

A Consultation on a *draft revised code of conduct* for registered property factors

October 2017

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Ministerial Foreword



The Scottish Government's vision is for the people of Scotland to be able to live in good quality homes which have high management standards and are fit for the future. Protecting the common parts of property and land as well as improving standards is an important part of that vision.

We recognise that homeowners are ultimately responsible for ensuring that shared spaces connected to their property such as roofs, communal stairways, shared gardens and other common land are properly maintained and kept in a good condition. This brings benefits in protecting a homeowner's investment in their property as well as making a crucial impact to their own and their neighbour's health and wellbeing. In circumstances where a property factor has responsibilities for managing that process on behalf of homeowners, then they should deliver their services in a clear and transparent way and to the homeowners' satisfaction.

The requirements set out in the Property Factors (Scotland) Act 2011, including the Code of Conduct are now approaching their sixth year of operation. Over that period, the number of registered property factors required to comply with the Code has increased year on year. The outcomes indicated in the most recent report of the activities of the Homeowner Housing Panel (now part of the First-tier Tribunal) also suggest that while there is some evidence of service improvement within the factoring sector, there could be further improvement particularly in relation to communication and complaint handling. This presents an opportunity to consider strengthening the requirements of the Code and the wider regulatory regime.

Registered property factors are an important part of the provision of housing related services in Scotland and the Code sets the minimum standards of practice for how they should undertake their business with homeowners. While I recognise that some property factors will endeavour to provide a level of service to their customers that exceed these standards, there is an established pathway under the Act for homeowners to seek resolution where they believe that the service they have received has fallen short of the standards required.

Your views will help to ensure that the minimum standards of service provided to homeowners continuously improve and that the requirements of the Code and the wider 2011 Act strike a fair balance between the duties placed on a registered property factor and the standards of service which homeowners should expect.

I look forward to hearing your views on this consultation.

A handwritten signature in black ink, appearing to read 'Kevin Stewart', followed by a long horizontal line extending to the right.

Kevin Stewart MSP,
Minister for Local Government and Housing

Introduction and background

1. In 2011, after considering a Members Bill, the Scottish Parliament passed the Property Factors (Scotland) Act (the 2011 Act) with broad support across all parties. The 2011 Act came into force on 1 October 2012 and created a statutory framework providing protections for homeowners who receive services from a property factor. As part of that framework, a code of conduct (the Code) was introduced which sets minimum standards of practice for registered property factors in their business with homeowners.
2. The 2011 Act applies to private sector businesses, local authorities and housing associations who operate as a property factor¹. The 2011 Act introduced a mandatory requirement for property factors to register with Scottish Ministers². There are currently around 400 registered property factors³, around 620,000 property addresses and 2,500 land records⁴ searchable on the register.
3. Scottish Ministers have responsibility for preparing the Code and, following parliamentary approval, the original code took effect from when the 2011 Act came into force. The Code includes requirements for a registered property factor to provide a written statement of service to homeowners and how they communicate and consult with homeowners. The Code also includes requirements in relation to financial obligations, debt recovery procedures, arranging insurance, carrying out repairs and maintenance and handling complaints from homeowners.
4. A homeowner who believes that their registered property factor has failed to comply with the code of conduct under section 14(5) of the 2011 Act⁵ or its duties specified under section 17(5) of the 2011 Act⁶ may apply to have their case considered by the First-Tier Tribunal for Scotland Housing and Property Chamber⁷ (First-Tier Tribunal) who are an independent tribunal separate from Scottish Ministers. The First-Tier Tribunal can issue a legally binding property factor enforcement order (PFEO) against a registered property factor if it finds that there has been a breach of the code or factoring duties. Scottish Ministers can also take a property factor's compliance with the code of conduct and PFEOs into account when considering whether an applicant should be entered on the register or be removed from it if already registered.

¹ As defined by Section 2 of the Property Factors (Scotland) Act 2011 - <http://www.legislation.gov.uk/asp/2011/8/notes/division/2/1/2>

² Scottish Property Factor Register - <http://sedsh119.sedsh.gov.uk/propertyfactorregister/>

³ Approximate figure collated from the Scottish Property Factor Register

⁴ Approximate figures primarily based on property information supplied by registered property factors as per section 7(3) of the Act based on the reporting period 1 April 2016 – 31 March 2017.

⁵ Section 14 of the Property Factors (Scotland) Act 2011 - <http://www.legislation.gov.uk/asp/2011/8/notes/division/2/1/13>

⁶ Section 17 of the Property Factors (Scotland) Act - <http://www.legislation.gov.uk/asp/2011/8/section/17>

⁷ The First-Tier Tribunal for Scotland Housing & Property Chamber - <https://www.housingandpropertychamber.scot/>

Purpose of the consultation

5. Section 14 of the 2011 Act⁸ requires that Scottish Ministers must prepare and publish a Code from ‘time to time’. The original Code was published in October 2012 and an informal review began last year to consider whether the original code required amendment. Feedback provided to the Scottish Government on how the Code has been operating in practice as well as relevant decisions and the annual reports of the previous Homeowner Housing Panel⁹ has been considered as part of this exercise.
6. After carefully consideration of the feedback received to date, we think that there could be benefit in exploring potential changes to the Code with a view to strengthening and clarifying certain requirements and also to assist the reader’s interpretation of the Code.
7. A draft revised Code has been prepared accordingly as part of that process. The 2011 Act requires for any draft Code to be published and consulted upon with such bodies as are considered appropriate and with the general public. The main areas we have strengthened and clarified are:
 - amending the Code’s introductory text to provide more clarification on its purpose including what is and is not covered;
 - clarifying the various situations where and when homeowners should expect to be provided with a copy of a written statement of service by their property factor;
 - requiring a property factor to provide information to homeowners on how it will act in circumstances where another property factor is due to or has taken over the management of common property and land owned by those homeowners. This includes a requirement for the incoming and outgoing property factor to co-operate with each other, as required;
 - requiring an incoming property factor who purchases the assets of an outgoing property factor to provide information to relevant homeowners on any implications this may have for them. This also includes a requirement for an incoming property factor to consider and respond to any complaint made to them by a homeowner which relates to an alleged breach of the Code by the previous property factor and which may lead to a continuing breach;
 - requiring a property factor to provide information to homeowners on its duties under the 2011 Act particularly in relation to its property factor registered number and the notification of its factoring portfolio for the purposes of supporting the register;

⁸ See Footnote (5)

⁹ See Footnote (7)

- requiring a property factor to provide information to homeowners of any relevant professional or trade bodies it belongs to including membership details;
- requiring a property factor to confirm to homeowners its duties under the Code including making a copy available or signposting to where the Code is published in the public domain. This also includes requiring a property factor to signpost to relevant homeowners where all decisions relating to compliance with the Code are published in the public domain;
- requiring a property factor to provide clear information to homeowners on how they can end their factoring arrangement, if applicable, including any information it requires from homeowners;
- requiring a property factor to take reasonable steps to ensure that any third parties appointed to act on their behalf are aware of any relevant requirements of the Code;
- amending the code to clearly specify the requirements placed on a property factor in circumstances where they must or may consider providing information to homeowners if requested;
- including a glossary of terms used in the Code to assist the reader.

8. The purpose of this consultation is to formally seek views on:

- the impact of the original code of conduct for property factors?
- the themes and specific requirements included in the draft revised Code and if these require further amendment?
- whether the written statement of service and complaints handling procedures should be standardised across the factoring industry?
- amending certain provisions of the 2011 Act to give further effect to the proposals in the draft revised Code?
- the impact of the requirements of the draft revised Code on businesses and other interests?
- the impact of the requirements of the draft revised Code on equality groups?
- the impact of the wider requirements of the 2011 Act and whether this has led to improvements in the regulation of property factors.

9. Following this consultation, and in accordance with section 14 of the 2011 Act, the Scottish Ministers may decide to amend the draft revised Code (as published as part of this consultation) and then lay the revised draft before the Scottish Parliament for its consideration. Responses relating to the requirements of the 2011 Act will also be considered and these may inform future policy on whether further amendments to the 2011 Act should be explored.

How we would like you to help?

10. This consultation paper sets out a draft revised statutory Code of Conduct for registered property factors, proposals to amend certain provisions of the Property Factors (Scotland) Act 2011 (2011 Act) to give further effect to the Code and to seeks views on the impact of the 2011 Act.

11. This consultation is comprised of 18 questions and set out in five parts:

- **Part One** seeks your views on the impact of the original code of conduct for property factors (which came into force on 1 October 2012) and whether this has led to improvements in the quality of factoring services provided to homeowners by property factors?;
- **Part Two** seeks your views on the introductory text, themes and specific requirements included in the draft revised Code;
- **Part Three** seeks your views on amending certain provisions of the Property Factors (Scotland) Act 2011 with the purpose of giving further effect to the draft 'revised' Code;
- **Part Four** seeks your views on the impact on equality groups and costs to businesses and related interests in implementing the requirements of the draft 'revised' Code? These will help us to understand the impact of the Code upon business and equality groups;
- **Part Five** seeks your views on the impact of the wider 2011 Act and whether this has led to improvements in the regulation of property factors?

12. Your answers will help us to consider whether the draft revised code requires further amendment, to develop a revised mandatory set of standards that property factors adhere to and to consider whether further legislative action is required?

Part One – Impact of the original code of conduct for registered property factors

13. In this part of the consultation paper we ask for your views on the impact of the original [code of conduct for property factors](#) published in October 2012¹⁰?

Consultation Question

Question 1: Do you think the original code of conduct for property factors has led to improvements in the quality of factoring services provided to homeowners by property factors?

Choose from the following options:

The Code has made significant improvements

The Code has made some or slight improvements

The Code has made no improvements

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of the original Code where applicable.

¹⁰ Property Factors (Scotland) Act 2011: Code of conduct for Property Factors (Scottish Government - July 2012) <https://beta.gov.scot/publications/property-factors-scotland-act-2011-code-conduct-property-factors/>

Part Two – Draft revised code of conduct for registered property factors

Introductory text, themes and requirements

14. In this part of the consultation paper we ask for your views on the introductory text, the themes and specific requirements featured in the draft revised Code (as published as part of this consultation).

