

PE2094/A: Review The Property Factors (Scotland) Act 2011 and expand the remit of First-tier Tribunal to include commercial properties

Scottish Government written submission, 4 June 2024

I am writing to you in response to the Committee seeking the Scottish Government's views on the action called for in public petition PE2094 by Alban Bartley-Jones:

“Calling on the Scottish Parliament to urge the Scottish Government to review the legislation on property factors and take steps to ensure commercial properties are also protected; and expand the remit of the First-tier Tribunal for Scotland (Housing and Property Chamber) to allow it to consider cases affecting wholly commercial properties.”

Firstly, please accept my sincere apologies for the delay in providing a response. This is a complicated matter that required a great deal of consideration.

It is important to note that the intention of the Property Factors (Scotland) Act 2011 (“the 2011 Act”) is clear. It establishes a register of property factors, requires property factors to be registered and makes provision for the resolution of disputes between homeowners and their property factors.

It also sets out what is meant by a property factor with the definition making clear that the services provided by a property factor must relate to management of common parts of land used for residential purposes.

The 2011 Act is therefore intended to provide a regulatory framework for the relationship between property factors and their homeowners customers but restricting this to situations where there is residential use and not solely commercial use.

However, the 2011 Act does provide protections for commercial property owners also where there is common ownership of land used to any extent for residential purposes. This addresses the common occurrence in Scotland of commercial property occupying parts of tenement buildings. In such situations, it is likely that title deeds will stipulate the basis on which shop owners and commercial premises need to contribute towards mutual or common repairs and maintenance in such shared property and land. In these situations, where there is any residential use of property occupied by both commercial and residential owners, the commercial property owner is seen as a homeowner. That allows them to make use of the dispute resolution service provided through the First-tier Tribunal to resolve disputes with their property factor.

There is therefore no loophole in the legislation, as the petitioner suggests, as the 2011 Act was not intended to apply to property factors solely concerned with providing a service to commercial property owners. Those with a commercial property factor may be able to take action, depending on the circumstances, against their commercial property factor via the courts but they should seek their own independent legal advice to determine the action available to them in their specific situation.

The Scottish Government currently has no plans to amend the Property Factors (Scotland) Act 2011 to encompass relationships between property factors and their commercial property owners where there is no residential element within the land and property involved.

Yours sincerely,

PAUL MCLENNAN
Minister for Housing