

Property Factors (Scotland) Bill

2nd 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 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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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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Published in Edinburgh by RR Donnelley and available from:

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Printed in Scotland by RR Donnelley

ISBN 978-1-4061-7200-3

£1.20

ISBN 978-1-4061-7200-3



9 78 1406 172003