

# MOBILE HOMES (WALES) ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Introduction

##### *Section 1- Overview of Act*

8. This section summarises the main provisions of the Act. It is intended to be a sign posting section and to introduce the 6 key Parts of the Act.

##### *Section 2 - Mobile home sites subject to Act and Section 3 – Owners of sites*

9. These sections explain key terms such as a “regulated site”, a “protected site” and a “local authority Gypsy and Traveller site”.
10. A “Regulated site” is a site in Wales which has at least one mobile home stationed on it for the purposes of human habitation other than a holiday site (or a site which Schedule 1 provides is not to be a regulated site).
11. “Protected Site” means land which is:
- a. a regulated site, or
  - b. any site that would be a regulated site but is occupied by a local authority.
12. Whilst holiday sites are excluded from the definition of a regulated site in this Act (and therefore the licensing regime does not apply; nor to a mobile home occupied by site owners, their family, or agents / employees) this section restates the definition of a holiday home site as set out in previous Acts. The meaning of “owner” is set out in section 3.

#### Part 2 - Licensing of Mobile Home Sites etc

##### *Section 5 - Prohibition on use of land as regulated site without site licence*

13. *Section 5* restates section 1(1) and (2) of the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”). It provides that using land as a regulated site without a site licence is an offence, but increases the fine from level 4 to level 5 on the standard scale. When section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force a level 5 fine will become an unlimited fine (currently £5000 at November 2013).

##### *Section 6 - Application for site licence*

14. This section is modelled on section 3 of the 1960 Act with some additions. It sets out requirements for site licence applications to local authorities. Subsection (2) provides details of what an application must contain and subsection (3) requires applicants to provide information requested by the local authority. Under subsection (4) an application must be accompanied by a declaration by the applicant that the manager

(or applicant) is a “fit and proper” person to manage the site. Under subsection (5), a local authority may require an application to be accompanied by a fee fixed by the local authority, provided it has published its fees policy (see the commentary to section 36).

### ***Section 7 - Issue of site licence***

15. **Section 7** restates section 3(3) to (6) and section 6 of the 1960 Act, with some new provisions. It sets out the timescales for issuing a licence. In subsection (4), if a local authority decides not to issue a licence, they must notify the applicant of the reasons for the decision and of their right of appeal to a Residential Property Tribunal.

### ***Section 8 - Duration of site licence***

16. **Section 8** replaces section 4 of the 1960 Act. Section 8 provides that a licence may be issued for a period of up to five years from the date the licence comes into operation, unless it is revoked.

### ***Section 9 - Power to attach conditions to site licence***

17. **Section 9** restates section 5 of the 1960 Act with some changes. It allows a local authority to attach certain types of conditions when it issues a site licence. Subsection (2)(c) and (f) make provisions for conditions that relate to minimising risk from flooding and coastal erosion and for communicating any known risk from flooding or coastal erosion to mobile home residents on the site.
18. Subsection (5) requires that a site licence must contain a condition that copies of the most recent utility bills relating to the site and any current certificate of public liability insurance must be displayed in a prominent place on the site.
19. Local authorities may, under this section, require works to be completed on a mobile homes site to the satisfaction of the local authority. When such works are ongoing the local authority can prohibit or restrict the movement of mobile homes on to the site. The authority may attach a condition to the licence so as to require the completion of the necessary work, within a time limit.

### ***Section 10 - Model standards***

20. **Section 10** restates section 5(6), (6A), (7) and (8) of the 1960 Act. Section 10 allows the Welsh Ministers, to specify for the purposes of section 9 model standards with respect to the layout of the site and the provision of facilities, services and equipment for regulated sites.
21. A local authority must have regard to these model standards when they consider attaching conditions to a site licence under section 9 of the Act.

### ***Section 11 - Fire precautions***

22. This section restates section 5(3A) to (3C) of the 1960 Act. It ensures that local authorities must consult the fire and rescue authority when they are considering conditions to attach to a site licence.

### ***Section 12 - Appeal against conditions of site licence***

23. This section largely restates section 7 of the 1960 Act. It sets out the applicant's right of appeal to a Residential Property Tribunal against any condition that is attached to a site licence (other than the condition under section 9(5)). If the condition is deemed unduly burdensome, the Residential Property Tribunal may vary or cancel the condition and may attach a new condition to the site licence.

***Section 13 - Power of local authority to vary conditions of site licence***

24. This section sets out that a local authority may vary the conditions attached to a site licence at any time, but before exercising this power a local authority must give the licence holder an opportunity to make representations. Variation is also possible where the local authority discovers new information or considers there has been a change of circumstances.
25. Subsection (4) provides that, where a licence holder makes an application to vary the conditions attached to a site licence, a local authority may require the application to be accompanied by a fee, fixed by the local authority, provided it has published its fees policy (see section 36).

