

Property Factors (Scotland) Bill

Bill Number:	SP Bill 51
Introduced on:	1 June 2010
Introduced by:	Patricia Ferguson MSP (Member's Bill)
Passed:	3 March 2011
Royal Assent:	7 April 2011

Passage of the Bill

The Property Factors (Scotland) Bill ("the Bill") is a Member's Bill introduced by Patricia Ferguson MSP on 1 June 2010. The Local Government and Communities Committee was designated as the lead committee for stage 1 consideration of the general principles of the Bill. The Committee's [stage 1 report](#) was published on 16 November 2010. The Committee agreed, with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. The [stage 1 debate](#) took place on 8 December 2010, when the general principles of the Bill were unanimously agreed to by Parliament. Stage 2 proceedings took place on [19 January 2011](#) and [26 January 2011](#). Stage 3 proceedings took place on [3 March 2011](#) when the Bill was passed unanimously by the Parliament.

Purpose and objectives of the Bill

The Bill requires property factors to be registered on a 'property factors register' and makes provision for the establishment of a system for the resolution of disputes between homeowners and property factors.

Provisions of the Bill

Part 1 of the Bill relates to the registration of property factors. This part of the Bill, amongst other things, provides that the Scottish Ministers must prepare and maintain a register of property factors; defines what is meant by the term

“property factor”¹; makes it an offence for a property factor to operate without being registered; requires the Scottish Ministers to consider whether a property factor is a fit and proper person to be registered as a property factor; requires the Scottish Ministers to prepare a code of conduct as to minimum standards of practice expected by registered property factors; and requires Scottish Ministers to allocate a number to each registered property factor which registered property factors must include in any document sent to a homeowner (the “property factor registered number”).²

Part 2 of the Bill relates to dispute resolution. The main effects of Part 2 of the Bill are to establish a homeowner housing panel and homeowner housing committees to consider disputes between factors and homeowners; enable a homeowner to apply in writing to the homeowner housing panel for a determination of whether their property factor has failed to comply with any term of the contract between them or to ensure reasonable compliance with the property factors code of conduct; and make it an offence to fail, without reasonable excuse, to comply with a property factor enforcement order issued by a homeowner housing committee.

The Financial Memorandum identifies the costs linked to the homeowner housing panel as including staff fees and expenses, obtaining reports and the hire of premises for hearings. It states that the “costs are expected to be modest as the Bill would utilise the existing infrastructure of the private rented housing panel” (PRHP) and explains that the “precise cost cannot currently be quantified since it will be demand-led” but that they were “unlikely to exceed the current budget for the PRHP.” The Budget for the PRHP in 2007/08 was £428,000 with an actual spend of £386,482 for the year. Similarly in 2008/09 the budget was £414,000, with a spend for the year of £377,877. According to the Scottish Government, the indicative cost of extending the remit of PRHP would be in the region of £103,000 per year in addition to further administrative and organisational costs associated with handling and filtering cases.³

Part 3 of the Bill, amongst other things, provides that the Bill shall come into force on 1 October 2012 (or such earlier date as the Scottish Ministers may by order appoint).

Parliamentary consideration

At stage 1, the Committee agreed, albeit with some caveats, to recommend to the Parliament that the general principles of the Bill be agreed to. During the stage 1 debate, the Minister for Housing and Communities (Alex Neil MSP)

¹ The statutory definition includes local authorities, housing associations and land maintenance companies (a point clarified during the passage of the Bill). This part of the Bill also allows the Scottish Ministers to modify the definition.

² The provisions in the Bill relating to the property factor registered number were added at stage 3.

³ [Supplementary evidence from Scottish Government - Options for third party redress \(341KB pdf\)](#)

indicated that the Government, like the Committee, supported the general principles of the Bill, but that greater clarity was required in a number of areas.

The introduction of a statutory regulatory framework, as opposed to a voluntary accreditation scheme, for property factors was one of the key areas of debate to emerge from the evidence heard and received by the Committee at stage 1. In its stage 1 report, the Committee agreed that there was a need to establish a statutory framework to regulate property factors. During the stage 1 debate, the Minister indicated that the government had come to accept that a statutory approach was appropriate.

Significant concerns were raised at stage 1 in relation to the provisions of the Bill which provide for the removal of a property factor from the register (sections 8 and 9). At stage 2, amendments were passed which sought to allay the concerns expressed at stage 1 about the deregistration of property factors by providing a notice period of 21 days for removal from the register in order to enable customers to take steps to find a replacement factor.

Although there was a widespread recognition in evidence concerning the need for a dispute resolution system, there were differing views as to what form that should take. During the stage 1 debate, the Minister indicated the Scottish Government's preference for an ombudsman system on the grounds that the costs of running an ombudsman scheme would be lower and would, in any case, fall to the industry rather than the taxpayer. At stage 2, amendments were passed that sought to ensure that the costs of the dispute resolution service provided for in the Bill do not fall entirely to the taxpayer. However, the system of dispute resolution originally proposed by the Bill was, in the main, retained.

A major issue to emerge during consideration, although not specifically dealt with by the Bill, was the ability of homeowners to switch property factor. Evidence was presented to the effect that switching provider was particularly difficult where land-owning maintenance companies were concerned. During the stage 1 debate, the Minister indicated that the Government would carry out research on switching by residents. During the stage 3 debate, the Minister said that the Government would shortly be issuing a consultation, which will cover switching of land maintenance companies and will ask whether more information can be provided to prospective home owners on potential land maintenance obligations.

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