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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

Implementing changes to the park home
commission rate.

Mobile Homes (Selling and Gifting) (Amendment) (Wales) Regulations 2019

March 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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1. Introduction

The Park Home Commission Rate is a fee payable to the site owner when a park home is sold. The current commission rate of 10% has been in place since 1983. There is a power for the Welsh Ministers under the Mobile Homes (Wales) Act 2013 to prescribe the maximum commission rate in regulations.

On 5 June 2018, the then Minister for Housing and Regeneration announced her decision to lower the maximum commission rate by 1 percentage point per year, over a 5-year period, to a final maximum of 5% of the purchase price. This decision followed a 12 week consultation which ended in August 2017 (having received almost 400 responses) and the commissioning of independent financial analysis work.

Following a commitment to engage the sector further this consultation sought views on how that decision should be implemented. The questions focused on the timings for introducing the reduction, what guidance is needed to support the change and how best to communicate that change.

2. Brief summary of findings

40 responses were received in total, broken down as follows:-

- Park Home Owners 7 (17.5%)
- Site Owners 11 (27.5%)
- Industry Representative Bodies 3 (7.5%)
- Qualifying Residents Associations 5 (12.5%)
- Not Identified 14 (35%)

The 3 industry representative bodies who submitted responses were:

- British Holiday & Home Parks Association (BH&HPA)
- National Caravan Council (NCC)
- Independent Park Home Advisory Service (IPHAS)

Of the 11 site owners who responded, 8 either submitted emails confirming they were members of the BH&HPA and fully endorsed their response, or submitted forms referring to or duplicating the responses of the BH&HPA.

For the purposes of analysing the responses for this paper, each response received supporting the BH&HPA comments is treated as a separate view, e.g. where the BH&HPA has made a comment, that comment is treated as having been received 9 times (i.e. received by the BH&HPA and 8 other respondents).

Key findings

- ❖ 58% of those who responded want the change to be introduced in April 2019 or earlier.
- ❖ Of the 3 industry representative bodies who responded (BH&HPA, NCC and IPHAS), none thought the changes should be implemented in 2019.
- ❖ 97% thought there should be non-statutory guidance issued to cover the changes.
- ❖ 86% thought that the change should be communicated using information leaflets, via representative organisations and local authorities.

3. Questions 1, 2 and 2a - Implementation of the Commission Rate.

These questions related to the timing of the first change to the Commission Rate

Question 1 asked which year the first percentage reduction in the commission rate should occur.

Of the 38 responses received to this question:

19 respondents (50%) selected 2019. Most respondents who felt the first reduction should be in 2019, felt that adequate time had been provided to prepare for the changes to be implemented.

5 respondents (13%) selected 2020. The majority of respondents who selected 2020, including the NCC and IPHAS, thought it would provide more time to prepare for the change.

14 respondents (37%) selected “other” broken down as follows:-

- 3 (8%) suggested “Immediately” or “As soon as possible”
- 9 (23%) suggested 2021
- 1 (3%) suggested 2023
- 1 (3%) suggested “Never”.

Of these respondents it was the BH&HPA and their members who suggested that the first change should not be implemented before 2021.

Question 2 asked if respondents agreed that bringing in a change to the rate in April to coincide with the financial year would be the best approach. Question 2a asked those who disagreed with April to indicate which month would be their preferred option.

Of the 35 responses received to this question:

24 respondents (69%) thought April was the best month

11 respondents (31%) did not agree. They indicated their preferred month as follows:

- 8 (22%) suggested May
- 2 (6%) suggested January
- 1 (3%) suggested February

The full breakdown of suggested dates for the first reduction is as follows:

22 (55%) - April 2019 (or earlier)
1 (2.5%) - February 2020
4 (10%) – April 2020
1 (2.5%) - January 2021
8 (20%) – May 2021
1 (2.5%) – April 2023
1 (2.5%) – Never
2 (5%) – Did not answer

The majority of people responding felt that the first change should take place in April 2019. However 2 of the representative bodies from the sector, the NCC and IPHAS, felt it should not be introduced before April 2020, whilst the BH&HPA felt it should not be introduced before May 2021. All 3 representative organisations felt more time was needed to prepare for and communicate the changes before they were introduced.

