

Mobile Homes (Wales) Act 2013

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Peter Black AM in consultation with the Welsh Government and was laid before the National Assembly for Wales.

It was originally prepared and laid in accordance with Standing Order 26.6 in October 2012, and a revised Memorandum was laid in accordance with Standing Order 26.28 at Stage 2 scrutiny of the Bill in July 2013.

A number of key terms are used in these Explanatory Memorandum. The following are designed to assist the reader

- i. "The 1960 Act" - the Caravan Sites and Control of Development Act 1960;
- ii. "The 1968 Act" - the Caravan Sites Act 1968;
- iii. "The 1983 Act" - the Mobile Homes Act 1983;
- iv. "The 2013 Act" - the Mobile Homes Act 2013

Declaration on Legislative Competence

In my view the provisions of the Regulated Mobile Home Sites (Wales) Bill, introduced by me on 24 October 2012 would be within the legislative competence of the National Assembly for Wales.

Peter Black AM
Member in charge of the Bill

November 2013

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Part 1: Background and overview of the Act

1. Introduction

1. On 29 November 2011 Peter Black AM was successful in the ballot held under Standing Order 26.87 for the right to seek leave to introduce a Member Bill. His proposal related to park homes. On 1 February 2012 the National Assembly for Wales agreed that Mr Black could lay a Bill to give effect to the pre-ballot information he provided.
2. This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 26.6. It sets out the background to the provisions and scope of the Act.
3. 'Park home' is the common name for a residential mobile home which is a permanent residence and situated on a site licensed by the local authority for residential use.
4. 'Park home' is not a legal term, so the Act and this Explanatory Memorandum refer to 'mobile homes' and 'regulated sites' throughout, except where it is necessary to refer to 'caravans' or 'caravan sites' for legal reasons when referring to existing legislation. A 'regulated site' is one on which at least one mobile home is stationed under an agreement, other than a site which Schedule 1 applies or a holiday site.
5. This Act has a number of objectives. Firstly, to introduce an updated licensing regime for mobile home sites and to give local authorities sufficient powers to enforce that regime. This will include ensuring that site owners or managers satisfy a fit and proper person test, modelled on a similar test that already applies to Houses in Multiple Occupation (HMOs). The Act, through consolidating existing mobile homes legislation restates the powers of the Welsh Ministers to specify for the purposes of section 9 (power to attach conditions to a site licence) Model Standards with respect to the layout of, and provision of facilities, services and equipment for, regulated sites. In deciding what conditions to impose in a site licence, a local authority must have regard to any model standards specified. Section 35 gives the Welsh Ministers power to issue guidance to local authorities as to the performance of its functions under Part 2 and a local authority must have regard to any guidance issued.
6. Additionally, the Act seeks to modernise a number of aspects of the contractual relationship between mobile home owners and site operators, including changes to the process by which homes are bought and sold.

7. This Act does not affect the law relating to holiday or touring caravan sites, although it will affect mixed use sites, i.e. sites used for a combination of residential and holiday purposes as far as the residential parts are concerned.

2. Legislative background

8. The National Assembly for Wales' Standing Orders provides for Bills to be introduced by backbench Assembly Members, as well as the Welsh Government, where the National Assembly has legislative competence in a policy area.
9. The legislative competence enabling the National Assembly for Wales to make an Act in relation to mobile homes is contained in Part 1 of Schedule 7 to the *Government of Wales Act 2006* ("the 2006 Act"). In particular, heading 11 (Housing) of that Part specifically includes residential caravans and mobile homes; heading 12 (Local Government) specifically includes the powers and duties of local authorities and their members and officers; and heading 18 (Town and Country Planning) specifically includes caravan sites. The relevant headings from Part 1 of Schedule 7 to the 2006 Act are reproduced below with the relevant subjects highlighted:

Heading 11 Housing

[Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits.] Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. Residential caravans and mobile homes.

Heading 12 Local government

Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. Powers and duties of local authorities and their members and officers. Local government finance.

"Local authorities" does not include police authorities [police and crime commissioners].

Exceptions—

Local government franchise.

Electoral registration and administration.

Registration of births, marriages, civil partnerships and deaths.

Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.

Anti-social behaviour orders.

Local land charges, apart from fees.

Sunday trading.

Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

Heading 18 Town and Country Planning

Town and country planning, including listed buildings [and conservation areas]. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

Exception—

Development consent under the Planning Act 2008

There are no general restrictions or exemptions to those restrictions in the 2006 Act.

Minister of the Crown functions in the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968, and the Mobile Homes Act 1983 have been transferred to Welsh Ministers by the National Assembly for Wales (Transfer of functions) Order 1999 except for the Treasury function under paragraph 6 of the Second Schedule to the Caravan Sites and Control of Development Act 1960.

The Treasury function under paragraph 6 of the Second Schedule to the Caravan Sites and Control of Development Act 1960 relate to Orders regarding commons and Crown land in limited circumstances.

10. The existing primary legislation that is relevant to this Act is:

- *The Caravan Sites and Control of Development Act 1960* (the 1960 Act) which provides for the licensing of caravan sites by local authorities;
- *The Caravan Sites Act 1968* (the 1968 Act) which protects mobile home owners from unlawful eviction and harassment;
- *The Mobile Homes Act 1983* (the 1983 Act) which regulates the contractual relationship between home owners and site operators and provides security of tenure to residents on residential mobile home sites; and
- *The Protection from Harassment Act 1997* which covers behaviour that would amount to an offence under the Caravan Sites Act 1968.
- *The Mobile Homes Act 2013, which amends* the 1960, the 1968 and the 1983 Acts for England.

11. The principal secondary legislation that is relevant to this Act is:

- *The Mobile Homes (Commissions) Order 1983* which sets a maximum rate of 10 per cent commission that can be claimed by the site operator on the sale of a mobile home;
- *The Mobile Homes Act 1983 (Amendment of Schedule 1) (Wales) Order 2007* amends Schedule 1 to the 1983 Act to provide greater protection and security for occupiers and to confirm and clarify the parties' rights and obligations; and
- *The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunal) (Wales) Order 2012* transferred jurisdiction of disputes under the 1983 Act to the Residential Property Tribunal (the Tribunal).
- *The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012, Part 2 of which regulates the procedure to be followed for applications and appeals to a residential property tribunal under the Housing Act 2004, Part 9 of the Housing Act 1985 (demolition orders) and the Mobile Homes Act 1983.*
- *The Mobile Homes (Written Statement) (Wales) Regulations 2012* which outlines the information that must be given to a proposed purchaser prior to an agreement to purchase a mobile home;
- *The Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013* that provides additional procedural safeguards to occupiers of gypsy and traveller sites.

12. The Model Standards that are relevant to this Act are:

- The Welsh Government's *Model Standards 2008 for Caravan Sites in Wales* made under section 5(6) of the 1960 Act and issued in July 2008 which are for local authorities to use when considering what conditions to attach to a licence. They make provision for the layout, provision of facilities, services, and equipment for caravan sites.

3. Purpose and intended effect of the Act

Overview

13. This Act introduces an updated licensing, inspection and enforcement regime for residential mobile home sites in Wales. The Act refers to these sites as "regulated sites". This will include those parts of mixed use sites used for residential purposes. This new regime is based upon

the existing legislative framework that applies to Houses in Multiple Occupation (HMOs). As with HMO licensing, there will be a requirement for site operators (owners, if they are managing the site day to day, or otherwise managers) to pass a fit and proper person test. Additionally, the Act will make a number of other changes that affect the contractual relationship between the home owner and the site operator. This includes giving mobile future home owners the right to sell a mobile home without the prior agreement of the site owner, and to assign the agreement.

Policy context

14. The Welsh Government's national housing strategy, *Improving Lives and Communities – Homes in Wales*, was published in April 2010.¹ The strategy recognises the diversity of the housing market in Wales, and the importance of delivering the types of housing people actually want to live in. For over 3,400 households in Wales a mobile home is their chosen form of housing.²
15. In December 2011 the Minister for Housing, Regeneration and Heritage published *Meeting the housing challenge: building a consensus for action*³, which was a consultation document to inform work on the forthcoming Housing Bill. Mobile homes were highlighted in the consultation as an area where there was a need for reform. In particular, the inadequacies of the current licensing regime and concerns about poor management on some sites were noted. In the 2012 Housing White Paper, *Homes for Wales: A White Paper for Better Lives and Communities*⁴, the Welsh Government notes its concerns about the current legislative framework for mobile homes which in its view “needs to be modernised”. The White Paper goes on to state that the Welsh Government's goal is to:

Ensure that residents can enjoy their chosen style of home with reasonable protection against dubious practices.⁵

16. Many mobile home owners are older people, and therefore likely to be living on fixed incomes, spending their retirement on a mobile home site for lifestyle as well as financial reasons. Research published jointly by the UK and Welsh Governments in 2002 estimated that 68 per cent of residents on mobile home sites were aged over 60 compared with 33

¹ Welsh Government, *Improving Lives and Communities – Homes in Wales*, April 2010

² Source: Consumer Focus Wales

³ Welsh Government, *Meeting the housing challenge: building a consensus for action*, December 2011

⁴ Welsh Government, *Homes for Wales, A White Paper for Better Lives and Communities*, May 2012

per cent of the population as a whole. The same study found that 64 per cent of households on mobile home sites had a monthly income of less than £800 per month. This compared with 30 per cent in the population at large.⁶ With an ageing population, it is a reasonable assumption that demand for this type of accommodation is likely to increase.

17. In recent years, the problems being experienced on some mobile home sites have come to public attention. Some credit for bringing these issues to public attention can be given to campaigns led by mobile home residents themselves such as through the *Park Home Owners' Justice Campaign*, as well as the criminal prosecutions of some site operators in England.⁷
18. Until recently there has been a paucity of robust data on the mobile home sector in Wales, and indeed throughout the rest of Britain. However, recent research commissioned by Consumer Focus Wales (CFW) has meant that, for the first time, there is a firmer evidence base for policy makers and legislators to draw upon.
19. The CFW research found that there were 92 residential mobile home sites in Wales, spread across 19 local authorities. In its response to the consultation on the proposals in this Act, CFW note that its research highlighted that a significant number of mobile home owners who participated in the research expressed dissatisfaction with their site. Some of the issues raised by home owners were in relation to selling and buying mobile homes, the appearance of the site, concerns about their contracts with the site operator (their written statements) and pitch fees.
20. Many problems associated with the management of sites have been allowed to develop because of a licensing regime that is more suited to the 1960s than the modern world. Local authorities, who are the licensing authorities, have neither the powers nor the resources to regulate mobile home sites effectively.
21. Although there have been attempts to modernise the contractual relationship between home owners and site operators by amending the implied terms in Schedule 1 of the 1983 Act, unscrupulous site operators can still use this legislation to frustrate the sales of mobile homes.

⁵ Ibid., para 4.119

⁶ Office of the Deputy Prime Minister & Welsh Assembly Government, *Economics of the park home industry*, 2002, paras 9-10

⁷ A/DCI Colquhoun (West Mercia Constabulary), *Criminality within the park home industry – Best practice guidance*

22. This lack of effective regulation and legislation that is open to abuse has arguably encouraged less scrupulous elements into the sector that sometimes use dubious practices to maximise profits at the expense of home owners, many of whom could be regarded as vulnerable because of age or ill health. For example, it has been alleged that one motive for this behaviour is so that site owners can buy the mobile home at a greatly reduced price and either re-sell it at market value, or put a new home on the site which can then be sold. In either scenario the site operator stands to make a substantial profit.
23. This Act will seek to address these issues, in particular the practice of sale blocking which is only possible because of the shortcomings of current legislation. This Act will ensure that sale blocking will no longer be possible, and the contractual relationship between home owners and site operators will be subject to better statutory regulation.
24. The case for improving rights for mobile home owners has been taken up by politicians in both Wales and at Westminster where two private members' bills seeking to reform the law in this area were introduced during the 2010/12 parliamentary session.⁸
25. During the third Assembly, in addition to a consultation that led to the transfer of disputes⁹ under the 1983 Act from the courts to the Tribunal, there was a consultation specifically on modernising the licensing regime that also took place on an England and Wales basis. That consultation, *Improving the Management of Residential Park Home Sites*¹⁰, was issued in May 2009 and considered how a modern licensing system might look.
26. In March 2010 a paper outlining responses to the 2009 consultation, and how these proposals could be taken forward, *Park homes site licensing reform: the way forward and next steps*,¹¹ was published. However, none of its proposals have yet been implemented. Both governments stated their policy intentions, which included introducing a fit and proper person test for site operators, and a range of other proposals to strengthen the licensing regime. Many of the 2010 paper's proposals are now reflected in this Act.

⁸ The Park Homes (Site Owner Licensing Bill) and the Sale of Park Homes Bill. Neither Bill proceeded due to lack of parliamentary time.

⁹ The transfer took place in March 2012 when the *Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012* became law.

