

CARAVANS ACT (NORTHERN IRELAND) 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Caravans Act (Northern Ireland) 2011 which received Royal Assent on 16 March 2011. They have been prepared by the Department for Social Development, on behalf of John McCallister MLA, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Northern Ireland Assembly.
2. The notes need to be read in conjunction with the Act. They do not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or Schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Act was the result of a private member's Bill, sponsored by John McCallister MLA, developed with Government support.
4. The purpose of the Act is to introduce statutory protections, similar to those which already exist in Great Britain, for those who occupy a caravan as their main residence on sites which have been approved for that purpose.
5. The Act also creates a level of protection for other, mostly static holiday, caravan owners by introducing a requirement for written agreements to be in place between site owners and caravan owners. No similar provisions exist in Great Britain.

CONSULTATION

6. The consultation process was initiated in June 2008 where in excess of 200 key stakeholders were advised of John McCallister's intention to create a private member's Bill to legislate for the regulation of permanent residential and static holiday caravan sites. The stakeholders included caravan site owners, residential associations, caravan manufacturers, district councils, recognised industry organisations and caravan owners themselves.
7. A further consultation was undertaken in October 2009 where stakeholders had sight of the first version of the draft Bill. This did create concern over some of the sections and the Bill was significantly re-drafted by Government on John McCallister's behalf.

OVERVIEW

8. The Act has five parts, totalling nineteen sections, and a Schedule (in three parts). A commentary on the provisions follows. Comments are not given where the wording is self-explanatory.

COMMENTARY ON SECTIONS

Part 1: Agreements for residential occupiers on protected sites

Section 1 - Application of this Part

Section 1 clarifies to whom and for what purpose Part 1 of the Act applies. Part 1 applies to the residential caravan sector and covers any residential agreement made either before or after commencement of the Act relating to owner-occupiers of caravans who are entitled to station their caravan on a protected site, and occupy it as their only or main residence, for more than twelve months. The inclusion of this time period is intended to ensure that sites used to provide temporary accommodation, including transit and emergency/halting sites which are designed to support the traditional nomadic lifestyle of Irish Travellers, are not inappropriately brought within the scope of Part 1.

Protected sites (defined in section 17) are sites for which planning permission or site licenses do not restrict use of the site to holiday use only or the times of the year during which the site can be used.

Section 2 – Particulars of agreements

Section 2 places a requirement on the owners of protected sites to provide caravan owners with written statements covering a range of issues within a specific time period. Section 2 also provides the Department for Social Development with a power to make regulations extending the range of requirements for the written statement.

Section 2 provides a mechanism for caravan owners on protected sites to seek redress through the courts where a site owner has failed to provide a written statement in accordance with the requirements of this section.

Section 3 – Terms of agreements

Section 3 refers to Part 1 of the Schedule to the Act which sets out the terms that are to be implied in any residential agreement.

The remainder of section 3 describes the powers of the court when matters relating to residential agreements are brought for its consideration, including the terms that a court can order to be implied in a residential agreement (these are included in full in Part 2 of the Schedule to the Act).

Section 4 – Power to amend implied terms

Section 4 provides the Department for Social Development with a power to amend the terms that are to be implied in any residential agreement (Parts 1 and 2 of the Schedule) by subordinate legislation. It also places a duty on the Department to review the operation of Parts 1 and 2 of the Schedule at least once every five years.

Section 5 – Successors in title

Section 5 makes provision for residential agreements to continue in effect when ownership of the caravan is lawfully assigned or inherited on the death of the owner. The aim of the provision is to protect the rights of those who lived with the caravan owner.

Sub-section (7) covers the rights of succession where the caravan owner lived alone on a protected site other than a ‘travellers’ site’. In these circumstances, there is no automatic right or requirement on the successor in title to live in the caravan as their main or only residence.

In the case of a travellers’ site (that is a site provided and managed by the Housing Executive for Irish Travellers), the successor in title has an automatic right to live in the caravan as long as they are a member of the Irish Traveller community and intend to occupy the caravan as their only or main residence.

Section 6 – Jurisdiction

Section 6 provides the county court covering the area in which the protected site is located with the jurisdiction to hear and make decisions on matters relating to residential agreements and other issues included in Part 1 of the Act. Arbitration is also available as an alternative to court proceedings where the relevant parties have agreed, in writing, to this course of action.

Part 2: Agreements for other occupiers of caravan sites

Section 7 – Application of this Part

Section 7 clarifies to whom and for what purpose Part 2 of the Act applies. Part 2 is intended to apply to the seasonal (holiday) caravan sector and covers any seasonal agreement made either before or after commencement of the Act relating to caravan owners (other than those to whom Part 1 of the Act applies) who are entitled to station their caravan on a caravan site for a period exceeding 28 days. The inclusion of this time period is intended to ensure that touring caravans are not inappropriately brought within the scope of Part 2.

