

## Members' Library Service Request Form

Date of Document	16/08/12
Originator	Sally Wainwright
Originator's Ref (if any)	SW/ES
Document Title	Introduction of the Property Factors (Scotland) Act 2011

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Designation	Ex Dir - Services for Communities
Date	05/09/12

For Office Use Only:	
Library Reference	226/12
Date Received	25/09/12
Bulletin	Sept 12

**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Executive Director (Services for Communities)

**SUBJECT:** Introduction of the Property Factors (Scotland) Act 2011

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## **1 PURPOSE**

- 1.1 To inform Cabinet of the Council's response to the Property Factors (Scotland) Act 2011 which will come into force on 1<sup>st</sup> October 2012.

## **2 RECOMMENDATIONS**

- 2.1 Cabinet is recommended to note the contents of this Report.

## **3 BACKGROUND**

- 3.1 The Property Factors (Scotland) Act 2011 received Royal Assent on 7 April 2011 and, for the most part, will come into force on 1<sup>st</sup> October 2012. In terms of the Act, any person, business, or Local Authority which undertakes the function of property factor will have to register with the Scottish Government and observe various additional duties and responsibilities which are set out in the Act and an associated Code of Conduct.

- 3.2 Section 2 of the Act defines "Property Factor" and there are two specific references to Local Authorities.

- 3.3 A Local Authority is deemed to be a property factor if it:

***Manages or maintains land which is available for use by—***

*(i) the owners of any two or more adjoining or neighbouring residential properties, or*

*(ii) the local authority or housing association and the owners of any one or more such properties,*

*but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land.*

- 3.4 This would include, for example, situations where the Council manages or maintains detached areas of garden or parkland, separate from the curtilage of the actual house/flat. It only applies where householders do not have ownership rights to the land, but are responsible for the costs of management and maintenance in terms of their titles.
- 3.5 East Lothian Council does not have any land which falls into this category.
- 3.6 A Local Authority is also deemed to be a property factor if it:

***Manages the common parts of land used to any extent for residential purposes and owned—***

*(i) by two or more other persons, or*

*(ii) by the local authority or housing association and one or more other person.*

- 3.7 This includes, for example, the common parts and garden areas of flatted dwelling house blocks, and would cover work such as grass-cutting, or repairs to an entry phone system or common chimney. (This section is likely to be particularly relevant in flatted blocks and terraced housing where some properties have been purchased through the Right to Buy.)
- 3.8 The form of wording shown in bold text above leads, in the view of officers, to the reasonable assumption that “management” and “maintenance” are considered to be two different activities - both are specifically referred to in relation to detached land, but only “management” in relation to commonly owned property. This clearly implies a differentiation between the two activities.
- 3.9 East Lothian Council only carries out work to the common parts of properties in situations where it continues to own at least one of the properties involved. It does not carry out any such works where all the properties are owned by others.
- 3.10 It is, therefore, the view of officers that the activities carried out by the Council relative to the common parts of tenements and flatted housing blocks constitute “maintenance” of those common areas carried out by the Council in its capacity as a co-owner, and not “management” of those areas in the capacity of a Property Factor within the meaning of the 2011 Act.
- 3.11 Following paragraphs 3.5 and 3.10 above, it is the view of officers that the Council does not currently undertake any activities which would fall within the definition of “Property Factor” within the meaning of the 2011 Act and, therefore, the Council does not require to register under the Act.

#### **4 POLICY IMPLICATIONS**

- 4.1 There are no immediate policy implications arising from this Report. However, any future policy change, for example in relation to the management of repairs in mixed tenure flatted blocks, could result in a requirement for the Council to register as a Property Factor in the future.
- 4.2 It is possible that the definition of “factoring” will be further clarified through the Courts in future. East Lothian Council will need to monitor this and ensure that in those circumstances the interpretation of “factoring” used above continues to apply.

#### **5 EQUALITIES IMPACT ASSESSMENT**

- 5.1 This Report is not applicable to the wellbeing of equalities groups and an Equalities Impact Assessment is not required.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 None.

#### **7 BACKGROUND PAPERS**

- 7.1 The Property Factors (Scotland) Act 2011 can be viewed at <http://www.legislation.gov.uk/asp/2011/8/contents>
- 7.2 The Code of Conduct can be viewed at: <http://www.scotland.gov.uk/Publications/2012/07/6791/1>

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