

Property Factors (Scotland) Act 2011

Draft revised Code of Conduct for registered property factors

**For engagement with Stakeholders –
December 2019**

**(Annotated Copy with reference to
changes to the original code and
incorporating further changes
following consultation responses)**



Scottish Government
Riaghaltas na h-Alba
gov.scot

Contents

Introduction to the Code of Conduct

Overarching Standards of Practice

Section 1 – Written Statement of Services

Section 2 – Communication and Consultation

Section 3 – Financial Obligations

Section 4 – Debt Recovery

Section 5 – Insurance

Section 6 – Carrying Out Repairs and Maintenance

Section 7 – Complaints Resolution

Appendix 1– Main Extracts from the Property Factors (Scotland) Act 2011

Appendix 2 – Glossary of Terms used in the Code

Commented [LS(1)]: SUGGESTED NEW SECTION TO SET OVERARCHING STANDARDS OF PRACTICE TO PROMOTE CONSISTENCY OF OPERATIONS AND IN ORDER TO REDUCE THE LEVEL OF DUPLICATED DETAIL NEEDED IN INDIVIDUAL SECTIONS

Introduction to the Code of Conduct - **UPDATED**

The following introductory text outlined at pages 3-7 provides further information on the Code's purpose, who it applies to and the broader regulatory background. It does not form part of the Code.

Commented [u2]: THE INTRODUCTORY TEXT HAS BEEN AMENDED TO PROVIDE MORE INFORMATION ON THE CODE'S PURPOSE, WHO IT APPLIES TO AND THE WIDER REGULATORY FRAMEWORK.

Commented [u3]: THE INTENTION OF KEEPING THIS INTRODUCTORY TEXT OUTWITH THE 'CODE' IS TO ALLOW MINISTERS TO APPLY MINOR UPDATES WITHOUT GOING THROUGH A FORMAL CONSULTATION PROCESS AS REQUIRED BY THE ACT.

The maintenance of common property is an important issue, as highlighted in the report from the Scottish Parliamentary Working Group on Tenement Maintenance, published in June 2019. Homeowners and landlords need to fully accept any shared responsibilities for the upkeep of their property, ensuring everyone can enjoy good quality, safe and sustainable homes. Property factors play an important role in supporting homeowners to ensure common property is protected, and maintained their properties. This Code of Conduct ('the Code') sets out minimum standards of practice for registered property factors on how they should act in their business with homeowners in connection with the management of common property. ~~and~~ It has been prepared by Scottish Ministers in terms of section 14 of the Property Factors (Scotland) Act 2011 ('the 2011 Act').

This revised Code applies from [date to be determined subject to parliamentary approval] and replaces the original Code which applied from 1 October 2012. All registered property factors are required by law to ensure compliance with the Code in terms of section 14(5) of the 2011 Act.

This Code is one of three main elements to the 2011 Act. The other two elements are:

1. A register of all property factors (the Register) operating in Scotland which is maintained by the Scottish Ministers. All organisations who meet the definition of property factors set out in the 2011 Act are required to register. It is an offence to operate as a property factor without being registered.

~~PA~~ All property factor registration enquiries (including reports of relevant individuals, corporate bodies, Scottish Partnerships or other unincorporated associations purportedly operating as a 'property factor' whilst unregistered) and/or general enquiries on the Code can be sent in writing to the Scottish Government by e-mail to propertyfactorregister@gov.scot or at the following address:

Scottish Government
Property Factor Registration
2nd Floor, Endeavour House
1 Greenmarket
DUNDEE,
DD1 4QB

2. A dispute resolution mechanism for homeowners (as defined by section 10(5) of the Act) - in the first instance on application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (First-tier Tribunal) which is an independent judicial body separate from the Scottish Government.

While the Scottish Government can comment generally on the requirements of the Code, it is unable to comment on any decisions taken by the Chamber President and/or the First-tier Tribunal which relate to such applications. Applications and/or related enquiries can be sent to by e-mail to HPCAdmin@scotcourtribunals.gov.uk or to the following address:

First-tier Tribunal for Scotland Housing and Property Chamber
4th Floor, 1 Atlantic Quay
45 Robertson Street
GLASGOW, G2 8JB

What is the purpose of the Code? UPDATED

The purpose of the Code is to provide a statutory framework which encourages transparency and sets standards on how a property factor should deliver services and provide related information in its business agreement with relevant homeowners.

Who does the Code apply to? UPDATED

This Code applies to all “property factors” as defined by section 2(1)(a)-(d) of the 2011 Act who are entered on the ~~R~~register ~~of property factors~~ under section 1 of the 2011 Act.

Broadly, ‘property factors’ means property and land managers operating in Scotland, whether they are private businesses, local authorities or housing associations (see Appendix A for the definition of ‘property factor’ which is contained in section 2(1) of the 2011 Act). Local authorities and housing associations will wish to take careful note of section 2(1)(b) of the 2011 Act in particular, as the provision of the service of managing the common parts of land used to any extent for residential purposes, to homeowners¹ free of charge does not in itself exempt those organisations from having to comply with the requirements of the 2011 Act and the Code.

Section 14(5) of the 2011 Act indicates that a registered property factor must ensure compliance with the Code for the time being in force.

What may happen if a homeowner believes that their property factor is not complying with the Code? UPDATED

A homeowner (as specified under section 10(5) of the 2011 Act) must, in the first instance, notify their property factor in writing of the reasons why they consider that their property factor has failed to comply with the Code and/or failed to carry out their duties under section 17(5) of the 2011 Act~~).~~ A homeowner must allow their property factor a reasonable opportunity to resolve such matters in the first instance (see Section 7 of the Code: Complaints Resolution).

¹ The definition of “homeowner”, as it appears in section 10(5) of the 2011 Act, is attached in Appendix 1 of the Code. **NEW**

The Tribunals (Scotland) Act 2014 established an integrated structure of tribunals with a First-tier Tribunal for Scotland and an Upper Tribunal for Scotland. A homeowner may apply to the First-Tier Tribunal for Scotland Housing and Property Chamber ([First-tier Tribunal](#))² if they believe their property factor has failed to comply with the Code and/or otherwise failed to carry out their duties under section 17(5) of the 2011 Act. Before making an application, a homeowner must have notified their property factor in writing as described above ~~to why they consider that their property factor has failed to carry out their duties under the Act or, as the case may be, failed to comply with the Code~~. The property factor must also have refused to resolve or unreasonably delayed in attempting to resolve the homeowner's concern. The President of the First-tier Tribunal for Scotland (Housing and Property Chamber) (Chamber President) will make a decision on whether to refer any application made to a First-tier Tribunal for decision or to reject the application in accordance with section 18 of the 2011 Act. It is open for any party to proceedings to appeal a decision by the Chamber President on a point of law to the Upper Tribunal for Scotland (with permission from the Chamber President).

What may happen if a property factor is found by the First-tier Tribunal to have not complied with the Code or their property factor duties? NEW

If the First Tier Tribunal finds ~~After considering a homeowner's application and finding~~ that the property factor has failed to comply with the Code and/or their duties specified by the 2011 Act, the First-tier Tribunal has the power to make a 'property factor enforcement order' (PFEQ). Examples include requiring the property factor to take action such as providing information or to make a payment to the homeowner. It is open for any party to proceedings to appeal a decision by a First-tier Tribunal on a point of law to the Upper Tribunal for Scotland (with permission from the First-tier Tribunal).

What may happen if a property factor is found by the First-tier Tribunal to have failed to comply with a property factor enforcement order PFEQ? NEW

~~Again it is open for any party to proceedings to appeal a decision by the First-tier Tribunal on a point of law to the Upper Tribunal for Scotland (with permission from the First-tier Tribunal).~~ Failure to comply with a property factor enforcement order PFEQ may ~~however~~ have serious consequences for the property factor. The First-tier Tribunal has a duty under section 23(2) of the 2011 Act to notify Scottish Ministers of the failure to comply³. Failure to comply with a property factor enforcement order PFEQ without reasonable excuse is also a criminal offence under section 24 of the 2011 Act. It is for the First-tier Tribunal ~~for Scotland Housing and Property Chamber~~ to report such matters to the Police and/or the Procurator Fiscal Service to investigate. It would be for the Procurator Fiscal to decide whether to prosecute and ultimately for a Court to determine the outcome of any prosecution. Again it is open for any party to proceedings to appeal a decision by the First-tier

² The functions of the Homeowner Housing Panel transferred to the First-tier Tribunal for Scotland Housing and Property Chamber on 1 December 2016. NEW

³ Section 23 of the 2011 Act - Effect of failure to comply with property factor enforcement order PFEQ NEW

Tribunal on a point of law to the Upper Tribunal for Scotland (with permission from the First-tier Tribunal).