Section 8 – Particulars of agreements

Section 8 places a requirement on the owners of caravan sites (to whom Part 2 applies) to provide caravan owners with written statements covering the terms and conditions upon which their agreement is based within a specific time limit. Any express term of the agreement not given in writing will be unenforceable by the site owner. The intention is to provide site owners with an incentive to comply with the duty to provide a written statement and protect occupiers from the application of terms that have not been given in writing.

Section 9 – Implied terms as to consultation with occupiers’ association

Section 9 creates implied terms in all seasonal agreements. These terms relate to the need to consult a qualifying occupiers’ association, if one exists, about matters relating to the operation and management of the site or about site improvements. Section 9 also includes the criteria used to determine whether an association is a qualifying occupiers’ association and a mechanism for the site owner to recognise it or a court to order the owner do so.

Section 10 – Jurisdiction

Section 10 provides the county court covering the area in which the caravan site is located with the jurisdiction to hear and make decisions on matters relating to seasonal agreements and other issues included in Part 2 of the Act. Arbitration is also available as an alternative to court proceedings where the relevant parties have agreed, in writing, to this course of action.

Part 3: Protection of residential occupiers from eviction and harassment

Section 11 – Application of this Part

Section 11 clarifies to whom Part 3 of the Act applies. Part 3 applies to the residential caravan sector and covers both owner-occupiers entitled to station their caravan on a protected site and those who rent a caravan on a protected site, where, in both cases, the caravan is the person’s only or main residence.

Section 12 – Protection of occupiers against eviction and harassment

Section 12 protects those living in caravans on residential (protected) caravan sites from eviction (other than through court proceedings) and harassment. It is an offence for the owner of a protected site or their agent to intend to cause the caravan occupier to abandon the caravan, remove it from the site or prevent them having access to their rights or a form of redress by withholding or withdrawing services or doing acts likely to interfere with the peace or comfort of the caravan occupier or anyone living with them.

Sub-section(8) sets out the penalties for a person guilty of such an offence and sub-section (12) enables district councils to prosecute such offences in relation to sites within their districts.

Section 13 – Provision for suspension of eviction orders

Section 13 establishes the powers of the courts in relation to proceedings for eviction and the factors the court should take into account in such proceedings. The court can suspend the enforcement of an eviction order for up to 12 months providing the relevant caravan is on a site which has a valid site license.

Section 14 – Supplementary

Section 14 defines ‘the court’ for the purposes of Part 3 as the county court and clarifies the operation of related legislation in light of Part 3.

Part 4 – Meaning of ‘caravan’

Section 15 – Meaning of ‘caravan’ in this Act

Section 15 updates the definition of ‘caravan’ for the purposes of this Act in line with the current definition of ‘caravan’ which applies in England and Wales.

Section 15 also provides a power for the Department of the Environment to amend the maximum dimensions of a caravan by subordinate legislation, subject to consultation with those persons or bodies who appear to the Department to be concerned in the matter.

Section 16 – Definition of ‘caravan’ in Caravans Act

Section 16 applies the new definition of ‘caravan’ in section 15 to the Caravans Act (Northern Ireland) 1963 (c17).

Part 5 - Supplementary

Section 17 – Interpretation

Section 17 defines a number of the terms used in the Act.

Section 18 – Commencement

Section 18 brings all the provisions of the Act into operation six months after it receives Royal Assent.

Schedule: Agreements under Part 1 of this Act

Part 1: Terms implied by Section 3

Part 1 of the Schedule sets out the terms to be implied in any residential agreement.

Paragraphs 1-2: Duration of agreement

Paragraphs 1 and 2 establish that residential agreements last until they are legitimately ended by either the caravan owner or site owner (in line with the requirements in paragraphs 3 to 6). In cases where planning permission or the site owner’s right to the land are time-limited, residential agreements will be similarly time-limited.

Paragraph 3 – Termination by occupier

Paragraph 3 entitles a caravan owner to terminate a residential agreement as long as they provide the site owner with at least four weeks notice in writing.

Paragraph 4-6 – Termination by owner

Paragraphs 4-6 establish the grounds on which a site owner can seek, through the court, to terminate a residential agreement.

Paragraph 7 – Recovery of overpayments by occupier

Paragraph 7 entitles the caravan owner to recover any payments made to the site owner for the period following the end of any residential agreement.

