

PROPERTY FACTORS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Property Factors (Scotland) Bill introduced in the Scottish Parliament on 1 June 2010:

- Explanatory Notes;
- a Financial Memorandum;
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 51-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by Govan Law Centre on behalf of Patricia Ferguson MSP, the member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill is in three parts:
- Part 1 – Registration of property factors
 - Part 2 – Dispute resolution
 - Part 3 – Miscellaneous and general

PART 1 – REGISTRATION OF PROPERTY FACTORS

5. The main effects of Part 1 of the Bill are to:
- require the Scottish Ministers to prepare and maintain a public register of all property factors;
 - make it an offence for a property factor to operate without being registered;
 - require a property factor to provide certain information when applying to be registered and to make some of that information publicly available on the register;
 - make it an offence to knowingly fail to provide or provide false information in respect of an application to be registered;
 - require the Scottish Ministers to consider whether a property factor is a fit and proper person to be registered as a property factor;
 - allow the Scottish Ministers to refuse to register a property factor and also to remove a property factor from the register;
 - require a property factor to inform the Scottish Ministers of any changes in the information they were required to provide when they applied to be registered which occur after they are registered;
 - to make it an offence for a registered property factor to fail, without reasonable excuse, to inform the Scottish Ministers of any changes in the information they were required to provide when they applied to be registered;

- allow a property factor to apply for a court order requiring the Scottish Ministers to enter the property factor in the register in circumstances where their application was refused or they were removed from the register, and to permit the property factor to appeal the sheriff's decision to the sheriff principal;
- require the Scottish Ministers to prepare a code of conduct as to minimum standards of practice expected by registered property factors;
- require property factors to comply with the code of conduct; and
- allow the Scottish Ministers to set fees in relation to applications for registration and changes in information, payable by property factors.

Section 1 – Register of property factors

6. Section 1(1) places a duty on the Scottish Ministers to prepare and maintain a register of property factors. Section 1(2) requires that this register must be available for public inspection at all reasonable times.

Section 2 – Meaning of “property factor”

7. Section 2(1) defines property factor for the purposes of the Bill. It establishes that there are three distinct groups covered by this definition. Firstly, persons who in the course of their business manage the common parts of land or buildings owned by two or more persons and used to any extent for residential purposes. Secondly, a local authority or housing association which manages the common parts of land or buildings used to any extent for residential purposes and owned by two or more other persons or by the local authority or housing association and one or more other person. Finally, a person who owns and manages or maintains land which is available for use by the owners of any adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land).

Section 3 – Application for registration

8. Section 3(1) states that a person who is a property factor or intends to become a property factor may apply to the Scottish Ministers for entry in the register. Although this does not require property factors to register, it should be read in conjunction with section 12(1), which makes it an offence to act as a property factor without being on the register.

9. Section 3(2) sets out the information which a person must include in an application to the Scottish Ministers for entry in the register. Section 3(2)(f) gives the Scottish Ministers the power to prescribe by regulations other information to be provided in an application.

10. Section 3(3)(a) requires that the application must be signed by the “responsible person”. Section 3(9) defines the “responsible person” as the person making the application under subsection (1) where they are a sole trader or, in any other case, the person specified in the application by virtue of subsection (2)(c), namely the most senior manager in the company or body who is (or is to be) directly concerned with the control or governance of the property factor.

11. Section 3(3)(b) requires that the application must be accompanied by such fee as the Scottish Ministers may determine. Section 3(4) gives the Scottish Ministers the power to prescribe those fees by regulations. In addition, regulations may prescribe how the fees are to be arrived at and cases in which no fees are payable. Section 3(5) makes clear that, while fees under this section and section 7 may be set at a level that allows the Scottish Ministers to recoup the costs of exercising their functions under the Bill, they may not be set beyond that cost-recovery level.

12. Section 3(6)(a) makes it an offence to provide false information in an application and section 3(6)(b) makes it an offence to fail to provide information required by section 3(2).

13. Section 3(7) stipulates that 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.

14. Section 3(8) provides additional information on when a person is to be regarded as being directly concerned in the control or governance of a property factor.

