

Code of Conduct for registered property factors



The following presentation provides an update on the consultation process regarding the development of a revised code of conduct for registered property factors.

This presentation, in parts, summarises some of the findings of the public consultation. These findings are presented for reporting purposes only and should not necessarily be seen to be representative of the views of the Scottish Government or those who participated in the consultation exercise.

Statutory Process – Part 1

- Section 14 of the PFSA 2011
- Prepare a draft Code from 'time to time' ✓
- Publish a draft Code ✓
- Consult with appropriate bodies and the general public ✓



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As you may be aware the Code is set in secondary legislation and there is a process under section 14 of the Property Factors (Scotland) Act 2011 which must be adhered to before any revised Code can be considered for approval by the Parliament.

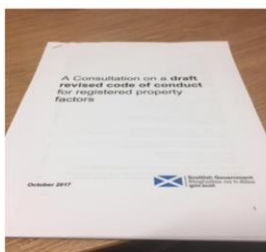
The initial steps to be taken by Scottish Ministers are to:

prepare a draft Code from time to time,

to publish the draft Code and

to consult with appropriate bodies and the general public on the draft Code.

Consultation



Consulted Oct 2017 – Jan 2018



102 responses received

73 groups/organisation 29 Individual

30% of responses from RSL/Subsidiary



Results published on 29 June



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So a formal consultation took place.

102 responses to the formal consultation were received.

There was a split in the responder type - 73 organisations and 29 individuals

Around 30% of responses came from Registered Social Landlords or an associated subsidiary company. Thanks to everyone who responded.

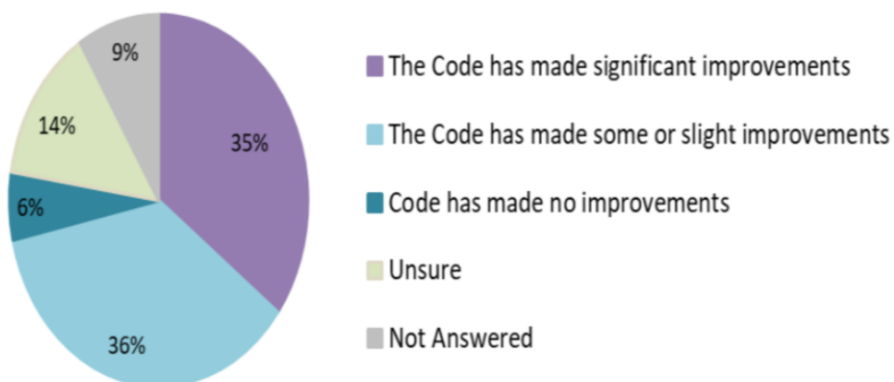
The results of the consultation on a draft revised Code were published on the Citizen Space website at the end of June.

We also published the findings of what we heard from the stakeholder feedback events run alongside the formal consultation. Over 100 interests participated at these events so thanks again for your input if you attended.

Consultation Findings

So what did the consultation tell us?

Impact of the current Code?



The majority of respondents thought that the original Code had either made significant improvements or some or slight improvements.

6% felt there has been no improvement while 14% were unsure.

Impact of the current Code?

Pro's

- Defined the minimum standards required
- Clarified the responsibilities of a factor
- Increased transparency and accountability
- Made owners more aware of their rights

Con's

- Code is sometimes ignored
- Poor Service is still prevalent
- Not enforced robustly
- Created additional costs and workload for factors

Those who identified improvements most frequently suggested that the original Code has defined the minimum standards of service required of property factors or provided a legal and/or professional framework within which property factors now work.

Other positive impacts identified included:

- Clarifying the responsibilities of a factor and encouraging factors to review and improve the services they provide.
- Requiring factors to be registered and helping to eliminate rogue operators.
- Increasing transparency and accountability.
- Making homeowners more aware of their rights

Among those respondents identifying problems with the Code the most frequently made suggestion was that more robust enforcement is needed to deal with factors who do not comply. Related points included that:

- The Code is sometimes ignored.
- Some factors continue to provide a poor service.
- Factors found to be in breach of the Code on multiple occasions should be removed from the register or fined a more significant amount.

