

Draft Order laid before Parliament under section 2A of the Mobile Homes Act 1983, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

MOBILE HOMES, ENGLAND

The Mobile Homes Act 1983 (Amendment
of Schedule 1) (England) Order 2006

Made - - - - - ###
Coming into force - - - - - 1st October 2006

This Order is made in exercise of the powers conferred by section 2A of the Mobile Homes Act 1983(1);

In accordance with section 2A(5) of that Act the Secretary of State has consulted such organisations as appeared to her to be representative of interests substantially affected by the Order and such other persons as she considered appropriate;

A draft of this Order was laid before Parliament in accordance with section 2A(6) of that Act and has been approved by a resolution of each House of Parliament;

The Secretary of State makes the following Order:

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 and shall come into force on 1st October 2006.

(2) The amendments made by this Order(2) to Schedule 1 to the 1983 Act apply in relation to any agreement to which that Act applies and which relates to the stationing of a mobile home in England.

(3) Subject to article 4, those amendments apply in relation to any such agreement made at any time before 1st October 2006 as well as in relation to such agreements made on or after that date.

(4) In this Order “the 1983 Act” means the Mobile Homes Act 1983.

(1) 1983 c.34. Section 2A was inserted by section 208(1) of the Housing Act 2004 (c.34). For England, the appropriate national authority is the Secretary of State; see the definition of “the appropriate national authority” in section 5(1) of the 1983 Act, as amended by section 206(3) of the 2004 Act.
(2) These amendments are additional to those made by section 207(1) of the Housing Act 2004.

Amendment of Part 1 of Schedule 1 to the 1983 Act

2.—(1) Part 1 of Schedule 1 to the 1983 Act (terms implied in site agreements) shall be amended as follows.

(2) In paragraph 5 (termination by the owner because mobile home is not being occupied as only or main residence), for the words from “the court” to the end, substitute—

“the court—

(a) is satisfied that the occupier is not occupying the mobile home as his only or main residence; and

(b) considers it reasonable for the agreement to be terminated.”. (3)

(3) In paragraph 6 (termination by the owner because of mobile home’s detrimental effect on amenity of the site due to its condition)—

(a) in sub-paragraph (1)—

(i) for “at the end of the relevant period” substitute “forthwith”;

(ii) at the end of paragraph (a) for “; or” substitute “; and”; and

(iii) for paragraph (b) substitute—

“(b) the court considers it reasonable for the agreement to be terminated.”;

(b) omit sub-paragraph (2); and

(c) in sub-paragraph (3)—

(i) in paragraph (a) omit “or (b)”; and

(ii) in paragraph (b) for “would result in neither of those paragraphs applying to it” substitute “would result in sub-paragraph (1)(a) not applying to it”.

(4) In paragraph 8 (sale of mobile home to person approved by owner)—

(a) for sub-paragraph (1C) substitute—

“(1C) The owner may not give his approval subject to conditions.”;

(b) for sub-paragraph (1D) substitute—

“(1D) If the approval is withheld, the notice under sub-paragraph (1B) above must specify the reasons for withholding it.”;

(c) in sub-paragraph (1E) for “sub-paragraphs (1B) and (1C)” substitute “sub-paragraph (1B) (and, if applicable, sub-paragraph (1D))”;

(d) in sub-paragraph (1F)-

(i) for “sub-paragraphs (1B) and (1C)” substitute “sub-paragraph (1B) (and, if applicable, sub-paragraph (1D))”; and

(ii) omit paragraph (b); and

(e) after sub-paragraph (2) insert—

“(2A) Except to the extent mentioned in sub-paragraph (2) above, the owner may not require any payment to be made (whether to himself or otherwise) in connection with the sale of the mobile home, and the assignment of the agreement, as mentioned in sub-paragraph (1) above.”.

(5) In paragraph 9 (gift of mobile home to person approved by owner) after sub-paragraph (2) add—

(3) For the meaning of “the court” and “the owner”, see section 5(1) of the Mobile Homes Act 1983 and for the meaning of “the occupier” see section 1 of the 1983 Act.

