

EXPLANATORY MEMORANDUM TO

THE MOBILE HOMES (REQUIREMENT FOR MANAGER OF SITE TO BE FIT AND PROPER PERSON) (ENGLAND) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations prohibit the use of land as a residential mobile home site unless the local authority is satisfied that the owner or manager of the site is a fit and proper person to manage the site. They also make related provision as to matters to be taken into account by local authorities in making a fit and proper person assessment, the establishment of a fit and proper person register, procedure for application for inclusion on the register, and enforcement, including the creation of criminal offences.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 This entire instrument applies to England only.
- 3.3 The instrument does not have any minor or consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Department has reached this view because the primary purpose of the instrument relates to housing, which is with the devolved legislative competence of each of the three devolved legislatures.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

5.1 The Housing Minister has made the following statement regarding Human Rights:

“In my view the provisions of the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020 are compatible with the Convention rights”.

6. Legislative Context

6.1 This instrument is being made to prohibit the use of land in England as a relevant protected site (a caravan site on which year-round residential occupation is allowed) unless the relevant local authority is satisfied that the owner or manager of the site is a fit and proper person to manage it. It also makes related provisions. An owner of a site that does not meet the fit and proper person requirement (“fit and proper person requirement”) set out in these Regulations will commit an offence.

6.2 This instrument is the first exercise of the powers conferred by sections 12A to 12E of the Caravan Sites and Control of Development Act 1960 which were inserted by section 8 of the Mobile Homes Act 2013.

6.3 The Mobile Homes Act 2013 (“the 2013 Act”) introduced a new local authority mobile home site licensing regime in England. It was intended that the 2013 Act would raise standards in the industry, deliver a more professional service to mobile home owners and strengthen the ability of local authorities to take effective enforcement action against those mobile home site owners who fail to comply with their licence obligations.

6.4 The policy intention behind the inclusion in section 8 of the 2013 Act of enabling powers for imposing the fit and proper person requirement, rather than including such a requirement on the face of the Act, was for it to act as a deterrent to the worst site owners and give the rest of the industry an opportunity to demonstrate that significant improvements had been made.

6.5 During the passage of the Mobile Homes Bill, the Government gave a commitment to carry out a review of the effectiveness of the Act, at least three years after implementation of the site licencing provisions, to inform a decision on whether to exercise the powers inserted by section 8. This review was undertaken in 2017, following which the Government took the decision to implement the fit and proper person requirement. The policy background section below provides further detail regarding the review and its outcome.

7. Policy background

What is being done and why?

7.1 There are good site owners in the sector who provide a valuable service and respect the rights of residents. However, the evidence from the review provided examples of some site owners continuing to disregard the law, harass and financially exploit residents. These poor practices and unprofessional behaviour have a significant negative impact on the finances and health of residents, most of whom are elderly and on low incomes.

7.2 The Government considered whether relying on existing provisions without additional enforcement powers for local authorities or allowing voluntary compliance with a code of conduct would achieve its objectives. It concluded that both options would

enable the worst site owners to continue to operate in the sector. This would result in many of the vulnerable and elderly residents in the sector continuing to suffer from poor and unprofessional behaviour and would have further costs imposed on their finances and wellbeing.

- 7.3 In its response to the review published in October 2018¹, the Government therefore concluded that the fit and proper person requirement would be a useful addition to local authorities' existing powers to help target the worst offenders in the sector. The local authority's assessment of whether a person is a fit and proper person to manage a site (the fit and proper person test) will work alongside other proposals announced by the Government in its response to the review to give local authorities additional enforcement powers, support good site owners and raise awareness among residents about rights and responsibilities in the sector.
- 7.4 The regulations will be brought into force in two stages to ensure they are implemented smoothly and effectively. Stage one will give local authorities until 1 July 2021 to prepare to receive applications from site owners, establish their processes for making and issuing decisions, and establish a fit and proper person register for their local area (reg. 1(2)). Stage two will provide 3 months from the end of Stage 1 for site owners/licence holders to submit completed applications to local authorities (reg. 1(3)).

What is the fit and proper person test and who does it apply to?

- 7.5 Section 8 of the Mobile Homes Act 2013, which was commenced on 15 June 2020, inserted sections 12A to 12E in the Caravan Sites and Control of Development Act 1960 which provide the Secretary of State with the power to make regulations that prohibit the operation of a relevant protected site unless the site owner or its site manager has been assessed by the local authority as a fit and proper person to do so. A "relevant protected site" is defined in section 5A(5) of the Caravan Sites and Control of Development Act 1960². The term is used for caravan sites for which a site licence is required under the 1960 Act and on which year-round residential occupation is allowed. These are mainly mobile home sites known as "park home" sites but also include owner occupied sites, such as those with planning permission for use by the Gypsy and Traveller communities. It does not include sites operated by a local authority or any other caravan site that does not require a licence under the Caravan Sites and Control of Development Act 1960.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749771/Park_homes_Review_Government_response.pdf

² "Relevant protected site", as defined in section 5A(5) of the Caravan Sites and Control of Development Act 1960, is land in respect of which a site licence is required under Part 1 of that Act, other than land in respect of which the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 or the site licence is—

(a) expressed to be granted for holiday use only, or

(b) otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation (subject to exceptions for year-round occupation by the occupier and persons employed by him).

