

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Guide

Property Services (Regulation) Act 2011  
(Minimum Standards) Regulations 2020  
Explanatory Note

Contents

1.	Citation and Commencement.....	3
2.	Definitions .....	3
3.	Registration of Business Name.....	4
4.	Experience .....	4
5.	Conduct and Behaviour.....	4
6.	Provision of Property Services by Unlicensed Persons.....	5
7.	Inducement .....	5
8.	Expenses or Fees .....	6
9.	Service Provided Without Consideration.....	6
10.	Provision of Information .....	7
11.	Breach of Letter of Engagement .....	8
12.	Accepting Tenants .....	8
13.	Timeframe to Transfer Payments in relation to Tenancy.....	9
14.	Notification of Termination of Tenancy.....	9
15.	Offers to Purchase (Private Treaty) or to Rent.....	9
16.	Deposits .....	10
17.	Service Charges and Sinking Fund.....	11
18.	Director in an Owners' Management Company .....	11
19.	Financial or Other Services.....	12
20.	Engagement of Legal Advisors .....	12
21.	Conflict of Interest .....	12

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Note

These Regulations lay down standards to be observed by licensed property services providers under S.95 of the Property Services (Regulation) Act 2011 in the provision of property services. This document is intended to set out in simple terms the implications of these regulations. It does not purport to be legal advice, or override in any way, the provisions of the Regulations.

Breaches of the Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020 fall under the definition of “**improper conduct**” in section 2(1) the Act. As such, they may be the subject of complaints from members of the public. Complaints received relevant to the regulation matters provided for in these Regulations, may be formally investigated by Inspectors appointed by the Authority and, if improper conduct is confirmed by an investigation, sanctions may result for the licensee.

Several of the Regulations, without being absolutely prescriptive, contain provisions that the licensee acts in a fair, reasonable and just manner towards their clients. Some examples: licensees are obliged to act in the clients’ interests, are obliged to return client funds and reply to queries within a defined timeframe, subject to reasonable excuse. In considering what would be a reasonable excuse, licensees may wish to bear in mind how they would justify or explain their actions or omissions to an Inspector who is carrying out an investigation into a complaint received based on a breach of the Regulations.

### 1. Citation and Commencement

Full name: Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020.

Date of Commencement: 30 November 2020.

### 2. Definitions

Defined terms used in this Regulation which are not already defined in the Property Services Regulation Act 2011. Where terms are defined in the 2011 Act, and a different meaning is used for the interpretation of this Regulation, the definition is provided in this Regulation.

“Act” = Property Services (Regulation) Act 2011 (No. 40 of 2011).

“Client” = for the purposes of this Regulation can be interpreted to include

- a. a person for whom a property service is provided by a licensee
- b. in the event of a death, insolvency or other incapacity of a person who falls under (a),

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Note

- i. any person with authority to administrator the estate,
- ii. any beneficiary under a will, intestacy or trust of the person concerned, or
- iii. any other personal representative of the person concerned.

“Inducement” = The promise, offer or giving, directly or through an intermediary, of a reward, advantage or enticement or of a potential reward, advantage or enticement, whether monetary or otherwise, other than the fees agreed in the letter of engagement.

“Written record” = Any record reduced to writing, including in electronic form.

### 3. Registration of Business Name

A licensee, in the provision of a property service, shall only use a business name where it has been registered with the Authority. The licensee is obliged to submit the business name to the Authority within 10 days of registration of the name with the Companies Registration Office, where the licensee intends to trade under that name. Where the business name is being used by the licensee and has not been previously notified to the Authority, the business name must be notified to the Authority as part of the next licence renewal application.

### 4. Experience

When entering into a property services agreement, a licensee must be open, honest and transparent with the client about their level of experience, competence, training and resources, including financial resources, necessary to fulfil the agreement. A licensee must not engage in any deception or exaggeration with their client regarding such matters which could give the client a false impression of their capacity to provide the service.

### 5. Conduct and Behaviour

- (1) Licensees must agree a means of communication with their client e.g. email, letter, text and respond to those communications within a reasonable timeframe or by providing a just and reasonable reason for not doing so.
- (2) While licensees must act in the best interests of their client consistent with the letter of engagement, the licensee must always act in a lawful manner. Licensees must be aware of not straying beyond lawful actions, even if requested to do so by their client.
- (3) Licensees must act in the best interest of the client and consult their client as often as necessary to attain the objectives of the client. Licensees are

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Note

reminded that they act for their client and not for anybody else subject, of course to acting in a lawful manner.