***Section 14 - Appeal against variations of conditions of site licence***

26. This section is restated from section 8(2) to (4) of the 1960 Act. A licence holder may appeal to the Residential Property Tribunal (formerly a magistrates' court), against any alteration of the conditions of the licence or any refusal to vary the conditions, within 28 days of receiving the notification of the decision. If the variation to the condition relates to carrying out of works to the site, the varied condition does not come into effect until the time for making an appeal has expired, or any appeal against it is disposed of or withdrawn.
27. In exercising its powers under subsection (1), the Residential Property Tribunal must have regard to any standards made by Welsh Ministers under section 10.

***Section 15 - Breach of condition***

28. This section provides that, where the owner of land is failing or has failed to comply with a site licence condition, a local authority may give the owner a fixed penalty notice or a compliance notice.
29. The Welsh Ministers may issue guidance to local authorities as to the considerations they should take into account when deciding whether to deal with a failure to comply with a condition of a site licence by issuing a fixed penalty notice or a compliance notice. The local authority must have regard to any guidance issued. Where a fixed penalty notice has been issued, but not paid, a local authority may withdraw the fixed penalty notice and instead issue a compliance notice in respect of the same failure. An owner of land served with a compliance notice may appeal to a Residential Property Tribunal against that notice under section 17(2) (see section 23).

***Section 16 - Fixed penalty notice***

30. This section sets out the information to be included in a fixed penalty notice. Subsection (2) provides that the amount specified in the fixed penalty notice must not exceed level 1 on the standard scale for summary offences (a maximum of £200 at November 2013) and subsection (3) sets out the method of payment.

***Section 17 - Compliance notices***

31. This section deals with the breach of a site licence condition. It provides that, where it appears to a local authority that an owner of land is failing to comply with a licence condition, the local authority may serve a compliance notice on that owner, which contains the information specified in subsection (1), including the steps that the owner must take to ensure that the licence condition is complied with.
32. The provisions provide the owner with a right of appeal against the compliance notice to a Residential Property Tribunal. They also provide the local authority with a power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This extension can be given in response to an application

made by the owner of land on whom the notice was served, or on the local authority's own initiative.

### ***Section 18 - Compliance notice: offence and multiple convictions***

33. **Section 18** sets out that an owner of land who has been served with a compliance notice, which has become operative under section 24, commits an offence if they fail to take the steps set out in the notice within the specified time period.
34. Subsection (2) sets out that where a person is guilty of the offence the penalty is a fine (a maximum of £5000 at November 2013). Subsection (3) allows a defence where the owner had a reasonable excuse for failing to take the steps set out in the notice within the time period specified.
35. Subsections (4) and (5) provide that, where an owner has two or more previous convictions for breach of a compliance notice, the local authority can make an application to the court (which convicted the owner) for the site licence to be revoked.

### ***Section 19 - Compliance notice: power to demand expenses***

36. **Section 19** provides a power to demand expenses where a compliance notice has been served under section 17.
37. Where a local authority serves a compliance notice on an owner of land, the local authority may impose a charge on the owner as a means of recovering the expenses incurred in deciding whether to serve the notice and in preparing and serving the notice or a demand for expenses. The charges could relate, for example, to the costs of obtaining legal advice in deciding whether or not to serve a compliance notice. Subsection (2) clarifies that the expenses are not limited to expert advice. The charges may include interest (see section 25).
38. A local authority exercises its power to recover expenses by issuing a demand, setting out the information about the charges specified in section 19(3)(a) to (c) when serving the compliance notice.
39. Where the tribunal allows an appeal against the underlying compliance notice (under section 17) it may also make an order about the expenses demand that accompanied the notice, for example to confirm or quash the charges.

### ***Section 20 - Power to take action following conviction of owner***

40. **Section 20** provides that where a site owner is convicted of an offence of failing to comply with the steps specified in a compliance notice, the local authority who issued the notice may take steps required by the compliance notice, and further action it considers appropriate to ensure the relevant condition is complied with.
41. Where a local authority proposes to take action under this section, it must serve a notice on the owner of the land which contains the information set out in section 20(2)(a) to (e).
42. Subsection (3) provides that the notice must be served sufficiently in advance of the intended entry to the site as to give the owner reasonable notice. As Section 32(2) requires that 24 hours notice of an intended entry must be given to the owner, this would be the minimum amount of notice that could be given.
43. Subsection (4) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 32(1). Such a person will be able to exercise a right of entry to the land.
44. The 24 hour notice requirement in section 32(2) only applies in relation to the day on which the local authority intends to start taking action on the land. This means that, if

a local authority carries out works which take more than one day, it will not need to provide 24 hours' notice before each day it intends to enter the site.

