

PERTH AND KINROSS COUNCIL

Housing and Health Committee – 31 October 2012

PROPERTY FACTORS (SCOTLAND) ACT 2011

Report by Executive Director (Housing and Community Care)

ABSTRACT

The purpose of this report is to advise Committee of the Property Factors (Scotland) Act 2011 and outline its implications for Perth and Kinross Council in respect of services to owners in mixed tenure estates.

1 RECOMMENDATIONS

It is recommended that Committee:

- 1.1 Notes the main provisions of the Property Factors (Scotland) Act 2011.
- 1.2 Approves the Council's approach to meeting the requirements of the Act
- 1.3 Approves the Executive Director of Housing and Community Care as the responsible person, as required by the Act, in relation to the property categories set out in paragraph 5.4 and recommends to the Council that the Scheme of Administration be amended accordingly.

2. BACKGROUND

- 2.1 The Property Factors (Scotland) Bill was introduced in the Scottish Parliament in 2010 as a private members bill in response to concerns about the way some property and land management services were being delivered in Scotland. It sought to create a statutory framework which would provide increased protection for homeowners in Scotland who receive services from factors. The majority of the provisions of the Act came into force on 1 October 2012.
- 2.2 The Act makes provision for the creation of a Register of Property Factors and for a Code of Conduct prepared by the Scottish Ministers which all registered property factors must adhere to. It also provides for a new statutory dispute resolution mechanism for owners, consisting of a Homeowner Housing Panel and Homeowner Housing Committees.
- 2.3 The definition of "Property Factor" under the Act is extremely broad. It includes private factors, land maintenance companies for private estates, as well as Registered Social Landlords (RSLs) and local authorities providing services to owners in mixed tenure estates.
- 2.4 The Act applies regardless of whether a formal factoring agreement is in place, as long as there are managed common parts of the property in question or, where the land managed or maintained is available for use by

adjoining or neighbouring residential proprietors or where owners are required by their title deeds to pay a share of its management or maintenance costs. The services provided by factors are therefore diverse, but will normally include repairs and other services for common parts of residential property as well as the maintenance of land.

3. MAIN ELEMENTS OF THE PROPERTY FACTORS (SCOTLAND) ACT 2011

The three main elements of the Act are as follows:

3.1 Creation of a Public Register of Property Factors

A person who is or intends to become a property factor is required to apply to Scottish Ministers for registration. The Scottish Government will maintain the register. For factors with a property portfolio of more than 100 units a fee of £370 is payable, and there is a “fit and proper person test” on the responsible person (the most senior person within the management structure of the partnership, company or body directly concerned with the control or governance of the property factor).

Those who apply for registration in respect of 100 properties or fewer will pay a fee of £100. It should be noted that fee levels may be altered in the future. Registration is required to be renewed every 3 years and factors must provide an annual return to Scottish Government. Factors must also inform Scottish Ministers of any changes from their original application.

The Act provides powers to remove factors from the Register in certain circumstances and it will be an offence to operate as a property factor without being registered.

3.2 The Code of Conduct

The Act requires the Scottish Ministers to prepare and maintain a Code of Conduct for factors and all registered property factors must adhere to this Code. The Code of Conduct has been published and comes into force on 1 October 2012.

Key objectives of the code are to ensure that homeowners are clear about what services they will receive, any charges for these, how charges are calculated and the options available to them should they wish to make a complaint.

The Code of Conduct therefore places a requirement on factors to provide each homeowner with a written statement of services provided, financial and charging arrangements, service delivery standards, procedures for repairs and maintenance and communication arrangements including a complaints process.

The code also requires factors to have a clear debt recovery policy available and arrangements to provide, on request, how and why contractors have

been appointed. It also requires factors to send to owners a yearly statement detailing works carried out and all the charges made for the previous year.

In certain housing blocks, where the Council is not the majority owner, the service will be restricted and limited to the services specified within the written statement issued to individual owners.

3.3 The Homeowners' Housing Panel

A Homeowners' Housing Panel will be established, however it should be noted that most decisions will be made by the Homeowners' Housing Committee who will have the power to make property factors' enforcement orders.

The homeowner must first notify the factor in writing of the alleged breach or failure and give them a reasonable time to resolve the concern. If there is no satisfactory conclusion, the homeowner can apply in writing to the Homeowner Housing Panel for a determination. The president of the Panel will decide whether to refer accepted applications to the Homeowners' Housing Committee and they will then determine whether the property factor has complied with their duties.

