



## BRIEFING PAPER

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# Mobile (Park) Homes

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## Summary

People living year-round in mobile (park) homes normally own their home and rent the land on which it is stationed from the site owner (paying a pitch fee). The Government estimates that around 85,000 households live in mobile homes on 2000 sites in England. The majority of mobile home sites are privately owned with a small number owned by local authorities. Mobile homes can offer an attractive housing option for retired people, consequently residents tend to be older. In 2002 68% of mobile home occupants were aged 60 or over. The age profile of mobile home owners can make it challenging for them to assert their rights when dealing with unscrupulous site operators.

The legal framework within which site and mobile home owners operate has developed in a piecemeal fashion. The *Mobile Homes Act 1983* extended the rights of mobile home residents, particularly in respect of security of tenure, but various short-comings in its provisions were identified, leading to calls for its review and amendment. In 1988 Shelter's now disbanded Mobile Homes Unit produced a report on the operation of the 1983 Act which called for changes to be made, including having pitch fee levels fixed by rent officers; the development of an effective system of arbitration; and stronger duties on local authorities to inspect unfit housing on mobile homes sites.

Following a review carried out by a Park Homes Working Group in 1998, some of the short-comings identified were addressed by the *Housing Act 2004*. Concerns around malpractice in the park homes sector persisted. These focused on complaints about unfair fees and charges; poor standards of maintenance; and site owners obstructing the ability of home owners to sell their homes. The Labour Government conducted a further consultation exercise in 2009, following which detailed proposals to strengthen the site licensing system were set out in [Park homes site licensing reform: The way forward and next steps](#). These measures were not implemented prior to the 2010 General Election.

The Coalition Government published [A better deal for mobile home owners](#) on 16 April 2012. The Communities and Local Government Select Committee conducted an inquiry into the park homes industry and published its report, [Park Homes](#), in June 2012. The Committee found "widespread malpractice" in the sector and concluded that the existing legislative framework was "inadequate."

### **Mobile Homes Act 2013**

After drawing fifth place in the 2012 Private Members' Bill ballot, Peter Aldous used this opportunity to introduce the *Mobile Homes Bill 2012-13*. The Bill secured Government support and amended existing legislation to strengthen the protection offered to mobile home owners in England. The *Mobile Homes Act* received Royal Assent on 26 March 2013. The 2013 Act implemented many of the proposals contained in [A better deal for mobile home owners](#) and recommendations made by the Communities and Local Government Select Committee in [Park Homes](#). The Coalition Government issued [detailed guidance on the rights and obligations of site and mobile home owners](#). In addition, the remit of the [Leasehold Advisory Service](#) was extended to provide free information and advice to "owners of mobile homes, site owners, local authority officers or anyone else with a question about the law on park homes."

### **Mobile homes policy review**

Despite the legislative activity in this area, mobile home owners are not content that all of their issues have been resolved. For example, there is particular dissatisfaction about the continuation of the requirement to pay a commission fee of 10% on the sale price of a

mobile home to the site owner. A separate Library Briefing Paper, 7003, [Mobile \(park homes\): 10% commission on sales](#) provides detailed information on this charge.

In 2015 the Government set up a Park Homes Working Group “to identify evidence of poor practice where it exists, and investigate how best to raise standards and further tackle abuse”. The Group, which included national resident groups and industry trade bodies, concluded its work and put forward its recommendations to Government.

The Government is conducting a two-part review of mobile (park) homes legislation:

- **Part 1** of the review concerns wider practices in the park home sector, including: the fairness of charges; the transparency of site ownership; and experience of harassment. The call for evidence closed on 27 May 2017. The Government published a [summary of consultation responses](#) on 27 November 2017.
- **Part 2 of the review**, published on 28 November 2017, called for evidence on the effectiveness of the *Mobile Homes Act 2013*, in particular on:
  - how effective local authority licensing has been;
  - how well the procedures for selling mobile homes, making site rules and pitch fee reviews are working;
  - whether “fit and proper” controls need to be applied in the sector; and
  - the appropriate index (Consumer Price Index or Retail Price Index) to be used when carrying out a pitch fee review.

The Part 2 review also sought views on the Park Homes Working Group’s recommendations to help ensure local authorities effectively carry out their licensing and enforcement functions. The Part 2 consultation closed on 16 February 2018. The Government published a [summary of consultation responses](#) on 25 May 2018.

A Government response to the call for evidence (Parts 1 and 2) is expected to be published in **Autumn 2018**.

Housing policy is a devolved matter in Scotland, Wales and Northern Ireland. Each of the devolved Nations has introduced specific legislation to regulate activities on residential mobile home sites.

# 1. The legal framework: an overview

Three statutes regulate mobile home occupation in England. These statutes were amended by the *Housing Act 2004* and, more recently, by the *Mobile Homes Act 2013*.

The *Mobile Homes Act 1983* and the *Caravan Sites and Control of Development Act 1960* extend to England, Scotland and Wales. The *Caravan Sites Act 1968* extends to Wales while parts also extend to Scotland. Housing policy is a devolved matter; Scotland, Wales and Northern Ireland have all introduced specific legislation in respect of mobile home parks in recent years (see section 4 of this paper). The 2013 Act extends to Wales but did not alter the legal position in relation to Wales.

## 1.1 The Caravan Sites and Control of Development Act 1960

The *Caravan Sites and Control of Development Act 1960* requires that site owners obtain a site licence from the local authority before any land may be used as a caravan site. Local authorities have powers to impose conditions in site licences and enforce them if they are breached. The types of conditions that authorities may impose relate to the number of caravans allowed on the site; the spacing between the caravans; and the provision of amenities on the site. In attaching conditions to the licence local authorities will seek to ensure that general standards of environmental health are maintained.

## 1.2 The Caravan Sites Act 1968

The *Caravan Sites Act 1968* introduced basic protection for all mobile home occupiers living on protected sites; i.e. on land for which the owner has planning permission and is entitled to obtain a site licence. The Act prevented site owners from evicting occupiers with residential contracts other than by obtaining a court order.

### Definition of a caravan (England)

The 1960 Act and the 1968 Act also contain the legal definition of a caravan. In August 2005 the Office of the Deputy Prime Minister (ODPM) issued a consultation paper on proposals to amend the dimensions of a caravan on the following grounds:

So far as the law is concerned, a park/mobile home, a caravan holiday home, touring caravan or Gypsy and Traveller home are all capable of coming within the legal definition of a caravan provided they retain the element of mobility. Mobility, in this context, means that the caravan must be capable of being moved when assembled from one place to another. This means that it cannot be fixed to the ground. Permanent works, such as a large porch or extension, which fix the caravan to the ground could mean that a caravan no longer comes within the legal definition of a caravan and could as a consequence be treated as a building.

This could have serious planning, legal and contract implications for site owners and residents alike such as residents of park homes not having protection under the Mobile Home Act 1983.<sup>1</sup>

A summary of responses to the consultation paper and the Government's recommendations were published in January 2006:

It is clear that the recommendation made in the consultation document has wide support from all sectors of the industry. As outlined above, there are some concerns surrounding the impact on separation spaces between caravans. We are currently consulting on the model standards, which form the best practice for local authorities' site licences. These will cover the issue of separation distances between homes in greater detail and we would welcome any further comments regarding the separation distances between homes in that consultation. The consultation also includes matters relating to fire safety, which was another matter raised in some consultation responses.

Given the overall broad support for the proposal contained in the consultation document, we will prepare a Statutory Instrument to be laid before Parliament to amend the maximum dimensions of a caravan to those proposed in the paper. This will be laid before Parliament in due course.

Guidance with regard to the proposals will be published prior to the amendment coming into force, and will be incorporated in the guidance to support the revision of the model standards.<sup>2</sup>

*The Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006* (SI 2006/2374) implemented this change in England on 1 October 2006.

### 1.3 The Mobile Homes Act 1983

The *Mobile Homes Act 1983* went further than the 1968 Act and gave security of tenure to residents of mobile home sites who own the home in which they live and rent the pitch from the site owner. As with the 1968 Act, the 1983 Act only covers owners and occupiers of protected sites.<sup>3</sup>

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<sup>1</sup> ODPM, [Amending the definition of a caravan](#), August 2005

<sup>2</sup> *Amending the definition of a caravan: consultation response*, January 2006

<sup>3</sup> From 30 April 2011 the 1983 Act was extended to apply to local authority Gypsy and Traveller sites.

## 2. Effective protection?

The legal framework within which site and mobile home owners operate has developed in a piecemeal fashion. The *Mobile Homes Act 1983* extended the rights of mobile home residents, particularly in respect of security of tenure, but various short-comings in its provisions were identified, leading to calls for its review and amendment. Shelter's Mobile Homes Unit, which is now disbanded, produced a report on the operation of the 1983 Act which noted a number of weaknesses in the legislation and set out some detailed recommendations for changes, including having pitch fee levels fixed by rent officers, the development of an effective system of arbitration, and greater duties on local authorities to inspect unfit housing on mobile homes sites.<sup>4</sup>

The Department of the Environment, Transport and the Regions established a Park Homes Working Group in 1998 with a view to reviewing a number of issues relating to mobile homes.<sup>5</sup> The report of the Working Party was published on 12 July 2000. The Labour Government took comments on the report's conclusions up to 30 October 2000 and, in the interim, issued good practice guidance for residents and park owners on harassment and site licensing.<sup>6</sup>

The Government's response to the Working Group's recommendations was published on 29 November 2001.<sup>7</sup> Some, but not all of the short-comings identified were addressed by the *Housing Act 2004*. Concerns around malpractice in the park homes sector persisted. These concerns focused on complaints about unfair fees and charges, poor standards of maintenance, and site owners obstructing the ability of home owners to sell. The age profile of mobile home owners tends to make it difficult for them to assert their rights when dealing with unscrupulous site operators.

In May 2009 the Labour Government published [Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation](#) which built on a 2005 consultation exercise and considered how a new licensing system might look. The Government said that its aim was to put in place a comprehensive package of proposals to reform the site licensing system. A further paper was published on 30 March 2010 which set out options for improving the management of park home sites: [Park homes site licensing reform: The way forward and next steps](#). These measures were not implemented prior to the 2010 General Election.

On 10 February 2011 the Housing Minister, Grant Shapps, said that he would consult on a range of measures to improve the rights of mobile home owners and give local authorities the powers to ensure these sites

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<sup>4</sup> Shelter, *It's not what we expected*, 1988

<sup>5</sup> HC Deb 13 April 1999 c78W

<sup>6</sup> DETR Housing Research Summary No. 129, 2000

<sup>7</sup> DTLR, *Government Response to the Recommendations of the Park Homes Working Party*, 2001

are safe and secure. [A better deal for mobile home owners](#) was published on 16 April 2012; the consultation period closed on 28 May. Two impact assessments were published alongside the consultation paper, [Changes to the Mobile Homes Act 1983 - Impact Assessment](#) and [Park Homes: Changes to the local authority site licensing regime - Impact Assessment](#). The [summary of consultation responses and next steps](#) was published in October 2012.

The Communities and Local Government Select Committee conducted an inquiry into the park homes industry and published its report, [Park Homes](#), in June 2012. The Committee found “widespread malpractice” in the sector and concluded that the existing legislative framework was “inadequate.”

Consumer Focus published the results of an investigation into life on mobile home sites in England, [Living the Dream?](#) (October 2012). This report reinforced the findings of earlier studies.

In the meantime, Peter Aldous drew fifth place in the Private Members’ Bill ballot 2012 and used this opportunity to introduce the *Mobile Homes Bill 2012-13* on 20 June 2012. The Bill secured Government support and received Royal Assent on 26 March 2013. The Act has amended the 1983, 1968 and 1960 Acts and has implemented many of the proposals contained in the consultation paper [A better deal for mobile home owners](#) and recommendations made by the Communities and Local Government Select Committee in [Park Homes](#).

