Final
Business and Regulatory Impact Assessment

PROPERTY FACTORS (SCOTLAND) ACT 2011:
THE PROPERTY FACTORS (REGISTRATION) (SCOTLAND) REGULATIONS 2012

Purpose and intended effect

- **Background**

In 2009 the Office of Fair Trading produced a market study of residential property managers in Scotland. The study highlighted the perceived problems within the industry and made some recommendations as to how the sector can move forward.

The study highlighted that that there was a lack of information available to property owners. Many of them did not understand their rights and obligations, were unsure what they should expect from their property manager and the standard of service that should apply.

The report set out some key recommendations. These included property factors providing homeowners with a written set of services; detailed financial breakdowns (including invoices); explanations of how and why particular contractors had been appointed; complying with the Financial Services Authority (FSA) guidelines on disclosure of commission on insurance; and operating a complaints procedure. The report also recommended that if self-regulation of the industry does not work, the Scottish Government should take the lead in introducing statutory legislation to ensure it is effective.

In 2010, the Scottish Government undertook a consultation on the proposed standards for a voluntary accreditation scheme for property managers. However, this was overtaken in June 2010, by the introduction of the Property Factors (Scotland) Bill. This was a Member's Bill brought to the Parliament by Patricia Ferguson MSP. The Bill was passed by Parliament with support across the chamber, and received Royal Assent on 7 April 2011. All provisions of the Act will come into force by 1 October 2012.

The Act contains three main elements; registration of all property factors, a statutory code of conduct against which all property factors are obliged to operate and a dispute resolution system called the homeowner housing panel.

<u>Register</u>

Under Section 12 of the Act, operating as a property factor unregistered will be a criminal offence. Registration will be administered by the Scottish Government and aims to open for applications in July. The Act states that the register must be publicly available. It defines a list of information that property factors must supply (see section 3(2)(a) to (e) of the Property Factors (Scotland) Act 2011) and gives Ministers the power to make regulations to prescribe other information to be supplied (section 3(2)(f)). In addition, the Act includes provision for Ministers to use a power (set out in section 3(4) of the Act) to make regulations to charge property factors a fee to register. It is the Scottish Government's intention to use both these powers.

<u>This BRIA relates primarily to the Register element of the Property Factors (Scotland) Act 2011.</u>

<u>Code of Conduct</u>

The code of conduct is one of the central provisions of the Property Factors (Scotland) Act 2011. Section 14 of the Act provides that Scottish Ministers must from time to time prepare a code of conduct setting out minimum standards of practice for registered property factors. A separate BRIA has been prepared and published to assess the impact of the code of conduct.

Dispute Resolution – Homeowner Housing Panel (HHP)

Part 2 of the Act introduces a new dispute resolution system for homeowners – the homeowner housing panel (HHP). Homeowners may apply to the HHP for determination of whether a property factor has failed to comply with the Code of Conduct or otherwise carry out their duties. The HHP will be based on an expansion of the existing Private Rented Housing Panel (PRHP). There is no cost to homeowners to raise a case with the HHP, and in the initial period of operation the costs of operating the HHP will be met by the Scottish Government.

- **Objective**

The primary objective of the Property Factors (Scotland) Act 2011 is to create a statutory framework to protect homeowners in Scotland who use factoring services. The Act will apply to all residential property and land managers whether they are private sector businesses, local authorities or housing associations.

- **Rationale for Government intervention**

The rationale for Government intervention was initially in response to the perceived problems highlighted in the Office of Fair Trading market study 2009. A voluntary accreditation scheme for property managers was under development by the Scottish Government, but the introduction of the Members Bill by Patricia Ferguson MSP and the subsequent Royal Assent of the Property Factors (Scotland) Act 2011 superseded this work. It places a statutory duty on all property factors to register, and requires the development of minimum standards for the industry and the introduction of the Homeowner Housing Panel by 1 October 2012.

The power under section 3 (4) of the Act, to prescribe a registration fee for a property factors is the focus of this Business and Regulatory Impact Assessment.

The aims of the Act, and within it the Register, will contribute to the following National Outcome: *“We value and enjoy our built and natural environment and protect it and enhance it for future generations.”*

Consultation

- **Within Government**

A number of teams, departments and agencies were engaged in and provided assistance to the development of the Register. The lead policy team was the Private Housing Services Team within the Housing Services and Regeneration Division, part of the Housing, Regeneration, Commonwealth Games and Sport Directorate. This team drafted the plan that formed the basis for the development of a Register.