If the Homeowner Housing Committee determine the property factor has not complied they can make a "property factor enforcement order" which sets out the work to be carried out and any financial payment to be made to the homeowner. There is a right of appeal to the Sheriff Court on a point of law only.

4. KEY PROVISIONS OF THE PROPERTY FACTORS (SCOTLAND) ACT

The key provisions of the Act relating to property factors, including Perth and Kinross Council are as follows:

- 4.1 Registration as factor with the Scottish Government by 1 October 2012 and every 3 years thereafter (with failure to do so being an offence) and supply a list of factored properties annually.
- 4.2 Compliance with the Code of Conduct for Property Factors.
- 4.3 The establishment of a dispute resolution system by the Scottish Government in the form of a Homeowner Housing Panel and associated orders, charges and fines. Factors de-registered (e.g. as a result of failure to comply with the Code) will be unable to recover any costs in respect of work instructed or charges incurred.
- 4.4 The Code of Conduct will not override the title conditions or any contractual arrangements between the owner and the factor however it has seven key elements are as follows:

- 4.4.1 Written Statement of Services – requirement to provide each owner with a written statement listing all responsibilities.
- 4.4.2 Communication and consultation – requirement not to provide owners with false or misleading information and to have a consultation procedure in place for any work not subject to delegated authority to the factor under the title deeds.
- 4.4.3 Financial Obligations - requirement to provide owners with a detailed financial breakdown of the charges made in writing at least once a year, and other provisions related to factors which operate floats or sinking funds (e.g. separation between the factors’ funds and those belonging to the home owner).
- 4.4.4 Debt Recovery – requirement for a written procedure for debt recovery.
- 4.4.5 Insurance - requirement to have and maintain adequate professional indemnity insurance.
- 4.4.6 Carrying out repairs and maintenance – includes the requirement for procedures which enable owners to notify factors of matters requiring repair, maintenance or attention.
- 4.4.7 Complaints Resolution – requirement for a written complaints procedure in which complaints from owners or third parties are recorded.
- 4.5 The Scottish Government will allow one year’s grace on the requirement to issue a written Statement of Services to all factored owners. The exception to this grace period will be if an owner or the Homeowner Housing Panel requests a copy of the written statement. On request, the property factor must produce the written statement within a four week period.

5. IMPLICATIONS FOR PERTH AND KINROSS

- 5.1 In the Act, the meaning of a “property factor” includes a local authority or housing association which:
 - 5.1.1 (a) manages the common parts of land used to any extent for residential purposes and owned (i) by two or more persons, or (ii) by the local authority or housing association and one or more other person or
 - 5.1.2 (b) manages or maintains land which is available for use (but not owned) by either the owners of any two or more adjoining or neighbouring residential properties or the local authority or housing association and the owners of any one or more such properties (this only applies where the title deeds oblige the owners to pay for the management or maintenance cost of the land).
- 5.2 The Act does not set out a definitive list of activities that count as “managing” common parts. It is up to each individual organisation to determine the circumstances in which it is acting as a factor by its management activities, for

example through agreement with owners, as a result of a clause within the Title Deeds, or operating Tenement Management Schemes.

- 5.3 In consultation with Perth & Kinross Council Legal Services the test applied to determine if the provision of a service is considered as factoring includes only those services that we would continue to provide where we no longer hold any interest in the properties: eg, (i) where an ex-local authority block is now fully privately owned and still receiving services from the Council these services are considered as factoring; and (ii) the provision of district heating.
- 5.4 A total of 107 privately owned properties in mixed tenure blocks have been identified where the Council does provide factoring services to the home owners in terms of the Act. These are privately owned properties within the following multi tenure blocks:
- 1 – 8 Charterhouse Court, Perth
 - 7 – 51 Pomarium Flats, Perth
 - 52 – 95 Pomarium Flats, Perth
 - 1 – 35 Market Court, Perth
 - 1 – 35 Milne Court, Perth
 - 1 – 35 Lickley Court, Perth
 - 1 – 48 Potterhill flats, Perth
- 5.5 The services provided to the above properties are as follows:
- District heating
 - Inspection & testing of lightning conductors, walkways & gantries
 - Servicing & maintenance of passenger lifts
 - Service & maintenance of fire alarms and detection systems
 - Service & maintenance of fire fighting equipment
 - Service & maintenance of emergency lighting
 - Repairs to communal areas
- 5.6 It should be noted that throughout Perth and Kinross there are around 600 mixed tenure blocks where the Council also has varying levels of ownership and may carry out work on owners' behalf, such as one-off communal repairs on a reactive basis. In accordance with the Act such repairs are not considered as factoring services due to their reactive one-off nature.
- 5.7 Equally, it is considered that the delivery of the Council's Scottish Housing Quality Standard programme in relation to common elements does not fall within the provisions of the Act.
- 5.8 It should also be noted however that the Act is new legislation in Scotland with no precedent and we will continue to develop our approach in light of other Local Authority approaches and any further guidance from the Scottish Government.