Despite the legislative activity in this area, mobile home owners are not content that all of their issues have been resolved. For example, there is particular concern about the continuation of the requirement to pay a commission fee of 10% on the sale price of a mobile home to the site owner (see section **3.3**).

## 2.1 Park Homes Working Group 2015

In 2015 the Government set up a Park Homes Working Group “to identify evidence of poor practice where it exists, and investigate how best to raise standards and further tackle abuse”.<sup>8</sup> The Working Group, which included national resident groups and industry trade bodies, has concluded its work and made its recommendations.<sup>9</sup>

The Working Group’s 2016 Report was published as an Appendix to the Government’s [Review of park homes legislation: Call for evidence - Part 2](#). The key recommendations outlined in the report are as follows:

- The working group considers the lack of enforcement action by local authorities a priority concern.
- The government should ensure that appropriate enforcement is taken by local authorities as the

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<sup>8</sup> [PQ 45729 \[Mobile Homes\] 16 September 2016](#)

<sup>9</sup> [PQ 45729 \[Mobile Homes\] 16 September 2016](#)



effectiveness of the Mobile Homes Act 2013 cannot be assessed in the absence of enforcement.

- Local authorities should be encouraged and assisted to share information and best practice across local authority boundaries through a central register.
- Local authorities should have a dedicated officer to deal with park home related issues and should be required to publish the name of the officer responsible.
- DCLG should speak and engage with the national bodies of solicitors and estate agents to raise awareness about the legislation.
- DCLG should work with the Department for Energy and Climate Change to investigate how the cost of LPG is made up and how the market can be made to work better on park home sites.<sup>10</sup>

There were also a number of issues, for example the 10% commission paid to the site owner on the sale of a mobile home, which the Working Group considered, but on which they did not make any recommendations.

In January 2017 the Minister for Housing, then Gavin Barwell, confirmed that the Government had taken forward one of the Working Group's recommendations to write to local authorities to remind them of their new enforcement powers and available guidance.<sup>11</sup>

The Government is currently seeking views, through the review of park homes legislation, on the Working Group's recommendations to help ensure local authorities effectively carry out their licensing and enforcement functions (see section **2.2** below).

## 2.2 Review of park homes legislation

The 2015 Conservative Government gave a commitment to review park homes legislation in 2017.<sup>12</sup> The review is being carried out in two parts:

**Part 1 of the review**, published on 12 April 2017, is concerned with wider practices in the park home sector and called for evidence on: the fairness of charges; the transparency of site ownership; and experience of harassment. The call for evidence on Part 1 closed on 27 May 2017.<sup>13</sup>

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<sup>10</sup> Department for Communities and Local Government, [Review of park homes legislation: call for evidence part 2](#), 28 November 2017, p15

<sup>11</sup> [PQ 61818 \[Mobile Homes\] 31 January 2017](#)

<sup>12</sup> [HC Deb 30 October 2014 c503](#)

<sup>13</sup> Department for Communities and Local Government, [Review of park homes legislation: call for evidence – Part 1](#), 12 April 2017

The Government published a [summary of responses](#) on 27 November 2017.<sup>14</sup>

**Part 2 of the review**, published on 28 November 2017, called for evidence on the effectiveness of the *Mobile Homes Act 2013*, in particular on:

- how effective local authority licensing has been;
- how well the procedures for selling mobile homes, making site rules and pitch fee reviews are working;
- whether “fit and proper” controls need to be applied in the sector; and
- the appropriate index (Consumer Price Index or Retail Price Index) to be used when carrying out a pitch fee review.

The Government also sought views on:

- the Park Homes Working Group’s recommendations to help ensure local authorities effectively carry out their licensing and enforcement functions; and
- user experiences of the Leasehold Advisory Service (LEASE) which provides free independent advice to park home residents on their rights.

The Part 2 consultation closed on 16 February 2018. The Government published a [summary of consultation responses](#) on 25 May 2018.<sup>15</sup>

A Government response to the call for evidence (Parts 1 and 2) is expected to be published in **Autumn 2018**.

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<sup>14</sup> Department for Communities and Local Government, [Review of park homes legislation: call for evidence part 1 - summary of responses](#), 27 November 2017

<sup>15</sup> Ministry of Housing, Communities and Local Government, [Review of park homes legislation: call for evidence part 2 - summary of responses](#), 25 May 2018

## 3. The rights of mobile home owners (England): an overview

### 3.1 Written statements

The central feature of the 1983 Act is the requirement on the site owner to serve a written statement on the occupier containing the express and implied terms of the agreement. Since 18 January 2005 site owners have been required to issue a written statement of terms to prospective occupiers 28 days before any agreement for the sale of a mobile home is made or, if there is no such agreement, not later than 28 days before the occupation agreement is entered into.<sup>16</sup> The parties can agree a shorter period than 28 days between themselves but the prospective occupier must indicate their consent in writing to the specified shorter time-scale. The aim of this provision is to ensure that potential park home occupiers are made aware of the terms under which they will occupy the site before taking up occupation.

#### Implied terms

The content of the written statement is governed by the *Mobile Homes Act 1983* (as amended). The implied terms, which are incorporated by statute into agreements between site and mobile home owners, cover such issues as the home owner's indefinite right to live in his/her home on the site unless the agreement is validly terminated by either party; the circumstances in which a valid termination of the agreement may take place; the occupier's right to sell; or give the mobile home to a person approved by the site owner; and the rules regarding succession as they apply to owners and occupiers. The implied terms constitute the minimum rights and obligations that all residents of park homes in England have.

Section 208 of the *Housing Act 2004* gave the Secretary of State power to add additional terms that will be implied into agreements and power to repeal and vary the existing implied terms in the 1983 Act. Provision was made for the first exercise of this power to have retrospective effect. *The Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006* (SI 2006/1755) introduced new implied terms with effect from 1 October 2006. These regulations were subsequently replaced by the [Mobile Homes \(Written Statement\) \(England\) Regulations 2011](#) (SI 2011/1006).

DCLG published a factsheet of consolidated implied terms in May 2013: [Consolidated implied terms in park home pitch agreements: factsheet](#)

#### Express terms

Express terms of the written agreement are individually negotiated between the owner and the occupier. They usually cover such areas as the occupier's obligation to keep the home in a decent state of repair

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<sup>16</sup> Section 206 of the *Housing Act 2004*

and the obligation on the site owner to maintain the park and its facilities. The parties can include whatever terms they like in the express terms as long as they do not conflict with any of the statutory implied terms. There is no requirement that the statement be signed or witnessed.

In order to give site owners an incentive to comply with the duty to provide a written statement, the express terms of the agreement are not enforceable at the suit of the site owner. The express terms remain enforceable at the suit of the occupier, so if they would work in his/her favour, s/he can enforce them against the site owner.

In the event of the owner failing to produce a written statement, the occupier may apply to a First-Tier Tribunal (FTT) at any time for an order requiring the owner to produce the written statement. There is also provision for either party to apply to the FTT to have an express term reinstated into an agreement. This is to enable the rectification of defective agreements.

If either party wishes to delete, vary or add an express term to the agreement they can apply to a FTT within the first six months of entering into the agreement. Currently this only applies to the original parties to the agreement and does not apply if the agreement is transferred on the sale of the home. Express terms are also sometimes varied on assignment as a condition of the sale. The Government proposed, in [A better deal for mobile home owners](#) (April 2012), to apply the six month rule to agreements that are assigned through a resident's sale to a third party.<sup>17</sup> It was decided not to proceed with this proposal as the site operator's role in approving sales has been removed.

## Site Rules

Mobile home sites usually have specific rules, such as a minimum age requirement for residents and management rules on keeping pets, car parking and refuse collection. These rules form an integral part of the pitch agreement and there should be a clear mechanism for making or amending these rules.

The CLG Select Committee (2012) found evidence of site rule breaches by site owners:

It appeared to us that some site owners were willing to break these rules. On our visit to Bournemouth, we saw evidence of increasing number of park homes being rented out by site owners. In some cases they were being rented to people under 50 years old which contravened park rules.<sup>18</sup>

Section 9 of the *Mobile Homes Act 2013* amended the 1983 Act by inserting two new sections. Sites rules, where they exist, are now an express term in pitch agreements between the site and home owner.

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<sup>17</sup> CLG, [A better deal for mobile home owners](#), April 2012, p14

<sup>18</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 71

The aim of this is to create certainty between the parties.<sup>19</sup> On introduction this provision applied retrospectively to existing pitch agreements in addition to newly made agreements.<sup>20</sup>

The Secretary of State has regulation making powers to set out the procedure to be followed by site owners proposing amendments to site rules. Regulations may provide for existing rules to have no effect; prescribe matters in relation to which site rules may not be made; provide for dispute resolution procedures; and require local authorities to keep and publish an up-to-date register of site rules in their areas.

[\*The Mobile Homes \(Site Rules\) \(England\) Regulations 2014 \(SI 2014/5\)\*](#) introduced a new procedure with effect from 4 February 2014 whereby site owners must consult occupiers before changing the site rules. A consultee may appeal to the Tribunal against any new rule if:

- there has been a failure to follow the prescribed consultation process;
- the new site rule is inconsistent with rights granted under the 1983 Act (as amended); or
- the decision to introduce the new rule is unreasonable, having regard in particular to any observations received during the consultation process, the size, layout, character, services or amenity of the site or the terms of any planning permission or site licence.

Regulation 18 made consequential amendments to the *Mobile Homes (Written Statement) (England) Regulations 2011* to set out that site rules now form part of the express terms of an agreement made under the *Mobile Homes Act 1983*.

### 3.2 Pitch fees

The pitch fee is the sum paid to the site owner in return for permission to station a mobile home on the pitch and use the common areas of the site. One of the main complaints made about the 1983 Act was that it gave mobile home owners insufficient rights over increases in pitch fees demanded by site owners. Disputes over pitch fee increases tend to arise because occupiers feel that the owner has done nothing to warrant an increase, or because the increase is above the Retail Price Index (RPI).<sup>21</sup>

The requirement to pay a pitch fee is one of the express terms of the written agreement. Pitch fees are reviewable annually and can usually only be increased in line with the Retail Price Index (RPI) plus the cost of expenditure on improving (rather than maintaining<sup>22</sup>) the site. A pitch fee review procedure came into force on 1 October 2006.

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<sup>19</sup> These provisions do not apply to gypsy and traveller sites.

<sup>20</sup> Section 9 came into force on 26 May 2013.

<sup>21</sup> DoE *Mobile Homes Survey*, 1992, para 386

<sup>22</sup> Repairs to the site are the responsibility of the site owner and should be funded through existing revenue resources

In [A better deal for mobile home owners](#) the Government noted that some site operators were adding repair costs to pitch fees. The Government said it was minded to legislate “to make it absolutely clear that costs relating to the above cannot be included in a pitch fee review, and, therefore, home owners are not obliged to pay any sum attributable to repairs.”<sup>23</sup> Following the consultation exercise the Government decided that “the priority for reform is not the law around repairs and improvements, but the transparency of pitch fee reviews.”<sup>24</sup>

Section 11 of the 2013 Act, which came into force on 26 May 2013, amended chapter 2 of Part 1 of schedule 1 to the *Mobile Homes Act 1983*. The amendments applied retrospectively to existing pitch agreements as well as to those made after the provisions come into force. Site owners are now required, when serving the pitch fee review notice, to also provide a document meeting the requirements set out in new paragraph 25A and the [Mobile Home \(Pitch Fees\) \(Prescribed Form\) \(England\) Regulations 2013](#) (2013/1505), which came into force on 26 July 2013. Site owners must give mobile home owners 28 days’ notice of the intention to increase the pitch fee. Copies of the pitch fee review form can be found online: [Pitch fee review form: online version](#).