Consultation within Scottish Government began in May 2011 when IT colleagues were contacted to provide assistance in the development of the Register. Comparable registration systems were also investigated through discussions with the Landlord Registration Team and Rent Service Scotland. The systems looked at included the Landlord Register, Rent Officer Case Administration System (ROCAS) system, Tobacco Register and the Debt Arrangement Scheme (DAS) Register.

Options for receiving payments were also considered with Treasury and Banking, and Finance colleagues.

Colleagues from Law Reform Division and Scottish Government Legal Services also provided significant support.

- **Public Consultation**

Scottish Government has not consulted specifically with the public with regard to setting the fees for registration as these costs will apply to the factoring organisations not their home-owning customers. However, the public were consulted during the Code of Conduct consultations over a 12 week period from September to December 2011 where the issue of fee levels were raised. 138 written consultation responses were received and two thirds of them came from private individuals including 2 MSPs. The consultation event and responses were analysed by ODS Consulting and an analysis report, and the individual responses received, were published on the Scottish Government's website on the 16 February.

- **Business**

The Property Factor register will have some similarities to the Landlord Register. The Landlord Register is administered by all 32 local authorities in Scotland and as such a cross section of them were consulted to provide advice. The local authorities consulted were:

- Dundee City Council
- Glasgow City Council
- Stirling Council
- South Lanarkshire Council

We have also had regular dialogue with the:

- Property Managers Association (PMAS)
- Association of Local Authority Chief Housing Officers (ALACHO)

We also liaised with stakeholders during the Scottish Federation of Housing Association's (SFHA) conference on the 29 March 2012 and the Chartered Institute of Housing (CIH) conference on the 2 May 2012.

Specific impact assessment interviews were held with six organisations across the industry. (Further details of the outcomes from these are included under the section on Scottish Firms Impact Test.)

Options

Part 1, section 3(5) provides a power for Ministers to make regulations to prescribe fees for registration. In setting fees, Ministers must make sure that the income generated does not exceed the cost of operating the register.

The following three options were considered in relation to setting or not setting fee levels:

Option 1 – No Registration Fee

Registration would be free for all factoring organisations. All costs would have to be absorbed by the Scottish Government.

Option 2 – A Flat Fee

Introducing a flat fee of **£275** to cover the registration for 3 years that would be applicable to all registering organisations. Introducing a fee will enable the Scottish Government to recoup some of the cost associated with the running of the register. The remainder would be absorbed by the Scottish Government.

Option 3 – Two Tiered Fees

This option would introduce two fee levels for factoring organisations. The fee level applied would depend on the size of the organisation as follows:

- **£100** registration fee for property factors with a portfolio size of less than 100 customers
- **£370** registration fee for property factors with a portfolio size of 100 or more 100 customers

Introducing a fee will enable the Scottish Government to recoup some of the cost associated with the running of the register. The remainder would be absorbed by the Scottish Government.

- **Benefits**

Option 1 – No Registration Fee

This option would encourage all property factors to register as they would not incur a fee to do so. The registration process would be quicker and more straight forward and the factors paying customers would not have to meet this additional charge as the registration fee costs are likely to be passed onto the homeowners.

Option 2 – A Flat Fee

Implementing a fee-charging system will provide better value for the public purse as the Scottish Government can recoup some of the costs associated with Part 1 of the Act, as well as providing an ongoing income stream to help sustain the register in future years.

Introducing a single flat fee would be easy to administer and would create a level playing field for all as there would be no dubiety over the costs when registering. It would most certainly speed up the registration process compared with tiered fees as there would be no confusion over the charges.

Option 3 – Two Tiered Fees

Implementing a fee-charging system will provide better value for the public purse as the Scottish Government can recoup some of the costs associated with Part 1 of the Act, as well as providing an ongoing income stream to help sustain the register in future years.

The tiered option would recognise the impact on smaller businesses as a lesser, more manageable registration fee should encourage these businesses to register. It reflects the fact that they have a smaller customer base and therefore if any costs are passed on to homeowners they will not be disproportionately high compared to those organisations with a large customer base. Even the higher rate for larger businesses is fairly low and any on-costs resulting should not be significant.

- **Costs**

Option 1 – No Registration Fee

The financial impact to the industry would be nil if this option were introduced. However, the cost to the Scottish Government per annum are estimated to be £25,000 which would have to be met by the public purse.