“(3) The owner may not require any payment to be made (whether to himself or otherwise) in connection with the gift of the mobile home, and the assignment of the agreement, as mentioned in sub-paragraph (1) above.”.

(6) For paragraph 10 (re-siting of mobile home) substitute—

“Re-siting of mobile home

10.—(1) The owner shall be entitled to require that the occupier’s right to station the mobile home is exercisable for any period in relation to another pitch forming part of the protected site (“the other pitch”) if (and only if)—

- (a) on the application of the owner, the court is satisfied that the other pitch is broadly comparable to the occupier’s original pitch and that it is reasonable for the mobile home to be stationed on the other pitch for that period; or
- (b) the owner needs to carry out essential repair or emergency works that can only be carried out if the mobile home is moved to the other pitch for that period, and the other pitch is broadly comparable to the occupier’s original pitch.

(2) If the owner requires the occupier to station the mobile home on the other pitch so that he can replace, or carry out repairs to, the base on which the mobile home is stationed, he must if the occupier so requires, or the court on the application of the occupier so orders, secure that the mobile home is returned to the original pitch on the completion of the replacement or repairs.

(3) The owner shall pay all the costs and expenses incurred by the occupier in connection with his mobile home being moved to and from the other pitch.

(4) In this paragraph and in paragraph 13 below, “essential repair or emergency works” means—

- (a) repairs to the base on which the mobile home is stationed;
- (b) works or repairs needed to comply with any relevant legal requirements; or
- (c) works or repairs in connection with restoration following flood, landslide or other natural disaster.

Quiet enjoyment of the mobile home

11. The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14.

Owner’s right of entry to the pitch

12. The owner may enter the pitch without prior notice between the hours of 9 a.m. and 6 p.m.—

- (a) to deliver written communications, including post and notices, to the occupier; and
- (b) to read any meter for gas, electricity, water, sewerage or other services supplied by the owner.

13. The owner may enter the pitch to carry out essential repair or emergency works on giving as much notice to the occupier (whether in writing or otherwise) as is reasonably practicable in the circumstances.

14. Unless the occupier has agreed otherwise, the owner may enter the pitch for a reason other than one specified in paragraph 12 or 13 only if he has given the occupier at least 14 clear days’ written notice of the date, time and reason for his visit.

15. The rights conferred by paragraphs 12 to 14 above do not extend to the mobile home.

The pitch fee

16. The pitch fee can only be changed in accordance with paragraph 17, either—

- (a) with the agreement of the occupier, or
- (b) if the court, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

17.—(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

- (a) the owner may apply to the court for an order under paragraph 16(b) determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and
- (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date.

(6) Sub-paragraphs (7) to (10) apply if the owner—

- (a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but
- (b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee—

- (a) the owner may apply to the court for an order under paragraph 16(b) determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and
- (c) if the court makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with date on which the owner serves the notice under sub-paragraph (6)(b).

(10) The occupier shall not be treated as being in arrears—

- (a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or
- (b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.

18.—(1) When determining the amount of the new pitch fee particular regard shall be had to—

- (a) any sums expended by the owner since the last review date on improvements—
 - (i) which are for the benefit of the occupiers of mobile homes on the protected site;
 - (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
 - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
- (b) any decrease in the amenity of the protected site since the last review date; and
- (c) the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.

(2) When calculating what constitutes a majority of the occupiers for the purposes of sub-paragraph (1)(b)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

19. When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

20.—(1) There is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.

Occupier's obligations

21. The occupier shall—

- (a) pay the pitch fee to the owner;
- (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;
- (c) keep the mobile home in a sound state of repair;
- (d) maintain—
 - (i) the outside of the mobile home, and
 - (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home,

- in a clean and tidy condition; and
- (e) if requested by the owner, provide him with documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement.