- 7.6 Under the Regulations, in order to lawfully operate the site, the occupier³ must be a fit and proper person to manage the site or have a fit and proper site manager in place (reg. 4(1)) unless the site is exempt. A site is exempt if it is only occupied by members of the same family and is not being run as commercial residential site (reg.3). In this memorandum, the ‘occupier’ is referred to as the site owner.
- 7.7 A site owner must therefore apply to their local authority for the relevant person (themselves or their appointed manager) to be included in the local register of fit and proper persons to manage a site (reg. 6(1)). A site owner may only apply if they hold or have applied for a site licence for the site. The same requirements apply where the owner or the site manager is a non-natural person (such as a company).
- 7.8 The local authority will consider an application in order to satisfy itself that the relevant person is a fit and proper person to manage the site, and, if so, add the person to the register.
- 7.9 In appropriate circumstances, for example where the site owner has been unable to appoint a fit and proper site manager, the local authority and site owner may agree that the local authority appoint a person who meets the fit and proper person test to manage the site on behalf of the site owner (reg. 4(1)(c) and (2)).

The Fit and Proper Persons register

- 7.10 The local authority must set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their local area. The register will provide a record of the outcome of the fit and proper person tests they have carried out for the sites in their local area and make it available for public inspection (reg. 5(2), (3) and (5)).
- 7.11 Paragraphs 2 and 3 of Schedule 1 specify the information that a local authority must include in the register in relation to persons who meet the fit and proper person test.
- 7.12 Where a person has met the fit and proper person test, the register will give details of that person and of the site, including whether they are the owner or manager of the site. It will also specify the dates of inclusion and whether any conditions are attached to the inclusion in the register, along with the date that any conditions are met or changed. In order to enable local authorities to make decisions that fit the circumstances of each site, local authorities may decide how long a person’s inclusion in the register has effect, up to a maximum of 5 years (reg. 5(4)). In order to continue to comply with the fit and proper person requirement beyond that period, a site owner must, at least two months before it comes to an end, submit a new application for the person (or an alternative) to be included in the register (reg. 11(2)(a), Sch. 5, para 2(b)). This will allow local authorities to make a new assessment on the basis of recent information, to ensure they are satisfied that there continues to be a fit and proper person to manage the site.
- 7.13 Where a fit and proper person application has been rejected, details of the site and the date the decision was issued must be included on the register. Information about a rejected application will remain in the register until a successful fit and proper person

³ An occupier is defined in section 1(3) of the Caravan Sites and Control of Development Act 1960. Under section 1 of the 1960 Act an occupier operating land as a caravan site is also subject to a requirement to obtain a site licence.

application is made in respect of the owner or manager of the site (Sch. 1, para 4). For privacy reasons, the name of the rejected applicant will not be included on the register.

- 7.14 Local authorities will be able to consider requests for further information about the entry on the register, for example the details of the specific conditions attached, and any additional information on a case by case basis, in accordance with data protection legislation.

The Fit and Proper Person test application process

- 7.15 The application for assessment as a fit and proper person to manage the site can be made by the site owner for themselves where they are the person responsible for managing the site, or for a person they have appointed to manage the site (reg. 6(1)). A site owner may only apply if they hold or have applied for a site licence for the site.
- 7.16 The information that must be provided to the local authority is set out in Schedule 2 (reg. 6(3)). An up-to-date criminal records certificate will need to be submitted for the individual who is being assessed as the fit and proper person and, where applicable, other individuals responsible for the day-to-day management of the site. Where a company is being assessed as the fit and proper person, or a company is responsible for the day-to-day management, a criminal records certificate will need to be submitted for the individual with responsibility for the day-to-day management of the site. If that individual is not a company officer, a criminal records certificate will be required for the officer that they report to if the officer is an individual (Sch. 2, para 15).
- 7.17 Paragraphs 2 to 4 of Schedule 3 set out the information that local authorities must consider in their assessment (reg. 7(1)(a)). In order to allow local authorities to make balanced decisions tailored to a particular area or site, they may also request and consider in their assessment any additional information they consider relevant to an application (reg 7(1)(b) and (c)). Where a site manager agrees that the local authority appoints a site manager, the same requirements will apply to the local authority's assessment of the suitability of its own appointee (reg. 7(2)(b)).
- 7.18 In order to ensure consistent standards are applied to companies and other organisations that are not individuals, Schedule 2 requires the provision of certain information about various persons involved in the management of the site (Sch. 2, paras 3, 10-14, 15(b)). Paragraph 4 of Schedule 3 requires further detailed information to be provided about responsible persons who are those, other than the subject of the fit and proper person test, who have responsibilities for the day-to-day management of the site. By applying the considerations within the assessment which relate to any natural person with responsibility for the site management, the local authority can, in making its fit and proper assessment, give an equivalent level of scrutiny to key individuals in companies and other bodies operating sites as for individuals who are site owners and managers.
- 7.19 Having assessed the application, the local authority may decide to add the person to its fit and proper person register with or without conditions or, if the person fails the fit and proper person test, reject the application and record that decision in the register accordingly (reg. 6(2)(a)-(c)).