If this document is not provided the notice of increase to the pitch fee has no effect. If the home owner pays the increase a Tribunal or arbitrator (where applicable) is able to order repayment on an application by the home owner.

Home owners who disagree with a proposed fee increase have the right to apply to a Tribunal for an order determining the amount of the new pitch fee. Previously, only site owners were able to make these applications.

Paragraphs 18 and 19 of schedule 1 to the 1983 Act were amended to clarify the matters to which site owners must have regard, and the costs to be disregarded, when determining the amount of the new pitch fee. Site owners have to have regard to any deterioration in the condition of the site and any decrease in the amenity of the site or any adjoining land. An amendment was agreed in Public Bill Committee to provide that the condition of adjoining land should only be taken into account if it is occupied or controlled by the site owner.<sup>25</sup> The site owner must also have regard to any service reduction supplied to mobile home owners, and any deterioration in the quality of those services.

The provision in paragraph 18(1)(c) of schedule 1, which allowed site owners to take account of the effect of legislation enacted since the last review date when determining the pitch fee increase, was replaced with a new provision specifying that site owners may only take into account any direct effect on their costs in relation to management or maintenance arising from any enactment that has come into force since

<sup>23</sup> DCLG, [A better deal for mobile home owners - Consultation](#), May 2012, para 2.33

<sup>24</sup> DCLG, [Summary of consultation responses and next steps](#), October 2012

<sup>25</sup> PBC 27 November 2012 cc18-19

the last review date. Site owners were prevented from passing on the cost of implementing amendments to the 1983 Act via pitch fee increases.

Amendments to paragraph 20 in relation to the calculation of RPI were agreed in Public Bill Committee:

Paragraph 20 was intended to ensure that the calculation of an RPI increase or decrease was based on the last published figure before the review. However, that is not as clear as it ought to be. As a result, it is not always the case that reviews are transparent, and there is evidence that some site owners simply choose the highest percentage change in RPI over the last year to fix the review, and that others simply work out an average RPI percentage change over that year and apply that to the pitch fee.

Clause 11(5) was intended to resolve that problem. It has come to light, however, that, as drafted, it would not enable the necessary calculation to be made. Amendment 16 therefore corrects an error in clause 11(5) regarding how the RPI percentage change should be calculated. It does that by replacing the current provision with two new subsections that would be inserted into paragraph 20 of chapter 2 of part 1 of schedule 1 of the 1983 Act. The new subsections require the calculation to be made using the last index published before the pitch fee review notice is given, or, where the site owner serves the pitch fee review notice late, the last index published before the last date on which he should have served the pitch fee review notice and the index published 12 months prior to that.<sup>26</sup>

The CLG Select Committee had recommended that the maximum annual pitch fee increase should be calculated in line with the Consumer Price Index (CPI) “to create a fairer link between home owner incomes and pitch fees.”<sup>27</sup> A number of groups are campaigning on this issue given that pensions are now linked to CPI. The Government rejected this recommendation stating “unlike the Consumer Price Index the Retail Price Index takes account of all housing costs and is, therefore, a more accurate reflection of inflation in that sector.”<sup>28</sup> However, the Government has indicated that it will call for evidence on the appropriate index to be used, as part of its 2017 review of park homes legislation.<sup>29</sup>

The Leasehold Advisory Service has published guidance on pitch fee reviews: [Pitch fee reviews on fully residential park homes explained](#).

### 3.3 Selling mobile homes

General guidance can be found in the DCLG factsheet, [Selling or gifting a park home: factsheet](#) (June 2013).

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<sup>26</sup> PBC 27 November 2012 c20

<sup>27</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 76

<sup>28</sup> [Park homes](#), Government response to the House of Commons Communities and Local Government Select Committee first report of session 2012-13, Cm 8424, p11

<sup>29</sup> Department for Communities and Local Government, [Review of park homes legislation: call for evidence – Part 1](#), 12 April 2017, para. 6

## Evidence of sale blocking

An area that causes mobile home owners considerable concern is the problems they face when site owners try to block their right to sell to a third party. The 1983 Act gave home owners the right to sell, but site owners have been creative in their methods to block open market sales in order to force owners to sell to themselves at a lower price. This enables the site owner to put a new home on the pitch and sell that (or the existing home) at its full market value. This is often more financially beneficial to the site owner than taking the 10% commission on third party sales.

Sale blocking has attracted previous legislative attention. Section 207 of the *Housing Act 2004* introduced (with effect from 18 January 2005) a contractual duty on the site owner to give approval to a prospective purchaser within a time limit of 28 days unless it was reasonable not to do so. If the site owner did not issue a decision within 28 days, or withheld approval unreasonably, then the occupier could seek damages for breach of contract. The home owner could also seek an order from a Tribunal declaring that the prospective purchaser was approved.

The *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provided:

Paragraph 8, which concerns the sale of the mobile home, has been amended so as to remove the owner's right to attach conditions to their approval of the purchaser and so that the only factor they can take into account is the suitability of the incoming resident. This has also been amended to make it clear that only commission is payable on the sale and that they cannot claim any other payment.<sup>30</sup>

Problems faced by home owners persisted. Some site owners used their right to approve prospective purchasers to contact them and deter them from buying, or persuade them to buy a new home on the site. The CLG Select Committee (2012) found evidence of direct intimidation and harassment of owners trying to sell on the open market.<sup>31</sup> Evidence submitted to the Committee by the British Holiday and Home Parks Association, and also the National Caravan Council, acknowledged the existence of sale blocking and expressed support for legislation to tackle it.<sup>32</sup>

In [A better deal for mobile home owners](#) the Government proposed three possible approaches:

- abolition of the site owner's approval of the purchaser; or
- the purchaser would be deemed "approved" unless declared unsuitable by a Tribunal; or

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<sup>30</sup> DCLG, [Park Homes Factsheet 2 – implied terms amendments – what it means for you](#), 2006

<sup>31</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 14

<sup>32</sup> [Park Homes](#), HC 177-II, First Report of Session 2012-13, Ev 113 and Ev 105



- keeping the approval requirement, but in the event of evidence of abuse the home owner could apply to a Tribunal to exercise the approval role.

The CLG Select Committee, after considering the various options, concluded that “removing a site owner’s right to approve prospective buyers provides the only effective way to eliminate sale blocking.” The alternative options were thought to present risks by giving site owners an opportunity to slow down the sale process.<sup>33</sup>

Although representatives of the park homes industry told the Committee that they hardly ever refused applications for approval, leading the Committee to conclude that “it is rarely used legitimately,”<sup>34</sup> they did point out the merits of the site owner’s approval:

We have refused people based on age – that is all – but only in a few cases. All our advertising is for 50 plus, and they are usually the type of people who come to us. We also think we have a duty to protect the residents who live on the park. If you buy a park home for a quiet retreat, you do not expect someone to move in next door with three children, two dogs and everything else that goes with it. Anybody who spends these considerable amounts of money should want to meet the park owner.<sup>35</sup>

The Committee recognised that abolishing the site owner’s right to approve buyers would reduce their contact with the seller, and transfer responsibility to the seller for bringing the site rules and pitch agreement to the attention of the buyer.

### Changes introduced by the Mobile Homes Act 2013

Section 10 of the 2013 Act amended schedule 1 to the 1983 Act by inserting new paragraphs (which only apply in England<sup>36</sup>) making provision about the sale or gifting of a mobile home. Different provisions apply where the proposed sale/gift concerns an existing agreement as opposed to a new pitch agreement (i.e. one made after the new provisions came into force, or one which was made before but which is assigned after the provisions came into force). The different approach to new and existing agreements takes account of the fact that the new provisions, in so far as they relate to existing agreements, affect site owners’ existing contractual rights. Section 10 came into force on 26 May 2013.

#### **New agreements (sale of a mobile home)**

In addition to the existing rights of a mobile home owner to sell and assign their pitch fee agreement and the right of a site owner to receive commission on the sale, new paragraph 7A removed the requirement on site owners to approve prospective purchasers. Instead, a requirement is placed on the purchaser to notify the site owner of the

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<sup>33</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 24

<sup>34</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 24

<sup>35</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 23

<sup>36</sup> Existing paragraphs 8 and 9 of Schedule 1 to the MHA 1983 will only apply in Wales.

completion of sale and assignment of the agreement. The Secretary of State has made regulations specifying the procedural requirements to be followed by the parties in connection with the sale.

The [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) (S.I. 2013/981) prescribe the form of notice required where a sale/gift of a mobile home is proposed. The regulations came into force on 26 May 2013. The *Mobile Homes Act 2013 (Saving Provisions) (England) Order 2013* contains relevant transitional and saving provisions (also in force on 26 May 2013).

[The Mobile Homes \(Site Rules\) \(England\) Regulations 2014](#) (SI 2014/5) provide that any site rules made prior to the commencement of the relevant sections of the 2013 Act (26 May 2013) which conferred power on the site owner to prevent a sale or gift of a mobile home, ceased to have effect from 4 February 2014. These Regulations also amended the [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) to revoke regulation 11 (replaced by regulation 15 of SI 2014/5) and to add an additional ground on which a site owner may apply for a refusal order under regulation 7 of the Selling and Gifting Regulations.

### **New agreements (gift of a mobile home)**

New paragraph 8A of schedule 1 to the 1983 Act retained the right of a mobile home owner to gift the home and assign the pitch agreement to a member of his or her family but removed the requirement for the site owner to approve the person to whom the property is gifted, subject to the occupier producing “relevant evidence” establishing the family connection. The Secretary of State has a regulation making power to specify what constitutes “relevant evidence” and to set out procedural requirements in connection with gifting and assigning a mobile home agreement.

As noted above, the [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) (S.I. 2013/981) prescribe the form of notice required where a sale/gift of a mobile home is proposed. The regulations came into force on 26 May 2013. The changes made by [The Mobile Homes \(Site Rules\) \(England\) Regulations 2014 \(SI 2014/5\)](#) are also relevant.

### **Existing agreements (sales and gifting mobile homes)**

Where there is an existing agreement new paragraphs 7B and 8B set out the requirements that must be met before a mobile home owner is entitled to sell or gift their home and assign the pitch agreement.

The home owner must serve notice on the site owner advising of the intention to sell/gift the home. The notice must include the name of the prospective buyer or family member (where the home is being gifted) together with the prescribed information contained in the [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) (S.I. 2013/981). Where a gift is proposed, the notice must include “relevant evidence” of the family connection.

The second requirement is that the home owner does not, within 21 days of the site owner receiving the notice, receive a notice back advising that that the site owner is seeking an order from the First-Tier

Tribunal (Property Chamber)<sup>37</sup> to prevent the sale/gift (“a refusal order”), or that the site owner has made an application which has been refused.

In Public Bill Committee the Minister, Don Foster, acknowledged that a number of existing agreements contained express terms requiring assignment of the agreement to take place in the presence, or with the approval of, the site owner. He moved amendments to make it clear that the approval of the site owner is no longer required:

Amendment 11 inserts into proposed new paragraph 7B(1) wording that explicitly provides that, under an existing contract, the resident selling the home is entitled to assign the agreement without the approval of the site owner, provided that the conditions set out in sub-paragraph (1) are met. Amendment 13 inserts the same wording into proposed new paragraph 8B(1) in connection with an assignment when, under an existing contract, the resident gifts the home. Under section 2(1) of the 1983 Act, terms implied in the agreement by the Act override any express terms in that contract. The amendments make it clear that any express terms that require assignments to be approved by the site owner will be unenforceable.

