



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 1

#### REGISTRATION OF PROPERTY FACTORS

##### *Removal from register etc.*

#### **8 Removal from register**

- (1) Subject to subsections (4) and (6), the Scottish Ministers may remove a property factor from the register if subsection (2) or (3) applies.
- (2) This subsection applies where a property factor is registered by virtue of section 4(4) (a) and the Scottish Ministers consider that—
  - (a) the property factor is no longer a fit and proper person to be registered as a property factor,
  - (b) the property factor has failed to comply with section 13(3), or
  - (c) the property factor has failed to demonstrate compliance with—
    - (i) the property factor code of conduct, or
    - (ii) any property factor enforcement order made against the property factor by [<sup>F1</sup>the First-tier Tribunal] .
- (3) This subsection applies where a property factor is registered by virtue of section 4(4) (b) and the Scottish Ministers consider that one or more of the conditions specified in sub-paragraphs (i) to (iv) of that section is no longer met.
- (4) Before removing a property factor from the register under subsection (1) the Scottish Ministers must—
  - (a) give notice to the responsible person that removal under that subsection is under consideration, and
  - (b) allow the property factor an opportunity to make representations to them.
- (5) Notice under subsection (4) must be accompanied by a written statement of the Scottish Ministers' reasons for proposing to remove the property factor from the register under subsection (1).

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*Changes to legislation: There are currently no known outstanding effects for the Property Factors (Scotland) Act 2011, Cross Heading: Removal from register etc.. (See end of Document for details)*

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- (6) The Scottish Ministers must not remove the property factor from the register under subsection (1) unless they are satisfied, after taking account of any representations made to them under subsection (4)(b), that subsection (2) or (3) applies.
- (7) Where the Scottish Ministers decide to remove a property factor from the register under subsection (1), they must, as soon as practicable after doing so, give notice of that fact (and the date of removal, which must be a date no less than 21 days after the date notice is given under this subsection) to the responsible person and give public notice of the date of removal.

#### Textual Amendments

- F1** Words in s. 8(2)(c) 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. 4](#) (with [sch. 1 para. 5](#))

#### Commencement Information

- II** S. 8 in force at 1.7.2012 by [S.S.I. 2012/149](#), art. 2, [sch.](#) (with [art. 3](#))

## 9 Effect of refusal to enter in register or removal from register

- (1) Subsection (2) applies where the Scottish Ministers—
- (a) refuse under section 4(5) an application for entry in the register by a person who is operating as a property factor on the day on which section 3 comes into force,
  - (b) remove a property factor from the register under section 4(7), or
  - (c) remove a property factor from the register under section 8(1).
- (2) After the relevant date—
- (a) no costs incurred by the property factor in respect of work instructed after the relevant date are recoverable,
  - (b) no charge imposed by the property factor which relates to a period after the relevant date is recoverable,
  - (c) homeowners may appoint new property factors (or decide to manage their properties without appointing a property factor) in accordance with the procedures made in relation to such decisions in their title deeds or, as the case may be, the Tenement Management Scheme,
  - (d) the property factor may not lodge a notice of potential liability for costs under section 13(1) of the Tenements (Scotland) Act 2004 (asp 11) in respect of work instructed after the relevant date.
- (3) The Scottish Ministers must, as soon as practicable after the relevant date, give public notice of—
- (a) the refusal or removal mentioned in subsection (1)(a), (b) or, as the case may be, (c),
  - (b) the relevant date, and
  - (c) the effect of subsection (2).

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#### Commencement Information

**I2** S. 9 in force at 1.7.2012 by S.S.I. 2012/149, art. 2, sch. (with art. 3)

### 10 Section 9: interpretation etc.

- (1) For the purposes of section 9(1)(b), a property factor is not removed from the register where the entry removed under section 4(7) is replaced, before or at the time of the removal, by another entry made by virtue of a further application for entry in the register under section 3(1) by the person to whom the entry removed under section 4(7) relates.
- (2) In section 9, “relevant date” means—
  - (a) in relation to a case mentioned in section 9(1)(a) or (c), the day after the day on which—
    - (i) the period within which any appeal under section 11(2) may be made expires (without such an appeal being made), or
    - (ii) any such appeal is concluded (without the Scottish Ministers being required to enter the applicant in the register),
  - (b) in relation to a case mentioned in section 9(1)(b), the day after the day on which the entry in the register is removed under section 4(7).
- (3) For the purposes of subsection (2), an appeal is concluded only when—
  - (a) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
  - (b) any such appeal has been concluded.
- (4) In section 9(2)(c), “Tenement Management Scheme” has the meaning given by section 29(1) of the Tenements (Scotland) Act 2004.
- (5) In this Act, “homeowner” means—
  - (a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
  - (b) an owner of residential property adjoining or neighbouring land which is—
    - (i) managed or maintained by a property factor, and
    - (ii) available for use by the owner.

#### Commencement Information

**I3** S. 10(1)-(4) in force at 1.7.2012 by S.S.I. 2012/149, art. 2, sch. (with art. 3)

**I4** S. 10(5) in force at 23.9.2011 by S.S.I. 2011/328, art. 2, sch.

**Changes to legislation:**

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