

# **Property Factors (Scotland) Act 2011**

## **Code of Conduct for Property Factors**

### **Draft for Consultation**

**September 2011**

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## FOREWORD FROM THE MINISTER FOR HOUSING AND TRANSPORT



The Scottish Government has long recognised that there are concerns about how some property and land management services are delivered in Scotland and we have been committed to working in partnership with Parliamentary colleagues and others to explore all options for identifying effective solutions.

Earlier this year the Scottish Parliament passed the Property Factors (Scotland) Act 2011 with broad support across all parties. The legislation had been introduced by Patricia Ferguson MSP, and we were pleased to support the Bill and work with Ms Ferguson to make the legislation as effective as possible.

The Act will come into force on 1 October 2012 and will cover organisations offering property and land management services. The Act's main aim is to create a statutory framework which will provide protection for homeowners in Scotland who receive services from factors. Within that framework, the Code of Conduct will set minimum standards of practice for the industry.

We are currently working on implementation of the various provisions of the Act and this 12 week public consultation on the draft Code of Conduct is part of that work. Through this consultation we hope to obtain a wide range of views to ensure that the Code is fit for purpose and I hope that you will take the time to read the draft Code and send us your comments.

A handwritten signature in black ink, appearing to be 'KB', followed by a horizontal line.

**Keith Brown MSP**  
**Minister for Housing and Transport**

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## **INTRODUCTION TO THE CONSULTATION**

### **The Property Factors (Scotland) Act 2011: Draft Code of Conduct**

The Property Factor Code of Conduct is one of the central provisions of the Property Factors (Scotland) Act 2011 and its aim is to set minimum statutory standards of practice for the property and land management industry.

#### **Provisions of the Code**

Property factors have a complex and wide-ranging role and for this reason the Code is organised into eight sections:

1. General obligations
2. Written statement of services
3. Communication and consultation
4. Financial obligations
5. Debt recovery
6. Insurance
7. Carrying out repairs and maintenance
8. Complaints resolution

The Code is designed to be reasonable and realistic, and most of the individual standards are short, straightforward statements. Some of the standards (for example those relating to the provision of insurance) will not be relevant to all property and land managers.

The Code is underpinned by the principle of transparency so that homeowners are clear about what they are paying for, how the charges were arrived at and the routes available in the event that they wish to make a complaint.

#### **Building on the voluntary accreditation standards**

The starting point in developing the Code was the standards prepared for the voluntary accreditation scheme for property and land managers which we consulted on during 2010. The accreditation standards were intended as a model of good practice and they had been developed in partnership with a group of key stakeholders representing the industry, consumers and other relevant bodies. In the course of this work the group gave careful consideration to a range of material, in particular the findings of the 2009 Office of Fair Trading market study of the property and land management market in Scotland.<sup>1</sup>

#### **Further work**

As part of the process of developing the Code and implementing the Act, an Equalities Impact Assessment and a Business and Regulatory Impact Assessment will be prepared and published later this year.

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<sup>1</sup> <http://www.offt.gov.uk/OFTwork/publications/publication-categories/reports/competition-policy/oft1046>

It is intended that the Code will be reviewed at an appropriate period after introduction to ensure that its provisions are appropriate and effective. Any necessary changes or adjustments would be made in the light of our experience of operating the Code.

### **Consultation period**

This consultation will run for a period of 12 weeks, opening on Monday 26 September and closing on Friday 16 December. We hope you will take this opportunity to respond.

We intend to hold a series of consultation workshops for property factors and for homeowners/members of the public during the consultation period. Further details will be published shortly on the Consultation section of our website.

# PROPERTY FACTORS (SCOTLAND) ACT 2011

## PROPERTY FACTOR CODE OF CONDUCT

The final version of this Code of Conduct for Property Factors will come into force by **1 October 2012**, along with the other provisions of the Property Factors (Scotland) Act 2011, such as the legal requirement to apply for registration. This particular version of the Code of Conduct is a draft for consultation purposes only and is likely to be revised in light of consultation responses.

### INTRODUCTION

This Code of Conduct ('the Code') sets out minimum standards of practice for registered property factors and has been prepared in terms of section 14 of the Property Factors (Scotland) Act 2011 ('the Act'). Registered property factors (as defined in section 2 of the Act) are legally required to ensure compliance with the Code in terms of section 14(5) of the Act.