Comments supporting the option of April 2019 (or earlier) included:

- “We need action now as residents are all elderly”
- “Should be as soon as possible”
- “This is long overdue and in view of the fact that it mainly affects older people who may have to sell for health reasons it is unfair to penalise them any longer.”
- “If there has been a decision to make a change, there is no sense in delaying that change. That would amount to not making any decision.”
- “It has been a long battle just to get to this point. The longer it is delayed the more it will be to the detriment of park home residents.”

Comments supporting April 2020 included:

- “Would like to know how much site fees will raise in time to relocate if necessary”
- “Time for preparation” (IPHAS)
- “The NCC believes the proposed implementation date of April 2019, as set in the consultation, will not give enough time for representative bodies or the Welsh Government to inform businesses of the change, but more importantly, will not provide Residential Park operators with the time they need to amend their operational budgets and business plans as a result of this loss of income.

Also, we understand that a new written statement will need to be produced and published for all new sales of park homes (mobile homes) by the park owner after the commencement date of the Regulations. This will allow the implied terms to be changed and relevant information sent to all parties about timescales ahead of the implementation date.” (NCC)

Comments supporting May 2021 included:

- “To allow time to adjust business model and consider alternative options that may require planning applications.”
- The BH&HPA provided the following response with this view being supported by 8 of its members:

“The Minister for Housing and Regeneration made a public commitment to the effect that site owners would require time to adjust their business models to reflect the commission changes and that these adjustments may include increasing pitch fees.

It is essential that any pitch fee increase does not take place later than the commission reduction which it is designed to mitigate.

It is also essential that the timing of the commission reduction does not undermine community cohesion by forcing the parties into tribunal proceedings to determine the new pitch fee prematurely, whilst there is any possibility that these proceedings may be avoided. Pitch fees are adjusted annually. Paragraph 17(3) of Chapter 2 of Schedule 2 of the Mobile Homes (Wales) Act 2013 requires the park owner to give at least 28 clear days’ notice of the proposals for the new pitch fee in advance of the review date. This means that the first reviews which will be able to take account of Regulations taking effect on 1 April 2019 are those taking place on or about 1 May 2019. Only by 30 April 2020 will park owners have had the opportunity to propose reviews for all agreements which would be affected by the first commission reduction.

To avoid community cohesion being undermined more than necessary in these difficult circumstances, the timing of the change should give the parties a reasonable opportunity to establish whether there has been a misunderstanding and/or discuss the possibility of reaching an agreement before tribunal proceedings must be issued. As the park owner must apply to the tribunal for an order determining the amount of the new pitch fee no later than 3 months after the review date, the time for doing so in respect of pitch fee review dates in April 2020 will end in July 2020. Proceedings could take between 6 and 9 months to determine, subject to any appeal. This means that pitch fee reviews which take the first adjustment proposed by the Regulations into account may not be determined until April 2021, subject to any appeal. Therefore we believe the first adjustment should not take place until May 2021.”

4. Questions 3 and 3a – Non-statutory guidance

Question 3 asked if respondents thought it would be useful for Welsh Government to produce non-statutory guidance to ensure all parties are clear about the change.

Question 3a asked those who agreed it would be useful to indicate what they thought should be included in the guidance.

38 responded to this question

37 (97%) agreed

1 (3%) disagreed

Of the suggestions made in the paper, this table shows how many respondents thought which ones should be included in the guidance.

Date of first reduction	37 (97%)
Dates of subsequent reductions	36 (95%)
Clarity on which maximum rate applies depending on when a sale goes through (potentially including worked examples).	35 (92%)
Further clarification, for sellers, buyers and site owners, on who pays the commission rate, and to whom	36 (95%)

Other suggestions for inclusion were:

- “Details of any exceptions/exemptions”
- “All site owners must be informed they are not allowed to increase pitch fees to compensate for any loss, and can only be applied by permission of RPT as a last resort.”
- “What caps if any is put on landlords right to raise rents to compensate for lost commission”
- “Guidance should explain the effect on pitch fees, how the law allows the site owner to propose an increase in pitch fees to compensate for loss of income resulting from the decision and the steps which the parties may take to reach agreement about the new pitch fee, or for the question to be determined.” (BH&HPA)
- “Such guidance should provide the greatest possible clarity to avoid acrimony and referrals to the Tribunal where compensatory pitch fee increases are proposed. It would also close the door to any rogue park owners seeking to exploit the change by proposing reviews which do not comply with the statutory guidelines. For example, the guidance might show possible ways for calculating

compensatory increases by reference to the commission income which the particular park is likely to lose.” (BH&HPA)

