



Welsh Government

Consultation Document

Draft Statutory Instruments to be made under the Mobile Homes (Wales) Act 2013

- 1) The Mobile Homes (Selling and Gifting) (Wales)
Regulations 2014
- 2) The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales)
Regulations 2014
- 3) The Mobile Homes (Site Rules) (Wales) Regulations 2014

Date of issue: **10 February 2014**
Responses by **6 May 2014**

Overview

This consultation is to gather views on a package of three draft Regulations which have been prepared under the Mobile Homes (Wales) Act 2013 and the forms set out within them.

How to respond

Please respond by completing the questionnaire at the back of this document and sending it to mobilehomeswalesact@wales.gsi.gov.uk

Or

Mobile Homes (Wales) Bill Team
Housing Policy
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

More details about the Act can be found on the Welsh Government website:
www.wales.gov.uk/mobilehomesact
www.cymru.gov.uk/deddfcartrefisymudol

Also additional information about the Act, including amendments laid by the Government and other Assembly members throughout the scrutiny process, can be found on the National Assembly website: <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?lId=4729>

Contact details

For further information:

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Email: mobilehomeswalesact@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

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Executive Summary

The Mobile Homes (Wales) Act 2013 became law in November 2013 and the powers of the Act will come into force on 1st October 2014. The Act allows Welsh Ministers to set out new procedures for:

- selling or giving away your mobile home,
- making changes to the pitch fee, and
- making and changing site rules.

The purpose of this consultation is to seek your views on the new processes set out in the regulations so that they can be made as clear and easy to use as possible, whilst also being an accurate reflection of what is set out in the Act itself.

1. Selling & Gifting

Currently, when a mobile home owner wants to sell their mobile home they must have the agreement of the site owner. If the owner does not give his agreement, the owner can stop the sale of the home from going through. Similarly, if a home owner wished to give their home away, the site owner would have a role in assigning the written agreement (the contract that allows a resident to site their home on a pitch.) The Mobile Homes (Wales) Act 2013 removes the site owner's role in approving a sale or gift.

The new regulations set out a new process that should be followed when a home owner wishes to sell or give away their mobile home. Where there is not already a written agreement in place, the home owner can sell the mobile home and assign the agreement to whomever they wish and notify the site owner of the completed sale. The new owner of the home will need to pay the site owner the relevant commission on the sale. A form is provided for the home owner to give to the purchaser setting out the full details of the sale, the written agreement, the pitch fees, site rules and utility charges.

Where there is already a written agreement in place between the home owner and the site owner. The home owner must notify the site owner of the proposed sale or gift with the form provided. This form provides the site owner with the name of the proposed new home owner. If the site owner wishes to object to the sale then they must apply to the Residential Property Tribunal for a 'refusal order' which prevents the sale.

Forms are also provided to notify the owner of a home owner's intention to give away their home, to assign the written agreement from the seller to the new home owner and a form which informs the site owner that this has taken place.

2. Pitch Fees

When a site owner wishes to change the rate of the pitch fee, the new Act requires site owners to consult with their residents about the change. The Act also says that the percentage increase or decrease of the pitch fee must not exceed the Consumer Price Index. Previously, the Retail Price Index was used.

The form contained in the regulations is designed to help the site owner communicate any proposed change to the pitch fee to the site residents. It allows the site owner to set out the proposed new pitch fee, the date it is proposed to take effect, how the fee has been calculated (including the CPI adjustment) and what to do if you do not agree to the proposal.

If a home owner does not agree with the proposed pitch fee then an appeal can be made to the Residential Property Tribunal to determine the new pitch fee. Similarly if a home owner does not agree with the proposal, but the site owner considers the change reasonable, the site owner can apply to the Tribunal to determine the fee. Until a new pitch fee is agreed, site owners are not obliged to pay the increased fee, but must however still pay the original fee.

3. Site Rules

These regulations set out a new procedure that site owners must follow when making or changing site rules. Currently, site rules can be used which may prevent home owners from undertaking certain activities or which give the site owner an unfair advantage or economic benefit. These regulations look to ban any such rules and ensure that rules are only made which ensure good site management and community well-being.

The regulations give site owners a year from 1st October 2014 to review all existing site rules and to propose new rules. The site owner must consult for a minimum of 28 days with all the home owners on the site and a form is provided to help them do so. The form sets out the proposed new rules, the reason for each of the rules being adopted, their effect and a list of all the banned rules.

