



## Consultation on on a draft revised Code of Conduct for registered Property Factors

### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual  
 Organisation

Full name or organisation's name

Scottish Property Federation

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name  
 Publish response only (without name)  
 Do not publish response

#### Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes  
 No



## Consultation Answer Form

### A Consultation on a draft revised code of conduct for property factors

#### Part 1 – The impact of the original code of conduct for property factors

**Question 1:** Do you think the original code of conduct for property factors has led to improvements in the quality of factoring services provided to homeowners by property factors? Choose from the following options:

- (a) The Code has made significant improvements
- (b) The Code has made some or slight improvements
- (c) The Code has made no improvements
- (d) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the original Code where applicable.

The Scottish Property Federation (SPF) is a voice for the property industry in Scotland. We include among our members: property investors including major institutional funds, developers, landlords of commercial and residential property, and professional property consultants and advisers.

We are keen therefore to support the Scottish Government's efforts to support both homeowners and the industry to enhance the perception of Property Factors in the public eye.

The Property factors (Scotland) Act 2011 represented a significant step forward for the factoring profession in Scotland. The SPF therefore continues to support the intent and purpose of the Code although our members still have concerns about clarity surrounding sanctions and rights thereof for factors and their companies.

The draft revised Code represents a real opportunity for both the profession, wider stakeholders and the government to raise professional and industry perceptions, standards in the interests of homeowners, potential homeowners and indeed some investors and those who rent residential

properties from them.

**Part 2 – Draft revised code of conduct for property factors – Introductory text, code themes and requirements**

**Question 2:** Does the Code’s introductory text clearly explain its purpose, who it applies to and the broader regulatory background? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below?

No Comment

There are currently seven themes featured in the Code. These are Written statement of services, Communication and consultation, Financial obligations, Debt recovery, Insurance, Carrying out repairs and maintenance and Complaints resolution.

**Question 3:** As published as part of this consultation, would you

- (a) Keep the themes of the revised Code (as drafted)?
- (b) Change the wording of the themes in the revised Code (as drafted)?
- (c) Propose any additional themes to the revised Code?
- (d) Remove any themes in the revised Code (as drafted)?
- (e) Or tick here if you are unsure

Please tick more than one box (if applicable) and explain your answer below making reference to any relevant theme(s) (where applicable).

No Comment

Section 1 of the draft revised Code proposes the requirements for the provision of a written statement of service to homeowners and the information which should be included in the statement of service. Different requirements may apply depending on whether the land is owned by a group of homeowners or whether the land is owned by a land maintenance company or a party other than the group of homeowners

**Question 4a:** As published as part of this consultation, would you

(a) Keep the requirements of Section 1 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 1 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Section 1 provides a good basis for the over-arching considerations relevant to the Code. However, it could be that a Factor finds it difficult to comply with decision of the First Tier Tribunal should there be an appeal in action and it may be that some further guidance will be needed to clarify correct procedure in any such situation.

The Code sets the standards on what information should be included in the written statement a property factor must provide to homeowners however does not specifically prescribe a standard format and/or structure on how that written statement of service should appear?

**Question 4b:** Should the format and structure of the written statement of service be standardised as part of any proposed changes to the Code? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below?

The written statement list is considerable and an indication of the level of detail and service information required. This is of course done by good Factoring companies already.

Section 2 of the draft revised code proposes the minimum standards/requirements for how a property factor should communicate and consult with homeowners.

**Question 5:** As published as part of this consultation, would you

(a) Keep the requirements of Section 2 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 2 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

Our members have suggested a minimum required level of information provided to purchasers involving lender, surveyor and solicitor, ensuring every future homeowner is fully aware of their communal property maintenance obligations. Some members have suggested that a more comprehensive Home Report could address this.

Section 3 of the draft revised code proposes the minimum standards/requirements for how a property factor should undertake any financial obligations it has with homeowners.

**Question 6:** As published as part of this consultation, would you

- (a) Keep the requirements of Section 3 of the revised Code (as drafted)
- (b) Change any requirement(s) of Section 3 of the revised Code?
- (c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

We note the emphasis upon individual homeowner client accounts but there is some uncertainty over developer accounts. Given that with new developments new homeowners will come into Factoring accounts at different purchases and stages and that the developer will be involved until their interest is effectively sold off.

Some members have expressed surprise that unlike the governance surrounding the Letting Agents Register there is no requirement for the annual audit of Factors' funds.

Section 4 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is recovering debt from homeowners and/or informing other relevant homeowners of such action.

**Question 7:** As published as part of this consultation, would you

- (a) Keep the requirements of Section 4 of the revised Code (as drafted)
- (b) Change any requirement(s) of Section 4 of the revised Code?
- (c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

It is important that is appreciated that opinions on a work or service will vary between homeowners who will be reluctant to pay for something that is not of direct interest to them, but may be of key concern to other homeowners on a particular development. This is controversial and difficult for factors to reconcile and procedures must allow for the probability of intra-owner dispute.

The Code is clear, but this will nonetheless remain a sticking point for many residents who would be unwilling to pay for services that someone else who benefits refuses to pay for – particularly since they could have little choice but to pay in such circumstances. The reality is that disputes with Factors are often disputes between residents unwilling to pay and inevitably some homeowners end up with justifiable grievances about paying for others.

Section 5 of the draft 'revised' code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is required to hold insurance and/or arrange insurance on behalf of homeowners.

**Question 8:** As published as part of this consultation, would you

(a) Keep the requirements of Section 5 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 5 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

This will cover flatted developments more than other forms of residence, but we support the emphasis upon timely action, transparency and clarity of service and arrangement that is required by the Code. As part of the wider emphasis of the Code the government may wish to consider if homeowners may be enabled, with due procedure and representative validity, to request Factors to re-tender insurance arrangements should premiums be deemed too high (or indeed if the cover is deemed insufficient).

