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Property Factors: Frequently Asked Questions (updated 2026)

Angus Evans, Sarah Harvie-Clark

Property factors manage the repair and maintenance of blocks of flats as well as common areas on housing estates. This briefing includes answers to some frequently asked questions on property factors. It is aimed at constituency enquiries asked by homeowners.



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Executive Summary

1. Homeowners have various legal obligations to repair and maintain their properties as well as those areas which are owned in common (i.e. co-owned), or which require joint maintenance (e.g. stairwells, lifts, roofs, gutters and gardens).

2. In some cases, homeowners will be able to arrange for repair and maintenance themselves. However, it can sometimes help to appoint someone else (i.e. a "property factor" or "property manager") to do this. There can be also be situations where the "title documents"to properties (the legal documents setting out ownership) [1] require a factor to be appointed (perhaps even stating which factor).

3. Various areas of law interact to govern the relationship between homeowners and property factors. The three most important areas are arguably:

    a. The Property Factors (Scotland) Act 2011 which includes: compulsory registration for property factors; a Code of Conduct with minimum standards for property factors; and a dedicated dispute resolution system which allows cases to be brought to a specialised tribunal.

    b. The title documents to a property which can include rules on the management of common property (as well as fallback rules in the Tenements (Scotland) Act 2004 and the Title Conditions (Scotland) Act 2003 which can be used when the title documents don't cover certain topics or are defective).

    c. The contractual agreement between homeowners and the property factor.

4. When assessing their relationship with their property factor, homeowners need to consider these three areas of law.

5. The rules on appointing and dismissing property factors are very complex. They are not dealt with by the Property Factors (Scotland) Act 2011. Instead one has to look at any rules in the title documents together with fallback powers in the Tenements (Scotland) Act 2004 for flats and in the Title Conditions (Scotland) Act 2003 extending to land and property more generally.

6. This briefing includes more details on the above points as well as answers to certain frequently asked questions on property factors.

7. The information published in this briefing is aimed at supporting the work of MSPs. It is not intended as legal advice and should not be relied on for that purpose.

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What are property factors?

Home ownership involves more than just owning a property. It often includes various legal obligations to maintain and repair the property in question (for details see the SPICe briefing on Flats: Management, Maintenance and Repairs (2026)).

Property factors (otherwise known as "property managers") manage the repair and maintenance of property on behalf of homeowners (i.e. as their agents).

They operate in two main areas as regards residential property:

1. Managing the maintenance and repair of property in blocks of flats
2. Managing maintenance and repairs on housing estates.

Flats

Flats (including traditional tenements, modern flats and four in a block properties) normally have areas which are owned in common (i.e. co-owned) by various homeowners, or which require joint maintenance. Depending on what the individual title documents (i.e. the legal documents setting out ownership) say, this can include areas such as stairwells, lifts, roofs, gutters and gardens.

One of the big issues for people who own flats is how to ensure that these areas are maintained and repaired properly.

Unlike maintenance in individual flats, one needs to work with other homeowners to maintain and repair these areas.

In some cases, homeowners will be able to arrange for repair and maintenance themselves, for example by agreeing informally with other owners what needs to be done or by setting up a more formal owners' association.

However, arranging maintenance and repairs can potentially be challenging and time-consuming (for details see the SPICe briefing on Flats: Management, Maintenance and Repairs (2026)). As a result, depending on the circumstances, it can sometimes help to appoint someone else (i.e. a "property factor" or "property manager") to do this.

In addition, there can be situations where the title documents require a factor to be appointed (perhaps even stating which factor). This is often the case in new-builds, or where properties have been sold off under "right to buy" rules, in which case the local council or housing association may be the property factor for the building. For the avoidance of doubt, in such a situation the council or housing association would not have a general repair or maintenance role in relation to the building beyond any linked to it being the property factor.

Housing estates

Housing estates normally have areas of land which are used by, or benefit, all the owners in the estate (for example, play parks, green spaces or drainage systems). In the past, local authorities would have been responsible for the upkeep of these areas. However, it is now more common for the private sector to be involved. [2]

One approach is a "common ownership model" where all the homeowners in the development have a share in the ownership of the associated space (with a property factor being appointed to carry out maintenance).

Another approach involves so-called "land-owning maintenance companies" purchasing the open spaces from the housing developer and agreeing to act as property factor for the estate when it is built. Residents are then required in their title documents to pay this property factor for arranging for the maintenance of these areas. (for details, see the section in this briefing on land-owning maintenance companies).

What services do property factors offer?

The range of work which property factors carry out will largely depend on the type of property involved, the state it is in, what the title documents require, and the scope of the agreement homeowners have with the factor.

Areas of work which factors regularly carry out include:

- **building inspections**: organising building inspections
- **repairs and maintenance**: arranging repairs and maintenance, obtaining quotations, appointing contractors, overseeing works, and managing payments to tradespeople
- **owner contributions**: collecting payments from flat owners
- **owners' meetings:** organising meetings to enable owners to make decisions about the building
- **insurance cover:** arranging and maintaining insurance cover for all or part of the building
- **legal action:** taking legal action on behalf of homeowners where authorised to do this.

In many cases, homeowners will appoint factors based on a regular maintenance and repair programme. However, in other cases the approach will be a more ad hoc one where work is carried out as and when it is needed.

Factors will charge a fee (usually monthly) to cover administration. Owners will normally also contribute towards a 'float' or 'advanced deposit' to cover small repairs. [3] Usually this is only a few hundred pounds per flat. Additionally, factors may also hold a building reserve fund, also known as a sinking fund, to pay for larger-scale, future repairs. [3]

More details of the kinds of services offered by property factors can be found on the websites of:

- TPI Scotland (a professional body for residential property managers which is part of the Property Institute)
- Under One Roof (a charity which provides impartial advice on repairs and maintenance for flat owners in Scotland);
- Registered property factor businesses providing services in constituents' local areas.

Why do homeowners use property factors?

As outlined later in this briefing, homeowners may be required to appoint a factor under rules in the title documents. This issue is dealt with in more detail in the SPICe briefing on Flats: Management, Maintenance and Repairs (2026).

However, even if using a property factor is not required, appointing a factor can sometimes be a way of ensuring that property or land is maintained to a suitable standard.

For example, homeowners can sometimes feel that they don't have time to arrange or carry out maintenance and repairs themselves (so-called "self factoring").

There might also be doubts about whether self-factoring will work in situations where few homeowners actually live in their properties, or in housing estates with large grounds and numerous owners. As noted in the SPICe briefing on Flats: Management, Maintenance and Repairs (2026) there can be more general challenges in homeowners working together. For example, in one block each flat owner might have very different priorities and resources. Some may be keen to maintain or improve the building, whereas others may be unwilling or unable to pay for this.

Appointing a factor can potentially provide access to the professional expertise needed to ensure that a property is well-maintained.

Appointing a property factor does, however, involve a financial cost as management fees will need to be paid. And it also means that homeowners will have to manage their relationship with the factor in order to ensure that work is carried out to an appropriate standard. Relationships between property factors and homeowners can also potentially break down, for example, if fees are considered to be too high or the work is not carried out to the required standards. Disputes can be dealt with by a specialised tribunal, which is free to access.

There are therefore pros and cons in using a property factor. More details on the advantages and disadvantages of using a property factor (and information on self-factoring) can be found on the Under One Roof website.

What are the main laws governing factoring?

Various areas of law interact to govern the relationship between homeowners and property factors. The three most important ones for homeowners are arguably:

1. The Property Factors (Scotland) Act 2011

This regulates the sector and includes three main elements:

- compulsory registration for property factors operating in Scotland
- a Code of Conduct with minimum standards which property factors have to follow
- a dispute resolution system which allows homeowners to bring cases to the First-tier Tribunal for Scotland (Housing and Property Chamber).

2. The rules in the title documents and associated legislation

The title documents are the legal documents associated with a property which are held by Registers of Scotland. They indicate who owns a property as well as which parts of a block of flats or housing estate are owned in common. There may also be rules on the management of common property or areas which are used in common, including how decisions should be taken and how property factors should be appointed or dismissed.

If flats' title documents don't cover certain topics or are defective, then there are fallback rules in the Tenements (Scotland) Act 2004 which can be used. The Title Conditions (Scotland) Act 2003 also contains rules which are of relevance to factoring, e.g. on the appointment or dismissal of factors.

Title deeds or title documents?

The term **title deeds** is still often used in practice to describe the official documents relating to the registered ownership of land and property.

However, this briefing refers to the official ownership documents as the **title documents** and, similarly, Under One Roof uses the term, **titles**, in the same context.

These shifts in legal terminology in the briefing material reflect key differences in the format of the two existing property registers in Scotland. The newer Land Register of Scotland, which now contains a significant proportion Scotland's land and buildings, does not contain the original conveyancing deeds as such. Instead, some of its documentation only makes reference to, or includes excerpts from, those deeds.