- “Any guidance needs to be explicit in relation to:-
(1) the fact that park owners are permitted by law to propose an increase in pitch fees to compensate for loss of income resulting from the decision; and
(2) the process by which agreement about the new pitch fee can be agreed, or the question determined.”
- “There should be further information included about the sales process and the forms which should be completed at each stage, especially about the form of assignment and notice of assignment. It is these two forms which will indicate the date of the assignment of the agreement under the Act which will be relevant for the rate of commission to be applied.” (NCC)
- “There should also be the standard information about disputes and the Tribunal process.” (NCC)
- “Separate guidance should be considered as to the options available to the park owner to address loss of income and how this should be approached with residents, together with information about what to do if any review is not agreed.” (NCC)
- “Please inform both parties that the rate is "up to" % it is not compulsory to have to pay the full percentage. Also that it should be very precisely spelled out to park owners that any pitch fee increases they may wish to impose to cover their loss can only be applied by permission of the RESIDENTIAL PROPERTY TRIBUNAL”
- “Options available to park operator to compensate for lost income such as amendments to pitch fee, alternative options for parks such as traditional housing or holiday options.”

5. Question 4 – Communicating the changes

Question 4 asked how changes to the prescribed commission rate should be communicated to site owners, residents and prospective buyers, as well as any other interested parties who may be involved in park homes (estate agents, solicitors etc.)

37 responded to this question

Of the suggestions made in the paper, this table shows the number of respondents that supported each method of communication.

Information leaflet	34 (92%)
Communication through representative bodies (British Holiday and Home Parks Association, the National Caravan Council, National Association of Park Home Residents, Independent Park Home Advisory Service etc.)	33 (89%)
Communication from local authorities	32 (86%)

Other suggestions included:

- “Estate Agents, Trade Associations.”
- “Communication by Welsh Government via all possible media”.(BH&HPA)
- “The NCC believe that a coordinated communications approach will target the largest audience and would therefore welcome further dialogue with the Welsh Government to ensure that our membership base is fully engaged with at the earliest convenience.
- The NCC believe that all information should be published on the Welsh Government’s website. We would also welcome support from other advice agencies such as Citizens’ Advice.”
- “LEASE, Park Home magazines” (IPHAS)
- “Holiday caravan magazines.”
- “ ‘COUNCIL TAX’ lists as other bodies such as Council Licensing do not have the names and addresses of ALL park home residents.”
- “Maximum possible use of public media (TV, radio/local radio, newspapers and magazine articles) and social media.”
- “All assembly members and members of parliament”

- “Direct communication from site owners through the regular channels they communicate with their tenants”

6. Question 5 – Draft regulations

Question 5 asked for comments on the draft regulations which will need to be agreed by the Assembly before any change in the commission rate comes into force.

20 responded to this question.

Two comments received suggested amendments to the regulations that would change the policy intention.

- BH&HPA suggested changing the regulations so that the change to the commission rate only applied to new agreements issued by the park; or, under current agreements, the second sale under the new Regulations. This approach was supported by their members who also responded.
- IPHAS suggested changing the Regulations so that the reduction in commission could not be considered as part of any pitch fee review.

Neither of these have been considered as they fall outside the scope of this consultation.

One comment suggested the draft needed to be amended to include the words “up to” in front of the relevant percentage figure to ensure it was the maximum rate and not a defined mandatory rate. However, this is not necessary as the relevant references to the commission rate in the sections 9(4) and 10(8) of Chapter 2 of Part 1 of Schedule 2 of the 2013 Act are to “a rate not exceeding such rate as may be prescribed by regulations made by the Welsh Ministers”. This therefore captures the fact that this is the maximum rate permissible.

Other comments received did not refer to amending the draft regulations in any way.

7. Questions 6 and 7 – Welsh Language

Questions 6 and 7 sought views on what effects: the regulations would have on the Welsh language, and how they might be changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language

28 responses were received

The majority did not think the regulations would have any impact on the Welsh language. No suggestions were made as to how the regulations could be changed to have a positive effect on the Welsh language.

Many of those responding commented they did not understand the relevance of the questions to implementing changes to the commission rate.

8. Question 8 – Other related comments

Question 8: provided an opportunity for comments on any related issues.