¹⁰ Department for Communities and Local Government/Welsh Government, *Improving the Management of Residential Park Home Sites*, May 2009

¹¹ Department for Communities and Local Government/Welsh Government, *Park homes site licensing reform: the way forward and next steps*, March 2010

Recent developments

27. In late 2011, the Communities and Local Government Select Committee at the House of Commons announced that it was to conduct an inquiry into park homes. This followed representations to Members of Parliament by constituents and campaigning groups. The Committee's report was published in June 2012 and made a range of recommendations for reform.¹² These included removing the right of site operators to veto the sale of mobile homes. On the issue of whether site operators should be required to satisfy a fit and proper person test, the Committee found that:

A fit and proper person test could be a useful addition to local authorities' armoury to exclude the worst offenders from owning and managing park home sites.¹³

28. The Committee specifically disagreed with the UK Housing Minister at the time, Grant Shapps MP, who argued that comparisons should not be made with HMO licensing. However, it stopped short of recommending that a fit and proper person test be introduced, preferring instead to call for enabling legislation to be brought forward that would allow ministers to introduce a test in future if it proved necessary. The Committee's report is available in full on Parliament's website.¹⁴

29. While the Select Committee was taking evidence for its inquiry, in April 2012 the Department for Communities and Local Government (DCLG) published a further consultation document on the park home industry, *A Better Deal for Mobile Home Owners*, which applies to England only. The consultation covered many of the same issues that this Act seeks to address, although a notable divergence is that it does not seek to introduce a fit and proper person test for site operators.

30. The Bill that emerged from this consultation was taken forward by a backbench MP, with the support of the government. Peter Aldous MP has since taken the Bill through Parliament with the Mobile Homes Act 2013 which received Royal Assent on 26th May 2013.

31. A Scottish Government consultation on the licensing of caravan sites was launched in May 2012. However, that consultation covered both mobile homes and holiday caravans and focused purely on licensing issues.

¹² Communities and Local Government Committee, *Park Homes*, 11 June 2012, HC 177-I, 2012-13, pp36-40

¹³ Communities and Local Government Committee, *Park Homes*, 11 June 2012, HC, para 58

¹⁴ **ibid.**

Licensing of Houses in Multiple Occupation

32. As has been noted, this Act reforms the licensing system, based upon the regime introduced for Houses in Multiple Occupation (HMOs) by the *Housing Act 2004*.
33. Prior to the implementation of the 2004 Act, local authorities had discretionary powers under the Housing Act 1985, as amended by the Housing Act 1996, to introduce registration schemes for HMOs within specified areas. Practice varied between local authorities and this led to differing approaches across Wales. In addition to mandatory registration schemes, many local authorities introduced voluntary accreditation schemes in a bid to raise standards (both physical standards and management standards) across the private rented sector, and in particular in relation to HMOs.
34. The 2004 Act brought with it a new statutory requirement for larger HMOs to be licensed across all of England and Wales. Local authorities have discretionary powers to license smaller HMOs either in specified areas, or across all of their area, following a General Approval from Welsh Ministers that was issued in March 2007. It is a statutory requirement that the licence holder if managing and/or manager of the house are fit and proper persons.
35. The 2004 Act requires local authorities to have regard to certain matters when determining whether the relevant person is a 'fit and proper person'. Specifically, it requires the local authority to consider whether the person has:
- committed any offence involving fraud or other dishonesty, or violence or drugs, or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (c 42) (offences attracting notification requirements);
 - practised unlawful discrimination on grounds of sex, colour, race, ethnic or national origins or disability in, or in connection with, the carrying on of any business;
 - 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.
36. The 2004 Act also requires local authorities to have regard to whether any associates of the applicant would contravene any of the above.

37. These matters have been replicated in this Act, and enhanced to include discrimination on the grounds of any protected characteristic under the *Equality Act 2010*.
38. As with the HMO licensing system, there are provisions within the Act for local authorities to charge for their licensing function, enforcement notices and repayment orders in cases of unlicensed sites.

The current licensing regime for mobile homes

39. Existing licensing requirements under the *Caravan Sites and Control of Development Act 1960* make provision for the licensing of all caravan sites. It therefore covers holiday sites, touring sites, residential mobile home sites and mixed use sites. As noted earlier, the provisions in the 1960 Act applicable to non-residential sites will be unaffected by this Act, although mixed use sites will be affected in so far as they are occupied by permanent residents.
40. Under the 1960 Act, land cannot lawfully be used as a mobile home site unless it has both the appropriate planning permission and the site operator has a licence from the local authority.
41. The 1960 Act requires that:

Subject to the provisions of [Part I of the] Act, no occupier of land shall after the commencement of [the] Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under [Part I] of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.¹⁵

42. It is an offence to cause or permit any part of land to be used as a caravan site unless the occupier of land holds a site licence. Contravention means the occupier will be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500). The level of fine is unlikely to be an effective deterrent. The Act (in line with amendments made in England in the *Mobile Homes Act 2013*) will increase the level of fine to level 5 on the standard scale. As of November 2013 this is currently a maximum of £5,000, but when section 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* is in force (expected in early 2014) this will become an unlimited fine.
43. A site may be licensed for holiday purposes, touring purposes, residential purposes, or the site may be mixed use, where there are both

¹⁵ *Caravan Sites and Control of Development Act 1960*, s1

residential units and holiday units. The site licence can prescribe a set number of pitches that can be used for a specific purpose. The local authority may not currently charge a fee for processing or issuing a licence. This is a significant hindrance to adequately resourcing the work of local authorities and therefore this Act permits local authorities to charge a fee for issuing a licence.

44. The existing provisions of the 1960 Act mean local authorities have limited powers to refuse to grant a licence. A licence must be issued by the local authority within two months (or longer by agreement between the parties) of the application providing the appropriate planning permission is in place, and providing the applicant has not had a site licence revoked within the previous three years.¹⁶ No other convictions, however relevant, may be taken into consideration. When a licence is issued, it is issued for an indefinite period unless the planning consent is time limited.
45. In order to comply with the requirements outlined above, a local authority is unable to require compliance with licence conditions prior to issuing a licence. However, local authorities can impose licence conditions as they deem appropriate, and in particular the 1960 Act permits conditions that include:
- Restricting the total number, type and location of caravans that may be situated on the site;
 - Ensuring that there are adequate fire precautions, and adequate means of dealing with any outbreak of fire;
 - Ensuring that there is adequate sanitation on the site.
46. In attaching conditions to a site licence, the local authority should have regard to the Model Standards for caravan sites issued from time to time by Welsh Ministers. The Model Standards are what should normally be expected as good practice on sites. They make provision for the layout, provision of facilities, and equipment for caravan sites. However, the standards can only be applied to new sites or sites that have been substantially redeveloped. They cannot be applied to existing sites that are already licensed.
47. Local authorities have limited enforcement powers under the 1960 Act should there be a breach of a licence condition. They have no power to serve enforcement notices, although they do have the power to prosecute. Summary conviction for breach of a licence condition carries

¹⁶ Caravan Sites and Control of Development Act 1960, s3(6)

a fine of up to level 4 on the standard scale, currently £2,500. When a site operator has been convicted for the third time of breaching a licence condition, the local authority can ask the court to revoke the licence.¹⁷

48. No caravan site licence is required where one of the exemptions outlined in Schedule 1 to the 1960 Act is applicable. The exemptions are:

Use within curtilage of a dwelling house

Use by a person travelling with a caravan for one or two nights

Use of holdings of five acres or more in certain circumstances

Sites occupied and supervised by exempted organisations

Sites approved by exempted organisations

Meetings organised by exempted organisations

Agricultural and forestry workers

Building and engineering sites

Travelling showmen

Sites occupied by local authority

Gypsy sites occupied by county councils or regional councils

49. Every local authority is required to maintain a public register of licensed sites.¹⁸

50. All powers of enforcement conferred on local authorities under the 1960 Act are discretionary, and there is no obligation on a local authority to take any action.

An updated licensing regime

51. This Act updates the licensing regime as it applies to residential mobile homes with a modern, fit for purpose, framework that can be consistently implemented across Wales. Local authorities will be the licensing authorities, as they are under the 1960 Act.

¹⁷ Caravan Sites and Control of Development Act 1960, s9(2)

¹⁸ Caravan Sites and Control of Development Act 1960, s25

52. Authorised agents or officers of local authorities will have powers of entry should they need to enter a regulated site for matters connected with licensing.
53. The Welsh Ministers will be able to issue guidance to local authorities on arrangements for the enforcement of licence conditions and with regard to any other provisions under Part 2 of the Act. Section 35 allows the Welsh Ministers to issue guidance regarding the performance of local authority functions under Part 2 of the Act.
54. Where necessary, and following service of a notice in writing upon the licence holder, the local authority will be able to carry out works to ensure compliance with a condition in the licence, and recover their costs from the licence holder. The licence holder will first be given reasonable time to carry out the works themselves.
55. Local authorities will be permitted to charge a fee for processing and issuing a site licence which will last for up to five years, but be renewable thereafter.
56. The Act permits a local authority to refuse to grant a licence where it is not satisfied as to certain matters outlined in the Act. These matters are:
- The suitability of the site for stationing a maximum number of mobile homes;
 - That the licence holder (the owner, if they are managing the site day to day, or the manager otherwise) is a fit and proper person;
 - That the proposed manager of the site is either the person having control of the site (i.e. the person who receives the pitch fees or any other periodic payments), or an agent or employee of that person;
57. If a local authority decides not to issue a licence, they must notify the applicant of the reasons for the decision.
58. When determining the suitability of a site, the local authority must give due regard to the Model Standards issued by the Welsh Ministers for the stationing of that number of mobile homes.
59. It would be in the interests of the site operator to engage with the local authority before starting any works to the site after planning permission is granted.

60. The local authority may also include conditions as they see fit, such as controlling the types of mobile homes that are on the land or ensuring that appropriate measures are taken for guarding against risk from flooding and coastal erosion, for example,(see section 9) The Welsh Ministers may give guidance as to the form and content of such conditions, and local authorities must have regard to this guidance.
61. In order to be granted a licence the owner and manager (or other persons involved in the management of the site) will need to declare that they are a **“fit and proper” person**. It largely replicates the test that is applicable to owners/managers of Houses in Multiple Occupation (HMOs) as set out in section 66 of the *Housing Act 2004*. However, it will also take into account the broader protected characteristics under section 4 of the Equality Act 2010.
62. There will be a duty on local authorities to request sufficient information from applicants for a licence to determine whether the licence holder and any person involved in the management of the site are fit and proper persons. This test will consider relevant criminal offences, contraventions of any provision of the law relating housing, landlord and tenant law. Section 29(3)(c) of the Act refers to contravention of the law relating to housing (including mobile homes) or landlord and tenant. It will be open to local authorities to request evidence of a person’s criminal convictions. Where a local authority decides that a person is not a fit and proper person, it should provide the applicant with the reasons for that decision. An applicant may appeal against a decision that they are not fit and proper to the Residential Property Tribunal.
63. The local authority must be informed if there is any change relating to the information contained in or provided with the application that led to the grant of the licence, and this includes a change of owner or manager. A licence may not be transferred to another person. Where a licence holder dies, the new owner will not become the licence holder automatically. The site licence is revoked and the new owner will need to apply for a new site licence. However, for a period of 3 months beginning with the date of the owner’s death, or the date on which a new person becomes the owner, the site is to be treated as if a temporary exemption notice is in force.
64. A local authority will have the power to exempt a site from any requirement to be licensed by issuing temporary exemption notices for further periods of 3 months. Either the personal representatives of the deceased owner or the new owner may request that such a notice is served.

Variation of licences

65. The local authority will be able to vary a licence where it is done upon application by the licence holder, or it discovers that there has been a change of circumstances since the licence was granted and this includes the discovery of new information.
66. The local authority may vary the terms of a licence, but only under the procedure outlined Section 13 of the Act. The same applies to the site rules, which may only be changed following consultation with occupiers and, if one exists, any qualifying residents' association, and it appears to the local authority that the majority of occupiers agree to the variation.

Revocation of licences

67. The Act outlines the circumstances where the local authority may consider revoking a site licence either on its own initiative or, in certain cases, at the request of a qualifying residents association.
68. These circumstances are:
- where a condition of a site licence, enforced by compliance notice, has not been complied with on two or more previous occasions;
 - where the authority no longer considers that the licence holder is a fit and proper person to be the manager of a regulated site; and
 - where the site to which the licence relates ceases to be a regulated site to which Part 2 applies.
69. When considering whether to revoke a licence on the grounds that the site is not reasonably suitable for the stationing of the maximum number of mobile homes specified in the licence, the local authority must apply the same standards when it is considering whether to revoke a site licence as were applicable when the licence was granted.
70. As an alternative to revocation, the local authority may instead appoint an interim manager. The remuneration and expenses of the interim manager may be deducted from any income that the licence holder would be entitled to receive. If the income were insufficient, then the licence holder would be liable.