- 5.9 It is expected that cases brought to the Homeowner Housing Panel will result in some decisions or directions that will help further clarify the responsibilities of Local Authorities in relation to services to owners, which may impact on the number of properties subsequently incorporated within the factoring services provided.

6. MEETING THE REQUIREMENTS OF THE ACT

- 6.1 In preparation for meeting our requirements to the 107 identified owners, there are a significant amount of tasks to be undertaken. A working group has been established to:

- Examine title deeds to establish the basis on which we act
- Prepare a written statement of services, covering information required as set out in the Code of Conduct. This will need to be tailored to each owner depending on the services they receive and charges made
- Prepare a debt recovery policy
- Review the existing complaints procedure to ensure it covers potential complaints from homeowners in relation to factoring matters
- Assess existing IT systems' ability to collate the required information from a number of different sections and determine whether any further IT developments are necessary
- Communicate with owners affected by the Act
- Organise staff training

- 6.2 An application to register as a factor, as required by the Act, was made to the Scottish Government at the end of September 2012 to meet their timescales.

- 6.3 The Executive Director of Housing and Community Care was named as the responsible person in respect of these categories of property.

- 6.4 It is a requirement of the Act that the Council provides owners with information on repair timescales, which will be agreed with appropriate contractors, including the Housing Repairs and Improvements Service.

7. CONSULTATION

- 7.1 The Council's Legal Services have been consulted in the preparation of this report and on the implications of the Property Factors (Scotland) Act 2011 for Perth and Kinross Council.

- 7.2 Further consultation will be required with the private owners of former local authority properties and additional private owners as further guidance on the Act is received.

- 7.3 The Perth and Kinross Tenants' and Residents' Federation were consulted about this report and note its contents. They look forward to finding out about the development of the Homeowners Housing Panel.

8. RESOURCE IMPLICATIONS

- 8.1 Current identified financial resource implications relate only to the registration fee of £370 and minimal costs for correspondence, the provision of a written statement and consultation with private owners.
- 8.2 Implications for staffing resources relate to the implementation of a small cross-service working group of representatives from the Housing and Community Care and Legal Services.

9. COUNCIL CORPORATE PLAN OBJECTIVES 2009-2012

The Council's Corporate Plan 2009-2012 lays out five objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. The following are relevant to this report:

- (i) A Safe, Secure and Welcoming Environment
- (ii) Healthy, Caring Communities

10. EQUALITIES IMPACT ASSESSMENT (EqIA)

- 10.1 The Council's Corporate Equalities Assessment Framework requires an assessment of functions, policies, procedures or strategies in relation to race, gender and disability and other relevant equality categories.

This supports the Council's legal requirement to comply with the duty to assess and consult on relevant new policies to ensure there is no adverse impact on any community group or employees.

- 10.2 The function, policy, procedure or strategy presented in this report was considered under the Corporate Equalities Assessment Framework as the implications will have a positive impact on people's wellbeing.

11. STRATEGIC ENVIRONMENTAL ASSESSMENT

- 11.1 Strategic Environmental Assessment (SEA) is a legal requirement under the Environmental Assessment (Scotland) Act 2005 that applies to all qualifying plans, programmes and strategies, including policies (PPS).
- 11.2 The matters presented in this report were considered under the Environmental Assessment (Scotland) Act 2005 and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

12 CONCLUSION

- 12.1 This report summarises the key elements and implications for the Council of the Property Factors (Scotland) Act 2011. It highlights the properties directly affected by the new arrangements and registered with the Scottish Government and nominates the Executive Director Housing and Community Care as the responsible person, as required by the Act.

- 12.2 A number of activities, including benchmarking with other local authorities, identifying best practice, and consultation with private owners, will continue over the next 12 months.

DAVID BURKE

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Note: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

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