This Code is one of three main elements to the Act. The other two elements are:

1. A register of all property factors operating in Scotland (a property factor operating in Scotland without being registered will be committing a criminal offence in terms of section 12 of the Act);
2. A dispute resolution mechanism – the Homeowner Housing Panel.

### Who does this Code apply to?

This Code applies to all registered 'property factors' as defined by section 2 of the Act.

Broadly, 'property factors' means property and land managers operating in Scotland, whether they are **private businesses**, **local authorities** or **housing associations** (see the annex to the Code for the definition of 'property factor' which is contained in section 2 of the Act). Local authorities and housing associations will wish to take careful note of section 2(1)(b) in particular, as the provision of the service of managing the common parts of land used to any extent for residential purposes, to homeowners free of charge does **not** in itself exempt those organisations from having to comply with the provisions of the Act.

### What happens if a property factor does not comply with the Code?

Section 16 of the Act establishes a dispute resolution system, the Homeowner Housing Panel, which a homeowner may apply to for a determination, if they believe that their property factor has failed to comply with the Code, or otherwise failed to carry out their duties (section 17 of the Act). This may result in a 'property factor enforcement order' being issued, requiring the property factor to take such action or to make such payment to the homeowner as is considered necessary. Failure to comply with such an order without reasonable excuse is a criminal offence in terms of section 24 of the Act.



In addition, Ministers can take into account any failure to comply with the Code or with any property factor enforcement orders when deciding whether to enter a person on the register of property factors, or to remove a registered property factor from it (see sections 4 and 8 of the Act). A property factor that has been removed from the register will be committing a criminal offence if they continue to operate (section 12(1) and (3)).

### **How do the requirements of professional bodies and other legislation relate to the Code?**

Property factors are responsible for ensuring that they conduct their business in a manner that complies with all relevant legislation in addition to the Act and the Code. In particular this covers duties imposed by legislation relating to consumer protection, financial services, consumer credit licences, title conditions, health and safety, data protection and equalities.

Some property factors will also have specific commitments to meet the regulatory requirements of statutory bodies (such as the Scottish Housing Regulator or the Financial Services Authority), or comply with the rules and codes of practice of professional or trade bodies (such as the Royal Institution of Chartered Surveyors or the Property Managers Association Scotland).

The Code is separate from, and additional to, these other statutory and voluntary requirements.

## SECTION 1: GENERAL OBLIGATIONS

1.1 You must comply with this Code in full (section 14(5) of the Act refers).

- However, where the property title deeds conflict with the Code, the title deeds will prevail, unless the title deeds have been replaced or over-ridden by provisions contained in or action taken under the Title Conditions (Scotland) Act 2003, the Tenements (Scotland) Act 2004 or other legislation; or by agreement in writing between the homeowners and the property factor; or by order made by a court or by the Lands Tribunal for Scotland.
- If the Code contradicts any term or condition set out in any contractual agreement between the property factor and homeowner, the latter shall take precedence.

These exceptions will only prevail on the issues where there is a direct conflict with the Code. All other requirements of the Code, on which there is no conflict, will continue to apply.

1.2 You must ensure that all members of your staff, and any contractors used by you, are familiar with the duties and requirements imposed by the Code.

1.3 You must comply with any decisions of the Homeowner Housing Panel.

1.4 You must take all reasonable steps to ensure that your property factor registered number is included in any document sent to a homeowner and in any other document or communication specified by the Scottish Ministers (section 13(3) of the Act refers).

1.5 You must keep clear and full written records and produce them when required by the Homeowner Housing Panel.

**QUESTION 1:** Does Section 1 cover all of the over-arching obligations required of this statutory Code?

If your answer is no, please explain what additional information you would require to explain the obligations more fully.