Section 4 – Registration

15. Section 4 provides for applications to be determined by the Scottish Ministers by either entering the person in the register or refusing to so enter them.

16. Section 4(2) is concerned with those circumstances in which Scottish Ministers are considering refusing to enter a person into the register. Section 4(2)(a) requires Scottish Ministers to give the responsible person notice that refusal of registration is under consideration and section 4(2)(b) requires Scottish Ministers to allow the responsible person to make oral or written representations to them.

17. Section 4(3) requires that notice under section 4(2) should be accompanied by a written statement of the Scottish Ministers' reasons for proposing to refuse to enter the person in the register.

18. Section 4(4) requires Scottish Ministers to enter the person in the register if, having considered the application and taken account of any representations, they are satisfied that the relevant conditions specified in either section 4(4)(a) or 4(4)(b) have been met.

19. Section 4(4)(a) requires that where the person has not been previously registered, and the Scottish Ministers are satisfied that the person is a fit and proper person to be a property factor, then the Scottish Ministers must enter the person into the register.

20. Section 4(4)(b) is concerned with those persons who are or have been previously registered. In such circumstances, Scottish Ministers must enter such a person into the register if they are satisfied that: the person is a fit and proper person to be a property factor; the person has while registered demonstrated reasonable compliance with the code of conduct published under section 13; and the person has demonstrated reasonable compliance with any order made against the person by a homeowner housing committee (see paragraph 63 onwards).

21. Section 4(5) provides that where Scottish Ministers are not satisfied that the terms of section 4(4)(a) or 4(4)(b) have been met, they must refuse to enter the person into the register.

22. Section 4(6) requires that an entry under subsection (4) must include the information specified under section 3(2)(a) to 3(2)(e).

23. Section 4(7)(a) requires that where the Scottish Ministers have made an entry under section 4(4), the entry must be removed on the expiry of the period of 3 years beginning with the day on which the entry is made. The effect of this is that property factors must apply for re-registration every 3 years. If an application for re-registration is still under consideration when the 3 years expires, section 4(7)(b) provides that the property factor remains registered until the application is finally determined. Section 4(8) provides additional information on what constitutes final determination of an application.

Section 5 – Section 4: considerations

24. Section 5(1) requires Scottish Ministers to have regard to any material falling within sections 5(2) to 5(4) when considering whether a person is a fit and proper person to be a property factor.

25. Section 5(2) establishes that material falls within the subsection if the person or any other person who is (or is to be) directly concerned with the control of governance of the property factor has: been convicted of an offence involving fraud or other dishonesty, violence or drugs; practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business; or contravened any provision of the law relating to tenements, property or debt.

26. Material falls within the understanding of section 5(3) 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 reasonable compliance with the code of conduct published under section 13, and any order made against that other property factor by a homeowner housing committee.

27. Finally, material falls within the understanding of section 5(4) if it appears to the Scottish Ministers that the material is relevant to the question of whether the person is a fit and proper person to be a property factor

Section 6 – Notification of registration, refusal to register or removal under section 4(7)

28. Under section 6, where the Scottish Ministers enter a person in the register under section 4(4), refuse to enter a person in the register under section 4(5) or remove an entry under section 4(7), they must, as soon as practicable after doing so, give notice of the fact to the responsible person. This enables the person to consider, in the case of a refusal, whether they wish to make an appeal under section 11.

Section 7 – Duty of responsible person to provide information

29. Section 7(1) establishes that the terms of this section apply where a property factor is registered.

30. Section 7(2) requires the responsible person for any registered property factor to notify the Scottish Ministers, in writing, of any changes in the information they were required to supply in terms of section 3(2) when they applied to be registered. Furthermore, it also requires the responsible person to notify the Scottish Ministers of any changes in any information supplied under this subsection.

31. Section 7(3) requires that any notice under subsection (2) must be accompanied by such fee as the Scottish Ministers may determine. Section 7(4) gives the Scottish Ministers the power to prescribe those fees by regulations (subject to not setting fees at a level that produces income greater than that needed for cost-recovery – see section 3(5)). In addition, regulations may prescribe how the fees are to be arrived at and cases in which no fees are payable.