3. Contract law and the law of agency

There will almost always be some sort of an agreement between the property factor and homeowners setting out the services to be provided. Often this will be the "written statement of services" required under legislation (see below) plus relevant terms and conditions rather than a formal written agreement. As contract law governs agreements, it

will therefore be relevant to any disputes between factors and homeowners. In addition, as factors act on behalf of homeowners (i.e. as their agents), the law of agency can also be relevant.

The importance of each of these three areas of law will depend on the individual circumstances of each case. For example, the scope of the title documents will differ from case to case as will the scope of the agreement between the factor and the homeowners.

Further information on each of these areas of law is set out below.

Property factors also have to comply with a range of other legal obligations (for example, the laws on consumer protection). Depending on their activities, they may also have to comply with the requirements of statutory bodies (such as the Scottish Housing Regulator or the Financial Conduct Authority), as well as the rules and codes of practice of professional or trade bodies (such as the Royal Institution of Chartered Surveyors).

The Property Factors (Scotland) Act 2011

The Property Factors (Scotland) Act 2011 ('the 2011 Act') has its origins in a Member's Bill proposed by the Labour MSP, Patricia Ferguson, in 2007 [4] , which was introduced in Parliament on 1 June 2010. [5]

Prior to the legislation, there was no overarching regulation of the sector. The main aim behind the Bill was to change this and to:

> " create a statutory framework which would protect Scottish homeowners who contract with property factors."
>
> Scottish Parliament, 2010[6]

The 2011 Act regulates various aspects of the property factor sector in Scotland and is a key piece of legislation for both homeowners and property factors. It came into force on 1 October 2012.

Which organisations does the 2011 Act apply to?

The legislation applies to "property factors", a term which is defined in section 2(1) of the 2011 Act. In summary, the term covers bodies which:

- manage the common parts of land used to any extent for residential purposes; or which
- manage or maintain land which is available for use by the owners of adjoining or neighbouring residential properties and where the owners are bound by their title documents to pay for managing or maintaining the land.

There are also specific rules on how many people have to own/be able to use the land in question. In essence this has to be two or more persons, or, in the case of land owned by a local authority or a housing association, by them and at least one other person.

The definition of "property factor" is a wide one as the rules cover a range of bodies which manage or maintain buildings containing flats or land used for residential purposes (e.g. housing estates). This can include private businesses, local authorities and housing associations.

There are, however certain qualifications to this definition. For example:

- Where the organisation is not a local authority or housing association, the management or maintenance of property/land has to be carried out "in the course of that person's business" (Sections 2(1)(a) and (c) of the 2011 Act).

  The Court of Session considered the meaning of this term in a case from 2020 involving a property developer which owned and rented out all of the flats in a building except one and which billed the other homeowner for carrying out maintenance of the common parts (Appeal by Proven Properties (Scotland) Ltd against a decision of the Upper Tribunal).[i]

  The court found that the phrase "in the course of that person's business" in the 2011 Act should be read as meaning "in the course of their business as managers of the common parts of properties, rather than in the course of any business." Therefore the developer wasn't a property factor under the 2011 Act as, although it was a business, it wasn't acting as a property factor but was instead carrying out maintenance in its role as developer and owner of the majority of the properties in the development. [7]

- There are exceptions in section 2(2) of the 2011 Act, including for:
  - those managing or maintaining property/land on behalf of a property factor (businesses carrying out maintenance/work for a property factor are therefore not covered); and
  - owners' associations set up under the development management scheme (this is a management scheme designed for larger developments which one can opt into through rules in the Title Conditions (Scotland) Act 2003).

More details on the definition of "property factor" can be found in the Scottish Government guidance "Property Factor Register Guidance: Am I a Property Factor." [8]

What kind of property is covered?

The 2011 Act does not list specific types of property which are covered by the legislation.

Instead, the definition of "property factor" in section 2(1) refers to two general types of property which fall under the rules when managed by a factor:

1. "the common parts of land ... used to any extent for residential purposes"; and

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i [2020] CSIH 22

2. "land which is available for use by the owners of any two or more adjoining or neighbouring residential properties" where the owners are bound by their title documents to pay for managing or maintaining the land.

Management of the common parts of land covers flats (including, for example, traditional tenements, modern flats and four in a block properties), while the second part of the definition is aimed at property factors who manage land on housing estates for neighbouring residential properties.

Purely commercial properties are not covered. However, since common property only has to be used "to any extent" for residential purposes, residential blocks which also contain commercial properties may still fall under the rules. The most common example of this is retail units on the ground floor of a block of flats. Depending on the circumstances, these may also be covered by the rules in the 2011 Act. For an example see the First-tier Tribunal's decision of 24 December 2018.[ii]

What are the rules on registration?

Anyone who wants to operate in Scotland as a property factor (as defined by section 2 of the 2011 Act) first has to apply for registration online with the Scottish Property Factor Register ('the Register'), a public register which is run by the Scottish Government.

It is an offence to operate as a property factor without being registered and without reasonable excuse (section 12 of the 2011 Act). Unregistered property factors can be reported to the Scottish Government or to the police. [9] [10] In addition, if a factor is refused registration or is removed from the Register, then future charges or costs incurred by the factor are no longer recoverable from homeowners (section 9(2) of the 2011 Act).

Applications for registration have to include information specified in section 3 of the 2011 Act. This includes the property factor's contact details, what type of organisation it is (e.g. sole trader or limited company), who is in charge of the organisation and details of the properties which will be managed. Further details of the information required in an application for registration is included in the Property Factors (Registration) (Scotland) Regulations 2024. The regulations also outline the registration fees which need to be paid.

In order to be registered, property factors have to pass a "fit and proper person" test (section 4(4)(a) of the 2011 Act). This involves an assessment whether persons directly concerned with the control or governance of the property factor have:

- been convicted of offences involving fraud/dishonesty, violence or drugs
- practised unlawful discrimination under Part 2 of the Equality Act 2010
- contravened any provision of the law relating to tenements, property or debt (section 5 of the 2011 Act). [11]

If the registration is approved, it lasts for three years and factors are required to re-register prior to that date. If they do not, they are removed from the Register (section 4(7)(a) of the 2011 Act).

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ii Case reference number FTS/HPC/PF/18/0157

Factors who are re-registering also have to pass the fit and proper person test to remain on the Register. In addition they also have to demonstrate (section 4(4)(b) of the 2011 Act) that, while registered, they have:

- complied with the Property Factor Code of Conduct;
- complied with any property factor enforcement orders made against the property factor by the First-tier Tribunal; and
- taken steps to include their property factor registered number in documents sent to homeowners.

The Scottish Ministers also have a general power to remove factors from the Register if they do not meet the fit and proper person test, or if they have not met any of the other three elements mentioned above (section 8(1) of the 2011 Act). This includes the power to remove factors from the Register under section 8(1) for technical reasons where the factor is no longer a legal entity, for example, where the company in question has been dissolved (the initial application requires the factor to specify their legal form - section 3(2)).

These powers were used in 2020 to remove the company Apex Property Factor Ltd from the Register . [12] Two other property factors have been removed from the Register under this part of the Act. [13] One property factor has also been refused entry to the Register. [14] In addition, nine property factors have been removed from the Register as they were no longer a legal entity. [13]

Registered factors have to notify the Register of information which needs updating due to a change in circumstances. They also have to update property details no later than three months after the end of their financial year (section 7 of the 2011 Act).

Based on information available from the Property Factor Register as of 27 August 2026, there are currently 366 registered property factors broken down as follows:

- 16 local authorities
- 104 registered social landlords
- 246 other property factors (including companies, sole traders, partnerships, and other legal entities). [15]

The latest annual update information submitted by registered property factors indicates that 691,566 properties and 2,407 land records are currently being managed by registered property factors in Scotland. [15]

More details on property factor registration can be found in:

- the Scottish Government's document: "Property Factors (Scotland) Act 2011 Guide to Registration." [16] ; and
- the mygov.scot document "Register as a property factor - How to register".

What does the Code of Conduct do?

The Code of Conduct which came into force on 16 August 2021, sets out the minimum standards which all registered property factors have to comply with (Section 14(5) of the 2011 Act). It updated the previous Code of Conduct from 2012 ('the 2012 Code').

The rules in the Code of Conduct only apply to registered property factors. Consequently, if a property factor does not register, or is removed from the register, it will not have to comply with the Code of Conduct. However, as noted elsewhere in this briefing, it is an offence to operate as a property factor without being registered and without reasonable excuse.

Overarching standards of practice

The first requirement, introduced in the revised Code, is that factors comply with twelve "overarching standards of practice". These cover areas such as levels of service, communication, record-keeping and complaints handling. Other areas of the Code expand on them in more detail.

Written statement of services

Another key part of the Code of Conduct is the "written statement of services" which property factors have to give homeowners. This is a summary of a factor's service delivery standards which the First-tier Tribunal will consider when assessing whether the factor has complied with the Code of Conduct.

