

HOUSING (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE STRUCTURE AND A SUMMARY OF THE ACT

Part Five – Mobile Home Sites With Permanent Residents

126. [Part 5](#) makes provision for the licensing system for mobile home sites with permanent residents.

General application

127. The provisions in this part of the Act amend the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). The 1960 Act requires occupiers of land (referred to in these Notes as “site owners”) to hold a licence before they allow their land to be used as a caravan site. Currently the same licensing regime applies to sites used for holiday caravans, and sites with permanent residents. The Act changes the licensing regime for most sites with permanent residents. These sites are defined as “relevant permanent sites” in new section 32Z6, which is inserted into the 1960 Act by section 82 of the Act. New section 32Z6 is an interpretation section for new Part 1A.
128. New Part 1A deals with the licensing of relevant permanent sites in Scotland. Sites that have a licence that only allows mobile homes on them to be used for holidays are not affected by the new Part 1A of the 1960 Act. Part 1 of the 1960 Act will continue to apply to such holiday sites. The definition of “excepted permission” (also in new section 32Z6) means that holiday sites that have an employee of the site owner living on them year round (for example to manage the site), are not covered by new Part 1A of the 1960 Act.
129. [Section 63](#) of the Act amends section 32 of the 1960 Act by inserting a new paragraph (m) into section 32(1). Section 32 changes the operation and wording of Part 1 of the 1960 Act as it applies to Scotland. For example it replaces references to English courts and legal terms with references to the relevant equivalents under Scots law. All the provisions in Part 1 of the 1960 Act need to be read alongside section 32 when considering how the Act applies to Scotland. The effect of the new paragraph (m) is that, when applying the 1960 Act to a relevant permanent site in Scotland, it is also necessary to read the provisions of Part 1A.

Part 1A site licence

130. [Section 64](#) of the Act inserts new sections 32B and 32C into the 1960 Act. New section 32B has the effect of replacing the existing system for licensing mobile home sites with permanent residents in Scotland (in terms of Part 1 of the 1960 Act) with the new system set out in new Part 1A (in terms of new section 32A(1)). New section 32B(1) provides that a relevant permanent site application may be made by the site owner of the relevant permanent site to the local authority in whose area the site is situated, and new section 32B(2) sets out what such a site licence application must include. For example, it must be in such format as is determined by the local authority, and specify the land in respect of which the application is made. Section 32B(3) requires an applicant to provide such information to the local authority as it reasonably requires.

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131. New section 32C provides that the relevant local authority may charge a fee for a site licence application. A local authority may also fix different fees for different applications (subsection (2)). Such a fee cannot exceed the amount a local authority considers represents the reasonable costs of deciding on an application (subsection (3)). Subsection (4) provides that the Scottish Ministers may by regulations make provision about the charging of fees for site licence applications. This could include setting out the factors a local authority could take into account when fixing the fee for a site licence, and providing for the fee not to exceed a maximum fee level prescribed by the Scottish Ministers in the regulations.
132. **Section 65** inserts new section 32D into the 1960 Act which provides for the issue and renewal of a site licence for a relevant permanent site. New section 32D(1) provides that a local authority may issue a site licence:
- where the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
 - if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, that both the applicant and the individual holding the most senior position within the management structure of the relevant partnership, company or body are fit and proper persons, and
 - if the authority is satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed and any individual who is to be directly concerned with the management of the site are fit and proper persons.
133. Section 32D(2) provides that a local authority must renew a licence if:
- the applicant has the relevant planning permission (for the use of the land as a caravan site otherwise than by a development order), and
 - if the authority is satisfied that the applicant is a fit and proper person or where the applicant is not a natural person, the both the applicant (subsection (2)(b)(i)) and the individual holding the most senior position within the management structure of the relevant partnership, company or body (subsection (2)(b)(ii)) are fit and proper persons, and
 - if the authority if satisfied that any person appointed by the applicant to manage the site is a fit and proper person, and in the case where a person to be appointed by the applicant to manage the site is not a natural person, that both the person to be appointed (subsection 2(b)(iii)) and any individual who is to be directly concerned with the management of the site (subsection 2(b)(iv)) are fit and proper persons.
134. New section 32D(3) provides that the local authority must not at any time issue a site licence to a person whom the local authority knows had held a site licence which has been revoked under the 1960 Act less than three years before that time.
135. New section 32D(4) provides that before refusing to issue a site licence, the authority must give the applicant a notice stating that it is considering refusal and its reasoning for this, and informing the applicant of the right to make written representations to the authority before the date specified in the notice. New section 32D(5) requires the local authority to consider the application and any representations made in making its decision.
136. **Section 65** also inserts new section 32E into the 1960 Act. Section 32E sets out procedures for the transfer of a site licence (other than on the death of a site licence holder) to a person who is to become the site owner of the relevant permanent site. This would occur, for example, where a site was sold to a new owner. Procedures similar to those that apply for a new site licence application apply in this situation, such as the need