32. Section 7(5) makes it an offence not to comply with the terms of subsection (2).

33. Section 7(6) stipulates that a person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Section 8 – Removal from register

34. Section 8(1) gives the Scottish Ministers the power to remove a property factor from the register if the property factor is no longer a fit and proper person to be a property factor or if the property factor has failed to demonstrate reasonable compliance with either the code of conduct any order made against them by a homeowner housing committee.

35. Section 8(4) is concerned with circumstances in which Scottish Ministers are considering removing the person from the register under subsection (1). Section 8(4)(a) requires Scottish Ministers to give the responsible person notice that removal from the register is under consideration and section 8(4)(b) requires Scottish Ministers to allow the responsible person to make oral or written representations to them.

36. Section 8(5) requires that notice under section 8(4) should be accompanied by a written statement of the Scottish Ministers' reasons for proposing to remove person in the register.

37. Under section 8(6) Scottish Ministers must not remove the person from the register unless, having taking account of representations under section 8(4)(b), they are satisfied that sections 8(2) and 8(3) apply.

38. Where a property factor is removed from the register under the terms of subsection (1), section 8(7) requires that the Scottish Ministers must notify the responsible person of this fact as soon as is practicable. This enables the property factor to consider whether to make an appeal under section 11.

Section 9 – Effect of refusal to enter in register or removal from register (and Section 10 – Section 9: interpretation etc.)

39. Section 9(1) establishes that section 9(2) applies where a person who is operating as a property factor when the Bill first comes into force is refused entry in the register under section 4(5) or where a property factor is removed from the register under section 8(1). Other cases of refusal under section 4(5) do not need to be covered here – a person setting up business as a property factor after the Bill comes into force should not be operating as a property factor prior to being registered, so the actions available under section 9(2) should not be relevant, while refusal of an application for re-registration is instead dealt with by reference to removal from the register under section 4(7).

40. Section 9(2) also applies where a property factor is removed from the register under section 4(7). In this case, though, “removed” needs to be read with section 10(1). This reading makes clear that a property factor is not removed from the register if their removed entry is replaced by a new entry following a successful application for re-registration. So removal from the register under section 4(7) only leads to section 9(2) kicking in where a re-registration application is refused or where no such application is made.

41. Section 9(2)(a) makes any fees charged for work done after the relevant date irrecoverable in law.

42. Section 9(2)(b) entitles homeowners to appoint a new property factor or to decide not to appoint a property factor. In acting under section 9(2)(b), homeowners should act in accordance with procedures specified in the titled deeds, or as the case may be, the Tenement Management Scheme.

43. Section 9(2)(c) prohibits a property factor from lodging a notice of potential liability under the Tenements (Scotland) Act 2004 after the relevant date. A notice of potential liability is a notice that can be registered against a property which has the effect of making certain future owners of the property liable for the costs of maintenance or work to the property which was carried out before they owned it.

44. Section 9(3) requires Scottish Ministers to give public notice of the refusal or removal mentioned in section 9(1). It also requires Scottish Ministers to give public notice of the relevant date and the effect of section 9(2).

45. The “relevant date” is defined in section 10(2)(a). Where a person operating as a property factor when the Bill comes into force is refused entry in the register or a property factor is removed from the register under section 8(1), the “relevant date” is the day after the day on which the period within which any appeal under section 11(2) may be made expires (without such an appeal being made) or any such appeal is concluded (without the appeal being successful – as there is no need for section 9(2) to kick in if the appeal is successful). Section 10(3) provides additional information on when an appeal is to be regarded as “concluded”. The effect of this is that section 9(2) only kicks in once all of the avenues of appeal provided by the Bill have been exhausted – and only if any such appeal has been unsuccessful.