## SECTION 2: WRITTEN STATEMENT OF SERVICES

**For situations where the land<sup>2</sup> is owned by the group of homeowners<sup>3</sup>:**

2.1 You must provide each homeowner within the group with a written statement setting out, in simple and transparent terms, your responsibilities as the property factor of the land managed and their responsibilities in relation to that land. The statement is not intended as a legally binding agreement, although the Homeowner Housing Panel will expect you to show how your actions compare with the written statement as part of your compliance with the requirements of this Code, if a homeowner applies to the Panel for a determination in terms of section 17 of the Act

You must provide the written statement:

- to existing homeowners when you initially register as a property factor;
- to any new homeowners when you agree to provide services to them;
- at change of ownership of a property which you already manage;
- if there are any changes to the terms of the written statement.

In preparing this statement you should, where reasonable, take account of any conditions in the property titles, any other formal documentation with legal effect, or any relevant legislation including the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004.

The written statement should set out the terms and conditions and service delivery standards of the arrangement in place between you and the homeowner including:

- a. the core services that you will provide. This will include the target times for taking action in response to requests for both routine and emergency repairs and the frequency of property inspections (if part of the core service). Any works or services which are a requirement of the property titles should also be stated;
- b. the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified;
- c. the management fee charged, including any fee structure and also processes for reviewing and increasing or decreasing this fee;
- d. what proportion, expressed as a percentage, of the management fees and charges for common works and services each owner within the group is responsible for;

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<sup>2</sup> In the context of the Code, the term 'land' refers to both land and any buildings on that land.

<sup>3</sup> The definition of 'homeowner', as it appears in the Act, is attached in Annex A.

- e. any joint liability for the non-payment of fees and charges for common works and services by co-owners (see Section 5: Debt Recovery);
- f. confirmation that you have a debt recovery procedure which is available on request, and may also be available online (see Section 5: Debt Recovery);
- g. any arrangements for taking floats, confirming the amount, payment and repayment (at change of ownership or termination of service);
- h. any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);
- i. how often you will bill homeowners and by what method they will receive their bills;
- j. how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable (see Section 5: Debt Recovery);
- k. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the Homeowner Housing Panel if they remain dissatisfied following completion of your in-house complaints handling procedure (see Section 8: Complaints);
- l. the timescales within which you are required to respond to enquiries and complaints received by letter or e-mail. These timescales will be as follows:
 

A written response within 5 working days of receipt, either giving a full reply or advising the homeowner that additional time will be required and stating a date by which you will respond.

Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time;
- m. your procedures and timescales for response when dealing with telephone enquiries;
- n. an explanation of the legal basis of any authority you have to act on behalf of all the owners in the group (for example what is stated in the title deeds or the use of the Tenement Management Scheme under the Tenements (Scotland) Act 2004). This should state any level of delegated authority, for example thresholds for instructing works;
- o. clear information on how to change or terminate the service contract based on the title deeds, the Tenements (Scotland) Act 2004, the Title Conditions (Scotland) Act 2003, other applicable legislation or any other method. This information should state clearly any 'cooling off' period, period of notice or penalty charges for early termination;
- p. a declaration of any financial or other interests in the building/development to be managed.

**Alternative Standards for situations where the land is owned by a land maintenance company or a party other than the group of homeowners:**

2.2 You must provide each homeowner with a written statement setting out, in simple and transparent terms, the terms and conditions and service delivery standards of the arrangement in place between you. The statement is not intended as a legally binding agreement although the Homeowner Housing Panel will expect you to show how your actions compare with the written statement as part of your compliance with the requirements of this Code, if a homeowner applies to the Panel for a determination in terms of section 17 of the Act.

You must provide the written statement:

- to your existing homeowners when you initially register as a property factor;
- to any new homeowners when you provide services to them;
- at change of ownership of a property to which you already provide services;
- if there are any changes to the terms of the written statement.

The written statement should include the following:

- a. a description of the use and location of the area of land to be maintained, including a map where possible (this information to be kept up-to-date);
- b. an explanation of the legal basis of the arrangement between you and the homeowner (e.g. as stated in the title deeds);
- c. the services that you will provide. This will include the minimum service delivery standards that can be expected and the target times for taking action in response to requests for both routine and emergency repairs. Any work or services which are a requirement of the property titles should also be stated;
- d. how many properties contribute towards maintenance costs for the area of land maintained;
- e. any joint liability for the non-payment of fees and charges by other homeowners (see Section 5: Debt Recovery);
- f. confirmation that you have a debt recovery procedure which is available on request, and may also be available online (see Section 5: Debt Recovery);
- g. any arrangements for taking floats, confirming the amount, payment and repayment (at change of ownership or termination of service);

