 8 of the Act).

A homeowner may apply to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determination of whether a property factor has failed to ensure compliance with the revised property factor code of conduct (applications are made under section 17(1) of the Act).

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government at Victoria Quay, Edinburgh EH6 6QQ and online at www.legislation.gov.uk.