Introduction to the Code of Conduct

The following introductory text provides further information on the Code's purpose, who it applies to and the broader regulatory background. It does not form part of the Code.

This Code of Conduct ('the Code') sets out minimum standards of practice for registered property factors on how they should act in their business with homeowners and has been prepared by Scottish Ministers in terms of section 14 of the Property Factors (Scotland) Act 2011 ('the 2011 Act').

This revised Code applies from [date to be determined subject to parliamentary approval], and replaces the original Code which applied from 1 October 2012. All registered property factors are legally required to ensure compliance with the Code in terms of section 14(5) of the 2011 Act.

This Code is one of three main elements to the 2011 Act. The other two elements are:

1. A register of all property factors operating in Scotland which is maintained by the Scottish Ministers.

All property factor registration enquiries (including reports of relevant individuals, corporate bodies, Scottish Partnerships or other unincorporated associations purportedly operating as a 'property factor' whilst unregistered) and/or general enquiries on the Code can be sent in writing to the Scottish Government by e-mail to propertyfactorregister@gov.scot or to the following address:

Scottish Government
Property Factor Registration
2nd Floor, Endeavour House
1 Greenmarket
DUNDEE
DD1 4QB

2. A dispute resolution mechanism for homeowners (as defined by section 10(5) of the Act) - in the first instance on application to the First-tier Tribunal for Scotland Housing and Property Chamber which is an independent judicial body separate from the Scottish Government.

While the Scottish Government can comment generally on the requirements of the Code, it is unable to comment on any decisions taken by the Chamber President and/or the First-tier Tribunal which relate to such applications. Applications and/or related enquiries should be sent to by e-mail to

HPCAdmin@scotcourtribunals.gov.uk or to the following address:

First-tier Tribunal for Scotland Housing and Property Chamber
4th Floor, 1 Atlantic Quay
45 Robertson Street
GLASGOW
G2 8JB

What is the purpose of the Code?

The purpose of the Code is to provide a statutory framework which encourages transparency and sets standards on how a property factor should deliver services and provide related information in its business agreement with relevant homeowners.

Who does the Code apply to?

This Code applies to all “property factors” as defined by section 2(1)(a)-(d) of the 2011 Act who are entered on the register of property factors under section 1 of the 2011 Act.

Broadly, ‘property factors’ means property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations (see Appendix A for the definition of ‘property factor’ which is contained in section 2(1) of the 2011 Act). Local authorities and housing associations will wish to take careful note of section 2(1)(b) of the 2011 Act in particular, as the provision of the service of managing the common parts of land used to any extent for residential purposes, to homeowners¹¹ free of charge does not in itself exempt those organisations from having to comply with the requirements of the 2011 Act and the Code.

Section 14(5) of the 2011 Act indicates that a registered property factor must ensure compliance with the Code for the time being in force.

What may happen if a homeowner believes that their property factor is not complying with the Code?

A homeowner (as specified under section 10(5) of the 2011 Act) must, in the first instance, notify their property factor in writing of the reasons why they consider that their property factor has failed to comply with the code and/or failed to carry out their duties under section 17(5) of the 2011 Act). A homeowner must allow their property factor a reasonable opportunity to resolve such matters in the first instance (see Section 7 of the Code: Complaints Resolution).

¹¹ The definition of “homeowner”, as it appears in section 10(5) of the 2011 Act, is attached in Appendix B of the Code.

The Tribunals (Scotland) Act 2014 established an integrated structure of tribunals with a First-tier Tribunal for Scotland and an Upper Tribunal for Scotland. A homeowner may apply to the First-Tier Tribunal for Scotland Housing and Property Chamber¹² if they believe their property factor has failed to comply with the Code and/or otherwise failed to carry out their duties under section 17(5) of the 2011 Act. Before making an application, a homeowner must notify their property factor in writing as to why they consider that their property factor has failed to carry out their duties under the Act or, as the case may be, failed to comply with the Code. The property factor must also have refused to resolve or unreasonably delayed in attempting to resolve the homeowner's concern. The President of the First-tier Tribunal for Scotland Housing and Property Chamber (Chamber President) will make a decision on whether to refer any application made to a First-tier Tribunal or to reject the application in accordance with section 18 of the 2011 Act.

What may happen if a property factor is found by the First-tier Tribunal to have not complied with the Code?

After considering a homeowner's application and finding that the property factor has failed to comply with the code and/or their duties specified by the 2011 Act, the First-tier Tribunal has the power to make a 'property factor enforcement order', for example requiring the property factor to take such action such as providing information or to make such payment to the homeowner as is considered necessary. It is open for any party to proceedings to appeal a decision by a First-tier Tribunal on a point of law to the Upper Tribunal for Scotland (with permission from the First-tier Tribunal).

What may happen if a property factor is found by the First-tier Tribunal to have failed to comply with a property factor enforcement order?

Again it is open for any party to proceedings to appeal a decision by the First-tier Tribunal on a point of law to the Upper Tribunal for Scotland (with permission from the First-tier Tribunal). Failure to comply with a property factor enforcement order may however have serious consequences for the property factor. The First-tier Tribunal have a duty under section 23(2) of the Act to notify Scottish Ministers of the failure to comply¹³. Failure to comply with a property factor enforcement order without reasonable excuse is also a criminal offence under section 24 of the 2011 Act. It is for the First-tier Tribunal for Scotland Housing and Property Chamber to report such matters to the Police and/or the Procurator Fiscal Service to investigate. It would be for the Procurator Fiscal to decide whether to prosecute and ultimately for a Court to determine the outcome of any prosecution.

¹² The functions of the Homeowner Housing Panel transferred to the First-tier Tribunal for Scotland Housing and Property Chamber on 1 December 2016.

¹³ Section 23 of the 2011 Act - Effect of failure to comply with property factor enforcement order

A property factor convicted of failing to comply with a property factor enforcement order is required to inform Scottish Ministers of such a conviction when submitting a fit and proper person declaration as part of any further application to enter the register (see sections 3(2)(f) and 5(2)(c) of the 2011 Act). The Scottish Ministers can also, amongst other things, take into account any failure to comply with the Code or with any property factor enforcement order, along with any other relevant unspent convictions made known to them¹⁴, when deciding whether it is satisfied 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 2011 Act). It is open for a property factor to appeal a decision¹⁵ by the Scottish Ministers to remove its entry on the register or, as the case may be, refuse an application for entry to the register. A property factor removed from the register is unable to recover any costs incurred or impose any charges in respect of work incurred after the removal takes effect. Homeowners may be able to appoint a new property factor (or decide to manage their properties without appointing a property factor) in accordance with procedures set within their title deeds, the Tenement Management Scheme or any statutory rights they may have under the Title Conditions (Scotland) Act 2003. The property factor may not lodge a notice of potential liability for costs under section 13(1) of the Tenements (Scotland) Act 2004 in respect of work instructed after the day removal takes effect (see section 9(2) of the 2011 Act¹⁶).

A property factor removed from the register will commit a criminal offence if it continues to operate as a property factor without being registered and without reasonable excuse (see section 12(1) and 12(3) of the 2011 Act).

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

Property factors are ultimately responsible for ensuring that they conduct their business in a manner that complies with all relevant legislation (either in Scots law, the law in the rest of the UK or wider) in addition to the 2011 Act and the Code. In particular this may cover duties imposed by legislation relating to companies, consumer credit licences and protection, contracts and procurement, data protection, equalities, financial services, freedom of information, health and safety, human rights, property and title conditions, and tribunals and court procedures.

Some property factors will also have specific commitments to meet the regulatory requirements of statutory bodies such as the Scottish Housing Regulator, the Financial Conduct Authority, the Prudential Regulation Authority, the Scottish Information Commissioner's office or have a duty to co-operate with other public bodies. Some property factors may also have to comply with the rules and Codes of practice of other professional bodies for example the Institute of Residential Property Management, the Law Society of Scotland, the Property Managers Association Scotland and the Royal Institution of Chartered Surveyors.

¹⁴ The Property Factors (Registration) (Scotland) Regulations 2012 – Information to be supplied by responsible/relevant person- <http://www.legislation.gov.uk/ssi/2012/181/regulation/3/made>

¹⁵ Section 11 of the 2011 Act – Appeal against refusal to register or removal from register

¹⁶ Section 9 of the 2011 Act – Effect of refusal to enter in register or removal from register

The Code is separate from, and additional to any other statutory and voluntary requirements which a property factor may already be required to adhere to.

What is not covered within the Code?

The code principally sets out minimum standards of practice for registered property factors on how they should act in their business with homeowners - not vice versa.

Unless otherwise stated in the Code, the Code does not specifically set requirements on how a property factor should act in circumstances that may arise out-with that business arrangement with homeowners for example a property factors business with any other relevant third parties i.e. repairs and maintenance contractors, agents or other property factors etc.

Section 2(2) of the 2011 Act indicates that a person is not acting as property factor if they manage or maintain the common parts of land on behalf of a property factor in relation to the same common parts of land. These persons are not subject to the requirements of the Code. Property factors should however consider the requirements of the Code when instructing third parties (see section 2.2 of the Code: Communication and Consultation) to undertake business on their behalf and/or or making decisions/undertaking actions which may have consequential implications for homeowners.

The requirements of the Code do not apply to arrangements where homeowners collectively choose to undertake ad-hoc repairs without using a property factor or self-factor the common parts of their properties for example owner associations established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003) or any other circumstances provided for under section 2(2) of the 2011 Act.

Again, the Code is separate from, and additional to any other statutory and voluntary requirements which the property factor may be required to adhere to. (also see - *How do the requirements of professional bodies and other legislation relate to the Code?*)

Consultation Question

Question 2: Does the Code's introductory text clearly explain its purpose, who it applies to and the broader regulatory background? Choose from the following options:

Yes No Don't Know

Please explain your answer

Introduction: The themes of the Code

15. There are currently seven themes featured in the Code. These are:

- Written statement of services;
- Communication and consultation;
- Financial obligations;
- Debt recovery;
- Insurance;
- Carrying out repairs and maintenance; and
- Complaints resolution.

