



## Mobile (Park) homes

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This note outlines the law governing residential mobile homes, also known as park homes. People living in park homes normally own their home and rent the land it stands on from the site owner (paying a 'pitch fee'). The *Housing Act 2004* implemented a number of the recommendations of the Park Homes Working Party. Further proposals to amend the law governing park homes were set out in two Government documents *Implied Terms and Written Statements for Park Homes: consultation summary of responses* (February 2005) and *Park Homes Site Licensing Proposals for Reform: Summary of Responses* (July 2005). Regulations to implement changes to the implied terms came into force on 1 October 2006.

The Labour Government consulted on changes to the maximum rate of commission that site owners can charge on the sale of a park home in May 2006 and issued a decision in March 2007.

In May 2009 the Labour Government published [Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation](#) which built on the 2005 consultation and considered how a new licensing system might look (consultation closed on 4 August 2009). The then Government said that its aim was to put in place a comprehensive package of proposals to reform the site licensing system. A further paper was published on 30 March 2010 which set out options for improving the management of park home sites [Park homes site licensing reform: The way forward and next steps](#). These measures were not implemented prior to the 2010 General Election.

A proposal to transfer the jurisdiction on appeals and applications under the 1983 Act from county courts to Residential Property Tribunals was due, subject to the necessary Parliamentary consent, to be brought into force on 6 April 2010. This did not happen before Parliament was dissolved for the General Election but on 16 December 2010 Andrew Stunell confirmed that the Coalition Government intended, subject to parliamentary approval, to transfer jurisdiction for the settlement of most disputes under the 1983 Act to the Residential Property Tribunal Service. Regulations to achieve this were laid on 31 January and will come into force on 30 April 2011. The Coalition Government has said it intends to consult on new measures to modernise the licensing of caravan and park home sites "in the spring."

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**1 The governing legislation**

**1.1 The Caravan Sites and Control of Development Act 1960**

Three statutes currently regulate mobile home occupation. The *Caravan Sites and Control of Development Act 1960* requires that site owners obtain a site licence from the local authority before any land may be used as a caravan site. Local authorities have powers to impose conditions in site licences and enforce them if they are breached. The types of conditions that authorities may impose relate to the number of caravans allowed on the site, the spacing between the vans and the provision of amenities on the site. In attaching conditions to the licence local authorities will seek to ensure that general standards of environmental health are maintained.

**1.2 The Caravan Sites Act 1968**

The *Caravan Sites Act 1968* gave basic protection to all mobile home occupiers living on protected sites; i.e. on land for which the owner has planning permission and is entitled to obtain a site licence. The Act prevented site owners from evicting occupiers with residential contracts other than by obtaining a court order.

The 1960 Act and this Act also contain the legal definition of a caravan. In August 2005 the Office of the Deputy Prime Minister (ODPM) issued a consultation paper on proposals to amend the dimensions of a caravan on the following grounds:

So far as the law is concerned, a park/mobile home, a caravan holiday home, touring caravan or Gypsy and Traveller home are all capable of coming within the legal definition of a caravan provided they retain the element of mobility. Mobility, in this context, means that the caravan must be capable of being moved when assembled from one place to another. This means that it cannot be fixed to the ground. Permanent works, such as a large porch or extension, which fix the caravan to the ground could mean that a caravan no longer comes within the legal definition of a caravan and could as a consequence be treated as a building. This could have serious planning, legal and contract implications for site owners and residents alike such as residents of park homes not having protection under the Mobile Home Act 1983.<sup>1</sup>

A summary of responses to the consultation paper and the then Government's recommendations were published in January 2006:

It is clear that the recommendation made in the consultation document has wide support from all sectors of the industry. As outlined above, there are some concerns surrounding the impact on separation spaces between caravans. We are currently consulting on the model standards, which form the best practice for local authorities' site licences. These will cover the issue of separation distances between homes in greater detail and we would welcome any further comments regarding the separation distances between homes in that consultation. The consultation also includes matters relating to fire safety, which was another matter raised in some consultation responses.

Given the overall broad support for the proposal contained in the consultation document, we will prepare a Statutory Instrument to be laid before Parliament to amend the maximum dimensions of a caravan to those proposed in the paper. This will be laid before Parliament in due course.

Guidance with regard to the proposals will be published prior to the amendment coming into force, and will be incorporated in the guidance to support the revision of the model standards.<sup>2</sup>

*The Social Landlords (Permissible Additional Purposes) (England) Order 2006 (Definition of Caravan) (Amendment) (England) Order 2006* (SI 2006/2374) implemented this change on 1 October 2006.

### **1.3 The Mobile Homes Act 1983**

*The Mobile Homes Act 1983* went further than the 1968 Act and gave security of tenure to residents of mobile home sites who own the home in which they live and rent the pitch from the site owner. As with the 1968 Act, the 1983 Act only covers owners and occupiers of protected sites.

While the *Mobile Homes Act* extended the rights of mobile home residents, particularly in respect of security of tenure, various short-comings in its provisions were identified leading to calls for its review and amendment. The Department of the Environment, Transport and the Regions established a Park Homes Working Group in 1998 with a view to reviewing a number

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<sup>1</sup> ODPM, *Amending the definition of a caravan*, August 2005

<sup>2</sup> *Amending the definition of a caravan: consultation response*, January 2006, <http://www.communities.gov.uk/archived/publications/housing/iamending>

of issues relating to mobile homes.<sup>3</sup> The report of the Working Party was published on 12 July 2000. The Labour Government took comments on the report's conclusions up to 30 October 2000 and, in the interim, issued good practice guidance for residents and park owners on harassment and site licensing.<sup>4</sup>

The then Government's response to the Working Group's recommendations was published on 29 November 2001.<sup>5</sup> Some, but not all, of the short-comings identified by the Working Group were addressed by the *Housing Act 2004*.

