POLICY NOTE

THE PROPERTY FACTORS (REGISTRATION) (SCOTLAND) REGULATIONS 2024

SSI 2024/274

The above instrument was made in exercise of the powers conferred by section 3(2)(f) and (4) and 30(2) of the Property Factors (Scotland) Act 2011. The instrument is subject to *negative procedure*.

Summary Box

Section 3(2) of the Property Factors (Scotland) Act 2011 provides for information to be contained in an application for registration. Section 3(2)(f) provides for any other information Scottish Ministers by regulation may prescribe. These regulations replace The Property Factors (Registration) (Scotland) Regulations 2012 and The Property Factors (Registration) (Scotland) Amendment Regulations 2015.

The purpose of this instrument is to extend the application requirements in order for Scottish Ministers to strengthen the fit and proper person assessment before entering a property factor onto the register. Registration fees are also prescribed in these regulations and the second purpose of this instrument is to set a new mechanism whereby register application fees are uplifted annually by the Consumer Price Index.

Policy Objectives

The Property Factors (Scotland) Act 2011 was brought in to establish a register of property factors with the aim of improving levels of service and professionalism in the sector. Property Factors are required to apply for a three-year registration period and Scottish Ministers must ensure that a fit and proper person assessment is satisfied before approving an application.

Following a review of the registration system, a number of minor modifications have been identified that would ensure that sufficiently useful information is collected in order to strengthen the assessment required for the fit and proper person test. A further consequence would be increasingly robust information available on the public register.

The income from the registration fees is used to offset the costs of operating the digital platform and for the assessment of the fit and proper person test. Any amendment to the fees must be carried out via regulations. Prior to these regulations, there has only been one previous increase in fees in 2015. The ability to increase fees each year in line with the Consumer Price Index will bring the Property Factors register in line with other property registers in Scotland. It will also ensure that property factors are not subject to large increases in fees sporadically.

The proposed amendments do not represent a change in policy or direction, but rather are intended to improve how the system operates.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Property Factors (Registration) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

While no specific consultation has been carried out in relation to these Regulations, the Property Factors Code of Conduct was updated in 2021 and the consultation for this also asked respondents to identify potential improvements in the overall regime. A number of these suggestions included making the fit and proper person test more robust – which is what the majority of the amendments in these regulations seek to address.

Impact Assessments

Equality, Child Rights and Welfare, and Data Protection impact assessments have been completed on the SSI and are attached. There are no equality/children's/privacy impact issues.

An Islands and Communities Impact Assessment was not carried out as the provisions seek to ensure that Scottish Ministers continue to meet the requirements of providing an accurate register. The provision do not represent a change in policy or direction and accordingly the amendments were screened out as having no direct impact on island communities.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that it will introduce a minor increase to fees for property factors at each three-year registration period.

Scottish Government
Local Government and Housing Directorate

September 2024