Section 6 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken.

**Question 9:** As published as part of this consultation, would you

(a) Keep the requirements of Section 6 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 6 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

The SPF supports the Code's emphasis upon transparency regarding arrangements with contractors/maintenance services. It is our understanding that many of these requirements are already expected by either due legal or professional process.

Section 7 of the draft revised code proposes the minimum standards/requirements for a property factor to follow in circumstances where it is handling and/or resolving complaints from homeowners.

**Question 10a:** As published as part of this consultation, would you

(a) Keep the requirements of Section 7 of the revised Code (as drafted)

(b) Change any requirement(s) of Section 7 of the revised Code?

(c) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code (where applicable).

As stated above it could be that a Factor finds it difficult to comply with decision of the First Tier Tribunal should there be an appeal in action and it may be that some further guidance will be needed to clarify correct procedure in any such situation.

It is recognised that property factors vary in organisation size and many have different internal structures, hierarchies and operating procedures. The draft revised Code currently requires a property factor to provide homeowners with a clear written complaints resolution procedure however does not specifically prescribe a standardised approach to complaint handling which should be followed by all property factors.

**Question 10b:** Should the procedures for complaints handling be standardised as part of any proposed changes to the Code? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below?

No Comment

**Question 11:** Do you have any other comments on the draft revised code and its appendices i.e. glossary (as published as part of this consultation)?

Our members are of the view that legislation is required to ensure the country's housing stock, but particularly communal property, is maintained in a satisfactory condition now and in the future.

Some members have suggested regular professional communal property inspections linked to planned maintenance, with a duty on every homeowner to contribute to a communal ring-fenced sinking fund. They also suggested that robust sanctions should be introduced against non-compliant homeowners. This could ensure that if they do not contribute to the regime, there is adequate remedy to ensure that their non-compliance does not inhibit communal maintenance and repair.

### Part 3 – Proposed modification order

The Scottish Government is exploring whether to make an order which would amend the definition of 'property factor' and the duty to comply with the Code under the Property Factors (Scotland) Act 2011.

This purpose of this amendment would be to make clear that the First-tier tribunal for Scotland Housing and Property Chamber can determine applications for a failure to comply with the Code or the property factor's duties which occurred when a property factor was previously registered on the property factor register. The application must however have been initially lodged prior to the date the property factor was removed from the register. The amendment would also make clear that awards and property

factor enforcement orders could be made against a property factor despite the property factor subsequently ceasing to be on the register. Further background to this proposal is available at page 40 of this consultation paper.

**Question 12:** For the limited purposes described above, should a de-registered property factor, be required to comply with the Code, including property factor enforcement orders, despite removal from the register of property factors? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below?

As stated above there may be circumstances whereby a Factor finds it difficult to comply with decision of the First Tier Tribunal should there be an appeal in action and it may be that some further guidance will be needed to clarify correct procedure in any such situation.

The Scottish Ministers are considering amending the Act to make provision for the President of the First-tier Tribunal for Scotland Housing and Property Chamber to reject a homeowner application if this is not initially lodged within three years of the alleged failure on the part of a property factor. This would not include continuing failures which began before the three year period. Further background to this proposal is available at page 42 of this consultation paper.

**Question 13:** Should a three time limit be introduced for homeowner applications to be initially lodged with the First-tier Tribunal for Scotland Housing and Property Chamber? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below making reference to any alternative suggested timeframe (if applicable)?

No Comment

#### **Part 4: Impact assessment**

To assist us in determining the impact of the proposals to revise the Code and to amend the Act (as published as part of this consultation), we are interested to find out if these proposals would lead to increased costs and/or impact on resources for you or your business (if applicable)? Further background is available at page 43 of this consultation paper.

**Question 14a:** Are there any proposals in this consultation which have any financial, regulatory or resource implications for you and/or your business (if applicable)? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below making reference to the relevant requirement(s) of the draft revised Code or the Act (where applicable)?

Since its inception in 2012 the Homeowners Housing Panel and its committees have received a number unwarranted and sometimes incoherent applications [complaints] from residential homeowners. This creates a degree of wasted resource and finance. Some of our members have suggested that an application fee [potentially refundable], like that now operating in employment tribunals, would be appropriate to avoid similar situations with the First Tier Tribunal.

We would welcome your comments on whether the proposals to revise the Code and to amend the Act (as published as part of this consultation) may impact or have implications on 'Equality Groups' i.e. particular groups of people in respect of their age, disability, gender reassignment, race, religion, sex or sexual orientation, being pregnant or on maternity leave and children's rights and wellbeing? Further background is available at page 44 of this consultation paper.

**Question 14b:** Are there any proposals in this consultation which impact or have implications on 'equality groups'? Choose from the following options:

Yes  No  Unsure

Please tick only one box and explain your answer below?

No Comment

## Part 5 – Impact of the Property Factors (Scotland) Act 2011

We are also seeking views on the impact of the requirements of the wider Property Factors (Scotland) Act 2011 on the regulation of property factors. Further information on the provisions of the Act is available at pages 45-48 of this consultation paper.

**Question 15:** In addition to the Code, do you think the wider requirements of the Property Factors (Scotland) Act 2011 (2011 Act) has led to improvements in the regulation of property factors? Choose from the following options:

- (a) The 2011 Act has made significant improvements
- (b) The 2011 Act has made some or slight improvements
- (c) The 2011 Act has made no improvements
- (d) Or tick here if you are unsure

Please tick only one box and explain your answer below making reference to any relevant requirement(s) of the 2011 Act where applicable including where the Act could be strengthened?

No Comment