The Secretary of State will have regulation making powers to prescribe the grounds on which a site owner will be able to seek a refusal order and to specify the procedural requirements in relation to sales/gifts of mobile homes.<sup>38</sup>

[\*The Mobile Homes \(Site Rules\) \(England\) Regulations 2014 \(SI 2014/5\)\*](#) provide that any site rules made prior to the commencement of the relevant sections of the 2013 Act (26 May 2013) which conferred power on the site owner to prevent a sale or gift of a mobile home, ceased to have effect from 4 February 2014.

### **Provision of information**

A further new paragraph, A1, specifies the information that the home owner must provide to the prospective purchaser and the timescale for the provision of this information. The [\*Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013\*](#) (S.I. 2013/981) specifies the documents and/or other information to be provided. Failure by a home owner to adhere to the information requirement enables the purchaser to bring civil proceedings against them for breach of statutory duty.

The aim of paragraph A1 is to ensure that prospective purchasers are aware of all relevant information (including restrictions in the site rules on who may reside on the site) and can make an informed decision as to whether or not to purchase.

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<sup>37</sup> The Act provides for applications to a Residential Property Tribunal (RPT) but *The Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014*, provides for applications to First-Tier Tribunals (Property Chamber) as RPTs have been abolished in England.

<sup>38</sup> PBC 27 November 2012 c17

## 10% commission on sales

When an owner of a mobile/park home situated on a site covered by the *Mobile Homes Act 1983* (as amended) sells their home, there is a requirement to pay commission on the sale to the site owner.<sup>39</sup> The maximum rate of commission is prescribed in regulations made by the Secretary of State and is currently set at 10% of the sale price.<sup>40</sup>

The general justification for the charge is that what is sold is an amalgam of the value of the mobile home and the value of the site on which it is placed. Shelter's 1988 report contained a short section on commission charges:

It is worth mentioning that the payment of up to 10% commission to a site owner is frequently objected to by many mobile home owners. They argue that as a site owner does nothing to earn this commission, they do not see why s/he should get it. This argument is even stronger when occupiers have increased the value of the home by adding porches, brick skirts, etc at their own expense.

The site owner's response to this argument is to accept that they do nothing for the money but that this is part of the income, along with pitch fees and selling new mobile homes that they have always expected to receive to make the businesses viable. They say that if the commission was reduced or abolished, then they would have to increase pitch fees accordingly to make up the difference. It is certainly true that there is some evidence that this did happen when commission was reduced from 15% to 10% in 1983.<sup>41</sup>

Shelter did not recommend the abolition of commission.

The maximum rate of commission payable was retained at 10% in the [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) (S.I. 2013/981).

Mobile home owners regard the requirement to pay commission as unfair and outdated. Various organisations, such as [Park Home Owners Justice Campaign](#) (PHOJC), are campaigning for reform. The PHOJC argues that the 10% charge should be based on the difference between the last sale price and the current sale price. In particular, PHOJC states that, when compared to the commission earned by estate agents on the sale of traditional housing, the commission payable on the sale of a park home is "unfair". PHOJC organised a Three Nations Protest Rally on 21 March 2017 to challenge the 10% commission charge.

The charge has been reviewed several times since it was last amended (reduced from 15%) in 1983. In [October 2014](#) the Coalition Government said there were no current plans to amend the amount

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<sup>39</sup> Paragraphs 7A(5) and 7B(8) of Part 1 Schedule 1 to the *Mobile Homes Act 1983* (as amended). The obligation to pay commission falls on the buyer of the mobile home.

<sup>40</sup> *The Mobile Homes (Commissions) Order 1983* SI 1983/748: [Mobile Homes \(Selling and Gifting\) \(England\) Regulations 2013](#) (S.I. 2013/981)

<sup>41</sup> Shelter, *It's not what we expected*, 1988

payable – this position was reiterated by the Minister for Housing, then Brandon Lewis, on [8 June 2015](#).

The Park Homes Working Group 2015 considered this issue but was unable to reach a consensus.<sup>42</sup>

A separate Library Briefing Paper, 7003, [Mobile \(park homes\): 10% commission on sales](#) provides detailed information on the commission charge and consideration of whether it should be amended.

The Welsh Government has consulted on the reduction or abolition of commission fees on the sale of park homes. More information is contained in section 4 of this paper.

### 3.4 Additional implied terms and obligations

As noted above, the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, contained proposals to amend the terms implied into written statements by the 1983 Act. In addition to the specific proposals previously referred to in this note, the *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provided:

- In respect of the **re-siting of a home**, except for essential or emergency works, if the park owner wishes to move the home, they must make an application to the FTT. The FTT must be satisfied that the move is reasonable in all cases. In addition, the new pitch must be broadly comparable to the original pitch and the park owner is liable for any costs incurred during the movement of the home. If a home is to be moved for repairs to the base, the park owner must return the home to its original pitch on completion of the repairs, if the resident requires or the FTT orders.
- Occupiers are entitled to **quiet enjoyment of the pitch** as an automatic right.
- Site owners are able to **enter a pitch** between 9am and 6pm to deliver written communications, including post and notices, or to read meters for services which they supply, or to carry out essential or emergency works. They have to give as much notice to the resident as is practical. Entry required for any other reason requires the site owner to give 14 days' written notice of the date, time and reason for the visit, unless agreed otherwise.
- The park owner has to inform the resident or the residents' association of an **address** in England or Wales at which any notices can be served on them. If the park owner serves a notice for any reason, it must contain the owner's name and an address in England or Wales where papers can be served. If the notice does not contain that information then the notice or charge is not deemed payable, or served, until the information is supplied.

Residents have to:

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<sup>42</sup> DCLG, [Appendix A: Park Homes Working Group Report: June 2016](#), para 55

- Pay the pitch fee and any sums due under the written agreement.
- Keep the mobile home in a sound state of repair.
- Maintain the outside of the mobile home and all areas of the pitch for which they are responsible.
- On request of the owner, provide evidence of expenditure for which they are seeking reimbursement.

On request site owners have to:

- Provide accurate written details of the pitch. These details must be from fixed points. The park owner can charge up to £30 for this to existing residents.
- At no cost, provide documentary evidence in support of any charge.
- Repair the base for the mobile home if necessary.
- Maintain any services which they supply to the mobile home.
- Maintain and keep clean and tidy parts of the park which are not the responsibility of a resident.
- Consult on any improvements to the park.
- When consulting, give at least 28 days' notice in writing, outlining how it will affect the park and how representations can be made. These representations must be taken into account.

### 3.5 Moving a mobile home

The previous section sets out the protections available to mobile home owners when a site operator wants to re-site a home. [A better deal for mobile home owners](#) noted that complaints of abuse continue and contained proposals to improve and clarify the law so that a home could only be moved with the authorisation of a FTT.

Following consultation the Government concluded:

...from the examples cited in the consultation responses, it is clear that better understanding and enforcement of the existing law should be the priority, rather than a change to the law. We will work with residents and industry partners to achieve this.<sup>43</sup>

### 3.6 Home owners' alterations and improvements

Mobile home owners complain of site operators who obstruct improvement works even when these are being carried out inside owners' homes. In [A better deal for mobile home owners](#) the Government proposed to make it clear that a home owner is always entitled to make internal improvements as long as they do not alter it to the extent that it no longer fulfils the definition of a mobile home.<sup>44</sup>

In regard to external improvements, the Government proposed that the site operator should be able to refuse or grant permission but that this

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<sup>43</sup> CLG, [Summary of consultation responses and next steps](#), October 2012

<sup>44</sup> DCLG, [A better deal for mobile home owners](#), April 2012, p16

permission should not be unreasonably withheld. Following consultation, the Government decided not to legislate on this issue:

Government is clear that home owners should be free to make reasonable improvements to their homes, and there was hardly any disagreement to the propositions in these questions. But neither was there any suggestion that unreasonably withholding permission for improvements was a widespread practice, even though there is some evidence that individual site operators have acted unreasonably in refusing permission.

The Residential Property Tribunal has a wide power under section 4 of the Mobile Homes Act 1983 to determine any question arising under the Act or under an agreement to which the Act applies. In *Potter v A Hartley (Bir/41 UG/PHC/2011/0001)* (5 October 2011) the tribunal ruled that where an agreement contained a provision that only permitted improvements to be made at the absolute discretion of the site owner (i.e. that consent could be withheld per se) then it is implied into that contract that permission must not be unreasonably withheld. We understand that many contracts contain an express provision similar to that in the *Potter* case. Furthermore, if the agreement contained an absolute prohibition against making any improvement, this might fall foul of the Unfair Terms in Consumer Contract Regulations 1999 and could be challenged in the tribunal.

Given that terms prohibiting or regulating the making of improvements can be challenged through an application under section 4 and the tribunal's ruling confirms the Government's view that permission cannot be unreasonably withheld, we do not think it is necessary at this stage to make any change to the law.<sup>45</sup>

### 3.7 Succession rights

Problems have been identified where mobile homes are jointly owned but only one owner is a signatory to the pitch agreement. Where the signatory dies or moves into a care home, the remaining owner may not be entitled to succeed to the pitch agreement. [A better deal for mobile home owners](#) proposed that the law should be simplified so that anyone who owns and lives in the home as their only or main residence will be deemed to be party to the pitch agreement.

Changes were also proposed to clarify the situation where someone inherits a mobile home but does not have the right to live there. The proposal was to change the law to allow someone inheriting a mobile home to either: a) live in it under the terms of the agreement; or b) gift it to a family member so that they can live in it. This would be subject to the owner complying with the site rules (including any rules on age).<sup>46</sup>

Consultation revealed no consensus over the best solution in relation to succession rights. The Government said it would "continue to work with partners to identify what practical and effective measures can be introduced to clarify the law." The key issue around inheritance was

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<sup>45</sup> DCLG, [Summary of consultation responses and next steps](#), October 2012

<sup>46</sup> DCLG, [A better deal for mobile home owners](#), April 2012, p17

identified as difficulty in selling and as the 2013 Act was already addressing this issue the Government did not see a “pressing need for reform.”<sup>47</sup>

## 3.8 Site conditions/licensing

### Background

Site residents have also complained of poor conditions on parks.

The *Caravan Sites and Control of Development Act 1960* (CSCDA) requires site owners to obtain a site licence from the local authority before any land may be used as a caravan site. Local authorities have powers to impose conditions in site licences and enforce them if breached. The types of conditions that authorities may impose relate to the number of caravans allowed on the site, spacing between the caravans and the provision of amenities on the site.

The 1988 Shelter report noted that local authority practice in enforcing site licence conditions under the CSCDA was “variable.” This finding was reinforced in the 1992 Department of the Environment (DoE) survey. The Park Homes Working Group of 1998 made several recommendations in relation to site conditions/site licensing.

On 14 January 2005 the ODPM published a consultation paper, [Park Home Site Licensing: Further Reform](#), which outlined existing regulations and difficulties with the licensing system and proposed several changes that, the Labour Government claimed, were “broadly in line with recommendations suggested by the Park Home Working Group.” The press notice announcing publication of the consultation paper stated that “there is no specific commitment to act on the results” [of the consultation exercise] and:

... we will make recommendations in the light of the resource and legislative position at the time. We have no resources within SR04 years to take forward any changes that might be agreed as a consequence of the consultation if they contain new burdens or are not clearly cost neutral at the outset. We would need to prioritise any implementation work and costs within SR06 years (2007-2010).<sup>48</sup>

A summary of responses to the consultation exercise was published in July 2005, [Park Homes Site Licensing Proposals for Reform: Summary of Responses](#).

