



Property Factors (Scotland) Act 2011

2011 asp 8

PART 1

REGISTRATION OF PROPERTY FACTORS

Registration

3 Application for registration

- (1) A person who is, or intends to become, a property factor may apply to the Scottish Ministers for entry in the register.
- (2) An application under subsection (1) must specify—
 - (a) the full name and business address of the person, and if formed and registered under the Companies Acts, the company's registered number,
 - (b) whether the person is trading as a sole trader, partnership or company or has some other legal status,
 - (c) where the person is not trading as a sole trader, the full name and business address of the individual who holds the most senior position within the management structure of the partnership, company or body which is (or is to be) directly concerned with the control or governance of the property factor,
 - (d) the full name and address of any other person who is (or is to be) directly concerned with the control or governance of the property factor,
 - (e) any dwelling houses, flats or land in relation to which the person acts, or expects to act, as a property factor, and
 - (f) such other information as the Scottish Ministers may by regulations prescribe.
- (3) An application under subsection (1) must be—
 - (a) signed by the responsible person, and
 - (b) subject to subsection (4), accompanied by such fee as the Scottish Ministers may determine.
- (4) Subject to subsection (5), the Scottish Ministers may by regulations prescribe for the purposes of subsection (3)(b)—
 - (a) fees,
 - (b) how fees are to be arrived at,

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- (c) cases in which no fee is payable.
- (5) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section and section 7 does not exceed the total cost incurred in exercising their functions under this Part.
- (6) A person who, in an application under this section—
 - (a) specifies information which the person knows is false in a material particular, or
 - (b) knowingly fails to specify information required by subsection (2),is guilty of an offence.
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) For the purposes of subsection (2)(d) and section 5, persons who are directly concerned in the control or governance of a property factor include any person who owns 25% or more of the equity in a business which is a property factor.
- (9) In this Part, the “responsible person” is—
 - (a) where the person making the application under subsection (1) is a sole trader, that person,
 - (b) in any other case, the person specified in the application by virtue of subsection (2)(c).

4 Registration

- (1) This section applies where a person makes an application to the Scottish Ministers in accordance with section 3.
- (2) In any case where the Scottish Ministers are considering refusing to enter a person in the register, they must before doing so—
 - (a) give notice to the responsible person that refusal is under consideration, and
 - (b) allow the person who made the application under section 3(1) an opportunity to make representations to them.
- (3) Notice under subsection (2) must be accompanied by a written statement of the Scottish Ministers’ reasons for proposing to refuse to enter the person in the register.
- (4) The Scottish Ministers must enter the person in the register if, having considered the application and taken account of any representations made by virtue of subsection (2), they are satisfied—
 - (a) where the person has not previously been registered, that the person is a fit and proper person to be a property factor,
 - (b) where the person is, or has previously been, registered, that—
 - (i) the person is a fit and proper person to be a property factor,
 - (ii) the person has demonstrated compliance with section 13(3),
 - (iii) the person has, while registered, demonstrated compliance with the property factor code of conduct, and
 - (iv) the person has demonstrated compliance with a property factor enforcement order made against the person by a homeowner housing committee.

- (5) Otherwise, the Scottish Ministers must refuse to enter the person in the register.
- (6) An entry under subsection (4) must include the information specified in the application by virtue of paragraphs (a) to (f) of section 3(2).
- (7) Subject to section 8, where the Scottish Ministers make an entry under subsection (4), they must remove the entry from the register—
 - (a) on the expiry of the period of 3 years beginning with the day on which the entry is made, or
 - (b) where the person to whom the entry relates—
 - (i) has made a further application for entry in the register under section 3(1), and
 - (ii) that application has not been determined on the expiry of the period mentioned in paragraph (a),on the determination of that further application.
- (8) For the purposes of—
 - (a) subsection (7)(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) paragraph (a)(ii), 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.

5 Section 4: considerations

- (1) In deciding for the purposes of section 4(4)(a) or (b)(i) whether a person is a fit and proper person to be a property factor, the Scottish Ministers are to have regard (among other things) to any material falling within subsections (2) to (4).
- (2) Material falls within this subsection if it shows that any person who is (or is to be) directly concerned with the control or governance of the property factor, has—
 - (a) been convicted of any offence involving—
 - (i) fraud or other dishonesty,
 - (ii) violence, or
 - (iii) drugs,
 - (b) practised unlawful discrimination on the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15), or
 - (c) contravened any provision of the law relating to tenements, property or debt.
- (3) Material falls within this subsection if it shows the extent to which any other property factor with which the person (or any other person who is, or is to be, directly concerned with the control or governance of the property factor) is or has previously been involved demonstrates or demonstrated compliance with—
 - (a) the property factor code of conduct, and
 - (b) any property factor enforcement order made against that other property factor by a homeowner housing committee.

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- (4) Where the person is, or has previously been, registered, material falls within this subsection if it shows that the person has failed to pay any charges imposed by virtue of section 26.

6 Notification of registration, refusal to register or removal

Where the Scottish Ministers—

- (a) enter a person in the register under section 4(4),
- (b) refuse to enter a person in the register under section 4(5), or
- (c) remove an entry under section 4(7),

they must, as soon as practicable after doing so, give notice to the responsible person of that fact and, in a case mentioned in paragraph (a) or (c), the date of entry or, as the case may be, removal.

7 Duty of responsible person to provide information

- (1) This section applies where a property factor is registered.
- (2) Where in consequence of a change in circumstances any information provided by the property factor to the Scottish Ministers by virtue of section 3(2)(a) to (d) or, as the case may be, this subsection, becomes inaccurate, the responsible person must, as soon as practicable after the inaccuracy arises, give notice to the Scottish Ministers of the change that has occurred.
- (3) The property factor must, no later than three months after the end of each financial year, give notice to the Scottish Ministers—
- (a) of any dwelling houses, flats or land in relation to which the property factor has acted as property factor during that financial year, or
 - (b) if there has been no change in that information since—
 - (i) the date of the last notice given under this subsection, or
 - (ii) if the person became registered as a property factor during the financial year, the date on which the person provided the information referred to in section 3(2)(e),that there has been no change in that information.
- (4) Subject to subsection (5), any notice given under subsection (2) or (3) must be accompanied by such fee as the Scottish Ministers may determine.
- (5) Subject to section 3(5), the Scottish Ministers may by regulations prescribe for the purposes of subsection (4)—
- (a) fees,
 - (b) how fees are to be arrived at,
 - (c) cases in which no fee is payable.
- (6) A person who, without reasonable excuse, fails to comply with subsection (2) or (3) is guilty of an offence.
- (7) A person who, in a notice under subsection (2) or (3), provides information which the person knows is false in a material particular, is guilty of an offence.
- (8) A person guilty of an offence under subsection (6) or (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.