### ***Section 21 - Power to take emergency action***

45. **Section 21** provides a local authority with the power to take emergency action in certain situations.
46. Subsection (2) sets out that the local authority may take such action as is necessary to remove an imminent risk of serious harm to the health and safety of any person who is or may be on the land. Under subsections (3) to (5), where a local authority proposes to take emergency action under this section, the authority must serve a notice on the owner which contains certain specified information. This notice may also state that the local authority would apply for a warrant under section 32(3) if entry onto the land is refused. The notice must be served sufficiently in advance of the intended entry to give reasonable notice to the owner of the land.
47. Subsection (6) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 32(1) of the Act.
48. Subsection (7) sets out that the requirement in section 32(1) for the right of entry to be exercised "at all reasonable hours" does not apply, as this may not be appropriate in an emergency situation. The requirement for 24 hours notice of the intended entry also does not apply here. Subsection (8) sets out that the local authority must serve a further notice on the owner, within 7 days of starting to take emergency action, which contains certain specified information, including the reasons for the action and an explanation of the right of appeal.
49. The owner is provided with a right of appeal to a Residential Property Tribunal against the emergency action the grounds for which are that there was no risk of imminent serious harm to the health or safety of a person who is or may be on the land or that the action of the local authority was (or is) not necessary to remove such a risk.

### ***Section 22 - Action under section 20 or 21: power to demand expenses***

50. **Section 22** provides a local authority with the power to demand expenses where action has been taken under section 20 or 21.
51. **Section 22(1)** provides that, where a local authority has taken action under section 20 or 21, it may impose a charge on the owner of the land as a means of recovering expenses incurred by them in taking the steps set out in paragraphs (a) to (c).
52. Subsections (4) and (5) set out the time when a charge may be imposed for the costs of emergency action, which is dependent upon whether an appeal is brought.
53. Subsection (6) sets out that the power to impose a charge is exercisable by serving on the owner a demand for the expenses that the local authority seeks to recover, in the time period specified in subsection (8).
54. Subsection (7) provides that an owner of land who is served with a demand under this section may appeal to a Residential Property Tribunal against this demand.

### ***Section 23 - Appeals under section 17, 21 or 22***

55. **Section 23** deals with appeals brought under sections 17, 21 or 22.
56. Subsection (1) provides that an appeal brought under these sections must be made before the end of the period of 21 days, starting from the date the relevant document (see section 23(2)) was served.

57. Subsection (3) provides that a Residential Property Tribunal may allow an appeal to be made after the end of the appeal period, if satisfied that there is a good reason for the delay.
58. An appeal brought under these sections is to be by way of a rehearing of the Tribunal. It may consider matters of which the local authority who made the decision were unaware. Subsection (5) sets out the order-making powers of the tribunal to confirm, vary or quash the matter under consideration.

***Section 24 - When compliance notice or expenses demand becomes operative***

59. This section sets out when a compliance notice or expenses demand becomes operative.
60. Under subsection (2) where no appeal against a compliance notice is brought within the appeal period specified in section 17, both the notice and any accompanying demand for expenses under section 19 becomes operative at the end of that period.
61. A demand for expenses under section 22 becomes operative at the end of the period allowed for an appeal, when no appeal is made against it (section 24(3)).
62. Subsections (4) to (6) deal with cases where an appeal is brought, and set out that a compliance notice (and any accompanying section 19 demand) or a demand under section 22 become operative when a decision on the appeal is given which confirms the notice or demand.

***Section 25 - Recovery of expenses demanded under section 19 or 22***

63. This section deals with the recovery of expenses demanded under section 19 or 22.
64. Subsection (1) provides that, from the time when a demand under section 19 or 22 becomes operative, interest is charged on the expenses set out in the demand at a rate which is fixed by the local authority, until all sums due under the demand are recovered.
65. Subsection (2) provides that from the time the demand becomes operative, the expenses and interest are a charge on the land to which the compliance notice relates, until they are recovered.
66. Subsection (3) sets out that the charge takes effect as a legal charge which is a local land charge.
67. Subsection (4) sets out that the local authority can rely on certain powers and remedies set out in the Law of Property Act 1925 to enforce the charge, including the appointment of a receiver. Subsection (5) sets out when the power to appoint a receiver can be exercised.