## 2 Does The 1977 Rent Act or The Housing Act 1988 apply?

In certain circumstances mobile home owners may be able to argue that they have the added protection of either the *1977 Rent Act* or the *Housing Act 1988* (depending on whether they entered into their agreements before or after 15 January 1989).<sup>6</sup> In order for one of these Acts to apply they must show that:

- 1) they have a tenancy rather than a licence; and
- 2) the mobile home can be defined as a dwelling house.

Case law has established that there is no reason in law why a mobile home should not be defined as a dwelling house; however, it will depend on the circumstances of each case. In *R v Rent Officer of Nottingham Registration Area ex parte Allen*<sup>7</sup> it was held that the permanency of the mobile home was the crucial factor.

The advantages offered by establishing that either of these Acts applies are that it will be more difficult for the site owner to make a mobile home owner leave the site. In addition, home owners will be in a stronger position to argue for repairs to be done and there may be some restrictions over the level of rent charged by the site owner.

## 3 The rights of mobile home owners

### 3.1 Written statements

The central feature of the 1983 Act is the requirement on the site owner to serve a written statement on the occupier containing the express and implied terms of the agreement. The *2004 Housing Act* amended the duty to provide this written statement<sup>8</sup> so that since 18 January 2005 site owners have been required to issue a written statement of terms to prospective occupiers 28 days before any agreement for the sale of a mobile home is made or, if there is no such agreement, not later than 28 days before the occupation agreement is entered into. The parties can agree a shorter period than 28 days between themselves but the prospective occupier must indicate their consent in writing to the specified shorter time-scale. The aim of this provision is to ensure that potential park home occupiers are made aware of the terms under which they will occupy the site before taking up occupation.

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<sup>3</sup> HC Deb 13 April 1999 c78W

<sup>4</sup> DETR Housing Research Summary No. 129, 2000

<sup>5</sup> DTLR, *Government Response to the Recommendations of the Park Homes Working Party*. The full report can be viewed online at:

<http://www.communities.gov.uk/publications/housing/203188>

<sup>6</sup> The date on which Part I of the 1988 Act came into force.

<sup>7</sup> QBD [1985] 17 HLR 481

<sup>8</sup> Section 206 of the *2004 Housing Act*

In order to give site owners an incentive to comply with the duty to provide a written statement, the express terms of the agreement (that is, terms specific to the park which are not implied into the agreement by the *Mobile Homes Act 1983*) are not enforceable at the suit of the site owner. The express terms remain enforceable at the suit of the occupier, so if they would work in his/her favour, s/he can enforce them against the site owner.

In the event of the owner failing to produce a written statement, the occupier may apply to the court at any time for an order requiring the owner to produce the written statement. There is also provision for either party to apply to the courts to have an express term reinstated into an agreement. This is to ensure that agreements which are defective in important respects can be remedied by the court.

The content of the written statement is governed by sections 1(2), 2(1) and (2) and Schedule 1 to the 1983 Act (as amended). The implied terms, which are incorporated by statute into agreements between site and mobile home owners, cover such issues as the home owner's indefinite right to live in his home on the site unless the agreement is validly terminated by either party, the circumstances in which a valid termination of the agreement may take place, the occupier's right to sell, or give the mobile home to a person approved by the site owner, and the rules regarding succession as they apply to owners and occupiers.

Section 208 of the 2004 Act gave the Secretary of State power to add additional terms that will be implied into agreements and power to repeal and vary the existing implied terms in the 1983 Act. Provision was made for the first exercise of this power to have retrospective effect. Future exercises of the power will be non-retrospective. A consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, was published by the ODPM (now the Department for Communities and Local Government, CLG) in July 2004.<sup>9</sup> A summary of responses to the consultation exercise was subsequently published in February 2005.<sup>10</sup> Draft regulations to amend the implied terms were considered by the Ninth Standing Committee on Delegated Legislation on 22 June 2006<sup>11</sup> and the Lords Grand Committee on 19 June 2006.<sup>12</sup> The Regulations were approved and came into force on 1 October 2006.<sup>13</sup>

CLG has produced a fact-sheet for park home owners outlining what the changes to the implied terms mean to them, it can be accessed online at:

[Park Homes Factsheet 2: Implied Terms Amendments - What it means to you](#)

The written statement will also include "express terms" which are individually negotiated between the owner and the occupier. The express terms usually cover such areas as the annual review of the pitch fee and other payments required from the occupier, the occupier's obligation to keep the home in a decent state of repair and the obligation on the site owner to maintain the park and its facilities. The parties can include whatever terms they like in the express terms as long as they do not conflict with any of the statutory implied terms. There is no requirement that the statement be signed or witnessed.

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<sup>9</sup> The paper is accessible online at:

<http://www.communities.gov.uk/archived/publications/housing/parkhomestatutory>

<sup>10</sup> *Implied Terms and Written Statements for Park Homes: consultation summary of responses*, February 2005, <http://www.communities.gov.uk/archived/publications/housing/parkhomestatutory>

<sup>11</sup> Ninth Standing Committee on Delegated Legislation, 22 June 2006: the proceedings of the Committee can be located online at: [www.publications.parliament.uk/pa/cm200506/cmstand/deleg9/st060622/60622s01.htm](http://www.publications.parliament.uk/pa/cm200506/cmstand/deleg9/st060622/60622s01.htm)

<sup>12</sup> GC 19 June 2006 cc90-103: the proceedings of the Grand Committee can be located online at: [www.publications.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds06/text/60619-41.htm](http://www.publications.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds06/text/60619-41.htm)

<sup>13</sup> *The Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006* (SI 2006/1755)

General guidance on express and implied terms can be found in the CLG fact-sheet [Park Home Fact Sheet: Residents' rights and obligations](#) (April 2009).

