

# PROPERTY FACTORS (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### THE ACT

#### Part 1 – Registration of Property Factors

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

45. Subsection (2) provides a right of appeal in the cases mentioned in subsection (1). These are where a person's application for entry in the register of property factors is refused under section 4(5) or where a property factor is removed from the register under section 8(1). It is not necessary to provide for an appeal against removal under section 4(7) – the reference to refusal under section 4(5) covers unsuccessful applications for re-registration.
46. An appeal under subsection (2) must be made not later than 21 days after the day on which the responsible person receives notice of the refusal or removal (under section 15(1), such receipt is deemed to occur, if the notice was sent by post by recorded delivery, on the next working day after posting). Subsection (8) provides that an appeal under subsection (2) is to be made by summary application to the sheriff. Subsection (3) gives the parties (that is, the property factor and the Scottish Ministers) a right to be heard before the appeal is determined.
47. Subsection (3) also enables the court to require the Scottish Ministers to register the applicant if it considers it reasonable to do so, having regard to the factors in subsection (4). Those factors are the same as those which the Scottish Ministers consider when deciding whether to grant or refuse an application, that is, whether the person is a fit and proper person to be a property factor and, in addition (if the person is or has previously been registered), whether the person complied with section 13(3) (use of property factor registered numbers), the property factor code of conduct (see section 14) and any property factor enforcement order made against the person by a homeowner housing committee (see sections 19 and 20). The court is required to give reasons for its decision under subsection (3) in writing (subsection (6)).
48. Subsection (9) provides that the decision of a sheriff under subsection (3) may be appealed to the sheriff principal, but only on a point of law. Under subsection (10) such an appeal must be made not later than 21 days after the day on which the decision appealed against is made. Subsection (11) provides that the decision of the sheriff principal is final.