A property factor convicted of failing to comply with a ~~property factor enforcement order~~ **PFEQ** is required to inform Scottish Ministers of such a conviction when submitting a fit and proper person declaration as part of any further application to enter the register (see sections 3(2)(f) and 5(2)(c) of the 2011 Act). The Scottish Ministers can also, amongst other things, take into account any failure to comply with the Code or with any ~~property factor enforcement order~~ **PFEQ**, ~~or any material along with any other relevant unspent convictions~~ made known to them⁴ which shows a person is no longer fit and proper, when deciding whether it is satisfied to enter a person on the ~~Register of property factors~~, or to remove a registered property factor from it (see sections 4 and 8 of the 2011 Act). It is open for a property factor to appeal a decision⁵ by the Scottish Ministers to remove its entry on the ~~Register~~ or, as the case may be, refuse an application for entry to the register. After being removed ~~Upon removal from the register~~, ~~A~~ a property factor cannot seek removed from the register ~~is unable~~ to recover any costs incurred or charges ~~imposed any charges~~ in respect of any work instructed ~~currred~~ after the relevant date removal takes effect. Homeowners may be able to appoint a new property factor (or decide to manage their properties without appointing a property factor) in accordance with procedures set ~~out in~~ within their title deeds, the Tenement Management Scheme or any statutory rights they may have under the Title Conditions (Scotland) Act 2003. The property factor may not lodge a notice of potential liability for costs under section 13(1) of the Tenements (Scotland) Act 2004 in respect of work instructed after the relevant date ~~day removal takes effect~~ (see section 9(2) of the 2011 Act⁶).

A property factor removed from the register will commit a criminal offence if it continues to operate as a property factor without being registered and without reasonable excuse (see section 12(1) of the 2011 Act), unless the removal is being appealed or the deadline to make an appeal has not yet passed. ~~Section and~~ 12(3) of the 2011 Act ~~provides that, despite removal, no offence is committed until the period within which any appeal in relation to the removal may be made expires (without such an appeal being made) or any such appeal is concluded.~~

How do the requirements of professional bodies and other legislation relate to the Code? - UPDATED

The Code is separate from, and additional to any other statutory requirements which a property factor may be required to adhere to.

Property factors are ultimately responsible for ensuring that they conduct their business in a manner that complies with all relevant legislation (either in Scots law, the law in the rest of the UK or wider) in addition to the 2011 Act and the Code. In particular this may cover duties imposed by legislation relating to companies, consumer credit licences and protection, contracts and procurement, data protection,

⁴ The Property Factors (Registration) (Scotland) Regulations 2012 – Information to be supplied by responsible/relevant person- <http://www.legislation.gov.uk/ssi/2012/181/regulation/3/made> **NEW**

⁵ Section 11 of the 2011 Act – Appeal against refusal to register or removal from register **NEW**

⁶ Section 9 of the 2011 Act – Effect of refusal to enter in register or removal from register **NEW**

equalities, financial services, freedom of information, health and safety, human rights, property and title conditions, and tribunals and court procedures.

Some property factors will also have specific commitments to meet the regulatory requirements of statutory bodies such as the Scottish Housing Regulator, the Financial Conduct Authority, the Prudential Regulation Authority, the Scottish Information Commissioner's office or have a duty to co-operate with other public bodies. Some property factors may also have to comply with the rules and codes of practice of other professional bodies for example the Institute of Residential Property Management, the Law Society of Scotland, the Property Managers Association Scotland and the Royal Institution of Chartered Surveyors.

~~The Code is separate from, and additional to any other statutory and voluntary requirements which a property factor may already be required to adhere to.~~

What is not covered within the Code? - NEW

~~The code principally sets out minimum standards of practice for registered property factors on how they should act in their business with homeowners – not vice versa.~~

Unless otherwise stated in the Code, the Code does not specifically set requirements on how a property factor should act in circumstances that may arise out-with that business arrangement with homeowners, ~~for example, a property factors business with any other relevant third parties, i.e. neighbour disputes about noise or antisocial behaviour or a property factor's business arrangement with any other relevant third parties, repairs and maintenance contractors, agents or other property factors etc.~~

Section 2(2) of the 2011 Act indicates that a person is not acting as property factor if they manage or maintain the common parts of land on behalf of a property factor in relation to the same common parts of land. These persons are not subject to the requirements of the Code. Property factors should however consider the requirements of the Code when instructing third parties (see section 2.2 of the Code: Communication and Consultation) to undertake business on their behalf and/or or making decisions/undertaking actions which may have consequential implications for homeowners.

The requirements of the Code do not apply to arrangements where homeowners collectively choose to undertake ad-hoc repairs without using a property factor or self-factor the common parts of their properties for example owner associations established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003) or any other circumstances provided for under section 2(2) of the 2011 Act.

~~Again, the Code is separate from, and additional to any other statutory and voluntary requirements which the property factor may be required to adhere to (also see – How do the requirements of professional bodies and other legislation relate to the Code?).~~

CODE OF CONDUCT

The requirements from this point forward (pages 8-27) form part of the Code and apply from [date to be determined subject to parliamentary approval].

Appendix 2 is a glossary of terms used in the Code, and also forms part of the Code. All registered property factors are legally required to ensure compliance with the Code in terms of section 14(5) of the 2011 Act. **NEW**

Overarching Standards of Practice (NEW – December 2019)

The following are the overarching standards of practice that property factors should apply in carrying out their work:

- You must conduct your business in a way that complies with all relevant legislation.
- You must be honest, open, transparent and fair in your dealings with homeowners (including prospective and former homeowners).
- You must provide information in a clear and easily accessible way.
- You must not provide information that is deliberately or negligently misleading or false.
- You must apply your policies and procedures consistently and reasonably.
- You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.
- You must not unlawfully discriminate against a homeowner or prospective homeowner on the basis of their age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation.
- You must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements in your business with homeowners in connection with the management of common property.
- You must maintain appropriate records of your dealings with homeowners and prospective homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.
- You must ensure you handle all private information sensitively and in line with legal requirements on data protection

Commented [u4]: PROPOSED ADDITION TO CLARIFIES WHAT IS TEXT FORMS PART OF THE CODE

Commented [LS(5): QUESTION 1 SUGGESTED NEW SECTION TO SET OVERARCHING STANDARDS OF PRACTICE TO PROMOTE CONSISTENCY OF OPERATIONS AND IN ORDER TO REDUCE THE LEVEL OF DUPLICATED DETAIL NEEDED IN INDIVIDUAL SECTIONS

- You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.
- You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

Some of these points are expanded in the later sections of the Code.

Section 1: Written Statement of Services

N.B. Section 1 covers the contents of the written statement of services (WSS) only. The provisions relating to service standards are covered in the later sections of the Code.

1.1 A property factor must provide each homeowner with a ~~written~~comprehensible written statement of services, using plain English where possible, setting out, in a simple, structured way, ~~the~~ terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner applies in terms of section 17 of the 2011 Act to the First-tier Tribunal for Scotland Housing and Property Chamber (First-tier Tribunal) for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their written statement of services as part of their compliance with the requirements of this Code. **UPDATED**

1.2 A property factor must take all reasonable steps to ensure that a copy of the written statement of services is provided to relevant homeowners:

- within 4 weeks of the property factor:-
 - agreeing in writing to provide services to them; or
 - being made aware of the actual date of sale of a property of which they manage and maintain the common parts (whichever comes first ; **UPDATED**
 - ~~if there are where the property factor identifies~~ identifying that they have provided misleading or inaccurate information at the time of previous issue (see section 2.1 of the Code: Communication and Consultation).

Commented [u6]: QUESTION 2 FOR DISCUSSION –
UPDATED SINCE CONSULTATION TO SIMPLIFY
REQUIREMENTS

- at the earliest opportunity⁷ (not exceeding 4-year³ months) where:
 - there is a substantial change is required to the terms of the written statement of services.

Any changes must be clearly indicated on the revised written statement of services issued or separately noted in a 'summary of changes' document attached to the revised version ; **UPDATED**

1.3 At all other times, a copy of the latest written statement of services must may be made available by the property factor on request by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). **NEW**

How the code applies to different types of land ownership **NEW**

Please note that the requirements in relation to the content of the written statement of services will depend on who owns the land which is factored. If land is owned by a land maintenance company or a party other than a group of home owners, Section 1.5 on Authority to Act applies rather than Section 1.4A.

If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

1.4 For situations where the land⁸ is owned by the group of homeowners,

The written statement of services must make specific reference to any relevant legislation and must set out the following:

A. Authority to Act

- (1). a statement of the basis of the authority the property factor has to act on behalf of all the homeowners in the group⁹ including references to the definition of 'property factor' and 'homeowner' specified in the 2011 Act and under this Code.