***Section 26 - Revocation on death, change of ownership or cessation of use***

68. Section 26 provides that a site licence is revoked upon the death of the licence holder, where the licence holder ceases to be the owner of the land or if the land covered by a licence ceases to be used as a regulated site.

***Section 27 - Duty of licence holder to allow site licence to be altered***

69. Section 27 is largely a restatement of section 11 of the 1960 Act which contains a duty on the licence holder to surrender the licence for alteration when required to do so by the local authority who issued it. Failure without reasonable excuse to comply with a requirement under this section means the licence holder commits an offence which attracts a fine not exceeding level 1 on the standard scale (a maximum of £200 at November 2013).

### ***Section 28 - Requirement for manager of site to be fit and proper person***

70. **Section 28** introduces a new “fit and proper person” requirement that applies to a person who manages a regulated site. Subsection (1) sets out that the owner of land may not allow any part of the land to be used as a regulated site unless the local authority is satisfied either the owner or a person appointed by the owner, or by the local authority (with the owners' consent), is a fit and proper person to manage the site.
71. Subsection (2) provides that, where the owner of land allows a site to be used, but a fit and proper person is not managing the site, in contravention of subsection (1), the local authority may apply to a Residential Property Tribunal for an order revoking the site licence. Subsections (3) and (4) provide that such a contravention is an offence liable on summary conviction to a fine (a maximum of £5,000 at November 2013).
72. Under subsection (5), where an owner has been convicted of an offence under subsection (3) by a magistrates' court on two or more previous occasions in relation to the land, the local authority may apply to the magistrates' court to make an order revoking the site licence.

### ***Section 29 - Decision whether person is fit and proper***

73. **Section 29(1)** provides that, in deciding whether a person is a “fit and proper person” to manage a regulated site, a local authority must have regard to all matters it considers appropriate, including any evidence of the kinds listed in subsection (3) or (4). For example, under subsection (3), a local authority should consider if the person has contravened any provision of the law relating to housing (including mobile homes) or landlord and tenant.
74. Under subsection (4) a local authority must consider evidence that anyone associated or formerly associated with the person has done any of the things set out in subsection (3) and whether that evidence is relevant to the question whether the person is a fit and proper person to manage the regulated site.
75. Subsection (5), allows the Welsh Ministers to make regulations which amend section 29 to vary the evidence that a local authority must have regard to when making a decision under this section.
76. Where a local authority decides that a person is not a fit and proper person, it must notify the person of the reasons for that decision and of the person's right of appeal to a Residential Property Tribunal within 28 days from the date of its decision.

### ***Section 30 - Appointment of interim manager***

77. **Section 30** allows a local authority to appoint an interim manager of the regulated site if the conditions specified in subsection (2) are met. These are that the local authority considers that the site licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the site licence; that the site is not being managed by a fit and proper person; or there is no one managing the site.
78. Under subsection (3) a qualifying residents' association (see section 61) may request the local authority to consider exercising its powers to appoint an interim manager. This might happen, for example, in circumstances when the residents' association do not consider the site manager is a fit and proper person.
79. Under subsection (5) if a person is aggrieved by a decision to appoint an interim manager there is a right of appeal against the decision to a Residential Property Tribunal within 28 days.
80. The appointment of the interim manager is not an indefinite appointment, and as set out in section 30(6) will end on a specified date, upon the expiration of a site licence or

on its revocation. Subsection (7) allows a new interim manager to be appointed should someone leave the post before the specified date.

### ***Section 31 – Terms of appointment and powers of interim manager***

81. **Section 31** sets out the terms of appointment of an interim manager with the powers of the interim manager set out under subsection (2)(a) and (b). Under subsections (3) and (4) a local authority may give general or specific directions to the interim manager and may withdraw or amend directions given. Under subsection (5), the remuneration and expenses of an interim manager may be deducted from any income the site licence holder is entitled to receive and if that income is insufficient any balance must be paid by the local authority. If the local authority pays any amount under subsection (5), it may recover them from the licence holder.

### ***Section 32 - Power of entry of officers of local authorities***

82. **Section 32** restates section 26 of the 1960 Act, with an increase in the penalty for a person wilfully obstructing any person exercising the power of entry or entering land by authorisation of a warrant from a level 1 to a level 4 fine on the standard scale (a maximum of £2,500 at November 2013).
83. This section provides any authorised officer or agent of the local authority with powers of entry to enter a regulated site at all reasonable hours, if there are reasonable grounds for entry. They must produce an authenticated document of authority (if required) and require entry for the purposes outlined in subsection 1 (a) to (d).
84. Admission to the site is only permitted if 24 hours notice has been given to the owner, except under section 21(7) in relation to emergency action.
85. A justice of the peace may issue a warrant to authorise the local authority's entry on to the land, if need be by force. This will happen if a magistrate concludes that, amongst other reasons, access to land has been refused, or the owner is temporarily absent and the case for entry is urgent.

