

PROPERTY FACTORS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT

Part 1 – Registration of Property Factors

Section 2 – Meaning of “property factor”

6. Subsection (1) defines property factor for the purposes of the Act. It establishes that there are four distinct groups covered by this definition. Firstly, a person who in the course of their business manages the common parts of land owned by two or more other persons and used to any extent for residential purposes. Secondly, a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned by two or more other persons (or by the local authority or housing association and one or more other person). Thirdly, a person who in the course of their 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 the 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 the land. Finally, a local authority or housing association which manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (or by the local authority or housing association and the owners any one or more residential properties) – but only where the owners of the 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 the land.
7. This definition is subject to subsection (2), which excludes three categories of persons or associations from the definition of property factor. These are: (a) a person so far as managing or maintaining on behalf of the Crown land acquired by the Crown by virtue of prerogative rights to unclaimed or ownerless land; (b) owners’ associations established under the development management scheme (see sections 71 to 74 of the Title Conditions (Scotland) Act 2003), so far as managing or maintaining common parts or land under the scheme; and (c) a person so far as managing or maintaining common parts or land on behalf of a person who is a property factor in relation to those common parts or land. A person who falls within subsection (2) is only excluded from being a property factor to the extent provided for in that subsection. That is, if the person also falls within subsection (1) by virtue of managing or maintaining land other than that mentioned in subsection (2), the person is a property factor for the purposes of the Act in relation to that other land (but not in relation to the land mentioned in subsection (2)).
8. Subsection (3) allows the definition of “property factor” in subsection (1) and the exclusions from that definition established by subsection (2) to be modified by order made by the Scottish Ministers (and approved by the Scottish Parliament). So, for example, additional persons could be defined as a property factor for the purposes of the Act or one of the existing categories of person who is a property factor removed.