- (4) Licensees must act within the authority granted by their client and must not stray beyond that authority. It is preferable that a client's instructions or authority to take any action be received in writing or confirmed in writing as it is difficult to retain records of verbal instructions. This is especially important as the business relationship progresses after signing of the Letter of Engagement. This need not be very onerous – for example, an e-mail or text message with instructions could be easily retained. Licensees should retain records of all such interactions from their client.
- (5) A licensee must inform the client, as of the date of the request, the amount of money held in the Client Account on the client's behalf no later than 5 days from date of written request.
- (6) Licensees must not maliciously and/or intentionally do anything, directly or indirectly, to injure or undermine the reputation and/or business of another licensee. This is not to prevent healthy competition between licensees, but such competition must not stray into malicious or unethical behaviour or spreading false information about another licensee or their business.

### 6. Provision of Property Services by Unlicensed Persons

A licensed employer is forbidden to direct an unlicensed employee to provide a property service within the meaning of the Act.

The PSRA has published on its website a guide "*Guidance on the Scope of Practice of Property Service Providers*" which clearly explains the roles that must be carried out by a licensee only as well as those that can be carried out by non-licensed staff either supervised or unsupervised by the licensee.

Additionally, any employee found to be carrying out activities that are only allowed to be performed by a licensee would be committing an offence and would be liable to prosecution by the PSRA.

### 7. Inducement

A Property Services Provider shall not accept any form of inducement, monetary or otherwise, in respect of the provision of a property service from a client, customer, potential customer, supplier or potential supplier. It is expected that the full fee structure for providing the property service will be set out in the Letter of Engagement and any payment or consideration beyond that may be

# Property Services (Regulation) Act 2011

## (Minimum Standards) Regulations 2020

### Explanatory Note

considered to be an improper inducement. Of course, a change to the fee structure may be agreed between a licensee and their client at any point. A revised Letter of Engagement should be produced and signed by both parties to reflect any such change.

#### 8. Expenses or Fees

1. Unless otherwise agreed in the Letter of Engagement, any unused outlays paid by the client must be returned to the client within 10 working days of the conclusion or termination of a property services agreement unless there is a valid reason to prevent this.
2. A licensee must only charge the client fees in respect of the sale or letting of land or incomplete sale or letting of land including:
  - a. Lease preparations
  - b. Tenancy extensions
  - c. Tenancy renewals
3. A licensee must not imply to a tenant or purchaser that they will be charged fees in respect of the sale or letting or incomplete sale or letting of land. The licensee can only charge the client fees in respect of the property service.

#### 9. Service Provided Without Consideration

A licensee must advise a client in writing if a property service is being provided without payment or consideration and that, as a result, the service is not provided in their capacity as a licensee nor do any of the consumer protection provisions under the Act apply.

Similarly, licensees must inform anybody who might pass money to them arising from a property service that the property service is being provided without consideration and that no consumer protections under the Property Services (Regulation) Act 2011 apply. Individuals who pay booking deposits on properties for sale, or security deposits on properties to let, where nothing is paid to the licensee by the vendor or landlord, would have no way of knowing that their funds were unprotected and that they were dealing with the licensee outside of the protective framework of the Act. The licensee must inform them when this is the case. (Licensees are reminded that the definition of a “client” in the Act already includes prospective purchasers of properties (land) who provide them with a booking deposit.)

# Property Services (Regulation) Act 2011

## (Minimum Standards) Regulations 2020

### Explanatory Note

Licensees may occasionally provide property services without consideration or payment, e.g. as a favour to a friend or family member, or they may sell or let their own property through their business. Any such service provided free of charge, where no fee is paid to the licensee, does not come under the definition of a “property service” in section 2(1) of the Act. As such, none of the consumer protection measures in the Act apply, e.g. the Compensation Fund, the complaints mechanism and, possibly, professional indemnity insurance. It is important the licensee actively informs anybody doing business with the licensee when the service being provided is not a property service as defined under the Act. The prospective client, or a prospective purchaser or tenant, must be fully aware of the environment surrounding the transaction. Otherwise, without being told so clearly, a prospective client, or a prospective purchaser or tenant paying a deposit would have no way of knowing that they were not subject to the protections provided in the Act and that their funds are being handed over without protection

One suggested way to overcome potential difficulties in this area is for the licensee to charge a much reduced or nominal fee to a person to whom they are providing a property service, or to make a small personal fee payment to their business, if they are selling or letting their own property through the business. A Letter of Engagement could be generated and a service that might otherwise be provided without a fee would be subject to the consumer protection provisions under the Act.

Of course, having been informed of the situation and its hazards, a client or purchaser/tenant may choose to still do business with the licensee outside of the protections offered by the Act. In such circumstances, it would be advisable that booking deposits should be paid directly to a Solicitor; similarly, security deposits could be paid to the landlord.