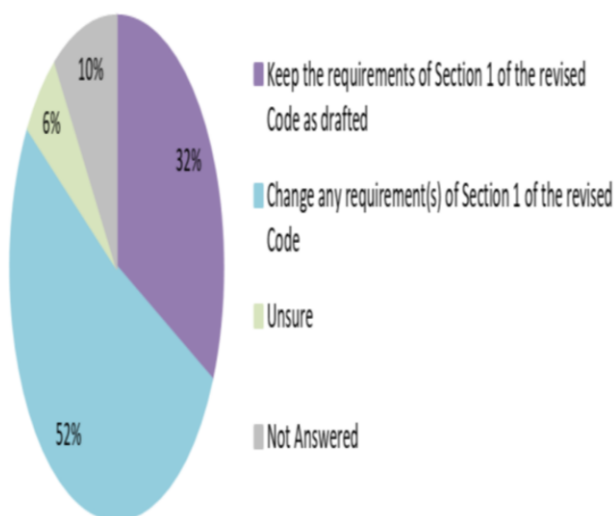
Factors may omit or misrepresent the requirement of some sections of the Code in their WSS.

- Some factoring customers are not aware of the Code or have insufficient understanding of the role and legal status of property factors.

Some homeowners may still be unclear what they can expect and may find it difficult to resolve disputes.

- For some organisations, compliance with the Code has had an adverse impact on costs and workload and so has reduced the resources available to develop the service being provided.

Written Statement of Services



FINDING

Majority of respondents disagreed with proposed requirement to issue annual WSS



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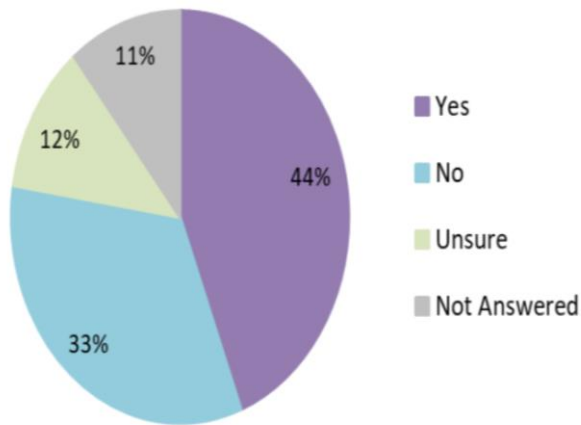
Just over half of the number of respondents suggested that the proposed requirements of the WSS should be amended further.

A majority of those commenting did not agree with the proposed requirement to provide a copy of the WSS to owners on an annual basis.

It was argued that to do so would be time consuming or expensive and that costs would ultimately be met by property owners via management fees.

Instead it was proposed a WSS should be re-issued only when there are relevant changes or when the resident requests a copy

Standardisation of Written Statements of Services?



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As illustrated, 44% of respondents thought that the format and structure of the WSS should be standardised, while 33% thought it should not. A further 12% were unsure.

Therefore there was no clear position on this.

Standardisation of Written Statements of Services?

For

- Ensure consistency of approach
- Simplify matters for owners
- Helpful for smaller factors or new factors joining the industry

Against

- Would have been useful when original code developed
- Would create significant costs and additional work
- One size does not fit all
- Factor should be allowed to tailor their own documents



The points made most frequently by those favouring standardisation included that this would:

- Ensure consistency of approach and that all factors provide the required information without room for interpretation. It was suggested that there is too much variation between the WSS agreements that are in current use.
- Simplify matters for homeowners and enable them to more easily compare the services different factors provide.
- Potentially be helpful for some factors, particularly those operating at small scale or new to the industry.

