

Property Factors (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Part 1: minor amendments and consequential

36, 37, 38, 40, 41, 42, 114, 43, 44, 45, 50, 51, 52, 53, 54, 58, 106, 111

Meaning of property factor

39, 1, 2, 3, 4, 5, 22, 27, 107, 109, 110

Notes of amendments in this group

Amendment 39 pre-empts amendments 1 and 2

Compliance with the code of conduct

46, 48, 55, 60, 84, 86

Code of conduct and property factor enforcement order

47, 49, 56, 57, 61, 62

Recovery of costs of dispute resolution

6, 21, 24, 29

Removal from register or refusal of entry into the register

59, 63, 64, 65, 66, 67, 68, 69, 70, 71

Effect of refusal of entry into the register or removal from the register

116, 117

Definition of “homeowner”

72, 7, 108

Procedure for appeal against refusal to register or removal from the register

73, 74, 75, 76, 77, 78, 79, 8, 80, 23

Notes of amendments in this group

Amendment 8 pre-empts amendment 80

Offence of operating as a property factor without registration

81, 82, 83

Property factor identifier

115

Applications to homeowner housing panels

9, 85, 10, 11, 12, 87, 13, 14, 30, 31

Homeowner housing panels and committees

88, 89, 91, 92, 93, 98, 104, 105

Notes of amendments in this group

Amendment 89 pre-empts amendments 15

Part 2: minor amendments

15, 90, 16, 17, 18, 94, 95, 96, 97, 99, 100, 101, 102, 103, 112

Part 2: appeals procedure

19, 20

Notes of amendments in this group

Amendment 20 pre-empts amendment 103 in group Part 2: minor amendments

Ancillary provision

25, 26, 28

Crown application

32

Commencement

33, 113, 34, 35

Notes of amendments in this group

Amendments 113 and 34 are direct alternatives

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Amendments in debating order

Part 1: minor amendments and consequential

Patricia Ferguson

- 36 In section 1, page 1, line 11, leave out <is to be construed accordingly> and insert <means not registered in the register>

Patricia Ferguson

- 37 In section 2, page 1, line 16, leave out <or buildings>

Patricia Ferguson

- 38 In section 2, page 1, line 19, leave out <or buildings>

Patricia Ferguson

- 40 In section 3, page 2, line 11, leave out from <incorporated> to <registration> in line 12 and insert <formed and registered under the Companies Acts, the company's registered>

Patricia Ferguson

- 41 In section 3, page 2, line 15, after <and> insert <business>

Patricia Ferguson

- 42 In section 3, page 2, line 21, leave out <a list of>

Patricia Ferguson

- 114 In section 3, page 2, line 21, leave out <or buildings>

Patricia Ferguson

- 43 In section 3, page 2, line 30, leave out <(1)> and insert <(3)(b)>

Patricia Ferguson

- 44 In section 3, page 2, line 36, leave out <by them>

Patricia Ferguson

- 45 In section 4, page 3, line 18, leave out <(either or both) written or oral>

Patricia Ferguson

- 50 In section 4, page 3, line 34, leave out <(e)> and insert <(f)>

Patricia Ferguson

- 51 In section 4, page 4, line 5, leave out <after> and insert <when>

Patricia Ferguson

- 52 In section 4, page 4, line 10, leave out <after> and insert <when>

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Patricia Ferguson

- 53 In section 5, page 4, line 18, leave out <the person, or any other> and insert <any>

Patricia Ferguson

- 54* In section 5, page 4, line 25, leave out from <grounds> to <business> in line 27 and insert <the grounds of any of the protected characteristics in Part 2 of the Equality Act 2010 (c.15)>

Patricia Ferguson

- 58 In section 5, page 4, line 36, leave out subsection (4)

Patricia Ferguson

- 106 In section 26, page 14, line 33, after <that> insert <any of>

Patricia Ferguson

- 111 In section 28, page 15, leave out line 23

Meaning of property factor

Patricia Ferguson

- 39 In section 2, page 1, leave out lines 23 to 27 and insert—
- (c) a person who, in the course of that person's business, manages or maintains land for the benefit of the owners of related properties occupied for residential purposes (but only where the owners of those related properties are required by burdens within the title deeds or land certificates relating to their properties to pay for the cost of the management or maintenance of such land), or
 - (d) a person who, in the course of that person's business, is instructed to carry out management and maintenance by the owner of land for the benefit of the owners of related properties occupied for residential purposes (but only where the owners of those related properties are required by burdens within the title deeds or land certificates relating to their properties to pay for the cost of the management or maintenance of such land).>

