

Property Factors (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 29

Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

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>

Section 2

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

- 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
 - (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.>

Section 3

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>

Section 4

Patricia Ferguson

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

Patricia Ferguson

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

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

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

Patricia Ferguson

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

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>

Section 5

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

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

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>

Patricia Ferguson

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

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*).>

Patricia Ferguson

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

Section 8

Patricia Ferguson

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

Patricia Ferguson

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

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>

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>

Section 9

Patricia Ferguson

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

Patricia Ferguson

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

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

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

Section 10

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)>

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.>

Section 11

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)>

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—
“(1a) regulating the procedure to be followed in appeals under sections 11 and 21 of the Property Factors (Scotland) Act 2011 (asp 00);”.>

Section 12

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>

Section 13

Patricia Ferguson

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

After section 13

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—

“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.>

Section 16

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>

Patricia Ferguson

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

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

Section 17

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>

Section 18

Patricia Ferguson

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

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>

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>

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

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

Section 19

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>

Section 20

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)>

Section 21

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.>

Section 22

Patricia Ferguson

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

Section 23

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)>

Section 24

Patricia Ferguson

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

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>

Patricia Ferguson

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

After section 24

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,
 - (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.>

Section 25

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>

Before section 26

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.”.>

Section 26

Patricia Ferguson

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

Alex Neil

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

Alex Neil

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

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

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

After section 26

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.>

Section 27

Alex Neil

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

Alex Neil

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

Section 28

Alex Neil

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

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,>

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,>

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,>

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),”>

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),>

Patricia Ferguson

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

Patricia Ferguson

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

After section 28

Alex Neil

32 After section 28, insert—

<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.>

Section 29

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.>

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