### ***Section 33 - Repayment orders***

86. **Section 33** introduces provision where, if a site is unlicensed, the occupier of the mobile home may apply to a Residential Property Tribunal for a repayment order.
87. A repayment order is defined in subsection (5) as an order requiring the owner or manager of the unlicensed site to pay the occupier of the mobile home sums specified in the order in respect of those payments under paragraphs (a) to (d). The repayment order may include any payment made by the occupier to the owner or manager in respect of the purchase of the mobile home, any commission paid in respect of the sale of the mobile home, the pitch fee and any periodical payments paid in respect of the mobile home.
88. Under subsection (6)(a) to (c) a tribunal must be satisfied that certain matters are satisfied, such as that the owner of the site has been convicted of an offence under section 5 in relation to the site, that an occupier made a payment to the owner during the time that the offence was committed and that the application has been made within 12 months of the date of the conviction.
89. Under subsection (8), the amount required to be paid under subsection (5) is such an amount as the tribunal considers reasonable in the circumstances. Subsection (9) sets out the matters the tribunal must take into account when determining the amount to be paid. Subsection (10) provides that a repayment order may not require the payment of any amount relating to a period outside the 12 months ending with the date of the occupier's application.



90. Under subsection (11), amounts payable to an occupier of a mobile home under a repayment order are recoverable as a debt due to the occupier from the owner or manager of the site.

#### ***Section 34 - False or misleading statements or information***

91. **Section 34** makes it an offence to make a false or misleading declaration or other statement, or to provide false or misleading information knowing or believing it to be false or misleading under Part 2 of the Act. The penalty on summary conviction is a fine (a maximum of £5,000 at November 2013).

#### ***Section 35 - Guidance by Welsh Ministers***

92. The Welsh Ministers may issue guidance to local authorities on the performance of their functions under Part 2 of this Act. Local authorities must pay regard to such guidance.

#### ***Section 36 - Powers to charge fees: supplementary***

93. This section allows local authorities to charge fees under section 6 (application for a site licence) or section 13 (varying the conditions of a site licence). Subsection (2) requires a local authority to prepare and publish a fees policy before charging a fee. Subsections (3) and (4) set out what a local authority needs to do when fixing fees and which costs they may not take into account when fixing a fee.

#### ***Section 37 - Registers of site licences***

94. **Section 37** requires all local authorities to keep a register of site licences which is available for public inspection.

#### ***Section 38 - Crown land***

95. **Section 38** states that Part 2 of the Act does not apply to Crown Land.

### **Part 3 - Protection from eviction**

96. This Part derives from the Caravan Sites Act 1968 (“the 1968 Act”) and has been amended to provide additional clarity and consistency.

#### ***Section 40 – Application of Part***

97. This section is derived from section 1(1) of the 1968 Act and ensures that the protection in Part 3 is applied to anyone who has a licence or a contract under which a person is entitled to:
- a. station a mobile home on a protected site to occupy it as the person’s residence, or,
  - b. move into a mobile home that was already on site.

#### ***Section 41 – Minimum length of notice***

98. This section provides that where a residential contract requires notice of termination that notice must be not less than 4 weeks notice before the date it is to take effect must be given.

#### ***Sections 42 - Protection of occupiers against eviction and harassment, false information etc.***

99. **Section 42** restates section 3 of the 1968 Act with some amendments. In subsection (4), the word “persistently” has been removed so that an offence is committed under this subsection if a person withdraws or withholds services or facilities reasonably required for the occupation of the mobile home. The same amendment is reflected in

subsection (5), so that an offence is committed if the owner of a protected site or his or her agent withdraws or withholds services or facilities reasonably required for the occupation of the mobile home as a residence on the site.

100. Subsection (6) creates a new offence. The owner of a protected site, or their agent, commits an offence if, during the lifetime of a residential contract, they knowingly or recklessly provide information or make a representation to a person which is false or misleading. In addition, the owner or agent must know, or have reasonable cause to believe, that taking this action is likely to:-
- cause the occupier to abandon occupation of the mobile home or remove it from the site,
  - cause the occupier not to exercise any right or pursue any remedy in relation to that; or
  - cause a person who is considering whether to purchase or occupy the mobile home to decide not to do so.

