

EXPLANATORY MEMORANDUM TO
THE MOBILE HOMES (SITE LICENSING) (ENGLAND) REGULATIONS
2014

2014 No. 442

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Mobile Homes Act 2013 (“the 2013 Act”) inserts provision into the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”) to provide local authorities with discretion as to whether they issue a site licence, and to set out the details of how local authorities may exercise their discretion when deciding whether to consent to the transfer of a site licence, for a mobile homes site. These provisions, which come into force on 1st April 2014, apply to relevant protected sites only, which, as defined by section 5A(5) of the 1960 Act, are sites which are residential or contain a mixture of residential and holiday mobile homes. Section 1 of the 1960 Act requires all site operators (referred to in the 1960 Act as “occupiers”) to hold a site licence, and operating a site without a licence is a criminal offence.

2.2 These Regulations set out the matters which local authorities must have regard to when exercising their discretion whether or not to issue or consent to the transfer a site licence. The Regulations also set out that local authorities can require certain information to accompany an application for the transfer of a site licence, or that such information is to be provided to the local authority subsequently. Where a local authority refuses to issue or consent to the transfer of a site licence, the Regulations require the local authority to notify applicants of the reasons for this and a right of appeal is provided to the First Tier Tribunal (Property Chamber).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The 2013 Act amends the law in relation to mobile homes, commonly called “park homes” by making amendments to the 1960 Act, the Caravan Sites Act 1968 and the Mobile Homes Act 1983. These Regulations are one of a number of implementing statutory instruments. The Mobile Homes (Selling and Gifting) (England) Regulations¹ came into force on 26th May 2013, the

¹ SI 2013/981

Mobile Homes (Pitch Fees) (Prescribed Form) (England) Regulations² came into force on 26th July 2013, and the Mobile Homes (Site Rules) (England) Regulations³ came into force on 4th February 2014. Further statutory instruments may follow in the future, in order, for example, to implement the provisions in relation to fit and proper persons, contained in section 8 of the 2013 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 All private sector park home sites are required to be licensed under the 1960 Act. In England licences are granted in perpetuity and can only be brought to an end by revocation or surrender. The changes introduced by the 2013 Act to Part 1 of the 1960 Act modernise the licensing regime applying to residential park home sites (including mixed holiday and residential parks) in England, which are referred to as relevant protected sites in the 1960 Act.

7.2 Park home sites are usually laid out as private estate with the entire infrastructure and often most of the services provided by the site operator. Residents own their homes, but pay a pitch fee (rent) for the land on which the home is stationed. That pitch fee includes a contribution towards the upkeep of the site, its services and amenities.

7.3 Conditions on some park home sites are poor. Some site operators do not maintain sites or keep in repair services or infrastructure.

7.4 Although maintenance and upkeep of services and infrastructure can be, and often are, conditions of the site licence, local authorities have neither had the right tools or financial resources to take effective action against a breach.

7.5 From 1st April local authorities will have new, more extensive powers to tackle poor conditions on sites and will be able to charge site operators for their licensing functions and recover costs of enforcement action.

7.6 Under the 1960 Act, except for a few limited exceptions, anyone who owns a park home site, for which there is relevant planning permission, is entitled to a site licence.

² SI 2013/1505

³ SI 2014/5

7.7 New site licences are issued rarely nowadays. However, the transfer of existing ones is more common. This happens when the site is sold, or sometimes in family businesses, when the owner retires and passes the site on to a relative.

7.8 In most cases the transfer of a licence does not give rise to concern. However, in more recent years site licences have frequently been transferred between members of the same families or people closely associated with them or between companies in the same group. Sometimes the transferee has a very short lease of the site, little financial resources and no management experience, to ensure the site licence is complied with.

7.9 Whatever the reason for these transfers, they often frustrate the licensing arrangements applying to the site, as the local authority may be unable to take effective enforcement action and the new licence holder may not be in a position to comply with the conditions of the site licence.

7.10 In order to prevent the practice of licences being transferred (or issued) to unsuitable persons, and to ensure licensing enforcement is not undermined, the 2013 Act amended the 1960 Act so as to give local authorities discretion in deciding whether to issue a new site licence. Whilst local authorities already had power under the 1960 Act to refuse to consent to the transfer of the site licence, in practice this refusal had little effect, as if consent to transfer the licence was refused, an application for a new licence could be made, which the local authority would then be required to issue.

7.11 These Regulations set out the matters that local authorities must have regard to when considering an application for consent to the transfer of a site licence or the issue of a new one.

7.12 As far as the proposed licence holder is concerned, the local authority must consider the person's interest in the land; their ability to comply with site licence conditions and provide for the long term maintenance of the site; the funding arrangements to meet licensing obligations and the management structures in place - including competence of the proposed licence holder or any nominated person to manage the site.

