Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003

Written submission from Homes for Scotland

1. Homes for Scotland is the authoritative voice for the home building industry in Scotland. With a membership of 160 organisations together providing 95% of all new homes built for sale in Scotland each year, we are committed to improving the living in Scotland by providing this and future generations with smart and sustainable homes where people want to live.

2. Having only been invited to submit written evidence on 20 February 2013, the time available to take a view from with member companies for this specific inquiry has been extremely limited. For this reason, rather than address each question listed, this response provides a general overview on our members observations in relation to the appointment and dismissal of property factors and the recourse available to home owners where they are dissatisfied with the services of land-owning maintenance companies.

3. It should be noted that these points have also been submitted to the Scottish Government in response to the following consultations:
   a) Maintenance of Land on Private Housing Estates, 2011
   b) Property Factors (Scotland) Act 2011- Draft Code of Conduct for Property Factors
   c) ‘Homes that don’t cost the earth’ – Draft Sustainable Housing Strategy, 2012

4. Confusion regarding legislation – The list of consultations issued by the Scottish Government in relation to Property Factors/Land Maintenance in the recent years gives the impression that there is a desire to change provisions and increase the flexibility for customers in relation to factoring services. We have to admit to being slightly confused by the number of consultations and repetitive questions raised. We understand that the Property Factors (Scotland) Act 2011 that came into force in October 2012 did not, in the end, increase capacity of homeowners to switch property factors where a majority of homeowners are unhappy with the service. Therefore the existing legal framework surrounding this is dependent on Title Deeds and/or the expiration of the ‘manager burden’ stemming from the Title Conditions (Scotland) Act 2003. We would question the timing of this inquiry given that the changes introduced by the Property Factors (Scotland) Act 2011, with the aim of bettering factoring provisions, would not have had any real time to take affect. For example has the Homeowner Housing Panel even begun operating yet?

5. Duration of Manager Burdens – It is our understanding that unless a shorter period is specified in the title deeds that the ability of a developer to appoint a property factor will come to an end after 5 years. We understand that the Government is keen to get the right balance between the interests of home owners and the interest of developers and to give customers more ‘choice’ there may be good reasons to reduce this timescale however it must be understood that it is the
commencement of this timescale that is important to developers. Large scale, phased developments can take years to build out and sell (particularly in the current market conditions) and it would not be appropriate for the appointed factor to change while homes are still being completed and marketed for sale. A sensible period must be allowed to lapse between the handover of the last unit on a new development and the time when the decision can be taken to ‘switch’. We believe that a period of two years was muted in the Scottish Government’s Land Maintenance consultation and that period seems sensible, giving the arrangements time to bed in and run for a reasonable time to allow performance to be properly judged.

6. **Majority vote to dismiss** – we understand that where the title deeds are silent on the issue, a property factor can be dismissed with a two-thirds majority vote. In practice we are not sure whether there are formal processes/mechanisms in place to take such a decision (i.e. residents vote). Detail such as how the majority is measured or any default positions (i.e. no show/vote = status quo) may also be unclear to residents. Residents should also be aware that the costs of using this mechanism will need to be added to factoring bills and shared by all residents, for example including but not limited to legal costs. It will be important that residents are aware of any notice to be given to existing maintenance companies and also the mechanism for residents to consult and appoint new managers prior to the termination of any existing contracts. It is likely that new build title deeds will contain clearer information on factoring and that customers will be better informed due to the obligations of the [Consumer Code for Home builders](http://www.gov.scot/Webs/Gov.scot/Topics/Housing/Quality/PropertyFactors/). However owners of tenements and other existing units are likely to be more reliance on the Title Conditions (Scotland) Act 2003 and be much less informed. It is our understanding that the Property Factors Act 2011 was introduced to address much of these concerns but do not know of any examples to site

7. **Land Maintenance Companies** – Our members view in relation to land maintenance companies and the options available to homeowners is inline with the view in relation to factoring services i.e. with guidance on ‘majority’ required to switch and appropriate timescale in place after last unit handed over to customer. The ownership of the land/open space makes land maintenance arrangements slightly more complicated. For example there may be situations where the land is owned by the home builder prior to transfer of ownership to the owners or a factoring company. The timing of the transfer in ownership will vary on the phasing and sequencing of the development. In our member’s experience, it is crucial that arrangements are in place to ensure that the management of maintenance of open space operates regardless of ownership. Hence the appointment of professional land maintenance companies as normal practice. There has been discussion over ‘choice’ where the land is owned by the maintenance company. As far as we are aware there is only one company that may insist on the ownership of the title being transferred. Our members’ preference is often for the land to be held in common, but sometimes there is no choice, if this solution is driven by Local Authority Planning Requirements or the Phase of the site is part of a bigger development, especially where a lead developer is in place.

Homes for Scotland
26 February 2013