- h. any arrangements for funds for specific projects or cyclical maintenance, confirming amounts, payment and repayment (at change of ownership or termination of service);
- i. any services or works that may incur additional fees and charges, including when or how they may arise (this may take the form of a 'menu' of services. How these fees and charges are calculated and notified;
- j. how often you will bill homeowners and by what method they will receive their bills;
- k. how you will collect payments, including timescales and methods (stating any choices available). Any charges relating to late payment, stating the period of time after which these would be applicable (see Section 5: Debt Recovery);
- l. your in-house complaints handling procedure (which may also be available online) and how homeowners may make an application to the Homeowner Housing Panel if they remain dissatisfied after completing your in-house complaints handling procedure (see Section 8: Complaints);
- m. the timescales within which you are required to respond to enquiries and complaints received by letter or e-mail. These timescales will be as follows:  

A written response within 5 working days of receipt, either giving a full reply or advising the homeowner that additional time will be required and stating a date by which you will respond.

Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time;
- n. your procedures and timescales for response when dealing with telephone enquiries;
- o. clear information on how to change or terminate the service contract based on the title deeds, the Tenements (Scotland) Act 2004, the Title Conditions (Scotland) Act 2003 or other applicable legislation. This information should state clearly any 'cooling off' period, period of notice or penalty charges for early termination;
- p. a declaration of any financial or other interests in the land to be managed.

**QUESTION 2:** Does Section 2 cover the key information that should be provided in the written statement of services?

If your answer is no, please explain what you would like to see expanded.

### SECTION 3: COMMUNICATION AND CONSULTATION

Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard:

- 3.1 You must not provide information which is misleading or false.
- 3.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).
- 3.3 You must provide homeowners with your contact details, including telephone number, out-of-hours arrangements. You must also provide details of how to contact an out-of-hours contractor for emergencies if this is part of the service provided.
- 3.4 You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those for the core service, unless you can show that you have delegated authority to instruct works up to an agreed threshold or act without seeking further approval from the group of homeowners. This procedure should be in accordance with relevant title deeds or the Tenements (Scotland) Act 2004, as appropriate.
- 3.5 If any homeowners inform you that they are experiencing difficulty in paying, you must provide contact details for agencies which provide money advice and local authorities who may be able to provide help under their Schemes of Assistance. Alternatively you may direct homeowners to where contact details are available.
- 3.6 You must ensure that homeowners have a route for providing feedback to you on the service provided.

**QUESTION 3:** Does Section 3 cover the key matters relating to communications between the property factor and homeowner?

If your answer is no, please explain what you think needs to be expanded.

## SECTION 4: FINANCIAL OBLIGATIONS

While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were arrived at and that no improper payment requests are involved.

Whether or not a property factor should be regulated by the Financial Services Authority (FSA) depends on the precise nature of their activities and whether these activities fall within the remit of the FSA as set out in various pieces of legislation. If you are subject to FSA regulation, compliance with their rules will be in addition to the requirement for property factors to comply with the Code. Additional information and links relating to FSA regulation will be included in the supplementary information which will accompany the final version of the Code. This note about FSA regulation also applies to Section 6: Insurance.

- 4.1 To offer protection to homeowners, you must ensure that there is a clear separation between bank accounts holding your own funds and account/s holding funds belonging to homeowners, regardless of whether you are a public or private sector organisation. This requirement applies to both float and sinking fund accounts. Private sector property factors must hold homeowner funds in client trust accounts.

In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest bearing client trust account must be opened in the name of each separate group of owners.

You must also have procedures for dealing with payments made in advance by homeowners, in cases where the homeowner requires a refund or needs to transfer his, her or their interest in the funds (for example, on sale of the property).

- 4.2 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided no later than the point of settlement of any funds due.
- 4.3 Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor. Arrangements must comply with the written statement outlined in Section 1: General Obligations and must, where appropriate, allow for holding a retention to cover any outstanding bills.
- 4.4 You must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. On request you must also supply supporting documentation and invoices for inspection or copying.



**QUESTION 4:** Does Section 4 cover the key matters in the financial relationship between the property factor and homeowner?