However, it was also suggested that, while it would be useful to have a template available, its use should not be mandatory or that it should be possible to adapt any template to suit different circumstances.

It was also argued that while a standard format would have been useful when the original Code was introduced, factors have already developed their own documents, and changing to a new format now would involve a significant amount of additional work and cost.

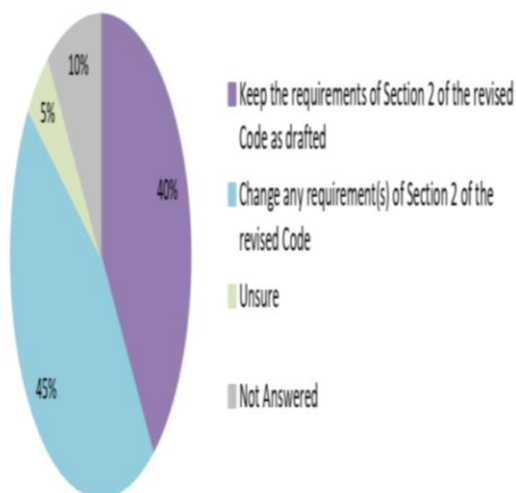
Further arguments made against standardisation included that:

- One size does not fit all as both properties and factors differ widely.
- Factors operate in a competitive market and should be allowed to produce their own documents and to tailor services to the needs to their clients.

Alternative suggestions included that there could be a standard structure or a requirement to provide standard common information, but not to use a template or common format.

Communication and Consultation

FINDINGS



Range of contrasting views

Most of the feedback addressed very specific issues or detail of the proposed requirements

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

45% of respondents thought that the proposed requirements of Section 2 of the revised Code should be changed while 40% thought they should be kept as drafted. 5% were unsure

The feedback received generally addressed very specific issues of wording or the detail of the requirements.

There was various opinions on the proposed requirements.

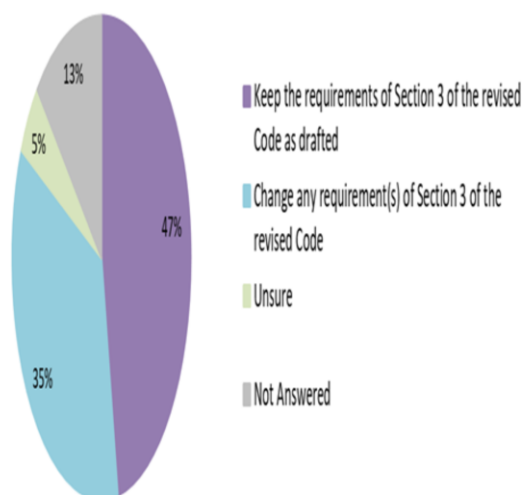
Some suggested that the proposed requirements were relevant, fair, satisfactory, clear and effective, and easy to understand.

On the other hand, others thought that the revised draft seemed unnecessarily long or burdensome, or that some additional requirements could cause a factor to be held in breach of the Code over very minor issues.

Some suggested that the information provided to owners would be increased significantly if the proposed requirements were approved.

Financial Obligations

FINDINGS



Proposed requirements strengthen the current ones in place

Further clarity required on terminology used.

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

While 47% of respondents thought that the proposed requirements of Section 3 of the revised Code should be kept as drafted
35% thought they should be amended.

Respondents who thought that the proposed requirements of Section 3 should be kept as drafted sometimes suggested this section is clear, strengthens the previous requirements and protects homeowners' interests.

There were calls for greater clarity as to what is meant by a 'detailed financial statement' and several respondents raised issues concerning the potential suitability of factoring invoices.

On the requirement to provide an outgoing homeowner with 'all financial information that relates to their account' prior to the date of the change of ownership, some respondents felt this would not be practical or possible.