8 responded with further comments. These included:

- “I understand landlords will be able to raise rents by way of compensation is there a percentage cap on how much and is this increase only on the year of implementation or does it roll on in perpetuity?”
- “The question that I have is, “what does the Welsh Government propose that I do as a micro business in Wales to create extra income to enable me to help repay my loan”.”
- “We earn less than the minimum wage, yet we are being punished for our hard work by the housing minister. There should be a much fairer system in place to reward Parks on their achievements and bring the ‘rouge landlords’ to book!
- Reverse the decision and leave the commission rate at 10%.”
- “We are concerned that these changes will be applied retrospectively and therefore completely change the Agreement between our homeowners and the park owner. In our view the changes should only apply to new Agreements whereby that new buyer is given options to enter into an agreement which either retains the commission at 10% or gives them the opportunity for a reduced commission and a higher pitch fee.

In essence our Company feels it is fundamentally wrong to simply take away an important part of our income without proper measures in place to compensate for that. We feel that the whole process has ignored the advice and findings of the various surveys carried out on behalf of the Welsh Assembly and also those conducted by our trade association. Our Company remains extremely concerned that our parks in Wales are not going to make sufficient income for them to remain viable and may become a parasite to the English parks. Moreover, we are concerned England will feel compelled to follow suit in which case this would be the state of the decline of the whole industry and the quality of the parks provided to our customers.”

- “PLEASE GET ON WITH IT”
- “The Minister's decision and presentation of her arguments are excellent and it is difficult to see how there could be any reasonable opposition, given the long lead time which allows full scope for site owners to cope without adverse effect on their business. I myself question why the decision should be expected to lead to a rise in site fees, and I am not sure site owners should be encouraged to think this. This effectively sanctions a rise in site fees as an offset to the reduction in commission charge, which shifts the commission burden from relatively few sellers to all lodge owners as annual fee payers, thus cancelling out the potential benefit of the reduction!”

9. Conclusion

Questions 1, 2 and 2a: Timing of Implementation

Whilst the overall majority of responses received support the first 1% reduction being implemented in April 2019 (58%) it should be noted that none of the three industry representative bodies took this view. The NCC and IPHAS think the earliest date should be April 2020 and the BH&HPA think the earliest date should be May 2021. The broad reason for this is that it will give reasonable time to prepare for the change.

It is clear therefore that views on the year in which the change should take place are polarised and there is also some divergence of opinion in regards to the month in any year the change should take effect from, although with 69% of respondents choosing April there was a higher degree of consensus.

No conclusive view on the date for implementation can be taken until pending Judicial Review proceedings are concluded. A further update on this matter will be provided at that time.

Questions 3, 3a and 4: Non-statutory guidance and communicating the changes

A total of 97% of respondents supported the suggestion of non-statutory guidance on the changes, including all topics suggested in the consultation paper. A number of other suggestions for what could be included in the guidance were made (see page 8) and all of these points will be considered when the guidance is drawn up.

There was also broad agreement on what channels should be used to communicate the changes with the use of information leaflets and the need to communicate the changes through local authorities and representative bodies all received high levels of support. A number of additional options were also suggested (see page 10) and these will be considered when the communications plan is developed.

Respondents were almost unanimous in their desire to see clear guidance and effective communication on the changes being made and how it will affect them with the BH&HPA and its members requesting examples showing how the changes would work in practice. This request will also be considered as part of the development of guidance and supporting communication materials.

A number of the comments received also highlighted that there is an element of confusion and misunderstanding within the sector as to:

- how the changes to the commission rate will be implemented;
- how those changes will impact upon individuals; and
- what individuals can or cannot do as a result of the changes.

It will be important that any such misunderstandings are corrected through guidance and communication materials.

As a result of the views expressed in this consultation:

- Non-statutory guidance will be produced ahead of any change.
- A programme of communications in keeping with those proposed in the consultation paper, and taking on board the additional views expressed will also be put in place ahead of any change.

Question 5: Draft Regulations

Only 50% of respondents answered this question and the majority of them did not refer to any changes in drafting that needed to be made.

Responses that suggested a change to the policy decision on the commission rate are outside of the scope of the consultation and have not been considered.

One issue of clarity in drafting raised has been considered and a response is set out on page 11.

As a result of the views expressed in this consultation, any draft regulations will need to be amended so that they reflect the dates of any change.

No other changes are considered necessary.