Where the land is owned by the homeowners (i.e. the standard situation in flats), the written statement of services must set out the following matters:

- **Authority to act** –
    - the basis on which the property factor acts on behalf of all the homeowners and;
    - where applicable, a statement of any level of delegated authority, e.g. financial thresholds for instructing works, and situations where the factor may act without further consultation.
- **Services** – the type of core services provided by the property factor, including target times, frequency of inspections and any services required in addition to core ones.
- **Financial and charging arrangements** – information on fee structures (including debt recovery procedures and late payment charges, billing arrangements, and payments towards maintenance funds).
- **Communication and consultation** – information on how homeowners can access documents, policies and procedures (including complaints handling) and the timescales and procedures for dealing with enquiries and complaints.
- **Declaration of interest** – a declaration of any financial or other interests (for example, as a homeowner or landlord) in the land to be managed or maintained.
- **Information on the 2011 Act and the duties it places on property factors**
- **Ending the arrangement** - information on how homeowners can change or terminate the arrangement and the procedure where another factor takes over the management of the property.

Slightly different requirements apply for land-owning maintenance companies.

New property factors have to take all reasonable steps to ensure that a copy of the written statement of services is provided to homeowners within a four week time-frame. If substantial changes are made to the written statement of services, a copy needs to be provided to homeowners at the earliest opportunity (in a period not exceeding three months). Homeowners also have the right to request a copy of the latest written statement of services at any other time.

Individual service standards

Property factors also have to comply with individual service standards relating to:

- **Good communication and consultation** – This includes obligations:
    - to provide contact details
    - to outline arrangements for reporting issues or making enquiries;

- to consult with homeowners where work incurs a charge (unless there is an agreed level of delegated authority).

- **Financial transparency** – This includes obligations:
  - to send homeowners a detailed financial statement of charges and work done at least once a year
  - to keep homeowners' floating funds (i.e. funds for paying for minor regular repairs) separate from property factors' funds
  - to put sinking/reserve funds **(**i.e. funds for paying for future major repairs**)** in an interest bearing account;
  - to provide financial information on termination of the service/where a property changes ownership.

- **Debt recovery** – This includes obligations:
  - to have a clear written debt recovery procedure
  - not to have excessive or unreasonable charges for late payment;
  - to take reasonable steps to first recover unpaid charges from any homeowner who has not paid their share of the costs where other owners are jointly liable for debts.

  Property factors are also not permitted to bring actions for debt in the courts, or to continue to charge for late payments, where a homeowner has disputed the debt at the First-tier Tribunal and the application is accepted by the First-tier Tribunal (these actions need to be paused until the tribunal's final decision).

- **Insurance** – Property factors are required to have adequate professional indemnity insurance (or the equivalent if the factor is a local authority or housing association). Factors also have to meet certain standards where they arrange building or contents insurance for homeowners.

- **Repairs and maintenance** – These include obligations on factors to:
  - have procedures so that homeowners can notify them of matters requiring repair, maintenance or attention
  - ensure that repairs and inspections are carried out to an appropriate timescale
  - ensure that a range of repair options are considered
  - ensure that the cost of the repair or maintenance is balanced with other factors such as likely quality and longevity
  - demonstrate how and why they appointed contractors, including where they have decided not to carry out a competitive tendering exercise or to use in-house staff
  - make documentation relating to tendering processes available for inspection
  - take reasonable steps to appoint contractors with public liability insurance

- disclose commission, fees or payments paid by contractors
- disclose any financial or other interests in contractors appointed by them;
- liaise with contractors to remedy any defects in any inadequate work or service provided where requested by homeowners.

- **Complaints procedure** – Property factors must have a written complaints procedure which includes certain elements specified in the Code of Conduct. Unless otherwise provided by the title documents, the procedure should be free. All correspondence (both written and electronic) should be retained for three years. Written correspondence with homeowners in relation to complaints should mention the possibility of bringing a case to the First-tier Tribunal.

Although the service standards cover a wide range of matters, the Code of Conduct doesn't set the level of fees which factors are able to charge.

Some of the service standards can, however, be used, to assess whether property factors are providing value for money.

That includes the obligations on financial transparency as well as those on repairs and maintenance. In particular, the revised Code of Conduct includes a new provision (rule 6.6.) partly focused on value for money. It states that:

> "A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the 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 must be made available if requested by a homeowner. "

Amendments to the legislation and future review

Regulation of property factors was an issue which was debated during the passage of the Housing (Scotland) Bill in Session 6 of the Parliament (SP Bill 45).

This ultimately led to the Housing Scotland Act 2025 amending certain limited areas of property factors legislation, notably sections 5,8, 13 and 14 of the the 2011 Act.

In addition, and more significantly, section 70 of the Housing Scotland Act 2025 amended section 64 of the Title Conditions (Scotland) Act 2003 so that (in many cases) a majority of homeowners can now vote not to use an existing factor and to hire a new one (the previous rule required a two-thirds majority).

These amended provisions came into force on 1 April 2026. [17]

During scrutiny of the Housing (Scotland) Bill the then Cabinet Secretary for Social Justice, Shirley-Anne Somerville MSP, also indicated that the Scottish Government was intending

to review the property factors sector in the round stating that:

> “ Instead of working in a potentially piecemeal way, I would like to look at any issues in the round and engage with stakeholders to review the system in its entirety to identify what improvements can be made. I wish to take the time to do that work properly and would welcome members contributing to it.”
>
> Scottish Parliament - Official Report, 2025[18]

This review did not take place during session 6 of the Parliament. The SNP's 2026 Scottish Parliament election manifesto does, however, state that:

> “ We are committed to reforming the Tenement (Scotland) Act 2004 and Property Factors (Scotland) Act 2011 by the end of the next parliament, to better meet the needs of relevant owners and tenants to enable repairs, maintenance and enhancement of such properties, and improve delivery of services by factoring organisations, including considering costs, where they manage properties.”
>
> Scottish National Party, 2026[19]

Title documents and associated legislation

Title documents

The title documents to properties will often contain rules which are relevant to the work of property factors. In particular:

1. They will often indicate which parts of the property are owned in common by all the homeowners or which parts can be used in common by the owners.
2. They will often contain so-called "title conditions" (known as "real burdens" or "burdens") on the management of common property, including:
    - obligations on owners to contribute to repairs and maintenance
    - rules on how decisions should be taken (e.g. majority voting)
    - rules on how repair and maintenance costs should be split between owners
    - rules on the insurance of common property
    - rules on whether maintenance funds can be refunded if a homeowner sells their property
    - rules on how property factors should be appointed or dismissed.
3. In some cases, the title conditions will also name a particular person or organisation who must be appointed, or who has the power to decide who the property factor should be.

Although there are certain exceptions in legislation,for example on the appointment or dismissal of factors, the basic principle is that the rules in the title documents need to be followed**.** In addition, as the rights in the title documents are what are known as"real rights", they survive transfers of ownership and therefore continue to apply after properties are sold.

The title documents are therefore an important starting point in understanding homeowners' rights and responsibilities (and their relationship with any property factor).

For more details on how title documents and title conditions work see page 26 of the SPICe briefing on Flats: Management, Maintenance and Repairs (2026).

See also the section on title documents on the website Under One Roof.

Associated legislation

The title documents may have gaps, defects or contradictions in their coverage of areas of relevance to property maintenance. For example, they may not indicate how decisions on

maintenance should be taken amongst the owners or may not deal with how property factors should be appointed.

Where the title documents do not deal with an issue or are defective, there are fallback rules for "tenements" (i.e. flats) in the Tenements (Scotland) Act 2004 which apply. These are known as the Tenement Management Scheme (TMS).

"Tenement" is defined in section 26 of the Tenements (Scotland) Act 2004 as:

> “ a building or a part of a building which comprises two related flats which, or more than two such flats at least two of which— (a) are, or are designed to be, in separate ownership; and (b) are divided from each other horizontally.”

This is a broad definition which in practice covers almost all buildings containing flats. For details, see the section on flats in the SPICe briefing on Flats: Management, Maintenance and Repair (2026).

Among other things, the TMS:

1. Defines key terms, including what is known as "scheme property". In simple terms this means the parts of a flat every flat owner is required to maintain. It covers three categories:
    - common property
    - parts that require joint maintenance under title conditions;
    - various structurally important parts of the building, however they are owned.
2. Describes how flat owners make decisions about scheme property - known as scheme decisions. The general rule is that decisions can be taken by a majority vote - this also includes the appointment and dismissal of property factors.
3. Explains how costs should be shared between owners.
4. Says what should happen when there are emergency repairs.

More details on the TMS can be found in the SPICe briefing on Flats: Management, Maintenance and Repairs (2026)

The rules in the TMS only apply to flats. However, there are also rules in the Title Conditions (Scotland) Act 2003 which can potentially apply to property more generally. These are of particular importance in the case of "land-owning maintenance companies" and where homeowners are seeking to dismiss or change their property factor.