Option 2 – A Flat Fee

The cost for each factoring organisation to register would be **£275** for 3 years. This cost will be most likely be met by the registering organisations' factoring customers. It is unlikely that this cost will any cause significant burden to the factoring customers or factoring organisations as the registration costs have been kept to a minimum. It is anticipated that the cost to run the register will predominantly be made up of staff time and register running costs. Scottish Ministers have been mindful that any income generated from the registration fees cannot exceed the cost to run the register. Any additional costs will be met by the Scottish Government.

Option 3 – Two Tiered Fees

The cost for each factoring organisation to register for 3 years would be:

- **£100** registration fee for property factors with a portfolio size of less than 100 customers.
- **£370** registration fee for property factors with a portfolio size of 100 or more 100 customers.

These cost will be most likely be met by the registering organisations' factoring customers. It is unlikely that this cost will any cause significant burden to the factoring customers or factoring organisations as the registration costs have been kept to a minimum. The tiered option would recognise the impact on smaller businesses as a lesser, more manageable registration fee should encourage these businesses to register. It is anticipated that the cost to run the register will predominantly be made up of staff time and register running costs. Scottish Ministers have been mindful that any income generated from the registration fees cannot exceed the cost to run the register. Any additional costs will be met by the Scottish Government.

Scottish Firms Impact Test

Interviews were conducted with a cross section of the industry to gather evidence of the various issues that may affect them when the Act comes into force on the 1 October 2012. The type of industries consulted included public sector factoring organisations (a local authority and two registered social landlords), two traditional property factor organisations from the private sector and a land maintenance organisation.

Overall, the industry gave positive support for the Act and intimated that its provisions will be welcomed. The perceived cost implications in relation to the register are highlighted below:

The industry were asked to consider the impact on levying a fee to register and their thoughts on flat rate fees and tiered fees in relation to industry size. The industry were also given an indication as to what the fee levels are likely to be. In the main, the industry were content and accepting of the fact that there would be a fee to register. They felt that the proposed fee levels would not have a negative impact on the industry. They were happy with the proposal to tier the fee levels but there was discussions on how this fee could be fairly split across the industry.

The other main cost issue discussed was the ease in which it would be to provide a portfolio list of their customers, which is a requirement of the Act. In the main, the industry did not feel this would cause any significant issues as data could be easily manipulated through their systems quickly and easily. However, it was highlighted that providing this information easily will depend on the existing technology and systems of each organisation.

- **Competition Assessment**

The register will have no bearing on, and will not directly limit, the number or range of property factoring businesses in operation. The two-tier registration fee reflects that smaller businesses will have smaller income streams from their customer base, while the higher rate fee of £370 for a three-year registration for larger organisations is not considered to be a significant burden. All principles in the register will apply equally across the industry. There will be no impact on the ability of suppliers to compete.

Specific information contained in the register will be publically available.

Legal Aid Impact Test

Customers of factoring organisations will not be charged if a case goes to the Homeowner Housing Panel, and there is no requirement or expectation that they will be legally represented during the proceedings.

There are likely to be a small number of appeals from the Homeowner Housing Panel to the Sheriff Court and that, subject to the statutory eligibility tests, legal aid would be available in these cases. Legal aid costs in this respect are likely to be minimal.

Enforcement, sanctions and monitoring

Operating unregistered as a property factor in Scotland will be a criminal offence after 1 October 2012 (unless the organisation has submitted an application for registration by 1 October but it is still under consideration).

Registering organisations will be required to provide Scottish Ministers with the names of the responsible person or persons within their organisation. A responsible person is directly concerned in the control or governance of a property factor. They may be a sole trader; an individual who holds the most senior position within the management structure of a partnership, company or body; or a person who owns 25% or more of the equity of a property factor business. In order for a organisation to legally operate as a property factor, the responsible person(s) must pass a “fit and proper person” test which is set out in section 5 of the Act.

Organisations will have to re-register every 3 years and evidence gathered since they first registered will be considered before a factor is approved. This evidence may include compliance with the Code of Conduct, information from gathered through the Homeowner Housing Panel including the issuing of and compliance with Property Factor Enforcement Orders.

All registering organisations will be expected to adhere to the conditions stated in the Code of Conduct. If a registered organisation fails to comply with the Code of Conduct, their home-owning customers can register a complaint through the organisation’s own complaints procedures. If the issue remains unresolved, the complaint can be taken to the homeowner housing panel where, depending on the outcome, the factor can be issued with a Property Factor Enforcement Order.

Failure to comply with an Enforcement Order will be a criminal offence. Failure to comply with the code of conduct or with a Property Factor Enforcement Order can also be taken into account by Scottish Ministers when making decisions about whether to enter a property factor on the register or remove them from the register.