Subsequently, during a Westminster Hall debate on 26 March 2008 on park homes, the Parliamentary Under-Secretary of State, Iain Wright, expressed an intention to bring in legislation to address concerns about site licensing and improper activity amongst site owners:

It is right that I now address the central matter of the debate, site licensing. I recognise that there is a need to bring forward a comprehensive and effective system of site licensing to replace the

<sup>47</sup> DCLG, [Summary of consultation responses and next steps](#), October 2012

<sup>48</sup> ODPM Press Release 2005/329, 14 January 2005



scheme introduced under the Caravan Sites and Control of Development Act 1960. The comments of hon. Members have reinforced my conviction that something needs to be done to prevent unscrupulous individuals from operating in the sector. Action also needs to be taken where an individual has acted in a criminal manner that is relevant to their fitness to be engaged in the management of a park home site. Therefore, let me make it clear to hon. Members that I intend to introduce a licensing regime that requires managers of park homes and other caravan sites to be confirmed as fit and proper persons, and to have the relevant competencies to manage a specific and, as hon. Members have said, in some cases unique type of accommodation.<sup>49</sup>

He said that consultation on the matter would take place before detailed proposals were put forward. On 12 May 2009 the Labour Government published [Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation](#) which built on the 2005 consultation and considered how a new licensing system might look (the consultation process closed on 4 August 2009). On publication the Minister said:

Persons engaged in the management of park home sites will need to demonstrate they have the relevant competences to manage sites. The new system will give local authorities duties to impose management conditions in licences and a range of enforcement tools to ensure that site licensing conditions are complied with. It will also allow local authorities to recover their costs in connection with their duties under the new provisions by charging appropriate fees. The proposals are intended to drive up the management standards in this sector and, in those parts of it where that is not possible, we intend to give local authorities powers to put alternative management arrangements in place.<sup>50</sup>

A summary of responses to this consultation paper, together with information on how the Labour Government intended to take these matters forward, was published on 30 March 2010: [Park homes site licensing reform: The way forward and next steps](#). These measures were not introduced prior to the 2010 General Election.

[A better deal for mobile home owners](#) (2012) stated that the licensing provisions in the 1960 Act were out of date. The Government intended to enable authorities to “properly resource” their licensing functions by charging for their services and to give them appropriate powers to enforce licence conditions.<sup>51</sup> Some of the proposed changes in [A better deal for mobile home owners](#) replicated those set out by the Labour Government in [Park homes site licensing reform: The way forward and next steps](#) (March 2010) but there were also some significant differences; for example, there was no proposal in [A better deal for mobile home owners](#) to require site operators to meet a “fit and proper person” test.<sup>52</sup>

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<sup>49</sup> HC Deb 26 March 2008, c89 WH

<sup>50</sup> HC Deb 12 May 2009 cc43-4WS

<sup>51</sup> CLG, [A better deal for mobile home owners](#), April 2012, p26

<sup>52</sup> Note that there *is* provision in the *Mobile Homes Bill* for this.

The consultation paper contained proposals to:

- enable authorities to refuse to grant a licence if not satisfied that the site is fit for purpose – this will give owners an incentive to engage with the local authority after planning permission is granted before any site works are carried out;
- give authorities power to charge for their licensing functions (applications, transfer, alterations of licences in addition to handling enquiries and complaints – payable annually as a condition of the licence);
- enable authorities to enter sites and carry out emergency works and recover costs associated with this work (authorities have similar powers to carry out emergency works in relation to bricks and mortar homes);
- increase the maximum fine for operating a site without a licence and for breach of a site licence (previously £2,500).

Other proposed changes included making all site owners, irrespective of whether they are joint licence holders, jointly and severally liable for complying with the licence conditions. Views were sought on an appropriate level of maximum fine for obstructing entry to a site by any authorised person.<sup>53</sup>

## Changes introduced by the Mobile Homes Act 2013

Provisions in the *Mobile Homes Act 2013* have significantly strengthened the role and powers of local authorities in relation to licensing mobile home sites in line with the proposals set out in [A better deal for mobile home owners](#).<sup>54</sup> Sections 1-7, which came into force on 1 April 2014, are aimed at raising standards in the industry and delivering a more professional service to home owners. The measures also provide for more effective enforcement action by local authorities where site operators do not comply with their licence obligations.

Ahead of the new licensing provisions coming into force, DCLG published [Mobile Homes Act 2013: new licensing enforcement tools - a guide for park home site owners](#) (February 2014).

### Fees

Authorities had been unable to charge for carrying out their licensing functions. In [A better deal for mobile home owners](#) the Government said “this inability to charge for their functions means that licensing functions are often under-resourced.”<sup>55</sup> The Communities and Local Government Select Committee also identified this as a “common theme” in submissions to its inquiry:

It is clear that local authorities do not have the resources to monitor park homes effectively. The existing regime should be

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<sup>53</sup> Ibid., pp26-33

<sup>54</sup> Sections 1-7 of the Act concerning site licensing were not to be brought into force until after 31 March 2014. This date marked the end of the Coalition Government’s moratorium on new burdens on micro-businesses

<sup>55</sup> CLG, [A better deal for mobile home owners - Consultation](#), May 2012, para 4.10

changed to provide local authorities with a funding source to resource adequately their park licensing activities.<sup>56</sup>

The Committee stressed the need for “a clear link” between fees received and the resourcing activity to license and monitor mobile home sites.<sup>57</sup>

In [Park Homes: Changes to the local authority site licensing regime - Impact Assessment](#) (April 2012) the Government provided an estimate of the costs to site owners of a new licensing regime:

The majority of the costs fall to site owners, who will need to pay new fees for licenses with a present value of around £26.5m over a ten year period as well as additional costs of administration and servicing enhanced monitoring and enforcement, which are estimated at around £9.8m. Costs to local authorities of increased monitoring and enforcement are estimated at around £22.3m.<sup>58</sup>

The [Impact Assessment](#) noted that where there are few sites within an authority’s area the fees may have to be very high in order for the authority to achieve full cost recovery.

Section 1 of the 2013 Act amended the CSCDA to enable authorities to charge fees in relation to their licensing functions on “relevant protected sites.” This excludes sites used for holiday caravans and those sites where year-round occupation is prohibited.<sup>59</sup> Local authority owned sites are exempt from the licensing regime.

The level at which the initial application fee was set, and any annual fee required in respect of licensing functions, is a matter for the local authority to determine. A new section 5A in the CSCDA requires the authority to inform the licence holder of the matters to which they have had regard when fixing the fee for the year in question.

Authorities can seek an order to recover overdue fees from a First-Tier Tribunal (Property Chamber).<sup>60</sup> Failure to comply with such an order within 3 months enables the authority to apply for an order revoking the site licence.

Fees are also payable for:

- an application to alter the conditions attached to a licence; and
- an application for consent to transfer a site licence on a relevant protected site.

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<sup>56</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 41

<sup>57</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 44

<sup>58</sup> DCLG, [Park Homes: Changes to the local authority site licensing regime - Impact Assessment](#), April 2012, p5

<sup>59</sup> Section 1 was amended in Public Bill Committee to ensure that sites including residential staff accommodation or that are occupied by the owner do not come within the definition of a relevant protected site. An amendment was also made to distinguish between a relevant protected site application and the grant of a holiday site licence [PBC 27 November 2012 cc3-5].

<sup>60</sup> The Act provides for applications to a Residential Property Tribunal (RPT) but *The Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014*, provides for applications to First-Tier Tribunals (Property Chamber) as RPTs have been abolished.

Authorities are required, by a new section 10A in the CSCDA, to prepare and publish a fees policy which can be revised from time to time.

Site owners were able to recover the cost of the annual licence fee through the pitch fee review in the first year that the licence fee became payable by the site owner. It could be added to the pitch fee in the first year it arose. Thereafter, the fee remains part of the pitch fee and will be updated in line with RPI.

The cost of any fees paid to accompany an application for site licence conditions to be amended, or consent to transfer a licence, may *not* be passed on via the pitch fee.<sup>61</sup>

The Park Home Owners Club commented on the site owner's ability to recover the cost of the annual licence fee through the pitch fee:

Although the site licence fee will probably be an annual fee, it can only be recovered once on the initial application for a site licence. The sum will become an integral part of the pitch fee which will increase each year with inflation. Therefore the park owner cannot add it on each year because it will already be in the pitch fee.

Note that the Bill also expressly excludes the cost of transferring or altering a site licence to the pitch fee by an amendment to implied term 19. Ref: clause 1(8) of the Bill. The Bill is carefully worded to clarify what costs can NOT be passed onto the residents, namely the costs incurred by failure to comply with the site licence conditions or costs of complying with any changes to the conditions or costs of meeting any other requirements from the local authority. The Bill deliberately does not mention the site licence fee because that is covered by the existing term which states that the effect of any enactment can be considered at the pitch fee review. This is explained in paragraph 13 of the Explanatory Notes to the Bill.

The law allowing the cost of the licence fee to be passed on to residents would seem very unfair. We in IPHAS and NAPHR protested about this repeatedly at meetings of the DCLG when the legislation was being drafted and we objected to the idea at the Select Committee meeting. But on the plus side, the government has pointed out that it now gives residents some leverage to use on the local authority. Whereas previously, when residents asked the local authority for action on the site licence conditions they would use the excuse of lack of resources, in future we can point out that the residents are paying for the licence fee so we are entitled to some return for our money.<sup>62</sup>

DCLG published [Mobile Homes Act 2013: a guide for local authorities on setting licence fees](#) in February 2014.

A review in January 2016 of the websites of 233 English local authorities by the British and Home Parks Association found that only

<sup>61</sup> A new paragraph has been inserted in Part 1 of Schedule 1 to the *Mobile Homes Act 1983* to provide for this.

<sup>62</sup> Park Home Owner's Club, [Site licence fee clarification](#), March 2013 (accessed on 17 December 2013)

89 councils (38%) had published their site licensing fees. The Park Homes Working Group 2015 highlighted the wide range of site licensing fees being charged by local authorities:

**For a 10-pitch residential park:**

- Annual fees ranged from £37.80 in Hart to £566 in Herefordshire
- Fees for transfer of site licences ranged from £27.80 in Taunton Deane to £896 in Derby City.

**For a 50-pitch residential park:**

- Annual fees ranged from £123 in Corby, Daventry and Wellingborough to £1,226 in Herefordshire
- Fees for transfer of site licences ranged from £27.80 in Taunton Deane to £896 in Derby City.<sup>63</sup>

**Applications to issue or transfer licences**

Previously, where an applicant showed that s/he had the necessary planning permission and had provided the required information, the local authority had to issue a site licence. [A better deal for mobile home owners](#) advised:

...the requirement to obtain a licence does not arise until the owner starts to station caravans on the land. This means that, by the time a licence application is made, the site's infrastructure, services and amenities may have already been provided without the involvement or oversight of the local authority. As the authority is obliged to grant the licence (subject to a limited exception relating to breaches of a licence) within two months of receipt this can mean that substandard sites are licensed and authorities are obliged to take enforcement action retrospectively.<sup>64</sup>

Section 2 of the 2013 Act has given local authorities discretion over whether or not to grant or transfer a site licence through amendments to sections 3 and 10 of the CSCDA. The Secretary of State has the power to make regulations to specify matters to which authorities will have regard when exercising discretion on whether to issue a licence.

[\*The Mobile Homes \(Site Licensing\) \(England\) Regulations 2014\*](#)

(SI 2014/442) came into force on 1 April 2014. These Regulations set out the matters to which an authority must have regard when considering whether to issue or agree to the transfer of a licence. They include the ability of the applicant to comply with any conditions of the licence, management arrangements and condition of the site. Authorities can require specific information or documents to accompany an application for a site licence.

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<sup>63</sup> DCLG, [Appendix A: Park Homes Working Group Report: June 2016](#), para 10

<sup>64</sup> DCLG, [A better deal for mobile home owners - Consultation](#), May 2012, para 4.31

The regulations confer a right to appeal to a tribunal<sup>65</sup> against a decision to refuse a licence application and provide that no compensation is payable for losses suffered pending the outcome of an appeal by a site owner.