⁷ If a change to the terms of the written statement of services is specified in a property factor enforcement order issued by the First-tier Tribunal, then the timescale determined by the First-tier Tribunal for that change to be made will supersede any timescales stated at section 1.2 of this Code. **NEW -- CLARIFIES THAT ANY DECISION BY THE FTT WOULD SUPERCEDE ANY REQUIREMENTS IN THE CODE.**

⁸ The term 'land' can means both land and any buildings on that land.

⁹ For example (not an exhaustive list):-

- Named in the Title Deeds as the property factor for the first (x period of time). This manager's burden time limit has/has not expired.
- Appointed by a decision of a majority of homeowners on x date.

Commented [OD(7)]: TIMESCALE SHORTENED IN VIEW OF THE FACT THAT SUBSTANTIAL CHANGES WHICH MAY HAVE A FINANCIAL EFFECT ON HOME OWNERS

Commented [u8]: AMENDED SO THAT FULL WSS DOES NOT NEED TO BE ISSUED. 'SUBSTANTIAL HAS BEEN DEFINED IN THE CODE'S GLOSSARY

Commented [u9]: PROPOSED ADDITION THAT A COPY OF THE WSS CAN BE REQUESTED AT ANY TIME BY A HOMEOWNER

Commented [u10]: PROPOSED ADDITION TO MAKE IT CLEAR WHICH REQUIREMENTS RELATE TO VARIOUS CIRCUMSTANCES –

THE INTENTION IS TO HELP REDUCE THE NUMBER OF APPLICATIONS/COMPLAINS WHICH REFER TO THE WRONG PARTS OF THE CODE

Commented [OD(11)]: DOES SECTION H APPLY TO LAND MAINTENANCE COMPANIES?

Property factors operating under a custom and practice arrangement with no formal appointment should clearly indicate this arrangement to homeowners. Where title deeds make provision for the appointment of a property factor, this provision should take precedence over custom and practice. Custom and practice as a basis for Authority to Act does not provide complete clarity in the relationship between the property factor and the homeowner. [Property Factors/homeowners] [may therefore wish to/should] consider formalising these arrangements. - **UPDATED**

- (2). where applicable, in cases where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factor has or has not taken on the outstanding liabilities of the previous property factor including any other information which may have implications for relevant homeowners; **NEW**
- (3). where applicable, a statement of any level of delegated authority, for example the financial thresholds for instructing works and the specific situations in which the property factor may decide to act without further consultation with homeowners.

Commented [u12]: QUESTION 3 FOR DISCUSSION - AMENDED AND PROPOSED AND ADDITION SO THAT 'AUTHORITY TO ACT' INCLUDES REFERENCES TO RELEVANT DEFINITIONS WITHIN THE ACT. ALSO TO MAKE CLEAR WHERE A FACTOR IS OPERATING UNDER A CUSTOM AND PRACTICE ARRANGEMENT AND THAT THESE SHOULD BE FORMALISED WHERE POSSIBLE (DEFINITION OF THIS IS IN GLOSSARY TO THE CODE)

Commented [u13]: PROPOSED ADDITION WITH THE INTENTION OF CLARIFYING ANY IMPLICATIONS FOR HOMEOWNERS WHERE THE NEW FACTOR IS OR IS NOT TAKING ON THE LIABILITIES OF THE PREVIOUS FACTOR

B. Services Provided

- (4). the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property inspections (if part of the core service);
- (5). the types of services and works which may be required in the overall maintenance of the land in addition to the core service, and which may therefore incur additional fees and charges (this may take the form of a 'menu' of services) and how these fees and charges are calculated and notified to homeowners;

C. Financial and Charging Arrangements

- (6). the management fee charged by the property factor, including any fee structure and breakdown of fees and also the property factor's policy for reviewing and increasing or decreasing this management fee;
- (7). what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner within the group is responsible for. If management fees are charged at a flat rate rather than a proportion then this should be clearly stated;
- (8). any arrangements relating to payment by homeowners towards a floating fund, confirming the amount, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners or by the property factor) (see section 3 of the Code: Financial Obligations); **UPDATED**

- (9). any arrangements for collecting payment from homeowners for specific projects or cyclical maintenance, confirming amounts, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners or by the property factor.) (see section 3 of the Code: Financial Obligations); **UPDATED**
- (10). The timing and frequency of billing and by what method homeowners will receive their bills;
- (11). how the property factor will collect payments, including timescales and methods (clearly stating the payment methods available to homeowners). Any charges relating to late payment must clearly state the period of time after which these charges would be applicable (see Section 4 of the Code: Debt Recovery);
- (12). The property factor's debt recovery ~~policy procedure~~ which may be made available on its website (if it has a website) or alternatively ~~must be~~ ~~may be~~ available on request (see section 4 of the Code: Debt Recovery).
UPDATED

Commented [u14]: AMENDMENT TO TEXT TO CLARIFY THAT PROCEDURE MUST BE MADE AVAILABLE ONLINE OR ON REQUEST – SUBJECT TO 2.8 OF THE CODE

D. Communication Arrangements

- (13). the property factor's internal complaints handling procedure¹⁰ including:
 - how to make a complaint and procedures and timescales for responding to enquiries and complaints received from homeowners in writing and by telephone (including details of the property factor's standard working hours).
 - Information on ~~including~~ how a homeowner specified under section 10(5) of the 2011 Act may make an application to the First-tier Tribunal if they remain dissatisfied following completion of the property factor's internal complaints handling procedure (see Section 7 of the Code: Complaints Resolution);
- (15). ~~the procedures and timescales which the property factor will follow in arranging to provide homeowners with access to information made available on request (where required by the Code), including —~~
the criteria on which the property factor will assess whether the information should be made available (see section 2.8 of the Code: Communication and Consultation); **NEW**
that documents required to be provided under the Code will be made available for inspection or issued electronically at no charge unless a paper copy is requested, in which case the property factor may impose a reasonable charge if the homeowner has been notified of the specific charge in advance (see section 2.8 of the Code: Communication and Consultation); **NEW**

Commented [u15]: WE WILL RE-CONSIDER THIS SECTION ONCE WE HAVE FINALISED THE POLICY ON PROVISION OF DOCUMENTS

¹⁰ This may refer to a general complaints handling procedure which is not restricted to complaints about property factoring for example where the property factor is a local authority or a housing association. **NEW – CLARIFIES THAT GENERAL COMPLAINTS HANDLING PROCEDURES CAN APPLY IN CERTAIN CIRCUMSTANCES.**

- (16). confirmation whether the property factor has a data protection policy,¹¹ and how it can be accessed, which may be on its website (if it has a website) or must be available on request by a homeowner (~~subject to see~~ section 2.8 of the Code: Communication and Consultation). **NEW**

Commented [u16]: PROPOSED ADDITION REQUIRING DATA PROTECTION POLICY MADE BE MADE AVAILABLE ON REQUEST SUBJECT TO 2.8 OF THE CODE.

E. Declaration of Interest

- (17). a declaration of any financial or other interests which the property factor has in the common parts of property and land to be managed or maintained, for example as a homeowner (including where the company is also acting as a landlord or undertaking letting agency work¹²). If no interest is declared, then this must be clearly stated. **UPDATED**

Commented [u17]: AMENDMENT TO REFER TO LETTING AGENCY WORK AS DEFINED UNDER THE HOUSING (SCOTLAND) ACT 2014.

F. Information on the duties on Property Factors under the 2011 Act. ~~Property Factor Registration~~ Number, duty to provide information for the purposes of the public register and details of membership of professional or trade bodies **NEW**

- (18). Confirmation ~~that of~~ the property factor is registered and of their's ~~registered registration~~ number; a statement that the property factor is required by the section 13(3) of the 2011 Act to take reasonable steps to ensure that their property factor registered number is included in any document sent to homeowners which relates to their duties under section 17(5) of the 2011 Act and/or this Code; **NEW**

Commented [u18]: PROPOSED ADDITION WITH THE INTENTION OF INCREASING AWARENESS THAT A FACTOR MUST COMPLY WITH SECTION 13(3) OF THE CODE .

- (19). a clear statement indicating that in accordance with section 3(2)(e) of the 2011 Act¹³ and section 7(3)(a-b) of the 2011 Act¹⁴, a registered property factor is required to provide details of any dwelling house, flat or land that it either expects to act for, may currently act for or previously acted for in order to allow for any public search of a specific property address and/or land record to be undertaken on the register of property factors, including information on where to find the register on the Scottish Government Website; **NEW**

Commented [u19]: PROPOSED ADDITION WITH THE INTENTION OF INCREASING AWARENESS PARTICULARLY AMONGST OWNERS THAT FACTORS HAVE A DUTY (IN ACCORDANCE WITH THE ACT) TO PROVIDE ACCURATE INFORMATION ON THE PROPERTY AND LAND THEY FACTOR FOR THE PURPOSES OF MAINTAINING THE REGISTER OF PROPERTY FACTORS

- (20). In circumstances, where the property factor is a member of any professional or trade bodies relevant to acting as a property factor and/or their duties under the 2011 Act, then the property factor must specify these bodies and any registration/membership numbers. **NEW**

Commented [u20]: PROPOSED ADDITION WITH THE INTENTION OF INCREASING HOMEOWNERS AWARENESS OF ANY PROFESSIONAL/TRADE BODIES WHICH THEIR FACTOR IS A MEMBER OF.