### 3.2 Pitch fees

One of the main complaints made about the 1983 Act is that it gave mobile home owners insufficient rights over increases in pitch fees demanded by site owners. The rate of increase is one of the *express* terms in the mobile home agreement; once the terms have been agreed they become binding on both parties. Many site owners use a standard agreement drawn up by the National Federation of Site Operators which contains a pitch fee review clause that takes into account such factors as the Retail Price Index (RPI) and sums expended by the owner on the upkeep of the park. Although the parties should take the factors in the review clause into account and then agree upon a reasonable increase, in practice it seems that site owners are more likely to serve a notice of pitch fee increase to each occupier. A survey of mobile home and site owners carried out on behalf of the Department of the Environment (DoE) over 1990/91 found that over one third (36%) of owners/managers stated that residents were consulted about pitch fee increases compared with 3% of residents who said they had been asked about their views over the most recent increase prior to its implementation.<sup>14</sup> Disputes over pitch fee increases tend to arise because occupiers feel that the owner has done nothing to warrant an increase or because the increase is above the RPI.<sup>15</sup>

Shelter's Mobile Homes Unit, which is now disbanded, produced a report on the operation of the 1983 Act which noted a number of weaknesses in the legislation and set out some detailed recommendations for changes including having pitch fee levels fixed by rent officers, the development of an effective system of arbitration and greater duties on local authorities to inspect unfit housing on mobile homes sites.<sup>16</sup>

In relation to pitch fees, the Park Homes Working Group recommended that the Government should commission an independent study into the economics of the park homes industry which, *inter alia*, should 'identify the principles on which pitch fees are set and reviewed.' The Labour Government commissioned Berkeley Hanover Consulting to carry out the study in January 2001; their findings, *Economics of the Park Homes Industry*, were published on 29 October 2002.<sup>17</sup> The then Government said it would consider the position on pitch fees in the light of its findings.

The study considered site owners' revenue, costs and the profits involved in running a mobile home site: the researchers concluded that "the evidence did not support the idea of excessive profits in the sector as a whole." From the home owners' point of view it was noted that, at entry, prospective residents in theory have full knowledge of the capital sum they must pay for the home, the pitch fees over the life of the agreement, and the obligation to pay a commission if the unit is sold. However, the researchers identified several respects in which park home transactions may in fact not operate as a perfectly flexible, fair and transparent market. In relation to pitch fees the study found:

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<sup>14</sup> DoE *Mobile Homes Survey*, 1992 para 379

<sup>15</sup> *ibid* para 386

<sup>16</sup> *Its not what we expected*, 1988

<sup>17</sup> *Economics of the park home industry*, a summary is available online at: <http://www.communities.gov.uk/archived/publications/housing/economics>; (Housing Research Summary No.173, 2002)

Fourthly, while agreements normally make provision for pitch fee increases (and in the case of agreements made using the industry's standard agreement the implication is that increases should follow inflation), in practice above-inflation increases or one-off charges may be levied to cover particular items. Residents who object to such increases cannot exit from the contract easily, and recourse to the courts or arbitration to settle a dispute is likely to be time-consuming and expensive (especially as related to the amount of money in question).

The researchers concluded that some factors presented more of a case for intervention than others. A note of caution was also sounded:

Given that operators rely on all three elements of income (sales of new home, pitch fees and commission on resales), intervention in any aspect which would affect the flow of any of these elements would have to be considered carefully, as to an extent the park home 'product' is defined by its payment mechanism.

The researchers found that there might be a case for hypothecating an agreed percentage of the pitch fees payable to a 'sinking fund' for repairs and maintenance. This arrangement would be akin to that already found in many leasehold blocks of flats.

No specific measures in relation to pitch fees were included in the 2004 Act but in the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, the ODPM did set out proposals to amend the terms implied into written statements by the 1983 Act including some specific provisions in relation to pitch fees. The proposed changes met with a mixed response from park home owners and site owners and the Government, in response, amended some of its proposals.<sup>18</sup> The CLG *Park Home Fact Sheet: Pitch fees and other payments to the site owner* (updated in April 2009) gives basic guidance for mobile home owners and provides an explanation of the new pitch fee review procedure that came into force on 1 October 2006.

### **3.3 Selling mobile homes**

General guidance can be found in the CLG fact-sheet, *Park Home Fact Sheet: Selling a park home* (updated April 2009).

#### ***The site owner's approval of prospective purchasers***

An area that causes occupiers considerable concern is the problems they face when site owners try to block their right to sell to a third party. The 1983 Act gave mobile home owners the right to sell; however, Shelter's Mobile Homes Unit found that a number of site owners would serve notice to terminate agreements on the basis that the home "is having a detrimental effect on the amenity of the site" and use this as a way of persuading occupiers to sell to them at a knock down price. Site owners have also claimed that occupiers cannot sell as their agreements are coming to an end (agreements are indefinite) and have refused to accept prospective purchasers. The DoE survey found that over a quarter of respondents anticipated some problem when they come to sell their homes and 51% of these anticipated problems because of the park owner. Shelter's 1988 report explained the incentive to site owners to try to block sales:

It is worth explaining at this point why some site owners behave the way they do. The kind of problems described above frequently occur on parks which are in the process of being developed. This means that the site owner is trying to get older homes off

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<sup>18</sup> See *Implied Terms and Written Statements for Park Homes: consultation summary of responses*, February 2005: <http://www.communities.gov.uk/archived/publications/housing/parkhomestatutory>

with the intention of putting on new, usually twin, units. Apart from wanting to improve the look of the park, the reason for this is obvious. The site owner acts for the manufacturer and obtains a large discount on sale. Furthermore, the site owner will also charge what is known as a siting fee. This is partly to pay for transporting the home to the site and connecting it to the mains service, but is also a means whereby the site owner can, in effect, charge a market price for the home. The siting fee can easily be £10,000 or more. It is likely to be higher in areas where house prices are higher.