No later than 21 days after the close of the consultation, the site owner must communicate the results of the consultation to the site residents and a form is provided to help them do so. Once agreed, the site owner must lodge the new site rules with the local authority, subject to a fee. Forms have been provided to notify the site residents that the site rules have been deposited with the local authority. The site rules then become part of the express terms of the pitch agreements and are enforceable as a contract term.

Home owners can appeal to the Residential Property Tribunal if they do not agree with the proposed rules, if the correct procedure has not been used or they disagree with the site owner's decision. Until such an appeal has been disposed of, the rules can not be deposited with the local authority and are not enforceable.

Consultation responses

Your views on each of the three regulations are welcomed and a response form is provided at the back of the document. The questions ask for your views on the clarity and completeness of the proposals and your thoughts on whether the regulations are in keeping with the policy set out in the Mobile Homes (Wales) Act 2013.

Introduction

Mobile Homes (Wales) Act 2013

The National Assembly for Wales passed the Mobile Homes (Wales) Act 2013 on the 4th November 2013. The law consolidates and updates existing legislation for residential mobile homes, originally enacted in the 1960s, which was seen as out of date. The new Act is designed to help improve regulation of the industry, so that conditions on mobile home sites are improved and the rights of residents are better protected.

The main features of the Act are:

- site owners will be required to apply for a site licence from their local authority to use land as a regulated site. The licence will last up to 5 years
- site managers will need to pass a 'fit and proper person' test to enable them to manage a site
- site owners will no longer be able to block the sale of a mobile home. The mobile home owner will be free to sell their home to who they wish
- local authorities will be able to inspect sites and issue a fixed penalty notice to site owners if it appears there is a failure to comply with a site licence condition
- for more serious breaches, local authorities have strengthened enforcement provisions such as issuing a compliance notice to a site owner to ensure a site licence condition is complied with
- pitch fees will only be increased in line with the Consumer Prices Index
- site owners and residents will be able to appeal to the Residential Property Tribunal in certain circumstances.

The Act is due to come into force on 1st October 2014 and a package of regulations will be made to support its implementation. These introduce new procedures for (1) the sale and gifting of mobile homes, (2) pitch fee reviews and (3) the making of site rules.

This consultation seeks views on the draft regulations and the forms contained within them for use by stakeholders upon implementation of the Act. The Regulations include:

- 1) The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014**
- 2) The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014**
- 3) The Mobile Homes (Site Rules) (Wales) Regulations 2014**

1. The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014

Legislative Background

1.1 Schedule 2, paragraphs 9 to 13 of the Act sets out provisions to introduce new procedures for the selling and gifting of mobile homes. These procedures are designed to make it easier for mobile home owners to sell or gift (give away) their homes without interference from the site owner. These are designed to help potential purchasers of a mobile home have all the information they need to make an informed decision about the purchase and allow for the proper assignment of the written agreement to the new purchaser.

Where are we now?

1.2 Currently when an owner of a mobile home wants to sell their mobile home they must seek the agreement of the site owner, who has 28 days to approve the new owner of the mobile home. If the owner does not give approval, the site owner must give reasons. The site owner can therefore “veto” the sale if they disapprove of the prospective buyer provided they serve notice on the occupier to that effect and give reasons.

1.3 There is evidence of widespread abuse of the approval process by some site owners who exploit the process to prevent residents from selling their mobile homes, so they can acquire the home for a fraction of its true value. They then can sell it themselves at the full market value or in the case of older homes with less value, replace it with a new home and sell that on the open market.

1.4 The Mobile Homes (Wales) Act 2013 addresses this problem by removing the site owner’s right to approve a purchaser, or the person to whom a mobile home is to be gifted. In addition, the site owner will no longer be involved in the assignment of the pitch agreement, where a mobile home is sold or gifted under an agreement.

1.5 Should these regulations not be made then a key provision of the Mobile Homes (Wales) Act 2013 will not come into force and could potentially allow for some site owners to continue to exploit the existing requirements and block sales or gifts of mobile homes for their own benefit.

What specific changes are taking place?

1.6 These regulations prescribe the information and documents that must be provided to a prospective buyer of a mobile home before a sale can be completed.

