

POLICY NOTE

THE PROPERTY FACTORS (CODE OF CONDUCT) (SCOTLAND) ORDER 2021

SSI 2021/113

The above instrument was made in exercise of the powers conferred by section 14 of the Property Factors (Scotland) Act 2011. The instrument is subject to affirmative procedure.

Summary Box

Section 14 of the Property Factors (Scotland) Act 2011 (the Act) requires that Scottish Ministers must from time to time prepare a draft code of conduct setting minimum standards of practice for registered property factors. This draft code should be published and then consulted upon with such bodies (as considered appropriate) and with the general public. Scottish Ministers must consider any representations about the draft made to them as a result of this consultation.

The existing Code of Conduct for Property Factors was published in October 2012 and, the purpose of this Order is to bring a revised Code of Conduct for Property Factors in to force.

Legislative Background

1. The Code provides a statutory framework which encourages transparency and sets standards for how a property factor should deliver services. If a homeowner believes that their property factor has not complied with the Code, once they have given the factor a reasonable opportunity to resolve the issue, they can apply to the First Tier Tribunal for Scotland (FtT) for a determination of whether the property factor has failed to comply with the Act. The FtT may make a Property Factor Enforcement Order if they find that the property factor is in breach of the Code. In addition, the Scottish Ministers will consider compliance with the Code in deciding whether or not to accept an application for entry in the register of property factors and in any case for removal of a property factor from the register.

Policy Objectives

3. Following a period of operation, an informal review of the operation of the Code introduced in 2012 has been undertaken and a draft revised Code prepared. The revised Code seeks to improve clarity on what the code does and does not cover and highlights the importance of the maintenance of common property. It introduces overarching Standards of Practice, provides clarification on requirements in relation to written statement of services and gives additional detail on information requirements related to ending of factoring arrangements and the transition process where a factor is due to or has taken over the management of property. To assist users and improve the consistency with which the Code is applied, a glossary of terms used in the Code has been added.

4. The proposed changes in the revised Code do not fundamentally change the aim of the Code, which is to provide a minimum set of standards that registered property factors must comply with. The revisions are expected to have positive impact for homeowners by improving transparency and making sure that they are aware of their rights and responsibilities but it is not considered that they place an undue burden on property factors.

Commencement

5. The requirements of the revised Code will come into force on 16 August 2021.

Consultation

6. The Act requires that Scottish Ministers must from ‘time to time’ prepare a draft code which should be published and then consulted upon.

7. As part of the development of the draft code, a full public consultation on the draft document was conducted from October 2017 to January 2018. This was supported by a series of consultation events attended by a range of public and private sector stakeholders affected by the operation of the Code. An analysis of the consultation responses was published on the Scottish Government’s website in June 2018. Ongoing discussions with stakeholders has taken place and in October 2020 a further, four week informal consultation was undertaken on the proposed final version of the revised Code. This included seeking views on the implementation timescales, including an option for phased implementation.

8. The information from this consultation and engagement with stakeholders has, alongside other available evidence, informed the proposed changes in the revised Code.

Impact Assessments

9. An Equality Impact Assessment and a Business and Regulatory Impact Assessment have been completed and are attached.

Financial Effects

10. The Business and Regulatory Impact Assessment (BRIA) showed that overall the introduction of the revised Code should not result in significant, ongoing additional costs to property factors.

Scottish Government
Housing and Social Justice Directorate
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