#### 10. Provision of Information

(1) Licensees or a licensed business must not knowingly publish or cause to be published any material or advertisements that are false, misleading or dishonest including:

- (i) sales records;
- (ii) sales prices achieved;
- (iii) work experience of the licensee or any licensee company;
- (iv) fees charged or chargeable;
- (v) applicable commission rates.

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Note

- (2) Licensees must not knowingly produce or circulate any false misleading information in relation to land or property advertised for auction, sale or let.
- (3) A licensee must on written request from the lawful owner remove advertisements and brochures from websites and portals under the licensee's control, and signage on or relevant to the land which has been sale agreed or sold, within 10 days of the request. Licensees should be careful to attend to their obligations in this area after a property has been sold and the new owner wants signage or information on what is now their property removed.
- (4) A licensee must update the status on advertisements and brochures on the website, brochure and portals under the licensees control, and signage on or relevant to the land which has been let, sale agreed or sold within 10 working days of the commencement of a tenancy or a contract for sale being completed unless the licensee can show reasonable cause which prevented the licensee from doing so.
- (5) On termination of a service agreement prior to conclusion of a contract for service, a licensee must remove advertisements from websites, brochures and portals under the licensees control and signage within 10 working days of the termination of the service agreement, unless the licensee can show reasonable cause which prevented the licensee from doing so.

### 11. Breach of Letter of Engagement

A licensee shall adhere to the terms agreed in the letter of engagement or other contract or agreement or any terms of agency with their client in respect of the provision of a property service. A breach of any provision of a Letter of Engagement will now be admissible for investigation by the Authority.

NB: This is a very significant change to what may be considered to be improper conduct. Up to now, a significant number of complaints received by the Authority are declined for investigation because the behaviour concerned does not fall under the definition of "improper conduct". Many such cases involve allegations of poor or shabby provision of services or breaches of the terms of the letter of engagement which fall short of being serious enough to render the licensee "no longer a fit and proper person" to provide property services. Such cases will now be admissible for investigation.

### 12. Accepting Tenants

Where a licensee has agreed with the client that references from prospective tenants shall be provided, the licensee must check the validity of the references and if they cannot be validated for any reason, the licensee shall inform the

# Property Services (Regulation) Act 2011

## (Minimum Standards) Regulations 2020

### Explanatory Note

client in writing. A tenancy agreement cannot be signed in this circumstance unless the client has agreed otherwise with the licensee.

#### 13. Timeframe to Transfer Payments in relation to Tenancy

Payment from tenants on behalf of clients must be transferred, as specified in the Letter of Engagement to an account nominated by the client within an agreed timeframe. Where not specified, such payments shall be transferred to the client no later than one calendar month from receipt where practicable, without deduction unless instructed otherwise in writing by the client. Licensees are reminded that all client funds must be held securely in the Client Account until they are transferred.

#### 14. Notification of Termination of Tenancy

The client must be notified in writing within a reasonable timeframe where the licensee becomes aware that the client's tenant has terminated the tenancy or the tenant has informed the licensee of their intention to terminate the tenancy. In most cases, it is to be expected that a licensee will inform their client immediately if an unanticipated termination of the tenancy comes to the licensee's notice.

#### 15. Offers to Purchase (Private Treaty) or to Rent

1. When a licensee is engaged by a client in respect of the sale of land, all offers to purchase land together with any conditions attached to the offer and all recorded price offers on the land must be advised to the client by the licensee unless the client has advised the licensee otherwise in writing. The aim of this provision is that clients be kept up-to-date on the state of play with offers on their property and be able to make fully-informed decisions on its sale. It is recognised that some offers can be speculative in nature, or come with so many conditions attached that they may be unacceptable. There is nothing to prevent the licensee also giving the client their opinion or advice in relation to any offer. Also, there is nothing to prevent a client from placing the entire sales effort in the hands of the licensee with little or no consultation until close to an actual sale; licensees are advised to always get any such instructions in writing from their client.
2. Where an offer to purchase land has been received, except at auction, written confirmation must be provided to the offeror.
3. A licensee is prevented from expressing or implying that an offer to purchase has been received until such time as an offer has been received. This has sometimes been referred to colloquially as 'fake bids'. Implying or

# Property Services (Regulation) Act 2011

## (Minimum Standards) Regulations 2020

### Explanatory Note

claiming to have offers on a property, perhaps as a sales tactic, when no such bids exist is not acceptable.

4. When advising a client of an offer to purchase or let, a licensee shall notify the client in writing when the offeror is any of the following:
  - (a) the licensee,
  - (b) an employee of the licensee,
  - (c) the employer of the licensee,
  - (d) an employee of the licensee's employer, or
  - (e) a connected relative of any of the above.