Register of licences

71. The local authority will be required to maintain a register of regulated site licences that are currently in force. This register must be available

for inspection at the authority's main offices during normal office hours. This restates an existing duty under the 1960 Act.

Appeals

72. Site owners will have a right of appeal in relation to the decisions of licensing authorities to the Residential Property Tribunal. Matters which may be appealed are:

- (a) refusal of licences,
- (b) conditions included in licences, other than ones the local authority is under a statutory obligation to impose,
- (c) revocation of licences,
- (d) variation of licences,
- (e) power to take emergency action,
- (f) the appointment of interim managers,
- (g) repayment orders
- (g) compliance notices issued for breaches of site conditions,
- (h) where an existing (and not a new) agreement is in place and the site owner wishes to appeal the sale or gift of a mobile home.

73. When considering appeals the Tribunal must have regard to model standards and other statutory provisions specified by Welsh Ministers. The Tribunal will have the power to direct the local authority to take whatever steps are necessary to give effect to the Tribunal's decision.

Offences

74. It will be an offence for a site that should be licensed, not to be so licensed. In relation to sites that are duly licensed, it will be an offence to:

- Station more homes on the site than are permitted by the licence; or
- To knowingly cause or permit any failure to comply with any licence conditions.

75. Upon conviction in the magistrates' court a person is liable to a fine not exceeding level 5 on the standard scale, currently £5,000. When section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is in force a level 5 fine will become an unlimited fine.

76. As an alternative to prosecution, a local authority may choose, (in line with any guidance issued by Welsh Ministers) to give any person they believe has committed a breach of licence condition the opportunity to discharge any liability for conviction for the offence by payment of a fixed penalty. The penalty will be set at level 1 on the standard scale (Section 16). If a fixed penalty notice is given and remains unpaid then the local authority would be able to withdraw the fixed penalty notice and issue a compliance notice instead for the same breach.
77. Section 17 of the Act allows local authorities to issue a Compliance notice for more serious site licence breaches. Local authorities will be required to draw up and publish a fees policy which will include when a fixed penalty or a compliance notice is to be used,
78. An owner of land who has been served with a compliance notice commits an offence if they fail to take the steps specified in the notice. A person guilty of an offence under subsection (1) is liable on summary conviction to a fine. When two or more compliance notices are not complied with, the Local Authority may revoke a site licence.
79. As noted above, officers of the local authority will have powers of entry in relation to site licensing. At present it is a criminal offence (Section 26(5) of the 1960 Act) wilfully to obstruct any authorised person from entering a site. This Act provides specific rights of entry that relate to licensing.
80. The maximum penalty is currently a level 1 (£200) fine; this is no longer an effective deterrent. In modern housing legislation the maximum fine for a similar obstruction is £2,500. There is no justifiable reason why the fine for obstruction of entry to a mobile homes site should be considerably less, and this Act makes any person who wilfully obstructs any authorised person entering a site, including where a warrant has been issued, liable for a fine of up to level 4 on the standard scale, which is in line with other housing legislation.

Other consequences of operating unlicensed regulated sites

81. A repayment order system is established by the Act, similar to rent repayment orders as set out under current Houses in Multiple Occupation (HMOs) legislation within the *Housing Act 2004*, whereby site operators who sell homes and/or collect pitch fees for unlicensed sites may be ordered to repay all pitch fees and reasonable costs incurred. In the case of homes sold directly by site owners, this may include the purchase cost of the home and any commission paid to the site owner in respect of a sale. An application for a repayment order must be made by the occupier of a mobile home stationed on the site

to the Tribunal. Repayment orders will only cover payments made within the period of 12 months ending with the date of the application to the Tribunal. The tribunal will have discretion to decide what amount of repayment is reasonable in the circumstances.

Management of regulated sites

82. Model Standards for caravan sites in Wales were issued under section 5 of the 1960 Act. Licensing authorities should refer to these standards when considering licence conditions for new or substantially redeveloped sites. This Act restates the Welsh Ministers' power to make Model Standards.

Residents' associations

83. Provisions for the recognition of a qualifying residents' association remain as set out in paragraph 28 of Schedule 1, Part 1, to the Mobile Homes Act 1983. The Act restates and amends the 1983 Act to require a membership list, which should be up-to-date, to be presented to the local authority and not made public. The association's rules and constitution will also be held by the local authority, but these will be open to public inspection

84. An association must have at least 50% of the residents of a site as members to qualify and each association must not include the owner or any of the management of the site. This section also stipulates the rules and constitution requirements of an association.

85. Only one resident of each mobile home may be a member of the association and where there is more than one resident of a mobile home they must agree amongst themselves who's name is to be on the agreement. Local Authorities are required to keep an up to date list of residents' associations and must give notice to an association should its membership fall below the required 50% of residents.

86. Any disclosure to the public of the list of association members will be treated a breach of the Freedom of Information Act 2000, to ensure the confidentiality of the members of each association. The details of the chairman, secretary and treasurer of a qualifying residents' association may be disclosed by a local authority however to help ensure transparency.

The sale and purchase of mobile homes

Current arrangements

87. Where the site operator sells a mobile home the prospective purchaser must be provided with a written statement of the terms under which they will occupy the pitch. This statement commonly becomes known as the written agreement once the home is actually purchased. A new written statement must be given every time the site operator agrees to sell a home directly to a purchaser. Different requirements apply where a prospective purchaser buys from an existing home owner and this is outlined below.
88. Mobile home residents own their home and rent the pitch from the site operator. It is an implied term of all written agreements that they are free to sell their home, subject to a number of statutory requirements. Where a home owner decides to sell their home they can also transfer their written agreement to the person who buys the home. The process of transferring the agreement in this way is known as assignment.
89. Home owners do not have to inform a site operator that they are selling their home. However, they must seek approval from the site operator of the proposed purchaser. This approval should not be unreasonably withheld but some site operators have been accused of exploiting this requirement and blocking sales for their own financial benefit. A legitimate reason for declining to approve a sale could be the age of the prospective purchaser, where the site rules specify a minimum age.
90. Consumer Focus Wales commissioned research submitted as part of the consultation on this Act found that 41 per cent of residents who were interviewed as part of their recent research did not agree that people on their site could buy or sell their homes freely. It is difficult to precisely estimate how many actual sales have been blocked by undertaking surveys of current residents, because residents who had been under pressure previously, and left the site because of it, clearly cannot participate in the research.
91. There are incentives for unscrupulous site operators to “churn” their residents as this could provide increased commission payments and also redevelopment opportunities – particularly where a site operator buys a home from a resident. The Consumer Focus Wales research suggested that sales were being blocked so that homes could be bought at far less than market value, and then either sold on at a substantial profit or replaced by a new unit.

92. There is no requirement on the home owner or prospective purchaser to use a solicitor at any point during the sale or to arrange any kind of professional survey or valuation. This contrasts with purchases of bricks and mortar properties that usually involve mortgages where the mortgagee would insist on both a valuation and appropriate legal enquiries by a suitably qualified and insured person. Although specialist mortgages are available for the purchase of mobile homes, anecdotal evidence suggests many purchases are made without one.
93. Much of the responsibility for ensuring that the prospective purchaser is given full and accurate information about the purchase falls on the seller. The sellers could be held responsible if they provided false or misleading information about the mobile home or the site in order to induce the sale.
94. The site operator should respond to a request to approve the prospective purchaser within 28 days. If they do not respond then the seller can request that the Tribunal makes an order to approve the request. The site owner cannot insist on meeting the prospective buyer, but in many cases the buyers themselves may want to meet the site operator to ask questions about the site.
95. The site operator is entitled to commission on the sale of up to 10 per cent of the sale price. This is a limit prescribed in legislation.¹⁹ Site operators are however free to charge a lower amount. The revenue generated by this commission forms an essential part of site operators' business plans. This was highlighted recently by the House of Commons Communities and Local Government Select Committee's inquiry in the mobile home industry. The Committee found that there was:
- ...no pressing reason to change the maximum commission that is paid to site owners on the sale of park homes. The commission is an important source of revenue for site owners and provides funding for properly managing and maintaining sites. Indeed, a change could disturb the balance between commission and pitch fees for many residents on fixed incomes.²⁰
96. The 2001 research referred to above, found that if the entitlement to commission was removed, pitch fees would have to increase by around 22 per cent.²¹ For the reasons outlined above, this Act does not remove the site owner's right to commission on sales.

¹⁹ *The Mobile Homes (Commissions) Order 1983*

²⁰ Communities and Local Government Committee, *Park Homes*, 11 June 2012, HC 177-1, 2012-13, para 31

²¹ Office of the Deputy Prime Minister & Welsh Assembly Government, *Economics of the park home industry*, 2002, para 41

New arrangements in this Act

97. For new pitch agreements, the requirement for the new owner to be approved by the site operator is removed. A new pitch agreement means an agreement which is made after the the provisions in this Act come into force, or one which was made before but which has been assigned after they came into force
98. In the case of existing agreements, a site owner may object to the sale by applying to the Residential Property Tribunal for a “refusal order” preventing the occupier from selling the mobile home and assigning the agreement.
99. As site owners will no longer be involved in the sales process where the new arrangement applies, there is a risk that sellers would not pay owners the 10 per cent commission as set by statutory instrument. The Act addresses this issue by ensuring that the new occupier must pay the site owner the commission upon sale.

Gifting of Mobile homes

100. Similarly, when a mobile home resident wishes to gift their mobile home, different provisions are made in relation to cases where the proposed gift concerns an existing pitch agreement (“an existing agreement”) and in relation to cases where the proposed gift concerns a new pitch agreement (“a new agreement”).
101. As above, in the future, for new pitch agreements, the requirement for the new owner to be approved by the site operator will be removed.
102. In the case of existing agreements, a site owner may object to the gifting by applying to the Residential Property Tribunal for a “refusal order” preventing the occupier from gifting the mobile home and assigning the agreement.

Written agreements and site rules

103. The written agreement is the contract which allows a mobile home to be situated on a particular pitch. It is formed by a combination of implied terms which apply to all contracts by virtue of the 1983 Act, and express terms which are agreed between the parties. It is usual for the express terms to refer to site rules.
104. A new written agreement is made when a site operator sells a mobile home to a home owner, or allows a new person to bring their mobile home onto an existing pitch. Where a home owner chooses to sell their home, no new written agreement is made – the existing agreement is

merely assigned to the new owner. This is similar to the way by which leasehold flats are sold.

105. This Act continues with the current arrangements, i.e. assignment of the agreement by the seller if the sale is by a home owner will continue to apply. If the sale is by the site operator, there will clearly be a new pitch agreement.

Site rules

106. Most mobile home parks will have site rules. Many sets of rules will include a minimum age requirement, and most will set out general management rules, for example, on keeping pets, car parking arrangements, refuse collection etc. Good site rules ensure that expectations are clear on all sides and disputes can be more easily resolved or avoided all together.
107. At present, site rules can form part of the written agreement and the procedures for making rules or changing existing ones can be included on the face of the agreement itself. This often happens as there is an industry model written agreement that includes a requirement to consult with home owners. However, not all site operators will use this agreement, and there is no statutory requirement for changes to site rules to be consulted on. Where the written agreement does not specify any procedure for changing site rules, home owners can be faced with uncertainty as to whether the new rules are binding or enforceable. While they could ask the Tribunal to determine this, this Act seeks to clarify the law on this matter.
108. The Act provides Welsh Ministers with the power to make regulations with regard to the procedural arrangements for making site rules, for example to ensure that any proposed changes to the rules by a site operator must be consulted on with the home owners and, if there is one, any qualifying residents' association.
109. The Act requires that the site rules must be deposited with the local authority and that the local authority keep an up to date register that is available to the public.. If the site rules are not deposited in this way, the site operator will not be entitled to rely on them at all. Existing site rules will bind a new site operator until any changes have been consulted on and agreed between the site operator and home owners, or authorised by the Tribunal.

Joint ownership: rights and succession

110. Mobile homes are often owned jointly, for example, by married or cohabiting couples, couples in a civil partnership, family members or

friends. In some instances only one of those owners is currently a signatory to the written agreement. This can lead to problems particularly if the person named on the written agreement moves into a care home or dies. For example, if the person named on the agreement dies, at present their co-owner may not be entitled to succeed to the written agreement, even though they jointly own the home.

111. This Act ensures that any person living in the mobile home as their only or main residence will be entitled to take over the agreement.

Gypsy and Traveller sites

112. The Act also provides additional safeguards for those living on and running local authority Gypsy and Traveller sites. The Act reflects amendments made to the Mobile Homes Act 1983 made by the National Assembly for Wales in July 2013²² which provide additional protections against eviction and harassment and limited rights of assignment. Prior to these amendments being made local authorities needed only to give four weeks notice without providing a reason or a possession order from the court.