Contract law

In addition to any obligations in the title documents, there will also almost always be a written agreement between the property factors and the homeowners.

Often the agreement will simply be defined in the written statement of services, which will include the property factor's terms and conditions of service. However, there may also be a written service agreement which homeowners have to sign.

Implied agreements are also possible. However, this is not the norm. In a 2020 appeal case involving arguments that a property factor had been appointed by "custom and practice", the Upper Tribunal stressed that the mere length of time that a factor has worked for home owners is not in itself sufficient to establish an implied agreement.[iii]

Whatever the form of the agreement, in very general terms, contract law works on the basis that agreements need to be followed. It is therefore crucial for homeowners to understand what obligations their factor has agreed to.

As indicated elsewhere in this briefing, the terms of property factor agreements will also have to comply with the requirements in the Code of Conduct.

In addition, as the primary obligation for dealing with repairs and maintenance rests with the homeowners, with property factors acting as their agents, the law of agency may also be relevant to disputes and the interpretation of contracts.

iii Zukowski v Charles White [2020] UT 26 UTS/AP/19/0033 (19 February 2020)

How does the dispute resolution system work?

Grounds for bringing cases to the First-tier Tribunal

One of the key elements of the legislation (section 17 of the 2011 Act) is that homeowners who have a dispute with a property factor can bring cases to a specialised tribunal which, amongst other things, has jurisdiction over property factor disputes - the First-tier Tribunal for Scotland (Housing and Property Chamber) ("First-tier Tribunal").

The First-tier Tribunal consists of legal members and ordinary members who are specialists in housing and land management issues. Since 1 December 2016, members are appointed on the recommendation of the Judicial Appointments Board for Scotland (JABS). It is headed by the Chamber President and is based in Glasgow. [20]

Cases can be brought to the First-tier Tribunal on two potential grounds:

1. that the property factor has failed to comply with the standards in the Code of Conduct; or

2. that the property factor has failed to carry out the "property factor's duties".

If cases deal with matters which occurred before the revised Code was introduced (on 16 August 2021), the First-tier Tribunal is able to consider the rules which applied in the past, as the revised Code does not operate retrospectively. See the information from the First-tier Tribunal. [21]

"Property factor's duties" is defined in section 17(5) of the 2011 Act as:

> "(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."

The First-tier Tribunal explains that complaints about "property factor's duties" can include:

> " alleged breaches of the written Statement of Services ... or title deed conditions or a factoring contract or contraventions of the law of agency. If the application is made on the basis of breach of property factor duties, the homeowner will need to specify the document or provision which the homeowner considers contains the duty which the property factor has not met."
>
> First-tier Tribunal for Scotland (Housing and Property Chamber), 2022[22]

Tribunal procedures

The legislation works on the basis that disputes will first be dealt with between the parties (section 17(3) of the 2011 Act). No application can be made to the First-tier Tribunal unless:

1. the homeowner has notified the property factor in writing as to why they are of the view that the factor has failed to carry out its duties or to comply with the Code of Conduct; **and**

2. the property factor has refused to resolve, or has unreasonably delayed in attempting to resolve the homeowner's concern.

If a property factor has not been given a "reasonable opportunity" to resolve a dispute, any complaint must be rejected by the First-tier Tribunal (Section 18(2)(b) of the 2011 Act). The term "reasonable opportunity" is not further defined in the legislation.

To apply to the First-tier Tribunal, homeowners have to submit an application in writing and include evidence of attempts to resolve the complaint (including correspondence) and a copy of any written statement of services. Based on the 2017 Upper Tribunal appeal decision in Shields and Blackley v Housing and Property Chamber,[iv] homeowners who have sold their property and are no longer owners may also be able to apply in relation to past failures by a factor.

There is no fee for applying to the First-tier Tribunal (applications are free) and legal representation is not necessary. One can therefore bring a case to the First-tier Tribunal without legal support, although there may sometimes be merit in getting legal advice on specific legal points, particularly if the costs can be shared amongst homeowners.

The Chamber President has, in principle, 14 days from receipt of the application to decide whether to take the complaint forward. If the complaint is to be investigated, both parties will be sent a so-called "Notice of Referral" asking whether they wish to deal with the application by written representations or whether they wish to attend a hearing. The Chamber President can also identify cases which are suitable for mediation in which case the First-tier Tribunal must bring it to the attention of the parties . No in-house mediation service is offered though and it is up to the parties to access mediation themselves.

If a complaint is taken forward, it will be dealt with by a tribunal comprising at least two members: a legal member who acts as chairperson (a qualified solicitor or an advocate); and an ordinary member - either a chartered surveyor or a member with experience in housing and land related issues.

The First-tier Tribunal has the power to make inquiries, and can require the parties to attend a hearing or produce documents or information. It also has powers to inspect the land to which the application relates.

The First-tier Tribunal makes its decision by considering all the evidence. According to the First-tier Tribunal's Information Guide on Applications about Property Factors:

> " The First-tier Tribunal will not normally give its decision on the day. It will usually be sent out about 4 weeks after the hearing, along with a statement of reasons for the decision. If it is a complex decision, a tribunal may require a longer timescale to produce the written decision."
>
> First-tier Tribunal for Scotland (Housing and Property Chamber), 2026[23]

Decisions of the First-tier Tribunal are legally binding and are published on the First-tier Tribunal's website. There is a search function based on the name of the property factor,

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iv [2019] UT 2 UTS/AP/17/0002 UTS/AP/17/0003

the property factor number, case reference number, or complaint type. There is, however, no free search capability and it is not possible to search decisions on the First-tier Tribunal's website to look for those which include a particular word or phrase.

Decisions can be appealed to the Upper Tribunal on a point of law. [24]

Further information on the process, including application forms, guidance on the information needed to apply and rules of procedure can be found on the website of the First-tier Tribunal. [25] A more detailed summary of tribunal processes and procedures can be found in the First-tier Tribunal's Information Guide on Applications about Property Factors.

What are the First-tier Tribunal's enforcement powers?

If the First-tier Tribunal decides that the property factor has failed to carry out the property factor's duties or to comply with the Code of Conduct, it may make a “Property Factor Enforcement Order” (PFEO) (Sections 19-21 of the 2011 Act).

PFEOs can cover either of two matters:

1. A requirement for the property factor to take action which the First-tier Tribunal is of the view is necessary or,

2. Where appropriate, a requirement on the property factor to make a payment to the homeowner which the First-tier Tribunal considers reasonable.

The PFEO has to state the period within which any action must be taken or any payment made.

Before considering whether to issue a PFEO, the First-tier Tribunal has to give notice to the property factor and consider representations from the parties.

The PFEO is the key method in the 2011 Act for sanctioning factors. It is important to note though that the First-tier Tribunal does not itself enforce compliance with any orders which it makes. As is the case in the courts more generally, if an order is not complied with (for example, payment is not made) individuals need to take enforcement action themselves.

This will involve instructing officers of the court, known as sheriff officers, to take action. They can, for example, use formal debt enforcement methods (called "diligence") to recover money from the property factor. These include things like seizing money in a bank account or goods (such as office equipment) belonging to the factor.

Sheriff officers charge fees (set in legislation) for the work they carry out. It is down to the person instructing them to pay the fee. This money can be recovered from the person who is the subject of the enforcement action, but only where it is successful. It is therefore important to consider what assets are available before instructing enforcement action.

On this point the First-tier Tribunal's Information Guide on Applications about Property Factors states:

> “ Applying to the Tribunal is free of charge. If an Order is made that requires execution, the party who was granted the Order would incur a cost to engage Sheriff Officers to carry out the execution. The Tribunal does not carry out the execution of any Orders they make.”

Although the initial execution of a PFEO is for the party in receipt of it, if the First-tier Tribunal ultimately decides that a property factor has not complied with a PFEO, then it must serve notice of that failure to "the Scottish Ministers", i.e. the Scottish Government (Section 23(2) of the 2011 Act). The Scottish Government then has the opportunity to consider what action to take against this non-compliance (for example, as a last resort, removing a property factor from the Property Factor Register). In addition, it is also a criminal offence not to comply with a PFEO without a reasonable excuse (Section 24(1) of the 2011 Act).

In response to a 2022 Freedom of Information (FOI) request, the Scottish Government outlined its general approach to non-compliance [26] noting that:

> “ This action taken may include keeping the property factor on the register but continuing to monitor their compliance and encouraging them to comply with the code of conduct (the Code); removing the property factor from the register; or refusing the property factor from the register.[v] The Scottish Ministers have the power to remove a property factor from the register if they consider that the property factor is no longer a fit and proper person or where the property factor has failed to demonstrate compliance with either the property factor Code or any PFEO ... ... It is a criminal offence for a property factor to fail to comply with a PFEO and it is for the First-tier Tribunal to consider making a report to Police Scotland for prosecution in terms of section 24 of the 2011 Act. A homeowner can also report any criminality to Police Scotland and homeowners may also have recourse through the Sheriff Court.”