Consultation Question

Question 3: Choose from the following options. As published as part of this consultation, would you

Keep the themes of the revised Code (as drafted)?

Change the wording of the themes in the revised Code (as drafted)?

Propose any additional themes to the revised Code?

Remove any themes in the revised Code (as drafted)?

Or

Let us know if you are unsure?

Please explain your answer making reference to any relevant theme(s) (where applicable).

Section 1: Written statement of services

16. Section 1 of the draft revised Code proposes the requirements for the provision of a written statement of service to homeowners and the information which should be included in the statement of service. Different requirements may apply depending on whether the land is owned by a group of homeowners or whether the land is owned by a land maintenance company or a party other than the group of homeowners

The requirements from this point forward form part of the Code and apply from [date to be determined subject to parliamentary approval]. Appendix 2 is a glossary of terms used in the Code, and also forms part of the Code. All registered property factors are legally required to ensure compliance with the Code in terms of section 14(5) of the 2011 Act.

Section 1: Written Statement of Services

1.1 A property factor must provide each homeowner with a written statement of services setting out, in a simple, structured and transparent way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner applies in terms of section 17 of the 2011 Act to the First-tier Tribunal for Scotland Housing and Property Chamber (First-tier Tribunal) for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their written statement of services as part of their compliance with the requirements of this Code.

1.2 A property factor must take all reasonable steps to ensure that a copy of the written statement of services is provided:-

- to any new homeowner within 4 weeks of the property factor agreeing in writing to provide services to them;
- to any new homeowner within 4 weeks of the property factor being made aware of an impending change of ownership (see 1.4 Head H) or the actual sale of a property of which they manage and maintain the common parts (whatever comes first);
- to all homeowners at least once on an annual basis thereafter. If applicable, any changes must be clearly indicated on any revised written statement of services issued;
- to all relevant homeowners within 4 weeks if there are changes required to the terms of the written statement of services as a result of the property factor identifying that they have provided information which was misleading or inaccurate at the time of previous issue (see section 2.1 of the Code: Communication and Consultation). Any changes must be clearly indicated on the revised written statement of services issued.

- to all relevant homeowners at the earliest opportunity (not exceeding 1 year after the change takes effect) if there is a substantial change¹⁷ required to the terms of the written statement of services. Any changes must be clearly indicated on the revised written statement of services issued.

1.3 At all other times, a copy of the latest written statement of services may be made available by the property factor on request by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).

Important information for the reader

Please note that the requirements in relation to the content of the written statement of services will depend on who owns the land which is factored.

For ease of reference, the following requirements apply:

Section 1.4 Head A – H applies in full when the land is owned by a group of homeowners.

Section 1.4 Head B – H applies in full when the land is owned by a land maintenance company or a party other than a group of homeowners.

Section 1.5 Head A applies only when the land is owned by a land maintenance company or a party other than a group of homeowners.

¹⁷ If a change to the terms of the written statement of services is specified in a property factor enforcement order issued by the First-tier Tribunal, then the timescale determined by the First-tier Tribunal for that change to be made will supersede any timescales stated at section 1.2 of this Code.

1.4 For situations where the land¹⁸ is owned by the group of homeowners

The written statement of services must make specific reference to any relevant legislation and must set out the following:

A. Authority to Act

- (1). a statement of the basis of any authority the property factor has to act on behalf of all the homeowners in the group¹⁹ including references to the definition of 'property factor' and 'homeowner' specified in the 2011 Act and under this Code. Property factors operating under a custom and practice arrangement with no formal appointment should clearly indicate this arrangement to homeowners;
- (2). where applicable, in cases where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factor has or has not taken on the outstanding liabilities of the previous property factor including any other information which may have implications for relevant homeowners;
- (3). where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.

B. Services Provided

- (4). the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property inspections (if part of the core service);
- (5). 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 to homeowners;

C. Financial and Charging Arrangements

- (6). the management fee charged by the property factor, including any fee structure and breakdown of fees and also the property factor's policy for reviewing and increasing or decreasing this management fee;

¹⁸ The term 'land' means both land and any buildings on that land.

¹⁹ For example (not an exhaustive list):-

- Named in the Title Deeds as the property factor for the first (x period of time). This time limit has/has not expired.

- Appointed by a decision of a majority of homeowners on x date.

- (7). what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion then this should be clearly stated;
- (8). any arrangements relating to payment by homeowners towards a floating fund, confirming the amount, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners or by the property factor) (see section 3 of the Code: Financial Obligations);
- (9). any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, confirming amounts, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners or by the property factor.) (see section 3 of the Code: Financial Obligations);
- (10). the frequency of when the property factor will bill homeowners and by what method homeowners will receive their bills;
- (11). how the property factor will collect payments, including timescales and methods (clearly stating the payment methods available to homeowners). Any charges relating to late payment must clearly state the period of time after which these charges would be applicable (see Section 4 of the Code: Debt Recovery);
- (12). confirmation of the property factor's debt recovery procedure which may be made available on its website (if it has a website) or alternatively may be available on request (see section 4 of the Code: Debt Recovery).

D. Communication Arrangements

- (13). the property factor's internal complaints handling procedure²⁰ including how a homeowner specified under section 10(5) of the 2011 Act may make an application to the First-tier Tribunal if they remain dissatisfied following completion of the property factor's internal complaints handling procedure (see Section 7 of the Code: Complaints Resolution);
- (14). the procedures and timescales which the property factor will follow in responding to enquiries and complaints received from homeowners in writing and by telephone (including details of the property factor's standard working hours) and the property factor's procedures and timescales for providing information to homeowners as required by the Code;

²⁰ This may refer to a general complaints handling procedure which is not restricted to complaints about property factoring for example where the property factor is a local authority or a housing association.

- (15). the procedures and timescales which the property factor will follow in arranging to provide homeowners with access to information made available on request (where required by the Code), including—
- i. the criteria on which the property factor will assess whether the information should be made available (see section 2.8 of the Code: Communication and Consultation);
 - ii. that documents required to be provided under the Code will be made available for inspection or issued electronically at no charge unless a paper copy is requested, in which case the property factor may impose a reasonable charge if the homeowner has been notified of the specific charge in advance (see section 2.8 of the Code: Communication and Consultation);
- (16). confirmation whether the property factor has a data protection policy²¹ which may be available on its website (if it has a website) or on request by a homeowner (see section 2.8 of the Code: Communication and Consultation).

E. Declaration of Interest

- (17). a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including acting as a landlord or undertaking letting agency work²²). If no interest is declared, then this must be clearly stated.

F. Property Factor Registration Number, duty to provide information for the purposes of the public register and details of membership of professional or trade bodies

- (18). confirmation of the property factor's registered number, and a clear statement that the property factor is required by the section 13(3) of the 2011 Act to take reasonable steps to ensure that their property factor registered number is included in any document sent to homeowners which relates to their duties under section 17(5) of the 2011 Act and/or this Code;
- (19). a clear statement indicating that in accordance with section 3(2)(e) of the 2011 Act²³ and section 7(3)(a-b) of the 2011 Act²⁴, a registered property factor is required to provide details of any dwelling house, flat or land that it either expects to act for, may currently act for or previously acted for in order to allow for any public search of a specific property address and/or land record to be undertaken on the register of property factors;

²¹ This may refer to a general data protection policy which is not restricted to its property factoring service e.g. for example where the property factor is a local authority or a housing association.

²² Section 61 of the Housing (Scotland) Act 2014 – Meaning of letting agency work

²³ Section 3(2)(e) of the 2011 Act – information supplied in an application to enter the register of property factors.

²⁴ Section 7(3) of the 2011 Act – Duty of Responsible Person to provide information

- (20). In circumstances, where the property factor is a member of any professional or trade bodies relevant to acting as a property factor and/or their duties under the 2011 Act, then the property factor must specify these relevant bodies and any relevant registration/membership numbers.

G. Compliance with the Code of Conduct and property factor enforcement orders imposed by the First Tier Tribunal

- (21). a clear statement indicating that under section 14(5) of the 2011 Act a registered property factor must ensure compliance with the property factor code of conduct for the time being in force. A property factor may make a copy of the Code available on its website (if they have a website). Alternatively, the statement must indicate that the Code can be found on the Scottish Government website;
- (22). a clear statement indicating that decisions by the First-Tier Tribunal in relation to a property factor's compliance with the Code under section 14(5) of the 2011 Act and/or its duties under section 17(5) of the 2011 Act are publically available and are published on the First-tier Tribunal for Scotland Housing and Property Chamber website.

H. How to End the Arrangement

- (23). clear information on when and how a homeowner should inform the property factor of an impending change in ownership of their property (including details of any reasonable period of notice which required by the property factor to comply with its duties under this Code (see section 3.5 of the Code: Financial Obligations). This information should also clearly state any charges for early termination/administration costs;
- (24). a clear statement confirming the property factor's policy on how it will co-operate with another property factor to assist the transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners; including the information that the property factor may share with the new or incoming property factor (subject to its own data protection policy or wider data protection legislation) and any other implications for homeowners. If these circumstances do not apply, then the property factor should provide a clear statement setting out the reasons why they do not apply (Also see sections 7.5 and 7.6 of the Code: Complaints Resolution);
- (25). clear information on how homeowners may (by collective or majority agreement) terminate or change the service arrangement including signposting to any relevant legislation for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should also clearly state any "cooling off" period, period of notice or charges relating to early termination. If these circumstances do not apply, then the property factor should provide a clear statement setting out the reasons why they do not apply (Also see sections 7.5 and 7.6 of the Code: Complaints Resolution).

