

MOBILE HOMES ACT 2013

EXPLANATORY NOTES

COMMENTARY

Pitch agreements

Section 11: Implied terms: pitch fees

41. **Section 11** makes amendments to Chapter 2 of Part 1 of Schedule 1 to the MHA 1983. The amendments apply to existing pitch agreements as well as to those made after commencement of the clause. The effect of the amendments made by paragraphs (a), (c) and (e) of subsection (2) and by subsection (6) is to require a site owner, when serving a pitch fee review notice on an occupier of a mobile home which proposes an increase in the pitch fee, to provide the occupier with an accompanying document which meets the requirements set out in new paragraph 25A (inserted by subsection (6)). New paragraph 25A confers a power on the Secretary of State to prescribe the form of that document in regulations. The first regulations made under that power will be subject to the negative resolution procedure. Where the site owner fails to provide that document, the notice which proposes the increase in the pitch fee has no effect; and in cases where an occupier has, nonetheless, begun to pay the increased pitch fee to the owner, the tribunal (a residential property tribunal, or where there is one, the arbitrator in respect of the agreement) may (on the application of the occupier) order the owner to repay the overpayment.
42. Paragraphs (b) and (d) of subsection (2) amend paragraph 17 of Chapter 2 so as to enable an occupier who does not agree to a proposed pitch fee to apply to the tribunal for an order determining the amount of the new pitch fee. Currently, where an occupier does not agree to the proposed pitch fee, it is only the owner who has the right to apply to the tribunal for an order determining the new pitch fee under paragraph 17. Although it is not anticipated that applications will be made routinely by occupiers under the amended provisions, there may be circumstances in which an occupier who has refused to agree to a proposed new pitch fee wishes to seek an order from the tribunal determining the new pitch fee even where the site owner has not objected to the occupier's refusal; for instance where the occupier is of the view that the existing pitch fee should be reduced.
43. Subsections (3) and (4) make amendments to paragraphs 18 and 19 respectively of Chapter 2 about the matters to which site owners must have particular regard, and the costs to be disregarded, when determining the amount of the new pitch fee. The existing provision in paragraph 18(1)(b) of Chapter 2 (so far as it applies in relation to England) which requires site owners to have regard to any decrease in the amenity of the site since the last review date is replaced with two broader requirements contained in new paragraphs 18(1)(aa) and 18(1)(ab) which are inserted by subsection (3)(a). Similarly, the existing provision in paragraph 18(1)(c) (so far as it applies in relation to England) which allows site owners to take into account the effect of any enactment which has come into force since the last review date when determining the new pitch fee, is replaced with new paragraph 18(1)(b) which specifies that site owners may only take into account any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment that has come into force since

*These notes refer to the Mobile Homes Act 2013 (c.14)
which received Royal Assent on 26 March 2013*

the last review date. The amendments made by subsections (3)(f) and (4) make it clear that site owners may not take into account any costs incurred in complying with the requirements inserted into the MHA 1983 by this Bill when determining pitch fees.

44. Subsection (5) inserts new sub-paragraphs (A1) and (A2) into paragraph 20 of Chapter 2. Sub-paragraph (A1) provides that when calculating the effect of changes in the retail prices index on the amount of the pitch fee, this must only be calculated by reference to the latest index and the index published for the month which was twelve months prior to the month which the latest index relates to. Sub-paragraph (A2) provides that where a site owner serves the pitch fee review notice late, the last index published before the day by which the owner was required to serve the notice is to be treated as the latest index, for the purposes of this calculation.