In a response to parliamentary question S6W-39119 from Mark Griffin MSP, the Scottish Courts and Tribunal Service ("SCTS") stated on 22 July 2025 that, since the implementation of the 2011 Act, there have been 130 instances where a property factor has failed to comply with a PFEO. [27] The SCTS response states that, since the 2011 Act came into force, the First-tier Tribunal has made a referral to Police Scotland for prosecution in 109 cases.

SPICe understands that there have not yet been any prosecutions for failure to comply with a PFEO. According to the Scottish Government's response to a parliamentary question on the total number of prosecutions under the 2011 Act, one person was prosecuted (but not convicted) in the Scottish courts in 2018-19 where the main charge was under the 2011 Act. [28] However, the case in question related to operating without registration. It did not relate to failure to comply with a PFEO. [29]

As of 2 July 2025, three property factors have been removed from the register for failing to meet the requirements of the fit and proper person test, including failing to comply with a PFEO. [30]

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v We understand from the Scottish Government that the final section of this sentence should actually read, "refusing the property factor entry to the register".

What powers does the First-tier Tribunal not have?

Although the First-tier Tribunal can investigate whether property factors have complied with the Code of Conduct or the property factor's duties, it is important to stress that it does not have the powers to:

- dismiss or change a homeowner's property factor; or to
- alter a homeowner's title documents (for example to change the share of maintenance which someone is required to pay).

In addition, as indicated, although the individual service standards cover a wide range of matters, the First-tier Tribunal doesn't set the level of fees which factors can charge.

What role do the courts have?

The First-tier Tribunal has a wide jurisdiction. It can consider breaches of the Code of Conduct as well as the property factor's duties.As explained elsewhere in this briefing, breaches of property factors' duties can include breaches of the written statement of services, title deed conditions, factoring contract or the law of agency.

Consequently, in many cases, other courts will not have a role in considering disputes between homeowners and property factors about the service offered by factors.

There are, however, certain exceptions to this as the First-tier Tribunal does not have jurisdiction over all disputes relating to factoring.

Examples where other courts can be relevant include:

- **Cases brought by factors in the civil courts for the payment of debts**

Factors who have not been paid for work done are able to bring actions in the courts (normally the sheriff court) for the repayment of debts by homeowners. These actions are not brought in the First-tier Tribunal.

There can therefore be situations where there is an ongoing action for the recovery of a debt in, for example, the sheriff court which is then followed by homeowners bringing a dispute to the First-tier Tribunal under the rules in the 2011 Act.

Rule 4.7 of the revised Code of Conduct is designed to deal with this issue. In effect, it requires the factor to pause the action for debt if a case is brought in the First-tier Tribunal. It states:

> “ If an application against a property factor relating to a disputed debt is accepted by the 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 part of the debt during the period from when the property factor is notified in writing by the First-tier Tribunal 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).”

The Code of Conduct does not lay down the procedures for pausing any action for debt. The process to be followed will depend on the individual circumstances of the case and whether or not an court action to recover the debt has already commenced.

- **Sheriff officers**

As outlined elsewhere in this briefing, the enforcement of PFEOs is not a matter for the First-tier Tribunal, but involves homeowners instructing officers of the court - called sheriff officers - to take action. However, as noted, if the First-tier Tribunal decides that a property factor has not complied with a PFEO, then it must serve notice of that failure to the Scottish Government.

- **Appeals against refusal to register or removal from the Property Factor Register**

Appeals against decisions of the First-tier Tribunal can be made to the Upper Tribunal. However, if a property factor is refused entry to the Register or is removed from the Register by the Scottish Ministers, the appeal is to the sheriff court (section 11 of the 2011 Act).

- **Enforcing title conditions or obligations under the TMS**

Title conditions can be key to establishing what obligations apply to the maintenance of land and blocks of flats. Where the title conditions are not being followed, it may be possible to bring an enforcement action in the sheriff court. Enforcing obligations under the TMS would also involve actions in the sheriff court. For details, see the SPICe briefing on Flats: Management, Maintenance and Repairs (2026) .

- **Lands Tribunal for Scotland**

The Lands Tribunal for Scotland (a specialised court which deals with various types of dispute involving land or property) has powers in relation to the variation or discharge of title conditions and can therefore be involved in cases involving property factors (Sections 32-37 and Part 9 of the Title Conditions (Scotland) Act 2003). Under the Crofting and Scottish Land Court Act 2026, the Lands Tribunal is due to merge with the Scottish Land Courtwhich has jurisdiction in resolving disputes relating to agricultural tenancies, including matters relating to crofts. [31]

How do you appoint or dismiss a property factor?

The rules on appointing and dismissing property factors are very complex. They are not dealt with by the 2011 Act. Instead, one has to look at the title documents in conjunction with fallback powers in the Tenements (Scotland) Act 2004 ('the 2004 Act') for flats and in the Title Conditions (Scotland) Act 2003 ('the 2003 Act') extending to land and property more generally. An overview of these rules follows.

Appointing a factor

There are two main scenarios when appointing a property factor:

The first scenario is that there is a real burden (a type of title condition) in the title documents which requires the owners to use a property factor, possibly even naming the particular person or organisation to be appointed.

The second scenario is that these legal requirements don't exist but that the homeowners take the initiative themselves to appoint a factor.

This section gives a brief overview of these two scenarios. A short summary of the key points can be found here.

The focus of this section of the briefing is on the main circumstances in which a property factor is appointed, and the principal methods of appointment.

However, another option is the statutory **Development Management Scheme** (DMS). Note that this framework, which can be opted into, includes its own procedures for appointing a 'manager'.

The DMS names the first manager, who serves until the first annual general meeting (AGM). Thereafter, the owners' association, by majority vote, appoints the manager at the first AGM and whenever a term ends or a vacancy arises (DMS rule 7 and 11.3).

A requirement in the title documents: manager burdens

In some properties there might be a real burden which names a particular person or organisation who must be appointed as property factor, or who has the power to decide who the property factor should be.

For example, some title documents (on the face of the documents at least) give the developer, local authority or housing association a permanent right to be a factor or to appoint a factor.

This occurs via a type of real burden known as a "manager burden" under the rules in the Title Conditions (Scotland) Act 2003 ('the 2003 Act').

These burdens can be controversial because some owners do not want to be bound in this way.

It is important to note though that the right associated with a manager burden is not permanent as, irrespective of what the title documents say, it is limited by section 63 of the 2003 Act.

The first restriction in section 63(2) of the 2003 Act is that manager burdens are only 'exercisable' where the holder of the right under the manager burden retains ownership over one of the "related properties." This restriction reflects a key policy justification for permitting manager burdens at all, i.e. that owners of related properties may have a legitimate interest in the management of shared parts and facilities. For example, local authorities and housing associations may seek these rights where they own units in a block alongside private owners, while developers may want them during the early years of a development while units are being marketed and sold. [32]

Related properties are ones which might be conveniently managed together when looking at all the relevant circumstances.

For example, the properties might have some or all of the following: a common feature; shared ownership of common property; shared maintenance obligations in respect of some facility; or, more broadly, membership of a common scheme of real burdens (section 66 of the 2003 Act).

While legal advice should always be obtained in individual cases, in practice a building containing flats will very often satisfy the definition of related properties.

The second restriction sets out maximum time limits for manager burdens, reflecting the policy concern that property owners should not be locked into a particular property factor indefinitely.

The main rules in the 2003 Act are that a manager burden comes to an end on the earliest of the following dates:

- **expiry under a manager burden:** the point the manager burden says the burden comes to an end (section 63(4)(a))
- **expiry on the 'relevant date'**: this is **three years** for sheltered or retirement housing; **30 years** for homes bought from local authorities or housing associations under the 'right to buy' legislation; or **five years** for other types of housing (see the provisions in sections 63(4)(5) and (6))
- **dismissal by owners:** the date owners of ex-local authority/housing association properties act together to dismiss the factor using section 64 of the 2003 Act (section 63(4)(d) and (6)). For details see the section on dismissing a property factor and appointing a new one.
- **extinction following loss of exercisability: 90 days** after the point the manager burden ceases to be 'exercisable' by virtue of the person or entity who can be a factor, or appoint a factor, under a manager burden no longer owning a related property (section 63(2) and (4)(c)).

Owners take the initiative to appoint a factor

If there is no manager burden, owners might decide on their own initiative to appoint a factor where there has not previously been one for the building.

In this case there are two main statutory procedures to be followed: one for flats and one for other communities of properties (largely housing estates) which, at least in principle, both allow for majority voting to appoint a property factor.