Local authority decisions, notification and appeal rights

- 7.20 In the interests of site owners and residents, local authorities are expected to make a decision on an application and notify the applicant as soon as reasonably practicable (reg.9, Sch 4, para 2). They may, at this stage, either decide to grant the application unconditionally and include the relevant person on the register for 5 years, or, if they anticipate making another decision, serve a preliminary decision notice on the applicant. Paragraph 3 of Schedule 4, sets out the information that local authorities must include in the preliminary decision notice, including the reasons for their decision and about the right to make representations.
- 7.21 After receipt of a preliminary decision notice the site owner has 28 days to make written representations to the local authority if they do not agree (Sch. 4, para 4(1)). The local authority must take account of any representations before making its final decision and issuing the final decision notice which it must do as soon as reasonably practicable after the conclusion of the 28 day period (Sch. 4, para 4(2), para 5(1)).
- 7.22 Paragraph 5(2) of Schedule 4 sets out the information local authorities must include in the final decision notice, including the reasons for the decision and about the right of appeal against the decision.
- 7.23 To support consistent application of the fit and proper standard during the period of inclusion on the register, local authorities will be able to review a person's inclusion if relevant new information comes to light (reg. 8(2)). Such a review may result in the removal of a person from the register, or the addition, variation or removal of a condition attached to a person's inclusion (reg. 8(1)).
- 7.24 Where, following such a review, a local authority decides to take any of the above actions (other than removal of a condition), the local authority must issue a notice to the site owner setting out specified information about any action it intends to take respect of the entry, including the reasons and the action to be taken (Sch. 4, para 6). The site owner will have 28 days to make representations which the local authority must consider before making a final decision on any action to be taken (Sch. 4, para 4(1) and (2)). Having made a decision and taken the proposed action the local authority must serve a notice of action within 5 working days of the date of the action, setting out the details of the action that it has taken (Sch. 4, para 7(2)), including details of the action and the right to appeal.
- 7.25 A local authority may withdraw or amend a preliminary decision notice before service of the final decision notice; a final decision notice before the decision to which it relates takes effect; or a notice of proposed action before the proposed action is taken by serving a notice on the site owner. (Sch. 4, para 8).
- 7.26 A site owner has a right of appeal to the First-tier Tribunal against a local authority's decision to include a person on the register for less than 5 years, attach or vary conditions to an entry on the register, reject an application for an entry on, or remove a person from, the register (Sch. 4, para 9(1) and (2)).
- 7.27 An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal (Sch. 4, para 9(3)).
- 7.28 Local authorities will be able to charge an application fee and an annual fee and to recover the costs they have incurred, or which will be incurred, in appointing a person to manage a site with the site owner's consent (reg. 10). This is consistent with the approach to other licensing fees.

Offences and defences

- 7.29 These Regulations introduce 3 criminal offences. These are: operating a site in contravention of the fit and proper person requirement (reg. 11(1)), providing false or misleading information in, or withholding information from, an application for inclusion of the register (reg. 12(1)), and failing to comply with a condition of inclusion in the register (reg. 12(2)).
- 7.30 If convicted of any of these offences, the site owner would face a penalty of an unlimited fine (reg. 11(3), reg. 12(6)). If convicted twice or more for operating a site in contravention of the regulations, the local authority may apply to the magistrates' court for an order to revoke the site licence (reg. 13(2)). An order to revoke the site license may also be granted by the First-tier Tribunal, on the application of the local authority, if the site owner breaches the fit and proper person requirement (reg.13(1)).
- 7.31 A defence is available to a site owner who inherits a site and has a reasonable excuse for failing to make an application within the relevant period (reg. 11(2)(b)). A defence is available where an application has been submitted to a local authority for assessment within the relevant period and not yet decided, where the period for making an appeal against a decision has not ended, or while the appeal process is taking place (reg. 11(2) and (4)). The table in paragraph 2 of Schedule 5 sets out the relevant period applicable in different circumstances, including where there is a requirement to notify the local authority within a set time period, to benefit from the defence.
- 7.32 Where a breach of condition has occurred, a site owner will have a defence where they fail to meet a condition that requires a person to be "in post" to carry out a particular role, provided they inform the local authority within 28 days of the relevant day and were taking all reasonable steps to try to comply with the condition (reg. 12(4)). A defence is also available where the period for making an appeal against a decision to impose a condition has not ended or while the appeal process is taking place (reg.12(5)).