46. Where the removal from the register follows an unsuccessful application for re-registration, the “relevant date” is the day after the day on which the property factor’s entry in the register is removed under section 4(7). In this case, the property factor’s existing registration will already have been extended (if necessary) until all avenues of appeal have been exhausted under section 4(7)(b), so further delay is unnecessary. If, on the other hand, all appeals are concluded before the property factor’s original 3 year registration expires, then section 9(2) does not kick in until the expiry of the original registration period.

Section 11 – Appeal against refusal to register or removal from register

47. Section 11(2) provides a right of appeal in cases where a person is refused entry in the register under section 4(5) or where a property factor is removed from the register under section 8(1). In this case there is no need to refer to removal under section 4(7), as such a removal can only take place after any appeal against a refusal of a re-registration application has been determined. The appeal must be made not later than 21 days after the day on which the responsible person received notice of the refusal or removal (under section 14(1), such receipt is deemed to occur, if the notice was posted, on the day after posting). Section 11(8) provides that an application under subsection (2) is to be made by summary application to the sheriff.

48. Section 11(3) enables the court to require the Scottish Ministers to register the applicant if it considers it reasonable to do so, having regard to the factors in section 11(4). Those factors are the same as those which the Scottish Ministers consider when deciding whether to grant or refuse an application: whether the person is a fit and proper person to be a property factor and, in addition (if the person is or has previously been registered), whether the person has demonstrated reasonable compliance with the code of conduct published under section 13 and with any order made against the person by a homeowner housing committee.

49. Section 11(9) provides that the decision of a sheriff under subsection (3) may be appealed to the sheriff principal, but only on a point of law. Under section 11(10) such an appeal must be made within the period of 21 days beginning with the day on which the decision appealed against is made. Section 11(11) provides that the decision of the sheriff principal is final.

50. Section 11(6) requires that the court give reasons for its decision under section 11(3) in writing.

51. Section 11(12) provides the Scottish Ministers may by order make further provision about the procedure for appeal under this section.

Section 12 – Offence of operating as a property factor without registration

52. Section 12(1) makes it an offence for a person to operate as a property factor without being registered.

53. There are two exceptions: the first is that the offence is not committed by a person who is operating as a property factor when the Bill first comes into force while their application for registration is under consideration (and subsection (6) makes clear that an application remains under consideration until all avenues of appeal under the Bill have been exhausted). The second

is that the offence is not committed by a property factor who is removed from the register under section 8(1) until all avenues of appeal provided by the Bill have been exhausted. These exceptions are consistent with when the effects of section 9(2) kick in. The offence is committed immediately after a property factor is removed from the register under section 4(7), as in the case of an unsuccessful application for re-registration the existing registration is, where necessary, automatically extended until all avenues of appeal against the refusal of the re-registration application have been exhausted.

54. It will be a defence under section 12(4) to show that there was a reasonable excuse for acting as a property factor without being registered.

55. Section 12(5) stipulates that 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, to imprisonment for a term not exceeding six months or both

Section 13 – Code of conduct

56. Section 11(1) requires the Scottish Ministers from time to time to prepare a code of conduct as to the minimum standards of practice expected of registered property factors.

57. Section 11(2) requires the Scottish Ministers to publish a draft code of practice and allows them to amend the draft after consulting such bodies as they consider appropriate and considering any representations made on the draft.

58. Section 11(3) requires Scottish Ministers to lay the code before the Parliament, publish the code and bring the code into force on such day as they may appoint.

59. Section 11(5) requires a property factor to ensure reasonable compliance with the code of conduct for the time being in force.

Section 14 – Services of notices etc.

60. Section 14(1) provides for the means by which notices under Part 1 of the Bill should be directed to the address of the responsible person specified under section 3(2)(a).