1.7 For new agreements that are made after these regulations come into force, the occupier of a mobile home will be entitled to sell the mobile home and assign the agreement without the site owner’s approval. The new

occupier must notify the site owner of the completion of sale and assignment of the agreement and pay the site owner a commission on sale of the mobile home at the prescribed rate. The 'veto' on sale of a mobile home will therefore be removed in respect of new agreements made after 1 October 2014 (or if the agreement was made before, but assigned after 1 October)

1.8 Where the agreement is an existing agreement made after 1 October 2014 or made before but assigned after that date, the site owner must be served with a notice of the proposed sale or gift. In such cases, the mobile home owner may sell the mobile home and assign the agreement without the site owner's approval. This form provides the site owner with the name of the person(s) to whom they wish to sell the home ("the proposed occupier"). The sale may proceed on the basis that either, within 21 days the occupier does not receive notice from the site owner that he has applied to a Residential Property Tribunal (RPT) for an order preventing the sale and assignment of the agreement ("a refusal order"); or that within 21 days the owner applies to the RPT for a refusal order and the occupier receives notice of the application from the site owner and the tribunal rejects the application.

1.9 The right of appeal to the RPT provides a safeguard to the existing contractual rights of site owners. In respect of existing agreements, site owners will still be able to apply to the RPT for a refusal order if they have grounds to apply for an order preventing the occupier from selling or gifting the mobile home and assigning the agreement to the proposed occupier (see regulation 7 of the draft regulations).

1.10 As these changes mean that sales can proceed without being overseen by the site owner, it is necessary for occupiers, potential occupiers, and site owners to be aware of their obligations, in order for the rights of the parties to be protected and sale transactions to run smoothly. It is particularly important given that most mobile homes are sold without the parties obtaining legal advice. The regulations will help ensure that these objectives are met.

1.11 The regulations include forms that are to be used when undertaking a sale or the gift of a mobile home. These are:

- **A buyer's information form** – to be completed by the seller and given to a proposed purchaser setting out the details of the sale, the agreement and information about the site, the pitch fees, site rules and utility charges.
- **A notice of proposed sale** – to be completed by the seller and buyer and given to the site owner setting out that the new occupier agrees to any site rules.
- **A notice of proposed gift** – to be completed by the owner of the mobile home and given to the site owner detailing who they propose to gift the home to.
- **An assignment form** – to be completed by both the existing occupier and new occupier and given to the site owner on completion of a sale.
- **A notice of assignment form** – to be completed by the new occupier and given to the site owner within 7 days of the assignment of the agreement.

2. The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014

Legislative Background

2.1 Paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the 2013 Act states what a document referred to in paragraph 17(4) and (9) must include when carrying out a review of the pitch fee and the information that must be included when consulting with site occupiers. These procedures are designed to provide transparency in pitch fee reviews, to help occupiers understand the amount that they are being charged and to ensure that site owners are not able to add unfair charges onto the pitch fee.

Where are we now?

2.2 The pitch fee is the fee the occupier pays the site owner in return for permission to site their home on the pitch. The payment of the pitch fee is a condition of the written agreement between the site owner and the occupier.

2.3 Under the Mobile Homes Act 1983, site owners are obliged to consult with their occupiers about the annual pitch fee review. Any increase to the pitch fees is currently linked to the Retail Price Index (RPI) but when the 2013 Act is in force it will be increased in line with the Consumers Price Index (CPI).

What are the main issues?

2.4 The Regulations set out the form that must accompany a pitch fee review notice. Regulating pitch fee reviews ensures that site owners are sufficiently funded to meet their obligations to manage and maintain the sites whilst at the same time protecting occupiers from unreasonable increases to the pitch fee.

2.5 The prescribed form will provide transparency that will prevent any unlawful charges being included in reviews, ensure that the correct rate of CPI is applied to the calculation of pitch fees and allow for the application of a consistent process of pitch fee reviews throughout Wales. Having been given all the necessary information about how the pitch fee is calculated, an occupier will be better placed to make a decision about whether to agree with the proposal or not.

2.6 Occupiers are not obliged to pay any increase to the pitch fee, which have not been agreed. If an occupier does not agree with the proposed pitch fee change and the site owner considers the change reasonable, the owner will be able to apply to the Residential Property Tribunal to determine the amount of the new pitch fee. Until that point, the existing pitch fee remains payable. An occupier can also make an application to the RPT to determine the amount of the new pitch fee.

2.7 The regulations prescribe the form of the document that must accompany a pitch fee review notice which proposes an increase in the pitch fee. A review notice proposing an increase in the pitch fee is of no effect unless accompanied by a pitch fee review form.