Owner's obligations

22. The owner shall—

- (a) if requested by the occupier, and on payment by the occupier of a charge of not more than £30, provide accurate written details of—
- (i) the size of the pitch and the base on which the mobile home is stationed; and
 - (ii) the location of the pitch and the base within the protected site;
- and such details must include measurements between identifiable fixed points on the protected site and the pitch and the base;
- (b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of—
- (i) any new pitch fee;
 - (ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and
 - (iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement;
- (c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;
- (d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;
- (e) consult the occupier about improvements to the protected site in general, and in particular about those which the owner wishes to be taken into account when determining the amount of any new pitch fee; and
- (f) consult a qualifying residents' association, if there is one, about all matters which relate to the operation and management of, or improvements to, the protected site and may affect the occupiers either directly or indirectly.

23. The owner shall not do or cause to be done anything which may adversely affect the ability of the occupier to perform his obligations under paragraph 21(c) and (d) above.

24. For the purposes of paragraph 22(e) above, to “consult” the occupier means—

- (a) to give the occupier at least 28 clear days' notice in writing of the proposed improvements which—
- (i) describes the proposed improvements and how they will benefit the occupier in the long and short term;
 - (ii) details how the pitch fee may be affected when it is next reviewed; and
 - (iii) states when and where the occupier can make representations about the proposed improvements; and
- (b) to take into account any representations made by the occupier about the proposed improvements, in accordance with paragraph (a)(iii), before undertaking them.

25. For the purposes of paragraph 22(f) above, to “consult” a qualifying residents’ association means—

- (a) to give the association at least 28 clear days’ notice in writing of the matters referred to in paragraph 22(f) which—
 - (i) describes the matters and how they may affect the occupiers either directly or indirectly in the long and short term; and
 - (ii) states when and where the association can make representations about the matters; and
- (b) to take into account any representations made by the association, in accordance with paragraph (a)(ii), before proceeding with the matters.

Owner’s name and address

26.—(1) The owner shall by notice inform the occupier and any qualifying residents’ association of the address in England or Wales at which notices (including notices of proceedings) may be served on him by the occupier or a qualifying residents’ association.

(2) If the owner fails to comply with sub-paragraph (1), then (subject to sub-paragraph (5) below) any amount otherwise due from the occupier to the owner in respect of the pitch fee shall be treated for all purposes as not being due from the occupier to the owner at any time before the owner does so comply.

(3) Where in accordance with the agreement the owner gives any written notice to the occupier or (as the case may be) a qualifying residents’ association, the notice must contain the following information—

- (a) the name and address of the owner; and
 - (b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.
- (4) Subject to sub-paragraph (5) below, where—
- (a) the occupier or a qualifying residents’ association receives such a notice, but
 - (b) it does not contain the information required to be contained in it by virtue of sub-paragraph (3) above,

the notice shall be treated as not having been given until such time as the owner gives the information to the occupier or (as the case may be) the association in respect of the notice.

(5) An amount or notice within sub-paragraph (2) or (4) (as the case may be) shall not be treated as mentioned in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges.

(6) Nothing in sub-paragraphs (3) to (5) applies to any notice containing a demand to which paragraph 27(1) below applies.

27.—(1) Where the owner makes any demand for payment by the occupier of the pitch fee, or in respect of services supplied or other charges, the demand must contain—

- (a) the name and address of the owner; and
- (b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.

(2) Subject to sub-paragraph (3) below, where—

- (a) the occupier receives such a demand, but

- (b) it does not contain the information required to be contained in it by virtue of sub-paragraph (1),

the amount demanded shall be treated for all purposes as not being due from the occupier to the owner at any time before the owner gives that information to the occupier in respect of the demand.

(3) The amount demanded shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges.