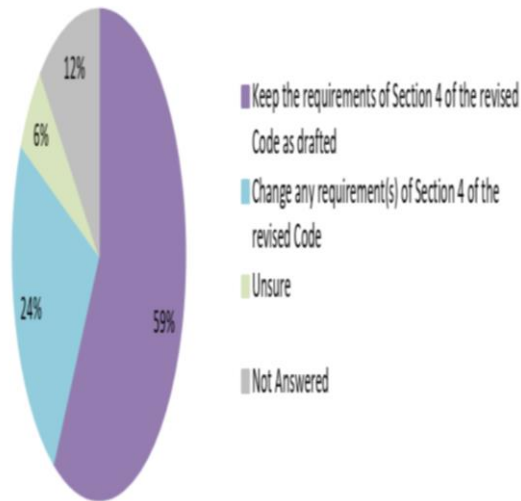
Other General comments included that:

- The requirements should be standardised in line with the Letting Agent Regulations.

- There should be specific reference to the regulatory requirements for factors in relation to the handling of client funds, including the use of client accounts and related requirements in terms of Anti-Money Laundering legislation and guidance.

Debt Recovery

FINDINGS



Strengthens current requirements

Concerns that requirements still favour owners



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Section 4 of the draft revised Code proposes the minimum standards and 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.

A majority of respondents, 59%, thought that the proposed requirements of Section 4 of the revised Code should be kept as drafted, while 24% thought they should be changed.

Respondents who thought that Section 4 should be kept as drafted often made few additional comments, although overall it was suggested that Section 4 is fair and strengthens the current requirements.

There were however some concerns that certain of the provisions could result in higher charges to other homeowners or that some homeowners might seek to delay payment of the whole balance of their account, rather just than the disputed portion, if their case has gone to the First-tier Tribunal for Scotland (Housing and Property Chamber) (FTT).

It was argued that it should be made clear that only disputed debts are exempt from payment during the FTT process.

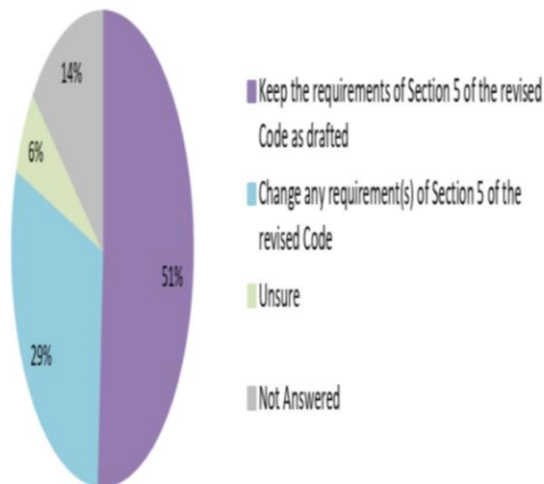
Other General points raised included that the Code does not need to go into further

detail as relevant information will be contained in the Debt Recovery Procedure of each factor, and also that debt recovery procedures may be specified in a property's title deeds. It was also argued that procedures must allow for the probability of dispute between owners, since some may be reluctant to pay for a service that is not of direct interest to them, while others will understandably resent having to pay more as a consequence.

Regulatory requirements relating to forbearance for homeowners in arrears with factoring fees and charges were also highlighted, including suggested changes to the Debt Arrangement Scheme. It was suggested that requirements for factors should reflect the wider prevailing debt recovery/ forbearance requirements applicable through this or other appropriate statutory schemes.

On that latter point it was argued that the process appears to favour homeowners who do not pay rather than those who do, and that problems concerning empty properties and owners who cannot be traced may not be resolved.