If your answer is no, please explain what you would like to see expanded

**QUESTION 5:** this question is for local authorities and housing associations only:

**Standard 4.1** – can you suggest an alternative arrangement to client trust accounts which would allow local authorities and housing associations to ensure that there is a clear separation of funds belonging to homeowners?

## SECTION 5: DEBT RECOVERY

Non-payment by some homeowners can affect other homeowners of common land, sometimes affecting the provision of services to the other homeowners, or resulting in the other homeowners being liable to meet the non-paying homeowner's debts (if they are jointly liable for the debts of others in the group). For this reason it is important that homeowners are aware of the implications of late payment and property factors have clear procedures to deal with this situation and take action as early as possible to prevent non-payment from developing into a problem.

It is a requirement of the written statement in Section 2: Written Statement of Services, that you inform homeowners that you have a debt recovery procedure which is available on request, inform them of any joint liability for the debts of other homeowners and inform them of any late payment charges.

- 5.1 You must have a clear written procedure for debt recovery which outlines a series of steps which you will follow unless there is a reason not to. This procedure must be clearly, consistently and reasonably applied. It is essential that this procedure sets out how you will deal with disputed debts.
- 5.2 Any charges that you make for late payment must not be unreasonable, excessive or include compound interest, unless explicitly provided for in the title deeds or otherwise.
- 5.3 You must provide homeowners with a clear statement of how service delivery and charges will be affected if one or more homeowner does not fulfil their obligations.
- 5.4 You must have systems in place to ensure the regular monitoring of payments due from homeowners. You must issue timely written reminders to inform individual homeowners of any amounts outstanding.
- 5.5 You must keep homeowners who are jointly liable for the debts of co-owners informed of any debt recovery problems of other homeowners which could have implications for them (subject to the limitations of data protection legislation).
- 5.6 You must be able to demonstrate that you have taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging those remaining homeowners if they are jointly liable for such costs.
- 5.7 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.
- 5.8 When contacting debtors you, or any third party acting on your behalf, must not act in an intimidating manner or threaten them (apart from reasonable threats that you may take legal action). Nor must you knowingly or carelessly misrepresent your authority and/or the correct legal position.

**QUESTION 6:** Does Section 5 cover the key matters relating to debt recovery?

If your answer is no, please explain which elements you would like to see expanded upon.

## SECTION 6: INSURANCE

6.1 You must have, and maintain, adequate professional indemnity insurance.

**If your agreement with homeowners includes arranging buildings and/or contents insurance, the following standards will apply. You will also have to check whether you are subject to regulation by the Financial Services Authority (see Section 4: Financial Obligations).**

- 6.2 You must provide each homeowner with clear information showing the basis on which their share of the insurance premium is calculated, the sum insured, the premium paid, details of any commission or administration fee paid, any excesses which apply, the terms of the policy (in the form of the policy booklet) and the name of the company providing insurance cover. You must also declare any other financial or other interests with the insurance provider.
- 6.3 You must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly.
- 6.4 You must keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves.

**Additional standard for situations where a land maintenance company owns the land:**

- 6.5 On request you must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, the terms of the policy and the name of the company providing insurance cover.

**QUESTION 7:** Does Section 6 cover the key matters in situations where insurance is arranged by the property factor?

If your answer is no, please explain which elements you would like to see expanded upon.

## SECTION 7: CARRYING OUT REPAIRS AND MAINTENANCE

This section of the Code covers the use of both in-house staff and contractors. It also applies in situations where the contract is not directly between the contractor and homeowners. This is because a property factor will often instruct repairs in their own name and in this situation homeowners will not be a direct party to the contract between the property factor and the contractor. The ability of homeowners to pursue the contractor at a later date to remedy any defective work would be affected in these circumstances.

- 7.1 You must have in place procedures to allow homeowners to notify you of matters requiring repair, maintenance or attention. You must inform homeowners of the progress of this work, including estimated timescales for completion.
- 7.2 You must have in place procedures for dealing with out of hours emergencies and for giving contractors access to properties in order to carry out emergency repairs, wherever possible.
- 7.3 You must be able to show how and why you appointed contractors, including cases where you decided not to carry out a competitive tendering exercise or use in-house staff.
- 7.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then you must prepare a programme of works;
- 7.5 You must ensure that all contractors appointed by you have public liability insurance.
- 7.6 If applicable, documentation relating to any tendering process (excluding any commercially sensitive information) should be available for inspection by homeowners on request.
- 7.7 You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.
- 7.8 You must disclose to homeowners, in writing, any financial or other interests with any contractors appointed.
- 7.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.