Park Homes Working Group recommended that a site owner's approval to a proposed sale of a park home should be deemed to have been given unless s/he expressly withholds it in writing within a set period provided the home owner has given proper notice of the sale. The Group said that the onus should be on the park owner to show that a disposal is unacceptable or should be required to prove to a court that a purchaser is unacceptable before a sale can be prevented.

The Labour Government acted on this recommendation. Section 207 of the 2004 Act introduced (with effect from 18 January 2005) a contractual duty on the site owner to give approval to a prospective purchaser within a time limit of 28 days unless it is reasonable not to do so. If the site owner does not issue a decision within 28 days, or withholds approval unreasonably, then the occupier can apply to the court and seek damages for breach of contract. The occupier can also seek an order from the court declaring that the prospective purchaser is approved.

The Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006, which came into force on 1 October 2006, provides:

Paragraph 8, which concerns the sale of the mobile home, has been amended so as to remove the owner's right to attach conditions to their approval of the purchaser and so that the only factor they can take into account is the suitability of the incoming resident. This has also been amended to make it clear that only commission is payable on the sale and that they cannot claim any other payment.<sup>19</sup>

The changes made by the 2004 Act in regard to park home sales have, according to the Park Home Residents Action Alliance (PHRAA) made the situation worse for park home owners. Eleanor Laing MP outlined the problem during the debate on the *Draft Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006* which took place on 22 June 2006.<sup>20</sup>

Residents' right to have an unhindered sale process is not entrenched in the legislation before us. The Park Home Residents Action Alliance has done research on the issue. It says that, at first glance, the amendment does not, as I said, allow the park home owner unreasonably to withhold his consent to the sale of a mobile home by one person to another. However, the alliance continues:

"this amendment appears to be an improvement, but in practice it has created a gaping loophole which the unscrupulous park owners are already using to prevent homeowners from selling and could have the effect, if taken to the extreme, of preventing every park homeowner in the country from selling their homes except to the park owner for whatever price he is prepared to pay."

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<sup>19</sup> <http://www.communities.gov.uk/publications/housing/parkhomesimplified>

<sup>20</sup> SC Deb 22 June 2006 cc3-20

I raise the issue because I know of such an instance in my constituency, although I shall not mention the exact instance, in case it becomes sub-judice at some point, in which case it would have been quite wrong for me to pre-empt matters by mentioning the case here.

A home owner who puts his home on the market and obtains a prospective buyer must inform the park owner in writing of the prospective buyer's details so that the park owner can approve the prospective buyer. The park owner may then contact the prospective buyer by telephone and verbally claim that all sorts of faults exist with the home or suggest other things to put the prospective buyer off buying the mobile home. I have known that to happen, and I can think of a person in my constituency who, at this very moment, cannot get a reasonable price for their mobile home because the park owner is interfering in the sale process. I appreciate that the way in which the order is drafted is meant to correct the balance, and it does go some way towards doing so, but those of us who are aware of what is happening would be wrong not to raise the issue this afternoon, even though the Minister cannot take direct action to deal with it. That, however, puts the matter firmly and properly on the record.

Under the new law, the home owner must undertake that procedure each time he has a prospective buyer, so the process could conceivably go on for years, until the home owner finally has to accept the park owner's offer to buy the mobile home—usually at a much reduced price. In the instance to which I referred, the price offered by the park owner is about 25 per cent. of the real value of the mobile home, which is blatantly unfair. I simply want to ensure that the Minister is aware of that.

Park Home Legal Services Ltd. has drawn to my attention the fact that, although existing legislation, as amended by the Housing Act 2004, which this statutory instrument amends, provides a procedure for the home owner to serve on the park owner a notice to the effect that they are desirous of selling their home to another person, with that notice, they must seek the park owner's approval of the sale to the stated person, and the park owner's permission must not be unreasonably withheld. On the face of it, the Committee will undoubtedly think that it is a good piece of legislation. However, that instance is similar to the one that I have just outlined, in which the park owner upon receipt of the notice has 28 days in which to respond.

The Government clearly believe that introducing the order is enough to prevent abuse by park owners blocking sales. However, because the legislation requires an express commitment from the park owner, it creates a new problem. The point at which a park owner communicates with a prospective purchaser to consider approval of that person prior to the sale of the mobile home will, as I have outlined, provide an opportunity for the abuse to continue.<sup>21</sup>

Meg Munn, then Under-Secretary of State for Communities and Local Government responded thus:

The hon. Lady mentioned owners' interference in the sale of mobile homes. We understand that some park owners seek to put off potential purchasers by speaking to them and misleading them about the state of the home. There is nothing in the implied terms that allows the park owner to contact a potential purchaser to deter them. As the new implied terms fact sheet states, the only factor that owners may take into account is the suitability of the incoming resident. Any express terms limiting rights are overridden by the implied terms.

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<sup>21</sup> SC Deb 22 June 2006 cc7-8

Contractual terms prohibiting an owner from contacting a prospective buyer are contrary to policy. We have difficulties with limiting park owners' rights to speak to potential residents because it could prove counter-effective. Hon. Members will be aware that an incoming resident might know little about the market that they are entering, and a park owner can legitimately tell them something that might affect their decision. We do not want to stop contact between park owners and potential residents if the information given is truthful. That could be better dealt with by guidance.