G. Compliance with the Code of Conduct and property factor enforcement orders imposed by the First Tier Tribunal **NEW**

- (21). a clear statement indicating that under section 14(5) of the 2011 Act a registered property factor must ensure compliance with the property factor Code of Conduct ~~for the time being in force. A property factor may make a~~

THIS IS INTENDED TO RAISE AWARENESS THAT THERE ARE PROFESSIONAL AND TRADE BODIES REPRESENTING FACTORS AND COULD IMPROVE PERCEPTIONS OF /REASSURE THE PUBLIC OF THE PROFESSIONALISM OF THE PROPERTY MANAGEMENT SECTOR?

THIS MAY SIGNPOST THE HOMEOWNER TO OTHER POTENTIAL ROUTES TO MAKE A COMPLAINT ABOUT THEIR FACTORS CONDUCT IF APPLICABLE

¹¹ This may refer to a general data protection policy which is not restricted to its property factoring service e.g. for example where the property factor is a local authority or a housing association. **NEW**

¹² Section 61 of the Housing (Scotland) Act 2014 – Meaning of letting agency work **NEW**

¹³ Section 3(2)(e) of the 2011 Act – information supplied in an application to enter the register of property factors. **NEW**

¹⁴ Section 7(3) of the 2011 Act – Duty of Responsible Person to provide information **NEW**

~~copy of the Code available on its website (if they have a website).~~
~~Alternatively, the statement must indicate that the~~ and information on
~~where the~~ Code can be found on the Scottish Government website; **NEW**

- (22). a clear statement indicating that decisions by the First-tier Tribunal in relation to a property factor's compliance with the Code under section 14(5) of the 2011 Act and/or its duties under section 17(5) of the 2011 Act are publically available and are published on the First-tier Tribunal for Scotland (Housing and Property Chamber) website. **NEW**

H. How to End the Arrangement

- (23). clear information on when and how a homeowner should inform the property factor of an impending change in ownership of their property (including details of any reasonable period of notice which required by the property factor to comply with its duties under this Code (see section 3.5 of the Code: Financial Obligations). This information should also clearly state any charges for early termination/administration costs; **NEW**

- (24). a clear statement confirming the property factor's policy on how it will co-operate with another property factor to assist the transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners; including the information that the property factor may share with the new, formally appointed, or incoming property factor (subject to ~~its own data protection policy or wider~~ data protection legislation) and any other implications for homeowners. If these circumstances do not apply, then the property factor should provide a clear statement setting out the reasons why they do not apply (Also see sections 7.5 and 7.6 of the Code: Complaints Resolution); **NEW**

- (25). clear information on how homeowners may (by collective or majority agreement) terminate or change the service arrangement including signposting to any relevant legislation for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should also clearly state any "cooling off" period, period of notice or charges relating to early termination. ~~If these circumstances do not apply, then the property factor should provide a clear statement setting out the reasons why they do not apply and any situations where these arrangements to terminate the agreement do not apply~~ (Also see sections 7.5 and 7.6 of the Code: Complaints Resolution). **UPDATED**

Commented [u21]: PROPOSED ADDITION SO THAT HOMEOWNERS ARE AWARE OF THE CODE, AND HOW THEY CAN SOURCE A COPY – WE HAVE REMOVED THE SUGGESTION THAT A COPY SHOULD BE INCLUDED ON FACTOR WEBSITES BUT THE CODE SHOULD BE SIGNPOSTED ON THE SG WEBSITE

Commented [u22]: PROPOSED ADDITION IS INTENDED SO THAT INDIVIDUAL HOMEOWNERS ARE AWARE OF THEIR OBLIGATIONS UNDER THEIR FACTORING AGREEMENT IN CIRCUMSTANCES WHERE THEY ARE SELLING THEIR PROPERTY AND IF ANY CHARGES APPLY IN THESE CIRCUMSTANCES.

Commented [u23]: FOR DISCUSSION – TRANSITION BETWEEN PROPERTY FACTORS

Commented [u24]: AMENDMENT TO RECOGNISE THAT THIS MIGHT NOT APPLY IN CERTAIN CIRCUMSTANCES

1.5 The following requirements apply where the land is owned by a land maintenance company or a party other than the group of homeowners - UPDATED

The written statement of services must make specific reference to any relevant legislation and must set out the following in terms of authority to act:

A. Authority to Act

- (1). a statement of the legal basis of the arrangement between the property factor and the homeowner;
- (2). a description of the use and location of the area of land to be maintained, including a map where possible (this information must be updated to reflect any changes as soon as reasonably practicable).

Section 2: Communication and Consultation

Section 2 of the Code relates to how a property factor should communicate and consult with homeowners. While Title Deeds or a Deed of Declaration of Conditions are the primary documents governing a property factor's powers and owners' responsibilities. Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes. In that regard, the Code requires that:

- 2.1 A property factor must not negligently or knowingly provide information to a homeowner which is misleading or inaccurate. A property factor must take reasonable steps to ensure such information is corrected within 4 weeks of discovering or agreeing after being made aware that information previously provided was misleading or inaccurate at the time of issue¹⁵. A property factor must also not negligently or knowingly misrepresent their authority to act for homeowners and/or the correct legal position. **UPDATED**
- 2.2 A property factor must not communicate (either orally or in writing) with a homeowner in an abusive or intimidating manner. A property factor must also not act in a manner which threatens a homeowner or unlawfully discriminate on the basis of a person's age, disability, sex, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief or sexual orientation. A property factor may also reasonably indicate it may take legal action against the homeowner as long as this is not undertaken in an abusive, intimidating or threatening manner. A property factor must take reasonable steps to ensure that all relevant third parties appointed to act on their behalf in delivering services to homeowners (for example repair and maintenance contractors, debt recovery specialists etc.) are made aware of this requirement of the Code. A property factor must arrange for any procedures taken in this regard to be published on its own website (if they have a website). Alternatively, this information ~~must may~~ be made available by the property factor if requested by a homeowner (subject to section 2.8 of the Code). **UPDATED**
- 2.3 A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and website address (if they have a website). If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors. **UPDATED**
- 2.4 A property factor must have a written procedure policy to consult with all homeowners within the group and seek homeowners' consent (either collective or by majority approval) in writing before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where the property factor can demonstrate that they

Commented [OD(25)]: THIS SECTION IS NOW COVERED BY PRINCIPLES AT THE START OF THE DOCUMENT AND COULD BE REMOVED IF THE DECISION IS MADE TO INCLUDE PRINCIPLES.

Commented [u26]: AMENDMENT TO CLARIFY THAT THIS IS A WRITTEN POLICY

¹⁵ If a property factor is required to provide updated information as specified in a property factor enforcement order issued by a First-tier Tribunal, then the timescales for that updated information to be provided will be determined by a First-tier Tribunal in accordance with section 20(2) of the 2011 Act. **NEW - CLARIFIES THAT ANY DECISION BY THE FTT WOULD SUPERCEDE ANY REQUIREMENTS IN THE CODE.**

have agreed a level of delegated authority in writing with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written ~~policy procedure must~~ be made available if requested by a homeowner (subject to section 2.8 of the Code). The written policy and any level of delegated authority must be in accordance with any provisions present in the title deeds of the property. **UPDATED**

2.5 A property factor must respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their written statement (see Section 1.4a head D). Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed ~~in writing if they require additional time to respond.~~ The property factor should provide reasonable notice to the homeowner(s) in writing if it is unlikely to respond in full to any enquiry or complaint by the agreed timescale set out in its written statement of service, setting out an expected timescale in which the enquiry or complaint will be responded to. **UPDATED**

2.6 A property factor must take all reasonable steps to ensure that their property factor registered number is included in any document sent to a homeowner. ~~as required by the Code~~¹⁶. **NEW**

2.7 ~~A property factor must ensure that any current notice of registration provided to them by the Scottish Ministers under section 6(a) of the Act is published on their website (if they have a website). Alternatively, this information must be made available if requested by a homeowner (subject to section 2.8 of the Code).~~ **NEW**

2.8 Where any information ~~may~~ **must** be made available to a homeowner (on request) by the property factor under this Code, the property factor must consider the request and make the information available unless there is good reason not to. **NEW**

- a. ~~the property factor must~~ consider the request and assess whether there is a good reason not to provide or partially provide the information requested i.e. the request is vexatious, unreasonable, repetitive, would contravene the property factor's data protection policy or breach any wider data protection legislation, would constitute a release of commercially sensitive information or the information may already be published and/or publically available¹⁷. If there is no good reason why the information should not be made available in full then the property factor should provide the information to the homeowner as requested;
- b. ~~the property factor's decision to release, partially release or not to release the information, along with a reason(s) for not releasing or~~

¹⁶ This is also required by section 13(3) of the Act and can be taken into account by the Scottish Government in relation to a further application to register (see section 4(4)(b)(ii) of the Act). **NEW**

¹⁷ Alternative procedures may be referred in circumstances where the property factor is subject to the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 or the Environmental Information (Scotland) Regulations 2004. **NEW**

Commented [u27]: AMENDMENT – FURTHER CLARIFICATION ADDED

Commented [u28]: PROPOSED ADDITION WITH THE INTENTION OF INCREASING AWARENESS THAT A FACTOR MUST COMPLY WITH SECTION 13(3) OF THE CODE .