for the new site licence holder (and any person appointed to manage the site) to be a fit and proper person to hold a site licence (subsection (2)). Subsection (3) also provides that the applicant and transferee must provide the local authority with such information as the authority reasonably requires in order to establish whether the person is a fit and proper person. Subsection (4) requires a local authority, before refusing consent to the transfer of a licence, to give the applicant a notice that states that it is considering refusing its consent, and the reasons why. The applicant then has an opportunity to make written representations to the local authority before the date given on the notice (which must be at least 28 days after the notice is given). A local authority must consider these representations.

137. **Section 65** also inserts new section 32F into the 1960 Act. New section 32F makes provision for the setting of time limits in relation to an application for a site licence and consent to transfer a licence mentioned in section 32E. Under the provision, the Scottish Ministers must set in regulations a time limit within which a local authority must decide on applications to issue a site licence for the first time, an application to renew a site licence, and an application to transfer a site licence. Ministers can set different time limits for different types of application. If a local authority does not meet the time limits set in the regulations then the applicant is to be treated as having been granted a site licence by the authority under new section 32F (subsection (8)). The period may be extended by the sheriff by such period as the sheriff thinks fit (subsection (4)), the sheriff may not extend the period unless the authority applies for the extension before the period expires (subsection (5)), the applicant is entitled to be party to any proceedings to extend the period of determination (subsection (6)), and the sheriff's decision on such summary application is final (subsection (7)). If a local authority does not determine an application for consent to transfer a licence within the period, then the applicant is to be treated as having been granted consent on the day the application was made (subsection (9)).
138. **Section 65** also inserts new section 32G into the 1960 Act. This provision gives the local authority the power to transfer a site licence to the person it considers to be the site owner of the relevant permanent site (subsection (2)), where a holder of a site licence does not seek consent of the authority for the transfer under section 10(1) of the 1960 Act and where it appears to the authority that the holder of the licence is no longer the site owner. The section introduces an offence of knowingly or recklessly providing false or misleading information to a local authority in relation to a local authority decision to transfer a licence. A person who commits such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale (subsection (7)) In 2013 this was a maximum of £1,000.
139. New section 32H as inserted into the 1960 Act by section 65, provides that where a relevant permanent site licence is transferred to a person in accordance with section 10(4) of the 1960 Act, that person must give the authority such information as the authority may reasonably require in order to make a determination under new section 32L, in relation to a decision to revoke a site licence on the basis that someone is not a fit and proper person.
140. New section 32I is inserted into the 1960 Act by section 65. It requires a local authority after:
- determinations of relevant permanent site applications,
 - determinations of an application for consent to transfer a licence mentioned in new section 32E,
 - a decision to transfer a licence mentioned in new section 32G,
- to notify respectively the applicant, the applicant and the transferee, and the previous holder of the site licence and transferee, of the decision, the reasons for it, and the right to appeal under new section 32M. It must do so as soon as practicable after making the decision (subsection (1)).

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141. **Section 66** inserts new section 32J into the 1960 Act and provides that a site licence issued or renewed for a “relevant permanent site” will be for a duration of five years (unless terminated by its revocation, or unless the holder is no longer entitled to planning permission for use of the land as a caravan site, or any planning permission for the use of the site as a caravan site expires). New section 32J(2) gives the Scottish Ministers the power to alter the duration of site licences, by order subject to the affirmative procedure.
142. **Section 67** inserts new section 32K into the 1960 Act. This requires a site licence holder to tell a local authority when the holder has appointed someone new to manage the site. New section 32K also requires a site licence holder to notify a local authority of a change of circumstances that means that information provided by the licence holder has become inaccurate. They must do so within 28 days of the day the information previously provided becomes inaccurate.
143. **Section 68** inserts new section 32L into the 1960 Act. This gives a local authority the power to revoke a site licence if the local authority is satisfied that the licence holder is no longer a fit and proper person, or that the person appointed to manage a site is no longer a fit and proper person. Where the licence holder is a non-natural person, the licence can be revoked where the local authority is satisfied that either the licence holder (subsection (1)(a)) or the individual who holds the most senior position in the body (subsection (1)(b)) is no longer a fit and proper person.
144. Section 32L(2) sets out the procedures a local authority must follow when revoking a licence (such as the requirement to notify the site owner of the proposed revocation and of the right of the site owner to make written representations). Subsection (4) requires a local authority to serve notice of the revocation on the owner of the relevant permanent site, identifying the site licence to which it relates and explaining the right of appeal. The local authority must also provide its reason(s) for revoking the licence.
145. **Section 69** inserts new section 32M into the 1960 Act. Under this section the person involved (the applicant, the applicant and transferee, the previous holder of the licence and the transferee, depending on the determination) can appeal to the sheriff against a local authority’s decision on a site licence application, on the transfer of a licence (whether on death of a site licence holder or not) or a decision to revoke a site licence.
146. **Section 70** inserts new section 32N into the 1960 Act. This section gives the Scottish Ministers the power to make regulations in relation to procedure and appeals. In particular in relation to:
- the procedure to be followed in relation to the issue, renewal, transfer, transmission and revocation of a permanent site licence,
 - appeals relating to a site licence under new section 32M.