Alex Neil

- 1 In section 2, page 1, line 23, leave out <owns and> and insert <, in the course of that person's business,>

Alex Neil

- 2 In section 2, page 1, line 24, after <any> insert <two or more>

Alex Neil

- 3 In section 2, page 1, line 27, at end insert <, and
- () a local authority or housing association which manages or maintains land which is available for use by—
 - (i) the owners of any two or more adjoining or neighbouring residential properties, or

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- (ii) the local authority or housing association and the owners of any one or more such 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.>

Alex Neil

4 In section 2, page 1, line 27, at end insert—

<(1A) Despite subsection (1), the following are not property factors for the purposes of this Act—

- (a) a person so far as managing or maintaining land on behalf of the Crown that was acquired by virtue of Her Majesty’s prerogative rights in relation to unclaimed or ownerless land,
- (b) an owners’ association established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) so far as managing or maintaining common parts or land in accordance with the scheme,
- (c) a person so far as managing or maintaining common parts or land on behalf of another person who is a property factor in relation to the same common parts or land.>

Alex Neil

5 In section 2, page 1, line 27, at end insert—

<(1B) The Scottish Ministers may by order modify either or both of subsections (1) and (1A).

(1C) An order under subsection (1B) may make such consequential modifications of any other provision of this Act as may be necessary or appropriate.

(1D) An order under subsection (1B) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.>

Alex Neil

22 In section 26, page 14, line 36, after <sections> insert <2(1B),>

Alex Neil

27 In section 27, page 15, line 9, after <section> insert <2(1B),>

Patricia Ferguson

107 In section 28, page 15, line 14, at end insert—

<“facilities” means any property which is of benefit to related properties, examples of property which may constitute such a facility, without prejudice to the generality, include a—

- (a) common area for recreation,
- (b) private road,
- (c) private sewerage, and
- (d) sustainable urban drainage system,>

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Patricia Ferguson

- 109** In section 28, page 15, line 15, at end insert—
<“land” includes facilities for the benefit of owners of related properties occupied as residential properties,>

Patricia Ferguson

- 110** In section 28, page 15, line 22, at end insert—
<“related properties” has the meaning given by section 66 of the Title Conditions (Scotland) Act 2003 (asp 9),>

Compliance with the code of conduct

Patricia Ferguson

- 46** In section 4, page 3, line 28, leave out <reasonable>

Patricia Ferguson

- 48** In section 4, page 3, line 30, leave out <reasonable>

Patricia Ferguson

- 55** In section 5, page 4, line 32, leave out <reasonable>

Patricia Ferguson

- 60** In section 8, page 5, line 33, leave out <reasonable>

Patricia Ferguson

- 84** In section 13, page 9, line 23, leave out <reasonable>

Patricia Ferguson

- 86** In section 16, page 10, line 26, leave out <reasonable>

Code of conduct and property factor enforcement order

Patricia Ferguson

- 47** In section 4, page 3, line 29, leave out <code of conduct published under section 13> and insert <property factor code of conduct>

Patricia Ferguson

- 49** In section 4, page 3, line 30, leave out <any> and insert <a property factor enforcement>

Patricia Ferguson

- 56** In section 5, page 4, line 33, leave out <code of conduct published under section 13> and insert <property factor code of conduct>

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Patricia Ferguson

- 57 In section 5, page 4, line 34, after <any> insert <property factor enforcement>

Patricia Ferguson

- 61 In section 8, page 5, line 35, leave out <code of conduct published under section 13> and insert <property factor code of conduct>

Patricia Ferguson

- 62 In section 8, page 5, line 36, after <any> insert <property factor enforcement>

Recovery of costs of dispute resolution

Alex Neil

- 6 In section 5, page 4, line 35, at end insert—
- <() 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 (*Recovery of costs from property factors in relation to certain applications and orders*).>