MINISTERS CAN TAKE COMPLIANCE WITH S13(3) INTO ACCOUNT WHEN CONSIDERING FURTHER APPLICATIONS TO REGISTER. COMPLIANCE IS DIFFICULT TO ASSESS SO REPORTS OF NON-COMPLIANCE THAT COME TO LIGHT VIA COMPLAINTS TO THE FTT WOULD HELP IN ASSESSING WHETHER FACTORS WERE COMPLYING WITH THIS REQUIREMENT AND FIT TO REMAIN ON THE REGISTER.

Commented [u29]: CONSIDERING REMOVING THIS PROVISION AND HAVE MADE A REQUIREMENT IN F19 TO SIGNPOST THE PUBLIC REGISTER INSTEAD

partially releasing information, must be provided to the homeowner(s) in writing within the timescales specified in the property factor's written statement for responding to enquiries and complaints (see section 1.4 head D) unless a separate arrangement has been agreed with the homeowner(s) who made the request;

e.g. in cases where the decision is to release or partially release information, the property factor must arrange for the homeowner(s) to be able to inspect any documents or issue them electronically at no charge, unless a paper copy is requested, in which case the property factor may make a reasonable charge if the homeowner(s) has been notified of and has agreed to the charge in advance. The information must be provided within the timescales specified in the property factor's written statement for responding to enquiries and complaints (see section 1.4 Head D) unless a separate arrangement has been agreed with the homeowner(s) who made the request¹⁸.

Commented [u30]: QUESTION 4 – FOR DISCUSSION - REVISED PROPOSAL TO SIMPLIFY THE PROVISIONS IN RELATION TO PROVIDING INFORMATION. ALL INFORMATION TO BE RELEASED UNLESS THERE IS A GOOD REASON NOT TO.

For the information that may be available under the Code, please refer to:

Sections	1.3 and 1.4a G(20),
Sections	2.4 and 2.7
Sections	3.1 and 3.6
Sections	4.3, 4.5, 4.6 and 4.7
Sections	5.1, 5.2, 5.4, 5.6, 5.7, and 5.8
Sections	6.3, 6.4, 6.5, 6.6, 6.9 and
Section	7.1

For the information that must be made available under the Code, regardless of section 2.8, please refer to:

Section	1.2
Section	2.3 and 2.7
Sections	3.1, 3.2, and 3.5
Sections	4.1, 4.3, and 4.5
Sections	5.2, 5.3, 5.5 and 5.9
Sections	6.1, 6.7 and 6.8
Sections	7.1, 7.2, 7.5 and 7.6

Commented [LS(31): WE WILL REVIEW THESE TABLES WHEN WE HAVE CONCLUDED ON THE INFORMATION TO BE RELEASED UNDER THE CODE AND CONSIDER WHETHER THERE IS A MORE USER FRIENDLY WAY TO PRESENT THE INFORMATION

¹⁸ See Footnote 17 **NEW**

- 2.9 Where another property factor is due to take over the management of property and land owned by homeowners; the outgoing property factor must co-operate (within the limits of their authority to act and data protection legislation) with the new, formally appointed, incoming property factor (and vice versa), and must supply each other with any necessary information (where appropriate and lawful). The considerations for sharing information as outlined at section 2.8a of the Code will apply. **NEW**

Commented [u32]: QUESTION 5 FOR DISCUSSION- WHAT SHOULD BE INCLUDED IN THE CODE WHERE ONE FACTOR IS DUE TO TAKE OR HAS TAKEN OVER THE MANAGEMENT OF PROPERTY AND LAND.

Section 3: Financial Obligations

While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. The overriding objectives of this section are to:-

- protect homeowners' funds;
- provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor;
- make a clear distinction between homeowners' funds and a property factor's own funds.

A property factor may also have specific commitments to meet regulatory requirements of statutory bodies such as the Scottish Housing Regulator, the Financial Conduct Authority and the Prudential Regulation Authority.

Commented [OD(33)]: WE ARE TAKING FURTHER ADVICE ON THIS SECTION AND FOLLOWING UP ON INDIVIDUAL CONSULTATION RESPONSES ON HOW THIS FITS WITH UP TO DATE REQUIREMENTS ON PROPERTY FACTORS E.G. ANTI MONEY LAUNDERING LEGISLATION AND AVAILABILITY OF INTEREST BEARING ACCOUNTS, REGULATORY REQUIREMENTS ON FORBEARANCE

- 3.1 A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for. ~~A copy of the relevant written statement of services may be enclosed along with any financial statement provided to homeowners. Alternatively the~~ The financial statement must make clear reference to the relevant written statement of services (see section 1 of the Code) and that ~~this information~~ the WSS may must be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED – MOVED FROM SECTION 3.3 OF THE ORIGINAL CODE**
- 3.2 If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, or the property factor decides to terminate its arrangement, a property factor must make available to the homeowners within the group all financial information that relates to their account available to the homeowners within the group. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services). **UPDATED - MOVED FROM SECTION 3.1 OF THE ORIGINAL CODE**

Commented [OD(34)]: PROPOSED ADDITION TO INCLUDE A REQUIREMENT IN SITUATIONS WHERE A FACTOR CHOOSES TO TERMINATE THE ARRANGEMENT

3.

3.4 Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following a change of property factor. **UPDATED - MOVED FROM SECTION 3.2 OF THE ORIGINAL CODE**

3.5 In cases where a property changes ownership, the property factor must return any funds due (less any outstanding debts) and must make available to the outgoing homeowner all financial information that relates to their account. This must be provided within 3 months of the property factor being made aware of prior to the actual date of change in ownership unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing of the change in ownership (see section 1.4 Head H)). **NEW**

3.6 A property factor must have a written procedure policy for dealing with advance payments made, in circumstances where the outgoing homeowner requires a refund or an incoming homeowner needs to transfer their share of the funds (for example, on the sale of the property). A copy of this written procedure must may be made available if requested by a homeowner or prospective homeowner (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED – MOVED FROM SECTION 3.4 OF THE ORIGINAL CODE**

In order to protect homeowner funds, if the property factor is a housing association or a local authority:

3.7a Homeowners' floating funds must be accounted for separately from the property factor's own funds, whether through coding arrangements or through one or more separate bank accounts.

3.7b In situations where a sinking or reserve fund is arranged as part of the service to homeowners, where reasonably available an interest-bearing account or accounting structure must be used for each separate group of homeowners.

All other property factors:

3.8a Homeowners' floating funds must be held in a separate account from the property factor's own funds. This can either be one account for all its homeowner clients or separate accounts for each homeowner or group of homeowners. A property factor must not transfer funds from one such account to another without obtaining in writing the collective or majority agreement of the homeowners within the group whose account may be affected. **UPDATED**

3.8b In situations where a sinking or reserve fund is arranged as part of the service to homeowners, where reasonably available an interest-bearing account must be opened in the name of each separate group of homeowners. A property factor must not transfer funds from one such account to another without

Commented [u35]: PROPOSED ADDITION TO INCLUDE A REQUIREMENT IN SITUATIONS WHERE A PROPERTY CHANGES OWNERSHIP

Commented [OD(36): QUESTION 6 - FOR DISCUSSION- WHAT IS THE DIFFERENCE BETWEEN PUBLIC AND PRIVATE SECTOR PROVIDERS IN TERMS OF CLIENT FUNDS?

Commented [u37]: WE WILL TAKE ADVICE ON THIS SECTION. SOME FEEDBACK THAT IT IS OVER-BURDENSOME

obtaining in writing the collective or majority agreement of homeowners within the group whose account may be affected. **UPDATED**

Section 4: Debt Recovery

Non-payment by some homeowners may affect provision of services to others, or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear policy and procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating into a serious problem which may affect other relevant homeowners within the group.