An application to issue or transfer a site licence received before 1 April 2014 had to be considered under the old provisions of the CSCDA.<sup>66</sup>

### **Site licence conditions – appeals**

Section 3 of the 2013 Act amended sections 7 and 8 of the CSCDA to provide that appeals against conditions attached to a site licence in England will be to a First-Tier Tribunal (Property Chamber)<sup>67</sup> rather than the magistrates' court. The tribunal can attach new conditions to a site licence where it varies or cancels a condition under section 7.

### **Compliance notices**

Previously, if a site owner was in breach of a licence condition the local authority had a power to prosecute in the magistrates' court but could not serve a formal notice requiring the work to be done ahead of prosecution. In [A better deal for mobile home owners](#) the Government observed a reluctance on the part of authorities to prosecute site owners as the maximum fine (£2,500) did not represent a deterrent.<sup>68</sup>

Section 4 of the 2013 Act amended section 9 of the CSCDA so that in the event of a breach of a licence condition on a relevant protected site in England, the local authority can serve a compliance notice on the occupier. The occupier has the right to appeal to a First-Tier Tribunal (Property Chamber).

If the occupier fails to adhere to the terms of a compliance notice without reasonable excuse they are guilty of an offence. Authorities can recover expenses associated with the service of a compliance notice.

Applications to amend site conditions made before 1 April 2014 had to be considered under the old provisions of the CSCDA.<sup>69</sup>

### **Local authority powers to carry out works**

The CLG Select Committee took evidence from authorities seeking the power to intervene to undertake works where licence conditions are not met, coupled with a power to recover costs. The Committee recommended the introduction of a power to undertake works within a

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<sup>65</sup> *The Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014*, provides for applications to First-Tier Tribunals (Property Chamber) as Residential Property Tribunals have been abolished in England.

<sup>66</sup> Article 4 of the [Mobile Homes Act 2013 \(Commencement and Saving Provision\) \(England\) Order 2014](#) (SI 2014/816)

<sup>67</sup> The Act provides for applications to a Residential Property Tribunal (RPT) but *The Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014*, provides for applications to First-Tier Tribunals (Property Chamber) as RPTs have been abolished in England.

<sup>68</sup> CLG, [A better deal for mobile home owners - Consultation](#), May 2012, para 4.16

<sup>69</sup> Article 4 of the [Mobile Homes Act 2013 \(Commencement and Saving Provision\) \(England\) Order 2014](#) (SI 2014/816)

regime akin to that under which authorities carry out works in default to Houses in Multiple Occupation (HMOs).<sup>70</sup>

Section 5 of the 2013 Act has given local authorities the power to enter and carry out works on sites in England where occupiers have been convicted of failing to comply with the steps set out in compliance notices.

In certain situations, authorities can take emergency action to remove an imminent risk of serious harm to the health and safety of any person on a relevant protected site in England. The occupier has a right of appeal. Section 5 was amended in Public Bill Committee to clarify that the deadline for service of an expenses demand, where emergency action has been taken, is two months after the date on which any appeal is determined, or two months after the completion of the action, whichever is the later date.<sup>71</sup>

Authorities have the power to reclaim expenses associated with carrying out necessary compliance works and/or emergency action.

### **Appeals, operative periods, recovery of expenses**

Section 6 of the 2013 Act inserted three new sections into the CSCDA (9G, 9H and 9I). New section 9G provides for the timing of appeals against compliance notices and emergency action, or a demand for expenses arising from these activities. New section 9H sets out when a compliance notice or demand for expenses becomes operative. New section 9I enables a local authority to charge interest from the operative date of a demand for expenses at a rate fixed by the authority. The local authority can register these debts as a local land charge against the site.

## **Fit and proper person test (not in force)**

### **Background**

There have been repeated calls from mobile home owners for the introduction of a requirement that site owners/operators demonstrate that they are “fit and proper persons.” In March 2010 the Labour Government announced an intention to insert a “fit and proper person” requirement into a new site licensing regime. The proposal was supported by “a majority of consultees.”<sup>72</sup> Labour’s proposals were not implemented prior to the 2010 General Election.

The context within which the “fit and proper person” issue has arisen is one where certain site operators have acted aggressively and/or in an intimidating manner towards residents. The CLG Select Committee’s report quotes evidence of harassment from the Park Home Owners Justice Committee:

It is right across the whole system. I have telephone calls and emails every day with regard to it. I have instances of more passive

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<sup>70</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 49

<sup>71</sup> PBC 27 November 2012 cc5-6

<sup>72</sup> CLG, [Park homes site licensing reform: The way forward and next steps](#), March 2010,

harassment, if you like, i.e. park owners sitting outside the house in cars with blacked-out windows and the engine being revved up; causing a disturbance; and sending threatening letters of eviction for no real reason whatsoever. The worst cases involve brandishing chainsaws outside the house when residents return; sending in thugs—about which I have given you information today—to throw paint over houses; breaking car windows; putting paint inside; and threatening elderly and disabled people. All of the letters I have received are in files for you. One disabled gentleman who dared to ask to see a utility bill was threatened; he was told he would be taken to the top field and done over. It goes on and on right across the board, so, yes, a lot of it is going on.<sup>73</sup>

Parallels have been drawn between the requirement on licence holders of certain Houses in Multiple Occupation (HMOS) to meet a “fit and proper person” test under the *Housing Act 2004*. This test involves asking the prospective licence holder whether they have:

- any unspent convictions for offences involving fraud or other dishonesty, or violence or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003; or
- practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins, or in connection with the carrying on of a business; or
- contravened any provision of the law relating to housing or of landlord and tenant law; or
- acted otherwise than in accordance with any applicable code of practice for the management of HMOs approved under section 233 of the 2004 Act.

The *Housing and Planning Act 2016* extends this test to provide that landlords must also be entitled to remain in the UK and must not be insolvent or bankrupt.<sup>74</sup>

The Select Committee acknowledged that there were drawbacks with the imposition of a similar test in the mobile homes sector. The HMO test relies on self-certification so it would be possible for an associate of the site owner with a clean record to hold a licence on his/her behalf. The Committee received evidence pointing out that it would be difficult to apply a test retrospectively to site owners who hold a licence. There is also the question of who would take over management of the site in the event of an owner being deemed unfit. Local authorities can take over the management of HMOs if they refuse or revoke an owner’s licence but this happens very rarely in practice.<sup>75</sup>

When giving evidence to the Select Committee’s inquiry the Minister for Housing, Grant Shapps, argued that the proposals in [A better deal for mobile home owners](#) would achieve the same result as a “fit and proper person” test by driving the worst offenders from the sector. The Committee was not persuaded and concluded that “a fit and proper

<sup>73</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, para 50

<sup>74</sup> Section 125 of the *Housing and Planning Act 2016*

<sup>75</sup> [Park Homes](#), HC 177-I, First Report of Session 2012-13, paras 55-56



person test could be a useful addition to local authorities' armoury to exclude the worst offenders from owning and managing park home sites." The Committee went on to recommend:

...that the Government bring forward as part of the proposed legislation an enabling power to establish a fit and proper person test, which could be activated through secondary legislation if required.<sup>76</sup>

The Government [response](#) to the Committee's report acknowledged the existence of "widespread malpractice" and "a number of criminal operators" but expressed a lack of conviction around the need for a "fit and proper person test."<sup>77</sup> However, the *Mobile Homes Act 2013* does enable the introduction of such a test.

### **Changes made by the *Mobile Homes Act 2013***

Section 8 of the Act has inserted five new sections (12A to 12E) into the CSACD. The Secretary of State has acquired regulation making powers under which s/he will be able to prohibit the use of land as a relevant protected site in England unless the local authority is satisfied that the occupier, or the person appointed to manage the site, is a "fit and proper person." Regulations will set out the consequences of contravening any requirement contained therein, including criminal sanctions and the circumstances in which a site licence may be revoked.

Section 8 will be brought into force on such day as the Secretary of State may, by Order, appoint. To date, it has not been brought into force.

## **3.9 Dispute resolution**

DCLG issued a consultation paper, *A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*, in May 2008. The Labour Government's response to comments received was published alongside the May 2009 consultation paper on site licensing.<sup>78</sup> The Minister announced the intention to transfer jurisdiction on appeals and applications under the 1983 Act from county courts to Residential Property Tribunals (RPTs):

The aim of the transfer of the jurisdiction is to provide residents of mobile homes (including caravans) and the owners of sites on which they are located with a level playing field in the resolution of disputes, by providing access to a dedicated, low-cost specialist (housing) tribunal, which can deal with cases quickly and without the parties needing to be legally represented.<sup>79</sup>

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<sup>76</sup> , HC 177-I, First Report of Session 2012-13, para 59

<sup>77</sup> [Park homes](#), Government response to the House of Commons Communities and Local Government Select Committee first report of session 2012-13, Cm 8424, p10

<sup>78</sup> CLG, *Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation*, 12 May 2009

<sup>79</sup> HC Deb 12 May 2009 cc43-4WS

This paper also included a short consultation on additional measures to protect residents subject to proceedings in relation to the termination of their agreements (see the following section).

In a Written Ministerial Statement issued on 16 December 2009 the Minister announced that, subject to Parliamentary consent, the Residential Property Tribunal's new jurisdiction would come into force on 6 April 2010.<sup>80</sup> This consent was not obtained prior to the dissolution of Parliament for the General Election however, on 14 July 2010 the new Housing Minister, Grant Shapps, said that he proposed to lay before Parliament the necessary secondary legislation to effect the transfer as soon as possible after the summer recess, with a view to transferring jurisdiction to the Residential Property Tribunals by the end of the year.<sup>81</sup> *The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011* (SI 2011/1005) was laid on 31 January 2011 and came into force on 30 April 2011. This Order transferred dispute resolution and other proceedings under the *Mobile Homes Act 1983* from the county courts to Residential Property Tribunals.<sup>82</sup> The only exception to this is in relation to applications to terminate an agreement (see section **3.10** below) – these remain within the jurisdiction of the county courts.

RPTs have now been abolished in England – the 2013 Act contains references to them as the Property Chamber of the First-tier Tribunal had not been established at that point. The Property Chamber was established on 1 July 2013 when the *Transfer of Tribunal Functions Order 2013* (S.I. 2013/1036) transferred (amongst other things) the functions of RPTs into the unified tribunal structure. *The Transfer of Tribunal Functions (Mobile Homes Act 2013 and Miscellaneous Amendments) Order 2014* transferred functions subsequently conferred on RPTs by the 2013 Act as from 18 July 2014.

### 3.10 Termination of agreements

Mobile home owners on sites covered by the 1983 Act have a right to live in their home on the site indefinitely unless the agreement is validly terminated by one of the parties or if the site owner's interest in the land is insufficient to enable him/her to grant the right for an indefinite period, or if there is only limited planning permission to use the land as a protected site. In the latter case, the agreement will only last as long as either the owner's interest in the land or the planning permission.

One of the grounds on which a site owner could apply to court to end an agreement with a park home owner was where, having regard to its age and condition, the mobile home was having a detrimental effect on the amenity of the site or was likely to have such an effect before the

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<sup>80</sup> HC Deb 16 December 2009 cc135-6WS

<sup>81</sup> HC Deb 14 July 2010 c2WS

<sup>82</sup> A new procedure and fees regime for RPTs was established by the *Residential Property Tribunal Procedures and Fees (England) Regulations 2011*

end of the next relevant period.<sup>83</sup> The Park Homes Working Group (1998) recommended that the “age” criterion be deleted and that the “condition” criterion should only apply to the exterior of the home.

