

## SPICe Briefing

# Property Factors (Scotland) Bill: Stage 3

18 February 2011

11/15

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Stage 3 proceedings on the Property Factors (Scotland) Bill are expected to take place on 3 March 2011.

This briefing considers some key recommendations made by the Local Government and Communities Committee in its stage 1 report, the response by the Member in charge of the Bill and the Scottish Government to those recommendations and other issues raised during stage 1 proceedings. The briefing also considers the main stage 2 amendments, as well as other relevant developments since the Bill was introduced in June 2010, including the Scottish Government's voluntary accreditation scheme.



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# INTRODUCTION

The Property Factors (Scotland) Bill (“the Bill”) is a Member’s Bill introduced by Patricia Ferguson MSP (“the Member in charge”) on 1 June 2010. The Bill requires property factors to be registered on a property factors register and makes provision for the establishment of a system for the resolution of disputes between homeowners and property factors.

Property factors (or managers) generally manage and maintain the common parts of residential property in multiple ownership (a statutory definition of “property factor” is provided at section 2 of the Bill). In recent years, property factoring, including the management of open spaces by land-owning maintenance companies, has been an area of some public controversy and has been the subject of a recent Office of Fair Trading (OFT) study ([OFT 2009](#)). Further background to the introduction of the Bill is provided in the Local Government and Communities Committee’s [stage 1 report](#) (Scottish Parliament Local Government and Communities Committee 2010) and in the [SPICe Briefing on the Bill](#) (Hough 2010).

The Local Government and Communities Committee (“the Committee”) was designated as the lead committee for stage 1 consideration of the general principles of the Bill. The Committee’s [stage 1 report](#) was published on 16 November 2010. The Committee agreed, with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. The Scottish Government provided a written response to the stage 1 report in December 2010. The Bill completed stage 1 scrutiny with the [stage 1 debate](#) on 8 December 2010, when the general principles of the Bill were unanimously agreed to by Parliament (Scottish Parliament 2010).

Stage 2 (detailed consideration of the Bill by the Committee) was carried out on [19 January 2011](#) (Scottish Parliament Local Government and Communities Committee 2011a) and [26 January 2011](#) (Scottish Parliament Local Government and Communities Committee 2011b).

Stage 3 proceedings are scheduled to take place on 3 March 2011.

## STAGE 1

The Committee took oral evidence on the general principles of the Bill from a range of relevant stakeholders, including the property factoring industry, consumer groups, the Minister for Housing and Communities and the Member in charge of the Bill, at four meetings in September 2010. The Committee also received 26 written responses. The Committee agreed, albeit with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. During the stage 1 debate, the Minister for Housing and Communities (Alex Neil MSP) indicated that the government, like the Committee, supported the general principles of the Bill but that greater clarity was required in a number of areas.

The main issues raised during stage 1 are summarised below.

### Meaning of property factor

The Committee considered that it was appropriate for housing associations and local authorities to be included within the definition of ‘property factor’ provided in the Bill. The Committee also expressed the view that land-owning maintenance companies should be included within the definition of property factor and called on the Member in charge to consider how this point could be clarified to avoid any doubt.

## Registration of property factors

The introduction of a regulatory framework, as opposed to a voluntary accreditation scheme, for property factors was one of the key areas of debate to emerge from the evidence heard and received by the Committee. In July 2008, the Scottish Government had announced plans to work with the property management industry to support the establishment of a voluntary accreditation scheme for property managers (2008). A working group was subsequently established to develop the scheme. Since March 2009, the Scottish Government has been working in partnership with key industry, consumer, housing and local authority stakeholders to develop a national accreditation scheme for residential property managers. On 10 May 2010, the Scottish Government launched a [public consultation on draft core standards for the accreditation scheme](#) (2010). The [consultation analysis](#) is available on the Scottish Government website: The scheme is endorsed by the Property Managers Association Scotland, Consumer Focus Scotland and the OFT, who are all represented on the working group.

Part 1 of the Bill relates to the registration of property factors. It provides for the establishment of a register; the procedures for registration; removal from the register; appeals against a refusal to register or removal from the register; enforcement of the requirement to register; and a code of conduct for property factors.

In its stage 1 report, the Committee indicated its belief that there was clear evidence testifying to the problems encountered by members of the public in their dealings with property factors and that there was, therefore, a need to establish a statutory framework to regulate property factors. The Committee agreed with those witnesses who said that a voluntary accreditation scheme would not address the problem of factors who provide a poor service to consumers. The Committee acknowledged the work already conducted by the Scottish Government's working group in developing a national voluntary accreditation scheme, but did not consider, from the evidence presented, that this would ultimately be successful in addressing inadequate factoring services. The Committee, therefore, supported the approach taken by the Member in charge of the Bill in proposing a statutory framework for the regulation of property factors. During the stage 1 debate, the Minister indicated that the government now accepted that a statutory approach is appropriate.

## Removal from property factors register

Significant concerns were raised in relation to the provisions of the Bill which provide for the removal of a property factor from the register (sections 8 and 9). In particular, the Committee recognised that the deregistration proposals contained in the Bill posed a number of complex issues, particularly in relation to land-owning maintenance companies. Notably, if a property factor was deregistered as a result of a problem in one area, there might be consequences for any other site managed by that company, even where no problem exists on that site. Also, a question arose as to the ownership of and liability for the land in question if the property factor, who was also the landowner, was deregistered. Additionally, it was pointed out that if a company was deregistered it would lose a source of income from factoring that would enable it to maintain the land. The Committee called on the Member in charge to give further consideration to these matters.