Alex Neil

- 21 After section 24, insert—
- <Recovery of costs from property factors in relation to certain applications and orders**
- (1) The Scottish Ministers may by regulations make provision about the recovery of relevant costs from property factors where—
- (a) the president of the homeowner housing panel refers an application to a homeowner housing committee under section 17(1)(a),
 - (b) a homeowner housing committee makes a property factor enforcement order against a factor.
- (2) In this section, “relevant costs” means costs incurred by—
- (a) the homeowner housing panel,
 - (b) the president of the panel,
 - (c) homeowner housing committees,
- in relation to the exercise of functions conferred by sections 15 to 24 of this Act.
- (3) Regulations under subsection (1) may in particular—
- (a) provide for charges to be imposed on property factors,
 - (b) provide for charges to be imposed in either or both of the circumstances referred to in subsection (1),
 - (c) provide for different charges to be imposed in different cases or different classes of case,

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- (d) confer functions (including functions relating to the imposition and determination of charges) on—
 - (i) the homeowner housing panel,
 - (ii) the president of the panel,
 - (iii) homeowner housing committees,
- (e) make provision about how charges may be recovered.
- (4) The Scottish Ministers must, in exercising their functions under subsection (1), secure that the income from any charges imposed by virtue of the regulations does not exceed the relevant costs.
- (5) Regulations under subsection (1) may modify any enactment (including this Act).
- (6) Regulations under subsection (1) are not to be made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, the Scottish Parliament.>

Alex Neil

- 24 In section 26, page 14, line 37, after <24,> insert <(Recovery of costs from property factors in relation to certain applications and orders)(1),>

Alex Neil

- 29 In section 27, page 15, line 9, after <29(2)> insert <or regulations under section (Recovery of costs from property factors in relation to certain applications and orders)(1)>

Removal from register or refusal of entry into the register

Patricia Ferguson

- 59* In section 8, page 5, line 33, leave out <since being registered,>

Patricia Ferguson

- 63 In section 8, page 6, line 5, leave out <(either or both) written or oral>

Patricia Ferguson

- 64 In section 8, page 6, line 13, after <Ministers> insert <decide to>

Patricia Ferguson

- 65 In section 8, page 6, line 15, after <removal> insert <, which must be a date no less than 21 days after the date notice is given under this subsection>

Patricia Ferguson

- 66 In section 8, page 6, line 15, at end insert <and give public notice of the date of removal>

Patricia Ferguson

- 67 In section 9, page 6, line 18, leave out <a first> and insert <an>

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Patricia Ferguson

- 68 In section 9, page 6, line 26, leave out <are entitled to> and insert <may>

Patricia Ferguson

- 69 In section 9, page 6, line 30, leave out <is ineligible to> and insert <may not>

Patricia Ferguson

- 70 In section 10, page 7, line 15, leave out <after> and insert <when>

Patricia Ferguson

- 71 In section 10, page 7, line 20, leave out <(asp 11)>

Effect of refusal of entry into the register or removal from the register

Patricia Ferguson

- 116* In section 9, page 6, line 29, at end insert—

<() homeowners may take a decision to manage land (where they are required by burdens contained within their title deeds or land certificates to pay for the cost of management or maintenance of such land) by appointing a new property factor, or no property factor, in accordance with the procedures in relation to such decisions in their title deeds or land certificates or sections 28 and 64 of the Title Conditions (Scotland) Act 2003 (asp 9) (as applied by section 70A of that section),>

Patricia Ferguson

- 117* Before section 26, insert—

<Amendments to Title Conditions (Scotland) Act 2003

After section 70 of the Title Conditions (Scotland) Act 2003 (asp 9) insert—

“70A Application of Act in relation to property factors

- (1) Where any of paragraphs (a) to (c) of section 9(1) of the Property Factors (Scotland) Act 2011 (asp 00) (“the 2011 Act”) apply, the following sections apply as if the references in those sections to a manager of property, manager or, as the case may be, manager of related properties included a reference to a property factor—
 - section 3(7),
 - section 28,
 - section 64.
- (2) For the purposes of section 66, as it applies in relation to section 64 as applied by subsection (1) above, the expression “related properties” includes “land” as defined in section 28 of the 2011 Act.
- (3) In subsection (1), “property factor” has the meaning given by section 2 of the 2011 Act.”.>

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Definition of “homeowner”

Patricia Ferguson

72 In section 10, page 7, line 21, leave out subsection (5)

Alex Neil

7 In section 10, page 7, line 22, at end insert <, or
() an owner of residential property adjoining or neighbouring land which is—
(i) managed or maintained by a property factor, and
(ii) available for use by the owner.>