Insurance



FINDINGS

Strengthens current requirements

Proposal to notify owners annually of frequency of revaluations was suggested by some to be unnecessary



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

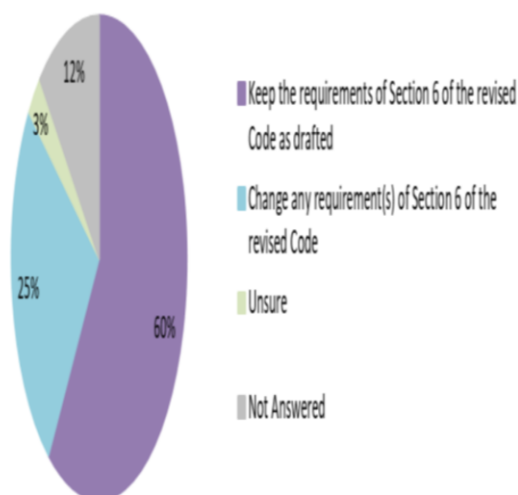
A small majority of respondents, 51%, thought that the proposed requirements of Section 5 of the revised Code should be kept as drafted, while 29% thought they should be changed.

Positive aspects identified included that this section is clear and concise, fair and justified, and strengthens the previous requirements. It was also seen as being in line with good practice and as reflecting the standards required by professional bodies.

In general other comments tended to focus on specific details. For example, the requirement to 'notify homeowners annually in writing of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance' was suggested to be unnecessary.

Carrying out repairs and maintenance

FINDINGS



Proposed requirements would help ensure owners receive sufficient information

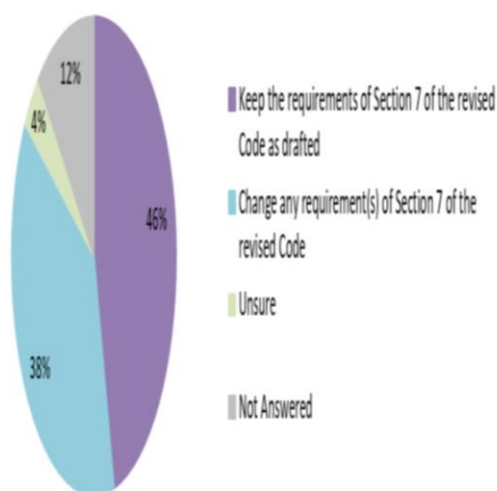
Section 6 of the draft revised Code proposes the minimum standards and requirements for a property factor to follow in circumstances where it is arranging for repairs and maintenance to be undertaken.

A majority of respondents, 60%, thought that the proposed requirements of Section 6 of the revised Code should be kept as drafted, while 25% thought they should be changed.

In general, most comments indicated that proposed requirements section covered the important points and would help ensure homeowners receive sufficient information to hold their factor accountable.

Complaints Resolution

FINDINGS



Strengthens current requirements

Concerns that incoming factors may be expected to be answerable for the faults of outgoing factors



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

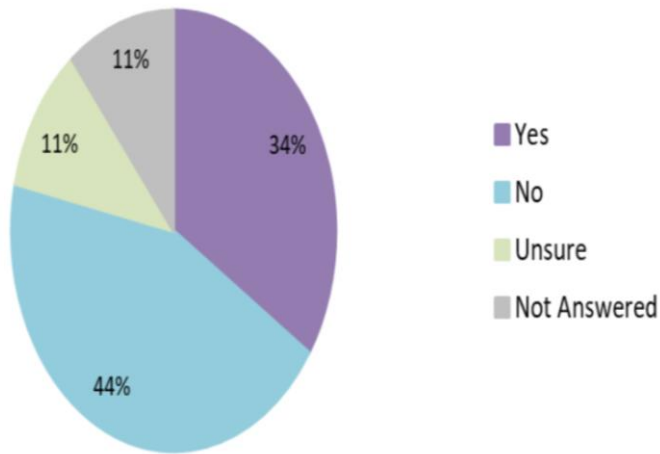
46% of respondents thought that the proposed requirements of Section 7 of the revised Code should be kept as drafted, while 38% thought they should be changed.