...**Meg Munn:** I understand the hon. Lady's point, but there is a difficulty, in that good and reputable site owners, of whom there are many, have legitimate reasons for wanting to be in contact. That contact should be productive. We had to consider the right way to deal with the problem. This is the position that we came to. It is a difficult issue. It would, we understand, be difficult for occupiers to take proceedings, and it would be difficult to prove the behaviour.

Under section 3 of the Caravan Sites Act 1968, it is an offence for the owner to act in a way likely to make occupiers refrain from exercising a right under the agreement. Under the agreement, the occupier has the right to sell their mobile home to a person approved by the owner. That already goes further than other legislation. It works well in leasehold situations, but I appreciate the concerns that the hon. Lady raised. We will continue to keep the matter under examination and review. We intend to issue guidance.<sup>22</sup>

### **Commission on sales**

A further contentious issue is that site owners are entitled to claim commission of up to 10% of the sale price of mobile homes on their sites. The general justification for this charge is that what is sold is an amalgam of the value of the mobile home and the value of the site on which it is placed. Shelter's report contains a short section on commission charges:

It is worth mentioning that the payment of up to 10% commission to a site owner is frequently objected to by many mobile home owners. They argue that as a site owner does nothing to earn this commission, they do not see why s/he should get it. This argument is even stronger when occupiers have increased the value of the home by adding porches, brick skirts, etc at their own expense.

The site owner's response to this argument is to accept that they do nothing for the money but that this is part of the income, along with pitch fees and selling new mobile homes, that they have always expected to receive to make the businesses viable. They say that if the commission was reduced or abolished, then they would have to increase pitch fees accordingly to make up the difference. It is certainly true that there is some evidence that this did happen when commission was reduced from 15% to 10% in 1983.

Shelter did not recommend the abolition of commission.

The DoE's survey noted that commission charges emerged as an issue on which there were fundamental disagreements between park owners and residents:

Park owners argued strongly that the retention of commission at its current level was essential for the continued viability of the trade, and that reduction or removal would lead to greater pressure on pitch levels or greater pressure towards sales through the

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<sup>22</sup> SC Deb 22 June 2006 cc16-17

park owner. Many residents, however, saw commission as a payment totally unearned and undeserved by the park owner.<sup>23</sup>

The DoE survey found that park owners see commission on sales as a vital part of their income and are concerned that the percentage should not be reduced any further. Over half the mobile home owners in the survey thought the payment of commission to be unfair or "disgusting".<sup>24</sup>

As noted above, the Park Homes Working Group recommended that the Government should commission an independent study into the economics of the park homes industry 'to identify the maximum level of commission to be set and give clarification of the items to be included in the calculation of the commission.' Berkeley Hanover Consulting was commissioned to carry out the study in January 2001; their findings, *Economics of the Park Homes Industry*, were published on 29 October 2002. Berkeley Hanover found "evidence did not support the idea of excessive profits in the sector as a whole" but the researchers identified several respects in which park home transactions may in fact not operate as a perfectly flexible, fair and transparent market:

Firstly, there is evidence that overall demand outstrips supply: questioned about physical and regulatory limits to expansion, only 7% of operators said that they had space on which further homes could be added but that they did not wish to do so. However, given that over 50% of parks are owned by operators running only one park, and only one operator runs over 25 parks, the industry is far from being a monopoly.

Secondly, 14-18% of more recently arrived residents believed the obligation to pay commission was not (or may not have been) made clear to them. On face value this might not seem a problem for the 80% who did not intend to move off the park in future in any case. But the fact that 58% had acquired their homes directly or indirectly through a previous resident suggests a mismatch between intention and reality, where a lack of information is likely to impose a hidden cost.

Thirdly, there is a perception that operators may harass residents into abandoning the park. The resident may lose out through being forced to sell the unit at a submarket price to the operator (who then either resells it at a profit or redevelops the pitch with a new home). Or he/she sells it at a market price on which the operator receives commission. While only 7% of residents reported having experienced pressures to leave in this way themselves – and by definition some who had experienced such pressure would have left the park so would have been unable to participate in the survey – 43% said they were aware of other residents on the park experiencing pressure to leave.

Finally, operators effectively block the sale of new units by manufacturers direct to residents (the sited price of a new home is substantially higher than the price the operator pays the manufacturer). In addition, manufacturers report that operator pressure prevents them from offering a refurbishment service.

The study outlined three potential avenues for reform, the consequences of which are based on total profits to operators remaining the same:

**Reduce or eliminate the commission** Simply decreasing or eliminating the maximum commission outright would mean that operators would have to increase prices elsewhere. Although the researchers assumed that this would come wholly from

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<sup>23</sup> DoE *Mobile Homes Survey*, 1992, para 694

<sup>24</sup> *ibid* paras 616-618

increasing pitch fees, some or all of the shortfall could be met through the price of new units (assuming that the trend for the value of park homes relative to bricks and mortar housing to rise over time will continue). If commission was abolished, pitch fees would rise by 20-32%. This might impact on the attractiveness of this form of tenure.

**Sliding scale of commission related to length of stay** Although the researchers acknowledged that the current structure of commission – under which the same proportion is payable every time the unit changes hands – could provide an incentive for operators to ‘encourage’ their residents to leave, the researchers did not calculate in detail the option of relating the rate of commission to the resident’s length of stay. Such a system would be fairer to people only staying on the park a short time – although this would imply that those selling after a very long stay would have to pay far more than 10%. The researchers also state that this mechanism would undermine the assumed relationship of commission to the value of the land. However, it could be argued that the land value forms an increasingly important component of the value of the sited home over time.