It is a requirement of section 1 of the Code: Written Statement of Services that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is available on its website (if it has a website) or may be available on request.

4.1 A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe. **UPDATED – MOVED FROM SECTION 4.5 OF THE ORIGINAL CODE**

4.2 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner. **UPDATED – MOVED FROM SECTION 4.3 OF THE ORIGINAL CODE**

4.3 A property factor must have a clear written policy and a procedure for debt recovery which outlines a series of steps which the property factor will follow ~~unless there is a good reason not to~~. This ~~policy procedure~~ must be, consistently and reasonably applied ~~in all cases~~. This ~~policy procedure~~ must clearly set out how the property factor will deal with disputed debts and, how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs. A property factor must ensure that a copy of its debt recovery policy and procedure is published on their website (if they have a website). Alternatively, this information ~~must~~ may be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED – MOVED FROM SECTION 4.1 OF THE ORIGINAL CODE**

4.4 If an application against a property factor relating to a disputed debt is referred to a 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-~~t~~-Tier Tribunal for Scotland

Commented [OD(38)]: WE ARE TAKING FURTHER ADVICE ON THIS SECTION TO ENSURE ALIGNMENT WITH CURRENT DEBT LEGISLATION/PRACTICE

Commented [u39]: AMENDED TEXT – NO SIGNIFICANT CHANGES

Commented [u40]: AMENDED TEXT

Commented [u41]: AMENDMENT TO CLARIFY THAT PROCEDURE MAY BE MADE AVAILABLE ON REQUEST

Commented [OD(42)]: CONSIDERING CONSULTATION FEEDBACK THAT THIS MAY BE OPEN TO ABUSE

(Housing and Property Chamber) 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). **UPDATED – MOVED FROM SECTION 4.2. OF THE ORIGINAL CODE**

- 4.5 ~~On request, a property factor must respond to any request from any relevant homeowners within the group enquiring as to how a certain scenario may affect them if one or more other homeowners within the group do not fulfil their obligations or pay towards any amounts owed. Further information may be provided to relevant homeowners within the group (subject to section 2.8 of the Code: Communication and Consultation).~~ **UPDATED – provide homeowners with a statement of how service delivery and charges will be affected if one or more homeowners does not pay their bills. -MOVED FROM SECTION 4.4 OF THE ORIGINAL CODE**
- 4.6 A property factor must take reasonable steps to keep relevant homeowners within the group promptly informed in writing of ~~debts outstanding debts that they may be liable to contribute to, or~~ any debt recovery action against any other homeowners within the group which could have implications for them, while ensuring compliance with ~~(subject to the requirements of any data protection policy it adopts (see section 1.4 Head D) or any wider data protection legislation (see section 2.8 of the Code: Communication and Consultation). Where a property factor is unable to provide information as the provision of this information would contravene any current data protection requirements, then the property factor should provide as much relevant information as it is able to do without breaching any data protection requirements for example the number of residents in arrears, the amount of arrears and at what stage of the debt recovery procedure they are at. A property factor must inform relevant homeowners within the group in writing of this decision.~~ **UPDATED**
- 4.7 A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging ~~those remaining~~ other homeowners within the group (if they are jointly liable for such costs). ~~This may include providing homeowners with information on options for accessing finance e.g. for major repairs.~~ Any supporting documentation ~~must~~ **may** be made available if requested by a homeowner within the group (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED**
- 4.8 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (also see sections 2.1, 2.2 of the Code: Communication and Consultation and section 4.4 of the Code). **UPDATED**

Commented [u43]: PREVIOUS TEXT RE-INSTATED

Commented [OD(44)]: CONSIDERING REMOVING THIS LEVEL OF DETAIL

Commented [u45]: AMENDMENT TEXT TO PROVIDE FURTHER CLARITY AND REFERENCE TO RELATED PARTS OF THE CODE.

Section 5: Insurance

- 5.1 A property factor must have, and maintain, an adequate professional indemnity insurance policy, and ensure that is appropriate for its level of income and type of services offered unless the property factor is a local authority or housing association and is able to arrange equivalent protections through another route. Details of the policy (including name of provider, policy number and summary) or equivalent protections ~~must~~ ~~may~~ be made available if requested by a homeowner who wishes to verify the policy is in place (subject to section 2.8 of the Code: Communication and Consultation).

UPDATED

Commented [OD(46)]: WE WILL TAKE FURTHER ADVICE ON THIS SECTION

If the agreement with homeowners includes arranging any type of insurance, the following standards will apply:

- 5.2 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover, and the terms of the policy. The terms of the policy must be supplied in the form of a summary of cover, but full details ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). A property factor should provide any supplementary documents necessary to provide the required information to homeowners where, for example, global insurance policies are in place and the summary of cover does not contain sufficient detail. **UPDATED**
- 5.3 A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit ~~they receive at is paid in connection with the policy from the company providing insurance cover~~ and any financial or other interest that they have with the insurance provider or any intermediary. This must be itemised separately on any insurance statement provided to homeowners. A property factor must also disclose any other charge they make or apply for arranging such insurance. **UPDATED**
- 5.4 If applicable, a property factor must have a procedure in place for submitting insurance claims on behalf of homeowners and for liaising with the insurer to check that claims are dealt with promptly and correctly. This information ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). If homeowners are responsible for submitting claims on their own behalf (for example, for private or internal works), a property factor must take reasonable steps to supply to homeowners all information that they reasonably require in order for homeowners to be able to do so. The target dates specified in the written statement of service (see section 1 of the Code: Written Statement of Services) for responding to enquiries and complaints will apply in this case unless a separate arrangement has been agreed with the homeowners who made the request. **UPDATED**
- 5.5 A property factor must ~~take reasonable steps to keep homeowners informed of the progress of their claim or provide them with sufficient information to allow them to pursue the matter themselves if required.~~

Commented [u47]: AMENDMENT TO CLARIFY THAT INFORMATION MAY BE PROVIDED SUBJECT TO SECTION 2.8 OF THE CODE

Commented [u48]: PROPOSED ADDITION

Commented [u49]: PROPOSED ADDITION

Commented [u50]: PROPOSED AMENDMENT

Commented [u51]: PROPOSED AMENDMENT

- 5.6 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including any cases where the factor decided not to obtain multiple quotes. This information ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED**
- 5.7 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) ~~must~~ ~~may~~ be made available to homeowners on request (subject to section 2.8 of the Code: Communication and Consultation). **UPDATED**

If the agreement with homeowners includes arranging buildings insurance:

- 5.8 A property factor must notify homeowners ~~annually~~ in writing of the frequency with which property revaluations will be undertaken to establish the building reinstatement valuation for the purposes of buildings insurance. Subject to any agreement required from homeowners, re-valuations should be undertaken at least every 5 years and sums assured reviewed in other years using the BCIS Rebuilding Cost Index. The property factor must adjust this frequency of property revaluations if instructed to do so by the collective or majority agreement of homeowners in the group. **UPDATED**

- 5.9 A property factor must confirm to homeowners that the buildings insurance policy covers all the usual perils including flood. If any perils or risks that a homeowner might reasonably expect to be covered by a buildings insurance policy arranged by the factor are not covered then this must be communicated to the homeowners.

Additional standard in situations where a land maintenance company owns the land:

- 5.910 On request, a property factor must provide homeowners with clear details of the costs of public liability insurance, how their share of the cost was calculated, and the terms of the policy and the name of the company providing insurance cover.

Commented [OD(52): QUESTION 7 - FOR DISCUSSION - PROPOSED ADDITION OF 5 YEARLY RE-VALUATIONS. IS THERE ANYTHING THAT CAN BE SAID IN THE CODE ABOUT BUILDING CONDITION REPORTS? Ref Tenement Maintenance Working Group

Section 6: Carrying out repairs and maintenance

This section of the Code covers the use of both in-house staff and external contractors by property factors.

- 6.1 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention. A property factor should seek to make the right repair at the right time and to the right standard. In order to do this they must arrange inspections and repairs in an appropriate timescale and inform homeowners of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required.
- 6.2 If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.
- 6.3 A property factor must have arrangements in place for ensuring that the cost of the repair represents value for money and 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~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation). **UPDATED**
- 6.4 ~~If~~ the core service agreed with homeowners includes periodic property inspections and/or a planned programme of cyclical maintenance, then a property factor must prepare a programme of works. This information ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation). **UPDATED**
- 6.5 A property factor must ensure that all contractors appointed by them have public liability insurance. This information ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation). **UPDATED**
- 6.6 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) ~~must~~ ~~may~~ be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation). **UPDATED**
- 6.7 A property factor must disclose to homeowners, in writing, any commission, fee or other payment or benefit that ~~it receives~~ is made in connection with contracts they let on behalf of homeowners from a contractor appointed by them.

