

MOBILE HOMES (WALES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Licensing of Mobile Home Sites etc

Section 5 - Prohibition on use of land as regulated site without site licence

13. **Section 5** restates section 1(1) and (2) of the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). It provides that using land as a regulated site without a site licence is an offence, but increases the fine from level 4 to level 5 on the standard scale. When section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force a level 5 fine will become an unlimited fine (currently £5000 at November 2013).

Section 6 - Application for site licence

14. This section is modelled on section 3 of the 1960 Act with some additions. It sets out requirements for site licence applications to local authorities. Subsection (2) provides details of what an application must contain and subsection (3) requires applicants to provide information requested by the local authority. Under subsection (4) an application must be accompanied by a declaration by the applicant that the manager (or applicant) is a “fit and proper” person to manage the site. Under subsection (5), a local authority may require an application to be accompanied by a fee fixed by the local authority, provided it has published its fees policy (see the commentary to section 36).

Section 7 - Issue of site licence

15. **Section 7** restates section 3(3) to (6) and section 6 of the 1960 Act, with some new provisions. It sets out the timescales for issuing a licence. In subsection (4), if a local authority decides not to issue a licence, they must notify the applicant of the reasons for the decision and of their right of appeal to a Residential Property Tribunal.

Section 8 - Duration of site licence

16. **Section 8** replaces section 4 of the 1960 Act. Section 8 provides that a licence may be issued for a period of up to five years from the date the licence comes into operation, unless it is revoked.

Section 9 - Power to attach conditions to site licence

17. **Section 9** restates section 5 of the 1960 Act with some changes. It allows a local authority to attach certain types of conditions when it issues a site licence. Subsection (2)(c) and (f) make provisions for conditions that relate to minimising risk from flooding and coastal erosion and for communicating any known risk from flooding or coastal erosion to mobile home residents on the site.

18. Subsection (5) requires that a site licence must contain a condition that copies of the most recent utility bills relating to the site and any current certificate of public liability insurance must be displayed in a prominent place on the site.
19. Local authorities may, under this section, require works to be completed on a mobile homes site to the satisfaction of the local authority. When such works are ongoing the local authority can prohibit or restrict the movement of mobile homes on to the site. The authority may attach a condition to the licence so as to require the completion of the necessary work, within a time limit.

Section 10 - Model standards

20. **Section 10** restates section 5(6), (6A), (7) and (8) of the 1960 Act. Section 10 allows the Welsh Ministers, to specify for the purposes of section 9 model standards with respect to the layout of the site and the provision of facilities, services and equipment for regulated sites.
21. A local authority must have regard to these model standards when they consider attaching conditions to a site licence under section 9 of the Act.

Section 11 - Fire precautions

22. This section restates section 5(3A) to (3C) of the 1960 Act. It ensures that local authorities must consult the fire and rescue authority when they are considering conditions to attach to a site licence.

Section 12 - Appeal against conditions of site licence

23. This section largely restates section 7 of the 1960 Act. It sets out the applicant's right of appeal to a Residential Property Tribunal against any condition that is attached to a site licence (other than the condition under section 9(5)). If the condition is deemed unduly burdensome, the Residential Property Tribunal may vary or cancel the condition and may attach a new condition to the site licence.

Section 13 - Power of local authority to vary conditions of site licence

24. This section sets out that a local authority may vary the conditions attached to a site licence at any time, but before exercising this power a local authority must give the licence holder an opportunity to make representations. Variation is also possible where the local authority discovers new information or considers there has been a change of circumstances.
25. Subsection (4) provides that, where a licence holder makes an application to vary the conditions attached to a site licence, a local authority may require the application to be accompanied by a fee, fixed by the local authority, provided it has published its fees policy (see section 36).