The wording concerning handling of complaints against contractors is stronger than in the existing Code, and that factors should be expected to be responsible for the performance of their contractors, including by initiating complaints if necessary.

It should be made clear that a homeowner must have exhausted the factor's complaints procedure before making an application to the FTT.

Some respondents interpreted the proposed requirements at 7.7 of the draft Code as being that an incoming factor would be answerable for the faults of an outgoing factors. We are considering the wording of this proposed requirement in light of this feedback.

Standardisation of Complaint Handling



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The consultation asked whether complaints handling procedures should be standardised.

44% of respondents thought that there should not be standardised procedures for handling complaints, while 34% thought there should.

11% were unsure.

Standardisation of Complaint Handling?

For

- Ensure consistency of approach
- Simplify matters for owners
- Would encourage factors to improve performance
- SPSO model should be considered

Against

- Would create significant costs and additional work
- One size does not fit all
- Factor should be allowed to tailor their own documents
- Further consultation required

Amongst respondents who thought that complaints handling should be standardised the reason cited most frequently was that it would bring consistency to the complaints process.

Other comments included that:

- It would be helpful to homeowners, would make it easier to complain, would force factors to get better at handling complaints, and would mean all owners reaching the FTT would have been through the same process.
- At present there are wide variations in procedure and smaller factors may not be aware of the features of a good procedure for complaints handling.
- The FTT has mentioned the variances in complaints handling procedures in its reports and a standardised procedure would resolve this issue.

Several respondents who thought there should be a standardised procedure suggested that the SPSO complaints procedure should be used as a model and it was noted that many RSLs and local authorities already use this procedure.

However, a number of respondents who did not advocate a standardised approach also referred to the SPSO complaints procedure, noting that many RSLs, some local authorities and Royal Institution of Chartered Surveyors (RICS) members already use

and would wish to keep this. It was suggested that within a large organisation, a separate standardised procedure for factored owners could create management difficulties and could interfere with efficient handling of complaints.

Other respondents who did not favour a standard procedure cited the need for flexibility to allow organisations to handle complaints in a way that is appropriate for them and to allow them to differentiate themselves from other factors through their complaints handling processes.

It was also argued that:

- The wide range of size and structure amongst factoring organisations means a one-size-fits-all-approach will not be appropriate. It was also suggested a standardised procedure would favour larger companies.
- Factors already have procedures in place and there would be confusion and cost implications if these procedures had to be revised.
It is important to recognise that small factors do not have the resources of larger firms and that using any standardised procedure should not become an excessive overhead for them.
- There should be a consultation on any proposed standardised procedure.
- While stopping short of a standardised procedure, it would be useful to provide a template or examples and guidance on good practice.

Statutory Process – Part 2

- Required to consider any views about the draft Code
- Required to consider whether to amend the draft Code
- Considering this carefully to get the detail right!
- ‘Balancing’ what is a Legal Document vs Easy to read and simple to use
- ‘Strengthening’ the code vs financial and resource implications



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So since the consultation ended and the results were published, we have been looking at what people have been telling us. The consultation prompted a range of contrasting views on what should be or should be included in any new Code. We expected this to happen but it has brought some challenges for us (as drafters)

The majority of responses tended to focus on the specific detail of the proposed requirements and where the draft Code could be amended further so there is a lot of detail within that which we are taking our time to carefully consider

We received feedback welcoming that the draft Code was more detailed however others felt that it was too long and complex. So as part of our considerations we will be looking to achieve the right balance for what is essentially a legal document but also a public facing document.

As part of our considerations we will be looking to achieve the right balance in terms of introducing and amending requirements to ‘strengthening’ the Code whilst being aware of any financial and resource implications placed on factors and potentially owners.

Revised Code – main focus of consideration

- What's in the Written Statement of Services (WSS) and when should this be issued?
- When and how a factor 'must' and 'may' make information available under the Code?
- The Code's requirements on holding client money vs wider banking regulations?
- Whether there should be further consideration of standardising the WSS and/or complaints handling procedures?

