



# Mobile Homes (Wales) Act 2013

2013 anaw 6

## PART 2

### LICENSING OF MOBILE HOME SITES ETC.

#### *Breach of condition*

#### **15 Breach of condition**

- (1) If it appears to a local authority which has issued a site licence that the owner of the land is failing or has failed to comply with a condition of the site licence, the local authority may give the owner—
  - (a) a fixed penalty notice, or
  - (b) a compliance notice.
- (2) The Welsh Ministers may issue guidance to local authorities as to the considerations they should take into account in deciding whether to deal with a failure to comply with a condition of a site licence by giving a fixed penalty notice or a compliance notice.
- (3) A local authority must have regard to any such guidance in making such a decision.
- (4) Where a fixed penalty notice is given to a person in respect of a failure but payment of the amount specified in it is not made in accordance with the notice, the local authority may withdraw the fixed penalty notice and give the person a compliance notice in respect of the failure.

#### **16 Fixed penalty notice**

- (1) A fixed penalty notice is a notice which—
  - (a) sets out the condition in question and details of the failure to comply with it,
  - (b) requires the owner of the land to pay a specified amount to the local authority at an address specified in the notice, and
  - (c) specifies the period within which the specified amount must be paid.

- (2) The amount specified in a fixed penalty notice given at any time must not exceed the amount specified at that time as level 1 on the standard scale for summary offences.
- (3) Without prejudice to payment by any other method, payment of an amount specified in a fixed penalty notice may be made by pre-paying and posting a letter containing the amount (in cash or otherwise) to the local authority at the address specified in the notice; and in that case payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

## 17 Compliance notices

- (1) A compliance notice is a notice which—
  - (a) sets out the condition in question and details of the failure to comply with it,
  - (b) requires the owner of the land to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that the condition is complied with,
  - (c) specifies the period within which those steps must be taken, and
  - (d) explains the right of appeal conferred by subsection (2).
- (2) An owner of land who has been served with a compliance notice may appeal to a residential property tribunal against that notice (see section 23).
- (3) A local authority may—
  - (a) revoke a compliance notice, or
  - (b) vary a compliance notice by extending the period specified in the notice under subsection (1)(c).
- (4) The power to revoke or vary a compliance notice is exercisable by the local authority—
  - (a) on an application made by the owner of land on whom the notice was served, or
  - (b) on the local authority's own initiative.
- (5) Where a local authority revokes or varies a compliance notice, it must notify the owner of the land to which the notice relates of the decision as soon as is reasonably practicable.
- (6) Where a compliance notice is revoked, the revocation comes into force at the time when it is made.
- (7) Where a compliance notice is varied—
  - (a) if the notice has not become operative when the variation is made, the variation comes into force at such time (if any) as the notice becomes operative in accordance with section 24, and
  - (b) if the notice has become operative when the variation is made, the variation comes into force at the time when it is made.

## 18 Compliance notice: offence and multiple convictions

- (1) An owner of land who has been served with a compliance notice which has become operative commits an offence if the owner fails to take the steps specified in the notice under section 17(1)(b) within the period specified in the notice under section 17(1)(c).

- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine.
- (3) In proceedings against an owner of land for an offence under subsection (1), it is a defence that the owner had a reasonable excuse for failing to take the steps referred to in subsection (1) within the period referred to in that subsection.
- (4) Subsection (5) applies where—
  - (a) an owner of land is convicted of an offence under subsection (1), and
  - (b) the owner has been convicted on two or more previous occasions of an offence under subsection (1) in relation to the site licence to which the conviction mentioned in paragraph (a) relates.
- (5) On an application by the local authority which served the compliance notice, the court before which the owner of the land was convicted may make an order revoking the site licence on the date specified in the order.
- (6) An order under subsection (5) must not specify a date which is before the end of the period within which notice of appeal (whether by case stated or otherwise) may be given against the conviction mentioned in subsection (4)(a).
- (7) Where an appeal against the conviction mentioned in subsection (4)(a) is made by the owner of the land before the date specified in an order under subsection (5), the order does not take effect until—
  - (a) the appeal is finally determined, or
  - (b) the appeal is withdrawn.
- (8) On an application by the owner of the land or by the local authority who issued the site licence, the court which made the order under subsection (5) may make an order specifying a date on which the revocation of the site licence takes effect which is later than the date specified in the order under subsection (5).
- (9) But the court must not make an order under subsection (8) unless it is satisfied that adequate notice of the application has been given to the owner (if the applicant is the local authority) or to the local authority (if the applicant is the owner).

## **19 Compliance notice: power to demand expenses**

- (1) When serving a compliance notice on an owner of land, a local authority may impose a charge on the owner as a means of recovering expenses incurred by the local authority—
  - (a) in deciding whether to serve the notice, and
  - (b) in preparing and serving the notice or a demand under subsection (3).
- (2) The expenses referred to in subsection (1) include (but are not limited to) the costs of obtaining expert advice (including legal advice).
- (3) The power under subsection (1) is exercisable by serving the compliance notice together with a demand which sets out—
  - (a) the total expenses the local authority seeks to recover under subsection (1) (“relevant expenses”),
  - (b) a detailed breakdown of the relevant expenses, and

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- (c) where the local authority propose to charge interest under section 25, the rate at which the relevant expenses carry interest.
- (4) Where a tribunal allows an appeal under section 17 against the compliance notice with which a demand was served, the tribunal may make such order as it considers appropriate—
- (a) confirming, reducing or quashing any charge under this section made in respect of the notice, and
  - (b) varying the demand as appropriate in consequence.

## **20 Power to take action following conviction of owner**

- (1) Where an owner of land is convicted of an offence under section 18(1), the local authority which issued the compliance notice may—
- (a) take any steps required by the compliance notice to be taken by the owner but which have not been taken, and
  - (b) take such further action as the authority considers appropriate for ensuring that the condition specified in the compliance notice is complied with.
- (2) Where a local authority proposes to take action under subsection (1), it must serve on the owner of the land a notice which—
- (a) identifies the land and the compliance notice to which it relates,
  - (b) states that the local authority intends to enter the land,
  - (c) describes the action the local authority intends to take on the land,
  - (d) if the person whom the local authority proposes to authorise to take the action on its behalf is not an officer of the local authority, states the name of that person, and
  - (e) sets out the dates and times on which it is intended that the action will be taken (including when the local authority intends to start taking the action and when it expects the action to be completed).
- (3) The notice must be served sufficiently in advance of when the local authority intends to enter the land as to give the owner of the land reasonable notice of the intended entry.
- (4) In a case where the local authority authorises a person other than an officer of the local authority to take the action on its behalf, the reference in section 32(1) to an authorised officer of the local authority includes that person.
- (5) The requirement in section 32(2) to give 24 hours' notice of the intended entry, in its application to a case within this section, applies only in relation to the day on which the local authority intends to start taking the action on the land.

## **21 Power to take emergency action**

- (1) A local authority which has issued a site licence may take action in relation to any of the land comprising the site if it appears to the local authority that—
- (a) the owner of the land is failing or has failed to comply with a condition of the site licence, and
  - (b) as a result of that failure there is an imminent risk of serious harm to the health or safety of any person who is or may be on the land.

- (2) The action a local authority may take under this section (referred to in this section as “emergency action”) is such action as appears to the local authority to be necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b).
- (3) Where a local authority proposes to take emergency action, the local authority must serve on the owner of the land a notice which—
  - (a) identifies the land to which it relates,
  - (b) states that the local authority intends to enter the land,
  - (c) describes the emergency action the local authority intends to take on the land,
  - (d) if the person whom the local authority proposes to authorise to take the action on its behalf is not an officer of the local authority, states the name of that person, and
  - (e) specifies the powers under this section and section 32 as the powers under which the local authority intends to enter the land.
- (4) A notice under subsection (3) may state that, if entry to the land were to be refused, the local authority would propose to apply for a warrant under section 32(3).
- (5) A notice under subsection (3) must be served sufficiently in advance of when the local authority intends to enter the land as to give the owner of the land reasonable notice of the intended entry.
- (6) In a case where the local authority authorises a person other than an officer of the local authority to take the emergency action on its behalf, the reference in section 32(1) to an authorised officer of the local authority includes that person.
- (7) Section 32, in its application to a case within this section, has effect as if—
  - (a) the words “at all reasonable hours” in subsection (1), and
  - (b) subsection (2),were omitted.
- (8) Within the period of 7 days beginning with the date when the local authority starts taking the emergency action, the local authority must serve on the owner of the land a notice which—
  - (a) describes the imminent risk of serious harm to the health or safety of persons who are or may be on the land,
  - (b) describes the emergency action which has been, and any emergency action which is to be, taken by the local authority on the land,
  - (c) sets out when the local authority started taking the emergency action and when the local authority expects it to be completed,
  - (d) if the person whom the local authority has authorised to take the action on its behalf is not an officer of the local authority, states the name of that person, and
  - (e) explains the right of appeal conferred by subsection (9).
- (9) The owner of land in respect of which a local authority has taken or is taking emergency action may appeal to a residential property tribunal against the taking of the action by the local authority (see section 23).
- (10) An appeal may be brought—
  - (a) on the grounds that that there was no imminent risk of serious harm as mentioned in subsection (1)(b) (or, where the action is still being taken, that there is no such risk), or

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- (b) on the grounds that the action the authority has taken was not necessary to remove the imminent risk of serious harm mentioned in subsection (1)(b) (or, where the action is still being taken, that it is not necessary to remove the risk).
- (11) The ways in which a notice under this section may be served include by fixing it in a prominent place at or near the main entrance to the land.

## **22 Action under section 20 or 21: power to demand expenses**

- (1) Where a local authority takes action under section 20 or emergency action under section 21, the local authority may impose a charge on the owner of the land as a means of recovering expenses incurred by the local authority—
  - (a) in deciding whether to take the action,
  - (b) in preparing and serving any notice under section 20 or 21 or a demand under subsection (6), and
  - (c) taking the action.
- (2) The expenses referred to in subsection (1) include (but are not limited to) the costs of obtaining expert advice (including legal advice).
- (3) In the case of emergency action under section 21, no charge may be imposed under subsection (1) until such time (if any) as is determined in accordance with subsection (4).
- (4) For the purposes of subsection (3), the time when a charge in respect of emergency action may be imposed is—
  - (a) if no appeal against the local authority’s decision to take the emergency action is brought under section 21(9) within the appeal period under section 23, the end of that period, and
  - (b) if such an appeal is brought and a decision on the appeal confirms the local authority’s decision—
    - (i) where the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, the end of that period, and
    - (ii) where an appeal to the Upper Tribunal is brought, when a decision is given on the appeal confirming the local authority’s decision.
- (5) For the purposes of subsection (4)—
  - (a) the withdrawal of an appeal against a decision by the local authority has the same effect as a decision on the appeal confirming the local authority’s decision, and
  - (b) references to a decision on the appeal confirming the local authority’s decision are to a decision which confirms that decision with or without variation.
- (6) The power under subsection (1) is exercisable by serving on the owner of the land a demand for the expenses which—
  - (a) sets out the total expenses the local authority seeks to recover under subsection (1) (“relevant expenses”),
  - (b) sets out a detailed breakdown of the relevant expenses,
  - (c) where the local authority proposes to charge interest under section 25, sets out the rate at which the relevant expenses carry interest, and
  - (d) explains the right of appeal conferred by subsection (7).

- (7) The owner of land who is served with a demand under this section may appeal to a residential property tribunal against the demand (see section 23).
- (8) A demand under this section must be served—
  - (a) in the case of action under section 20, before the end of the period of 2 months beginning with the date on which the action is completed, and
  - (b) in the case of emergency action under section 21—
    - (i) before the end of the period of 2 months beginning with the earliest date (if any) on which a charge may be imposed in accordance with subsection (4), or
    - (ii) if the action has not been completed by the end of that period, before the end of the period of 2 months beginning with the date on which the action is completed.

### **23 Appeals under section 17, 21 or 22**

- (1) An appeal under section 17, 21 or 22 must be made before the end of the period of 21 days beginning with the day on which the relevant document was served (referred to in this section and section 24 as “the appeal period”).
- (2) In subsection (1) “relevant document” means—
  - (a) in the case of an appeal under section 17, the compliance notice,
  - (b) in the case of an appeal under section 21, the notice under subsection (8) of that section, and
  - (c) in the case of an appeal under section 22, the demand under that section.
- (3) A residential property tribunal may allow an appeal under section 17, 21 or 22 to be made to it after the end of the appeal period if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).
- (4) An appeal under section 17, 21 or 22—
  - (a) is to be by way of a rehearing, but
  - (b) may be determined having regard to matters of which the local authority which made the decision was unaware.
- (5) The tribunal may by order—
  - (a) on an appeal under section 17, confirm, vary or quash the compliance notice,
  - (b) on an appeal under section 21, confirm, vary or reverse the decision of the local authority, or
  - (c) on an appeal under section 22, confirm, vary or quash the demand.

### **24 When compliance notice or expenses demand becomes operative**

- (1) The time when a compliance notice under section 17 or a demand under section 19 or 22 becomes operative (if at all) is to be determined in accordance with this section.
- (2) Where no appeal under section 17 is brought within the appeal period against the compliance notice, the notice and any demand under section 19 which was served with it become operative at the end of that period.

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- (3) Where no appeal under section 22 is brought within the appeal period, the demand under that section becomes operative at the end of that period.
- (4) Where an appeal under section 17 is brought, and a decision on the appeal confirms the compliance notice, the notice and any demand under section 19 which was served with it become operative—
  - (a) where the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, at the end of that period, or
  - (b) where an appeal to the Upper Tribunal is brought and a decision on the appeal is given which confirms the notice, at the time of the decision.
- (5) Where an appeal under section 22 is brought, and a decision on the appeal confirms the demand under that section, the demand becomes operative—
  - (a) where the period within which an appeal to the Upper Tribunal may be brought expires without such an appeal having been brought, at the end of that period, or
  - (b) where an appeal to the Upper Tribunal is brought and a decision on the appeal is given which confirms the demand, at the time of the decision.
- (6) For the purposes of subsections (4) and (5)—
  - (a) the withdrawal of an appeal against a notice or demand has the same effect as a decision confirming the notice or demand, and
  - (b) references to a decision which confirms the notice or demand are to a decision which confirms the notice or demand with or without variation.

## **25 Recovery of expenses demanded under section 19 or 22**

- (1) As from the time when a demand under section 19 or 22 becomes operative, the relevant expenses set out in the demand carry interest at such rate as the local authority may fix until recovery of all sums due under the demand; and the expenses and any interest are recoverable by it as a debt.
- (2) As from that time, the expenses and any interest are, until recovery, a charge on the land to which the compliance notice or emergency action in question relates.
- (3) The charge takes effect at that time as a legal charge which is a local land charge.
- (4) For the purpose of enforcing the charge the local authority has the same powers and remedies under the Law of Property Act 1925 and otherwise as if it was a mortgagee by deed having powers of sale and lease, of accepting surrenders of leases and of appointing a receiver.
- (5) The power of appointing a receiver is exercisable at any time after the end of the period of 1 month beginning with the date on which the charge takes effect.
- (6) In this section “relevant expenses”—
  - (a) in the case of a demand under section 19, has the meaning given by subsection (3) of that section, and
  - (b) in the case of a demand under section 22, has the meaning given by subsection (6) of that section.