Section 14 - Appeal against variations of conditions of site licence

26. This section is restated from section 8(2) to (4) of the 1960 Act. A licence holder may appeal to the Residential Property Tribunal (formerly a magistrates' court), against any alteration of the conditions of the licence or any refusal to vary the conditions, within 28 days of receiving the notification of the decision. If the variation to the condition relates to carrying out of works to the site, the varied condition does not come into effect until the time for making an appeal has expired, or any appeal against it is disposed of or withdrawn.
27. In exercising its powers under subsection (1), the Residential Property Tribunal must have regard to any standards made by Welsh Ministers under section 10.

Section 15 - Breach of condition

28. This section provides that, where the owner of land is failing or has failed to comply with a site licence condition, a local authority may give the owner a fixed penalty notice or a compliance notice.
29. The Welsh Ministers may issue guidance to local authorities as to the considerations they should take into account when deciding whether to deal with a failure to comply with a condition of a site licence by issuing a fixed penalty notice or a compliance notice. The local authority must have regard to any guidance issued. Where a fixed penalty notice has been issued, but not paid, a local authority may withdraw the fixed penalty notice and instead issue a compliance notice in respect of the same failure. An owner of land served with a compliance notice may appeal to a Residential Property Tribunal against that notice under section 17(2) (see section 23).

Section 16 - Fixed penalty notice

30. This section sets out the information to be included in a fixed penalty notice. Subsection (2) provides that the amount specified in the fixed penalty notice must not exceed level 1 on the standard scale for summary offences (a maximum of £200 at November 2013) and subsection (3) sets out the method of payment.

Section 17 - Compliance notices

31. This section deals with the breach of a site licence condition. It provides that, where it appears to a local authority that an owner of land is failing to comply with a licence condition, the local authority may serve a compliance notice on that owner, which contains the information specified in subsection (1), including the steps that the owner must take to ensure that the licence condition is complied with.
32. The provisions provide the owner with a right of appeal against the compliance notice to a Residential Property Tribunal. They also provide the local authority with a power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This extension can be given in response to an application made by the owner of land on whom the notice was served, or on the local authority's own initiative.

Section 18 - Compliance notice: offence and multiple convictions

33. [Section 18](#) sets out that an owner of land who has been served with a compliance notice, which has become operative under section 24, commits an offence if they fail to take the steps set out in the notice within the specified time period.
34. Subsection (2) sets out that where a person is guilty of the offence the penalty is a fine (a maximum of £5000 at November 2013). Subsection (3) allows a defence where the owner had a reasonable excuse for failing to take the steps set out in the notice within the time period specified.
35. Subsections (4) and (5) provide that, where an owner has two or more previous convictions for breach of a compliance notice, the local authority can make an application to the court (which convicted the owner) for the site licence to be revoked.

Section 19 - Compliance notice: power to demand expenses

36. [Section 19](#) provides a power to demand expenses where a compliance notice has been served under section 17.
37. Where a local authority serves a compliance notice on an owner of land, the local authority may impose a charge on the owner as a means of recovering the expenses incurred in deciding whether to serve the notice and in preparing and serving the notice or a demand for expenses. The charges could relate, for example, to the costs

of obtaining legal advice in deciding whether or not to serve a compliance notice. Subsection (2) clarifies that the expenses are not limited to expert advice. The charges may include interest (see section 25).

38. A local authority exercises its power to recover expenses by issuing a demand, setting out the information about the charges specified in section 19(3)(a) to (c) when serving the compliance notice.
39. Where the tribunal allows an appeal against the underlying compliance notice (under section 17) it may also make an order about the expenses demand that accompanied the notice, for example to confirm or quash the charges.

Section 20 - Power to take action following conviction of owner

40. **Section 20** provides that where a site owner is convicted of an offence of failing to comply with the steps specified in a compliance notice, the local authority who issued the notice may take steps required by the compliance notice, and further action it considers appropriate to ensure the relevant condition is complied with.
41. Where a local authority proposes to take action under this section, it must serve a notice on the owner of the land which contains the information set out in section 20(2)(a) to (e).
42. Subsection (3) provides that the notice must be served sufficiently in advance of the intended entry to the site as to give the owner reasonable notice. As Section 32(2) requires that 24 hours notice of an intended entry must be given to the owner, this would be the minimum amount of notice that could be given.
43. Subsection (4) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 32(1). Such a person will be able to exercise a right of entry to the land.
44. The 24 hour notice requirement in section 32(2) only applies in relation to the day on which the local authority intends to start taking action on the land. This means that, if a local authority carries out works which take more than one day, it will not need to provide 24 hours' notice before each day it intends to enter the site.