We won't be able today to go into everything that has come up as part of the consultation but based on the feedback we have received, the main focus of our considerations is emerging to be:

What should be in the WSS and how frequently this should be sent? The draft Code proposed that the WSS should be sent under a number of circumstances. There was contrasting views on this so we are considering the feedback received and the implications this may have on factors.

Where a factor 'must' or 'may' provide information to a owner if requested? Again some respondents thought the proposed requirements were too detailed and phrases used in the Code open to interpretation. The challenge we have is that anything that goes in the Code will be open to interpretation (we have that same issue with the current Code as it stands and essentially that what the FTT is for) but we are looking at this further.

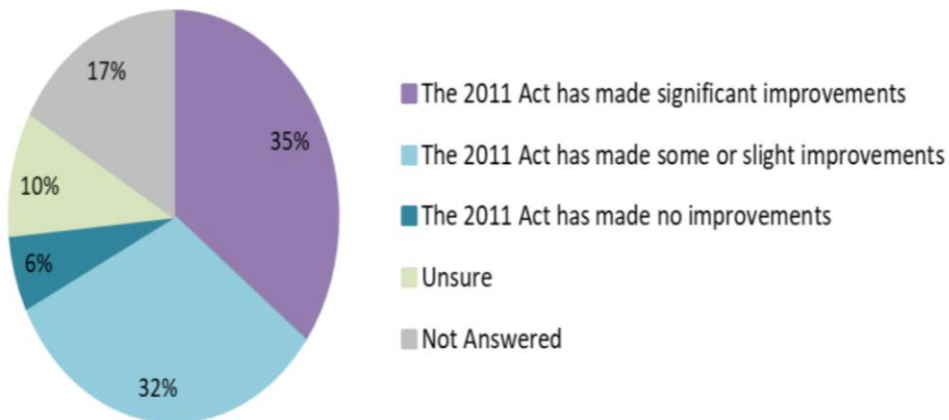
Concerns were raised about the Code's requirements for holding money in client accounts and how this complied with wider banking regulations. This was not changed in the draft Code but during the consultation we heard from a number of sources that the provisions of the current code are unworkable due to tighter regulation brought in after the code came into force. We know that such matters affects other registration regimes such as letting agents so we will closely following developments on that front with a view to ensuring that the Code is compliant with

other challenges that factors face.

Whether the WSS and/or complaints handling procedures should be standardised?

The results were not really conclusive on this and there was considered arguments for and against. As part of any changes to the Code, we will be looking at this further.

Impact of the Property Factors (Scotland) Act 2011



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The consultation also asked about the impact the PFSA 2011 had on the regulation of property factors. The majority of respondents thought the 2011 Act had made significant improvements (35%) or had made some or slight improvements (32%)

6% (all Individual respondents) felt there has been no improvement and 10% were unsure.

Respondents who identified improvements often pointed to the Act and Code as having set a framework and minimum standards for the factoring industry and having created greater clarity or transparency. It was also suggested that there has been improvement in delivery of services and better communication with homeowners, who are more aware of their rights.

Several respondents suggested improvements may have been greatest amongst private factors while RSLs and local authorities, which were already heavily regulated, may have seen less of an effect.

There was some positive feedback around the register, being able to quantify the number of properties factored and being able to search for who factored a particular property.

How the 2011 Act could be improved?

- Strengthening the entry requirements to the register
- Strengthening the Act to include specific enforcement powers

There was also feedback on how the Act could be improved, From a registration perspective we also picked up from some of the responses the following points

Strengthening the entry requirements – should the fit and proper person test be strengthened? and should applicants be required to demonstrate a level of training/qualifications/competence if they wished to enter the register.