Patricia Ferguson

108 In section 28, page 15, line 15, leave out <has the meaning given by section 10(5)> and insert <means an owner of land used to any extent for residential purposes—
(a) the common parts of which are managed or maintained by a property factor, or
(b) where owners are required by burdens contained in their title deeds, or land certificates, to pay for the cost of the management or maintenance of land where such land is for the benefit of owners of related properties,>

Procedure for appeal against refusal to register or removal from the register

Patricia Ferguson

73 In section 11, page 7, line 30, leave out <court> and insert <sheriff>

Patricia Ferguson

74 In section 11, page 7, line 37, leave out <4(4)(b)(i) to (iii)> and insert <4(4)(b)>

Patricia Ferguson

75 In section 11, page 8, line 5, leave out <An application such as is mentioned in> and insert <An appeal under>

Patricia Ferguson

76 In section 11, page 8, line 7, leave out <granting or refusing> and insert <on>

Patricia Ferguson

77 In section 11, page 8, line 8, leave out <(3)> and insert <(2)>

Patricia Ferguson

78 In section 11, page 8, line 9, leave out <within the period of 21 days beginning with> and insert <not later than 21 days after>

Patricia Ferguson

79 In section 11, page 8, line 11, leave out <this section> and insert <subsection (9)>

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Alex Neil

- 8 In section 11, page 8, line 12, leave out subsection (12)

Patricia Ferguson

- 80 In section 11, page 8, line 12, leave out subsection (12) and insert—
<(12) In section 32(1) (power of the Court of Session to regulate civil procedure in sheriff courts) of the Sheriff Courts (Scotland) Act 1971 (c.58) after paragraph (1) insert—
“(la) regulating the procedure to be followed in appeals under sections 11 and 21 of the Property Factors (Scotland) Act 2011 (asp 00);”.>

Alex Neil

- 23 In section 26, page 14, line 36, leave out <11(12),>

Offence of operating as a property factor without registration

Patricia Ferguson

- 81 In section 12, page 8, line 20, leave out <under that section>

Patricia Ferguson

- 82 In section 12, page 8, line 36, leave out <after> and insert <when>

Patricia Ferguson

- 83 In section 12, page 9, line 1, leave out <after> and insert <when>

Property factor identifier

Patricia Ferguson

- 115 After section 13, insert—

<Registered property factor identifier

Registered property factor identifier

- (1) The Scottish Ministers must devise an identifier which may be used by registered property factors to identify themselves as such.
- (2) A registered property factor must include the identifier mentioned in subsection (1) in any communication of a type mentioned in subsection (3).
- (3) The types of communication are—
 - (a) any communication with any homeowner to whom the registered property factor provides property factoring services, and
 - (b) any communication which advertises the registered property factor’s provision of property factoring services to one or more homeowners to whom the registered property factor does not currently provide such services.
- (4) In this section—

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“communication” includes an electronic communication,

“property factoring services” means the activities undertaken by the property factor which cause the property factor to require to be registered in the register.>

Applications to homeowner housing panels

Alex Neil

- 9 In section 16, page 10, leave out lines 24 and 25 and insert—
<() to carry out the property factor’s duties,>

Patricia Ferguson

- 85 In section 16, page 10, line 25, at end insert—
<() to carry out management and maintenance required by burdens contained within their title deeds or land certificates, where the property factor owns land for the benefit of owners of related properties (as defined in section 2(1)(c) and (d)), or>

Alex Neil

- 10 In section 16, page 10, line 29, leave out <comply with the contractual> and insert <carry out the property factor’s>

Alex Neil

- 11 In section 16, page 10, line 30, after <be,> insert <to comply with>

Alex Neil

- 12 In section 16, page 10, line 33, leave out <comply with the contractual> and insert <carry out the property factor’s>

Patricia Ferguson

- 87 In section 16, page 10, line 34, after <duties> insert <, burdens contained within their title deeds or land certificates>

Alex Neil

- 13 In section 16, page 10, line 34, after <be,> insert <to comply with>

Alex Neil

- 14 In section 16, page 10, line 36, at end insert—
<(4) References in this Act to a failure to carry out a property factor’s duties include references to a failure to carry them out to a reasonable standard.
(5) In this Act, “property factor’s duties” means, in relation to a homeowner—
(a) duties in relation to the management of the common parts of land or buildings owned by the homeowner, or
(b) duties in relation to the management or maintenance of land—