Pitch fees

113. Mobile home owners pay a fee in return for permission to site their home on a pitch – this is known as the pitch fee. Payment of the pitch fee will be a condition of the written agreement.

114. Pitch fees are determined at the inception of the agreement between the site operator and home owner. Unless there have been some relevant changes (which are outlined below), there is currently a presumption that the pitch fee can be increased or decreased annually by an amount equal to the increase or decrease in the Retail Prices Index (RPI). This is known as the pitch fee review and there would normally only be one per year. This Act substitutes the Consumer Prices Index for the RPI. The review process is outlined in the terms implied into all agreements by virtue of Schedule 1 to the Mobile Homes Act 1983 and restated in Schedule 2 of the Wales Act. When calculating any increase, or decrease, the site operator must take into account:

- Any authorised amounts spent on improvements to the site since the last review date. This means improvements that were the subject of consultation and the approval of home owners on the park;

²² *The Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013*

- Any reduction in people's ability to use the site since the last review date; and
 - The effect of any relevant changes in the law that have come into force since the last review date.
115. Pitch fees can only be increased in respect of legislative changes which directly affect the actual costs of the management or maintenance of the site, and have taken effect within the 12 months since the last review date. This would not include more general changes such as those affecting tax, overheads or other business or head office activities, but would include matters such as, for example, enhanced environmental duties applicable to the site.
116. As an example of inappropriate increases to pitch fees, the Department for Communities and Local Government consultation notes that it is aware of a site operator trying to claim the costs of maternity pay through pitch fees, even though they had no pregnant staff working on the site.²³
117. This Act makes it explicit that a site operator must not pass on any costs that are incurred by them in order to implement the changes to be made by this Act, in the next or any future pitch fee review.

Improvement works to mobile homes

118. The April 2012 Department of Communities and Local Government consultation highlights its concerns about some site operators being obstructive when a home owner is seeking to make internal alterations to their home. This particularly relates to adaptations for disabled occupants, some of which may be funded by a local authority Disabled Facilities Grant. The DCLG consultation gives another example where the installation of an accessible shower unit and permission to install a ramp for wheelchair access to the home has been refused.
119. The current law is not clear as to whether a home owner can make alterations of this kind without the consent of the site operator. This Act clarifies that a home owner should generally be entitled to make any **internal or external** improvements to their home, (Paragraph 21, Schedule 2) so long as they do not carry out works to the mobile home which are prohibited under the terms of the agreement or by any enactment. Where the agreement requires the permission of the owner, that permission may not be unreasonably withheld. The site owner should not do or cause to be done anything that would affect their

²³ Department for Communities and Local Government, A better deal for mobile home owners – consultation, April 2012, Para 2.39

ability to carry out improvements, or interfere with the occupier's ability to do so.

Relocation of mobile homes

120. The site operator is entitled, under certain circumstances, to re-site a mobile home and when they do so the home owner has certain rights and protections. However, there have been cases of abuse, highlighted by the consultation undertaken by DCLG, proving that the law is not sufficiently clear in this area. Therefore the law is to be clarified to specify that, unless there is agreement between the parties, a home can only be moved without the authorisation of the Residential Property Tribunal where the urgency of the need means that it is impractical to make an application before the mobile home is re-sited. An urgent relocation could be necessary in cases where, for example, there has been a sudden land slip. In the case of an urgent re-siting, where the mobile home has already been moved, the owner must immediately make an application to the Tribunal. The Tribunal must be satisfied of the need to re-site and that the new pitch is broadly comparable to the old one. If the Tribunal is not satisfied of this, then the mobile home must be returned to the original pitch.

The Residential Property Tribunal

121. The Residential Property Tribunal (RPT) is an independent quasi-judicial body constituted under the Rent Act 1977, and given its formal title by the Housing Act 2004. The RPT sets up Rent Assessment Committees and Rent Tribunals to consider appeals over rent levels and to fix an appropriate rent where there are disputes between landlords and tenants in the Private Rented Sector; and Leasehold Valuation Tribunals to settle certain disputes between leaseholders and freeholders. The RPT also adjudicates on a wide range of matters under the Housing Act 2004.

122. In 2008, the Welsh Government and Department for Communities and Local Government jointly consulted on whether disputes under the 1983 Act should be heard by the RPT rather than the courts.²⁴ The consultation suggested that there were a number of advantages in transferring jurisdiction over a range of mobile home disputes to the RPT including their informality and relatively low cost. The party making the application to the RPT will not have to pay the other sides costs, even if they lose the case. This is not the case when matters are dealt with by the courts.

²⁴ Department for Communities and Local Government and Welsh Government, *A new approach for resolving disputes and proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended) A consultation paper*, 2008

123. Transfer of jurisdiction for a range of disputes under the Mobile Homes Act 1983 took place in March 2012.²⁵ Appeals from the RPT can be heard by the Upper Tribunal. However, the permission of the RPT or the Upper Tribunal is required for an appeal to be heard.

124. The RPT will have jurisdiction over all disputes related to this Act, aside from criminal prosecutions. Such prosecutions will still be heard by the courts.

4. Consultation by Peter Black AM

125. Peter Black AM launched a formal 8 week consultation on this Bill in May 2012. The consultation document posed 31 questions to all interested parties and stakeholders. Over 120 responses were received from a variety of stakeholders including home owners, residents' associations, site operators and their trade associations and local authorities.

126. The consultation demonstrated that the case for reform had become polarized, with home owners and local authorities broadly in favour of reform, and site operators broadly in favour of retaining the status quo. While there were some areas where a consensus emerged, such as the need to increase the financial penalties for those prosecuted for licence breaches, such areas were limited. All of the consultation responses are available on the National Assembly for Wales' website.

Summary

127. This consultation provoked considerable interest from a range of stakeholders with over 120 responses being received. Responses were received from:

Residents/family members	-	43
Site operators/directors	-	55
Other stakeholders	-	25

128. The responses broadly came from three main groups of stakeholders: mobile home owners and residents associations; site operators and their trade associations; and other stakeholders including local authorities. There were also two lengthy responses from Consumer Focus Wales – one based on research they had commissioned and another following an event they held for local authorities. No specific response was received from the WLGA. Other interested parties that responded included the

²⁵ Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012

Minister for Housing, Regeneration and Heritage, Huw Lewis AM, the Residential Property Tribunal (RPT), an Assembly Member, a Member of Parliament and the Older People's Commissioner. A full list of respondents, and all of the evidence they submitted, is available on the National Assembly's website.²⁶

129. Some of the headline issues that emerged from the consultation were:

Home owners were **overwhelmingly in favour of reform**, and while there were a range of views on individual issues, there was solid support from this group for the general direction of the proposals outlined in the consultation document;

Local authorities were in favour of reform, but anxious to ensure that any new regime takes adequate account of their **role and resources**;

Site operators were generally **hostile to many of the proposals**, in particular they objected to the proposal to prevent them from passing on costs that they might incur as a result of this Act to home owners;

A significant number of **holiday site operators** responded to the consultation, and expressed concerns that the changes proposed by this Act would affect their businesses, despite the assurances given in the consultation document that it would not. Holiday site owners also raised the issue of **residential units for employees** on their sites which could potentially bring these sites within the scope of this Act.

130. Below is an analysis of responses by theme.

The Residential Property Tribunal

Transfer of jurisdiction to RPT

131. A majority of respondents that expressed a view felt that the RPT should have jurisdiction over disputes connected to this Act. An advantage of this approach that was noted by many, in particular mobile home owners, was **the lower cost and more informal** approach when compared with the county court. One individual commented that the RPT would be "cheaper, faster and more focused than the courts".

132. There was some concern that the RPT would not have the expertise necessary to deal with mobile home disputes, and reference was drawn

²⁶ www.assemblywales.org/bus-home/bus-

to an individual's bad experience in a court where it was claimed a judge did not know the difference between a holiday caravan and a residential mobile home. However, one site operators' trade association indicated its willingness to become involved in training RPT members. Several respondents commented on what they saw as the inadequacy of the RPT's powers, such as not being able to enforce judgements.

133. The RPT itself provided a detailed response to the consultation and noted that its members do indeed have expert knowledge and experience of determining property related disputes. It therefore believes that it is appropriate that recourse would be to the RPT on a range of issues connected with this Act.
134. A number of respondents commented that they supported the Act's intention to retain the power for local authorities to bring criminal prosecutions in the courts. Several also commented that the **termination of agreements** should remain a matter for the courts, not the RPT. A site operators' trade association clearly stated that it did not support the transfer of any disputes between the local authority and site operator to the RPT.
135. A number of local authorities drew comparisons between the way the RPT in Wales operates and its equivalents in England, particularly with regard to the **openness and transparency of decisions**. RPT decisions in Wales are not published online as they are in England. This issue was also commented upon by a site operator who noted that if decisions in Wales were also published, potential home owners would be able to see which parks constantly appear before the Tribunal.

Damages and compensation

136. There was broad support from mobile home owners for the RPT to have power to award damages and compensation. A number of site operators, as well as a solicitor and the RPT itself, noted that to be fair the power to award compensation **should apply equally to both site operators and home owners**. As one site operator put it, the power should "work both ways". The RPT also queried whether this power would extend beyond breaches of the written agreement to also include breaches of site rules.
137. Consumer Focus Wales highlighted that in England, where the RPTs have had responsibility for determining a range of mobile home disputes for over a year, **compensation has already been awarded in a number of cases**. A number of respondents suggested that guidance should be

issued to the RPT to enable it to effectively and consistently use this power.

138. However, there were a number of cautionary notes on this issue. One, from the Welsh Government, suggested that giving the RPT explicit powers to award damages and compensation could have wider legal implications. Another respondent commented that they would not wish to see the RPT replace the role civil courts have in this area.

Re-siting requests

139. There was a more mixed response on the issue of whether re-siting requests in the case of an emergency should have to be determined by the RPT. Most individuals who expressed a clear preference were in favour of the RPT having a role, but this was far from unanimous. Some felt that there could be a genuine emergency that would require an **immediate response**. Some examples that were given included fire, floods and ground collapses.
140. Site operators were largely content with the current arrangements with one commenting that they struck “the right balance”.
141. The RPT itself suggested that “it would be **disproportionate** to require consent in an emergency.” However, it went on to say that it accepted that that the interpretation of ‘emergency’ may be open to question.

Sale blocking

Experiences of sale blocking

142. There was an awareness of sale blocking by nearly all of the home owners that responded to the consultation, however, only a small number claimed to have experienced this first-hand. Most home owners that commented on this issue said that they knew of people that had been victims of sale blocking.
143. Site operators also acknowledged that this behaviour does happen on some sites, but stressed that there are a number of legitimate reasons why a site operator may wish to prevent a sale from going ahead using lawful means. One site operator noted that it dealt with around 250 assignments each year and that **very few were prevented** from going ahead. Some of the issues raised by site operators, and a number of home owners, were the age of the intended purchaser, whether they have pets and the age and condition of the mobile home itself.
144. Consumer Focus Wales suggested that some site operators were applying one set of rules for assignments and another for direct sales,

with **far stricter criteria being used on assignments** for the sole purpose of blocking sales.

Reforming the law on sales

145. There was overwhelming support from home owners for removing the right of the site operator to veto a sale. Consumer Focus Wales believed that there was **substantial evidence** that a sale was often blocked so the site operator could purchase the home at a substantial discount, before then reselling it for a substantial profit.
146. A small number of home owners supported some sort of control on new residents, with concerns about anti-social behaviour being noted. A solicitor also commented that without proper controls on who was entering the site the **value of residents' homes** could be adversely affected.
147. Site operators saw the current system as **fit for purpose**, and noted the existing role of the RPT in dealing with sales, and that a decision to block a sale can already be challenged at the Tribunal. The requirement for a site operator to approve a sale was seen by many site operators as an opportunity to provide information to potential purchasers, many of whom will never have lived on a mobile home site before. There were also some concerns from site operators that removing them from the sales process entirely could mean the **sale price is under-declared**, and they therefore receive less commission.
148. One local authority noted that it often addresses licence breaches by requiring that the areas of non-compliance are **addressed on the sale or assignment** of the homes. It believes that removing the ability to prevent a sale could affect this approach.
149. The RPT itself preferred one of the other options put forward in the consultation document, where the buyer is deemed to be approved and if the site operator objects they could apply to the RPT for a ruling to that effect. The RPT suggests that any fee for making such an application should be "realistic and sufficient to require a site owner to fully consider their position before making one." The RPT also notes that it "...already has powers to dismiss vexatious applications and to award costs so there is a safeguard against spurious applications."

Meetings between all parties

150. The majority of home owners were **strongly against any meeting** with the site operator prior to the purchase. One of the main reasons given was that this was just a tactic to block a sale. Others suggested that it

could be used to intimidate a potential purchaser. However, this was not the view of all home owners or residents associations, and some did support the idea, seeing it as an opportunity to deal with important paperwork and to iron out any issues of concern.

