

Enforcement of the Property Factors (Scotland) Act 2011

Scottish Ministers will take action against property factors who do not comply with the regime.

Unregistered Property Factors

The Scottish Ministers will act upon any third party information relating to companies or individuals providing factoring services while unregistered and/or using a registration number purporting to another registered property factor.

This involves:

- cross checking information received with information held on the register
- engaging with the organisation/individual to ascertain their position regarding compliance with the Act and provide assistance to the organisation/individual in order to facilitate an application to register
- monitoring whether an application has been made to register
- referring the matter to the Police for investigation if applicable

Information on unregistered property factors can be reported to the Property Factor Registration team at propertyfactorregister@gov.scot.

It would be helpful if reports could include the property factor's name, address, details of any persons associated with the property factor and their contact details. This will assist any subsequent enquiries.

Registered Property Factors

The following may be examples of non-compliance by a registered property factor:

- failure to comply with a property factor enforcement order (PFEO) issued by the [Homeowner Housing Panel](#) (HoHP). The HoHP can issue a failure to comply notice if it decides that a property factor has failed to comply with all or part of any requirements set out in a PFEO. The Property Factors (Scotland) Act 2011 (the Act) requires the HoHP to inform Scottish Ministers of the failure to comply. The HoHP may also report the offence to the Police for further investigation
- failure to comply with the [Code of Conduct](#)
- failure to inform Scottish Ministers of a change in circumstances including changes to the responsible and relevant persons and information provided for the ['fit and proper person'](#) declaration
- failure to complete the [annual property portfolio update](#) within the first three months of the new financial year (April-June)
- failure to use a property factor registered number in correspondence with homeowners
- failure to provide any other information as required by the Act

General approach to enforcement

Where issues have been identified in relation to non-compliance, Scottish Ministers will take action to address these including:

- engaging with the registered property factor to ascertain their position regarding compliance with the Act
- monitoring the registered property factor's future compliance with the Act and informing the property factor that this is being undertaken
- considering a registered property factor's compliance history when assessing a new application to register, changes of Fit and Proper Person (if linked to the property factor being monitored or to another property factor) and any further issues of non-compliance
- referring offences under the Act to the Police for investigation if applicable
- pursuing formal action to remove the property factor from the register if any statutory requirements continue to not be met

Removing a property factor from the register during its current registration

Scottish Ministers have the power to remove a property factor from the register where:

- the property factor is no longer a fit and proper person to be a registered property factor
- the property factor has failed to demonstrate compliance with either the property factor code of conduct, a property factor enforcement order or the requirement to take all reasonable steps to ensure that their property factor registered number is included in any document sent to homeowners
- a further application for entry to the register has been made prior to the expiry of the current registration and the outcome of that application is to refuse entry

In the above cases (with the exception of a removal following refusal of a further application for entry) the Scottish Ministers will:

- inform the property factor that removal is being considered and provide details on how representations can be made

For all the above cases, where a subsequent decision to remove the property factor is made, the Scottish Ministers will:

- inform the property factor of the decision to remove, provide details of the date of removal, the effect of removal, the date that the effect of removal comes into force and details of any route of appeal
- arrange for the date of removal to be published via a public notice
- send a copy of the public notice to local authorities who may have an interest

On the basis that the decision to remove is not subject to a successful appeal, the Scottish Ministers will:

- arrange for date of the removal and the effect of removal to be published via a further public notice
- send a copy of the public notice to local authorities who may have an interest

It is an offence for a person to continue to act as a property factor whilst unregistered.

Removing a property factor whose registration has expired

A property factor's entry on the register last three years from the date of entry unless a further application for entry on to the register has not been determined before the expiry of the three year period.

A property factor will be removed where no further application for entry to the register has been made prior to the expiry of the current registration.

In this case, Scottish Ministers will:

- inform the property factor of the decision to remove and provide details of the date of removal and the effect of removal
- arrange for the date of the removal, the effect of removal and the date that the effect of removal comes into force to be published via a public notice
- send a copy of the public notice to local authorities who may have an interest

There is no route of appeal against this type of removal although a property factor can choose to make a [new application for entry](#) if it chooses to do so. Consideration of the application will take into account the property factor's previous compliance as required by the Act.

It is an offence for a person to continue to act as a property factor whilst unregistered.

Informing homeowners who may be affected by the decision to remove a property factor

The requirements of providing public notice of a removal are set out as above. For all cases of removal, there is no requirement in the Act for the Scottish Ministers to **directly** inform homeowners in respect of any decision to remove their property factor from the register.

The name of a property factor who has either been served with a notice of removal or has been removed from the register will appear on the Scottish Property Factor Register [news page](#) around the time of the publication of the related public notice.

The proposed or actual date of removal from the register and a reference to the date and the newspaper(s) that the public notice was published will be provided.

There is also no current requirement in the Act to inform homeowners where a property factor's entry on the register has been considered and the outcome of that consideration is for the property factor to remain on the register.

Information on appointing and dismissing a property factor

The Act provides protections for homeowners. All property factors operating in Scotland are required to be registered and must comply with a code of conduct setting out minimum standards of practice. A requirement of the code is that the property factor must provide the homeowner with a written statement of services provided. This written statement of services should include the basis on which a homeowner can end their service arrangement.

The [register of property factors](#) can be searched for registered property factors operating nationally or in local areas.

It is for homeowners to collectively decide if they wish to appoint or dismiss their property factor. The Title Conditions (Scotland) Act 2003 makes provision on the switching of property factors. Essentially, there are three different mechanisms which might apply:

- if the title deeds provide for a procedure by which such a decision is taken, then that will be followed
- if the title deeds do not say anything on how a decision is to be taken, then a simple majority will be able to make a decision to appoint or dismiss
- regardless of what the title deeds say, a majority of two-thirds of the owners can agree to appoint or dismiss a manager so long as a "manager burden" is not in place. A "manager burden" normally expires after 5 years

Information on appointing or dismissing a factor is available in paragraph 3.3.5 of the Scottish Government publication [Common Repair, Common Sense](#).

Appendix A

Property Factors (Scotland) Act 2011 – date of removal and effect of removing a property factor from the property factor register

The following 'effect of removal' applies when

- a property factor is removed following the expiry of their current three year registration and when no new application for entry to the register has been received by Scottish Ministers
- a property factor has submitted a further application for entry to the register prior to the expiry of its current three year registration and that application has subsequently been refused by Scottish Ministers and where the outcome of any appeal has been concluded
- a property factor is removed during its current three year registration under section 8(1) of the Act

The date of removal and the relevant date under section 10(2)(b) of the Act can vary depending on the circumstances of the removal.

In accordance with section 9(2) of the Act, the following effect of removal applies after the relevant date.

- no costs incurred by the property factor in respect of work instructed after the relevant date are recoverable
- no charge imposed by the property factor which relates to a period after the relevant date is recoverable
- 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
- 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

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