**Basing the commission on the value of the land** The contribution of the operator’s land to the value of the home could alternatively be acknowledged explicitly in the commission – either by applying commission to the land proportion of the home’s value, or to the increase in value of the land component. The percentage of land value payable as commission would have to maintain existing actual income from commission; alternatively, if the percentage remained at 10%, the lower actual amount payable would mean that prices elsewhere would have to rise (from pitch fees or operator-sold units – as for first option). Although the researchers did not specifically address this point, a mechanism assuming an increase in land values would of course function only as long as land values did indeed continue to rise.

It was accepted by the researchers that there would be implementation issues associated with whichever option was chosen (if any). It would be particularly difficult to introduce changes for existing residents (legislation is, in any case, rarely retrospective). Operators might find it difficult to carry out cost and income projections for the park as a single business if residents are on different regimes. An alternative suggested by the researchers would be to offer residents a choice of payment mechanisms at the outset so that he/she could elect, according to his/her circumstances, a higher price at entry in exchange for lower commission payments at exit.

A further suggestion of the researchers would involve residents and prospective residents being allowed greater scope to contract with a park home manufacturer independently for bringing a home onsite and to refurbish existing units:

While operators would see their income flows affected as units needed replacing (through them) less often, refurbishment is likely to be the best use of resources for residents. Operators should accept this development as a business risk, and on new contracts adjust the price of the unit (and possibly other elements of the cost package) accordingly.

The 2004 Act did not make any changes to the charging of commission.

In the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, the ODPM set out proposals to amend the terms implied into written statements by the 1983 Act, in relation to commission there were proposals to ‘stipulate that commission on sale does not apply to a gift of the mobile home.’

In the February 2005 summary of responses the Labour Government said that it accepted the trade associations proposed wording to achieve this aim:

The owner shall not be entitled to receive a commission on a gift made under Schedule 1, Part 1, paragraph 9 of the 1983 Act.<sup>25</sup>

Paragraph 9 of the *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, implemented this change.

In the summary of responses to the January 2005 consultation paper on site licensing proposals for reform (published in July 2005) the then Government said that it would 'examine the economics of the park home industry including the 10% commission in a consultation paper in 2005.'<sup>26</sup> On 10 May 2006 the Government published a further consultation paper, *Park Home Commission Rate*, which outlined options for a more transparent payment system for mobile homes.<sup>27</sup> The consultation period closed on 2 August 2006 and the then Government announced the outcome on 27 March 2007.

Briefly, it was decided that the maximum rate of commission should remain at 10% and that measures to strengthen the transparency of the payment mechanisms on mobile home sites should be introduced.<sup>28</sup> The Labour Government published its proposals alongside a summary of responses to the consultation process, the proposals are listed below:

- Revise the Written Statement Regulations which prescribe the content of residents' written agreements, to ensure that the commission payment requirement is sufficiently obvious to anyone reading the statement.
- Where a written statement is not provided in advance of a sale (in accordance with the changes made in the Housing Act 2004) or if the commission payment requirement does not appear as required in accordance with the Written Statement Regulations, a park owner will not be able to require payment of that commission.
- Require that where a park home owner is selling their home to a third party (ie not the site owner) that the incoming resident is given a copy of the written agreement at least 28 days before the sale takes place, unless otherwise agreed; and
- Require a prospective home owner to confirm to the park owner that they are aware of the commission rate payable and all other charges payable during the occupancy of the park home.
- As part of taking forward the proposed changes, Communities and Local Government would engage with the industry to agree how they can improve transparency in relation to commission and pitch fee monies.
- Revise the Departmental park homes booklet to make the financial arrangements clearer.

The first four of these proposals will require primary legislation. Communities and Local Government has already indicated in July 2005 that it intends to legislate on site licensing and intends to bring forward legislation to implement these proposals when a suitable opportunity arises.

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<sup>25</sup> *Implied Terms and Written Statements for Park Homes: consultation summary of responses*, February 2005, paras 2.18-2.19

<sup>26</sup> *Park Homes Site Licensing Proposals for Reform: Summary of Responses*, July 2005, <http://www.communities.gov.uk/archived/publications/housing/parkhomesresponse>

<sup>27</sup> <http://www.communities.gov.uk/publications/housing/parkhomecommission>

<sup>28</sup> CLG Press Notice 'Park Home Commission Rate moves towards greater transparency,' 27 March 2007

The fifth proposal is currently being discussed with the national trade bodies.

The park homes booklet is already in the process of being revised, and Communities and Local Government are making the financial arrangements clear for all to see in the booklet.<sup>29</sup>

Legislation to introduce these changes was not introduced before the 2010 General Election. On 12 May 2009 the Labour Government published a consultation paper, *Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation* (see section 3.4 below) and said that further consultation on options for reform to the 1983 Act "to improve the transparency of dealings between site owners and residents" was expected in 2009.<sup>30</sup>

### **3.4 Site conditions/licensing**

Site residents also complain of poor conditions on parks; the Shelter report noted that local authority practice in enforcing site licence conditions under the 1960 Act was "variable;" this finding was reinforced in the 1992 DoE survey. The Park Homes Working Group made several recommendations in relation to site conditions/site licensing. These recommendations, including the Labour Government's responses, are reproduced below:

#### **Recommendation: controlling the award of a site licence**

The Government should consider whether the licensee should be required to be a 'fit and proper person' and whether a statutory definition of this should be provided.

#### **Response**

The Government accepts in principle that a licensee should be a 'fit and proper person'. The Government recognises that a requirement for a 'fit and proper person' criterion may have potential resource implications for local authorities. However, authorities already operate fit and proper person criteria in other contexts, such as registration schemes for Houses in Multiple Occupation (HMOs), and would be able to draw on that experience.

