



# Property Factors (Scotland) Act 2011

## 2011 asp 8

### PART 1

#### REGISTRATION OF PROPERTY FACTORS

##### *Enforcement*

#### **12 Offence of operating as a property factor without registration**

- (1) Except where subsection (2) or (3) applies, a person who operates as a property factor while unregistered is guilty of an offence.
- (2) This subsection applies where—
  - (a) a person who is operating as a property factor on the day on which section 3 comes into force has made an application for entry in the register, and
  - (b) the application has not yet been determined by the Scottish Ministers under section 4.
- (3) This subsection applies where a property factor has been removed from the register under section 8(1) but only until—
  - (a) the period within which any appeal under section 11(2) in relation to the removal may be made expires (without such an appeal being made), or
  - (b) any such appeal is concluded.
- (4) It is a defence for a person charged with an offence under subsection (1) to show that there was a reasonable excuse for acting in the way charged.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding six months or to both.
- (6) Where—
  - (a) an offence under subsection (1) has been committed by a body corporate or a Scottish partnership or other unincorporated association, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or

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*Status: This is the original version (as it was originally enacted).*

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(ii) an individual purporting to act in the capacity of a relevant individual, that individual, as well as the body corporate, Scottish partnership or other unincorporated association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(7) In subsection (6), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a Scottish partnership, a partner,
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

(8) For the purposes of—

- (a) subsection (2)(b), an application is determined only when—
  - (i) the period within which any appeal under section 11(2) in relation to the application may be made expires (without such an appeal being made), or
  - (ii) any such appeal is concluded,
- (b) subsection (3)(b) and paragraph (a)(ii) of this subsection, an appeal is concluded only when—
  - (i) the period within which an appeal under section 11(9) may be made has expired without such an appeal being made, or
  - (ii) any such appeal has been concluded.