Improving the enforcement powers within the Act to deal with unregistered factors. While there is no real evidence to suggest that the level of unregistered factors operating in Scotland is a serious problem, we are aware that the Act is silent on how this offence is investigated and reported. We have in the past year reported one case ourselves which led to a caution from the fiscal. There was another case reported by an owner which led to a criminal trial earlier this year with a not proven verdict. There are also a couple of on-going cases which we are assisting the Police with their enquiries.

Greater enforcement powers within the Act to deal with registered factors who do not comply. Some respondents felt that the criteria for how factors are removed from the register should be clarified. The Act is fairly clear on the conditions Scottish Ministers can take account of to be satisfied that a property factor should continue to be registered. The Act also set out the steps Ministers must take and the legal process which must be adhered to when considering the removal of a factor and

when refusing entry to the register – however alongside the consultation responses, we are aware that such matters have attracted some parliamentary interest and debate over the last six months and Ministers have committed to look at this further.

So we will continue to look at responses on the 2011 Act alongside other available evidence. Any changes to the Act would likely involve formal public consultation (subject to Ministerial agreement)

Wider matters

- First-tier Tribunal
- Changing factors
- Point of Sale requirements
- Requirements for surveys, inspections, sinking funds, block insurance

The consultation responses raised many other points – some of which are beyond the scope of the 2011 Act

We received a fair amount of feedback on tribunal processes and decisions. We are considering such responses carefully but there are restrictions to what we can do here as the tribunal will have processes which is determined by primary legislation and tribunal regulations (the majority of which are beyond the scope of the 2011 Act) and also will have its own internal processes as an independent judicial body.

While we have touched on proposed requirements for incoming and outgoing factors in the Code when owners decide to switch, there was some feedback on the ability to changing factors. In particular some respondents fed back about a perceived lack of open competition in the factoring marketplace. Again such matters are beyond the scope of the 2011 Act.

Concerns were raised about the lack of knowledge that owners have about their factoring obligations. While putting detail into the Code could help with this, some respondents mentioned that there should be greater role for conveyancing solicitors on such matters and whether guidance could be produced for owners.

There was also feedback raised on whether further consideration should be given to require owners to undertake regular building surveys, inspections, contribute to

sinking funds and mandatory block insurance. Since the consultation was launched, these matters have again come to the fore and have, in some cases, generated parliamentary interest and debate. We are aware that there is an external working group been set up to look at some of these matters within the context of 'tenement maintenance' and we will await their recommendations with interest.

Next steps

- **Continuing to consider responses carefully**
- **Preparation for the potential introduction of secondary legislation –**
 - Further impact assessment on businesses and equality groups
 - Speaking to factors to seek views on implementation dates
 - Bring forward a draft Code to the Parliament
- **Continue to look at responses on the 2011 Act and wider related matters alongside other available evidence.**

Next steps are to -

Continue the careful consideration of what we have heard to date and whether we apply this to any new Code

After considering such representations, we will amend the draft Code accordingly.

As a preparation for any required secondary legislation, (as the Code is set by order of the Parliament) we intend to do a further assessment of any impact on business and equality groups. As part of this we will gather feedback from factors as well as having a conversation about realistic implementation dates for any new Code to be introduced (if approved)

We then have to bring the secondary legislation before the Parliament for its scrutiny and consent). (realistically that's going to be into 2019 subject to Ministerial agreement

Further Information

Property Factor Register

www.scotland.gov.uk/propertyfactorregister

Enquiry Mailbox

propertyfactorregister@gov.scot

Enquiry Line

Tel: 0131 244 9965

Consultation Results

<https://consult.gov.scot/housing-regeneration-and-welfare/code-of-conduct-for-registered-property-factors/>

Web: www.mygov.scot/property-factors/



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If you require further information, please email the team and address indicated or give us a call if you prefer.

If you have not already done so and would like to read the more detailed findings of the consultation then these are available alongside the report of the stakeholder events on the Scottish Government Citizen page website.

General information on the 2011 Act is available on the mygov.scot website

Thanks for your time.