The Government is considering, in developing detailed proposals for the mandatory licensing of HMOs, whether the concept of 'fit and proper person' would benefit from greater definition, either in legislation or in operational guidance. The conclusions will be relevant to site licensing too.

#### **Recommendation: revocation of site licence**

The Government should consider whether it is necessary to clarify the provisions on how the revocation of a site license would affect home owners.

#### **Response**

The Government will consider the effect which the revocation of a licence would be likely to have on the position of home owners. Our initial view, however, is that the revocation of a site owner's licence would not be likely to affect residents' security of tenure. However, the Government is aware that, in such a case, the absence of a site owner would mean residents would not receive the services which the site owner was responsible for supplying.

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<sup>29</sup> *ibid*

<sup>30</sup> HC Deb 10 February 2009 c1842W

While the Government appreciates the concerns of local authorities about the resource implications of authorities taking over the management of sites in these circumstances, we are equally concerned that residents' rights should be respected. In considering the way forward on this, the Government wishes particularly to explore whether, when considering the revocation of a licence, an authority might be formally required to consider the effect which revocation would be likely to have on home owners, perhaps including a requirement for the authority to have a strategy in place to assist them. We will consider the position of such residents with regard to what entitlement to housing support from their authority might be appropriate for them.

**Recommendation: control of parks owned by local authorities**

The Government should consider whether local authority owned parks should be covered by licence conditions and how this might be brought about.

**Response**

The Government agrees that local authority-owned parks should be run to standards at least as high as those which authorities require of private operators through site licence conditions. There was widespread consensus among consultees that home owners on local authority parks should receive the same level of licence protection as those on privately owned parks.

The Government also accepts the view taken by a number of consultees that a formal licensing procedure for local authority parks would be unnecessarily bureaucratic. We therefore support the adoption of conditions for authority-owned parks, but without the imposition of a licensing regime for these parks. Good practice guidance on site licensing issued to authorities by the then DETR in October 2000 supported the adoption of conditions on authority-owned parks similar to the licence conditions which apply to privately-owned ones.

**Recommendation: adequacy of penalties for breach of licence conditions**

The Government should consider whether the system of fines and penalties available to the court for breaches of licence conditions should be strengthened. The current maximum fine is £2,500.

**Response**

The Government will consider the case for increases in the level of fines, or an extension of other penalties. In response to the Working Party's report, most authorities that commented suggested that some strengthening of the fines available would be helpful in enforcing licence conditions, but did not make clear recommendations on an appropriate level of penalties. We are aware, however, of some concerns among authorities about the reluctance of some courts to levy the existing maximum fines.

The Government's initial view is that the current maximum fine for the breach of a site licence of £2,500 appears low in comparison with fines for comparative offences under the landlord and tenant legislation. For example, the failure of a landlord in the private rented sector to carry out works when required to do so by the local authority, carries a maximum fine of £5,000. Options to be considered will therefore include the scope for raising the current maximum fine to this level. An alternative option might be to retain the current maximum fine for the breach of a condition, but impose a £5,000 maximum overall penalty for failure to comply with a court order to restore the park to the situation as it was before the licence conditions were breached.

Some members of the Working Party suggested that fines should be levied for every day in which the offence continues, or that there should be an escalating scale of fines. The Government does not support these suggestions. We consider that the fine should reflect the seriousness of each offence, rather than putting undue weight on its repetition. A daily fine could result in the offender becoming liable to more than the maximum fine for the offence. Rather than imposing a scale of fines, or daily fines, we consider it preferable to retain the court's discretion to determine the appropriate penalty, within a possible overall new maximum level, taking into account all the circumstances of each case.

The Government agrees that authorities need to be aware of their powers to carry out works in default, and that there are situations where more use could profitably be made of them. However, though the cost of the works themselves is recoverable from the operator, this can be an administratively expensive option, which authorities cannot be expected to resort to lightly.

**Recommendation: notification of assignment of licences**

The Government should consider whether there should be a requirement to notify authorities when parks change hands.

**Response**

The Government appreciates the view of some consultees that the legislation already implies a requirement for the authority to be notified on the sale of the park, so as to allow the licence to be transferred to the new licensee. We are also, however, aware that such notification does not always take place. The Government agrees that a specific formal requirement for notification following a sale, or before the completion of a sale, could help authorities to implement the proposed requirement for the licensee to be a 'fit and proper person'.

There is no current requirement on the Land Registry to notify the local authority of changes of ownership of property. It is; however, open to authorities to interrogate information held by the Land Registry, possibly via data held by the National Land Information Service, to which authorities can subscribe. Procedures would need to be put in place to identify any relevant new data generated by the Land Registry and transmit it to the appropriate licensing section of the local authority. Such a procedure would seem likely to prove overly bureaucratic for this particular purpose, and a cost would need to be paid for it.

**Recommendation: duty on local authorities to impose, monitor and enforce licence conditions**

The Government should consider whether there should be duty on authorities to attach, monitor and enforce conditions to licences.

**Response**

The Government accepts in principle that there would be benefits to be gained by requiring all authorities to be under a duty to attach, monitor and enforce conditions to licences. Although the legislation currently gives only a discretionary power to authorities to attach conditions to licences, research has suggested that most, if not all, authorities already do so. There are, however, wide variations in the regimes for monitoring and enforcing the conditions. The Government appreciates the view of many consultees that the imposition of a duty to attach and enforce conditions would raise the profile of authorities' site licensing responsibilities, although we accept that

such a duty on its own would not necessarily improve the consistency of standards among authorities.

The Government fully accepts that authorities should continue to have regard to the Model Standards when attaching conditions to licences.

