

Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2094](#): Review the Property Factors (Scotland) Act 2011 and expand the remit of the First-tier Tribunal to include commercial properties, lodged by Alban Bartley-Jones

The petition calls 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.

Property factors

Property factors manage the repair and maintenance of common property and communal areas in residential flats and housing estates, but also in commercial property, e.g. office blocks, retail units, warehouses and industrial sites. They are sometimes also known as “property managers”.

The [SPICe Briefing “Property Factors - Frequently Asked Questions”](#) (‘SPICe Briefing’) includes responses to certain frequently asked questions in this area (focused on the residential sector).

Property Factors (Scotland) Act 2011

The Property Factors (Scotland) Act 2011 (‘the 2011 Act’) has its origins in a [Member’s Bill proposed by the Labour MSP, Patricia Ferguson, in 2007, which was introduced in Parliament on 1 June 2010.](#)

Prior to the legislation, there was no overarching regulation of the residential property factor sector. According to [the Policy Memorandum](#) for the Bill this absence was causing “significant consumer detriment”. The main aim behind the Bill was to change this and to:

“create a statutory framework which would protect Scottish homeowners who contract with property factors.”

The 2011 Act includes rules which apply to “property factors”, a term which is defined in section 2(1) of the 2011 Act to cover bodies which:

- manage the common parts of land used to any extent for residential purposes; or which

- manage or maintain land which is available for use by the owners of adjoining or neighbouring residential properties and where the owners are bound by their title deeds to pay for managing or maintaining the land.

The legislation therefore has limited relevance in the commercial property sector as, given the consumer focus, purely commercial properties are not covered.

However, in some circumstances commercial property factors can be covered by the rules. This is because the main definition of “property factor” in section 2(1) of the 2011 Act refers to the management of common property which is used “to any extent” for residential purposes. Commercial properties may therefore still fall under the rules if there is also a residential element. The most common example of this is retail units on the ground floor of a block of flats. Depending on the circumstances, these may also be covered by the 2011 Act. For an example see [the First-tier Tribunal's decision of 24 December 2018](#).¹ Purely commercial properties would not be covered, however.

The main elements of the 2011 Act are as follows:

- compulsory registration for property factors operating in Scotland
- a [Code of Conduct](#) with minimum standards which property factors have to follow, including the requirement to provide homeowners with a “written statement of services” (i.e. a summary of a factor's service delivery standards)
- a dispute resolution system - homeowners can bring cases to [the First-tier Tribunal for Scotland \(Housing and Property Chamber\)](#) if their property factor breaches the Code of Conduct. There is no fee for applying to the First-tier Tribunal and legal representation is not necessary. Cases can therefore be brought without legal support.

The First-tier Tribunal has a wide jurisdiction. It can consider breaches of the Code of Conduct as well as the property factor's duties under the 2011 Act. This can also involve certain issues linked to contract law and the title deeds.

Consequently, in many cases other courts will not have a role in considering disputes between homeowners and property factors about the service offered by factors.

There are, however, certain exceptions to this as the First-tier Tribunal does not have jurisdiction over all disputes related to factoring (for details see [the SPICe briefing](#)).

¹ Case Reference Number: FTS/HPC/PF/18/0157

Title deeds, contracts and other legislation

The title deeds to properties (the legal documents transferring ownership) often contain rules on the maintenance of buildings and the work of property factors. They will often:

1. indicate which parts of the property are owned in common; and
2. contain "[title conditions](#)" (known as "real burdens") on the management of common property, including obligations to pay towards maintenance, and rules on how property factors should be appointed or dismissed.

Title deeds have to be read in conjunction with rules in legislation, in particular:

1. the Tenements (Scotland) Act 2004 ('the 2004 Act') – this sets up a default scheme for managing common property in residential flats known as the Tenement Management Scheme (TMS); and
2. the Title Conditions (Scotland) Act 2003 ('the 2003 Act') – this contains rules on title conditions for land and property more generally, including commercial property.

In addition to any obligations in the title deeds, there will often be some sort of agreement or contract between a property factor and the homeowners or businesses which they provide a service to.

In residential factoring, the agreement will often simply be defined in the written statement of services, which will include the property factor's terms and conditions of service.

Commercial property factors

The 2011 Act had a consumer focus and was aimed at dealing with the problems faced by homeowners and not businesses in relation to property factors.

As indicated, unless there is also a residential element, commercial properties are not covered by the rules in the 2011 Act.

[The Property Factors Code of Conduct](#) does not therefore normally apply. Disputes between businesses and commercial property factors are dealt with in the normal courts system and not at [the First-tier Tribunal for Scotland \(Housing and Property Chamber\)](#) as is the case where a homeowner wants to bring a case under the rules in the 2011 Act against a property factor.

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content
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