## **Dispute resolution**

Part 2 of the Bill proposes the creation of a form of alternative dispute resolution between property factors and homeowners by establishing a homeowner housing panel and homeowner housing committees (HHC). This would be based on the infrastructure of the private rented housing panel and private rented housing committees established by the Housing (Scotland) Act 2006. The HHC would deal with complaints from homeowners who believed that their factor had failed to comply with any term of the contract between them, or to ensure reasonable compliance with the factors' code of conduct.

Although there was a widespread recognition in evidence concerning the need for a dispute resolution system, there were differing views as to what form that should take. The Committee, therefore, called on the Member in charge and the Minister to provide further information about both the panel and ombudsman options. During the stage 1 debate, the Minister indicated the Scottish Government's preference for an ombudsman system on the grounds that the costs of running an ombudsman scheme would be lower and would, in any case, fall to the industry rather than the taxpayer.

## **Switching provider**

A major issue to emerge from both the oral and written evidence, although not specifically dealt with by the Bill, is the ability of homeowners to switch property factor. The Committee heard evidence to the effect that switching provider was particularly difficult where land-owning maintenance companies were concerned. The Member in charge of the Bill expressed the view that "registration will help to ensure that there are fewer instances of people reaching the stage at which they feel that switching is the best option for them." Whilst recognising that there may be less need for homeowners to switch once the provisions in the Bill come into force and raise standards in the sector, the Committee nevertheless expressed the view that a simplification of the process would be of benefit to the consumer and called on the Scottish Government to undertake further research. During the stage 1 debate, the Minister indicated that the Scottish Government would carry out research on switching by residents.

## **STAGE 2**

Stage 2 (detailed consideration of the Bill by the Committee) was carried out on [19 January 2011](#) and [26 January 2011](#).

In total, 117 amendments were lodged by the Minister and the Member in charge of the Bill. No other Members lodged amendments. The following paragraphs consider some of the main issues that were debated at stage 2. Those amendments that attracted less discussion and debate, including minor and consequential amendments, are not considered here (please refer to the relevant Official Report). Following the conclusion of stage 2 proceedings, the Bill (as amended at stage 2) was published.

## **Meaning of property factor**

The first substantive group of amendments to be considered at stage 2 relate to the meaning of "property factor" (amendments 39, 1, 2, 3, 4, 5, 22, 27, 107, 109 and 110). Amendment 39, by the Member in charge of the Bill, sought to remove doubt that land-owning maintenance companies are covered by the Bill's provisions. The Minister expressed major concerns about amendment 39 on the grounds that it created unnecessary complications and may have unintended consequences. Amendment 39 was disagreed to (by division). Amendment 1 by

the Minister also sought to clarify that land maintenance companies are included within the meaning of 'property factor'. Amendment 1 was agreed to. Government amendment 5 gives Ministers an order-making power to amend the definition of property factor. Amendment 5 was agreed to. Although the Minister expressed concerns about some of the other non-executive amendments in this group, they were agreed to (by division).

### **Removal from property factors register**

Amendments in this group, by the Member in charge (amendments 59, 63, 64, 65, 66, 67, 68, 69, 70 and 71), sought to allay the concerns expressed at stage 1 about the deregistration of property factors by providing a notice period of 21 days for removal from the register in order to enable customers to take steps to find a replacement factor. Amendments in this group were supported by the Minister and agreed to by the Committee.

### **Dispute resolution**

The intention of this group of executive amendments (amendments 6, 21, 24 and 29) was to ensure that the costs of the dispute resolution service provided for in the Bill do not fall entirely to the taxpayer. Amendment 21 provides Ministers with the power to make provision for the recovery of costs associated with dispute resolution. These amendments were supported by the Member in charge of the Bill on the grounds that they represent a "polluter-pays" approach to cost recovery. All amendments in this group were agreed to.

### **Commencement of the Bill**

This group of amendments (33, 113, 34 and 35) relate to the commencement date of the Bill (i.e. the date on which the Bill's provisions come into force). Section 29 of the Bill [as introduced] provided that the Bill would come into force on 29 September 2011, or such earlier date as the Scottish Ministers may by order appoint. During discussion on this group of amendments, the Minister argued that a later commencement date was necessary in order to enable the government to establish the new registration scheme and dispute resolution service; prepare and consult on the code of conduct; consult and make regulations on matters such as fees and charges; and put together information and guidance for the industry and the public. The Minister indicated that, with the agreement of the Member in charge, an amendment would be lodged at stage 3 seeking to implement the Bill by 1 October 2012 at the latest. Amendments 33 and 35, which relate to the commencement of part 3 of the Bill, were agreed to. Amendments 113 and 34, which provided alternative dates for commencement, were not moved pending further discussion at stage 3.

## **STAGE 3**

Stage 3 proceedings on the Property Factors (Scotland) Bill are expected to take place on 3 March 2011.

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## RELATED BRIEFINGS

[SB 10/42 Property Factors \(Scotland\) Bill \(347KB pdf\)](#)

[SB 08/68 Common Property and Open Spaces: Management, Repair and Maintenance \(148KB pdf\)](#)

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