Implementation and delivery plan

The Property Factors (Scotland) Act 2011 has a commencement date of the 1 October 2012 when all elements of the Act will come into force. This includes the register and the Code of Conduct (Part 1 of the Act), and the Homeowner Housing Panel as the dispute resolution mechanism (Part 2 of the Act).

- **Post-implementation review**

The impact of implementation of the Act will be closely monitored following the 1 October implementation deadline. The register will be monitored to ensure that it is fit for purpose.

The government will monitor the register for the first three years, and will then evaluate its operation to establish whether changes are required, with a view to implementing changes if necessary during the second three-year period.

Summary and recommendation

When the Property Factors (Scotland) Act 2011 comes into force on the 1 October 2012, all provisions of the

The intention of the Property Factors (Scotland) Act 2011 is to make the register available for public inspectio

Three options were considered in relation to fees for property factors to register. These were *Option 1 – No* is recommended that the register set **two tiered fees** level for the following reasons.

- This option proposes a fee of £100 for Property Factors with a portfolio size of less than 100 and £370 fo
- It is considered that this Option will best respect and protect the pressures on small property factor busin on time.
- As part of the consultation on the Code of Conduct the issue of fee charging on registration was raised by registration fee should take cognisance of the scale and nature of the business.
- In most instances homeowners pay for the service provided by a Property Factor and it is likely that any c minimum with have less impact in the home-owning customers.

In concluding the analysis, the two tier approach would best respect and protect the pressures on small prop turn, this will encourage such businesses to register.

Summary costs and benefits table

Part 1, section 3(4) provides a power for Ministers to make regulations to prescribe fees for registration. In s operating the register.

The cost to run the register should be cost-effective as the additional charges are likely to be passed onto th issuing homeowners with a written statement of services as specified in the Code of Conduct. The low fees registered.

The cost to develop and maintaining the register in-house has been estimated as follows:

System development		£50,736	
Running Costs		Annual	3 Years
System running costs		£5,000	£15,000
Staff costs (FTE member of admin staff)		£20,000	£60,000
	Total	£25,000	£75,000

Option	**Total benefit per annum:** **- economic, environmental, social**	**Total cost per annum:** **- economic, environmental, social** **- policy and administrative**
Option 1: No Registration Fee	• No cost to the factoring organisation to register • Reduced chance that any part of the industry will be unable to comply • As the registration fee costs are likely to be passed onto the homeowner, with no registration fee in place, this cost cannot be passed onto their customers.	The cost for factoring organisations to register would be **nil**. The cost to the Scottish Government will be **£25,000** per annum if no fees are set.
Option 2: A Flat Fee	• Would make it easier for the Scottish Ministers to administer. • There would be no dubiety of which fee would apply to each organisation. • The registration fees would create a minimal financial burden to registering organisations. This cost is likely to be passed onto the homeowner but with the fees set low it is unlikely that this will cause a significant financial burden.	The cost for each factoring organisation to register would be **£275** for 3 years. There are approximately 218 property factors in Scotland (as per the Office of Fair Trading (OFT) 2009 market study). If each organisation paid a registration fee of £275, it would generate an income of £59,950 for 3 years. Annually, this means that the Scottish Government would recover **£19,983** of the annual registration costs leaving **£5,017** per annum to be paid by the Scottish Government.
Option 3: Tiered Fees	• The small fees levels will help encourage property factor businesses to register on time. • Stakeholders stated during the Code of Conduct consultation that registration fees should take account of the scale and nature of the business. • The two tier approach would best respect and protect the pressures on small property factor businesses whilst also returning the desired level of income without substantial financial levy on larger business.	The cost for each factoring organisation to register would be: **£100** (portfolio less than 100 customers) **£370** (portfolio 100 customers and over) There are approximately 76 property factors with a portfolio size less than 100 customers and 142 property factors with a portfolio of 100 customers and over in Scotland (as per the Office of Fair Trading (OFT) 2009 market study). The paid registration fees would generate an income of £60,140 for 3 years. Annually, this means that the Scottish Government would recover **£20,047** of the annual registration costs leaving **£4,953** per annum to be paid by the Scottish Government.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date:

Keith Brown MSP
Minister for Housing and Transport

Scottish Government Contact point:

Angela Cameron
Policy Officer
Private Housing Services
Housing Options and Support Division
Endeavour House
1 Greenmarket
DUNDEE, DD1 4QB