### ***Section 43 – Offences under Section 42 supplementary***

101. Under subsection (1), it is a defence in proceedings for an offence of contravening section 42(2) or (3) to prove that the accused believed and had reasonable cause to believe that the occupier of the mobile home ceased to reside there. In subsection (2), in proceedings for an offence contravening section 42(5) it is a defence to prove that the accused had reasonable grounds for withdrawing or withholding services or facilities.
102. Under subsection (3), the penalty for an offence under section 42 is on summary conviction (magistrates court) is to a fine, or to imprisonment for a term not exceeding 12 months, or to both and on conviction on indictment (crown court), to a fine or two years' imprisonment or to both.

### ***Section 44 – Provision for suspension of eviction orders***

103. Section 44 sets out the circumstances when a court can suspend the enforcing of an order it has made to evict the occupier from a site for a period not exceeding 12 months.

## **Part 4 - Mobile Home Agreements**

### ***Section 48 – Agreements to which Part applies***

104. Section 48 restates section 1(1) of the Mobile Homes Act 1983 ("the 1983 Act") and states that Part 4 relates to agreements under which a person is entitled to station a mobile home on a protected site and to occupy the mobile home as the person's only or main residence. It defines who an "occupier" is under Part 4.

### ***Sections 49 – Particulars of agreements***

105. Section 49 sets out requirements for agreements. Subsection (1) provides that before making an agreement, the owner of a protected site must give a written statement to the proposed occupier under the agreement setting out those matters listed in paragraphs (a) to (e), such as the express and implied terms of the agreement. The Welsh Ministers may make regulations which specify further information that must be included in this statement.
106. Subsection (2) sets out when the written statement must be given.
107. Subsection (4) states that if an agreement includes an express term, other than a site rule, which was not set out in the written statement, the term is unenforceable by the owner (see also section 50(3)). Express terms are the terms of the agreement that a site owner

has included in the agreement with an occupier. Implied terms are those under Part 1 of Schedule 2 which are implied into all agreements between occupiers and site owners.

108. Subsection (5) sets out what happens if the owner fails to give an occupier a written statement.
109. Subsections (2), (3) and (5) do not apply to a person occupying or proposing to occupy a transit pitch on a local authority Gypsy and Traveller site.

### ***Section 50 – Terms of agreements***

110. **Section 50** introduces Schedule 2 (Terms of Mobile Home Agreements) which set out the terms to be implied in any agreement to which Part 4 applies. It also sets out in subsections (2) to (4) that a tribunal or court (see section 54) may make an order to amend or delete any express term other than a site rule (see section 52).
111. Subsections (2) to (4) do not apply in relation to a person occupying or proposing to occupy a transit pitch on a local authority Gypsy and Traveller site.

### ***Section 51 – Power to amend implied terms***

112. **Section 51** states that the Welsh Ministers may by order amend Schedule 2 - apart from paragraph 11 - as they consider appropriate.

### ***Section 52 - Site rules***

113. **Section 52** makes provision about “site rules” (as defined in subsection (2)). Under the provisions (which do not apply to local authority Gypsy and Traveller sites) every site rule will be an express term of the pitch agreement between the site owner and the mobile home occupier creating certainty for both parties. These provisions will apply to existing pitch agreements as well as to those made after the provisions come into force.
114. The provisions confer a power on the Welsh Ministers to make regulations about the procedure to be followed by a site owner who is proposing to make new site rules or to vary or delete existing site rules, for example, requiring prior consultation with occupiers. The Welsh Ministers may also make regulations which:-
  - Render existing site rules (i.e. ones pre-dating the commencement of section 52) of no effect by such date as set out in the regulations;
  - Prescribe matters in relation to which site rules may not be made;
  - Establish a process for the resolution of disputes arising between site owners and mobile home occupiers regarding the making, varying or deleting site rules;
  - Require a local authority to keep and publish an up-to-date register of site rules for protected sites in its area.

### ***Section 53 - Successors in title***

115. **Section 53** restates section 3 of the 1983 Act with some amendments, and provides for a mobile home agreement to be passed to another on the death of a party to the agreement. Subsection (3)(a) defines those persons entitled to succeed to an agreement to which Part 4 applies. Under subsection (3)(b), in default of any such persons, the person entitled to the mobile home is established by virtue of the deceased’s will or under the law of intestacy (subject to subsection (4)).

## **Part 5 – Powers of local authorities**

### ***Section 56 – Power to provide sites for mobile homes***

116. **Section 56** sets out the power of a local authority to provide mobile homes sites on land within its area.
117. Subsection (2) includes a power to do anything desirable in connection with the provision of a site under subsection (1) such as acquiring land.