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- (i) adjoining or neighbouring residential property owned by the homeowner, and
- (ii) available for use by the homeowner.>

Alex Neil

- 30 In section 28, page 15, leave out line 14

Alex Neil

- 31 In section 28, page 15, line 20, at end insert—
<“property factor’s duties” has the meaning given by section 16(5),”>

Homeowner housing panels and committees

Patricia Ferguson

- 88 In section 17, page 11, line 7, leave out <there has not been a reasonable period of time> and insert <a reasonable period of time has not elapsed>

Patricia Ferguson

- 89 In section 18, page 11, line 29, leave out <complied> and insert <failed to comply>

Patricia Ferguson

- 91 In section 18, page 11, line 37, leave out subsection (3)

Patricia Ferguson

- 92 In section 18, page 12, line 1, leave out <is> and insert <are>

Patricia Ferguson

- 93 In section 18, page 12, line 5, leave out <and the common law remedy of judicial review,>

Patricia Ferguson

- 98 In section 21, page 13, line 11, leave out subsection (3) and insert—
<(3) The decision of the sheriff under this section is final.>

Patricia Ferguson

- 104 In section 25, page 14, line 20, leave out <written>

Patricia Ferguson

- 105 In section 25, page 14, line 20, leave out <by the panel>

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Part 2: minor amendments

Alex Neil

- 15 In section 18, page 11, line 29, leave out <complied with the contractual> and insert <failed to carry out the property factor's>

Patricia Ferguson

- 90 In section 18, page 11, line 29, after <duties> insert <, burdens contained within their title deeds or land certificates>

Alex Neil

- 16 In section 18, page 11, line 30, after <be,> insert <to comply with>

Alex Neil

- 17 In section 18, page 12, line 2, leave out <comply with the contractual> and insert <carry out the property factor's>

Alex Neil

- 18 In section 18, page 12, line 3, after <be,> insert <to comply with>

Patricia Ferguson

- 94 In section 19, page 12, line 11, leave out <financial>

Patricia Ferguson

- 95 In section 19, page 12, line 15, leave out from <committee> to end of line 16 and insert <property factor must take>

Patricia Ferguson

- 96 In section 20, page 12, line 24, leave out <in question>

Patricia Ferguson

- 97 In section 20, page 13, line 1, leave out <(including this section)>

Patricia Ferguson

- 99 In section 22, page 13, line 16, leave out <complied> and insert <failed to comply>

Patricia Ferguson

- 100 In section 23, page 14, line 7, leave out <has> and insert <have>

Patricia Ferguson

- 101 In section 23, page 14, line 8, after <decided> insert <under section 22(1)>

Patricia Ferguson

- 102 In section 24, page 14, line 15, leave out <procedure> and insert <rules>

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Patricia Ferguson

- 103 In section 24, page 14, line 17, leave out <making> and insert <rights>

Patricia Ferguson

- 112 In section 28, page 15, line 24, leave out <16(1)(b)> and insert <13(4)>

Part 2: appeals procedure

Alex Neil

- 19 In section 24, page 14, line 16, after <16> insert <and>

Alex Neil

- 20 In section 24, page 14, line 17, leave out <and the making of appeals against such decisions>

Ancillary provision

Alex Neil

- 25 In section 26, page 14, line 37, after <25(3)> insert <, (*Ancillary provision*)(1)>

Alex Neil

- 26 After section 26, insert—

<Ancillary provision

- (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).
- (3) An order under subsection (1) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.>

Alex Neil

- 28 In section 27, page 15, line 9, after <13(3)(c)> insert <, (*Ancillary provision*)(1)>

Crown application

Alex Neil

- 32 After section 28, insert—

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<Crown application

- (1) No contravention by the Crown of any provision of this Act makes the Crown criminally liable.
- (2) However, the Court of Session may, on the application of the Scottish Ministers, declare unlawful any act or omission of the Crown which constitutes such a contravention.>

Commencement

Alex Neil

- 33** In section 29, page 15, line 28, after <Act> insert <(except this Part)>

Patricia Ferguson

- 113** In section 29, page 15, line 28, leave out <29 September> and insert <31 December>

Alex Neil

- 34** In section 29, page 15, line 28, leave out <29 September 2011 or such earlier date> and insert <such day>

Alex Neil

- 35** In section 29, page 15, line 29, at end insert—

<() This Part comes into force at the beginning of the day after the day on which the Bill for this Act receives Royal Assent.>