Commented [LS(53): QUESTION 8 - FOR DISCUSSION -
CAN ADDITIONS BE MADE TO THE CODE TO SUPPORT
PROPERTY FACTORS IN ACHIEVING 5 YEARLY BUILDING
CONDITION SURVEYS?

- 6.8 A property factor must disclose to homeowners, in writing, any financial or other interests that the property factor has with any contractors appointed by them.
- 6.9 If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors within the limits of their 'authority to act' (see section 1.4a or 1.5a head A) in order to remedy the defects in any inadequate work or service provided to homeowners by third parties. If appropriate, the property factor may consider should obtaining a collateral warranty from any third party instructed by the property factor to undertake works on behalf of homeowners. A copy of the warranty must may be made available if requested by a homeowner (subject to section 2.8 of this Code: Communication and Consultation). **UPDATED**

Commented [u54]: PROPOSED ADDITION

Commented [u55]: AMENDED TEXT – NO SIGNIFICANT CHANGES

Section 7: Complaints Resolution

Property Factor Complaints Process

- 7.1 A property factor ~~must have a written complaints process, setting out a series of steps, which it apply its policies and procedures applies consistently and reasonably and must have a clear written complaints resolution procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement of service, which needs to be followed.~~

The Scottish Public Services Ombudsman's Valuing Complaints Website contains information to help support improvement in public sector complaints handling, including model complaints handling procedures which could be adapted for the private sector. Their work identifies key elements of a good complaints handling process.

It is a requirement of section 1 of this Code: Written Statement of Services that the property factor must provide homeowners with a copy of its complaints handling process. The final stage of the complaints process must be to provide information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved.

Theis procedure must also include how the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf. If applicable, it must also set out any recourse to the complaints procedures of any professional or membership body that the property factor may belong to; whether the property factor provides access to alternative dispute resolution services or if the property factor is also subject to another regulatory body. A property factor must ensure that a copy of its complaints handling procedure is published on their website (if they have a website). Alternatively, it must be made available if requested by the homeowner. **UPDATED**

- 7.2 ~~When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed by either the responsible or any relevant person (as listed on the property factors entry on the property factors register) before the homeowner is notified in writing. The task of confirming the final decision can be delegated to another member of the property factor's senior management team (if applicable) if that delegation is set out in the written notification. This confirmation must also provide details of how the homeowner may apply to the First-tier Tribunal if they remain unsatisfied (including contact details for the First-tier Tribunal).~~

UPDATED

- 7.3 A property factor must not charge homeowners for handling complaints unless this is explicitly provided for in the property titles ~~or contractual~~ documentation.

Commented [u56]: SECTION RE-ORDERED TO MAKE IT CLEAR THAT PROPERTY FACTOR COMPLAINTS PROCESS MUST BE EXHAUSTED BEFORE PROGRESSING TO TRIBUNAL.

Commented [u57]: AMENDED TO MAKE REFERENCE TO FITT

Commented [u58]: PROPOSED AMENDMENT

Commented [u59]: PROPOSED AMENDMENT

Commented [u60]: PROPOSED ADDITION

Commented [u61]: REMOVAL OF REQUIREMENT FOR RESPONSIBLE PERSON TO SIGN OFF ON COMPLAINTS

7.4 A property factor must retain (in either electronic or paper format) all correspondence relating to a homeowner's complaint for a period of 3 years from the date of the receipt of the first complaint. ~~or until such time that they no longer have authority to act for the homeowner for example the homeowner has ended their arrangement with the property factor due to a change in ownership of the property or by collective/majority agreement with other homeowners within the group (whatever comes first).~~ **UPDATED**

7.5 Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must co-operate with the current property factor (and vice versa) and supply each other with any necessary information, including about outstanding complaints. (where appropriate and lawful). The considerations for sharing information as outlined at section 2.8a of the Code will also apply. **NEW**

7.6 Complaints that have arisen during the appointment of a previous property factor should be dealt with by that previous property factor. A complaint can be made to the new, formally appointed property factor if a continuing failure is present after their appointment and they should deal with the complaint in accordance with their complaints handling procedure.

~~Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the incoming property factor must consider and respond in writing to any complaint made to the incoming property factor from homeowners about any alleged failure to comply with the Code or the property factors' duties by previous property factors in relation to the property which may lead to a continuing failure to comply. A response must be issued by the incoming property factor within 6 weeks of receiving that complaint. Where no complaint has been made to an incoming property factor by homeowners about an alleged failure to comply with the Code of the property factor's duties by previous property factors in relation to the property, the incoming property factor shall bear no responsibility for any continuing failure to comply with the Code of the property factor's duties which results from the failure on the part of a previous property factor.~~ **NEW**

First Tier Tribunal

Section 17 of the 2011 Act allows homeowners (as defined by section 10(5) of the 2011 Act) to make an application to the First-tier Tribunal for Scotland (Housing and Property Chamber - www.housingandpropertychamber.scot/apply-tribunal/property-factors) for a determination of whether their property factor has failed to carry out their factoring duties, or failed to comply with the Code.

To take a complaint to the First-tier Tribunal for Scotland (Housing and Property Chamber), a homeowner must first have exhausted the Property Factor's complaints handling procedure. The property factor must have refused to resolve the homeowner's concerns or have unreasonably delayed its attempts to resolve the complaint.

Commented [u62]: THREE YEAR PERIOD IS IN LINE WITH CONSULTATION PROPOSAL THAT OWNERS SHOULD HAVE A THREE YEAR TIME LIMIT TO LODGE APPLICATIONS.

Commented [OD(63)]: QUESTION 9 - FOR DISCUSSION - CONSIDERING AN ALTERNATIVE APPROACH TO THE PREVIOUS DRAFT

Definition of Property Factor, Homeowner and Property Factor Duties.

The full text of the Property Factors (Scotland) Act 2011 can also be accessed at:

<http://www.legislation.gov.uk/asp/2011/8/contents>

The meaning of “property factor”

Section 2 of the Act - Meaning of ‘property factor’

(1) In this Act, ‘property factor’ means –

- (a) a person who, in the course of that person’s business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,
- (b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned—
 - (i) by two or more other persons, or
 - (ii) by the local authority or housing association and one or more other person,
- (c) a person who, in the course of that person’s business, manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land), and
- (d) a local authority or housing association which manages or maintains land which is available for use by—
 - (i) the owners of any two or more adjoining or neighbouring residential properties, or
 - (ii) the local authority or housing association and the owners of any one or more such properties, but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land.

(2) Despite subsection (1), the following are not property factors for the

purposes of this Act—

- (a) a person so far as managing or maintaining land on behalf of the Crown that was acquired by virtue of Her Majesty's prerogative rights in relation to unclaimed or ownerless land,
- (b) an owners' association established by the development management scheme (within the meaning of the Title Conditions (Scotland) Act 2003 (asp 9)) so far as managing or maintaining common parts or land in accordance with the scheme,
- (c) a person so far as managing or maintaining common parts or land on behalf of another person who is a property factor in relation to the same common parts or land.

(3) The Scottish Ministers may by order modify either or both of subsections (1) and (2).

(4) An order under subsection (3) may make such consequential Modifications of any other provision of this Act as may be necessary or appropriate.

(5) An order under subsection (3) is not to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

(6) In this Part—

'housing association' has the meaning given by section 1 of the Housing Associations Act 1985 (c.69),

'local authority' means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39).

The meaning of “homeowner”

Section 10 of the Act - Section 9: interpretation etc

- (5) In this Act, ‘homeowner’ means—
 - (a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or
 - (b) an owner of residential property adjoining or neighbouring land which is—
 - (i) managed or maintained by a property factor, and
 - (ii) available for use by the owner.

The meaning of “property factor’s duties”

Section 17 of the Act - Application to First-tier Tribunal for Scotland Housing and Property Chamber

- (5) In this Act, “property factor’s duties” means, in relation to a homeowner—
 - (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.

Glossary of terms used in the Code - **NEW**

This glossary of terms in the table below forms part of the Code and is relevant to its interpretation.

Abusive or intimidating	<p>For a property factor (or a third party acting on their behalf) to communicate to a homeowner in a manner where it is reasonable for the homeowner to form a view that this manner is offensive or insulting and/or for a property factor or a third party acting on their behalf to cause the homeowner fear and alarm including threats of physical and/or non-physical violence against the homeowner.</p> <p>A homeowner can, if they choose to do so, report such matters to Police Scotland if they believe that their property factor (or a third party acting on its behalf) has acted in a manner which may be a criminal offence in Scots or the law in the rest of the UK.</p>
Authority to Act	A statement on the basis of why a property factor is acting on behalf of homeowners including any legal basis where applicable.
Code	The property factor code of conduct as defined in section 14 of the Property Factors (Scotland) Act 2011.
'Cooling off' period	A set period of time after an arrangement is agreed between homeowners and a property factor during which the homeowners can terminate the contract without incurring any penalty notice that may apply.
Collateral warranty	An agreement associated with a primary contract (often concerning building work) which provides for a duty of care to be extended by one of the contracting parties to a third party not party to the original contract.