The ***Pitch Fee Review form*** sets out:

- The parties
- The proposed new pitch fee and the date it is proposed to take effect
- The calculation of the new pitch fee including the current fee, the CPI adjustment, recoverable costs and relevant deductions.
- Information about what to do if the occupier disagrees with the proposed new pitch fee.

The following information is also contained in the form as notes for guidance

- Information about the matters that can and cannot be included in a proposed review of the pitch fee.
- The site owner's consultation obligations
- The site owner's repairing and maintenance liabilities
- Occupier's repairing liabilities
- Guidance regarding reviews, late reviews and the effect of the pitch fee review notice.

3. The Mobile Homes (Site Rules) (Wales) Regulations 2014

Legislative Background

3.1 Section 52 of the Mobile Homes (Wales) Act 2013 provides a new statutory framework for site rules in Wales⁽¹⁾. Section 52(2) provides that regulations may be made by the Welsh Ministers which relate to the management and conduct of a site or prescribe other matters, including making, varying and deleting site rules. Section 52(9) provides that the Welsh Ministers may make provision as to the resolution of disputes relating to a proposal to make, vary or delete a site rule. The Welsh Ministers may require a local authority to establish and keep an up to date register of site rules in its area and may require it to publish that register.

Where are we now?

3.2 Site Rules ensure community cohesion and good estate management whilst also ensuring that occupiers of mobile homes are clear as to the rules that apply to them. At present, site rules can be used by site owners to circumvent occupier's rights or give site owners unfair advantages or economic benefits. For example, rules could be used to require an occupier to notify the site owner of their intention to sell the home, require all visitors to report to the site office or ban estate agents' sale signs.

3.3 Currently, site rules can form part of the written agreement. The written agreement is the contract between the site owner and an occupier which entitles the occupier to station a mobile home and to occupy the mobile home as their main residence. The procedure for the making of rules or changing existing ones might be included in the written agreement itself. This might occur if the industry model written agreement is followed which includes a requirement to consult mobile home owners. However, where the written agreement does not specify any procedure for changing site rules, home owners can be faced with uncertainty as to whether the new rules are binding.

What are the main issues?

3.3 Section 52(2) of the 2013 Act provides that site rules may be made by the owner in accordance with a prescribed procedure which relate to the 'management and conduct of the site' or other matters prescribed by Welsh Ministers. Section 52(8) provides that site rules, or rules as mentioned in subsection (3) are of no effect in so far as they make provision in relation to prescribed matters. Schedule 5 of the draft Regulations includes a list of those site rules that are of no effect. Where site rules aid sale blocking or interfere with sales of mobile homes or restrict activities and use of the site or prevent an occupier from exercising their rights, they are of no effect.

3.4 The draft Regulations also prescribe the procedure for the making, variation and deletion of site rules and who must be consulted. They provide

¹ In England, section 9 of the Mobile Homes Act 2013 amended the Mobile Homes Act 1983 by inserting new sections 2C and 2D into the 1983 Act to provide a new statutory framework for site rules in England with effect from 26 May 2013.

that a local authority must establish and keep up-to-date register of site rules. Where an owner has decided to implement new site rules, they must be deposited with the local authority in accordance with regulation 12. Where there are site rules on a protected site, each of the rules is an express term of each agreement.

What specific changes are we proposing?

3.4 Site owners will have a year from 1st October 2014 to consult with mobile home owners and any qualifying residents' association if they implement new rules. This will allow site owners sufficient time to:

- Review existing rules
- Consult with the occupiers or residents association
- Notify occupiers about the proposed rules
- Allow for any appeals
- Deposit any new rules with the local authority

3.5 A form is contained in Schedule 1 of the draft regulations to help the site owner undertake a full and proper consultation with the site occupiers on the proposed new site rules. The consultation should be for a minimum of 28 days and include the proposed new rules, why it is proposed each of the rules is adopted, their proposed effect and include a guidance note listing all rules that may or may not be included.

3.6 The outcome of the consultation must be notified to each consultee. A form is contained in Schedule 2 of the draft. The form prescribes the information which must be contained in the consultation response document such as the decision made on the proposals, a summary of the consultation responses, information about the right to appeal to the RPT and those site rules which will be deposited with the local authority.

3.7 Where it is decided to implement new site rules the owner must deposit them with the local authority. Schedules 3 and 4 prescribe the forms to notify site occupiers of the deposit, variation or deletion of a site rule. If an appeal is made, the site rules can not be deposited until the appeal has been disposed of, determined or abandoned. Rules may only be deposited after occupiers have been notified of the outcome of the consultation and if no application has been made to the Residential Property Tribunal.