1.5 The following requirements apply where the land is owned by a land maintenance company or a party other than the group of homeowners

The written statement of services must make specific reference to any relevant legislation and must set out the following:

A. Authority to Act

- (1). a statement of the legal basis of the arrangement between the property factor and the homeowner;
- (2). a description of the use and location of the area of land to be maintained, including a map where possible (this information must be updated to reflect any changes as soon as reasonably practicable).

B. Services Provided

- (3). the required information indicated at section 1.4 Head B.

C. Financial and Charging Arrangements

- (4). the required information indicated at section 1.4 Head C.

D. Communication Arrangements

- (5). the required information indicated at section 1.4 Head D.

E. Declaration of Interest

- (6). The required information indicated at section 1.4 Head E.

F. Property Factor Registration Number, duty to provide information for the purposes of the public register and details of membership of professional or trade bodies

- (7). the required information indicated at section 1.4 Head F.

G. Compliance with the Code of Conduct and property factor enforcement orders imposed by the First Tier Tribunal

- (8). the required information indicated at section 1.4 Head G.

H. How to End the Arrangement

- (9). the required information indicated at section 1.4 Head H.

Consultation Question

Question 4a: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 1 of the revised Code (as drafted)? or

Change any requirement(s) of Section 1 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Standardisation of the Written Statement of Services

17. The Code sets the standards on what information should be included in the written statement a property factor must provide to homeowners however does not specifically prescribe a standard format and/or structure on how that written statement of service should appear?

Consultation Question

Question 4b: Should the format and structure of the written statement of service be standardised as part of any proposed changes to the Code?

Choose from the following options:

Yes No Unsure

Please explain your answer

Section 2: Communication and consultation

18. Section 2 of the draft revised code proposes the minimum standards and requirements for how a property factor should communicate and consult with homeowners.

Section 2: Communication and Consultation

Section 2 of the Code relates to how a property factor should communicate and consult with homeowners. Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard, the Code requires that:

- 2.1 A property factor must not negligently or knowingly provide information to a homeowner which is misleading or inaccurate. A property factor must take reasonable steps to ensure such information is corrected within 4 weeks of discovering or agreeing after being made aware that information previously provided was misleading or inaccurate at the time of issue²⁵. A property factor must also not negligently or knowingly misrepresent their authority to act for homeowners and/or the correct legal position.
- 2.2 A property factor must not communicate (either orally or in writing) with a homeowner in an abusive or intimidating manner. A property factor must also not act in a manner which threatens a homeowner or unlawfully discriminate on the basis of a person's age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation. A property factor can also reasonably indicate it may take legal action against the homeowner as long as this is not undertaken in an abusive, intimidating or threatening manner. A property factor must take reasonable steps to ensure that all relevant third parties appointed to act on their behalf in delivering services to homeowners (for example repair and maintenance contractors, debt recovery specialists etc.) are made aware of this requirement of the Code. A property factor must arrange for any procedures taken in this regard to be published on its own website (if they have a website). Alternatively, this information may be made available by the property factor if requested by a homeowner (subject to section 2.8 of the Code).
- 2.3 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and website address (if they have a website). If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.

²⁵ If a property factor is required to provide updated information as specified in a property factor enforcement order issued by a First-tier Tribunal, then the timescales for that updated information to be provided will be determined by a First-tier Tribunal in accordance with section 20(2) of the 2011 Act.

- 2.4 A property factor must have a written procedure to consult with all homeowners within the group and seek homeowners' consent (either collective or by majority approval) in writing before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where the property factor can demonstrate that they have agreed a level of delegated authority in writing with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure may be made available if requested by a homeowner (subject to section 2.8 of the Code).
- 2.5 A property factor must respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their written statement (see Section 1.4a head D). Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed in writing if they require additional time to respond. The property factor should provide reasonable notice to the homeowner(s) in writing if it is unlikely to respond in full to any enquiry or complaint by the agreed timescale set out in its written statement of service, setting out an expected timescale in which the enquiry or complaint will be responded to.
- 2.6 A property factor must take all reasonable steps to ensure that their property factor registered number is included in any document sent to a homeowner as required by the Code²⁶.
- 2.7 A property factor must ensure that any current notice of registration provided to them by the Scottish Ministers under section 6(a) of the Act is published on their website (if they have a website). Alternatively, this information may be made available if requested by a homeowner (subject to section 2.8 of the Code).
- 2.8 Where any information may be made available to a homeowner (on request) by the property factor under this Code—
- a. the property factor may consider the request and assess whether there is a good reason not to provide or partially provide the information requested i.e. the request is vexatious, unreasonable, repetitive, would contravene the property factor's data protection policy or breach any wider data protection legislation, would constitute a release of commercially sensitive information or the information may already be published and/or publically available²⁷. If there is no good reason why the information should not be made available in full then the property factor should provide the information to the homeowner as requested;

²⁶ This is also required by section 13(3) of the Act and can be taken into account by the Scottish Government in relation to a further application to register (see section 4(4)(b)(ii) of the Act).

²⁷ Alternative procedures may be referred in circumstances where the property factor is subject to the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004.

- b. the property factor's decision to release, partially release or not to release the information must be provided to the homeowner(s) in writing within the timescales specified in the property factor's written statement for responding to enquiries and complaints (see section 1.4 head D) unless a separate arrangement has been agreed with the homeowner(s) who made the request;
- c. in cases where the decision is to release or partially release information, the property factor must arrange for the homeowner(s) to be able to inspect any documents or issue them electronically at no charge, unless a paper copy is requested, in which case the property factor may make a reasonable charge if the homeowner(s) has been notified of and has agreed to the charge in advance. The information must be provided within the timescales specified in the property factor's written statement for responding to enquiries and complaints (see section 1.4 Head D) unless a separate arrangement has been agreed with the homeowner(s) who made the request²⁸.

For the information that may be available under the Code, please refer to:

Sections	1.3 and 1.4a G(20),
Sections	2.4 and 2.7
Sections	3.1 and 3.6
Sections	4.3, 4.5, 4.6 and 4.7
Sections	5.1, 5.2, 5.4, 5.6, 5.7, and 5.8
Sections	6.3, 6.4, 6.5, 6.6, 6.9 and
Section	7.1

For the information that must be made available under the Code, regardless of section 2.8, please refer to:

Section	1.2
Section	2.3 and 2.7
Sections	3.1, 3.2, and 3.5
Sections	4.1, 4.3, and 4.5
Sections	5.2, 5.3, 5.5 and 5.9
Sections	6.1, 6.7 and 6.8
Sections	7.1, 7.2, 7.5 and 7.6

²⁸ See Footnote 17

2.9 Where another property factor is due to take over the management of property and land owned by homeowners; the outgoing property factor must co-operate (within the limits of their authority to act) with the incoming property factor (and vice versa), and may supply each other with any necessary information (where appropriate and lawful). The considerations for sharing information as outlined at section 2.8a of the Code will apply.

Consultation Question

Question 5: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 2 of the revised Code (as drafted) or

Change any requirement(s) of Section 2 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Section 3: Financial obligations

19. Section 3 of the draft revised code proposes the minimum standards and requirements for how a property factor should undertake any financial obligations it has with homeowners.

Section 3: Financial Obligations

While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. The overriding objectives of this section are to:-

- protect homeowners' funds;
- provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;
- make a clear distinction between homeowners' funds and a property factor's own funds.

A property factor may also have specific commitments to meet regulatory requirements of statutory bodies such as the Scottish Housing Regulator, the Financial Conduct Authority and the Prudential Regulation Authority. The Code is separate from, and additional to, other statutory and voluntary requirements.

- 3.1 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for. A copy of the relevant written statement of services may be enclosed along with any financial statement provided to homeowners. Alternatively the financial statement must make clear reference to the relevant written statement of services (see section 1 of the Code) and that this information may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).
- 3.2 If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, a property factor must make available to the homeowners within the group all financial information that relates to their account. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).
- 3.3 In cases where a property factor decides to terminate its arrangement with homeowners, the property factor must make available to the homeowners all financial information that relates to their account. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).

- 3.4 Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following a change of property factor.
- 3.5 In cases where a property changes ownership, the property factor must return any funds due (less any outstanding debts) and must make available to the outgoing homeowner all financial information that relates to their account. This must be provided prior to the date of change in ownership unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing of the change in ownership (see section 1.4 Head H).
- 3.6 A property factor must have a written procedure for dealing with advance payments made, in circumstances where the outgoing homeowner requires a refund or an incoming homeowner needs to transfer their share of the funds (for example, on the sale of the property). A copy of this written procedure may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).

If the property factor is a housing association or a local authority:

- 3.7a Homeowners' floating funds must be accounted for separately from the property factor's own funds, whether through coding arrangements or through one or more separate bank accounts.
- 3.7b In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account or accounting structure must be used for each separate group of homeowners.

All other property factors:

- 3.8a Homeowners' floating funds must be held in a separate account from the property factor's own funds. This can either be one account for all its homeowner clients or separate accounts for each homeowner or group of homeowners. A property factor must not transfer funds from one such account to another without obtaining in writing the collective or majority agreement of the homeowners within the group whose account may be affected.
- 3.8b In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account must be opened in the name of each separate group of homeowners. A property factor must not transfer funds from one such account to another without obtaining in writing the collective or majority agreement of homeowners within the group whose account may be affected.

Consultation Question

Question 6: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 3 of the revised Code (as drafted)? or

Change any requirement(s) of Section 3 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of The draft revised Code (where applicable).

Section 4: Debt recovery

20. Section 4 of the draft revised code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is recovering debt from homeowners and/or informing other relevant homeowners of such action.

Section 4: Debt Recovery

Non-payment by some homeowners may affect provision of services to others, or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to promptly deal with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating into a serious problem which may affect other relevant homeowners within the group.

It is a requirement of section 1 of the Code: Written Statement of Services that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is available on its website (if it has a website) or may be available on request.