Qualifying residents' association

28.—(1) A residents' association is a qualifying residents' association in relation to a protected site if—

- (a) it is an association representing the occupiers of mobile homes on that site;
- (b) at least 50 per cent. of the occupiers of the mobile homes on that site are members of the association;
- (c) it is independent from the owner, who together with any agent or employee of his is excluded from membership;
- (d) subject to paragraph(c) above, membership is open to all occupiers who own a mobile home on that site;
- (e) it maintains a list of members which is open to public inspection together with the rules and constitution of the residents' association;
- (f) it has a chairman, secretary and treasurer who are elected by and from among the members;
- (g) with the exception of administrative decisions taken by the chairman, secretary and treasurer acting in their official capacities, decisions are taken by voting and there is only one vote for each mobile home; and
- (h) the owner has acknowledged in writing to the secretary that the association is a qualifying residents' association, or, in default of this, the court has so ordered.

(2) When calculating the percentage of occupiers for the purpose of sub-paragraph (1)(b) above, each mobile home shall be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

Interpretation

29. In this Schedule—

“pitch” means the land, forming part of the protected site and including any garden area, on which the occupier is entitled to station the mobile home under the terms of the agreement;

“pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

“retail prices index” means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that Office;

“review date” means the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced; and

“written statement” means the written statement that the owner of the protected site is required to give to the occupier by section 1(2) of this Act.”.

Amendment of Part 2 of Schedule 1 to the 1983 Act

3. In Part 2 of Schedule 1 to the 1983 Act (matters concerning which terms may be implied by the court) paragraphs 1, 6 and 7 shall be omitted.

Transitional and saving provision

4.—(1) This article applies in relation to any agreement to which the 1983 Act applies and which commenced at any time before 1st October 2006 (“the relevant date”).

(2) The terms implied in the agreement by virtue of this Order have effect only in relation to times falling on or after the relevant date.

(3) If the terms so implied make provision which is inconsistent with—

- (a) any express term of the agreement, or
- (b) any term implied in the agreement by virtue of section 2(2) of the 1983 Act,

the term referred to in sub-paragraph (a) or (b) shall cease to have effect, in relation to times falling on or after the relevant date, so far as it is inconsistent with the terms implied by virtue of this Order.

(4) Nothing in this Order affects—

- (a) any right or liability which has accrued before the relevant date, or any remedy in respect of any such right or liability,
- (b) any application to terminate the agreement which was made before that date by virtue of paragraph 4, 5 or 6 (termination by owner) of Part 1 of Schedule 1 to the 1983 Act,
- (c) any request for approval which was made before that date by virtue of paragraph 8 (sale of mobile home) or paragraph 9 (gift of mobile home) of that Part of that Schedule,
- (d) the amount of any new pitch fee payable in respect of any period which falls (wholly or in part) on or after the relevant date which was determined before that date, or
- (e) (without prejudice to the generality of sub-paragraph (a)) any right to the determination of a new pitch fee payable—
 - (i) as from a date before the relevant date, and
 - (ii) in respect of any period which falls (wholly or in part) on or after the relevant date, if that right subsists immediately before the relevant date.

(5) If the review date in 2006 falls on the relevant date, or falls after that date but before 30th October 2006, then—

- (a) for the purposes of paragraph 17(2) and (5) (review of pitch fee) of Part 1 of Schedule 1 to the 1983 Act, the review date shall be deemed to be 30th October 2006; but
- (b) any written notice served on the occupier by the owner before the relevant date and setting out the owner’s proposals in respect of the new pitch fee payable as from the review date

in 2006 shall be as effective for the purposes of paragraph 17(2) as one served on the relevant date.

(6) In the case of improvements begun on the relevant date, or after that date but before 30th October 2006, regard may be had to any sums expended on such improvements when determining the amount of a new pitch fee in accordance with paragraph 18 of Part 1 of Schedule 1 to the 1983 Act even if the consultation requirements in paragraph 22(e) and (f) (owner's obligations) of that Part of that Schedule have not been complied with by the owner in relation to the improvements.