61. Section 14(3) provides for the process by which public notice is to be given under Part 1 of the Bill.

PART 2 – DISPUTE RESOLUTION

62. The main effects of Part 2 of the Bill are to:

- establish a homeowner housing panel and homeowner housing committees similar to the private rented housing panel and private rented housing committees established by Housing (Scotland) Act 2006;

- enable a homeowner to apply in writing to the homeowner housing panel for a determination of whether their property factor has failed to comply with any term of the contract between them or to ensure reasonable compliance with the code of conduct published under section 13;
- require a homeowner to notify the property factor in writing of the alleged breach or failure and give them a reasonable time to respond before making an application to the panel;
- require the president of the homeowner housing panel to refer accepted applications to a homeowner housing committee;
- require a homeowner housing committee to decide whether a property factor has complied with its duties and, if not, whether to require the committee to make a “property factor enforcement order” setting out any work to be executed and any financial payment to be made to the homeowner;
- make it an offence to fail, without reasonable excuse, to comply with a property factor enforcement order;
- allow an appeal to the sheriff in relation to a decision by the homeowner housing panel or homeowner housing committee, on a point of law only; and
- require the president of the homeowners housing panel to prepare an annual report for submission to the Scottish Ministers, who then lay it before the Scottish Parliament.

Section 15 – Naming of panel and re-naming of committees

63. Section 15 mirrors section 21 of the Housing (Scotland) Act 2006, which deals with the private rented housing panel. Schedule 4 to the Rent (Scotland) Act 1984 requires there to be a panel of people to act as chairmen and members of rent assessment committees. Section 15(2) names that panel the “homeowner housing panel” and the committees the “homeowner housing committees” in relation to all applications made under Part 2 of this Bill (i.e. applications from homeowners in relation to an alleged breach of contract or failure to ensure reasonable compliance with the code of conduct for property factors published under section 13).

Section 16 – Application to homeowner housing panel

64. Section 16(1) enables a homeowner to apply to the homeowner housing panel for a determination of whether the homeowner’s property factor has failed to comply with any contractual term between the parties or to ensure reasonable compliance with the property factor code of conduct published under section 13.

65. Section 16(2) requires a homeowner to set out in the application his or her reasons for considering that the property factor has failed to comply with their contractual duties or with the code of conduct.

66. Section 16(3) requires a homeowner to notify the property factor in writing of the reasons why he or she believes that the property factor has failed to comply with the property factor’s contractual duties or with the code of conduct. It also prohibits the homeowner from making an

application to the homeowner housing panel unless the property factor has refused to resolve or unreasonably delayed in attempting to resolve the homeowner's concerns.

Section 17 – Referral to homeowner housing committee

67. Section 17(1) requires the president of the homeowner housing panel to decide whether to refer an application made to the homeowner housing panel to a homeowner housing committee or to reject the application.

68. Section 17(2) states the only circumstances in which the president may reject an application. In any other circumstances, the president must therefore refer the application to a homeowner housing committee.

69. Section 17(3) requires the president to decide whether to reject an application or refer it to a homeowner housing committee within 14 days of receipt unless he or she considers that further information is required to enable him or her to make the decision or that there is a reasonable prospect of the dispute being resolved by parties.

70. Section 17(4) requires the president to notify, as soon as practicable, the homeowner (and anyone acting on his or her behalf whose name and address is known to the president) that his or her application has been rejected.

71. Section 17(5) requires the notice of rejection to set out the reasons for the rejection and explain the procedure for appealing against the decision.

Section 18 – Determination by homeowner housing committee

72. Section 18 requires a homeowner housing committee, on receipt of an application referred to it by the president, to decide whether the property factor has complied with its contractual duties or with the code of conduct.

73. When a homeowner housing committee decides that a property factor has failed to comply with its contractual duties or with the code of conduct, it may make a "property factor enforcement order", provided it has given notice of its proposal to do so to the property factor and has allowed the parties an opportunity to make written or oral representations. The committee is obliged by subsection (3) to state its reasons when giving such notification.

74. Subsection (4) obliges the committee, where it is satisfied (after taking into account any representations received) that the property factor has failed to comply with contractual duties or with the code of conduct, to make a property factor enforcement order. Subsection (5) states that, subject to the appeals provisions contained in section 21 of the Bill and to the usual access to the common law remedy of judicial review, matters considered and decided on by the committee cannot be considered and decided on by any other court or tribunal.