151. Site operators saw a meeting as an opportunity to explain site rules and other issues any potential buyer would need to be aware of. One trade association saw a meeting as an **even more important safeguard** should, as a result of this Act, the site operator no longer be able to approve the purchaser.

Licensing

Views on current licensing regime

152. The majority of home owners that responded to the consultation felt that the existing licensing system needed to be modernised. One individual described it as “woefully inadequate and weak”, another as a “toothless tiger”. A number directed comments at local authorities who they felt should make **better use of the existing powers** that they have rather than simply allowing breaches of licence conditions to be “ignored”, with one suggesting that there should be a statutory requirement placed upon local authorities to enforce licence conditions. Consumer Focus Wales noted that many local authorities do not have accurate records of sites they have licensed, despite this being a statutory requirement.
153. A number of respondents had concerns that there was **inconsistency in the approaches** of different local authorities and some suggested that there could be an all-Wales body to implement a new licensing regime to provide more uniformity. In a similar vein, Consumer Focus Wales suggested that this role could be taken forward by appointing a lead local authority to co-ordinate all of the licensing work and **information sharing**.
154. Site operators were generally content with the current regime with one saying that it had “stood the test of time”. Another site operator, echoing concerns expressed by some home owners, said that if any changes were to be made, it should be that “rogues” are made to comply with licence conditions and, where necessary, **licences should be updated**. A solicitor suggested that the existing licensing regime could be made more effective rather than introducing “unnecessary and costly new procedures”.
155. A number of local authorities responded to the consultation, with one describing the current regime as “cumbersome and not effective” with

prosecution the only enforcement option. However, another local authority noted that the existing legislation has been effective in helping to secure improvements to poorly maintained or managed sites. A third local authority felt that more use could be made of the 2008 model standards that currently only apply to new or substantially redeveloped sites.

156. Local authorities raised the issue of fire safety during a consultation event facilitated by Consumer Focus Wales, and that they are **not clear** where responsibility for enforcement lies – i.e. whether it is the responsibility of the local authority or the fire and rescue service. They suggested that new legislation could clarify this issue.
157. The issue of **mixed holiday and residential sites** was raised by a local authority concerned that this Act does not specifically address this, nor does the Act address those **holiday sites effectively used as residential sites** where residents vacate their homes for only a few weeks each year. This issue was also raised by an Assembly Member that responded to the consultation.
158. The issue of how the Act would address the issue of residential units that are provided for **staff use** on holiday sites was also highlighted. There were substantial concerns from the holiday park sector that this Act could impact directly upon them because of the existing shared licensing regime, despite the consultation document's promise not to. One holiday site operator emphasised that there was no need to change the current licensing system for holiday sites as the sector was very competitive and poor sites would simply go out of business.

Frequency of inspections and financing

159. There were a wide range of suggestions as to the frequency of site inspections, with annual inspections being a popular suggestion from home owners. A number of respondents also suggested that **inspections should be unannounced** if necessary, and this was supported by local authorities.
160. Site operators did not generally see a need for frequent inspections and a number suggested that inspection frequency should be **risk-based** rather than prescribed in law. This approach was supported by local authorities, a number of which noted that it mirrors the approach taken in other areas of regulation such as with trading standards, health and safety and food premises.
161. Many home owners suggested that licence fees could be used to fund inspections, with Consumer Focus Wales suggesting that local

authorities should have the **power to charge for inspections** that were the result of an upheld reactive complaint.

162. Site operators did not see justification for additional fees to fund inspections, believing that local authorities should fund these from their own resources, which include **council tax from home owners and business rates from site operators**. One site operator suggested that inspections could be financed from fines levied on sites where licence conditions are breached.

Guidance on frequency and nature of inspections

163. There was broad support from home owners for the Welsh Government to issue guidance on the frequency and nature of inspections. Site operators were less enthusiastic on this issue, but thought that any guidance that was developed should be done so in **partnership with the industry**. Local authorities were also generally supportive, although again emphasising that there should be a risk-based approach to inspections.

Licence conditions

164. There were a wide range of suggestions for possible licence conditions with many focusing on health and safety and specific issues of concern such as utilities. The current Model Standards were mentioned in a number of responses as a basis for licence conditions. Many home owners wanted very extensive conditions, but the benefit of a concise licence was noted by the secretary of a residents' association who felt this gave less opportunity for "unscrupulous owners to use parts of the licence to scare, intimidate or force people from their homes".
165. Site operators were anxious not to have rigid licence conditions that did not allow for some degree of local flexibility a point echoed by some local authorities.

Duration of licence

166. Suggestions for the duration of licences from home owners and local authorities varied from between **1 to 5 years**, or shorter if the circumstances warranted it. For example, where there had been particular issues of concern at the park or the site operator was new to the industry.
167. Site operators were **opposed to any fixed term licence**. They saw this as both a threat to the security of home owners and also a threat to their financial viability. A number of responses, primarily from owners of holiday sites, stated that the introduction of a fixed term licence would

“completely undermine the economics” of their business. They had particular concerns about lenders willingness to invest in a business whose right to trade could simply expire, and the potential impact upon home owners’ security of tenure and ability to sell their home. However, they saw no objection to the licence being **periodically reviewed** by the local authority based on a risk assessment.

168. A national body representing park home residents, the Independent Park Home Advisory Service (IPHAS), also had concerns about having fixed term licences, in particular they believe that **home owners would lose security of tenure should the licence expire**. They saw the potential for site operators to use the imminent expiry of a licence as a “weapon” that could be used against home owners. The site operator could, for example, threaten not to renew the licence if the home owner complained to the local authority. IPHAS would prefer the licence to remain in force until ownership of the site changed hands.

Fees for licensing

169. There were a variety of methodologies put forward for calculating licence fees, many local authorities preferred straightforward methods based on the **cost of inspection** to the local authority and the **number of pitches**. There was some support from local authorities for a “national set fee” which could be set by regulation.

170. Site operators again reiterated their opposition to licence fees, and felt that their contributions through business rates and other taxes, in addition to council tax from home owners, should be sufficient to finance the cost of licensing. Emphasising their belief that there should be no fee for licensing, one site operator noted that parks do not receive some services that other businesses would expect such as road maintenance and street lighting.

Annual charges

171. There was a mixed response to the proposal that there should be an annual charge. While a number of home owners supported this idea, many felt the licence fee should be sufficient. Local authorities were **strongly opposed** to the idea of an annual fee as they saw this as further bureaucracy, and pursuing non-payment could potentially take up a significant amount of resources and officer time.

172. Site operators saw no justification for an annual fee which they believed would result in good sites paying for enforcement on poorly managed sites.

Fit and proper person test (FPPT)

173. There was substantial support from home owners and local authorities for a fit and proper person test to be introduced for site operators. Many of the responses from home owners called for an **Enhanced Criminal Records Bureau check** rather than the basic one proposed in the consultation so that all “spent” convictions were disclosed on the basis that home owners were often older people that would be regarded as vulnerable. Two local authorities made reference to Disclosure Scotland basic disclosures (which do not disclose those convictions considered spent under the terms of the Rehabilitation of Offenders Act 1974) already being requested by some local authorities dealing with HMO licence applications.
174. It was also suggested by local authorities that attended the Consumer Focus Wales event that the directors of any company that owns the site, and the person with whom home owners have direct dealings with (e.g. the site manager) should undergo the same checks.
175. Site operators expressed mixed views on this issue. While some had no objection in principle to this proposal, there were queries such as how far back the checks would go and would this sort of check be applied to other businesses? The issue of what would happen should a licence be revoked if a person failed to meet the fit and proper person criteria was also raised. A site operators’ trade association suggested separating the site licence which would deal with infrastructure from a **personal licence** to manage the site, a point echoed by a residents’ association. They suggested that a central Wales-wide body could deal with personal licences and this would deal with the issue of one person owning a number of sites in different areas. Local authorities could retain responsibility for the physical inspection of sites.
176. It was noted by a holiday site operator that many owners and employees on these sites already have to pass a variety of fit and proper person tests as part of other licensing regimes, such as alcohol licensing, gambling and financial services.

Other issues relevant to FPPT

177. Many home owners wanted a wide range of issues to be taken into account, including the opinions of site residents. Amongst the more popular suggestions from home owners were complaints made to the local authority and a history of harassment or sale blocking. A number suggested that there should be some consideration given to the **financial resources and financial background** of the site operator.

178. Local authorities were keen to consider any record of enforcement action, including referrals to the RPT. The RPT saw itself as a potential arbitrator should a site operator be deemed not to be a fit and proper person.

Fines

179. There was a general consensus from across the whole spectrum of respondents that the current level of fine was not an effective deterrent. Many site operators felt that the fine “should be proportionate to the gravity of the offence”. A number of home owners called for unlimited fines.

Fixed penalty notices

180. There was a substantial amount of support for fixed penalty notices from home owners, with agreement that these should be for minor breaches of licence conditions.

181. Site owners had various concerns about this type of notice, including that they could just be used by local authorities as a way of **raising extra revenue**, and that there would not necessarily be any judicial oversight of the process.

182. Some local authorities saw some merit in the proposal, with one suggesting this type of notice could be appropriate for licence breaches that could be easily remedied. However, as with annual fees, local authorities highlighted a potential **administrative burden** in collecting unpaid fines. Some local authorities saw other means of enforcement as potentially more effective than fixed penalty notices.

Enforcement notices and works in default

183. There was **broad agreement** that local authorities should have a greater range of enforcement options available to them and that this should include enforcement notices and an ability to carry out works in default. One local authority commented that “tools other than prosecution” were what they needed. Another local authority felt that it was important that they should be able to instigate a prosecution should a notice not be complied with. A third local authority, while supporting the principle of enforcement notices, felt that this should only be a power, and not a requirement.

184. While site operators generally supported the proposal, one did feel that an enforcement notice should only be “limited to instances of repeated and flagrant breach”. Another commented that if the current

licensing regime allowed for such notices there would be no need for this consultation.

When to revoke a licence

185. It was generally agreed that a licence should only be revoked in the **most extreme cases** of licence breaches, including where a site operator no longer meets fit and proper person criteria. It was noted by a number of respondents that there would be serious implications for home owners should their licence be breached, for example frustrating sales that may be imminent.

Local authority management orders

186. As noted above, respondents generally saw the revocation of a licence as a last resort, and in these circumstances it may be necessary for the local authority to take over the management of a site.

187. Local authorities saw some **practical difficulties**, with one noting that there would probably be a substantial amount of work to be carried out on a site where this took place. Another local authority commented that a local authority would not have the practical experience necessary to undertake this. Several local authorities paralleled experience of dealing with management orders in relation to HMOs, and noted how **resource intensive** this was.

188. Consumer Focus Wales suggested that a Registered Social Landlord could take the role of manager.

Residents taking over management

189. There were **mixed views** from home owners on them being given the power to take over the management of a site. However, many believed that there would either not be enough interest from home owners, or practical difficulties may be difficult to overcome. A number of respondents suggested that some home owners or particular “factions” on the site may be more interested in furthering their own interests, rather than taking decisions that would benefit the park as a whole. Site operators were opposed to this proposition.

190. If home owners were to take over the management of a site, a number of respondents commented that they should be expected to meet all of the standards of the site operator, including passing a fit and proper person test.

Written agreements and site rules

Consultation requirements

191. A number of respondents suggested written notice of proposed changes, and a statutory period of consultation. Consumer Focus Wales suggested that the consultation requirements could be set out in **regulations**, with CIH Cymru suggesting that any consultation should address barriers faced by anyone with protected characteristics as defined in the *Equality Act 2010*. A number of respondents suggested involving any Residents' Association in the consultation process and holding public meetings.
192. A number of site operators believed that the existing provisions on changes to express terms were sufficient.

Pitch fees

Regulation

193. The majority of home owners believed that pitch fees **should be regulated**, and a number suggested that the increase should be linked to the Consumer Prices Index (CPI) rather than the currently higher Retail Prices Index (RPI). One reason given for this was that pensions are linked to CPI, and most mobile home owners are pensioners. A number of respondents asked for **more clarity** on pitch fee review notices. An anonymous response suggested that some older sites have deteriorated in quality because pitch fee increases have not been sufficient to pay for maintenance.
194. Site operators were generally content with the current system for pitch fee reviews. On the specific issue of CPI versus RPI, a trade association commented that it is necessary for a business to remain viable, echoing the words of English housing minister Grant Shapps when he gave evidence to the Communities and Local Government select committee at the House of Commons. Another trade association said it would welcome more clarity in how pitch fees are calculated and this could be by means of an **annual statement**.
195. Consumer Focus Wales commented that site operators must be prevented from using legislative changes to increase the pitch fee, unless those legislative changes can be directly proven to affect the management or maintenance costs of the site. However, they did not believe that changes as a result of this Act should be passed on to home owners.