Getting legal advice on the appropriate procedure to follow is advisable as, if the correct procedure is not followed, other homeowners may not necessarily be bound by the decision reached (or the decisions taken by the property factor appointed).

The Under One Roof website contains a section with practical advice on topics including whether a property factor is needed, and what to look for in a property factor.

> Note that, where there is already a property factor for the building and the owners want to change factors, slightly different statutory rules apply**.** For details see the section on dismissing a property factor and appointing a new one.

The Tenement Management Scheme

As referred to earlier in the briefing, rule 3.1(c)(i) of the Tenement Management Scheme (TMS) in the Tenements (Scotland) Act 2004 ("2004 Act") sets out that a simple majority of flat owners (more than 50% of the votes allocated) can vote to appoint a property factor. A scheme decision under the TMS can also delegate powers to the organisation or person appointed as property factor (rule 3.1(d)).

This rule is an important one because it can allow a property factor to be appointed to maintain the property even in situations when not everyone in the building agrees that this is the right decision. If the correct procedures are followed, then in principle everyone in the building will be bound by the decision.

It is important to stress though that the default rule in the TMS only applies where:

1. **There is no existing decision-making power to appoint a factor in the title documents** or where any powers that exist in the flats' title documents are in conflict or are deficient (section 4(4) of the 2004 Act).
2. **There is no manager burden in force.**
3. **The separate Development Management Scheme has not been opted into for the building**.[vi]

Before using the procedures in the TMS, homeowners will therefore need to check whether any of these exceptions apply (in particular, whether the title documents lay out other rules on the appointment of property factors).

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vi Tenements (Scotland) Act 2004, section 4(2), (4) & (5) and TMS, rule 3.1(c)(i); Title Conditions (Scotland) Act 2003, Part 6; Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order SSI 2009/729.

Section 28(1)(a) of the Title Conditions (Scotland) Act 2003

Section 28(1)(a) of the Title Conditions (Scotland) Act 2003 ('the 2003 Act') gives the power to the 'majority' of units (more than 50%) in the community to appoint a property factor. This rule is, however, modified for sheltered housing or retirement developments where a two- thirds majority of the units is needed (section 54(5)(a) of the 2003 Act).

The term "community" has a specific meaning in the 2003 Act (it doesn't mean community in the normal sense of the word).

First, a community is defined as one subject to community burdens. Community burdens, in turn, are a type of real burden imposed on two or more properties under a mutually enforceable scheme of burdens. Accordingly, each property would be both a property able to enforce the burden, but also be bound by it (sections 25, 26(2) and 122 of the 2003 Act).

Housing developments often have such a scheme of burdens and, in practice, they are one of the most common situations where a community will exist for the purposes of the 2003 Act.

A community can, however, also include buildings containing flats where those buildings form part of a wider housing development subject to a common scheme of burdens, with the result that the development is treated in law as a single community (sections 25, 26(2), 28 and 122 of the 2003 Act).

On the other hand, the term community does not apply to a stand-alone flatted building which is not part of a wider development. In that case the rules set out in the TMS, discussed in the preceding section, would apply instead.[vii]

> Where a development includes flats and houses, the properties included in a community in an individual case is a matter for legal advice.

It is important to stress that the default voting power in the 2003 Act is itself subject to the terms of any community burdens themselves. So if, for example, a community burden specified a higher voting threshold for appointing a factor (for example, two-thirds or 75%) this would have to be followed instead of the default rule in the legislation.

> As explored in more detail later, due to recent legislation, there is often no equivalent need to adhere to a higher voting threshold in the title documents when **changing property factors** from one already appointed.
>
> **This change does not affect the power to appoint a factor for the first time using section 28(1)(a) of the 2003 Act**. As indicated, if a community burden specifies a higher threshold (such as two-thirds or 75%) for appointing a factor then this would have to be followed.

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vii Title Conditions (Scotland) Act 2003, section 31A. Tenements (Scotland) Act 2004, sections 4(4)(5) and 26; TMS, rules 2 and 3.

Dismissing a property factor and appointing a new one

The briefing has already considered statutory procedures where a property factor is being appointed for a building where there has previously not been a property factor.

This section of the briefing looks at the important topic of what happens when flat owners want to dismiss an existing factor, and then potentially also appoint a new one.

As a reminder, the appointment of a new factor following dismissal is only one option open to owners. They might, for example, decide instead to set up an owners' association and organise the maintenance of the building themselves.

The issue of whether a factor can be dismissed and then a new one appointed is **not** dealt with by the Property Factors (Scotland) Act 2011. Instead one has to look at the title documents in conjunction with statutory powers in the Tenements (Scotland) Act 2004 ('2004 Act') and the Title Conditions (Scotland) Act 2003 ('2003 Act'), and associated secondary legislation.[viii]

This part of the briefing considers two different scenarios:

- The title documents contain provisions relating to a property factor.
- The title documents do not contain provisions relating to a property factor, or alternatively any stated procedure relating to a factor is set out inconsistently across the individual properties' title documents.

This is an incredibly complex area of law and legal advice is strongly recommended.

The title documents cover property factors

The Housing (Scotland) Act 2025

As outlined elsewhere in this briefing, the Housing (Scotland) Act 2025 ('the 2025 Act') has amended the key provision in **section 64** of the Title Conditions (Scotland) Act 2003 so that (in many cases) a majority of homeowners can now vote not to use an existing factor and to hire a new one (the previous rule required a two-thirds majority). More details are outlined below.

The amendment applies where the statutory power is exercised **on or after 1 April 2026**.

As the law has changed, it is especially important to refer to the current version of this SPICe briefing rather than the 2022 version when considering this area of law.

viii The Title Conditions (Scotland) Act 2003 (Development Management Scheme) Order 2009 (SI 2009/729).

As explained, the title documents might contain a manager burden, naming a particular person or organisation who must be appointed as property factor, or who has the power to decide who the property factor should be.

Additionally, or as their sole provision on property factors, the title documents might give a procedure for dismissing a factor and then appointing a new one. For example, the title documents might state that a simple majority (that is, more than 50%), two-thirds, 75% or even 100% of flat owners must vote in favour of the change.

If the title documents contain procedures to dismiss a factor and appoint a new one, then one option is to follow those procedures.

There can, however, be situations where that is not possible, either because the requirements are too onerous (for example, a unanimous vote is needed), or because the procedure is set out inconsistently across the individual properties' title documents (with the result that it is not clear legally which procedure to follow). In addition, if there is a manager burden, then a property factor may already have been appointed to the property for a set period of time.

In these circumstances, then there are a range of options which may allow for a property factor to be dismissed and a new one appointed, in particular the new **section 64** of the Title Conditions (Scotland) Act 2003, as amended by the Housing (Scotland) Act 2025.

The following points summarise the main options:

1. **An overriding majority power:** Even if the title documents say otherwise, **section 64** of the 2003 Act allows **a majority of flat owners** (more than 50% of the allocated votes) to vote to replace an existing factor of related properties with a new one. This can be a very useful alternative where the title documents require a higher level of owner support that is difficult to obtain. **However, see point 2 below.**

2. **Exception for manager burdens:** In most cases, section 64 **cannot** be used where a manager burden is in force and confers a right on a person to act as factor, or to appoint a factor. That said, there are also some important caveats to that:

    a. For ex-local authority and housing association properties bought under the 'right to buy' legislation, section 64 can still be used even if a manager burden exists.

    b. Regardless of what the title documents say on a manager burden, it is only 'exercisable' where the holder of the right retains ownership over one of the related properties (section 63(2)).

    c. There are various maximum time limits on manager burdens also set by section 63 of the 2003 Act. **See below for a recap on these.**

3. **The Development Management Scheme (DMS):** Property factors appointed under the DMS can, in principle, be removed by a majority vote of the owners association's general meeting (DMS rules 4.2 and 11.3).

4. **Contractual agreements**: When dismissing a property factor, one also needs to consider whether there are any contractual obligations which need to be complied with in any contract between flat owners and the factor. [33]

The statutory time limits on manager burdens (referred to in point 2 above) have already

been discussed earlier in the briefing. However, as a reminder, the main rules are that a manager burden comes to an end **on the earliest of the following dates:**

- **expiry under a manager burden:** the point the manager burden says the burden comes to an end (section 63(4)(a))
- **expiry on the 'relevant date'**: this is **three years** for sheltered or retirement housing; **30 years** for homes bought from local authorities or housing associations under the 'right to buy' legislation; or **five years** for other types of housing (see the provisions in sections 63(4)(5) and (6))
- **dismissal by owners:** the date owners of ex-local authority/housing association properties act together to dismiss the factor using section 64 of the 2003 Act (section 63(4)(d) and (6)).
- **extinction following loss of exercisability: 90 days** after the point the manager burden ceases to be 'exercisable' by virtue of the person or entity who can be a factor, or appoint a factor, under a manager burden no longer owning a related property (section 63(2) and (4)(c)).