Paragraph 8 – Sale of caravan

Paragraph 8 establishes the process for the sale of a caravan on a protected site. A caravan owner is entitled to sell a caravan and assign their residential agreement to a person approved by the site owner. The site owner's approval cannot be unreasonably withheld and must be notified to the caravan owner within 28 days of a written request being made. If this does not occur, the caravan owner can apply to the court for an order approving a person.

The site owner is entitled to receive a maximum commission of 10% on the sale. This provision does not apply to the Northern Ireland Housing Executive in respect of the sites it provides and manages for Irish Travellers.

Paragraph 9 – Gift of caravan

Paragraph 9 establishes the process for the gifting of a caravan on a protected site. A caravan owner is entitled to gift a caravan and assign their residential agreement to a family member approved by the site owner. The site owner's approval cannot be unreasonably withheld and must be notified to the caravan owner within 28 days of a written request being made. If this does not occur, the caravan owner can apply to the court for an order approving a family member.

Paragraph 10 – Re-siting of caravan

Paragraph 10 allows the site owner to move a caravan to conduct essential or emergency repairs, or to apply to the court to move a caravan, to another comparable pitch on the same site or a different site in their ownership. All costs associated with such moves are the responsibility of the site owner.

Paragraphs 16-20 – The pitch fee

Site owners are entitled to charge a pitch fee and paragraphs 16-20 set out the conditions for changes to and payment of the pitch fee.

The pitch fee can only be changed either with the agreement of the caravan owner or by order of the court.

Paragraph 17 describes the process associated with the annual review of the pitch fee, including mechanisms for dealing with disputes.

Paragraphs 18, 19 and 20 establish the factors that can be taken into account in determining the new pitch fee.

Paragraphs 22-25 – Owner’s obligations

Paragraphs 22-25 establish the site owner’s obligations. These include providing written information on a range of issues, such as charges payable under the residential agreement, and requirements to consult caravan owners and any qualifying residents’ association on matters such as site improvements.

Paragraphs 26-27 – Owner’s name and address

Paragraph 26 requires the site owner to provide caravan owners and any qualifying residents’ associations with an address in Northern Ireland. Caravan owners can, in certain circumstances, reasonably withhold pitch fee payments until such information is provided. All notices from the site owner must also include an address in Northern Ireland.

Paragraph 27 similarly requires site owners to provide an address in Northern Ireland on any demand for payment. Caravan owners can, in certain circumstances, reasonably withhold payments until such information is provided.

Paragraph 28 – Qualifying residents’ association

Paragraph 28 establishes the circumstances in which a residents’ association on a protected site becomes a qualifying residents’ association which the site owner must consult on matters such as the operation and management of the site.

Part 2: Matters concerning which terms may be implied by court.

Section 3 of the Act allows the court to order that certain terms are implied in a residential agreement. These terms are set out in full in Part 2 of the Schedule.

Part 3: Supplementary provisions

Part 3 of the Schedule relates to paragraphs 8 (sale of caravan) and 9 (gift of caravan) of Part 1 of the Schedule and provides for circumstances in which a caravan owner makes a request to someone other than the site owner to approve a person to whom the caravan owner wishes to sell their caravan and assign the residential agreement. Part 3 places a duty on the person who receives the request (providing the tests in sub-paragraph (2) are met) to take reasonable steps to ensure the request reaches the site owner in a timely way and a form of redress where this duty is not fully exercised.

HANSARD REPORTS

The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Northern Ireland Assembly.

STAGE	DATE
Introduction to the Northern Ireland Assembly ("Assembly")	26.04.10
Assembly – Second Stage debate	24.05.10
Committee Stage – evidence from the Department for Social Development and Northern Ireland Human Rights Committee	17.06.10
Committee Stage – evidence from Trading Standards Service (Department of Enterprise, Trade and Investment) and the Northern Ireland Local Government Association	24.06.10
Committee Stage – evidence from the British Holiday and Home Parks Association, the National Caravan Council and Seahaven Park Home Residents' Association.	1.07.10
Committee Stage – evidence from the Northern Ireland Housing Executive, John McCallister MLA and the Department for Social Development	16.09.10
Committee Stage – consideration of sections, Schedule and possible amendments	23.09.10
Committee Stage – consideration of correspondence	7.10.10
Committee Stage – evidence from Assembly Legal Services, consideration of correspondence and consideration of possible amendments.	14.10.10
Committee Stage – further evidence from the Northern Ireland Housing Executive and Department for Social Development and formal consideration of sections and amendments	21.10.10
Committee Stage – formal consideration of remaining amendments.	4.11.10
Committee publishes its report on the Act – Report Number NIA/10/11R	18.11.10
Assembly – Consideration Stage	25.1.11
Assembly – Further Consideration Stage	7.02.11
Assembly – Final Stage	15.02.11
Royal Assent	16.03.11

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