The Scottish Ministers can also make provision for the determination and consequences of an appeal under section 32M.

Fit and proper persons

147. **Section 71** inserts new section 32O into the 1960 Act. The section sets out the factors a local authority must consider when applying the fit and proper person test, for example to potential site licence holders, or existing site licence holders seeking to renew a licence. This section provides that the relevant material that can be taken into account includes:
- whether the person has convictions (other than spent convictions) for offences involving fraud or other dishonesty, violence, drugs, firearms, and sexual offences within the meaning of section 210A(10) of the Criminal Procedure (Scotland) Act 1995,
 - evidence an applicant has practised unlawful discrimination,

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- whether the person has contravened the law relating to caravans, housing, and landlords and tenants,
 - whether the person has committed a breach of an agreement to which the Mobile Homes Act 1983 applies,
 - whether a person has broken rules covering profiteering in relation to the supply of gas, electricity, or water and waste water services to mobile home residents,
 - whether the person has engaged in antisocial behaviour,
 - whether the person has breached the conditions of the site licence,
 - other relevant material a local authority is aware of from its licensing duties.
148. Subsection (7) gives the Scottish Ministers the power to adjust the list of relevant material, by order subject to the affirmative procedure.
149. [Section 72](#) inserts new section 32P into the 1960 Act. This gives a local authority the power, if it is carrying out the fit and proper person test, to require the relevant person to provide a criminal conviction certificate. A local authority can only do so if it has reasonable grounds to suspect that the information an applicant has provided in relation to the fit and proper person test is, or has become, inaccurate.
150. [Section 73](#) inserts new section 32Q into the 1960 Act. This enables local authorities to share information relevant to the application of the fit and proper person test.

Offences relating to relevant permanent sites

151. [Section 74](#) inserts new sections 32R, 32Q and 32T into the 1960 Act. New section 32R makes it an offence for someone to knowingly or recklessly provide information that is materially false or misleading to a local authority, in respect of an application for, or transfer of, a site licence or where information is provided following a change of circumstances. It also makes it an offence for a person, without reasonable excuse, to fail to notify a local authority of a change of circumstances under section 32K (for example, the appointment of a new person to manage a site). Section 32R also makes it an offence to fail to provide to a local authority such information as it might reasonably require under section 32K(3) and (4). If a person commits these offences, the penalty is a fine not exceeding level 3 on the standard scale (in 2014 this is a maximum of £1,000).
152. Section 32S makes it an offence for someone to cause or permit land to be used as a relevant permanent site without a licence. The maximum fine, if convicted for doing so, is £50,000. New section 32T makes it an offence for the site owner of a relevant permanent site to fail to comply with any licence conditions. The maximum fine, if convicted of breaching a licence condition, is £10,000.

Local authority enforcement at relevant permanent sites

153. [Section 75](#) inserts new sections 32U, 32V and 32W into the 1960 Act. These sections all relate to improvement notices. New section 32U sets out:
- the situation in which a local authority may issue an improvement notice,
 - what must be part of such a notice (such as what needs to be improved, and the period within which action needs to be carried out done),
 - that there is a right of appeal to the sheriff by way of summary application,
 - when the period specified in the notice begins, and
 - the powers a local authority has to suspend, revoke, or vary an improvement notice.

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154. New section 32V makes it an offence for a site owner who has been served with an improvement notice to fail to comply with the terms of the notice. If someone is convicted of doing so the maximum fine is £10,000.
155. New section 32W gives a local authority the power, if the site owner fails to take the steps specified in the improvement notice within the period specified, to take the action required on a site to meet the conditions set out in the improvement notice. Subsection (3) requires the local authority to give the site owner notice, and specific details, of the work the local authority will be carrying out (or the authority will be requiring someone else to do on its behalf and to give that person's name), and the dates and times on which this intended action will be taken.
156. [Section 76](#) inserts new section 32X into the 1960 Act. This gives a local authority the power to issue a penalty notice on the site owner, and provides for the situations in which the authority can do so (where there is no licence or a breach of licence conditions). A penalty notice has the effect of suspending, for a specific period of time, payments residents may be making for:
- the right to station a mobile home on a site,
 - rent for the occupation of a mobile home caravan on the site, and
 - the use of the common areas on the site, and their maintenance.