- 4.1 A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe;
- 4.2 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner;
- 4.3 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow unless there is a good reason not to. This procedure must be clearly, consistently and reasonably applied in all cases. This procedure must clearly set out how the property factor will deal with disputed debts and, if applicable, how debts will be charged to other relevant homeowners in the group if they are jointly liable for such costs. A property factor must ensure that a copy of its debt recovery procedure is published on their website (if they have a website). Alternatively, this information may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation);
- 4.4 If an application against a property factor relating to a disputed debt is referred to a First-tier Tribunal for consideration, a property factor must not continue to apply any interest, late payment charges or pursue any separate legal action in respect of the disputed debt during the period from when the property factor is notified in writing by the First Tier Tribunal for Scotland Housing and Property Chamber that the application is being considered and

until such time as they are notified in writing of the final decision by the First Tier Tribunal or the Upper Tribunal for Scotland (if appeal proceedings are raised);

- 4.5 A property factor must respond to any request from any relevant homeowners within the group enquiring as to how a certain scenario may affect them if one or more other homeowners within the group do not fulfil their obligations or pay towards any amounts owed. Further information may be provided to relevant homeowners within the group (subject to section 2.8 of the Code: Communication and Consultation);
- 4.6 A property factor must take reasonable steps to keep relevant homeowners within the group promptly informed in writing of any debt recovery action against any other homeowners within the group which could have implications for them (subject to the requirements of any data protection policy it adopts (see section 1.4 Head D) or any wider data protection legislation (see section 2.8 of the Code: Communication and Consultation). Where a property factor is unable to provide information as the provision of this information would contravene any current data protection requirements, then the property factor must inform relevant homeowners within the group in writing of this decision;
- 4.7 A property factor must be able to demonstrate it has 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 within the group (if they are jointly liable for such costs). Any supporting documentation may be made available if requested by a homeowner within the group (subject to section 2.8 of the Code: Communication and Consultation);
- 4.8 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action. Also see sections 2.1, 2.2 of the Code: Communication and Consultation and section 4.4 of the Code).

Consultation Question

Question 7: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 4 of the revised Code (as drafted)? or

Change any requirement(s) of Section 4 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of The draft revised Code (where applicable).

Section 5: Insurance

21. Section 5 of the draft 'revised' code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is required to hold insurance and/or arrange insurance on behalf of homeowners.

Section 5: Insurance

5.1 A property factor must have, and maintain, an adequate professional indemnity insurance policy, and ensure that is appropriate for its level of income and type of services offered unless the property factor is a local authority or housing association and is able to arrange equivalent protections through another route. Details of the policy (including name of provider, policy number and summary) or equivalent protections may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).

If the agreement with homeowners includes arranging any type of insurance, the following standards will apply:

5.2 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover, and the terms of the policy. The terms of the policy must be supplied in the form of a summary of cover, but full details may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).

5.3 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit they receive from the company providing insurance cover and any financial or other interest that they have with the insurance provider or any intermediary. This must be itemised separately on any insurance statement provided to homeowners. A property factor must also disclose any other charge they make or apply for arranging such insurance.

5.4 If applicable, a property factor 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. This information may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), a property factor must take reasonable steps to supply to homeowners all information that they reasonably require in order for homeowners to be able to do so. The target dates specified in the written statement of service (see section 1 of the Code: Written Statement of Services) for responding to enquiries and complaints will apply in this case unless a separate arrangement has been agreed with the homeowners who made the request.

- 5.5 A property factor must take reasonable steps to keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves if required.
- 5.6 On request, a property factor must be able to demonstrate to homeowners how and why they appointed the insurance provider, including any cases where the factor decided not to obtain multiple quotes. This information may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation).
- 5.7 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) may be made available to homeowners on request (subject to section 2.8 of the Code: Communication and Consultation).

If the agreement with homeowners includes arranging buildings insurance:

- 5.8 A property factor must notify homeowners annually in writing of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance. This notification may be included in the annual insurance statement issued to homeowners (see section 5.2 of the Code). The property factor must adjust this frequency if instructed to do so by the collective or majority agreement of homeowners in the group.

Additional standard in situations where a land maintenance company owns the land:

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

Consultation Question

Question 8: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 5 of the revised Code (as drafted)? or

Change any requirement(s) of Section 5 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of The draft revised Code (where applicable).

Section 6: Carrying out repairs and maintenance

22. Section 6 of the draft revised code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken.

Section 6: Carrying out repairs and maintenance

This section of the Code covers the use of both in-house staff and external contractors by property factors.

- 6.1 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. A property factor must inform homeowners of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.
- 6.2 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.
- 6.3 A property factor must be able to demonstrate, how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).
- 6.4 If the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then a property factor must prepare a programme of works. This information may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).
- 6.5 A property factor must ensure that all contractors appointed by them have public liability insurance. This information may be made available **if** requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).
- 6.6 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).

- 6.7 A property factor must disclose to homeowners, in writing, any commission, fee or other payment or benefit that it receives from a contractor appointed by them.
- 6.8 A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.
- 6.9 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors within the limits of their 'authority to act' (see section 1.4a or 1.4b head A) in order to remedy the defects in any inadequate work or service provided to homeowners by third parties. If appropriate, the property factor should obtain a collateral warranty from any third party instructed by the property factor to undertake works on behalf of homeowners. A copy of the warranty may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation).

Consultation Question

Question 9: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 6 of the revised Code (as drafted)? or

Change any requirement(s) of Section 6 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Section 7: Complaints resolution

23. Section 7 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is handling and/or resolving complaints from homeowners.

Section 7: Complaints Resolution

Section 17 of the 2011 Act allows homeowners (as defined by section 10(5) of the 2011 Act) to make an application to the First-Tier Tribunal for Scotland Housing and Property Chamber 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 First-tier Tribunal for Scotland Housing and Property Chamber, homeowners must first notify their property factor in writing of the reasons why they consider that the property factor has failed to carry out their duties, and/or failed to comply with the Code. The property factor must also have refused to resolve the homeowner's concerns, or the property factor must have unreasonably delayed its attempts to resolve the complaint.

It is a requirement of section 1 of this Code: Written Statement of Services that the property factor must provide homeowners with a copy of its internal complaints procedure which must provide information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unsatisfied.

- 7.1 A property factor must apply its policies and procedures consistently and reasonably and 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 of service, which needs to be followed. This procedure must also include how the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf. If applicable, it must also set out any recourse to the complaints procedures of any professional or membership body that the property factor may belong to; whether the property factor provides access to alternative dispute resolution services or if the property factor is also subject to another regulatory body. A property factor must ensure that a copy of its complaints resolution procedure is published on their website (if they have a website). Alternatively, it must be made available if requested by the homeowner
- 7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed by either the responsible or any relevant person (as listed on the property factors entry on the property factors register) before the homeowner is notified in writing. The task of confirming the final decision can be delegated to another member of the property factor's senior management team (if applicable) if that delegation is set out in the written notification. This confirmation must also provide details of how the homeowner may apply to the First-tier Tribunal if they remain unsatisfied (including contact details for the First-tier Tribunal).

- 7.3 A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles or contractual documentation.
- 7.4 A property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner's complaint for a period of 3 years or until such time that they no longer have authority to act for the homeowner for example the homeowner has ended their arrangement with the property factor due to a change in ownership of the property or by collective/majority agreement with other homeowners within the group (whatever comes first).
- 7.5 Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must co-operate with the current property factor (and vice versa) and supply each other with any necessary information (where appropriate and lawful). The considerations for sharing information as outlined at section 2.8a of the Code will also apply.
- 7.6 Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the incoming property factor must consider and respond in writing to any complaint made to the incoming property factor from homeowners about any alleged failure to comply with the Code or the property factors' duties by previous property factors in relation to the property which may lead to a continuing failure to comply. A response must be issued by the incoming property factor within 6 weeks of receiving that complaint. Where no complaint has been made to an incoming property factor by homeowners about an alleged failure to comply with the Code of the property factor's duties by previous property factors in relation to the property, the incoming property factor shall bear no responsibility for any continuing failure to comply with the Code of the property factor's duties which results from the failure on the part of a previous property factor.

Consultation Question

Question 10a: Choose from the following options. As published as part of this consultation, would you

Keep the requirements of Section 7 of the revised Code (as drafted)? or

Change any requirement(s) of Section 7 of the revised Code?

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of The draft revised Code (where applicable).

Standardisation of Complaints Handling Procedures

24. It is recognised that property factors vary in organisation size and many have different internal structures, hierarchies and operating procedures. The draft revised Code currently requires a property factor to provide homeowners with a clear written complaints resolution procedure however does not specifically prescribe a standardised approach to complaint handling which should be followed by all property factors.

Consultation Question

Question 10b: Should the procedures for complaints handling be standardised as part of any proposed changes to the Code? Choose from the following options:

Yes No Unsure

Please explain your answer?

Any other comments on the draft 'revised' Code

Consultation Question

Question 11: Do you have any other comments on the draft revised code and its appendices i.e. glossary (as published as part of this consultation)?

Please provide these?

Part Three: Proposed Modification Order

25. In this section of the consultation paper we ask for your views on modifying certain provisions of the Property Factors (Scotland) Act 2011 (the 2011 Act) with the purpose of giving further effect to the draft 'revised' Code as published as part of this consultation and also attached at **Annex A**.

Removal from the register and compliance with the Code and property factor enforcement orders

26. Section 1(3) of the 2011 Act provides that 'registered' means registered in the register of property factors. Section 2(1) of the 2011 Act provides a definition of the meaning of 'property factor'²⁹. Section 14(5) of the 2011 Act provides that a registered property factor must ensure compliance with the property factor code of conduct for the time being in force.

27. A property factor may be 'registered' at the time when an application was made by a homeowner to the First-Tier Tribunal for Scotland Housing & Property Chamber (First-Tier Tribunal) under section 17 of the 2011 Act or when a property factor enforcement order is made by the First-Tier Tribunal under section 20 of the 2011 Act. While the application is being determined, there is potential for a property factor to be removed from the register in certain circumstances, including the following:

- A property factor must be removed from the register by Scottish Ministers under section 4(7)(a) of the 2011 Act where the registration has expired and where no further application to enter the register has been submitted.
- A property factor must be removed from the register under section 8(1) of the 2011 Act (following the expiry of any appeal period) where a further application to enter the register is refused or where the property factor is removed during its period of registration as they no longer meet the considerations for entry to the register.

