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## **Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan**

# **Report on the Property Factors (Code of Conduct) (Scotland) Order 2021**



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# Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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Scottish Conservative  
and Unionist Party



**Andy Wightman**  
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# Introduction

1. [The Property Factors \(Code of Conduct\) \(Scotland\) Order 2021 \(SSI/draft\)](#) was laid before the Parliament 19 January 2021 and is subject to the affirmative procedure. Section 14 of the Property Factors (Scotland) Act 2011 (the Act) requires Scottish Ministers from time to time to prepare a draft code of conduct setting minimum standards of practice for registered property factors. The existing Code of Conduct for Property Factors was published in October 2012 and, the purpose of this Order is to bring a revised Code of Conduct for Property Factors in to force by 16 August 2021.
2. The [Policy note](#) states the Code provides a statutory framework that will encourage transparency and set standards for how a property factor should deliver their services. If a home owner believes that their property factor has not complied with the Code, once they have given the factor a reasonable opportunity to resolve the issue, they can apply to the First Tier Tribunal for Scotland for a determination of whether the property factor has failed to comply with the Act.
3. The Tribunal may make a Property Factor Enforcement Order if they find that the property factor is in breach of the Code. In addition, the Scottish Ministers will consider compliance with the Code in deciding whether or not to accept an application for entry in the Register of Property Factors and in any case for removal of a property factor from the Register.

## Delegated Powers and Law Reform Committee Consideration

4. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [26 January 2021](#) and [determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.](#)

## Local Government and Communities Consideration

5. At its meeting on 10 February 2021 the Local Government and Communities Committee took evidence on the instrument from Kevin Stewart, Minister for Local Government, Housing and Planning.
6. In his opening statement, the Minister said the Code would set minimum standards of practice for registered property factors and would provide protections for home owners who use their services. He also said the Code was one of three key elements in the property factor regulatory regime alongside the Register and the Tribunal.
7. He said the Scottish Government's revisions will bring the Code up to date and strengthen it in several areas:
  - The changes will help home owners to understand what to expect from a property factor and whether the property factor has met their obligations.

- The changes will also clarify situations of where, when and how home owners should expect to be provided with a copy of the written statement of services and other documentation.
  - Home owners will have a choice in who they appoint as property factors and that they can change provider should they wish. Property factors must provide clear information to home owners on how they can end their factoring provider. Property factors must also co-operate with another provider when a transition takes place.
  - The revisions will improve transparency. For example, factors must declare financial interests and issue an annual insurance statement.
  - The changes will improve consistency in how the code is applied by including standards of practice and a glossary of terms.
8. The Minister said he hoped the revisions would also provide an opportunity for property factors to review and improve on their own current processes, procedures and documents. The Minister said property factors had generally reacted positively to the new draft indicating it might lead to a reduction in the number of complaints they receive in future.
9. The Minister was asked if the revisions addressed any concerns from home owners who feel they have been let down by the current Code of Conduct. The Minister said he hoped the changes would make things much easier for home owners. He said that work was still required to address the issue of communal repairs in a shared estate and that the Scottish Government would continue to work with the Law Commission of Scotland on this issue. He said he was grateful to the Scottish Parliamentary Working Group on Tenement Maintenance for their work in this area.
10. The Minister added that Police Scotland are involved with property factors who are not complying and that factors and that some providers had already been removed from the register.
11. The Minister said that he expects all 390 registered properties factors to comply with the changes by 16 August 2021 and that the Scottish Government will monitor progress. He said the changes should be simple to implement for all parties and are not overly onerous.
12. The Minister was asked if the changes to the Code would encourage more homeowners of Edinburgh tenements to employ factors, given the relatively low use of factors in the city. The Minister said he hoped home owners would be encouraged to use factors and that the Code would clearly set out what services a factor would provide. He said the revisions to the Code would help home owners consider the benefits of a factoring service.
13. The Minister was asked if the Code would assist home owners who do not want a property factor but discover, when buying a new home, that their property is subject to factoring services. He said the Code did not directly address that issue but that it would make changing factors easier should residents wish to change a factor that had, for example, been imposed by the developer.
14. After questions were concluded the Minister moved the motion [S5M-23919](#).

That the Local Government and Communities Committee recommends that the Property Factors (Code of Conduct) (Scotland) Order 2021 [draft] be approved.

15. The motion was agreed to without further debate.

## **Conclusion**

16. The Local Government and Communities Committee recommends that the Property Factors (Code of Conduct) (Scotland) Order 2021 [draft] be approved.