Section 207(2) of the *Housing Act 2004* removed the age of a mobile home as a relevant factor for the termination of an agreement. A site owner may still apply to court to end an agreement on the basis that the condition of a home is having a detrimental effect on the amenity of the site, or is likely to have such an effect in the next five years. Section 207(2) also gave discretion to the court to adjourn termination proceedings to give the occupier time to effect repairs if this would be reasonably practicable, and if the occupier has indicated that s/he is willing to carry out those repairs.

In the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, the ODPM set out proposals to amend the terms implied into written statements by the 1983 Act, in relation to the termination of agreements there were proposals to:

Permit site owners to terminate agreements only because the current condition of the home is having a detrimental effect on the amenity of the site without reference to five year 'relevant periods'.

And:

Permit site owners to terminate agreements because the home is no longer the occupier's only or main residence only if the court considers it reasonable to do so.

The *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, implemented these changes.

The May 2009 paper, *Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation*, included a short consultation on additional measures to protect residents subject to proceedings in relation to the termination of their agreements. The purpose of this consultation was to seek views on whether the fact-finding role of county courts in termination cases should be transferred to RPTs.

The outcome of this consultation exercise was published in December 2009. [Further consultation on termination provisions in the Mobile Homes Act 1983 \(as amended\): government response](#) set out the Government's decision not to transfer the fact-finding role of county courts to RPTs in respect of termination cases involving a breach of an agreement, or a claim that the resident of the park home is no longer occupying it as his only or main residence, but to do so in respect of claims relating to the detrimental condition of the home to the amenity of the site.

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<sup>83</sup> Schedule 1(1)(5) of the 1983 Act

The Coalition Government transferred jurisdiction for disputes under the 1983 Act from the county courts to the RPT service from 30 April 2011.<sup>84</sup> It retained the Labour administration's decision not to transfer responsibility for determining applications to terminate an agreement:

The only exception will be applications to terminate an agreement, which will remain within the county courts' jurisdiction. If the ground on which termination is sought is that the home is in disrepair, that fact will, in future, need to be established in the tribunal before the court can be asked whether it is reasonable to terminate the agreement. The tribunal will be able to deal with such matters as pitch fees, any applications for approval of a purchaser of a home that arise after 30 April, the re-siting of homes, the recognition of qualifying residents' associations—a matter of considerable grievance at the moment—and other contractual disputes.<sup>85</sup>

Note that RPTs were abolished in England in 2013 and references should be treated as references to the First-Tier Tribunal (Property Chamber).

### 3.11 Residents' associations

The Park Homes Working Group (1998) recommended that a procedure should be established for recognising residents' associations which meet specified criteria.

The July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, contained proposals to amend the terms implied into written statements by the 1983 Act to give occupiers the right to form recognised residents' associations in certain circumstances. The issue of resident consultation and involvement was also raised in the January 2005 consultation document on site licensing.

*The Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provides:

That the park owner must acknowledge the residents' association if the criteria is met. A resident's association is regarded as being qualifying if:

- It represents the residents on the park who own their home.
- At least 50% of residents are members.
- It has a chairman, secretary and treasurer.
- Decisions of the association are taken by vote, with one vote per home.
- It is independent from the park owner, whose agents and employees are excluded from membership, even if they are park residents.

<sup>84</sup> *The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011*

<sup>85</sup> Sixth Delegated Legislation Committee, 2 March 2011 c4

In calculating the percentage of residents, each home is considered as having 1 occupant. If there is more than one occupant then the first name on the written agreement is used.<sup>86</sup>

The restriction to one vote per home was raised during the debate on the *Draft Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006* on 22 June 2006:

If only one person in each home is allowed voting rights - it will be the stronger person, which is usually, but not necessarily, the man – the woman's rights will, again, be put aside. I simply ask the Minister to consider that.<sup>87</sup>

The Minister responded:

Only one occupier is counted per caravan for the residents' association. That is standard practice in residents' association membership, and similar provisions are made in other areas of the housing sector. For the purposes of percentages needed to form a residents' association under the clauses, we think that it is appropriate for the relevant unit to be the mobile home rather than the number of people in it.<sup>88</sup>

Further information can be found in the DCLG factsheet [Park home qualifying residents' associations](#) (November 2012).

### 3.12 Sale of utilities

The Park Home Working Group 1998 recommended that suppliers of all utilities should give price information to consumers. It also recommended the introduction of a new statutory duty to require resellers of water and gas to provide information on charges to purchasers and the introduction of a statutory maximum price for the resale of gas supplied by cylinder and bulk tank.

The Labour Government responded thus:

The Government accepts in principle that suppliers of all utilities should provide price information to consumers. The Government consulted in November 2000 on proposals for a statutory requirement to provide price information on water resale, and is currently considering the responses received.

The Government will consider the implications of introducing a statutory duty on resellers of gas in cylinders and bulk tanks to provide information on charges to customers. The Government's initial view is that competition in the supply of gas in cylinders and bulk tanks allows customers to choose alternative suppliers, and gain price information from those suppliers.

We will however consider further the circumstances faced by many mobile home residents whose fuel is supplied via their site owner, and who may not be able to choose a different supplier or get the information needed to be able to challenge prices charged by their site owners.

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<sup>86</sup> DCLG, [Park Homes Factsheet 2](#)

<sup>87</sup> SC Deb 22 June 2006 c7

<sup>88</sup> Ibid., c16

The Office of Gas and Electricity Markets consulted in March 2001 on its proposal to introduce a requirement for resellers of electricity to pass information about electricity purchase prices to their customers, as currently happens for mains gas.

The Government will consider the implications of introducing a statutory resale price for gas supplied by cylinder and bulk tank. As referred to above, the Government's initial view is that competition in the supply of gas in cylinders and bulk tanks allows customers to choose alternative suppliers and benefit from a competitive market. We consider that the consumer is best served by open market competition, although we appreciate that competition can be impeded by restrictions imposed by site owners on the choice of LPG suppliers. Unfair contract terms can in some cases be challenged under the Unfair Terms in Consumer Contracts Regulations. It is open to residents concerned about restrictions on their choice of supplier to approach the Office of Fair Trading with any evidence they have that such restrictions are being imposed in their particular circumstances.

We will consider further the circumstances faced by many mobile home residents whose fuel is supplied via their site owner who may not be able to benefit from effective choice and thus achieve lower fuel costs as a result of competition.

The Office of Water Services introduced maximum resale price arrangements for water with effect from 1 April 2001.

The Government welcomes the discussions that have already begun between industry and home owners' representative bodies about the industry charter. These discussions could include consideration of how good practice on the supply and pricing of utilities should be promoted.

The *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provides that an owner, if requested by an occupier, shall provide documentary evidence in support and explanation of any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement. In addition the owner is responsible for maintaining the supply of these services.

The Park Homes Working Group 2015 considered utilities issues and made the following recommendations:

- DCLG should investigate further the funding implications of having water and electricity meters fitted for every park home.<sup>89</sup>
- DCLG should work with the Department for Energy and Climate Change to investigate how the cost of LPG is made up and how the market can be made to work better on park home sites.<sup>90</sup>

### 3.13 Harassment and illegal eviction

The Park Homes Working Group 1998 recommended the amendment of the *Caravan Sites Act 1968* to follow the terms of the legislation

<sup>89</sup> DCLG, [Appendix A: Park Homes Working Group Report: June 2016](#), para 45

<sup>90</sup> DCLG, [Appendix A: Park Homes Working Group Report: June 2016](#), para 49

giving protection against harassment and illegal eviction to private rented tenants.

Section 210(2) of the *Housing Act 2004* amended the 1968 Act to give mobile home owners equivalent protection to that given to tenants in conventional housing against harassment and unlawful eviction:

Also we have increased the protection of occupiers of park homes against harassment and illegal eviction. The Act amends the Caravan Sites Act 1968 to mirror the Protection from Eviction Act 1977, the legislation which governs the protection given to occupiers of conventional housing against unlawful eviction and harassment.

The wording relating to the existing offence, where a site owner does "acts **calculated** to interfere with the peace or comfort" of the occupier which cause him to abandon his home, has been relaxed to "acts **likely** to interfere" with such peace or comfort, which is obviously an easier test to satisfy. A new offence has been introduced which does not require "intent" with regard to the harassing actions - it will be sufficient if the site owner or agent knows (or has reasonable cause to believe) that his conduct is likely to result in an occupier abandoning occupation.

This will increase the protection available to occupiers and the chances of successful prosecutions.<sup>91</sup>

Section 12 of the *Mobile Homes Act 2013* (with effect from 26 May 2013) has removed the word "persistently" from subsection 3(1)(c) in relation to sites in England so that an offence will be committed if a person withdraws or withholds services or facilities reasonably required for occupation of the mobile home as a residence on the site. The Act has also inserted a new offence into section 3 to provide that a site owner in England, or his/her agent, will commit an offence if, during the subsistence of a residential contract, s/he knowingly or recklessly provides information or makes a representation to a person which is false or misleading in a material respect. The owner/agent must know or have reasonable cause to believe that such a course of action is likely to cause the home owner to abandon their home or remove it from the site, or fail to exercise their rights in relation to this; or that taking the action is likely to cause a prospective purchaser to terminate their interest. The penalty on summary conviction is a level 5 fine on the standard scale, six months imprisonment or both and on indictment, a fine, two years imprisonment or both.

Section 13 of the 2013 Act increased the level of penalties payable for certain offences under the 1960 Act. Section 13 was brought into force on 1 April 2014 by the [Mobile Homes Act 2013 \(Commencement and Saving Provision\) \(England\) Order 2014](#) (SI 2014/816).

Section 14 of the 2013 Act inserted a new section 26A into the CSCDA which mirrors a provision in section 14 of the *Caravan Sites Act 1968*. The new section provides that where a body corporate commits an

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<sup>91</sup> Housing Act 2004 Factsheet 9: Park Homes

offence under the CSCDA, and it is established that the offence was committed with the consent or connivance of an officer of the body corporate, or was attributable to neglect on the part of this person, then they will be guilty of an offence in addition to the body corporate.

Section 14 was brought into force on 1 April 2014 by the [Mobile Homes Act 2013 \(Commencement and Saving Provision\) \(England\) Order 2014](#) (SI 2014/816).

### 3.14 Model standards

The Model Standards specify the layout and provision of facilities, services and equipment for mobile home sites. They also set out what conditions, if any, a local authority may attach to a site licence and indicate the standards that the authority should have regard to in issuing a licence. Section 5(6) of the *Caravan Sites and Control of Development Act 1960* provides the Secretary of State with a power to specify these Model Standards “from time to time.”

The Park Homes Working Group 1998 recommended that the Government should consider whether to amend the Model Standards to include additional terms. In response, the Labour Government said that there was a plan to commission research to inform this process. The Government did not think, subject to the outcome of the research, that “fundamental changes are likely to be necessary” but noted that, at a minimum, “the Standards need to reflect current recognised best practice on the provision of services such as gas, electricity, water supply, drainage, sewerage and flood protection.”

The Government wishes to encourage authorities to base the conditions they attach to licences on their own risk assessments of each park, as supported by the Department’s recent good practice guidance on site licensing. This should include any necessary emergency arrangements in the event, for example, of flooding or fire, including provisions for early warnings, and evacuation and rescue procedures. The need for guidance on such arrangements in the context of each authority’s risk assessment will be considered as part of our proposed review of the Model Standards.<sup>92</sup>

A consultation paper entitled [Revising the Model Standards for Park Homes: Consultation paper on revised standards and guidance](#) was published by the ODPM on 16 December 2005; the consultation period ended on 13 April 2006. The new [Model Standards](#), which replaced those issued in 1989, were published by DCLG in April 2008.

When issuing any new licences or reviewing current ones local authorities must have regard to the 2008 Standards in setting or varying any of the conditions attached.