**QUESTION 8:** Does Section 7 cover the key matters relating to repairs and maintenance?

If your answer is no, please explain what information you would like to see expanded upon.

## SECTION 8: COMPLAINTS RESOLUTION

Section 17 of the Act allows homeowners to make an application to the Homeowner Housing Panel for a determination of whether their property factor has failed to carry out their factoring duties, or failed to comply with the Code.

To take a complaint to the Panel, homeowners must first notify their property factor in writing of the reasons why they consider that the factor has failed to carry out their duties, or failed to comply with the Code. The property factor must also have refused to resolve the homeowner's concerns, or have unreasonably delayed attempting to resolve them.

It is a requirement of the written statement in Section 2: Written Statement of Services that you provide homeowners with a copy of your in-house complaints procedure and how they may access the Homeowner Housing Panel.

- 8.1 You must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.
- 8.2 When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may access the Homeowner Housing Panel.
- 8.3 Unless explicitly provided for in the property titles or other formal documents with legal effect, you must not charge for handling complaints.
- 8.4 You must keep a written record of all complaints made by homeowners or third parties during the past three years, in case this information is required by the Homeowner Housing Panel.
- 8.5 You must comply with any request from the Homeowner Housing Panel to provide information relating to an application from a homeowner.

**QUESTION 9:** Does Section 8 cover the key aspects of dealing with complaints?

If your answer is no, please explain what information you would like to see expanded upon.

## GENERAL QUESTION

**QUESTION 10: Overall,** Is the Code clear, understandable and easy enough to interpret?

If your answer is no, please explain which points require further clarification (where possible, please refer to the numbers of specific standards).

## EXTRACTS FROM THE PROPERTY FACTORS (SCOTLAND) ACT 2011

The full text of the Property Factors (Scotland) Act 2011 can be accessed here:

<http://www.legislation.gov.uk/asp/2011/8/contents>

### THE MEANING OF 'PROPERTY FACTOR'

#### Section 2 of the Act - Meaning of 'property factor'

(1) In this Act, 'property factor' means –

- (a) a person who, in the course of that person's business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,
- (b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned—
  - (i) by two or more other persons, or
  - (ii) by the local authority or housing association and one or more other person,
- (c) a person who, in the course of that person's business, manages or maintains land which is available for use by the owners of any two or more 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), and
- (d) 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.

(2) 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.
- (3) The Scottish Ministers may by order modify either or both of subsections (1) and (2).
- (4) An order under subsection (3) may make such consequential modifications of any other provision of this Act as may be necessary or appropriate.
- (5) An order under subsection (3) 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.
- (6) In this Part—
  - 'housing association' has the meaning given by section 1 of the Housing Associations Act 1985 (c.69),
  - 'local authority' means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

## **THE MEANING OF 'HOMEOWNER'**

### **Section 10 of the Act - Section 9: interpretation, et**

- (5) In this Act, 'homeowner' means—
  - (a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
  - (b) 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.



## HOW TO COMMENT

We invite responses to this consultation paper by **Friday 16 December 2011**

It will be very helpful for us in capturing your views if you could use this online questionnaire for your response. It covers all the questions included in the consultation paper. You may also download a Word version of the questionnaire from our website (<http://www.scotland.gov.uk/Consultations>)

Please send your completed response by email to:  
[propertyfactor.consultation@scotland.gsi.gov.uk](mailto:propertyfactor.consultation@scotland.gsi.gov.uk)

or post your response to:

Edward Friel  
Housing Options and Support Division  
Scottish Government  
Highlander House  
58 Waterloo Street  
GLASGOW  
G2 7DA

Please also complete and send the **respondent information form** with your reply (see 'handling your response' below).