Section 19 – Property factor enforcement orders

75. Section 19 defines a property factor enforcement order as an order requiring the property factor to take such action as the committee feels appropriate and to pay such financial payment to the homeowner as the committee may feel is reasonable. The committee is not required to order the property factor to make financial payment to the homeowner but has the power to do so if it feels it is appropriate, for example where there has been a material breach of contract with consequential loss. The property factor enforcement order is similar to the repairing standard enforcement order introduced by the Housing (Scotland) Act 2006.

Section 20 – Variation and revocation of property factor enforcement orders

76. Section 20(1) allows the homeowner housing committee which made a property factor enforcement order to vary or revoke it.

77. Section 20(3) lists situations in which the homeowner housing committee must vary the property factor enforcement order under subsection (2).

Section 21 – Appeals

78. Section 21 provides a right to appeal against a decision of the homeowner housing panel or homeowner housing committee to the sheriff within 14 days of the date of the decision being made. The appeal can only be made on a point of law, and there is no further right of appeal.

Section 22 – Effect of failure to comply with property factor enforcement order

79. Section 22(1) requires the homeowner housing committee which made a property factor enforcement order to decide whether the property factor has complied with the order.

80. Section 22(2) requires the homeowner housing committee to serve a notice on the Scottish Ministers when it decides that a property factor has failed to comply with an enforcement order. This will enable this fact to be taken into account, for example, when the Scottish Minister are considering an application from the property factor for re-registration.

81. Section 22(3)(a) prohibits the homeowner housing committee from deciding that a property factor has failed to comply with a property factor enforcement order until the period within which the order requires the work to be completed has ended.

82. Section 22(3)(b) prohibits the homeowner housing committee from deciding that a property factor has failed to comply with a property factor enforcement order if the committee is satisfied that the property factor is unable to comply with the order due to lack of necessary rights (e.g. rights of access) despite having taken reasonable steps to acquire these rights, or that the action required by the order is likely to endanger anyone.

83. Section 22(4) requires the homeowner housing committee to serve a notice on the Scottish Ministers stating that they consider the property factor to be unable to comply with the property factor enforcement order, in situations where the committee would otherwise decide

that a property factor enforcement order had not been complied with but is satisfied that the property factor is unable to comply with the order due to lack of necessary rights (e.g. rights of access), or the likelihood of endangering anyone. Again, this could be relevant when the Scottish Ministers are considering a re-registration application.

Section 23 – Property factor enforcement order: offences

84. Section 23(1) makes it an offence for a person to fail to comply with a property factor enforcement order without reasonable excuse.

85. Section 23(2) prescribes situations where a person will have a reasonable excuse for failing to comply with a property factor enforcement notice.

86. Section 23(3) clarifies, for the avoidance of doubt, that the definition of reasonable excuse is not confined to the excuses listed in section 23(2).

87. Section 23(4) requires the homeowner housing committee to have decided that the property factor has failed to comply with a property factor enforcement notice in order for a person to be found guilty of an offence. It also clarifies, for the avoidance of doubt, that the homeowner housing committee's decision that a property factor has failed to comply with a property factor enforcement order does not establish any presumption that the property factor has committed an offence. To be found guilty of an offence it would have to be shown, beyond a reasonable doubt, that the property factor had failed to comply with the property factor enforcement order, whereas the homeowner housing committee would only have to be satisfied on the balance of probabilities that the property factor had failed to comply with a property factor enforcement order to make a decision to that effect.

88. Section 23(5) stipulates the penalty for committing the offence created by subsection (1).

Section 24 – Power to make further provision about applications etc.

89. Section 24 allows the Scottish Ministers to make, by way of regulations, further provisions about the procedure for making and determining applications under section 16 and for the making of appeals in relation to such applications.

Section 25 – Annual report

90. Section 25(1) requires the president of the homeowner housing panel to prepare an annual written report on the exercise of the functions of the president, the homeowner housing panel and homeowner housing committees during that year.

91. Section 25(2) requires the president to submit a copy of every annual report to the Scottish Ministers as soon as possible at the end of the reporting year.

92. Section 25(3) requires the Scottish Ministers to lay a copy of every annual report received from the president of the homeowner housing panel before the Scottish Parliament.