The title documents do not cover property factors

When the title documents do not contain a procedure for dismissing an existing factor, and/or do not contain a manager burden, the rules under the the Tenement Management Scheme or section 28 of the Title Conditions (Scotland) Act 2003 can be used for dismissing the factor and appointing a new one. For details see below.

A solicitor can advise on the appropriate route to use based on the circumstances of the individual case.

Tenement Management Scheme

A decision under the Tenement Management Scheme (TMS) to dismiss a factor and appoint a new one requires a simple majority, meaning more than 50% of the allocated votes.

The section on using the TMS to appoint a factor can be consulted for more detail on making a scheme decision on dismissal, as the basic approach is the same in both instances.

Section 28(1)(d) of the Title Conditions (Scotland) Act 2003

The second possible procedure for dismissal is found in section 28(1)(d) of the Title Conditions (Scotland) Act 2003 ('the 2003 Act') which gives the power to the 'majority' of units (more than 50%) in the community to dismiss a manager. Appointments, as discussed earlier, are covered by section 28(1)(a). However, in practice the framework is the same and the points noted in the section on 28(1)(a) also apply to dismissals (as well as subsequent appointments). Further details can be found in the SPICe briefing on Flats: Management, Maintenance and Repairs (2026).

Recent developments in Parliament

In Session 6 of the Parliament, petition PE2006 called on the Parliament to review and simplify the legislation in relation to the dismissal of property factors. [34] In its written submission to the Citizen Participation and Public Petitions Committee dated 28 March 2024, the Scottish Government stated that "legislative change at this time is neither necessary nor proportionate". On 29 October 2025, the Citizen Participation and Public Petitions Committee decided to close the petition on the basis of the amendments made to the rules in the Housing (Scotland) Act 2025 and the Scottish Government's proposal to review property factor legislation more generally. [35]

At the very end of Session 6 of the Scottish Parliament, the Scottish Government also published its Voluntary Code of Practice on dismissing and replacing land-owning maintenance companies (for more details see this section of the briefing).

Appointing or dismissing a property factor - summary of key points

As can be seen from the sections above, the rules on appointing or dismissing a property factor are extremely complicated as there are multiple rules, multiple exceptions (including exceptions within exceptions), various time limits for manager burdens and various different default voting principles all of which straddle different pieces of legislation.

In addition, there are also subtle legal differences between the rules on appointing a factor where there has not been one before and the rules on dismissing an existing factor and appointing a new one. One of the key differences is that, although section 64 of the Title Conditions (Scotland) Act 2003 generally allows a majority of homeowners to dismiss an existing factor appointed under a community burden and to hire a new one, this rule does not apply to the first appointment of property factor.

As outlined in the section below on "land-owning maintenance companies", additional issues also arise where a property factor owns the land in a housing estate which it manages for residents.

Notwithstanding these complexities, some key general points to note are as follows:

- **The starting point is not necessarily a legal one** - Although legal issues are very important (and can be crucial, for example where a manager burden requires a factor to be appointed), in many other cases, one needs to first assess whether self-management could be a practical solution or whether a property factor might be advisable. The Under One Roof website contains a section with practical advice on topics including whether a property factor is needed, and what to look for in a property factor

- **The Property Factors (Scotland) Act 2011 does not deal with appointments/ dismissals of property factors**, instead one needs to look at the title documents in conjunction with statutory powers in the Tenements (Scotland) Act 2004 ('2004 Act') and the Title Conditions (Scotland) Act 2003 ('2003 Act').

- **It is essential to check the title documents as a starting point because, in some**

circumstances, they will need to be followed - They may include manager burdens, community burdens and/or procedures for appointing/dismissing factors which in principle may need to be followed. In larger developments, the title documents might also incorporate the statutory rules in the Development Management Scheme.

- **A range of default voting rules exist in relation to appointing or dismissing property factors which can sometimes apply irrespective of what the title documents say -** In some cases this may mean that a simple majority of owners in flats or housing developments (more than 50% of the votes allocated) can vote to appoint a factor for the first time and/or dismiss an existing property factor and appoint a new one.
- **Although there are some general rules, this is an extremely complicated policy area and legal advice will often be needed.**

Land-owning maintenance companies

Background

Housing estates normally have areas of land which are used by, or benefit, all the homeowners in the estate (for example, play parks, green spaces or drainage systems).

In the past, the land was often owned by local authorities who were responsible for the upkeep of these areas. However, for some time it has been common for the private sector to be involved. [36]

One approach involves "land-owning maintenance companies" purchasing the open spaces from the developer (usually for no or minimal consideration) and agreeing to act as property factor for the new estate when it is built. Residents are then required in their title documents to pay this property factor for managing and maintaining these areas. This involves the inclusion of an annual charge as a condition in all of the title documents of the individual houses sold. Usually this is done by registering a “deed of conditions” in the property register, i.e. a deed outlining the obligations which apply by reference when each property is sold.

In broad terms, the result is that private companies:

1. may own the open spaces in housing developments; and
2. will normally require payment for the management and maintenance of these areas based on conditions in the title documents.

The financial advantage to housing developers of this approach is that they do not need to pay local authorities the "commuted sum" for adopting the land and taking on the maintenance of it in the future. The commuted sum is a capital payment representing forecasted maintenance costs over a number of years (potentially up to 20 years). [37]

Local authorities also do not have to consider how to finance the management and maintenance of such land long term (e.g. through council tax), although the flip-side is that they do not have the level of control over these areas which they would have if the land was adopted by them. [38]

How do the above rules apply to land-owning maintenance companies?

Land-owning maintenance companies have to comply with the rules in the Code of Conduct and the property factor's duties as they are specifically defined as "property factors" in the 2011 Act (Section 2(1)(c)). Homeowners can therefore use these rules if land-owning maintenance companies are not providing the desired level of service.

The rules on title conditions in the Title Conditions (Scotland) Act 2003 are also important as land-owning maintenance companies are appointed through conditions in the title documents. However, although there have been cases in the courts, there is a lack of

clarity on whether certain of these rules apply to land-owning maintenance companies. This is a particular issue for the rules on dismissing property factors in sections 28 and 63 of the 2003 Act as they do not fit squarely with the situation where the factor is appointed by a developer and owns the land which it manages. For a discussion of this issue see the Lands Tribunal's Opinion in Marriott v Greenbelt Group Limited (paragraphs 73-78).[ix]

Inquiries into the system and responses by government

Although land-owning maintenance companies need to comply with the Code of Conduct, a crucial difference to most other property factors (for example, in flats) is that they own the land which they maintain.

This fact means that it can be very difficult in practice to switch property factors in this situation. Even if the factor can be dismissed under the rules in the 2003 Act, which is uncertain, they will retain ownership of the land. It will not revert to the homeowners without some sort of sales process or agreement with the factor (or the local authority agreeing to adopt the land).

As a result, the system has been the subject of criticism for many years with homeowners arguing that it sets up a "private monopoly" on spaces used by them. [39] In contrast, land-owning maintenance companies take the view that, as landowners, they have a key role in managing these open spaces and that it is not clear that homeowners or local authorities would be able to provide a better service. For details, see, for example, Greenbelt Group Limited's response to the Justice Committee's inquiry into the 2003 Act. [40]

There have been various political debates and inquiries into the system over the years.

In September 2007, for example, there was a Members' debate in the Scottish Parliament on the maintenance of common land on Scottish housing estates. [41]

This was followed by a number of inquiries by the following bodies:

- **The Office of Fair Trading**

The then competition authority, the Office of Fair Trading (OFT), conducted a market study into the Scottish property management market in 2009, [42] which also examined land maintenance. It concluded, amongst other things, that consumers were experiencing:

> “ particularly extreme barriers to switching land maintenance suppliers when ownership of open spaces had been transferred to private companies.”

The OFT recommended that Consumer Focus Scotland support a test case in the courts in order to assess whether the rules in the 2003 Act might be an effective way of changing the supplier of land maintenance services. However, shortly thereafter, the UK Government decided to transfer Consumer Focus Scotland’s functions to Citizens Advice Scotland and the test case did not proceed. Consumer Focus Scotland did, however, publish a legal opinion on how the rules on title conditions in the 2003 Act might apply to

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ix Case Reference: LTS/TC/2014/27

land maintenance companies. [43] A privately funded test case on the scope of the 2003 Act was ultimately brought in 2014 and other cases have followed.