Other comments on pitch fees

196. It was clear from the consultation responses that a number of respondents had direct experience of issues connected with pitch fees. A number of issues were raised including, the clarity of the pitch fee review notice and differences in charges between homes on the same park.

Improvements and alterations

Maintenance and repairing obligations

197. There was general agreement from home owners that clarification of site operators' repairing and maintenance obligations would be a positive step, with a number also commenting that a clearer definition of the **difference between repairs and improvements** would also benefit all parties. However, as a site operators' trade association commented, it is not always straightforward to make this distinction. For example, they queried whether replacing an old electrical system is a repair or an improvement.

Consultation on proposed improvements and alterations

198. There was strong support for a standard consultation format from home owners. However, site operators were content with the current arrangements as set out in the *Mobile Homes Act 1983* and in existing park agreements.

199. One local authority pointed out that some improvements could be required as a result of licence conditions.

Internal improvements and alterations

200. Most home owners were adamant that internal improvements should be the sole responsibility of the home owner. However, some site operators and local authorities, as well as a small number of home owners, raised health and safety issues, as well as potential breaches of licence conditions as a reason why the site operator may need to be aware of alterations. Examples given included the installation of fixed heating appliances, sub dividing accommodation, an alteration that would affect the mobility of the unit and installing electrical appliances that could affect the electricity supply to the rest of the park. A local authority suggested that internal alterations that could be carried out without approval should be limited to decorative or replacement like for like works only.

External improvements and alterations

201. There was much more of a consensus on external alterations, with many respondents from all sides suggesting that anything that would result in a breach of the site licence being grounds for refusing permission. Fire safety and privacy concerns were also raised as issues that should be considered when considering whether to give permission.

Succession

202. There was strong support from home owners for the proposals to modernise the rules on succession. Site operators and their trade bodies were more cautious, with some content with the status quo, and others seeing scope for modernisation.

203. Many respondents, representing both home owners and site operators, highlighted the potential complexity of this area.

Financial impact of the Act

204. The main concern of home owners was that the potential costs of this Act would ultimately fall on them through **higher pitch fees**.

205. Local authorities saw additional costs from their enhanced enforcement powers and duties, but saw licence fees as an opportunity to make the new licensing scheme **self-financing** or at least contribute towards these costs. There were also some concerns raised about initial setup costs, and awareness raising costs.

206. Site operators saw a potentially **significant financial impact** upon their business and felt that these costs should be passed on to home owners through pitch fees. They also thought that local authorities should be able to absorb more of the additional costs from their existing resources which include a significant contribution from both site operators and home owners through various taxes. A number of site operators highlighted the fact that parks do not receive a number of services that most businesses and council tax payers receive such as road maintenance and street lighting.

207. Site operators **strongly objected** to the proposal that they should not be permitted to pass on any of the costs of this Act to home owners, and if this was not allowed it could impact upon the viability of their business. However, a number of site operators also highlighted that it was difficult to be precise when calculating the impact of this Act on their business as there were so many variables/possibilities at this stage. On balance, site operators saw the potential for this Act to **disproportionately affect** them.

208. The Residential Property Tribunal saw a **considerable impact** on the Tribunal should the Act become law. It noted that in recent years costs to the Tribunal have increased and there already exists considerable pressure on the budget, members time and staff resources. It also noted that consideration would have to be given to staff training and **fees** that would be charged when making applications to the RPT.

Other issues

209. A number of issues not directly consulted on were raised in the consultation responses. A number of home owners objected to the 10 per cent commission that is paid to the site operator on the sale of a home. However, a number of site operators were equally certain that the commission was an essential part of their business plans.

210. A number of home owners suggested that “park home” should be a legal term rather than “mobile home”.

211. There were a number of calls for an information hub, available online and by telephone, to be funded by the Welsh Government so there was a central source of information on mobile homes, particularly on the buying and selling process.

212. A number of home owners raised the issue of fair utility bills, and the right to have a water meter, and asked for these issues to be considered when drafting the Act.

Transitional Provisions

213. Much of the current legislation applies to all forms of caravan sites. The arrangements in this Act make substantial changes to the law relating to residential mobile home sites. Transitional Provisions will be required to explain how holders of licences under the current arrangements are to transfer to the new regime. Other parts of the Act are more self-contained, and should be capable of being implemented more quickly. Those relating to pitch fees, for example, may be implemented more quickly, but transitional arrangements will need to specify whether changes take effect from a certain date, or from the next review.

Implementation timescale

214. In order to implement this Act effectively, Welsh Ministers will need to put in place a number of pieces of subordinate legislation as explained in Part 5 of this Explanatory Memorandum. Local authorities will also need to put in place appropriate administrative arrangements.

5. Power to make subordinate legislation

215. The Act makes a range of provisions for subordinate legislation. The following table sets out in relation to each provision:

the person upon whom, or the body upon which, the power is conferred;
 the form in which the power is to be exercised;
 the appropriateness of the delegated power; and
 the applied procedure (affirmative, negative, no procedure) if any.

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 29(5)	Welsh Ministers	Regulations by statutory instrument	The evidence to be considered by local authorities when deciding if someone is a fit and proper person is set out on the face of the Act. Suitable for regulations as it provides the Welsh Ministers with the ability to amend this section to vary the list of evidence to be considered.	Affirmative	Amends an Act of the Assembly and relates to a requirement on members of the public to demonstrate they are a fit and proper person.
Section 49(1)(e)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it provides the flexibility to set out requirements for the content of written statements in addition to those on the face of the Act	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 51(1)	Welsh Ministers	Order by statutory instrument	Suitable for order as it provides the flexibility to amend the implied terms of mobile home agreements set out in Schedule 2, except those in paragraph 10	Affirmative	These regulations have the ability to change terms of mobile home agreements.
Section 52(2)	Welsh Ministers	Regulations by statutory	Suitable for regulations as it will	Negative	These regulations will

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
		instrument	enable the Welsh Ministers to set out administrative details regarding the making of site rules which govern the proper management and conduct of sites.		prescribe technical matters of detail which may change from time to time.
Section 52(2)(b)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out other matters which site rules may cover, beyond the management and conduct of sites.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(3)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out the time period after which site rules made under existing legislation will cease to have effect once this section of the Act comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(4)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the time period following commencement of consultation with occupiers that a site rule comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the time period	Negative	These regulations will prescribe technical matters of detail which may change from

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			following commencement of consultation with occupiers that a variation of a site rule comes into force.		time to time.
Section 52(5)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the procedure to be followed to delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(6)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the time period following commencement of consultation with occupiers that deletion of a site rule comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(6)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the procedure to be followed to delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(7)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding how occupiers are notified of proposals to make, vary or delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section	Welsh	Regulations	Suitable for	Negative	These

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
52(8)	Ministers	by statutory instrument	regulations as it will enable the Welsh Ministers to set out matters that cannot be included in site rules.		regulations will prescribe technical matters of detail which may change from time to time.
Section 52(9)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding how disputes regarding the making, varying or deletion a site rule or their deposit with a local authority are to be resolved.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(11)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the keeping of a register of site rules by local authorities and the charging of fees for the deposit of site rules.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 57(2)	Local Authorities	Order	Suitable for order as it will enable local authorities to make an order prohibiting the stationing of a mobile home on specified areas of common land.	No procedure	Local order, not made by statutory instrument.
Section 58(3) –	Welsh Ministers	Order by statutory instrument	Suitable for order as it enables the Welsh Ministers to make consequential, transitional, transitory and saving provisions	Affirmative if amending primary legislation Negative if amending other legislation	Affirmative procedure is appropriate where orders affect primary legislation Negative procedure is appropriate for other orders

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 60(4) –	Welsh Ministers	Order by statutory instrument	Suitable for order as it will enable the Welsh Ministers to amend administrative details regarding the size of mobile homes covered by the Act.	Negative	which make technical provision only. These orders will prescribe technical matters of detail which may change from time to time.
Section 64(2) –	Welsh Ministers	Order by statutory instrument	Suitable for order because this provision enables the Welsh Ministers to provide for commencement of the Act.	No procedure	These orders will be confined to commencement and are technical in nature.
Schedule 1 paragraph 3(2)	Welsh Ministers	Order by statutory instrument	Suitable for order as it will enable the Welsh Ministers to amend administrative details regarding the size of certain sites which are not to be a regulated site.	No procedure	These orders will prescribe technical matters of detail which may change from time to time.
Schedule 1 paragraph 14(1)	Welsh Ministers	Order	Suitable for order as it will enable the Welsh Ministers to specify that exemptions contained in Schedule 1 do not apply in specified areas, at the request of a local authority	No procedure	Local order, not made by statutory instrument.
Schedule 2 paragraph 9(4)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out the maximum commission rate new occupiers will be required to pay site owners under new agreements.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 2 paragraph 9(6)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the procedures for the sale of mobile homes, assignment of agreements and payment of commission where a new agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 10(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the content of a notice of sale required where other agreements are in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 10(7)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out the grounds on which an application for a refusal order preventing a sale of a mobile home and assignment of an agreement	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 10(8)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out the maximum commission rate new occupiers will be required to pay site owners under other agreements.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 10(10)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out	Negative	These regulations will prescribe technical

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			administrative details regarding the procedures for the sale of mobile homes, assignment of agreements and payment of commission where an agreement other than a new agreement is in place.		matters of detail which may change from time to time.
Schedule 2 paragraph 11(2)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the information, and form it is to take, that an occupier must provide a proposed occupier before the completion of a sale of a mobile home and assignment of an agreement.	Negative for first regulations	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 12(2)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the evidence of family connection an occupier is required to provide a site owner when they are proposing to use exercise their entitlement to gift a mobile home and assign an agreement to a family member.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 12(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out	Negative	These regulations will prescribe technical

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 2 paragraph 13(5)(b)	Welsh Ministers	Regulations by statutory instrument	administrative details regarding the procedure to follow when gifting a mobile home and assigning an agreement to a family member where a new agreement is in place. Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding information, other than evidence of family, to be included in a notice that an occupier must serve on a site owner when proposing to gift a mobile home and assign an agreement to a family member where an other agreement is in place.	Negative	matters of detail which may change from time to time. These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 13(7).	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out the grounds on which an application for a refusal order preventing the gift of a mobile home and assignment of an agreement	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 13(9)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the procedure to	Negative	These regulations will prescribe technical matters of detail which may change from

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
			follow when gifting a mobile home and assigning an agreement to a family member where an other agreement is in place.		time to time.
Schedule 2 paragraph 23(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to set out administrative details regarding the form the notice a site owner must serve on an occupier informing them of a proposed change in pitch fee.	Negative for first regulations	These regulations will prescribe technical matters of detail which may change from time to time.

6. Territorial application

216. This Act will apply only to residential mobile homes situated on protected sites in Wales. This Act will also apply to the sites themselves.

7. Cross border issues

217. As the Act applies to regulated home sites in Wales, there are no direct cross-border issues in the Act.

Part 2: Regulatory Impact Assessment

218. Official data on the sector is scarce, and until recently a 2002 survey commissioned by the Office of the Deputy Prime Minister (now the Department for Communities and Local Government) provided the bulk of robust data. Census data only provide limited scope for further analysis as mobile homes are not identified as a distinct form of housing in the census questionnaire, they are instead included within a wider category that includes other temporary structures.

219. Recent research by Consumer Focus Wales provides the most up-to-date data on the sector, and they have shared some of their findings so as to assist with the preparation of this explanatory memorandum.

220. The mobile home sector in Wales is small, comprising approximately 3,400 homes on 92 sites.²⁷ This equates to less than 0.3 per cent of the total housing stock in Wales.²⁸ The majority of sites have pitches for fewer than 50 mobile homes, while eight sites have over 100 pitches.²⁹ Just under one third of sites are corporately owned.

221. The options considered are:

Option 1: Do nothing

Option 2: Voluntary arrangement

Option 3: Introduce the proposed Bill

Estimate of Costs: Option 1 – do nothing – continue with existing arrangements.

222. There is broad agreement from mobile home owners that the measures within this Act should be implemented. This is evidenced by the response to the consultation held by Peter Black, the research carried out by Consumer Focus Wales and also by the House of Commons Communities and Local Government Select Committee inquiry into park homes. However, it is recognised that there is considerable opposition to reform from site operators and their trade associations, many of whom would prefer to retain the current licensing regime.

223. The previous licensing system, which included criminal penalties, was openly flouted by a minority of site owners who engaged in dubious practices, and there is no reason to believe this would change unless the

²⁷ CFW 2012

²⁸ There are approximately 1.3 million homes in Wales.

²⁹ CFW 2012

law is strengthened. While this does mean extra regulation for all site owners, including the majority who manage their sites well, this is a necessary step to protect mobile home owners.

224. As has been stated previously, local authorities are unable to charge for their mobile home licensing functions under current legislation. They therefore receive no direct contribution from site operators towards the costs associated in dealing with duties under the 1960 Act. If this Act did not become law, these costs would continue to fall upon council tax payers and the local authority's general resources provided by the Welsh Government. The inability of local authorities to charge may deter some authorities from intervening where breaches of licences are identified, or indeed from undertaking regular monitoring.