This is not to prevent any of the persons listed from making a genuine offer on a property that their client is selling or letting. However, full disclosure is necessary to avoid any perception of a conflict of interest and to ensure that the client enters into any deal in a fully-informed manner. "Connected relative" is defined in the 2011 Act and includes, the licensee's spouse or civil partner, AND parents, siblings and children of the licensee themselves OR the licensee's spouse or civil partner.

#### 16. Deposits

1. Where any amount of a security deposit is held by the licensee and/or due to be retained by the client (landlord) or returned to the tenant, the licensee must pay the amount within the timeframe specified in the letter of engagement. Where the timeframe is not specified the licensee must make the payment(s) within 10 working days unless there are exceptional circumstances preventing it.

These deposits are intended to cover damage caused to a rental property during a tenancy. They must either be paid over to the client (landlord) where damage has been caused to the property, or returned to the tenant if no damage has been caused. Partial retention and return may be appropriate if the damage amounts to less than the deposit. This provision does not prevent retention of deposits or partial retention of deposits to cover damage caused to a rental property. Any such retention should not exceed the amount of the damage concerned and any amount in excess of that should, be returned to the tenant. Licensees are responsible only for deposits which they hold in their client account. There is no onus on a licensee to recover or pay back a security deposit which is held by their client (landlord). In the event of an investigation of a complaint based on

# Property Services (Regulation) Act 2011

## (Minimum Standards) Regulations 2020

### Explanatory Note

non-return of a deposit, licensees can expect to be asked by the Inspector to fully explain any retention or partial retention of a deposit and to show solid evidence as to why such retention was justified.

2. A licensee must return a booking deposit or any part of it in relation to the sale of land, which is due to be paid or returned, within 10 working days on written instruction unless there are exceptional circumstances preventing it.
3. A licensee must refund a booking deposit or any part of it in relation to the sale of land, to a person other than a client, within 10 working days after the day on which the refund is due, unless there are exceptional circumstances preventing it.
4. A licensee is only permitted to hold one booking deposit in relation to a sale of land at any given time unless there is a reasonable cause for doing otherwise. This provision is designed to prevent situations where a potential purchaser is misled into handing over a booking deposit on a property in the mistaken belief that their offer has been accepted ahead of all other offers. It is unacceptable for a licensee to mislead any individual, by accepting multiple booking deposits, in the belief that each of their offers have been accepted. None of this is to prevent a genuinely competitive bidding process on a property or to prevent a vendor withdrawing from a sale prior to contracts being signed.

#### 17. Service Charges and Sinking Fund

1. A licensee who is administering the collection of service charges or sinking fund contributions on behalf of a management body of a multi-unit development must only collect service charges and sinking fund contributions following written instructions from the client and must ensure that all funds collected are placed in the correct account. Licensees should beware of allowing a situation to develop where sinking fund contributions are being used for day to day expenditure. It is strongly recommended that licensees address any such situations as early as possible with their client.
2. A licensee who collects service charges or sinking fund contributions on behalf of a management body of a multi-unit development shall transfer all monies to the relevant account of the management body within the timeframe provided for in the letter of engagement. Where not specified, the monies must be transferred within 30 days after receipt of the monies.

#### 18. Director in an Owners' Management Company

1. A licensee shall not be a director in a management body of a multi-unit development where property management services are provided to that management body by:

# Property Services (Regulation) Act 2011 (Minimum Standards) Regulations 2020

## Explanatory Note

- i. The licensee;
- ii. An employee of the licensee;
- iii. The employer of the licensee;
- iv. An employee of the licensee's employer.
- v. Another licensee who is a beneficial owner of a company which is providing a property service.

At the time of signing these Regulations, if a licensee is acting as a director of an owners' management company and where the licensee is not a unit owner, the licensee shall resign as director at the earliest opportunity but no later than the next annual general meeting of the owners' management company.

2. A licensee who is a unit owner in a multi-unit development can become a director in the management body which is responsible for that development.
3. Where the licensee is a unit owner in a development and intends to provide a property service to that development, the licensee shall notify that fact in writing to the secretary and all directors of the owners' management company.

### 19. Financial or Other Services

The sale of land cannot be made conditional by the licensee on someone recommended by that licensee providing a financial service or any other service to the purchaser.

### 20. Engagement of Legal Advisors

The provision of a property service cannot be made conditional by a licensee on the vendor, purchaser, tenant, or lessor or lessee being represented by a specified legal advisor.

### 21. Conflict of Interest

Any conflict of interest must be notified in writing to the client immediately. Full disclosure is important here. If the client is happy to proceed with the business arrangement despite the notification of the conflict of interest, then that is acceptable as long as they do so in a fully-informed manner. Where a conflict of interest exists, of which the client has been advised and where the client in full knowledge of the conflict agrees to proceed with the property service, it is advisable to get this confirmation in writing from the client.