

# MOBILE HOMES ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY

#### *Pitch agreements*

##### *Section 9: Site rules*

33. **Section 9** amends the MHA 1983 by inserting two new sections into it (which apply in relation to England only) which make provision about “site rules” (as defined in subsection (2) of new section 2C). Under the new provisions (which do not apply to gypsy and traveller sites), every site rule will be an express term of the pitch agreement between the site owner and the mobile home occupier creating certainty for both parties (but there is no requirement for site owners to have site rules in the first place). The new provisions will apply in relation to existing pitch agreements as well as to those made after the new provisions come into force.
34. The new provisions also confer a power on the Secretary of State to make regulations about the procedure to be followed by a site owner who is proposing to make new site rules or to vary or delete existing site rules (for example, requiring prior consultation with occupiers). Under the new sections, the Secretary of State may also make provision in regulations:
- rendering existing site rules (i.e. ones pre-dating commencement of this clause) of no effect by such date as set out in the regulations;
  - prescribing matters in relation to which site rules may not be made;
  - about the resolution of disputes arising between site owners and mobile home occupiers;
  - requiring local authorities to keep and publish an up-to-date register of site rules in their areas.

##### *Section 10: Implied terms: removal of requirement for site owner consent to sale or gift*

35. This section amends Schedule 1 to the MHA 1983 by inserting new paragraphs into it which make provision about the sale or gift of a mobile home. The new paragraphs make different provision in relation to cases where the proposed sale or gift concerns an existing pitch agreement (“an existing agreement”) and in relation to cases where the proposed sale or gift concerns a new pitch agreement (“a new agreement”). A new pitch agreement means an agreement which is made after the new provisions come into force, or one which was made before but which has been assigned after they came into force (see new paragraph 7A(3)). Different provision has been made in recognition of the fact that the new provisions, so far as they relate to existing agreements, will affect site owners’ existing contractual rights. The new paragraphs apply in relation to England only. The section also makes provision so as to apply existing paragraphs 8 (sale of

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mobile home) and 9 (gift of mobile home) of Chapter 2 of Part 1 of that Schedule to Wales only.

**New agreements**

**New paragraph 7A (sale of mobile home)**

36. New paragraph 7A mirrors the existing provision in paragraph 8 of Chapter 2 to the extent that it entitles the mobile home occupier to sell the mobile home and assign the agreement and entitles the site owner to receive a commission on the sale. However, it removes the requirement for the site owner to approve the person to whom the mobile home is being sold and places a requirement on the purchaser of a mobile home to notify the site owner of the completion of the sale and assignment of the agreement. It also confers a power on the Secretary of State to make provision in regulations specifying procedural requirements to be followed by the parties in connection with the sale.

**New paragraph 8A (gift of mobile home)**

37. New paragraph 8A mirrors the existing provision in paragraph 9 of Chapter 2 to the extent that it entitles the mobile home owner to give the mobile home and to assign the agreement to a member of his or her family. However, it removes the requirement for the site owner to approve the person to whom the gift is being made subject to a requirement that the occupier has provided the site owner with “relevant evidence” showing that the person concerned is a member of his or her family. It places a requirement on the person to whom the mobile home is gifted to notify the site owner of the gift and assignment of the agreement. It also confers a power on the Secretary of State to make provision in regulations specifying what constitutes “relevant evidence” and specifying procedural requirements to be followed by the parties in connection with the gift of a mobile home and assignment of the agreement.

**Existing agreements**

**New paragraphs 7B (sale of mobile home) and 8B (gift of a mobile home)**

38. New paragraphs 7B and 8B set out the requirements that must be met before an occupier is entitled to sell the mobile home or give it to a family member and assign the agreement where there is an existing agreement. The first requirement is that the occupier serves notice on the owner that he proposes to sell or gift the mobile home. The notice must include the name of the person to whom he proposes to sell or give the mobile home and such other information as may be prescribed in regulations made by the Secretary of State. In the case of a gift, the notice must also include “relevant evidence” as defined in new paragraph 8A(3). The second requirement is that either the occupier does not, within 21 days of when the owner receives the notice of the proposed gift or sale, receive a notice back from site owner that the owner has made an application to the tribunal for an order preventing the occupier from selling or gifting the mobile home (“a refusal order”) or that the owner makes such an application to the tribunal within the 21-day period and the tribunal rejects that application. Where a sale proceeds under paragraph 7B, the site owner is entitled to receive a commission on the sale.
39. New paragraphs 7B and 8B also confer powers on the Secretary of State to make regulations (subject to the negative resolution procedure) prescribing the grounds on which an owner may apply to the tribunal for a refusal order (see paragraphs 7B(7) and 8B(7)) and specifying the procedural requirements to be followed by the parties in connection with the sale or gift (see paragraphs 7B(10) and 8B(9)). The grounds on which an owner may apply for a refusal order would be likely, for example, to include the age of the buyer and the keeping of pets, where a site has rules in relation to such matters.

**New paragraph A1 of Part 3 of Schedule 1: provision of information**

40. New paragraph A1 makes provision about the information to be provided by an occupier (who is proposing to sell a mobile home) to the prospective purchaser and about the time by which that information must be provided. It confers a power on the Secretary of State to specify, in regulations, the documents and/or other information which must be provided. The first such regulations will be subject to the negative resolution procedure. Where an occupier fails to comply with the duty to provide the prescribed documents and/or information within the required time, the prospective purchaser may bring civil proceedings in like manner as any other claim in tort for breach of statutory duty. These provisions will ensure that the prospective purchaser is aware of all the relevant information (including, for example, any restrictions in the site rules on who can reside on the site) and so is able to make an informed decision as to whether or not to proceed with the purchase.

***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 the last review date. The amendments made by subsections (3)(f) and (4) make it clear

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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.