225. The consultation held by Peter Black highlighted that a number of local authorities do already undertake regular inspections of sites within their areas, but this does not happen in all areas. The new regime in this Act will ensure that regular inspections are carried out, and licences renewed at least every five years. In the absence of these provisions there is a risk that in some areas there will be few, if any, inspections to ensure that physical and management standards are being maintained.

Estimate of Costs: Option 2 – Voluntary arrangement

226. Consideration was given to whether a voluntary arrangement, such as the Landlord Accreditation Wales model, could be agreed that would meet the needs that gave rise to the Act without the need for legislation.

227. However, the sites likely to sign up to such an agreement would be likely to exclude the minority of sites where dubious practices take place.

228. Hence the impact would be negligible.

Estimate of Costs: Option 3 – Introduce a proposed Bill

229. The Act will impose a number of new costs on site owners, licensing authorities, the Residential Property Tribunal and the Welsh Government. The Act specifically prevents site owners from passing on costs associated with this Act to mobile home owners.

230. There are thirty four regulation and order-making powers within this Act and therefore the financial cost of the Act will be very much dependent on how and when these powers are implemented. The

following sections set out indicative costings around the intention of the Act. It is anticipated that more detailed estimates will be available when regulations are drafted and consulted upon.

An updated licensing regime

231. This Act updates the existing licensing regime as it applies to residential mobile homes with a modern framework that is both fit for purpose and consistently implemented across Wales. Local authorities will be the licensing authorities, as they are under the 1960 Act.
232. The Welsh Ministers will be able to issue guidance to licensing authorities on arrangements for the enforcement of licence conditions. Where necessary, and following service of a notice in writing upon the licence holder, the local authority will be able to carry out works to ensure compliance with a condition in the licence, and recover their costs from the licence holder. The licence holder will first be given reasonable time to carry out the works themselves.
233. Licensing authorities will be permitted to charge a fee for processing and issuing a site licence which will be renewable at least every five years.
234. The site licence must include a number of mandatory conditions, as set out in Section 56 of this Explanatory Memorandum. The local authority may also include such further conditions as they see fit, but those conditions cannot apply to any person other than the owner, unless that person has consented to the imposition of those conditions.
235. Welsh Ministers may give guidance as to the form and content of such conditions, and licensing authorities must have regard to this guidance.
236. Welsh Ministers may issue guidance as to the appropriate level of fees. For illustrative purposes an example is set out below, this example assumes that the fee is based on the number of units on a site and following consultation responses, there would be no annual fee charged. A few examples of income follow, based on the facts that there are 92 sites in Wales with around 3,400 units. If a fee were set based on the number of units then the following licence fees could be raised over 5 years.

Fee per unit £	Licence fee income from 92 sites £
50	170,000
100	340,000
150	510,000
200	680,000

This is simply a transfer from site owners to licensing authorities and so not a net economic cost.

237. In order to be granted a licence the owner and manager (or other persons involved in the management of the site) will need to pass a “**fit and proper**” person test. There will be a duty on licensing authorities to obtain sufficient information from applicants for a licence to determine whether the licence holder and any person involved in the management of the site are fit and proper persons. Licensing authorities must have regard to any relevant criminal offences, contraventions of any provision of the law relating to equality, housing and landlord and tenant law. It will be open to licensing authorities to request evidence of a person’s criminal convictions.
238. There will be administrative costs to the site owner in relation to additional work needed for the licence application and we have included an estimation of £100 per site to cover this. This is consistent with the RIA undertaken for the 2013 Act, which estimates the owner’s time at £100 for two hours work. This would lead to a cost of £9,200 over 5 years (£100 * 92) and more if a local authority decides to grant a licence for a shorter period. Also, if a local authority requires evidence of criminal convictions, a Disclosure Scotland Criminal Conviction Certificate costs around £25, a standard CRB check costs around £26 and an enhanced CRB check £44. If we were to assume that on average three checks were carried out per site, the cost of carrying out criminal checks for all 92 sites would be in the region of £7,000 and £12,000 depending on the check required to be carried out by the local authority.
239. Local authorities with park homes sites within their areas currently license and inspect, to varying degrees, these sites. The new system of licensing would be considerably different with regulations set by Welsh Ministers and there is potential for collaborative service delivery and economies of scale.
240. A licence may not be transferred to another person. Where a licence holder dies, the new owner will not become the licence holder automatically. However, for a period of three months beginning with the date of the owner’s death, or the date on which a new person becomes the owner, the site is to be treated as if a temporary exemption notice is in force. The initial three month period of exemption may be renewed by the local authority for further periods, each of three months duration.
241. The Act also contains a power to appoint an interim manager of a site. It is estimated, based on appointing a manager at senior level that the potential cost to the local authority of securing a replacement could be

approximately £10,000. The full cost of employing the interim manager would come from site revenue. However it is hoped that such an intervention would only ever be considered as a last resort, and used only rarely. The consultation responses indicated that the limited experience local authorities have of dealing with Houses in Multiple Occupation management orders would lead them to only use this power only in extreme circumstances. Moreover, the enhanced regulatory powers contained in this Act should enable a local authority to intervene at an early stage when problems are identified, before it becomes necessary to consider the appointment of an interim manager.

242. The local authority will be required to maintain a register of regulated site licences that are currently in force. This must be available for public inspection.

243. How services are organized on a local, regional or national level is not directed by this Act. We have assumed in the first year that to process the 92 new site licenses in Wales would take a combined resource of around four (full time equivalent) environmental health officer (EHOs), this would assume that two licence applications and associated work could be processed per officer per month, allowing time for interaction with site owners as part of the application process, to minimise the number of potential appeals. If the cost of an EHO is assumed to be £40,000 this would be a combined cost of £160,000 in the first year, this would assume all licences would be processed within one year of policy implementation, if this was not the case these costs would be spread over a longer period. Their role would include setting up registers of licences.

244. As part of work by the Welsh Government to determine regulations around licensing, further modelling work will be done to calculate more definite costs including time taken to undertake inspections and administrative work associated with this.

Variation of licences, site rules and agreements

245. The written statement will continue to be a requirement of the arrangement between a site owner and a mobile homes resident. The local authority may not vary its terms without the changes being approved under the procedure outlined in the 1983 Act, which is restated in the Act. The same applies to the site rules, which may only be changed following consultation with occupiers and, if one exists, any qualifying residents' association, and it appears to the local authority that the majority of occupiers agree to the variation.

246. If it is assumed that 10% of site owners need to make some form of amendment to the site rules, agreement or licence each year and this would have an administrative cost of around £250 to the site owner, including a possible requirement to consult with residents. This would lead to a cost of £2,300 a year (£250*9.2 – consistent with the RIA undertaken in England). Section 6(5) would permit lower fees when it is the licence holder only that is being considered and not the site.

Fines and Penalties

247. The Act introduces a system of fines, fixed penalty notices and compliance notices, for offences such as breaches of site licence conditions. These conditions will be determined by the Welsh Government and local authorities. The intention of the new regulatory framework is that these powers are only exercised as a last resort and will be a rare occurrence. The relationship model being applied will allow for early intervention in order to address issues through voluntary undertaking. Any income in relation to fixed penalties or the failure of a site owner to meet the terms of a compliance notice would be retained by the local authority, whereas income from fines imposed by the courts would be passed on to the Treasury – however, in cases of successful prosecution, local authorities can apply to the court for costs to be payable in relation to preparatory and court costs. Therefore cost and income to the local authority is not included.

248. Costs falling on site owners in relation to fines or fixed penalty notices have not been included in these cost estimates, as these will only come into force as a reaction to criminal activity by site owner / management rather than due to the Act itself. Benefits (or illegally withheld costs) accruing from illegal activity are not typically recognised in appraisals. In this instance withholding maintenance represents an illegal transfer from the residents to the site owner. However, we do recognise the value of the work to residents when it is undertaken.

249. Upon conviction of the offence of failing to meet the terms of a compliance notice in the magistrates' court, a person is liable to a fine not exceeding level 5 on the standard scale, currently £5,000 except in the case of obstruction, for which see below).

250. This Act will make any person who wilfully obstructs any authorised person entering a site, including where a warrant has been issued, liable for a fine of up to level 4 on the standard scale, which is currently £2,500 and in line with other housing legislation.

Monitoring of sites

251. This Act restates the powers held by Welsh Ministers to set Model Standards, and the duty that those standards are given regard to by local authorities when setting licence conditions. Following consultation responses it is not suggested that routine inspections should be charged for.

252. Local authorities currently monitor and inspect sites so the additional burden of this legislation is limited. In response to the consultation two local authorities mentioned inspection frequency:

The City and County of Swansea Council stated that “We inspect sites annually on a routine basis with visits in response to queries”.

The Vale of Glamorgan Public Protection Service stated that “The Council officers currently regularly inspect licensed site to ensure compliance with site licence condition”.

253. Costs would be dependent on the number of routine inspections required, it was suggested in consultation that the frequency of inspection should be subject to a risk based assessment, Consumer Focus Wales has suggested “a five year licence with a full inspection every two and half years. When there’s a breach, officers should go back more often and could charge the park owners for the inspection”. We have assumed that any new monitoring and general administrative requirements would need the resource input of two full-time equivalent technical officers, or around 5 person days input per site per year. If the cost of a technical officer is approximately £30,000 per year, the annual cost of this would be £60,000 per year from year 2 onwards. This would include processing any variations to existing licences, maintaining registers of licences, along with holding the required information on residents’ associations and site rules.

254. A different need in relation to monitoring by licensing authorities may require site owners to spend more time to provide evidence that the site is up to standard. We have assumed that this will involve a cost of £100 a year per site from year 2 onwards, based on administrative time collating information that the site owner will already hold, totaling £9,200 per year.

Powers to take emergency action

255. The Act provides for local authorities to take emergency action so as to remove an imminent risk of serious harm to the health and safety of any person on the site. In this instance, the local authority must serve a notice specifying, amongst other matters, the emergency action it

intends to take, and the intention to enter the land. However, as these events are likely to be infrequent and the costs are unpredictable they are not assessed here.

Residents' Associations

256. The Act amends and restates the 1983 Act to require a membership list, which should be up-to-date, to be presented to the local authority and not made public. The association's rules and constitution will also be held by the local authority, but these will be open to public inspection. It is assumed that costs to Residents' Associations of this requirement will be too small to be significant. For example, if a change to a membership list is made notifying the local authority this may involve printing and sending off a copy of the list or possibly correspondence by email.

Consultations on changes to site rules

257. The Act provides that site rules are made by the owner by a procedure prescribed in regulations made by the Welsh Ministers. Site rules may be varied/or deleted, but again this will be in accordance with the procedure set out in regulations. Welsh Ministers have new regulation making powers to make provision on a number of matters in relation to site rules including, for example, requiring local authorities to maintain a register of site rules for protected sites in its area. The costs of any further regulations made will be subject to a further RIA.

The sale and purchase of mobile homes, changes and relocation

258. The Act removes the requirement for the new occupier to be approved by the site owner. This change will not lead to an increase in costs. The likely impacts are less administrative burden on site owners and less potential for conflict and legal cases due to alleged sale blocking.

259. Similarly the clarifications in terms of joint ownership, rights and succession will have no financial impacts.

260. The clarification of law in terms of entitlement to make internal and external improvements to their home and clarifications around the relocation of mobile homes have no direct financial consequences. The clarification of the law in relation to re-siting of mobile homes is also not assumed to have a financial impact. However, it would be anticipated that these changes will lead to less applications to the courts or Tribunal.

261. Costs in terms of training of local authority and Residential Property Tribunal staff in relation to these changes are covered later in this document.

Pitch fees

262. This Act makes it explicit that a site operator must not pass on any costs that are incurred by them in order to implement the changes to be made by this Act, in the next or any future pitch fee review. There is currently a presumption that pitch fees can be increased or decreased annually by an amount equal to the increase or decrease in the Retail Price Index (RPI). The Act substitutes the Consumer Prices Index (CPI) for the RPI. Looking at the two years leading up to July 2012, the CPI has been 0.6 percentage points lower than the RPI. This will have an impact on the amount of income that site operators can potentially raise through the pitch fee over time. Whilst the impact of this change is not predictable due to the nature of fluctuations between the two indices, if a site owner of a 30 caravan site with £150 monthly fees for all residents would have annual fee income of £54,000, 0.6% of this is £324.

263. This is not included as a cost as the pitch fee is simply a transfer from residents to site owners. However, this is highlighted as a consequence of the Act.

Residential Property Tribunal (RPT)

264. See Paragraph 115 for more details on the Residential Property Tribunal. The Tribunal will have jurisdiction over all disputes related to this Act, aside from criminal prosecutions.