### ***Section 57 – Power to prohibit mobile homes on commons***

118. **Section 57** applies to any land within Wales which forms part of a common and is not land to which section 193 of the Law of Property Act 1925 applies, land subject of a scheme under Part 1 of the Commons Act 1889, or land in respect of which a site licence is in force. Under subsection (11) “common” includes land subject to be enclosed under the Inclosure Acts 1845 to 1882 and any town or village green.
119. Under subsections (2) to (4), a local authority may make an order prohibiting the stationing of a mobile home on land to which this section applies. Any person who contravenes such an order is guilty of an offence, and liable on summary conviction to a fine not exceeding level 1 on the standard scale (a maximum of £200 at November 2013).
120. A local authority must take all reasonable steps to secure that copies of such an order are displayed on the land to provide appropriate warnings (subsection (5)). An order may be revoked by the local authority at any time or an order may be varied to exclude any land or to provide an exception (subsection (7)).

## **Part 6 – Supplementary and General**

121. **Part 6** deals with technical matters, such as the power to make consequential, transitional, transitory and savings provisions.

### ***Section 59 – Liability of officers of bodies corporate***

122. **Section 59** applies to any offence under this Act committed in relation to land in Wales. It mirrors the provision contained in section 14 of the 1968 Act. Section 59 provides that where a body corporate commits an offence and it is proved that the offence was committed with the consent or connivance of an officer of the body corporate, or the offence was attributable to neglect on the part of this person, then this person is guilty of the offence as well as the body corporate. Proceedings can be brought against this person as well as the body corporate and both may be punished accordingly. Subsection (2) defines what is meant by an officer of a body corporate.

### ***Section 60 – Meaning of ‘mobile home’***

123. The section defines a ‘mobile home’. Subsection (1) derives from section 29(1) of the 1960 Act. Subsections (2) to (4) derive from section 13(1) to (3) of the 1968 Act.

### ***Section 61 – Meaning of “qualifying residents’ association”***

124. **Section 61** provides a definition of a qualifying residents' association and derives from paragraph 28 of Chapter 2 of Part 1 of Schedule 1 to the 1983 Act with some amendments. For example, under subsection (1)(b) an association must have occupiers of at least 50% of mobile homes being members of the association and under paragraph (e) its rules and constitution are open to public inspection and the qualifying residents' association must maintain a list of its members Under subsection (1)(g), decisions are taken by voting and there is only one vote per mobile home.

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125. Under subsection (2), only one occupier of each mobile home may be a member of the association. Where there is more than one occupier, they can agree who will be the member of the association or, in default of agreement, the one whose name appears first on the agreement.
126. Under subsection (3), an association is not a qualifying residents' association unless an up-to-date list of members has been lodged with the local authority.
127. Under subsection (4), when a copy of the list of members is lodged with a local authority, it must take reasonable steps to ascertain whether occupiers of at least 50% of the mobile homes are members of the association, and give notice in writing to the association and the owner stating whether or not it is satisfied that occupiers of at least 50% of the homes on site are members of the association. Under subsection (5), where a local authority is satisfied that occupiers of at least 50% of the homes on site are members, the association has a duty to lodge an up-to-date copy of its list of members as soon as is practicable after any changes in its membership. Under subsection (6), where it appears to a local authority that membership no longer includes occupiers of at least 50% of the homes on site, the local authority must give notice to the association and the site owner that the association is no longer a qualifying residents association.
128. Any disclosure to the public of the list of qualifying residents' association members lodged with the local authority is treated under section 41(1) of the Freedom of Information Act 2000 as a breach of confidence actionable by the members of the association (other than disclosure of details of the chairman, secretary or treasurer).

***Section 63 – Orders and Regulations***

129. **Section 63** makes general provision for orders and regulations under the Act. In particular, it provides for orders and regulations to be made by statutory instrument except where specified otherwise.
130. **Section 63(3)** and **(4)** require the Welsh Ministers to consult before exercising their power under section 51(power to amend implied terms) and section 60(4) (an order amending the figures relating to the dimensions of a mobile home mentioned in section 60(3)).
131. Subsections **(5)** to **(7)** set out the Assembly procedure to be applied in respect of various statutory instruments.

***Schedule 1 - Sites which are not regulated sites***

132. **Schedule 1** restates Schedule 1 of the 1960 Act setting out those sites that are exempt from a site licence, for example agricultural and forestry workers (paragraphs 7 and 8), building and engineering sites (paragraph 9) and travelling showmen (paragraph 10).
133. **Paragraph 12** provides for a temporary exemption after the death of the owner or change of ownership. In such cases, there is a 3 month "initial exempt period" from the requirement to have a site licence which the local authority may extend on application.