If you have any queries about how to reply, or require a copy of this paper in an alternative format or a language other than English, please contact Edward Friel on 0141 – 271 3723 or email us at [propertyfactor.consultation@scotland.gsi.gov.uk](mailto:propertyfactor.consultation@scotland.gsi.gov.uk)

## Questions

There are a total of 10 questions within this consultation paper. Nine of these relate to specific sections of the Code, and the final question relates to the whole of the Code.

You don't need to answer all the questions if you don't want to. Different questions may be more or less important to different groups of people or organisations. We want your comments on the areas that matter most to you, so please feel free to focus on as many or as few as you wish.

## Handling your response

We need to know how you wish us to handle your response and, in particular, whether you are happy for us to make your response public. Please complete and return the **respondent information form** (which follows with the consultation questionnaire below) when returning your questionnaire. This will help us to treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it as such.

The Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. This means we have to consider any request made to us under the Act for information relating to responses made to this consultation exercise.

## What happens next?

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library. and on the [Scottish Government consultation](#) web pages. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

Following the closing date, all responses will be analysed and considered along with any other available evidence. We aim to issue a report on this consultation process after it closes for responses.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them Edward Friel (contact details as above).

## Consultation events

We intend to hold a series of workshops during the consultation period. These will take the form of workshops for property factors and for homeowners/members of the public. Further details will be published shortly on the Consultation section of our website.

# PROPERTY FACTORS (SCOTLAND) ACT 2011

## RESPONDENT INFORMATION FORM

Please Note: that this form **must** be returned with your response to ensure that we handle your response appropriately.

### 1. Name/Organisation

Organisation Name

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Forename

### 2. Postal Address

Postcode	Phone	Email

### 3. Permissions

I am responding as...

Individual	/	Group/Organisation
<input type="checkbox"/>		<input type="checkbox"/>
<i>Please tick as appropriate</i>		

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate* Yes ☐ No ☐

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available ☐

Or

Yes, make my response available, but not my name and address ☐

Or

Yes, make my response and name available, but not my address ☐

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate* No ☐ Yes ☐

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate* ☐ Yes

## QUESTIONNAIRE

### CONSULTATION: PROPERTY FACTORS (SCOTLAND) ACT 2011 DRAFT CODE OF CONDUCT FOR PROPERTY FACTORS

#### Section 1 – General obligations

**QUESTION 1:** Does Section 1 cover all of the over-arching obligations required of this statutory Code?

If your answer is no, please explain what additional information you would require to explain the obligations more fully.

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#### Section 2 – Written statement of services

**QUESTION 2:** Does Section 2 cover the key information that should be provided in the written statement of services?

If your answer is no, please explain what you would like to see expanded.

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### **Section 3 – Communication and consultation**

**QUESTION 3:** Does Section 3 cover the key matters relating to communications between the property factor and homeowner?

If your answer is no, please explain what you think needs to be expanded.

### **Section 4 – Financial obligations**

**QUESTION 4:** Does Section 4 cover the key matters in the financial relationship between the property factor and homeowner?

If your answer is no, please explain what you would like to see expanded.

**QUESTION 5:** this question is for local authorities and housing associations only:

**Standard 4.1** – can you suggest an alternative arrangement to client trust accounts which would allow local authorities and housing associations to ensure that there is a clear separation of funds belonging to homeowners?

## **Section 5 – Debt recovery**

**QUESTION 6:** Does Section 5 cover the key matters relating to debt recovery?

If your answer is no, please explain which elements you would like to see expanded upon.

## **Section 6 – Insurance**

**QUESTION 7:** Does Section 6 cover the key matters in situations where insurance is arranged by the property factor?

If your answer is no, please explain which elements you would like to see expanded upon.

## **Section 7 – Carrying out repairs and maintenance**

**QUESTION 8:** Does Section 7 cover the key matters relating to repairs and maintenance?

If your answer is no, please explain what information you would like to see expanded upon.

## **Section 8 – Complaints resolution**

**QUESTION 9:** Does Section 8 cover the key aspects of dealing with complaints?

If your answer is no, please explain what information you would like to see expanded upon.

### **General question**

**QUESTION 10: Overall,** Is the Code clear, understandable and easy enough to interpret?

If your answer is no, please explain which points require further clarification (where possible, please refer to the numbers of specific standards).



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