93. Section 25(4) defines a reporting year as beginning on the day that section 25 comes into force and ending on 31 December that year, and each successive calendar year thereafter. For example, if section 25 was to come into force on the 29 September 2011, the first reporting year would be 29 September 2011 to 31 December 2011, the next reporting year would be 1 January 2012 to 31 December 2012 etc.

PART 3 – MISCELLANEOUS AND GENERAL

Section 26 – Delegation of functions

94. Section 26(1) allows the Scottish Ministers to delegate their functions under the Bill. So, for example, they could arrange for another person or body to carry out their functions in relation to receiving and determining applications for entry in the register of property factors.

95. Section 26(2) specifies certain exceptions to this: the excepted functions (which may not be delegated) are those relating to the making of regulations or orders, those relating to fees and those relating to laying documents before the Scottish Parliament.

FINANCIAL MEMORANDUM

INTRODUCTION

96. This document relates to the Property Factors (Scotland) Bill introduced in the Scottish Parliament on 1 June 2010. It has been prepared on behalf of Patricia Ferguson MSP, the member in charge of the Bill, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

97. Property factors or managers administer communal areas, roofs and stairwells in an estimated 225,000 residential flats and tenements across Scotland. Yet, there are no statutory requirements on the operation and conduct of property factors in Scotland. The purpose of the Bill is two fold. Part 1 of the Bill would protect Scottish homeowners by requiring property factors to be registered to ensure that they were fit and proper persons operating to minimum standards in the public interest. Part 2 establishes an accessible form of alternative dispute resolution between property factors and homeowners.

COSTS ON THE SCOTTISH ADMINISTRATION

98. It is not anticipated that there will be any significant costs on the Scottish Administration as a result of Part 1 of the Bill. Section 3(4) permits the Scottish Ministers to prescribe by regulations the level of fees to accompany an application to the register of property factors. Section 7(4) enables the Scottish Ministers to prescribe by regulations the level of fees to accompany a change in information relating to the property factors' business. Section 4(7) provides that an entry in the register has a maximum duration of 3 years before a fresh application is required. Accordingly, the Bill's provision for fee-charging will enable the cost of administering the register to be self-financing, and cost neutral to the Scottish Administration.

99. Part 2 of the Bill will involve the cost of running hearings of the homeowner housing committee, including staff fees and expenses, obtaining reports and the hire of premises for hearings. Costs are expected to be modest as the Bill would utilise the existing infrastructure of the private rented housing panel (PRHP). The precise cost cannot currently be quantified since it will be demand-led, but is unlikely to exceed the current budget for the PRHP.

100. The PRHP is funded by the Scottish Administration and was provided with a budget of £428,000 for the financial year 2007/08. During that period, the PRHP spent £386,482. This underspend arose because it was impossible to predict with any accuracy how many cases would be brought in the first few months of the new jurisdiction.

101. The budget for the PRHP for the financial year 2008/09 was £414,000. During that same period, the PRHP actually spent £377,877. The Panel was able to make savings on the projected budget because further recruitment for new members, which had been budgeted for, did not require to be carried out.

COSTS ON LOCAL AUTHORITIES

102. There are no anticipated additional costs for local authorities as a result of the Bill.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

103. The Bill would impose costs on property factors in relation to the registration process under Part 1 of the Bill. It is estimated that there are around 140 to 200 property factors in Scotland (including private firms, housing associations and local authorities). It is anticipated that the register would be operated by a small staff located, for example, within the Scottish Government's Housing and Regeneration Directorate or such body as the Scottish Ministers may appoint. With an estimated budget of £150,000 to £200,000 per annum, the average cost of registration would equate to £750 to £1,000 per annum. While it would be a matter for the Scottish Ministers to determine fees payable under Part 1 of the Bill but it would be reasonable to adopt a sliding scale of fees, proportionate to the number of properties managed by property factors.

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

104. On 1 June 2010, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Property Factors (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Property Factors (Scotland) Bill (SP Bill 51) as introduced in the Scottish Parliament on 1 June 2010

PROPERTY FACTORS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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