

MOBILE HOMES (WALES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 – terms of mobile homes agreements

Part 1 – Terms Implied By Act

Chapter 2 – Agreements relating to pitches except those on local authority Gypsy and Traveller sites

136. Paragraphs 2 to 8 restate paragraphs 1, 2, 3, 4, 5, 5A and 7 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act relating to the duration of agreements relating to pitches (except local authority Gypsy and Traveller sites), termination by the occupier and the recovery of overpayments by the occupier.
137. Paragraph 9 of Schedule 2 replaces paragraph 8 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act and relates to "new agreements," i.e. those made or assigned after these provisions have come into force. It entitles the mobile home occupier to sell the mobile home and assign the agreement as well as entitling the site owner to receive a commission on sale. It removes the requirement for the site owner to approve the person to whom the mobile home is being sold. It requires the purchaser of a mobile home to notify the site owner of the completion of the sale and assignment of the agreement. It also confers on the Welsh Ministers power to make regulations which specify the procedures requirements to be followed by the parties involved with the sale.
138. Paragraph 10 sets out the arrangements for selling the mobile home and assigning the agreement where there is an existing agreement. The occupier must serve written notice on the owner that he proposes to sell the mobile home. The notice must include the name of the person to whom he proposes to sell the mobile home and such other information as may be required by regulations made by the Welsh Ministers. Within 21 days the site owner can apply to a tribunal for "a refusal order" preventing the occupier from selling the mobile home. If the occupier does not receive notice of the owner's application to a tribunal for a refusal order or the tribunal declines to issue a refusal order, the sale and assignment of the agreement can proceed. Where a sale proceeds under paragraph 10, the site owner is entitled to receive a commission on the sale.
139. Paragraph 10 also confers powers on the Welsh Ministers to make regulations setting out the grounds on which an owner may apply to the tribunal for a refusal order (paragraph 10(7)) and specifying the procedures to be followed by the parties in connection with the sale (paragraph 10(10)). The grounds on which an owner may apply for a refusal order could, for example, include the age of the buyer and the keeping of pets, where a site has rules in relation to such matters.
140. Paragraph 11 applies where the occupier proposes to sell the mobile home and assign the agreement (under either paragraph 9 or 10) and sets out the information a seller must provide to the prospective purchaser and the time by which that information must be provided. It confers a power on the Welsh Ministers to specify, in regulations, the documents and/or other information which must be provided. Where an occupier fails

to comply with the duty to provide these documents and/or information within the required time, the prospective purchaser may bring civil proceedings. These provisions will ensure that the prospective purchaser is aware of all the relevant information (for example, any restrictions in the site rules on who can reside on the site) and so is able to make an informed decision as to whether or not to proceed with the purchase.

141. [Paragraph 12](#) applies where a new agreement is in place and is similar to paragraph 9 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act. It entitles the mobile home owner to give the mobile home and to assign the agreement to a member of his or her family. However, it removes the requirement for the site owner to approve the person to whom the gift is being made, subject to a requirement that the occupier has provided the site owner with evidence showing that the person concerned is a member of his or her family. It requires the person to whom the mobile home is gifted to notify the site owner of the gift and assignment of the agreement. It also confers a power on the Welsh Ministers to make provision in regulations specifying the type of evidence of a family connection that must be supplied and specifying the procedures to be followed by the parties involved with the gift of a mobile home and assignment of the agreement.
142. [Paragraph 13](#) applies where an existing agreement is in place and sets out the process if an occupier wishes to gift the mobile home to a family member. The occupier must serve notice on the owner that he proposes to gift the mobile home. The notice must include the name of the person to whom he proposes to give the mobile home and such other information as may be prescribed in regulations made by the Welsh Ministers. The notice must also include evidence as defined in paragraph 12(2). Within 21 days of when the owner receives the notice of the proposed gift, the site owner may make an application to the tribunal for an order preventing the occupier from gifting the mobile home (“a refusal order”). If he does not, or the tribunal rejects the application, the gift may proceed.
143. [Paragraph 13](#) also confers powers on the Welsh Ministers to make regulations prescribing the grounds on which an owner may apply to the tribunal for a refusal order (paragraph 13(7)) and specifying the procedures to be followed by the parties involved with the gift (paragraph 13(9)). The grounds on which an owner may apply for a refusal order could, for example include the age of the buyer or the keeping of pets, where a site has rules in relation to such matters.
144. [Paragraph 14](#) restates and amends paragraph 10 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act relating to the re-siting of a mobile home. This may occur where a Tribunal has agreed that the replacement pitch is comparable, and the move reasonable. Where the owner needs to carry out essential repair or emergency works which may only be done if the mobile home is moved to another pitch for that period, and the urgency means it is impracticable to make an application to a tribunal before the mobile home is re-sited, the owner must immediately make an application to a tribunal. If the tribunal is not satisfied of the need to do so, the owner must immediately ensure that the mobile home is returned to the original pitch.
145. [Paragraph 15](#) restates paragraph 11 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act and makes it clear that the occupier has the right to quiet enjoyment of their mobile home and pitch.
146. [Paragraph 16](#) restates paragraphs 12 to 15 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act and sets out the requirement that the site owner gives at least 14 day's notice to enter a pitch (but not a mobile home) except to make deliveries and read meters, when no notice is required, or carry out essential maintenance or emergency repairs, when as much notice as is practicable should be given.
147. [Paragraph 17](#) restates and amends paragraphs 16 and 17 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act and sets out the processes for reviewing and changing pitch fees. The effect of sub-paragraphs (4), (9), (15) and (16) of paragraph 17 together with paragraph 23 (see below) require a site owner, when serving a pitch fee review notice

on an occupier of a mobile home which proposes an increase in the pitch fee, to provide the occupier with an accompanying document which meets the requirements set out in paragraph 23.