28. In a previous case³⁰, a Homeowner Housing Committee (under the previous jurisdiction of the Homeowner Housing Panel) determined that the property factor's obligation to comply with a property factor enforcement order (PFEO) and the wider code was no longer enforceable as the property factor had been removed from the register subsequent to the PFEO being issued by the Committee. This meant the homeowner had no effective remedy for conduct which occurred while the property factor was still registered.

²⁹ Section 2 of the Property Factors (Scotland) Act 2011-
<http://www.legislation.gov.uk/asp/2011/8/section/2>

³⁰ *Docherty v Sheltered Housing Management Ltd.*, 1 July 2016, HOHP/PF/14/0203.

29. Under certain circumstances, Section 23 of the 2011 Act³¹ does already allow the First-Tier Tribunal to take account of circumstances where the property factor is unable to comply with the order because of the lack of necessary rights.

30. In light of the findings of this case, the Scottish Government is exploring whether to make an order which would amend the definition of 'property factor' and the duty to comply with the Code under the Property Factors (Scotland) Act 2011.

31. The purpose of this amendment would be to ensure that:

- where applications under section 17 of the Act (failure to comply with the property factor code of conduct or the property factor's duties) are initially lodged when a property factor is registered, but where the property factor subsequently ceases to be registered, the First-tier tribunal for Scotland Housing and Property Chamber can still:
 - determine the application;
 - make awards;
 - enforce property factor enforcement orders which result from that application; and
 - make new property factor enforcement orders in relation to that application.
- the homeowner application must be initially lodged prior to the date the property factor was removed from the register.
- any duty to comply would continue to remain enforceable until such time as the First-tier Tribunal for Scotland Housing and Property Chamber has determined the application, including any issue of compliance with a property factor enforcement order(s) issued as a result of the application.

Consultation Question

Question 12: For the limited purposes described above, should a de-registered property factor, be required to comply with the Code, including property factor enforcement orders, despite removal from the register of property factors? Choose from the following options:

Yes No Unsure

Please explain your answer?

³¹ Section 23 of the Property Factors (Scotland) Act 2011 - <http://www.legislation.gov.uk/asp/2011/8/section/23>

Liability for Registered Property Factors and time limits for submitting homeowner applications to the First-tier Tribunal

32. The Scottish Ministers are also exploring whether to specify, by Order, a time period in the 2011 Act within which an application must be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber following an alleged failure to comply with the Code or the property factors' duties.
33. While this has not been an issue up until now, as the property factor regime has only been in place since 2012, it is likely to become unfair for historical complaints to be raised, unless they are raised with property factors in good time. Similar rules are common to the ability to raise other legal complaints in courts and tribunals, and it may be helpful to have a clear rule which applies?
34. Section 7.4 of the draft revised Code proposes that a property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner's complaint for a period of three years or until such time that they no longer have authority to act for the homeowner for example the homeowner has ended their arrangement with the property factor due to a change in ownership of the property or by collective/majority agreement with other homeowners within the group (whatever comes first).
35. The proposal is that applications against property factors must be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber within three years of the alleged failure on the part of a property factor.
36. This would not include continuing failures which began before the three year period.
37. The Chamber President would be given the ability to reject an application which does meet this criteria. Section 18(2) of the 2011 Act makes provision on the matters which the Chamber President can take into account if considering whether to reject an application.

Consultation Question

Question 13: Should a three time limit be introduced for homeowner applications to be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber?

Choose from the following options:

Yes No Unsure

Please explain your answer making reference to any alternative suggested timeframe or criteria (if applicable)?

Part Four: Impact Assessment

Costs and other resources

38. A [Business and Regulatory Impact Assessment](#)³² was prepared prior to the introduction of the original Code which was published in 2012.

39. To assist us in determining the impact of the proposals to revise the Code (as published as part of this consultation), and any proposed changes to the 2011 Act (see Question 12 and 13) we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable)?

40. Any comments received will be used to inform an updated Business and Regulatory Impact Assessment which would be prepared in support of any Order to lay a revised Code as per section 14 of the 2011 Act.

Consultation Question

Question 14a: Are there any proposals in this consultation which have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes No Unsure

Please explain your answer?

³² The Property Factors (Code of Conduct) (Scotland) Order 2012 – Final Business and Regulatory Impact Assessment - http://www.legislation.gov.uk/ssi/2012/217/pdfs/ssifia_20120217_en.pdf

Equalities

41. An [Equality Impact Assessment](#) was prepared prior to the introduction of the current Code which was published in 2012³³.
42. We would welcome your comments on whether the proposals in the draft revised Code (as published as part of this consultation) and any proposed changes to the 2011 Act (see Question 12 and 13) may impact or have implications on 'Equality Groups' i.e. particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing?
43. Any comments received will be used to inform an updated Equalities Impact Assessment as well as a Children's Rights and Wellbeing Impact Assessment which would be prepared in support of any Order to lay a revised Code as per section 14 of the 2011 Act.

Consultation Question

Question 14b: Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes No Unsure

Please explain your answer?

³³ The Property Factors (Code of Conduct) (Scotland) Order 2012 – Equality Impact Assessment - <http://www.gov.scot/Resource/0039/00393912.pdf>

Part Five: Impact of the property factors (Scotland) act 2011

44. Parts 1 – 4 of this consultation paper asked for views in connection with the current code of conduct for property factors and also the draft 'revised' Code being consulted upon.

45. In this final part of the consultation paper we ask for your views on the impact of the requirements of the wider Property Factors (Scotland) Act 2011 (the 2011 Act)³⁴.

46. In addition to the code of conduct, other features of the Act include provisions for :

- setting out the meaning of 'property factor' 'homeowner' and 'property factor duties' for the purposes of the 2011 Act;
- the Scottish Ministers (or other delegated authority) to prepare and maintain a register of property factors³⁵ which must be available for inspection at all reasonable times and displays the business name and address of the property factor, the name and address of any relevant persons and any dwelling houses, flats or land which the person currently expects to act;
- a person who intends to become a property factor to apply to Scottish Ministers for registration and for that application to specify certain information including business name, address and legal status, names and address of any relevant person(s), any dwelling houses, flats or land which the person expects to act as a property factor³⁶, and information to assist Scottish Ministers consideration on whether any relevant persons are 'fit and proper' to act as a property factor³⁷;
- for any responsible person and /or relevant person(s) to be considered 'fit and proper' by Scottish Ministers in accordance with the considerations under the 2011 Act³⁸ and for Scottish Ministers to decide whether to enter a person on the register or refuse entry;
- the Scottish Ministers to provide any notice of entry to the register, refusal to enter or removal from the register to responsible persons by recorded delivery postal service or by using sheriff officers;
- the Scottish Ministers to ensure that the register of property factors is available for public inspection at all reasonable times;

³⁴ Property Factors (Scotland) Act 2011 - <http://www.legislation.gov.uk/asp/2011/8/contents>

³⁵ Property Factors Register - <http://sedsh119.sedsh.gov.uk/propertyfactorregister/>

³⁶ Section 3 of the Property Factors (Scotland) Act 2011 – Application for registration - <http://www.legislation.gov.uk/asp/2011/8/section/3>

³⁷ The Property Factors (Registration) (Scotland) Regulations 2012 - Information to be specified in an application for registration as a property factor - <http://www.legislation.gov.uk/ssi/2012/181/regulation/3/made>

³⁸ Section 5 of the Property Factors (Scotland) Act 2011 – Considerations of entry to the register <http://www.legislation.gov.uk/asp/2011/8/section/5>

- a registered property factor to take all reasonable steps to ensure that their property factor registered number is included in any document sent to a homeowner³⁹;
- a registered property factor to provide information including informing Scottish Ministers, as soon as practicable, if there are any changes to the information previously supplied in their application and to ensure that the property addresses and land information searchable on the register is updated on an annual basis or as part of any further application to register in accordance with the 2011 Act⁴⁰;
- a property factor to apply for registration every three years and for an application to be submitted to Scottish Ministers on or before the date the current registration expires;
- the Scottish Ministers to remove the entry where no further application is made, and for no opportunity to appeal against that decision to be available to the property factor;
- a homeowner to apply to the Housing and Property Chamber of the First-tier Tribunal for Scotland (First-tier Tribunal)⁴¹ in cases where they have notified their property factor in writing of their complaint as to why they consider that their property factor has failed to carry out its duties under the Act or, as the case may be, comply with the Code. The property factor must also have refused to resolve their complaint or unreasonably delayed in attempting to resolve the complaint;
- the Chamber President to decide whether refer an application to the First-tier Tribunal or to reject it after considering certain criteria in accordance with the 2011 Act⁴²;
- the First-tier Tribunal to determine whether a property factor has failed to carry out its duties under the Act or, as the case may be, comply with the Code⁴³;
- the First-tier Tribunal to make proposed property factor enforcement orders,⁴⁴ to make, vary or revoke property factor enforcement orders made against a property factor⁴⁵ and to determine compliance with such orders;

³⁹ Section 13 of the Property Factors (Scotland) Act 2011 – Property factor registered number - <http://www.legislation.gov.uk/asp/2011/8/section/13>

⁴⁰ Section 7 of the Property Factors (Scotland) Act 2011 - Duty on the Responsible person to provide information <http://www.legislation.gov.uk/asp/2011/8/section/7>

⁴¹ The functions of the Homeowner Housing Panel transferred to the First-Tier Tribunal on 1 December 2016. Section 17 of the Property Factors (Scotland) Act 2011 as amended - Application to the First-Tier Tribunal Housing and Property Chamber - <http://www.legislation.gov.uk/asp/2011/8/section/17>

⁴² Section 18 of the Property Factors (Scotland) Act 2011 – Referral to the First-tier Tribunal - <http://www.legislation.gov.uk/asp/2011/8/section/18>

⁴³ Section 19 of the Property Factors (Scotland) Act 2011 – Determination by the First-tier Tribunal - <http://www.legislation.gov.uk/asp/2011/8/section/19>

⁴⁴ See Footnote 43

- for the First-tier Tribunal to serve notice on Scottish Ministers where a property factor has failed to comply with a property factor enforcement order⁴⁶;
- the Scottish Ministers to consider and decide whether to remove a property factor from the register in accordance with the 2011 Act;
- for a property factor to appeal any decision by Scottish Ministers to refuse an application to enter the register or to remove its entry from the register during the period of registration;
- for a property factor removed from the register to no longer recover costs, impose charges or lodge notices of potential liability following a relevant date specified by the 2011 Act;
- the Scottish Ministers to place a public notice in relevant newspapers informing of both the consideration of removal, and the actual removal of the property factor from the register and to inform any relevant local authorities of these notices⁴⁷;
- a criminal offence to be introduced in relation to operating as a property factor whilst unregistered (and without reasonable excuse)⁴⁸. The offence, if guilty on summary conviction, carries a custodial sentence of up to six months and/or a fine up to level 5 on the standard scale;
- a criminal offence to be introduced where a person knowingly fails to specify information or knowingly provides false information as part of any application to register⁴⁹. The offence, if guilty on summary conviction, carries a fine up to level 3 on the standard scale.
- a criminal offence to be introduced where a person, other than a registered property factor uses a number purporting to be a property factor registered number in any document or communication (and without reasonable excuse). The offence, if guilty on summary conviction, carries a fine up to level 3 on the standard scale;
- a criminal offence to be introduced where a property factor fails to inform Scottish Ministers, as soon as practicable, of changes to information displayed

⁴⁵ Section 20 and 21 of the Property Factors (Scotland) Act 2011 – Property factor enforcement orders/Variation and revocation of Property factor enforcement orders - <http://www.legislation.gov.uk/asp/2011/8/section/20> and <http://www.legislation.gov.uk/asp/2011/8/section/21>

⁴⁶ Section 23 of the Property Factors (Scotland) Act 2011 – Effect of failure to comply with a property factor enforcement order - <http://www.legislation.gov.uk/asp/2011/8/section/23>

⁴⁷ Section 15 of the Property Factors (Scotland) Act 2011 – Service of notices etc - <http://www.legislation.gov.uk/asp/2011/8/section/15>

⁴⁸ Section 12 of the Property Factors (Scotland) Act 2011 – Offence of operating as a property factor without registration - <http://www.legislation.gov.uk/asp/2011/8/section/12>

⁴⁹ See footnote 23 and 24

or searchable on the register⁵⁰. The offence, if guilty on summary conviction, carries a fine up to level 3 on the standard scale;

- a criminal offence to be introduced where a property factor fails to comply with a property factor enforcement order issued by the First-tier Tribunal (without reasonable excuse)⁵¹. The offence, if guilty on summary conviction, carries a fine up to level 3 on the standard scale.

Consultation Question

Question 15: In addition to the Code, do you think the wider requirements of the Property Factors (Scotland) Act 2011 (2011 Act) has led to improvements in the regulation of property factors? Choose from the following options:

The 2011 Act has made significant improvements

The 2011 Act has made some or slight improvements

The 2011 Act has made no improvements

Or

Let us know if you are unsure?

Please explain your answer making reference to the relevant requirement(s) of the 2011 Act where applicable.

⁵⁰ See footnotes 23 and 24

⁵¹ Section 24 of the Property Factors (Scotland) Act 2011 – Property Factor Enforcement Order: offences - <http://www.legislation.gov.uk/asp/2011/8/section/24>

Definition of Property Factor, Homeowner and Property Factor Duties.

47. The full text of the Property Factors (Scotland) Act 2011 can also be accessed at: <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 etc

- (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.

The meaning of “property factor’s duties”

Section 17 of the Act - Application to First-tier Tribunal for Scotland Housing and Property Chamber

- (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 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.

Glossary of terms used in the Code

48. This glossary of terms in the table below forms part of the Code and is relevant to its interpretation.

Abusive or intimidating	<p>For a property factor (or a third party acting on their behalf) to communicate to a homeowner in a manner where it is reasonable for the homeowner to form a view that this manner is offensive or insulting and/or for a property factor or a third party acting on their behalf to cause the homeowner fear and alarm including threats of physical and/or non-physical violence against the homeowner.</p> <p>A homeowner can, if they choose to do so, report such matters to Police Scotland if they believe that their property factor (or a third party acting on its behalf) has acted in a manner which may be a criminal offence in Scots or the law in the rest of the UK.</p>
Authority to Act	A statement on the basis of why a property factor is acting on behalf of homeowners including any legal basis where applicable.
Code	The property factor code of conduct as defined in section 14 of the Property Factors (Scotland) Act 2011.
'Cooling off' period	A set period of time after an arrangement is agreed between homeowners and a property factor during which the homeowners can terminate the contract without incurring any penalty notice that may apply.
Collateral warranty	An agreement associated with a primary contract (often concerning building work) which provides for a duty of care to be extended by one of the contracting parties to a third party not party to the original contract.
Commercially sensitive	Information which if disclosed may prejudice the commercial interests of the property factor or any other person, who may be an individual, a company, a public authority or any other legal entity.
Complaint	An expression of dissatisfaction (either orally or in writing) from a homeowner or homeowners in relation to the standards of service provided by their property factor.
Core Service	Factoring services under agreed fee arrangements which do not incur additional <i>ad hoc</i> fees and charges.

Custom and practice	A course of action between a property factor and homeowners which has historically been undertaken in a particular way and is considered by one or more parties as the norm in the absence of any formal contract or arrangement between a property factor and homeowners.
Data protection policy	A property factor's procedures for how it processes and safeguards personal data in accordance with any relevant data protection requirements.
Delegated authority	Authority granted by homeowners to a property factor to make decisions on their behalf always up to an agreed threshold without the property factor seeking further agreement from the homeowners.
Emergency repair	Where urgent work is required to prevent damage, or in the interests of health and safety, and where there is not time for the property factor to use the normal channels of consultation and decision-making with homeowners.
Enquiries	A request to the property factor (either orally or in writing) from a homeowner asking for information and where the request does not include an expression of dissatisfaction from the homeowner (see "complaint").
Floating funds	The collective term for advance payments made by homeowners kept in a maintenance account by a property factor to deal with routine or minor repairs.
Financial Conduct Authority	The conduct regulator for financial services firms and financial markets in the UK.
First-tier Tribunal for Scotland Housing and Property Chamber	A specialist dispute resolution body (independent from the Scottish Government) whose Housing and Property Chamber deals with undetermined and new disputes between homeowners and property factors from 1 December 2016.
Homeowner	As defined in section 10(5) of the Property Factors (Scotland) Act 2011. Also see Appendix A of the Code. http://www.legislation.gov.uk/asp/2011/8/section/10
Homeowners within the group	The homeowners who should be informed in cases where a property factor is required to provide certain information or seek approval from as required by the Code in relation to matters which may affect a specific development where these homeowners may reside and/or account(s) held by those homeowners.

Housing Association	As defined in section 1 of the Housing Associations Act 1985 http://www.legislation.gov.uk/ukpga/1985/69/section/1
Land	Both land and any buildings on that land.
Letting agency work	As defined in section 61 of the Housing (Scotland) Act 2014. http://www.legislation.gov.uk/asp/2014/14/section/61
Local Authority	As defined in section 2 of the Local Government etc. (Scotland) Act 1994. http://www.legislation.gov.uk/ukpga/1994/39/section/2
Notice of potential liability for costs	A notice registered by a property factor in accordance with section 13 of the Tenements Scotland Act 2004 or section 10A of the Title Conditions (Scotland) Act 2003 for the purposes of recovering common maintenance costs and debts due by homeowners.
Professional indemnity insurance	A form of liability insurance which protects a property factor from bearing the full cost of defending a negligence claim by homeowners.
Property factor	As defined in section 2 of the Property Factors (Scotland) Act 2011. http://www.legislation.gov.uk/asp/2011/8/section/2
Property factor duties	As defined in section 17(5) of the Property Factors (Scotland) Act 2011. See Appendix A of this Code. http://www.legislation.gov.uk/asp/2011/8/section/17
Property factor enforcement order	As defined in section 20 of the Property Factors (Scotland) Act 2011. http://www.legislation.gov.uk/asp/2011/8/section/20 An order requiring a property factor to undertake such action as a First-tier Tribunal considers necessary, and, where appropriate, make payment to a homeowner, as the First-tier Tribunal considers reasonable.

Property factor registered number	A number allocated to a property factor upon registration by Scottish Ministers in accordance with section 13(1) and 13(2) of the Property Factors (Scotland) Act 2011. A property factor must take all reasonable steps to ensure that this number is included in any document sent to a homeowner.
Property Factors (Scotland) Act 2011 (2011 Act).	An Act of the Scottish Parliament which makes provision for a register of property factors requiring property factors to be registered and the resolution of disputes between homeowners and property factors; and for connected purposes. http://www.legislation.gov.uk/asp/2011/8/contents
Prudential Regulation Authority	Responsible for the prudential regulation and supervision of insurers.
Public liability insurance	A form of liability insurance which compensates a person if they experience personal injury or damage to their property.
Out-of-hours	The time period which is out-with any standard working hours as set out in a written statement of service provided to a homeowner.
Reasonable	A course of action, consideration or decision which is fair, sensible and appropriate.
Register of property factors	The public register prepared and maintained by the Scottish Ministers (or other delegated authority) under section 1 of 2011 Act. http://sedsh119.sedsh.gov.uk/propertyfactorregister/
Registered	The property factor is currently entered on the register of property factors with a property factor registered number allocated by Scottish Ministers.
Relevant person	A responsible person (see below) or other individual directly concerned with the control or governance of the property factor listed on the register of property factors in accordance with section 3(2)(d) and 3(8) of the 2011 Act.
Responsible person	The individual, either sole trading as a property factor, or holding the most senior position in the management structure of the partnership, company or body directly concerned with the control or governance of the property factor, listed on the register of property factors in accordance with section 3(2)(c) and 3(9)(a) of the 2011 Act.