It also suspends the commission a mobile home resident can be required to pay the site owner on sale of a mobile home (under paragraph 1 of Part 1 of Schedule 1 to the 1983 Act). The section sets out what must be included in such a notice (subsection (2)), when the penalty period begins (subsection 4), and the relevant appeal procedures (subsection (7)).

157. [Section 77](#) inserts new section 32Y into the 1960 Act. This provision relates to the appointment of an interim manager to manage a mobile home site. Section 32Y(1) gives a local authority the power to apply to a sheriff to appoint an interim manager for a site. Subsection (5) gives the Scottish Ministers the power to make regulations relating to the appointment of an interim manager. These regulations may, in particular, cover the powers of an interim manager, the qualifications the manager must hold, and the actions the interim manager must carry out.
158. [Section 78](#) inserts section 32Z into the 1960 Act. This gives a local authority the power to take emergency action where it appears to a local authority that:
- the site licence holder is failing, or has failed, to comply with a site licence condition; and as a result of that there is an imminent risk to the health and safety of anyone who is, or may be, on the land, or
 - land is being used as a relevant permanent site without a site licence, and there is an imminent risk to the health and safety of anyone who is, or may be, on the land.
159. In the circumstances above the local authority would be able to carry out work to remove the imminent risk of serious harm. The section requires an authority to provide notice to the site owner in an emergency action notice before carrying out emergency action (subsection (4)), and to provide the site owner with an emergency action report after it has begun undertaking emergency action (subsection (7)). It also provides for appeals against an authority taking emergency action.
160. Under section 26 of the 1960 Act any authorised officer of a local authority has a right of entry to a mobile home site, subject to provisions about the purpose of such entry and the hours in which it takes place. Section 79 inserts new section 32Z1 into the 1960 Act. This extends the applicability of the provisions in section 26, so that they cover situations relating to the use of the new enforcement powers a local authority is given by this Act in relation to relevant permanent sites. In relation to an emergency action notice it also has the effect that a site owner is not required to have 24 hours' notice that

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someone will be carrying out such works, and that entry to the site does not have to be at a reasonable hour. This is to cover situations where such entry must be carried out urgently, for example to address something that is immediately dangerous on a site.

161. **Section 80** inserts new sections 32Z2, 32Z3 and 32Z4 into the 1960 Act. Section 32Z2 gives a local authority the power to recover expenses from a site owner where the local authority has served an improvement notice, penalty notice, or emergency action notice on, or provided at emergency action report to, a site owner. Section 32Z3 allows a local authority to recover from the site owner the expenses of taking action under an improvement notice or emergency action notice.
162. Section 32Z4 gives a local authority the power to recover costs for inspections and other work to investigate or assess compliance with the provisions of this Act.

Miscellaneous

163. **Section 81** inserts new section 32Z5 into the 1960 Act. Section 32Z5 provides that where an offence has been committed under Part 5 of the Act by a corporate body, and it can be proved that a specific individual played a role in the committing of the offence, that person also commits an offence and can be punished accordingly.
164. **Section 82** inserts sections 32Z6 and 32Z7 into the 1960 Act. Section 32Z6 sets out the definitions of terms that are introduced into the 1960 Act through this Act. Section 32Z7 gives the Scottish Ministers the power to issue guidance about the operation of the mobile home site licensing system inserted into the 1960 Act by Part 5 of this Act. The Scottish Ministers can issue such guidance after consulting such persons as they consider appropriate, and a local authority must have regard to any guidance issued under section 32Z7.
165. **Section 83** sets out transitional provisions for existing site licences. Under this section an existing site licence will continue in force for two years from the day the relevant section of the Act comes into force, unless it is revoked or replaced by a new licence issued by the local authority.
166. **Section 84** inserts new sub-paragraphs into Schedule 1 to the Mobile Homes Act 1983. Under the sub-paragraphs inserted by section 84 the expiry, non-renewal, or revocation of a site licence has no effect on a person's right to station a mobile home on a site, if a mobile home resident has an agreement to which the 1983 Act applies. This means that the rights of residents to remain on the site under the 1983 Act will not be affected by a decision to revoke, or to refuse to issue or renew, a site licence, or if a site licence expires.
167. The sub-paragraphs inserted into the 1983 Act by section 84 also prevent pitch fees paid to a site owner from being increased to take account of any costs paid, or to be paid, by the site owner as a result of a local authority recovering the costs of enforcement action.