148. Sub-paragraphs (6)(a) and (11)(a) of paragraph 17 enable an occupier who does not agree to a proposed pitch fee to apply to the tribunal for an order determining the amount of the new pitch fee. Previously, where an occupier did not agree to the proposed pitch fee, it was only the owner who had the right to apply to the tribunal for an order determining the new pitch fee. There may be circumstances in which an occupier who has refused to agree to a proposed new pitch fee wishes to seek an order from the tribunal determining the new pitch fee, even where the site owner has not objected to the occupier's refusal; for instance where the occupier is of the view that the existing pitch fee should be reduced.
149. [Paragraph 18](#) restates paragraph 18 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act but with amendments, and sets out the matters to which site owners must have particular regard when determining the amount of the new pitch fee. These include the cost of site improvements or deterioration of amenities. Paragraph 18(1)(d) specifies that site owners may only take into account any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment that has come into force since the last review date. Paragraph 18(2) makes clear that site owners may not take into account any costs incurred in complying with the requirements when determining pitch fees.
150. [Paragraph 19](#) restates and amends paragraph 19(1) of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act and sets out matters which site owners must disregard when determining the amount of the new pitch fee. Sub-paragraph (2) make clear that site owners may not take into account any costs incurred or fees payable in complying with those requirements listed under paragraphs (a) to (c) when determining pitch fees, including the costs of licensing or enforcement actions taken by local authorities.
151. [Paragraph 20](#) contains the process to be used when considering a revision to the pitch fee, either an increase or decrease, and that the consumer prices index is to be used.
152. [Paragraph 21](#) sets out the owner's obligations and corresponding obligations of the occupiers including paying the required fees and utilities as agreed with the owner and ensuring the mobile home and the surrounding pitch are in a sound state of repair. It also sets out the owner's obligations to not do anything or causing anything to be done which may adversely affect the occupier's ability to perform their obligations under paragraph 21(1)(c) or (1)(d), which may deter the occupier from making internal or external improvements to the mobile home or interfere with the occupier's ability to do so. It does not authorise the occupier to carry out works to the mobile home which are prohibited by the terms of the agreement or under any enactment. Where the agreement permits work to the mobile home with the owner's permission, that permission must not be unreasonably withheld.
153. [Paragraphs 22](#) sets out further obligations of the owner in regard to the pitch, providing information such as the basis for utility charges and maintaining the utilities supplied to the pitch and the common parts of the site. The owner must also consult with occupiers and the residents' association on all matters relating to the operation and management etc. of the site, including any proposed change of use of the site.
154. [Paragraph 23](#) confers a power on the Welsh Ministers to prescribe the form of the pitch fee document in regulations. Where the site owner fails to provide that document, the notice which proposes the increase in the pitch fee has no effect; and in cases where an occupier has, nonetheless, begun to pay the increased pitch fee to the owner, the tribunal (a Residential Property Tribunal, or where there is one, the arbitrator in respect of the agreement) may (on the application of the occupier) order the owner to repay the overpayment.

*These notes refer to the Mobile Homes (Wales) Act 2013
(c.6) which received Royal Assent on 4 November 2013*

155. [Paragraphs 24](#) and [25](#) set out the obligations on the owner to notify the residents and the qualifying residents' association of the address at which notices may be served on the owner, for the purposes of dealing with pitch fees and payments.
156. [Chapters 3](#) and [4](#) of Part 1 of Schedule 2 reflect recent changes made in Wales to Schedule 1 of the 1983 Act by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013 which came into force on 10 July 2013 (“the 2013 Order”). The 2013 Order introduced different implied terms under Schedule 1 of the 1983 Act for local authority Gypsy and Traveller sites. Other amendments include limiting the right of assignment of pitches to prevent the creation of a market in pitches, regulation of pitch fee reviews, and greater clarity on the responsibilities of local authority site owners in respect of such sites. The commencement of section 318 of the [Housing and Regeneration Act 2008 \(c. 17\)](#) on 10 July 2013 removed the exclusion of local authority Gypsy and Traveller sites from the provisions of the 1983 Act so that they became “protected sites” for the purposes of section 5(1) of that Act, giving the occupier greater security of tenure and other rights in occupying local authority Gypsy and Traveller sites. These amendments are reflected in Chapters 3 and 4 of Part 1 of Schedule 2 of the Act.