Commented [u64]: PROPOSED ADDITION TO PROVIDE MORE CLARITY TO THE CODES INTERPRETATION ALTHOUGH IT IS FULLY RECOGNISED THAT IT WILL ULTIMATELY BE FOR THE FTT TO INTERPRET THE CODE AND APPLY THIS WITHIN ITS DECISION MAKING.

Commercially sensitive	Information which if disclosed may prejudice the commercial interests of the property factor or any other person, who may be an individual, a company, a public authority or any other legal entity.
Complaint	An expression of dissatisfaction (either orally or in writing) from a homeowner or homeowners in relation to the standards of service provided by their property factor.
Core Service	Factoring services under agreed fee arrangements which do not incur additional <i>ad hoc</i> fees and charges.
Custom and practice	A course of action between a property factor and homeowners which has historically been undertaken in a particular way and is considered by one or more parties as the norm in the absence of any formal contract or arrangement between a property factor and homeowners.
Data protection policy	A property factor's procedures for how it processes and safeguards personal data in accordance with any relevant data protection requirements.
Delegated authority	Authority granted by homeowners to a property factor to make decisions on their behalf always up to an agreed threshold without the property factor seeking further agreement from the homeowners.
Emergency repair	Where urgent work is required to prevent damage, or in the interests of health and safety, and where there is not time for the property factor to use the normal channels of consultation and decision-making with homeowners.
Enquiries	A request to the property factor (either orally or in writing) from a homeowner asking for information and where the request does not include an expression of dissatisfaction from the homeowner (see "complaint").

Floating funds (<u>The Float</u>)	The collective term for advance payments made by homeowners kept in a maintenance account by a property factor to deal with routine or minor repairs.
Financial Conduct Authority	The conduct regulator for financial services firms and financial markets in the UK.
First-tier Tribunal for Scotland Housing and Property Chamber	A specialist dispute resolution body (independent from the Scottish Government) whose Housing and Property Chamber deals with undetermined and new disputes between homeowners and property factors from 1 December 2016.
Homeowner	As defined in section 10(5) of the Property Factors (Scotland) Act 2011. Also see Appendix 1 of the Code. http://www.legislation.gov.uk/asp/2011/8/section/10
Homeowners within the group	The homeowners who should be informed in cases where a property factor is required to provide certain information or seek approval from as required by the Code in relation to matters which may affect a specific development where these homeowners may reside and/or account(s) held by those homeowners.
Housing Association	As defined in section 1 of the Housing Associations Act 1985. http://www.legislation.gov.uk/ukpga/1985/69/section/1
Land	<u>Can mean B</u> both land and any buildings on that land.
Letting agency work	As defined in section 61 of the Housing (Scotland) Act 2014. http://www.legislation.gov.uk/asp/2014/14/section/61

Local Authority	As defined in section 2 of the Local Government etc. (Scotland) Act 1994. http://www.legislation.gov.uk/ukpga/1994/39/section/2
Notice of potential liability for costs	A notice registered by a property factor in accordance with section 13 of the Tenements Scotland Act 2004 or section 10A of the Title Conditions (Scotland) Act 2003 for the purposes of recovering common maintenance costs and debts due by homeowners.
<u>Owners' Association</u>	<u>Add definition</u>
<u>Provide in writing</u>	<u>Add definition to clarify this may include provision electronically or via a link unless specifically requested in paper format</u>
Professional indemnity insurance	A form of liability insurance which protects a property factor from bearing the full cost of defending a negligence claim by homeowners.
Property factor	As defined in section 2 of the Property Factors (Scotland) Act 2011. http://www.legislation.gov.uk/asp/2011/8/section/2
Property factor duties	As defined in section 17(5) of the Property Factors (Scotland) Act 2011. See Appendix 1 of this Code. http://www.legislation.gov.uk/asp/2011/8/section/17
Property factor enforcement order	As defined in section 20 of the Property Factors (Scotland) Act 2011. http://www.legislation.gov.uk/asp/2011/8/section/20 An order requiring a property factor to undertake such action as a First-tier Tribunal considers necessary, and, where appropriate, make payment to a

	homeowner, as the First-tier Tribunal considers reasonable.
Property factor registered number	A number allocated to a property factor upon registration by Scottish Ministers in accordance with section 13(1) and 13(2) of the Property Factors (Scotland) Act 2011. A property factor must take all reasonable steps to ensure that this number is included in any document sent to a homeowner.
Property Factors (Scotland) Act 2011 (2011 Act).	An Act of the Scottish Parliament which makes provision for a register of property factors requiring property factors to be registered and the resolution of disputes between homeowners and property factors; and for connected purposes. http://www.legislation.gov.uk/asp/2011/8/contents
Prudential Regulation Authority	Responsible for the prudential regulation and supervision of insurers.
Public liability insurance	A form of liability insurance which compensates a person if they experience personal injury or damage to their property.
Out-of-hours	The time period which is out-with any standard working hours as set out in a written statement of service provided to a homeowner.
Reasonable	A course of action, consideration or decision which is fair, sensible and appropriate.
Register of property factors	The public register prepared and maintained by the Scottish Ministers (or other delegated authority) under section 1 of 2011 Act.

	http://sedsh119.sedsh.gov.uk/propertyfactorregister/
Registered	The property factor is currently entered on the register of property factors with a property factor registered number allocated by Scottish Ministers.
Relevant person	A responsible person (see below) or other individual directly concerned with the control or governance of the property factor listed on the register of property factors in accordance with section 3(2)(d) and 3(8) of the 2011 Act.
Responsible person	The individual, either sole trading as a property factor, or holding the most senior position in the management structure of the partnership, company or body directly concerned with the control or governance of the property factor, listed on the register of property factors in accordance with section 3(2)(c) and 3(9)(a) of the 2011 Act.
Scottish Ministers	As defined in section 44(2) of the Scotland Act 1998. http://www.legislation.gov.uk/ukpga/1998/46/section/44
Scottish Housing Regulator	Regulates the interests of people who use the services of a social landlord such as a local authority or a housing association.
<u>Self Factoring</u>	<u>Add definition</u>
Sink/ <u>Building</u> reserve funds	A fund used to gather monies from homeowners to pay for major repairs. The arrangements are normally written into the title deeds to the property.
Substantial change	Any change to the written statement of services which is necessary as a result of substantial, amended or additional factoring arrangements, changes to the property factor code of conduct or other relevant legislative requirements (including the finding of a First-tier Tribunal or Upper Tribunal).

Tenement Management Scheme	<p>The tenement management scheme under the Tenements (Scotland) Act 2004 sets out procedures flat owners may need to follow when making 'scheme decisions' about maintaining and repairing common parts, depending on the title deeds.</p> <p>http://www.legislation.gov.uk/asp/2004/11/schedule/1</p>
Tenements (Scotland) Act 2004 (2004 Act)	<p>An Act of the Scottish Parliament which makes provision about the boundaries and pertinents of properties comprised in tenements (as broadly defined in the 2004 Act) and for the regulation of the rights and duties of the owners of properties comprised in tenements.</p> <p>http://www.legislation.gov.uk/asp/2004/11/contents</p>
Title Conditions (Scotland) Act 2003	<p>An Act of the Scottish Parliament which makes further provision about real burdens, servitudes and certain other obligations affecting land; to amend the law relating to the ranking of standard securities; and for connected purposes</p> <p>http://www.legislation.gov.uk/asp/2003/9/contents</p>
Title deeds	<p>Title deeds are proof of ownership of land and buildings and contain various rules that apply to the building.</p>
Tribunals (Scotland) Act 2014	<p>An Act of the Scottish Parliament to establish the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland; and for connected purposes.</p> <p>http://www.legislation.gov.uk/asp/2014/10/introduction</p>
Unreasonable or excessive	<p>A course of action, consideration or decision where it is reasonable to take the view that the action, consideration or decision is unfair, disproportionate or generally deemed to be beyond what is considered as typical or normal.</p>

Unregistered	Not entered on the register of property factors.
Upper Tribunal for Scotland	A specialist dispute resolution body (independent from the Scottish Government) which considers appeals against decisions (on a point of law) taken by the First-tier Tribunal.
Written statement of service	A document which sets out the service delivery standards of the business arrangement in place between a property factor and a homeowner.