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<sup>92</sup> DTLR, Government Response to the Recommendations of the Park Homes Working Party, 2001



### 3.15 Repairs and maintenance

Section 3.4 explains that there are already implied terms in relation to responsibilities for repairs and maintenance on the site operator and home owner. [A better deal for mobile home owners](#) stated that the difference between “repairs” and “improvements” is not always understood. Since 2006 site operators have only been able to recover the cost of improvements through pitch fee increases (subject to consultation with home owners).

The Government proposed to clarify the site operator’s obligation to keep the site in a good state of repair by maintaining and repairing:

- (a) the base on which the home is stationed;
- (b) any pipes, conduits, wires, structures, tanks or other equipment provided by the site operator in connection with the provision of water, electricity or gas or for the supply of sanitary facilities to the site, pitch or mobile home;
- (c) all parts of the site that are under the control of the site operator and not within the repairing liability of a home owner, including access ways, street furniture and lighting, boundary fences, buildings in common use, drains and the drainage system and any open spaces or facilities in common use and to keep the same in a clean and tidy condition;
- (d) any out house to which the pitch agreement relates;
- (e) any trees, hedges or shrubs on the site and in the pitch (which have not been planted by the home owner or a predecessor in title or assignee), and ensuring that the supply of gas, electricity or water to a pitch, out house or the home is maintained to a satisfactory standard (if the site operator is responsible for the supply).<sup>93</sup>

The consultation paper also proposed to clarify the definition of an improvement.<sup>94</sup> Following the consultation exercise the Government decided that “the priority for reform is not the law around repairs and improvements, but the transparency of pitch fee reviews.”<sup>95</sup>

### 3.16 Damages and compensation

[A better deal for mobile home owners](#) proposed that where someone incurs a loss or expenses as a result of a breach of contract, or a duty under the 1983 Act, they will, in all circumstances, be entitled to damages and/or compensation from the party at fault. An application for damages/compensation would be made in the first instance to a FTT (and enforced in the courts).<sup>96</sup> Following consultation the Government decided that there was no need to legislate in this area:

The Government agrees that the Residential Property Tribunal has a power to award damages and compensation and although they rarely do so, they have awarded compensation in some sale

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<sup>93</sup> DCLG, [A better deal for mobile home owners](#), April 2012, p19

<sup>94</sup> Ibid., p20

<sup>95</sup> DCLG, [Summary of consultation responses and next steps](#), October 2012

<sup>96</sup> DCLG, [A better deal for mobile home owners](#), April 2012, p23

blocking cases. Any doubts over whether this power was effective have been resolved by amendments to the legislation in 2006. We are, therefore, satisfied that there is no need for further legislation.<sup>97</sup>

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<sup>97</sup> DCLG, [Summary of consultation responses and next steps](#), October 2012

## 4. Wales, Scotland and Northern Ireland

The *Mobile Homes Act 1983* and the *Caravan Sites and Control of Development Act 1960* extend to England, Scotland and Wales. The *Caravan Sites Act 1968* extends to England and Wales while parts also extend to Scotland. Thus the provisions in these Acts have formed the basis for mobile home owners' rights on residential sites across most of the UK.

Housing policy is a devolved matter; Scotland, Wales and Northern Ireland have now all introduced specific legislation in respect of mobile home parks in recent years.

### 4.1 Wales

The Welsh Government has acted from time to time to incorporate amendments to the *Mobile Homes Act 1983* to ensure that they also apply in Wales. For example, [The Mobile Homes Act 1983 \(Amendment of Schedule 1 and Consequential Amendments\) Wales Order 2013](#) (2013/1723) (W.167) extended security of tenure under the Act to Gypsy and Traveller sites.

The May 2009 consultation [Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation](#) was a joint UK/Welsh Government process. The response, [Park homes site licensing reform: The way forward and next steps](#) (March 2010), was also a joint paper. In December 2011 the Welsh Government set out its own proposals for the sector in [Meeting the Housing Challenge: building a consensus for action](#) (December 2011). A subsequent [White Paper](#) (May 2012) highlighted the need to modernise the legislation governing mobile home sites.

Also in May 2012 Welsh Assembly Member, Peter Black, took forward his own [Regulated Mobile Homes Sites \(Wales\) Bill](#). This Bill became the [Mobile Homes \(Wales\) Act 2013](#) which gained Royal Assent on 4 November 2013. Some of the Act's provisions were brought into force on 7 January 2014 by the [Mobile Homes \(Wales\) Act 2013 \(Commencement, Transitional and Savings Provisions\) Order 2014](#) (SI 2014/11 (W.1)) - other provisions were brought into force on 1 October 2014. The stated purpose of the Act is to establish a licensing regime for mobile home sites in Wales and to make further provision in relation to the management of such sites and the agreements under which mobile homes are stationed on them.

The Welsh Government has produced a series of leaflets on the key changes made by the Act for site owners and residents. These leaflets are available to download on the [Government's website](#).

During the Bill's passage through the Assembly the Research Service published a series of papers: [A summary of the Bill](#) (12/50 November 2012); [A summary of changes made at stage 2](#) (June 2013); and [A summary of changes made at stage 3](#) (August 2013).

The Welsh Government commissioned research into the economics of the park home industry. The report - [Understanding the Economics of the Park Home Industry in Wales Final Report](#) – was published in October 2016. In a statement to the Welsh Assembly on 21 March 2017, the Cabinet Secretary for Communities and Children, then Carl Sargeant, confirmed that the Welsh Government intended to act on the Report's recommendations:

It [the report] clearly identified a need to raise current residents' awareness of contractual obligations and to ensure that future residents are clear on the matters before entering into contracts. It also recommended that we consider how poor practice could be identified and addressed. I accept both of these recommendations in principle, and will be inviting colleagues and key stakeholders to work with us on implementing them, including developing materials setting out the very best practice and promoting greater transparency for residents and site owners. In addition, the report highlighted concerns around energy costs and suggested further consideration be given to initiatives to reduce them. Work has already taken place to prevent site owners from charging more than their cost price for energy, and I'm happy to look at how we might encourage site owners to seek out the most cost effective energy deals on the market...<sup>98</sup>

A consultation paper on the [Park Homes Commission Rate](#), published on 25 May 2017, sought views on:

- whether commission fees should be changed;
- how any changes might affect park businesses; and
- how any changes might affect residents.<sup>99</sup>

The consultation closed on 17 August 2017. In response to a Written Question in December 2017 the Welsh Government confirmed it would seek further financial information on this issue.<sup>100</sup>

The Welsh Government published the [summary of responses to the consultation on the park homes commission rate payable](#), together with the independent review of financial information from site owners on 24 May 2018. In a Written Statement the Minister for Housing and Regeneration, Rebecca Evans, confirmed that the Welsh Government intends to commence a phased reduction of the commission rate over a period of time, alongside a range of proposals designed to support good management in the sector:

**Rebecca Evans, Minister for Housing and Regeneration**

I am pleased to announce the publication of the summary of responses to the consultation on the commission rate payable on the sale of a park home. I have also published the independent review of financial information from site owners.

There is a clear and consistent divide between the views of residents and park owners, with most residents supporting the

<sup>98</sup> [National Assembly for Wales Record of Proceedings 21 March 2017](#), Statement: Park Homes Commission Rate – Next Steps

<sup>99</sup> Welsh Government, [Consultation Document Number WG31760: The Park Homes Commission Rate](#), 25 May 2017

<sup>100</sup> WAQ75278 6 December 2017

reduction or abolition of the commission paid, whilst all site owners wish to see it retained at the current maximum rate of 10%.

The summary outlines the next steps following this extensive exercise. Following consideration of the views and evidence presented, I am setting out my intention to begin a phased reduction of the commission rate over a period of time.

I also intend to take forward a range of proposals designed to support good management in the sector and to ensure that those buying and selling park homes have access to clear, consistent information to support their decision making.

I will make an oral statement in due course.

The summary of responses and financial review are available here:

<https://beta.gov.wales/park-homes-commission-rate><sup>101</sup>

## 4.2 Scotland

According to the Scottish Government:

There are 92 residential mobile home sites across Scotland in 22 local authority areas, with over 3,000 mobile homes. Many park home sites are well run but some sites fall short of meeting the standards site residents expect.<sup>102</sup>

In order to improve standards and protections for permanent mobile home residents, the Scottish Government has set out a package of reforms aimed at:

- reforming the mobile sites licencing system
- improving the terms of agreements between site owners and mobile home residents
- introducing updated model standards for mobile home residents<sup>103</sup>

In 2011, the Scottish Government consulted on proposals to amend the implied terms in the *Mobile Homes Act 1983*.<sup>104</sup> The Scottish Government introduced legislation to update the implied terms on 1 September 2013. [\*The Mobile Homes Act 1983 \(Amendment of Schedule 1\) \(Scotland\) Order 2013\*](#) (SSI 2013/219) gave mobile park home residents a right to enjoy their home without unnecessary interference, and abolished the need to have a site owner's approval before a permanent park home resident can sell their mobile home.

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<sup>101</sup> Welsh Government, [\*Written Statement - Publication of Summary of Responses to Consultation: The Park Home Commission Rate\*](#), 28 May 2018

<sup>102</sup> [Scottish Government website](#) [accessed on 8 May 2017]

<sup>103</sup> Ibid.

<sup>104</sup> The Scottish Government, [\*Mobile Homes Act 1983 - Amending Implied Terms - Policy Consultation Paper\*](#), 24 January 2011

The Scottish Government leaflet - [A Guide for Mobile Home Owners in Scotland: Your Rights and Responsibilities \(August 2013\)](#) – summarises the changes to residents’ implied terms.

The Scottish Government [consulted](#) on proposals for a new mobile home site licensing system in May 2012.<sup>105</sup> As a result of this exercise, measures were included in the *Housing (Scotland) Act 2014*. The 2014 Act sets out the framework for a new site licensing system “by creating a system that reflects modern practice.” Further consultation was launched on 17 November 2015 on [proposals for regulations supporting the new licensing system for mobile home sites with permanent residents; and on changes to the maximum permitted caravan dimensions](#). Following the consultation, the [Licensing of Relevant Permanent Sites \(Scotland\) Regulations 2016](#) (SSI 2016/443) were brought into force on 1 May 2017. The Scottish Government has also issued [guidance to local authorities](#) on the new site licensing system.<sup>106</sup>

The Scottish Parliament Information Centre published a briefing paper on the *Housing (Scotland) Bill* as first introduced, part 5 of which provides background on the existing legal framework for mobile homes in Scotland and on the Bill’s provisions: [SPICe Briefing 14/02](#), 10 January 2014. A further briefing paper was published to summarise the main issues raised during Stage 1 proceedings by the Infrastructure and Capital Investment Committee: [SPICe Briefing 14/45](#), 18 June 2014.

### 4.3 Northern Ireland

The rights of mobile home owners on a protected site in Northern Ireland are governed by Part 1 of the [Caravans Act \(NI\) 2011](#). This Act also started its life as a Private Member’s Bill which was introduced in the Assembly by John McCallister MLA for South Down. In addition to giving protection to owners who occupy a caravan as their main home, Part II of the Act governs agreements to occupy holiday caravans for over 28 days.

The Act provides that home owners must be provided with a written statement; regulates site fee reviews; and specifies the circumstances in which a site owner can gain entry to the site. Guidance can be found on the [Nldirect.gov](#) website. There is also a [Guide to the Caravans Act \(NI\) 2011](#).

The Department for Communities is currently finalising a review of the *Caravans Act (Northern Ireland) 2011*.

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<sup>105</sup> The Scottish Government, [Consultation on the Licensing of Caravan Sites in Scotland](#), May 2012

<sup>106</sup> The Scottish Government, [Licensing system for mobile home sites with permanent residents: guidance for local authorities](#), 13 April 2017

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