Scottish Ministers	As defined in section 44(2) of the Scotland Act 1998. http://www.legislation.gov.uk/ukpga/1998/46/section/44
Scottish Housing Regulator	Regulates the interests of people who use the services of a social landlord such as a local authority or a housing association.
Sink/reserve funds	A fund used to gather monies from homeowners to pay for major repairs. The arrangements are normally written into the title deeds to the property.
Substantial change	Any change to the written statement of services which is necessary as a result of substantial, amended or additional factoring arrangements, changes to the property factor code of conduct or other relevant legislative requirements (including the finding of a First-tier Tribunal or Upper Tribunal).
Tenement Management Scheme	The tenement management scheme under the Tenements (Scotland) Act 2004 sets out procedures flat owners may need to follow when making 'scheme decisions' about maintaining and repairing common parts, depending on the title deeds. http://www.legislation.gov.uk/asp/2004/11/schedule/1
Tenements (Scotland) Act 2004 (2004 Act)	An Act of the Scottish Parliament which makes provision about the boundaries and pertinents of properties comprised in tenements (as broadly defined in the 2004 Act) and for the regulation of the rights and duties of the owners of properties comprised in tenements. http://www.legislation.gov.uk/asp/2004/11/contents
Title Conditions (Scotland) Act 2003	An Act of the Scottish Parliament which makes further provision about real burdens, servitudes and certain other obligations affecting land; to amend the law relating to the ranking of standard securities; and for connected purposes http://www.legislation.gov.uk/asp/2003/9/contents
Title deeds	Title deeds are proof of ownership of land and buildings and contain various rules that apply to the building.
Tribunals (Scotland) Act 2014	An Act of the Scottish Parliament to establish the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland; and for connected purposes. http://www.legislation.gov.uk/asp/2014/10/introduction

Unreasonable or excessive	A course of action, consideration or decision where it is reasonable to take the view that the action, consideration or decision is unfair, disproportionate or generally deemed to be beyond what is considered as typical or normal.
Unregistered	Not entered on the register of property factors.
Upper Tribunal for Scotland	A specialist dispute resolution body (independent from the Scottish Government) which considers appeals against decisions (on a point of law) taken by the First-tier Tribunal.
Written statement of service	A document which sets out the service delivery standards of the business arrangement in place between a property factor and a homeowner.

Responding to this consultation

49. We are inviting written responses to this consultation by 15 January 2018.
50. Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.scotland.gov.uk/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 15 January 2018.
51. If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

Consultation on a draft revised Code of Conduct for Property Factors
Scottish Government
2nd Floor, Endeavour House
1 Greenmarket
DUNDEE
DD1 4QB

52. It would be helpful to have your response by email or using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk>. You can also email your response to propertyfactorregister@gov.scot.

Handling your response

53. If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.
54. If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached and included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.
55. All respondents should be aware that the Scottish Government is subject to the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the consultation process

56. 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 at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.
57. Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

58. If you have any comments about how this consultation exercise has been undertaken, please send them to propertyfactorregister@gov.scot or write to us at:

Consultation on a draft revised Code of Conduct for Property Factors
Scottish Government
2nd Floor, Endeavour House
1 Greenmarket
DUNDEE
DD1 4QB

What happens next?

59. Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.
60. You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.
61. Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>).
62. Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:
- indicate the need for further policy development or review
 - inform the development of a particular policy
 - help decisions to be made between alternative policy proposals
 - be used to finalise legislation before it is implemented

63. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



Consultation on a draft revised Code of Conduct for registered Property Factors

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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?

- Yes
 No



Consultation Answer Form

A Consultation on a draft revised code of conduct for property factors

Part 1 – The impact of the original code of conduct for property factors

Question 1: Do you think the original code of conduct for property factors has led to improvements in the quality of factoring services provided to homeowners by property factors? Choose from the following options:

- (a) The Code has made significant improvements
- (b) The Code has made some or slight improvements
- (c) The Code has made no improvements
- (d) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the original Code where applicable.

Comments

Part 2 – Draft revised code of conduct for property factors – Introductory text, code themes and requirements

Question 2: Does the Code's introductory text clearly explain its purpose, who it applies to and the broader regulatory background? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below?

Comments

There are currently seven themes featured in the Code. These are Written statement of services, Communication and consultation, Financial obligations, Debt recovery, Insurance, Carrying out repairs and maintenance and Complaints resolution.

Question 3: As published as part of this consultation, would you

- (a) Keep the themes of the revised Code (as drafted)?
- (b) Change the wording of the themes in the revised Code (as drafted)?
- (c) Propose any additional themes to the revised Code?
- (d) Remove any themes in the revised Code (as drafted)?
- (e) Or tick here if you are unsure

Please tick more than one box (if applicable) and explain your answer below making reference to any relevant theme(s) (where applicable).

Comments

Section 1 of the draft revised Code proposes the requirements for the provision of a written statement of service to homeowners and the information which should be included in the statement of service. Different requirements may apply depending on whether the land is owned by a group of homeowners or whether the land is owned by a land maintenance company or a party other than the group of homeowners

Question 4a: As published as part of this consultation, would you

- (a) Keep the requirements of Section 1 of the revised Code (as drafted)
- (b) Change any requirement(s) of Section 1 of the revised Code?
- (c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

The Code sets the standards on what information should be included in the written statement a property factor must provide to homeowners however does not specifically prescribe a standard format and/or structure on how that written statement of service should appear?

Question 4b: Should the format and structure of the written statement of service be standardised as part of any proposed changes to the Code? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below?

Comments

Section 2 of the draft revised code proposes the minimum standards/requirements for how a property factor should communicate and consult with homeowners.

Question 5: As published as part of this consultation, would you

(a) Keep the requirements of Section 2 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 2 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

Section 3 of the draft revised code proposes the minimum standards/requirements for how a property factor should undertake any financial obligations it has with homeowners.

Question 6: As published as part of this consultation, would you

(a) Keep the requirements of Section 3 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 3 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

Section 4 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is recovering debt from homeowners and/or informing other relevant homeowners of such action.

Question 7: As published as part of this consultation, would you

(a) Keep the requirements of Section 4 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 4 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

Section 5 of the draft 'revised' code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is required to hold insurance and/or arrange insurance on behalf of homeowners.

Question 8: As published as part of this consultation, would you

(a) Keep the requirements of Section 5 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 5 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

Section 6 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken.

Question 9: As published as part of this consultation, would you

(a) Keep the requirements of Section 6 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 6 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

Section 7 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is handling and/or resolving complaints from homeowners.

Question 10a: As published as part of this consultation, would you

(a) Keep the requirements of Section 7 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 7 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Comments

It is recognised that property factors vary in organisation size and many have different internal structures, hierarchies and operating procedures. The draft revised Code currently requires a property factor to provide homeowners with a clear written complaints resolution procedure however does not specifically prescribe a standardised approach to complaint handling which should be followed by all property factors.

Question 10b: Should the procedures for complaints handling be standardised as part of any proposed changes to the Code? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below?

Comments

Question 11: Do you have any other comments on the draft revised code and its appendices i.e. glossary (as published as part of this consultation)?

Comments

Part 3 – Proposed modification order

The Scottish Government is exploring whether to make an order which would amend the definition of ‘property factor’ and the duty to comply with the Code under the Property Factors (Scotland) Act 2011.

This purpose of this amendment would be to make clear that the First-tier tribunal for Scotland Housing and Property Chamber can determine applications for a failure to comply with the Code or the property factor’s duties which occurred when a property factor was previously registered on the property factor register. The application must however have been initially lodged prior to the date the property factor was removed from the register. The amendment would also make clear that awards and property factor enforcement orders could be made against a property factor despite the property factor subsequently ceasing to be on the register. Further background to this proposal is available at page 40 of this consultation paper.

Question 12: For the limited purposes described above, should a de-registered property factor, be required to comply with the Code, including property factor enforcement orders, despite removal from the register of property factors? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below?

Comments

The Scottish Ministers are considering amending the Act to make provision for the President of the First-tier Tribunal for Scotland Housing and Property Chamber to reject a homeowner application if this is not initially lodged within three years of the alleged failure on the part of a property factor. This would not include continuing failures which began before the three year period. Further background to this proposal is available at page 42 of this consultation paper.

Question 13: Should a three time limit be introduced for homeowner applications to be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below making reference to any alternative suggested timeframe (if applicable)?

Comments

Part 4: Impact assessment

To assist us in determining the impact of the proposals to revise the Code and to amend the Act (as published as part of this consultation), we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable)? Further background is available at page 43 of this consultation paper.

Question 14a: Are there any proposals in this consultation which have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code or the Act (where applicable)?

Comments

We would welcome your comments on whether the proposals to revise the Code and to amend the Act (as published as part of this consultation) may impact or have implications on 'Equality Groups' i.e. particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing? Further background is available at page 44 of this consultation paper.

Question 14b: Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes No Unsure

Please tick only one box and explain your answer below?

Comments

Part 5 – Impact of the Property Factors (Scotland) Act 2011

We are also seeking views on the impact of the requirements of the wider Property Factors (Scotland) Act 2011 on the regulation of property factors. Further information on the provisions of the Act is available at pages 45-48 of this consultation paper.

Question 15: In addition to the Code, do you think the wider requirements of the Property Factors (Scotland) Act 2011 (2011 Act) has led to improvements in the regulation of property factors? Choose from the following options:

- (a) The 2011 Act has made significant improvements
- (b) The 2011 Act has made some or slight improvements
- (c) The 2011 Act has made no improvements
- (d) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to any relevant requirement(s) of the 2011 Act where applicable including where the Act could be strengthened?

Comments



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