Transitional provision

- 7.33 Where a local authority includes a person on their register before the requirement for a manager of a site to be a fit and proper person comes into force, the maximum 5 year period for inclusion in the register will run from the date the fit and proper person requirement comes into force (reg. 14).

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not amend other instruments.

10. Consultation outcome

- 10.1 Following publication in October 2018 of the Government response to the review of park homes legislation, the Department held informal consultations (spring 2019) with residents, the industry and local authorities on initial proposals on how the test would

work in practice. The discussions fed into the further development of the proposals, which were subject to a full public consultation between 22 July and 17 September 2019⁴.

- 10.2 The consultation on how the fit and proper person test will work in practice received 370 responses, most of which supported the proposals. The summary and the Government's response can be downloaded from: <https://www.gov.uk/government/consultations/mobile-homes-a-fit-and-proper-person-test-for-park-home-sites>. The responses we received have made a significant contribution to these Regulations. For example, in response to Site Licensing Officers' Forum's co-ordinated response from 160 local authorities and engagement with the Gypsy and Traveller Communities, non-commercial sites occupied solely by a family have been exempted from the fit and proper person requirements, as it would not further the policy objective of these Regulations to include these sites and would have placed a disproportionate burden on their residents.
- 10.3 The majority of responses from residents, site owners and local authorities, supported a local area's fit and proper person register being available online, for example:
- “We agree with the proposed content of the register and ... the local authority should make the register available online. ... there should be a duty on the local authority to maintain the register.” - Site owners' representative body.
- “Online access is so convenient for the majority. In addition, it is a source of invaluable information for prospective purchasers of homes on the park.” - Park home resident.
- “Registers have to be placed online to have any meaningful value to both local authorities and residents.- Local authority

11. Guidance

- 11.1 To ensure the smooth implementation of the proposals, we will publish non-statutory guidance for both local authorities and site owners.
- 11.2 The Leasehold Advisory Service (LEASE) will continue to provide residents with free independent advice on the new requirements and how they can engage with the process, through their website, telephone service and outreach programmes.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector. The caravan sites to which these regulations apply are privately owned. Under paragraphs 11 and 11A of Schedule 1 of the Caravan Sites and Control of Development Act 1960 local authorities are excluded from site licensing requirements. Local authority sites are therefore outside the definition of relevant protected sites. Local Authorities will need to administer the fit and proper person test and register at a cost which will be recovered through fees to site owners.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819599/Mobile_Homes_Consultation.pdf

- 12.3 A full impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sectors is anticipated based upon our internal assessment of impact, outlined below. However, we have assessed the costs to site owners from complying with the fit and proper person requirement and obtaining DBS certificates to be approximately £290 per year. This results in an Equivalent Annual Net Direct Cost to Business (EANDCB) of £0.63m.
- 12.4 We have allowed sufficient time after enactment of this instrument for site owners to undertake the necessary applications before the requirements come into force.
- 12.5 The costs of compliance with the fit and proper person requirement would need to be replaced at cost to the site owners. This is in line with the intent of this instrument, to increase the standards of site management and for the benefits of this to be felt by the residents of sites. If the level of enforcement notices issued by local authorities under the current legislation is used as a proxy for the likely number of test failures, we estimate that only 2.5% of site owners would be affected (excluding appeals).
- 12.6 As outlined above, improvements in the standards of behaviour and conduct of site owners should benefit the health and wellbeing of residents who are often vulnerable and elderly.
- 12.7 Other benefits might accrue to the sector and to responsible site owners by improvements to the overall standards of sites and the reputation of the sector.

13. Regulating small business

- 13.1 This instrument applies mostly to small businesses, excluding them would undermine the purpose of the instrument.
- 13.2 This instrument applies to all businesses equally and small businesses are not disproportionately affected.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Housing Minister has made the following statement.
- 14.2 “As the provisions of the Mobile Homes (Requirement for Manager to be Fit and Proper Person) (England) Regulations 2020 have an EANDCB of only £0.63m, carrying out a review would be disproportionate.”

15. Contact

- 15.1 William Tandoh, Policy Advisor at the Ministry of Housing Communities and Local Government, Telephone: 030 3444 3699 or email: William.tandoh@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Stephanie Kvam, Deputy Director, Private Rented Sector Standards and Enforcement, at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall, Minister for Housing at the Ministry of Housing Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.