***Schedule 2 – terms of mobile homes agreements***

134. **Schedule 2** contains two Parts, the first dealing with terms implied by the Act, the second dealing with matters concerning which terms may be implied by the appropriate judicial body.
135. **Part 1** is set out in four Chapters. Chapter 1 sets out to which agreements the implied terms in each Chapter applies and provides definitions of terms common to all Chapters. Chapter 2 applies to all agreements except for local authority Gypsy and Traveller sites. Chapter 3 sets out the implied terms that apply to transit pitches of a local authority Gypsy and Traveller site and Chapter 4 sets out the implied terms that apply to permanent pitches of a local authority Gypsy and Traveller site.

## **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

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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.
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.



### ***Chapter 3 – Agreements relating to transit pitches on local authority Gypsy and Traveller sites***

157. Paragraphs 27 to 30 set out the terms in relation to duration and termination of agreements on local authority Gypsy and Traveller transit pitches. Agreements on these pitches can be terminated by the site owner with 4 weeks written notice. Where agreements are terminated, occupiers can claim back any overpayment of fees.
158. Paragraphs 31 and 32 set out that transit pitch occupiers have a right to quiet enjoyment of the pitch and establish rules when site owners can enter the pitch, but not the mobile home, with or without notice.
159. Paragraphs 33 and 34 set out the obligations on the owner to notify the residents of the address at which notices may be served on the owner, for the purposes of dealing with pitch fees and payments.

### ***Chapter 4 – Agreements relating to permanent pitches on gypsy and traveller sites***

160. Paragraphs 36 to 40 set out the terms in relation to duration and termination of agreements on local authority Gypsy and Traveller permanent pitches. Agreements on these pitches can be terminated by the occupier by giving 4 weeks notice. The owner can terminate the agreement by applying to the appropriate judicial body in certain circumstances.
161. Paragraphs 41 and 42 set out the limited right of assignment that will apply to pitch occupiers on these sites. Occupiers may assign their agreement to a family member, or exchange with other site occupiers with the approval of the site owner. If the owner declines to agree the assignment the occupier may apply to a tribunal for an order allowing the assignment.
162. Paragraph 44 sets out that if a permanent pitch needs to be re-sited by the site owner a suggested alternative pitch must be broadly comparable to the original pitch. Should the site owner need to carry out essential works that can only be carried out if the mobile home is moved, the site owner is liable to pay all the costs and expenses as a result of the mobile homes being moved due to works.
163. Paragraphs 45 and 46 set out that occupiers of these pitches have a right to quiet enjoyment of the pitch and sets out when a site owner may enter the pitch without giving notice. This does not extend to the mobile home.
164. Paragraphs 47 to 50 set out the procedure for calculating and changing the pitch fee. This includes when pitch fees are to be reviewed, including consultation, and the process for appeal by owner or occupier to the Residential Property Tribunal, should they disagree with the proposed pitch fee. The pitch fee review and presumption that pitch fees can be increased or decreased annually is based on the Consumer Prices Index.
165. Paragraph 51 sets out the occupier's obligations, including paying the pitch fee and keeping the mobile home in a sound state of repair.
166. Paragraph 52 sets out the owner's obligations, including undertaking repairs and maintenance, consulting site residents, and providing information.
167. Paragraphs 53 and 54 set out the obligations on the owner to notify the residents of the address at which notices may be served on the owner, for the purposes of dealing with pitch fees and payments.

### ***Part 2 – Matters concerning which terms may be implied by the appropriate judicial body***

168. Paragraphs 55 to 58 restate Part 2 of Schedule 1 to the 1983 Act and set out the terms which may be implied by "the appropriate judicial body". "The appropriate judicial body" is defined under section 55(1) of the Mobile Homes (Wales) Act 2013.

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***Schedule 3 – Further provision about orders relating to commons***

169. **Schedule 3** is introduced by section 57 and restates Schedule 2 of the 1960 Act. It makes further provisions about orders relating to commons.

***Schedule 4 – Consequential amendments***

170. **Schedule 4** contains consequential amendments to primary legislation.

***Schedule 5 – Transitional and transitory provisions and savings***

171. **Schedule 5** contains transitional, transitory provisions and savings. Paragraph 2 sets out the position whereby existing site licences issued under the 1960 Act which are in force on the coming into force of Part 2 of the Act will continue until the end of “the initial period,” i.e. the 6 month period starting with the day on which Part 2 comes into force.