3.8 Occupiers or a qualifying resident's association may appeal to the Residential Property Tribunal against the owner's decision on a proposal within 21 days of receipt of the consultation response document on the grounds specified in regulation 10(2):

- a rule cannot be made because it is a rule listed (see Schedule 5) as a rule that can not be included;
- the site rule makes provision relating to a matter contained in Schedule 5.
- the site owner has not complied with the statutory procedure;

- the site owner's decision was unreasonable based upon the proposal or representations received, relevant factors relating to the site or relevant planning permissions or site licence conditions.

3.9 The local authority may charge a fee as it determines in connection with the deposit of site rules.

Consultation on draft Statutory Instruments under the Mobile Homes (Wales) Act 2013

Response Form

Name:	<input type="text"/>
Email:	<input type="text"/>
Telephone:	<input type="text"/>
Address:	<input type="text"/>
Postcode:	<input type="text"/>
Organisation (if applicable)	<input type="text"/>

Returning this form

The closing date for replies is **6 May 2014**

Please send this completed form to us by post to or email to

Mobile Homes (Wales) Bill Team
Housing Policy
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
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mobilehomeswalesact@wales.gsi.gov.uk

If you are sending your response by email, please mark the subject of your e-mail: **Consultation on draft Statutory Instruments for implementing the Mobile Homes (Wales) Act 2013**

Publication of responses

Responses to consultations may be made public – on the internet or in a report. Normally the name and address (or part of the address) of its author will be published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published

please tick here ☐

The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014

These regulations make detailed provision in relation to the selling and gifting of a mobile home and assignment of agreements under the Mobile Homes (Wales) Act 2013. The purpose of this consultation is to seek your views on the clarity of the new requirements and the forms provided.

1. Do you agree that the regulations make clear the requirements for the future Sale or Gift of a mobile home?

Yes ☐

No ☐

Please provide details:

2. Does the draft regulations accurately enable the provisions set out in the Mobile Homes (Wales) Act 2013 for the sale and gifting of a mobile home?

Yes ☐

No ☐

If not, why not?

3. Do the prescribed Sale & Gifting forms include all the necessary information that is required to complete a sale or gift of a mobile home?

Yes ☐

No ☐

If not, what information is missing?

4. Is there anything not included in the regulations for sale and gifting that should be?

Yes ☐

No ☐

If yes, what also needs to be included?

The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014

These regulations prescribe the form of the document that must accompany a pitch fee review notice proposing an increase in the pitch fee in Wales. The purpose of this consultation is to seek your views on the clarity of the new requirements and the form provided.

5. Do you agree that the regulations make clear the requirements for a Pitch Fee Review?

Yes ☐

No ☐

Please provide details:

6. Does the draft regulations accurately enable the provisions set out in the Mobile Homes (Wales) Act 2013 for a pitch fee review?

Yes ☐

No ☐

If no, why not?

7. Does the prescribed Pitch Fee Review form include all the necessary information that is required to inform residents about the proposed increase/decrease?

Yes ☐

No ☐

If no, what information is missing?

8. Is there anything specific that is not included in the Pitch Fee regulations that should be?

Yes ☐

No ☐

If yes, please provide details:

The Mobile Homes (Site Rules) (Wales) Regulations 2014

These regulations prescribe the procedure for making, varying and deleting site rules. The purpose of this consultation is to seek your views on the clarity of the draft regulations and the prescribed forms.

9. Do you agree that the regulations make clear the requirements for the procedure for making, varying and deleting Site Rules?

Yes ☐

No ☐

Please provide details:

10. Do the draft regulations accurately enable the provisions set out in the Mobile Homes (Wales) Act 2013 for the making of site rules?

Yes ☐

No ☐

If not, why not?

11. Do you think that it is reasonable for any new rules to be made within 12 months of the regulations coming into force?

Yes ☐

No ☐

If not, then why not?

12. (a) Do you agree that the list of rules set out in Schedule 5 are not to be included in site rules?

Yes ☐

No ☐

If not, why not?

(b) Are there any other matters that should be included in Schedule 5?

13. Do you agree with the procedure for setting out, consulting and depositing site rules?

Yes ☐

No ☐

If not please explain why?

14. Is there anything specific that is not included in the Site Rules Regulations that should be?

Yes ☐

No ☐

If yes, please provide details: