

# **MOBILE HOMES ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Licensing*

##### *Section 1: Fees*

7. This section amends the CSCDA 1960 to allow local authorities to charge fees in relation to the licensing of “relevant protected sites” in England and to enable them to recover the costs incurred in operating licensing schemes. The definition of ‘relevant protected site’ is inserted into Part 1 of the CSCDA 1960 by subsections (3) and (7) of this section. A relevant protected site is a site requiring a licence other than one which is for holiday use only or is otherwise not capable of being used all year round. This is similar to the definition of a ‘protected site’ provided in the CSA 1968, although the definition of a ‘protected site’ includes local authority sites, which are excluded from the definition of a ‘relevant protected site’, as such sites are exempt from the licensing regime. New section 5A(6), inserted into the CSCDA 1960 by subsection (3) of this section, provides for the case where the planning permission or site licence for a site specifies that it is for holiday or seasonal use only, but there are also conditions which allow the occupier or an employee of the occupier (who does not occupy the caravan under an agreement to which the Mobile Homes Act 1983 applies), to live on the site all year round. These conditions are to be disregarded for the purpose of determining whether a site falls within the definition of ‘relevant protected site’.
8. Subsection (2) inserts subsections (2A) and (7) and (8) into section 3 of the CSCDA 1960. Subsection (2A) allows a local authority to require that an application for a site licence for land to be used as a relevant protected site is accompanied by a fee, the amount of which is fixed by the local authority.
9. Subsection (3) inserts section 5A of the CSCDA 1960. Section 5A applies to a site licence for a relevant protected site. This section provides that the local authority who issued the licence may fix an annual fee which they require the licence holder to pay and must inform the licence holder of the matters to which they have had regard when fixing the fee for the year in question, including in particular the extent to which they have taken account of deficits or surpluses from previous years. The provisions set out that where an annual fee under this section has become overdue, the local authority may apply to a residential property tribunal for an order requiring the licence holder to pay by the date and in the manner specified. Where a licence holder fails to comply with an order from the tribunal made under this section within 3 months, the local authority may apply to a residential property tribunal for an order revoking the site licence.
10. Subsection (4) inserts subsection (1B) into section 8 of the CSCDA 1960. This subsection provides that where the holder of a licence for a relevant protected site in England makes an application to alter the conditions attached to the licence, a local authority can require the application to be accompanied by a fee, which is fixed by the local authority.

*These notes refer to the Mobile Homes Act 2013 (c.14)  
which received Royal Assent on 26 March 2013*

11. Subsection (5) inserts subsection (1A) into section 10 of the CSCDA 1960. This subsection provides that where an application is made for consent to the transfer of a site licence of a relevant protected site in England, a local authority can require the application to be accompanied by a fee, which is fixed by the local authority.
12. Subsection (6) inserts section 10A into the CSCDA 1960. This section applies where a local authority proposes to exercise the power to charge a fee under section 3, 5A, 8 or 10 of the Act. Subsection (2) of section 10A provides that a local authority must prepare and publish a fees policy before charging any fee under these sections. The intention is that the new powers to charge fees will be used by local authorities in a way limited to recovering the costs of exercising their licensing functions as they relate to relevant protected sites. Subsection (3) requires local authorities to have regard to the fees policy but also enables them to grant exemptions from the fees and to set different fees in different cases. For example, a local authority may decide to provide an exemption for owners of small family sites that are not run for commercial gain. Subsection (4) sets out certain costs that the local authority may not take into account when fixing a fee for the purpose of this section. Subsection (5) provides that if the local authority propose to charge an annual fee under section 5A, the fees policy must include provision about the time at which any such fee is payable. Subsection (6) provides that the local authority may revise their fees policy, and where they do so they must publish their revised policy.
13. Subsection (8) inserts sub-paragraph (3) into paragraph 19 of Chapter 2 of Part 1 of Schedule 1 to the MHA 1983. Sub-paragraph (3) provides that for protected sites in England, when determining the amount of the new pitch fee, no regard may be had to any fees paid by the site owner to accompany an application for site licence conditions to be altered or an application for consent to transfer a site licence. However, site owners will be able to recover the cost of the annual licence fee through the pitch fee review, by adding this to the pitch fee in the first year that the licence fee is introduced. The cost of the licence fee will then remain part of the pitch fee and any subsequent RPI increases will be applied to it.

***Section 2: Local authority discretion on application to issue or transfer licence***

14. **Section 2** amends sections 3 (issue of site licences by local authorities) and 10 (transfer of site licences, and transmission on death, etc) of the CSCDA 1960. The effect of the amendments to subsections (4) and (5) of section 3 made by subsection (1) of section 2 is to confer discretion on a local authority when deciding whether to issue a site licence to the occupier of land who has made an application for a site licence authorising the use of that land as a relevant protected site under section 3(1). Currently, as long as the applicant can show that the necessary planning permission for use of the land as a caravan site has been granted and has provided the required information, the local authority has no option but to issue the licence. New subsections (5A) to (5F) of section 3, inserted by subsection (2) of this clause, confer a power on the Secretary of State to make regulations (subject to the negative resolution procedure) that:
  - require a local authority, where they have the new discretion not to issue a licence, to have regard to the matters prescribed in the regulations when deciding whether to issue one;
  - require a local authority, where it decides not to issue a licence, to notify the applicant of the reasons for that decision;
  - confer on an applicant a right of appeal to a residential property tribunal against a decision of a local authority not to issue a site licence;
  - provide that no compensation may be claimed by the applicant for loss suffered in consequence of the decision pending the outcome of an appeal.
15. Subsection (3) of section 2 inserts new subsections (1B) to (1F) into section 10 of the CSCDA 1960 – section 10 makes provision about the transfer of site licences with the

consent of the relevant local authority where a licence holder ceases to occupy the land. New subsection (1B) confers a power on the Secretary of State to make provision in regulations requiring the person applying for the transfer of a licence for a relevant protected site to provide the local authority with such information as it may require. Under new subsections (1C) to (1F) the regulations may also make provision equivalent to that which may be made in relation to the issue of site licences under new subsections (5A) to (5F) of section 3 as set out above. Subsection (4) of section 2 of the Act amends subsection (3) of section 10 of the CSCDA 1960 so that that subsection will no longer apply where the application concerned relates to a relevant protected site. This is consequential on the amendments to section 3 of the CSCDA 1960 made by section 2 of the Act.

### ***Section 3: Site licence conditions: appeals***

16. This section amends sections 7 and 8 of the CSCDA 1960, to provide that where a person appeals against a condition attached to a site licence under these sections, where the site in question is in England, the appeal shall be brought to a residential property tribunal, rather than a magistrates' court. It also inserts subsection (1A) into section 7 of the CSCDA 1960, which provides that where a residential property tribunal varies or cancels a site licence condition under this section, it may also attach a new condition to the licence in question.

### ***Section 4: Compliance notices***

17. This section amends section 9 of the CSCDA 1960 so that it applies only to sites other than relevant protected sites in England. New sections 9A to 9C are introduced into the Act to replace the provisions of section 9 for relevant protected sites in England.
18. Section 9A deals with the breach of a licence condition in relation to a relevant protected site in England. Under the existing provisions in section 9 of the CSCDA 1960, an occupier of land who fails to comply with a site licence condition is guilty of an offence. However, new section 9A provides that where it appears to a local authority that an occupier is failing to comply with a licence condition, the local authority may serve a compliance notice on the occupier, which contains the information specified in subsection (2) of section 9A, including the steps that the occupier must take to ensure that the licence condition is complied with. The new provisions provide the occupier with a right of appeal against the compliance notice to a residential property tribunal. They also provide the local authority with power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This power is exercisable by the local authority on an application made by the occupier on whom the notice was served or on the local authority's own initiative.
19. Section 9B sets out that an occupier of land who has been served with a compliance notice which has become operative under section 9H, is guilty of an offence if he fails to take the steps specified in the notice within the period provided. Subsection (2) sets out the penalty that applies where a person is guilty of the offence. Subsection (3) provides a defence, where an occupier had reasonable excuse for failing to take the steps set out in the notice within the time period specified. Subsections (4) and (5) set out the circumstances in which a local authority can make an application to court for an occupier's site licence to be revoked. These provisions essentially replicate the existing provisions in section 9 of the CSCDA 1960 dealing with multiple offences and the revocation of the site licence, which set out that where an occupier has two or more previous convictions for breach of a licence condition, the local authority can make an application to the court which convicted the occupier, for the site licence to be revoked.
20. Section 9C provides the power to demand expenses where a compliance notice has been served under section 9A. Subsection (1) sets out that where a local authority serves a compliance notice on an occupier of land, the local authority may impose a charge on the occupier as a means of recovering the expenses they have incurred in

relation to this. Subsection (2) provides further information about what the expenses may include. Subsection (3) specifies that a local authority's power to recover expenses under subsection (1) is exercised by serving the compliance notice together with a demand, setting out the information specified in paragraphs (a) to (c) of this subsection. Subsection (4) sets out the orders which the tribunal may make about an expenses demand where it allows an appeal against the underlying compliance notice.

***Section 5: Powers for local authority to carry out works***

21. This section inserts new sections 9D to 9F into the CSCDA 1960, which provide local authorities with the power to carry out works on a site in certain situations.
22. Section 9D provides local authorities with the power to take action following the conviction of an occupier. Under the new provisions, where an occupier of a relevant protected site in England is convicted of the offence of failing to comply with the steps specified in a compliance notice, the local authority who issued the notice may take the actions specified in paragraphs (a) and (b) of subsection (1). The provisions set out that where a local authority proposes to take action under this section, they must serve a notice on the occupier of the land which contains the information set out in paragraphs (a) to (e) of subsection (2). Subsection (3) provides that the notice must be served sufficiently in advance of the intended entry to the site as to give the occupier reasonable notice. As section 26(1) of the CSCDA 1960 sets out that 24 hours notice of an intended entry must be given to the occupier, this would be the minimum amount of notice that could be given, but depending on the circumstances, it may be reasonable to provide additional notice. Subsection (4) provides that where a local authority authorises a person other than an officer of the local authority to take action on their behalf, this person shall be treated as being an authorised officer under section 26(1) of the CSCDA 1960, and so will be able to exercise a right of entry to the land. Subsection (5) sets out that the 24 hour notice requirement in section 26(1) only applies in relation to the day on which the local authority intend to start taking action on the land, which 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.
23. Section 9E provides a local authority with power to take emergency action in certain situations in relation to land in England which is a relevant protected site. Subsection (2) provides that the action which may be taken by the local authority is 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. The provisions set out that where a local authority proposes to take emergency action under this section, the authority must serve on the occupier a notice containing certain specified information, and this notice may state that the local authority would apply for a warrant under section 26(2) of the CSCDA 1960, if entry onto the land is refused. The notice must be served sufficiently in advance of the intended entry as to give the occupier of the land reasonable notice. Subsection (6) provides that where a local authority authorises a person other than an officer of the local authority to take action on their behalf, this person shall be treated as being an authorised officer under section 26(1) of the CSCDA 1960, and so will be able to exercise a right of entry to the land. Subsection (7) sets out that the requirement in section 26(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, set out in section 26(1), also does not apply here. The provisions set out that the local authority must serve a further notice on the occupier within seven days of starting to take emergency action, which contains certain specified information. The occupier 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.
24. Section 9F provides local authorities with the power to demand expenses where action has been taken under section 9D or 9E. Subsection (1) provides that where a local

authority has taken such action, they may impose a charge on the occupier of the land as a means of recovering expenses incurred by them in taking the steps set out in paragraphs (a) to (c). Subsections (4) and (5) set out the time when a charge may be imposed in respect of emergency action, which is dependent upon whether an appeal is brought. Subsection (6) sets out that the power to impose a charge under subsection (1) is exercisable by serving on the occupier a demand for the expenses that the local authority seeks to recover, in the time period specified in subsection (8). Subsection (7) provides that an occupier of land who is served with a demand under this section may appeal to a residential property tribunal against this demand.

### ***Section 6: Sections 4 and 5: appeals, operative periods, recovery of expenses***

25. This section inserts sections 9G, 9H and 9I into the CSCDA 1960. Section 9G deals with appeals brought under section 9A, 9E or 9F. 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 (defined in subsection (2)) was served. 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. An appeal brought under these sections is to be by way of a rehearing but may be determined having regard to matters of which the local authority who made the decision were unaware. Subsection (5) sets out the order-making powers of the tribunal.
26. Section 9H deals with when a compliance notice or expenses demand becomes operative. Subsection (2) provides that where no appeal is brought within the appeal period against a compliance notice, both the notice and any accompanying demand under section 9C become operative at the end of that period. (An occupier commits an offence under new section 9B if he fails to take the steps specified in a compliance notice which has become operative.) Subsection (3) similarly provides that a demand under section 9F becomes operative, in a case where there is no appeal made against it, at the end of the appeal period. Subsections (4) to (6) deal with cases where an appeal is brought, and set out the point at which a compliance notice (and any accompanying section 9C demand) or a demand under section 9F become operative where a decision on the appeal is given which confirms the notice or section 9F demand.
27. Section 9I deals with the recovery of expenses demanded under section 9C or 9F. Subsection (1) provides that from the time when a demand under section 9C or 9F becomes operative, the relevant expenses set out in the demand carry interest at a rate fixed by the local authority, until all sums due under the demand are recovered. The expenses and any interest are recoverable as a debt. 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. Subsection (3) sets out that the charge takes effect at that time as a legal charge which is a local land charge. Subsection (4) sets out that the local authority can rely on certain powers and remedies set out in the Law of Property Act 1925. Subsection (5) sets out when the power of appointing a receiver is exercisable.

### ***Section 7: Residential property tribunals: jurisdiction under the 1960 Act***

28. This section inserts subsection (5ZA) into section 230 of the Housing Act 2004, which sets out certain directions which may be given by a residential property tribunal when exercising jurisdiction under the CSCDA 1960. It also amends Schedule 13 to the Housing Act 2004 to make appropriate references to the CSCDA 1960. The effect of this section is to make the changes needed to the provisions of the Housing Act 2004 which deal with the general powers and procedure of residential property tribunals as a result of the fact that the Mobile Homes Act 2013 confers new jurisdiction on them under the CSCDA 1960.