Section 21 - Power to take emergency action

45. **Section 21** provides a local authority with the power to take emergency action in certain situations.
46. Subsection (2) sets out that the local authority may take such action as is necessary to remove an imminent risk of serious harm to the health and safety of any person who is or may be on the land. Under subsections (3) to (5), where a local authority proposes to take emergency action under this section, the authority must serve a notice on the owner which contains certain specified information. This notice may also state that the local authority would apply for a warrant under section 32(3) if entry onto the land is refused. The notice must be served sufficiently in advance of the intended entry to give reasonable notice to the owner of the land.
47. Subsection (6) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 32(1) of the Act.
48. Subsection (7) sets out that the requirement in section 32(1) for the right of entry to be exercised "at all reasonable hours" does not apply, as this may not be appropriate in an emergency situation. The requirement for 24 hours notice of the intended entry also does not apply here. Subsection (8) sets out that the local authority must serve a further notice on the owner, within 7 days of starting to take emergency action, which contains

certain specified information, including the reasons for the action and an explanation of the right of appeal.

49. The owner is provided with a right of appeal to a Residential Property Tribunal against the emergency action the grounds for which are that there was no risk of imminent serious harm to the health or safety of a person who is or may be on the land or that the action of the local authority was (or is) not necessary to remove such a risk.

Section 22 - Action under section 20 or 21: power to demand expenses

50. **Section 22** provides a local authority with the power to demand expenses where action has been taken under section 20 or 21.
51. **Section 22(1)** provides that, where a local authority has taken action under section 20 or 21, it may impose a charge on the owner of the land as a means of recovering expenses incurred by them in taking the steps set out in paragraphs (a) to (c).
52. Subsections (4) and (5) set out the time when a charge may be imposed for the costs of emergency action, which is dependent upon whether an appeal is brought.
53. Subsection (6) sets out that the power to impose a charge is exercisable by serving on the owner a demand for the expenses that the local authority seeks to recover, in the time period specified in subsection (8).
54. Subsection (7) provides that an owner of land who is served with a demand under this section may appeal to a Residential Property Tribunal against this demand.

Section 23 - Appeals under section 17, 21 or 22

55. **Section 23** deals with appeals brought under sections 17, 21 or 22.
56. Subsection (1) provides that an appeal brought under these sections must be made before the end of the period of 21 days, starting from the date the relevant document (see section 23(2)) was served.
57. Subsection (3) provides that a Residential Property Tribunal may allow an appeal to be made after the end of the appeal period, if satisfied that there is a good reason for the delay.
58. An appeal brought under these sections is to be by way of a rehearing of the Tribunal. It may consider matters of which the local authority who made the decision were unaware. Subsection (5) sets out the order-making powers of the tribunal to confirm, vary or quash the matter under consideration.

Section 24 - When compliance notice or expenses demand becomes operative

59. This section sets out when a compliance notice or expenses demand becomes operative.
60. Under subsection (2) where no appeal against a compliance notice is brought within the appeal period specified in section 17, both the notice and any accompanying demand for expenses under section 19 becomes operative at the end of that period.
61. A demand for expenses under section 22 becomes operative at the end of the period allowed for an appeal, when no appeal is made against it (section 24(3)).
62. Subsections (4) to (6) deal with cases where an appeal is brought, and set out that a compliance notice (and any accompanying section 19 demand) or a demand under section 22 become operative when a decision on the appeal is given which confirms the notice or demand.

Section 25 - Recovery of expenses demanded under section 19 or 22

63. This section deals with the recovery of expenses demanded under section 19 or 22.

64. Subsection (1) provides that, from the time when a demand under section 19 or 22 becomes operative, interest is charged on the expenses set out in the demand at a rate which is fixed by the local authority, until all sums due under the demand are recovered.
65. Subsection (2) provides that from the time the demand becomes operative, the expenses and interest are a charge on the land to which the compliance notice relates, until they are recovered.
66. Subsection (3) sets out that the charge takes effect as a legal charge which is a local land charge.
67. Subsection (4) sets out that the local authority can rely on certain powers and remedies set out in the Law of Property Act 1925 to enforce the charge, including the appointment of a receiver. Subsection (5) sets out when the power to appoint a receiver can be exercised.

Section 26 - Revocation on death, change of ownership or cessation of use

68. **Section 26** provides that a site licence is revoked upon the death of the licence holder, where the licence holder ceases to be the owner of the land or if the land covered by a licence ceases to be used as a regulated site.

Section 27 - Duty of licence holder to allow site licence to be altered

69. **Section 27** is largely a restatement of section 11 of the 1960 Act which contains a duty on the licence holder to surrender the licence for alteration when required to do so by the local authority who issued it. Failure without reasonable excuse to comply with a requirement under this section means the licence holder commits an offence which attracts a fine not exceeding level 1 on the standard scale (a maximum of £200 at November 2013).

Section 28 - Requirement for manager of site to be fit and proper person

70. **Section 28** introduces a new “fit and proper person” requirement that applies to a person who manages a regulated site. Subsection (1) sets out that the owner of land may not allow any part of the land to be used as a regulated site unless the local authority is satisfied either the owner or a person appointed by the owner, or by the local authority (with the owners' consent), is a fit and proper person to manage the site.
71. Subsection (2) provides that, where the owner of land allows a site to be used, but a fit and proper person is not managing the site, in contravention of subsection (1), the local authority may apply to a Residential Property Tribunal for an order revoking the site licence. Subsections (3) and (4) provide that such a contravention is an offence liable on summary conviction to a fine (a maximum of £5,000 at November 2013).
72. Under subsection (5), where an owner has been convicted of an offence under subsection (3) by a magistrates' court on two or more previous occasions in relation to the land, the local authority may apply to the magistrates' court to make an order revoking the site licence.

Section 29 - Decision whether person is fit and proper

73. **Section 29(1)** provides that, in deciding whether a person is a “fit and proper person” to manage a regulated site, a local authority must have regard to all matters it considers appropriate, including any evidence of the kinds listed in subsection (3) or (4). For example, under subsection (3), a local authority should consider if the person has contravened any provision of the law relating to housing (including mobile homes) or landlord and tenant.
74. Under subsection (4) a local authority must consider evidence that anyone associated or formerly associated with the person has done any of the things set out in subsection (3)

and whether that evidence is relevant to the question whether the person is a fit and proper person to manage the regulated site.

75. Subsection (5), allows the Welsh Ministers to make regulations which amend section 29 to vary the evidence that a local authority must have regard to when making a decision under this section.
76. Where a local authority decides that a person is not a fit and proper person, it must notify the person of the reasons for that decision and of the person's right of appeal to a Residential Property Tribunal within 28 days from the date of its decision.

Section 30 - Appointment of interim manager

77. **Section 30** allows a local authority to appoint an interim manager of the regulated site if the conditions specified in subsection (2) are met. These are that the local authority considers that the site licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the site licence; that the site is not being managed by a fit and proper person; or there is no one managing the site.
78. Under subsection (3) a qualifying residents' association (see section 61) may request the local authority to consider exercising its powers to appoint an interim manager. This might happen, for example, in circumstances when the residents' association do not consider the site manager is a fit and proper person.
79. Under subsection (5) if a person is aggrieved by a decision to appoint an interim manager there is a right of appeal against the decision to a Residential Property Tribunal within 28 days.
80. The appointment of the interim manager is not an indefinite appointment, and as set out in section 30(6) will end on a specified date, upon the expiration of a site licence or on its revocation. Subsection (7) allows a new interim manager to be appointed should someone leave the post before the specified date.