7.13 The local authority must also have regard to the effect of an application to issue a new licence for an existing site and can refuse to grant the licence if the new licensing proposals would adversely affect the amenity of, or quality of services on the site or reduce the local authority's ability to ensure the site as a whole is adequately managed and maintained.

7.14 As far as any existing licence holder is concerned, in deciding whether to consent to the transfer of or to issue a new licence⁴, the local authority must have regard to compliance with the licence conditions and whether any actions or proceedings that have been notified to the licence holder are outstanding. It

⁴ If an application for a transfer or issue of a licence is refused, this means the existing licence holder remains liable for compliance with the existing licence.

must also have regard to whether any debts are due to the local authority in connection with the licence or where the authority has otherwise incurred costs in taking steps to protect the health and safety of the home owners because of the site operator's failure to do so.

7.15 The Regulations provide that in considering whether to agree to the transfer of a licence or the issue of a new one, the local authority must, where relevant, have regard to any undertakings given by the proposed and/ or existing licence holder concerning carrying out works to the site; in relation to payment of money owed to the authority and regarding substitution of the parties in relation to any notices served under the 1960 Act or any court or tribunal proceedings.

7.16 The Regulations allow the local authority to require such information as it may specify to be provided in connection with an application for a transfer of a licence⁵.

7.17 Where an application for approval for the transfer or issue of a licence has been refused, the Regulations require the local authority to notify both the existing and proposed licence holder of its decision and the reasons for it. That notification must also advise the applicant of the right of appeal to the First Tier Tribunal.

7.18 The Regulations specify that an appeal must be made within 28 days of notification of that decision. In determining the appeal the tribunal may have regard to the undertakings given to it. The tribunal may either (a) dismiss the appeal or (b) allow it and order the local authority to consent to the proposed transfer or to issue the licence.

7.19 Regulation 7 makes a minor amendment to the Mobile Homes (Selling and Gifting) (England) Regulations 2013 to clarify the provision which sets out that where a site is owned by a private registered provider of social housing, the owner may apply to the tribunal for a refusal order if the site has a policy in place for the allocation of pitches to gypsies and travellers, which the home owner would be contravening through the proposed sale or gift of the home. The right to seek a refusal order only applies in relation to home owners who moved onto their pitches before 26 May 2013. The purpose of this provision is to protect the private registered providers' allocation policy by preventing homes from being sold in situ in the open market.

8. Consultation outcome

8.1 In 2012, the Communities and Local Government Select Committee held an inquiry into the park homes sector. In its report published in June, the committee made recommendations that the regime for the licensing of park home sites should be reformed.

⁵ The Act already requires such information to be provided in connection with applications for the issue of a licence.

8.2 The Government consulted in the spring of 2012 on site licensing. The consultation was aimed at park home owners, site owners and local authorities. Amongst other matters, we sought views on whether measures should be introduced to prevent licences being transferred inappropriately. Of the 159 responses, 153 thought that measures should be brought forward. The consultation response document can be downloaded from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11086/2238637.pdf.

8.3 As outlined above, the scheme passed by Parliament under the 2013 Act is more extensive than that set out in the consultation. For that reason we consulted informally and widely with home owners, industry and local authorities on the details of the Regulations during the late autumn of 2013. We received 61 responses, which have significantly helped inform the detailed provisions in the Regulations.

9. Guidance

9.1 No formal guidance is planned to be published. However, DCLG has set up a licensing working group of local authority practitioners, industry trade bodies and national resident groups to consider best practice advice on fee setting and enforcement for local authorities. This advice will be published shortly as will a guide for site owners in understanding the new enforcement regime.

9.2 The Department will be publishing in the spring a fact sheet for site operators and home owners on the new licensing regime and this will specifically cover the new procedures and rules that apply to application for the grant or transfer of licences.

10. Impact

10.1 No separate Impact Assessment has been prepared for this instrument because an Impact Assessment has been prepared for the licensing changes introduced by the 2013 Act. This envisages an overall net cost to business of £3.97 million per annum as a result of these changes. In particular, the Impact Assessment estimates in paragraph 23 that the fees for making an application for the issue or transfer of a site licence would be about £1,500. This would be a one-off cost since there is no requirement to renew the licence from time to time. A copy of the Impact Assessment can be downloaded from <https://www.gov.uk/government/consultations/a-better-deal-for-mobile-home-owners>

11. Regulating small business

11.1 The measures in these Regulations will have an impact upon small businesses as most mobile home site owners are small or micro businesses.

12. Monitoring & review

12.1 A review of all the amendments brought in by 2013 Act will be carried out in 2017, three years after commencement of the licensing provisions in sections 1 to 7 of the 2013 Act, on 1st April 2014.

13. Contact

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