Signed by authority of the Secretary of State

Parliamentary Under Secretary of State
Department for Communities and Local
Government

Date

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 2A of the Mobile Homes Act 1983 (“the 1983 Act”), which was inserted by section 208(1) of the Housing Act 2004. It amends Schedule 1 to the 1983 Act, which was also amended by section 207 of the Housing Act 2004. Schedule 1 contains terms which, by virtue of section 2 of the 1983 Act, are implied into agreements to which section 1 of the 1983 Act applies. Section 1 applies to agreements under which a person is entitled to station a mobile home on a protected site and occupy it as his only or main residence.

This Order only applies in relation to agreements for the stationing of mobile homes in England.

This is the first Order to be made under section 2A of the 1983 Act. In accordance with subsection (4) of that section, article 1(2) of this Order provides that the additional implied terms for which this Order provides are implied into agreements made before the day on which this Order comes into force, as well as to agreements made on or after that day.

In addition to minor and drafting amendments, this Order amends Schedule 1 to the 1983 Act as follows:

Article 2(2) amends paragraph 5 so as to require the court, before it makes an order under that paragraph terminating an agreement on the basis that the occupier is not occupying the mobile home as his only or main residence, to be satisfied that it is reasonable for the agreement to be terminated.

Article 2(3) amends paragraph 6 so as to enable owners to apply to the court to terminate an agreement forthwith if the mobile home is having a detrimental effect on the amenity of the site.

Article 2(4) amends paragraph 8, which applies when an occupier wishes to sell their mobile home. New sub-paragraph (1C) states that the owner may not impose conditions when giving their approval.

Article 2(5) amends paragraph 9 by inserting a new sub-paragraph (3), which provides that the owner may not require any payment on the gift of a mobile home.

Article 2(6) substitutes a new paragraph 10 and inserts new paragraphs numbered 11 to 29. New paragraph 10 concerns the re-siting of a mobile home and provides that an owner can only require a mobile home to be stationed on another pitch if the court is satisfied that the other pitch is broadly comparable and that it is reasonable for the mobile home to be stationed there, or if the mobile home needs to be moved so that the owner can carry out essential repair or emergency work. If the mobile home is moved so that the owner can replace or carry out repairs to the base on which the mobile home is stationed, the occupier can require, and the court can order, that the mobile home is returned to the original pitch on completion of the works. The owner is required to pay all the costs and expenses incurred by the occupier in connection with their mobile home being moved to and from the other pitch.

New paragraph 11 provides that an occupier is entitled to quiet enjoyment of the mobile home during the continuance of the agreement. New paragraphs 12 to 15 set out the owner’s rights to enter the pitch (but not the mobile home). New paragraphs 16 to 20 describe the procedure to be followed when reviewing and determining the new pitch fee. These provide for the annual review of the pitch fee as at the review date and application to the court in default of agreement as to the new pitch fee. New paragraph 21 describes the occupier’s obligations to the owner and new paragraphs 22 to 25 describe the owner’s obligations to the occupier. For example, paragraph 22 includes a requirement to consult the occupier and any qualifying residents’

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006 No. 1755

association about improvements to the protected site. New paragraphs 24 and 25 describe what is meant by “consult”. New paragraphs 26 and 27 specify the owner’s obligation to inform the occupier and any qualifying residents’ association of their name and address generally and when giving any written demand or notice to them. New paragraph 28 lists the criteria that a residents’ association must satisfy if it is to be a qualifying residents’ association for the purposes of Schedule 1 to the 1983 Act. New paragraph 29 contains definitions of key terms.

Article 3 amends Part 2 of Schedule 1 by omitting paragraphs 1, 6 and 7.

Article 4 contains transitional and saving provisions. Article 4(2) states that the terms implied by this Order will only have effect in relation to times falling on or after the 1st October 2006. Article 4(3) provides that, if any express term of the agreement or any term implied by virtue of section 2(2) of the 1983 Act is inconsistent with the terms implied by virtue of the amendments made by this Order, the inconsistent term is to cease to have effect on and after the 1st October 2006.

A full regulatory impact assessment of the effect that this instrument will have on the cost of business is available from Mark.Coram@odpm.gsi.gov.uk.