Section 31 – Terms of appointment and powers of interim manager

81. **Section 31** sets out the terms of appointment of an interim manager with the powers of the interim manager set out under subsection (2)(a) and (b). Under subsections (3) and (4) a local authority may give general or specific directions to the interim manager and may withdraw or amend directions given. Under subsection (5), the remuneration and expenses of an interim manager may be deducted from any income the site licence holder is entitled to receive and if that income is insufficient any balance must be paid by the local authority. If the local authority pays any amount under subsection (5), it may recover them from the licence holder.

Section 32 - Power of entry of officers of local authorities

82. **Section 32** restates section 26 of the 1960 Act, with an increase in the penalty for a person wilfully obstructing any person exercising the power of entry or entering land by authorisation of a warrant from a level 1 to a level 4 fine on the standard scale (a maximum of £2,500 at November 2013).
83. This section provides any authorised officer or agent of the local authority with powers of entry to enter a regulated site at all reasonable hours, if there are reasonable grounds for entry. They must produce an authenticated document of authority (if required) and require entry for the purposes outlined in subsection 1 (a) to (d).
84. Admission to the site is only permitted if 24 hours notice has been given to the owner, except under section 21(7) in relation to emergency action.
85. A justice of the peace may issue a warrant to authorise the local authority's entry on to the land, if need be by force. This will happen if a magistrate concludes that, amongst

other reasons, access to land has been refused, or the owner is temporarily absent and the case for entry is urgent.

Section 33 - Repayment orders

86. **Section 33** introduces provision where, if a site is unlicensed, the occupier of the mobile home may apply to a Residential Property Tribunal for a repayment order.
87. A repayment order is defined in subsection (5) as an order requiring the owner or manager of the unlicensed site to pay the occupier of the mobile home sums specified in the order in respect of those payments under paragraphs (a) to (d). The repayment order may include any payment made by the occupier to the owner or manager in respect of the purchase of the mobile home, any commission paid in respect of the sale of the mobile home, the pitch fee and any periodical payments paid in respect of the mobile home.
88. Under subsection (6)(a) to (c) a tribunal must be satisfied that certain matters are satisfied, such as that the owner of the site has been convicted of an offence under section 5 in relation to the site, that an occupier made a payment to the owner during the time that the offence was committed and that the application has been made within 12 months of the date of the conviction.
89. Under subsection (8), the amount required to be paid under subsection (5) is such an amount as the tribunal considers reasonable in the circumstances. Subsection (9) sets out the matters the tribunal must take into account when determining the amount to be paid. Subsection (10) provides that a repayment order may not require the payment of any amount relating to a period outside the 12 months ending with the date of the occupier's application.
90. Under subsection (11), amounts payable to an occupier of a mobile home under a repayment order are recoverable as a debt due to the occupier from the owner or manager of the site.

Section 34 - False or misleading statements or information

91. **Section 34** makes it an offence to make a false or misleading declaration or other statement, or to provide false or misleading information knowing or believing it to be false or misleading under Part 2 of the Act. The penalty on summary conviction is a fine (a maximum of £5,000 at November 2013).

Section 35 - Guidance by Welsh Ministers

92. The Welsh Ministers may issue guidance to local authorities on the performance of their functions under Part 2 of this Act. Local authorities must pay regard to such guidance.

Section 36 - Powers to charge fees: supplementary

93. This section allows local authorities to charge fees under section 6 (application for a site licence) or section 13 (varying the conditions of a site licence). Subsection (2) requires a local authority to prepare and publish a fees policy before charging a fee. Subsections (3) and (4) set out what a local authority needs to do when fixing fees and which costs they may not take into account when fixing a fee.

Section 37 - Registers of site licences

94. **Section 37** requires all local authorities to keep a register of site licences which is available for public inspection.

Section 38 - Crown land

95. **Section 38** states that Part 2 of the Act does not apply to Crown Land.