- **The Scottish Government**

The Scottish Government carried out a consultation into the management of land on private housing estates in 2011 which examined possible options for change including amending the rules for dismissing factors in the 2003 Act. [44]

- **The Scottish Parliament**

In March 2013, the Justice Committee conducted a short inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003 in relation to the appointment and dismissal of property factors. [45]

In its report the Committee made a number of recommendations for change. [46] The Scottish Government responded to this report in a letter dated 4 September 2013. [47]

Amongst other things, the Scottish Government's response recommended the preparation of a Voluntary Code of Practice on dismissing and replacing land-owning maintenance companies. The response stated that:

> " 24. The Government accepts, however, that it is not easy for consumers to dismiss and replace land-owning LMCs. This was the key issue covered in the 2011 consultation. In broad terms, there are now three options for the Government: do nothing; invite land-owning LMCs and consumer bodies to work with the Government on a Code of Practice on dismissing and replacing land-owning LMCs; or legislate. 25. The Government has concluded that doing nothing is not an option, given the concerns in this area, including concerns mentioned by the Committee. The Government has also concluded that, at the moment, it would be preferable to prepare a Code of Practice on dismissing and replacing land-owning LMCs, rather than legislate. The Government has a number of reasons for taking that view:
>
> - The Property Factors (Scotland) Act 2011 has had a significant impact on land-owning LMCs."
> - It is unclear that legislation would be any more effective than a Code of Practice in relation to the dismissal and replacement of land-owning LMCs."
> - As the 2011 consultation and the Committee's report noted, some sort of provision would be needed in relation to the ownership of the land being maintained. Inevitably, this would make any legislation in this area more complex. "
>
> 26. Preparing a Code of Practice does not rule out legislation in future if the Code of Practice should turn out to be ineffective. The Government will review the effectiveness of the Code of Practice after it has been operating for three years and will provide a report to the Committee on the outcome of this review."

The response also agreed that a test case on the enforceability of title conditions in this area would be helpful.

- **Competition and Markets Authority**

In 2024, the UK Competition and Markets Authority (CMA) published the final report of its market study into housebuilding in England, Wales and Scotland. [48]

Amongst other things, the CMA's report found that there is “significant consumer detriment” in the private management of amenities on housing estates such as roads, sewers and drains, public open spaces etc.

As a result the report recommended that the UK, Scottish and Welsh governments:

- implement common adoptable standards for public amenities on new housing estates
- implement mandatory adoption of public amenities on new housing estates
- prohibit the establishment of new embedded management arrangements (i.e. what are known in Scotland as land-maintenance companies)
- provide guidance to members and directors of resident management companies (companies controlled by the residents which own and manage common spaces) to support them in managing the amenities on their housing estates.

It also recommended that the UK Government, in consultation with the devolved governments, introduces enhanced consumer protection measures in this area.

For more details see the SPICe blogpost "Can they fix it? CMA report looks at property factoring arrangements on housing estates."

The UK Government published a response to the CMA report in October 2024, [49] which largely agreed with the recommendations made by the CMA in relation to the private management of amenities on housing estates.

Following on from this, in December 2025, the UK Government published a consultation entitled "Reducing the prevalence of private estate management arrangements". [50] The Ministerial Foreword summarises the aims of the consultation, which closed in March 2026, as follows:

> “ Building on the recommendations of the Competition and Markets Authority 2024 Housebuilding Market Study, this consultation aims to better understand the root causes and incentives that have led to the rise of unadopted amenities and what credible options for reform exist. It explores a wide range of issues including: ”
>
> - Removing barriers to adoption and improving processes”
> - Mandatory adoption for certain public amenities ”
> - Removing perverse incentives driving non-adoption ”
> - Improving Data and Transparency ”
> - Assessment of financial sustainability and impact on consumers ”
> - Prohibiting “Embedded” management company arrangements and Mandating Resident-Controlled management ”
> - Dispute resolution for amenity quality and adoption processes ”
>
> UK Ministry of Housing, Communities & Local Government, 2025[50]

The Scottish Government has yet to respond to the recommendations made by the CMA. The Scottish Government has indicated to SPICe that it is currently considering the CMA report and the CMA's recommendations in the context of its housing emergency response and its Housing Emergency Action Plan. This is confirmed in the Scottish Government's response on 15 September 2026 to parliamentary question S7W-02839 by Kate Nevens MSP on the implementation of the CMA report:

> “ **Question** To ask the Scottish Government what actions it has taken to implement the recommendations in the Competition and Market Authority's 2024 market study into housebuilding and maintenance. **Answer** Scottish Ministers welcomed the Competition and Market Authority's 2024 house building market study and considered its recommendations. Actions to accelerate housebuilding and address planning barriers are included in the Planning and the Housing Emergency: Delivery Plan and in the Housing Emergency Action Plan. Activity is progressing through the work to establish More Homes Scotland, which will play a role in addressing market failure.”
>
> Scottish Parliament, 2026[51]

Accordingly, unlike the UK Government, the Scottish Government has yet to formally respond or set out its position on the CMA’s recommendations regarding land-owning maintenance companies.

Cases in the courts

In September 2014, Mr and Mrs Marriott of Greenbelt Group Action took a case at the Lands Tribunal against their property factor Greenbelt Group Limited. Greenbelt managed land in a housing development in Menstrie where the Marriotts lived. The homeowners there were required to pay Greenbelt for maintenance of the common areas in the deed of conditions which were part of their title documents.

Although the Marriotts ultimately won the case, [52] the Lands Tribunal only accepted one of

the legal arguments which they made, i.e. that the title condition in question was invalid due to uncertainty because the common areas were not readily identifiable in the deed of conditions.

The arguments which the Lands Tribunal did not accept were that:

- The relationship between the burden to make the payment for the common areas did not relate in some way to the burdened property (i.e. the Marriotts' property) as required by section 3(1) of the Title Conditions (Scotland) Act 2003.

  In essence, the Marriotts' argument was that homeowners on the estate actually had no legal right to use the common areas. However, the Lands Tribunal took the view that the properties were related since the maintenance of the common areas preserved the overall amenity and value of the homeowners' land.

- The title conditions created an unlawful monopoly in breach of section 3(7) of the 2003 Act (the Lands Tribunal's view was that the ownership of land is inherently monopolistic and hence not unlawful in this case).

- It was an unreasonable restraint of trade contrary to section 3(6) of the 2003 Act.

- It was an illegal abuse of a dominant position under UK competition law.

The case was therefore only won on a relatively narrow ground which, in itself, does not affect the validity of the land-owning maintenance model. The Lands Tribunal emphasised this at the end of its judgment noting that:

> " [177] The applicants fought this case on a very wide front but (on the majority view) have been successful only on a relatively narrow and technical issue. As an attack on the land-owning model per se it has failed. The applicants have succeeded not because of any structural flaw in the model but because the benefited land property [sic] was not adequately identified in the constitutive deed."
>
> Lands Tribunal for Scotland, 2015[52]

Subsequent cases have followed this trend. For example, in the Sheriff Appeal Court case of Greenbelt Group Ltd v Walsh & Others[x] in 2019, the court held that title conditions obliging the residents to pay for maintenance did not create a monopoly as the factor's right to maintain the land arises from its ownership of the land itself.

The above cases have arguably reduced the options for using the courts to challenge maintenance payments to land-owning maintenance companies. Legal challenges are still possible, however, although legal advice is needed as this is a very complex area of law.

It is also worth noting that certain property factors may have policies which in principle allow homeowners to purchase land held by land-owning maintenance companies. See, for example, Greenbelt's Consumer Choice Policy.

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x [2019] SAC (Civ) 9

Voluntary Code of Practice

As court judgments have been limited in scope, the Voluntary Code of Practice on dismissing and replacing land-owning maintenance companies ("the Voluntary Code") proposed by the Scottish Government in 2013 will be of importance to the sector and homeowners wishing to dismiss land-owning maintenance companies.

Work on the the Voluntary Code was paused while the Marriott test case was being considered by the Lands Tribunal. The Lands Tribunal ruled in this case at the end of 2015.

Following this, there was a long delay in the drawing up the Voluntary Code and it wasn't until 23 March 2026, almost 13 years after the Scottish Government first proposed it, that the code was published. [53] SPICe understands from communication with the Scottish Government that the code was drawn up without a public consultation.

The Voluntary Code includes two sections. The first section sets out the things homeowners should be aware of or should do when seeking to replace or dismiss a land-owning maintenance company. The second section outlines the expectation on land-owning maintenance companies. Disputes are to be dealt with by an independent arbitrator with any costs normally falling to the losing party.

As the Voluntary Code has only recently been published**,** it remains to be seen how it will work in practice and whether it will provide a practical remedy to some of the issues surrounding the transfer of ownership of land on housing estates by land-owning maintenance companies.

It is also worth noting that, as the Voluntary Code was only published two days before Parliament's last sitting day before the 2026 election, as of the date of this briefing it has yet to be subject to scrutiny in Parliament.

Where to find more information?

Other sources of information include:

- The website of Under One Roof (a charity which provides impartial advice on repairs and maintenance for flat owners in Scotland)
- The website of Shelter Scotland
- The website of the First-tier Tribunal for Scotland (Housing and Property Chamber).

Under One Roof offers a free information service for more complex questions, as does Shelter Scotland.

TPI Scotland can also be contacted for information on the role of property factors.

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