265. In 2012 most disputes relating to Mobile Homes under the existing legislation were transferred to the Residential Property Tribunal. The underlying reasons for the transfer were to provide a more cost effective, informal and quicker access to justice in dispute resolution. In their response to the consultation on this Act the Tribunal stated that at that time it had received no valid applications under the existing legislation so it is difficult to judge the likely impact of the Act, however this does not suggest that the number of cases falling to the RPT will be large.

266. The Act does include a number of situations where the RPT may be involved with some proposals likely to be more frequently used than others. There are new provisions for owners to appeal to the Tribunal where a site licence application is turned down, where they are aggrieved by licence conditions and where site owners wish to object to the sale or gifting of a mobile home on their site, where an

agreement is already in existence, The effect of changing the law in relation to the site owners' veto on the sale of a home may go a long way to reducing disputes which would otherwise come to the Tribunal. However, if enforcement action is used by the Local Authorities of Wales, then appeals to the Tribunal will follow. The best estimate is for 15 appeals from 92 sites (over 15% of sites) over the course of 5 years, on which the additional resource requirement for the Tribunal is based.

267. Training will have to be provided to members on the new legislation and to the office staff.
268. If we were to assume that there are three cases heard a year, with appeal costs estimated at £500 a case in preparing for and attending the Tribunal, this would lead to an annual cost of £1,500 to the site owner.
269. If we were to assume that there are three cases heard a year, with appeal costs estimated at £500 a case to the local authority in preparing for and attending the Tribunal, this would lead to an annual cost of £1,500 to the local authority.
270. A Tribunal of Lawyer, Surveyor and Lay Person costs over £1,000 per day leaving aside the cost of a venue, travel and the office staff. Therefore, if we assumed 3 cases of 2 days each per year this could be up to £6,000 or £8,000 including ancillary costs. This would equal £8,000 per year. There will need to be training for Tribunal staff, estimates for training and publicity are included in figures provided by the Welsh Government with regards to transitional costs of the Act.
271. Costs for residents are not included as it is anticipated that the provisions within the Act will make it less likely for residents to need recourse to legal action than is currently the case and the availability of the RPT will mean that costs will be lower than in the past. Under current provisions, an application to the RPT starts at £150 and could go up to £500 depending on the detail of the case. Regulations could be used to amend these amounts.

Other costs

272. Additional training would be needed for local authority staff in the first year along with publicity costs, estimates for training and publicity are included in figures provided by the Welsh Government with regards to transitional costs of the Act.
273. In the unlikely event that a local authority were required to take over the management of a site, the authority would be able to recover

management costs from site income, therefore costs are not included to cover this eventuality.

Welsh Government

274. There will also be costs for the Welsh Government due to the number of regulations and order making powers in the Act. These will generally be transitional costs that could involve the setting of and consulting on legislation and publicising decisions. It is difficult to estimate the costs that will fall on the Welsh Government, as the timing and extent of resource input will be decided within the relevant department. Also, some of the powers are similar to those in existing housing legislation or current industry standards.
275. There are thirty four regulation and order-making powers, and the Welsh Government may need to draft, consult upon and implement these. However, existing housing legislation, particularly in relation to Houses in Multiple Occupation, may provide a basis for some of the new legislation.
276. Although costs will vary due to the complexity of regulations and guidance prescribed. We approached the Welsh Government for more detailed estimates of what the implications of this Act will be in terms of costs to produce regulations and guidance. The Welsh Government estimated that transitional costs for the set of 34 regulation and order making powers and two guidance documents would be estimated to be at least £270,000. This includes their preparation, publication and publicity along with training for staff who would enforce these regulations and adhere to guidance.

Summary of costs

Site owners

277. There will be a number of costs which will fall on site owners. These are summarised below:

Site licence fees – illustrative figure £340,000. Transitional period, assumed to be the first year. The licence will last up to five years.

Fit and proper person test though dependent on regulations, likely to be approximately £10,000 every five years.

Administrative costs for licence application, £9,200 in first year.

Amendment of rules, agreement or licence £2,300 a year.

Administrative support for local authority monitoring £9,200 from year 2.

Tribunal administration costs £1,500 per year.

Change from RPI to CPI ceiling on pitch fee increase over time, will have an impact on site owner income and residents pitch fees paid.

Over the first five years of the Act this would equate to around £415,000.

278. Most of the costs outlined above will be incurred by small/micro firms, as site owners typically employ very few staff. For a fixed licence fee, the cost will be proportionally greater on small firms as the cost per resident would be higher. However, the fee structure is to be determined by local authorities, for example they could chose to have a variable licence fee structure that relates to the size of a site. Thus the impact will depend on what structure each decides on.

279. There is the potential for adverse effects caused by extra costs associated with introduction of licensing fees, as different areas are likely to charge different rates. In particular, where there are high fixed monitoring costs for a local authority, and a small number of sites, fees for each site may have to be very high if local authorities were to achieve full cost recovery. This may make the park homes business unviable in some areas, and could result in a clustering of sites where fees are low and Local authorities can benefit from economies of scale. Or it may result in fewer, larger sites so that only one licence fee has to be paid for a larger number of tenants. To mitigate this risk, we are proposing to allow local authorities discretion over the fee structure and any exemptions.

Local authorities

Site fee income – illustrative figure £340,000.

Four EHO equivalent staff in first year to support implementation of licensing, £160,000.

Two technical officers to cover additional monitoring £60,000 a year from year 2 onwards.

Tribunal administration costs £1,500 per year.

Training and publicity costs are included in Welsh Government transitional costs.

Over the first five years of the Act this would equate to around £67,500 (net of £340,000 illustrative income).

Residential Property Tribunal

A Tribunal of Lawyer, Surveyor and Lay Person costs £6,000 or £8,000 including ancillary costs a year. Additional training costs in the first year for Tribunal staff are included in Welsh Government transitional costs.

Over the first five years of the Act this would equate to around £40,000.

Welsh Government

280. There will also be costs for the Welsh Government dependent on the level of regulations in the Act and how much existing legislation needs to be amended or replaced. This will place an administrative burden on Welsh Government staff. Transitional costs were estimated by the Welsh Government to be at least £270,000, this includes preparation, publication and publicity along with training for staff who would enforce these regulations and adhere to guidance.

	£				
	Yr1	Yr2	Yr3	Yr4	Yr5
Site Owners					
Admin license	9,200				
Checks	10,000				
Amend license	2,300	2,300	2,300	2,300	2,300
Monitoring		9,200	9,200	9,200	9,200
Appealing	1,500	1,500	1,500	1,500	1,500
Total administrative costs	23,000	13,000	13,000	13,000	13,000
Licence fee ¹	340,000				
Total	363,000	13,000	13,000	13,000	13,000
Licensing authorities					
Cost of licensing monitoring	160,000	60,000	60,000	60,000	60,000
Court costs	1,500	1,500	1,500	1,500	1,500
Total administrative costs	161,500	61,500	61,500	61,500	61,500
License income ¹	-340,000				
Total	-178,500	61,500	61,500	61,500	61,500
Tribunal costs	8,000	8,000	8,000	8,000	8,000
Welsh Government²	270,000				
Total	462,500	82,500	82,500	82,500	82,500

¹ Licence is illustrative estimate based on £100 per unit licence fee.

² These figures were provided by the Welsh Government. Timing of costs will be dependent on timetable of implementation, for simplicity all transitional costs are included in year 1.

Benefits

281. We estimate that complaints³⁰ about site conditions and management relate to around 10 per cent of sites that are significantly below required standards. Data from the Mobile Homes Act 2013 impact assessment shows that average site operating costs are around £180,000 per year³¹, and we estimate that annual remedial work would cost site owners an average of £36,000. In our assessment, we take the cost of the remedial work to be the benefit accruing to residents from the work, as this is work that residents have already paid for through their pitch fee.

282. The cost of necessary remedial work that is not performed is therefore the value that is presently being extracted from residents by site owners. We therefore assume that this is the value that is returned to residents when a site is brought back up to standard. We also need to make assumptions about the proportion of substandard sites that are persuaded or compelled to make improvements as a result of the new system, and the value of the work undertaken to residents.

283. As we cannot know with certainty how many sites will make improvements in response to the new sanctions and enforcement powers, it is sensible to undertake sensitivity analysis around the outcome of the stronger enforcement framework.

284. The main benefits of the Act are anticipated to take the form of improvements to mobile homes sites. We have used the following calculation to determine the potential range of benefits: Cost of remedial work per site (base = £36,000) * proportion of substandard sites (10 per cent) * total number of sites each year (base = 92) * number of substandard sites compelled to make improvements (low = 25 per cent, base = 50 per cent, high = 75 per cent.)

a. Low = £82,800

b. Base = £165,600

c. High = £248,800

³⁰ 29 per cent of respondents to Consumer Focus Wales had experienced problems with the maintenance, security or safety standards on their site, p.7, 2012

³¹ „A Better Deal for Mobile Home Owners - Changes to the Local Authority Site Licensing Regime, 2012

285. The principal benefit expected to arise from the provisions relating to sales and gifting is the ability of residents to sell their homes at the market value without site owners blocking or otherwise interfering with the process. This has the wider benefit of opening up the market and making the match up of prospective buyers and sellers more efficient.

286. The other benefits include:

- purchasers from being able to see, from site rules deposited with the local authority, what the regulations are for living on the site without having to make direct contact with the owner before purchase;
- responsible site owners gaining from an enhanced reputation of the sector; and
- a reduced potential for harassment and intimidation of residents leading to improved quality of life, health and wellbeing.

287. We conservatively estimate that at present 10 per cent of residents experience harassment and problems in selling their homes in the open market. Research by Consumer Focus Wales also suggests a 'discount' of more than 50% of the property value when the resident sells to the site owner.

288. Assuming the annual sales of mobile homes in Wales to be 5% of the total stock (100% = 3,400 units, 5% = 170) we have estimated the maximum transfer from site owners to residents as £340,000, (10% of £3.4m - [10% of residents who experience harassment]).

This assumes an average property value of £40,000. It constitutes the difference of £20,000 per property - between a reduced sale value of £20,000 and the sale value that will be received by sellers in the future

289. Other benefits are difficult to put a financial value on:

- The previous legal system is complex. Fines have been at a low level which did not make it cost effective for local authorities to monitor and enforce legislation effectively.
- The previous system of enforcement was cumbersome and the new system would therefore be likely to result in savings for local authorities in terms of current enforcement costs.
- The new system is intended to give local authorities the powers and funding to effectively oversee the industry, through licence fees, fixed penalty income and any recovered

enforcement costs. This should improve standards at sites which currently provide an unacceptable service.

- The legal system will reduce the opportunities currently being exploited by a minority criminal element at the expense of a mainly elderly population. The system should also push to raise standards at sites which have an unacceptable level of facilities.
- The incidence of elderly residents being coerced out of their accommodation will be reduced by this Act and there will be less demand to house vulnerable people removed from sites and potentially made homeless.
- Where owners make improvements to sites, site owners more broadly may benefit from an enhanced reputation for the industry.

Unintended consequences

290. There were fears raised in consultation responses that having a fixed term licence would make banks less likely to provide financing for park homes sites. However, this appears unlikely as banks will lend to many other types of businesses and industry which require licences, including HMO landlords who also require 5 year renewable licences.

291. The additional costs, if they are borne by site owners entirely, will have a marginally detrimental effect on site profitability, along with the slight reduction in capacity to raise the pitch fee, caused by the switch from the use of RPI to CPI in terms of expected maximum increase over time. This may lead to less money being invested in park facilities. If a park were to become unprofitable in the long run this could lead to a site owner considering changing the status of their parks or leaving the industry.

292. The Act prohibits the passing on of additional costs in relation to this Act. If the additional costs were to be passed on to park residents, this could have a considerable impact on residents. Especially as research suggests that over two-thirds of residents on mobile home sites are elderly, well over half of households on mobile home sites had a monthly income of less than £800 per month. Also, any significant increase in living costs could impact on the desirability and value of park homes.

Equality considerations

293. The Act will ensure that as part of the licensing process, site owners and managers will be required to pass a fit and proper person test. One of the criteria that the local authority will be able to use to assess an applicant is whether they have discriminated on the basis of a protected characteristic under the Equality Act 2010.

294. It is common practice for site rules to restrict occupancy of mobile homes to people over a certain age. This could potentially be challenged on the basis of age discrimination. Section 29 of the Equality Act 2010 (the 2010 Act) prevents a service provider discriminating against a person requiring a service by not providing the person with the service. This would apply to mobile home site operators. However, The UK Government has used its powers under the 2010 Act to make an order that amends the 2010 Act by inserting new paragraph 30D into Part 7, Schedule 3 to the Act, so that the owner of a mobile home park does not violate the 2010 Act if he requires a person to have attained a particular age before being allowed to occupy a mobile home on the site.³²

³² The Equality Act 2010 (Age Exceptions) Order 2012