**Recommendation: consultation on licence conditions**

The Government should consider whether there should be a right for home owners to be consulted on, and to appeal against, licence conditions and/or proposed changes in the conditions.

**Response**

The Government accepts in principle that there should be a right for home owners to be consulted on and appeal against licence conditions and proposed changes. There was widespread consensus among consultees that such consultation represented good practice. Further consideration is needed on the resource implications for local authorities of a requirement to consult home owners.

General guidance on approaches to take on consulting home owners is included in the Department's good practice guidance on site licensing. This guidance was issued in October 2000.

On 14 January 2005 the ODPM published a consultation paper, *Park Home Site Licensing: Further Reform*, which outlined existing regulations and difficulties with the licensing system and proposed several changes that, the then Government claimed, were 'broadly in line with recommendations suggested by the Park Home Working Group'.<sup>31</sup> The Press Notice announcing publication of the consultation paper stated that 'there is no specific commitment to act on the results' [of the consultation exercise] and:

... we will make recommendations in the light of the resource and legislative position at the time. We have no resources within SR04 years to take forward any changes that might be agreed as a consequence of the consultation if they contain new burdens or are not clearly cost neutral at the outset. We would need to prioritise any implementation work and costs within SR06 years (2007-2010).<sup>32</sup>

A summary of responses to this consultation exercise was published in July 2005, *Park Homes Site Licensing Proposals for Reform: Summary of Responses*.<sup>33</sup>

Subsequently, during a Westminster Hall debate on 26 March 2008 on park homes, the then Parliamentary Under-Secretary of State, Iain Wright, stated an intention to bring in legislation to address concerns about site licensing and improper activity amongst site owners:

It is right that I now address the central matter of the debate, site licensing. I recognise that there is a need to bring forward a comprehensive and effective system of site licensing to replace the scheme introduced under the Caravan Sites and Control of Development Act 1960. The comments of hon. Members have reinforced my conviction that something needs to be done to prevent unscrupulous individuals from operating in the sector. Action also needs to be taken where an individual has acted in a criminal manner that is relevant to their fitness to be engaged in the management of

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<sup>31</sup> This paper is accessible online at:  
<http://www.communities.gov.uk/archived/publications/housing/parkhomessite>

<sup>32</sup> ODPM Press Release 2005/329, 14 January 2005

<sup>33</sup> <http://www.communities.gov.uk/archived/publications/housing/parkhomesresponse>

a park home site. Therefore, let me make it clear to hon. Members that I intend to introduce a licensing regime that requires managers of park homes and other caravan sites to be confirmed as fit and proper persons, and to have the relevant competencies to manage a specific and, as hon. Members have said, in some cases unique type of accommodation.<sup>34</sup>

He said that consultation on the matter would take place before detailed proposals were put forward. On 12 May 2009 the Labour Government published *Park Home Site licensing - Improving the Management of Residential Park Home Sites: Consultation* which built on the 2005 consultation and considered how a new licensing system might look (the consultation process closed on 4 August 2009). On publication the then Minister said:

Persons engaged in the management of park home sites will need to demonstrate they have the relevant competences to manage sites. The new system will give local authorities duties to impose management conditions in licences and a range of enforcement tools to ensure that site licensing conditions are complied with. It will also allow local authorities to recover their costs in connection with their duties under the new provisions by charging appropriate fees. The proposals are intended to drive up the management standards in this sector and, in those parts of it where that is not possible, we intend to give local authorities powers to put alternative management arrangements in place.<sup>35</sup>

A summary of responses to this consultation paper, together with information on how the then Government intended to take these matters forward, was published on 30 March 2010: *Park homes site licensing reform: The way forward and next steps*. A summary of the then Government's intentions is reproduced below:

- We propose to set up a **task force** of representatives of Government and key stakeholders from trade bodies, national residents' groups, local authority representative organisations and local authority practitioners. The task force's terms of reference will be to consider further, in light of the consultation responses and the Government's comments, key aspects of licensing reform and to report back with recommendations on how these might best be achieved to help inform the Government how to proceed. An overarching role of the task force will be to ensure the licensing proposals are effective and practical and do not create undue burdens.
- The task force will consider and recommend whether to adopt a **single or two-tier licence structure** and shall advise the Government how the recommended option might be best implemented.
- The Government has decided to introduce a **"fit and proper" person** requirement as part of the new licensing requirements. The task force will consider, in light of the licensing structure options, how best to ensure that licence holders and those engaged in the management of park home sites are "fit and proper" persons and whether, and if so to what extent, measures need to be in place to ensure management arrangements are satisfactory and to advise the Government on these issues with recommendations.
- The Government has decided to give the relevant authority the **power to refuse applications for licences** and the **power to revoke existing licenses**, where appropriate. The Government has also decided to introduce **management order**

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<sup>34</sup> HC Deb 26 March 2008, c89 WH

<sup>35</sup> HC Deb 12 May 2009 cc43-4WS

provisions to ensure that suitable management arrangements are in place when an application for a licence is refused or an existing licence is revoked. The task force will consider, having regard to the licensing structure options, the nature and scheme of alternative management arrangements to be put in place where a site is unlicensed and to advise the Government on these issues with recommendations.

- The Government intends that park home sites will be licensed for a specified number of homes, and local authorities will be given enforcement tools, such as **removal orders**, to ensure this is complied with. We will ask the task force to review the proposed scheme so as to ensure it operates effectively and fairly.
- The Government has decided to give local authorities powers to serve **enforcement notices** on licence holders to require them to carry out repairs and maintenance to sites and ensure they are properly managed and to recover their expenses in doing so and to do works in default, the cost of which is to be paid by the licence holder.
- The Government intends to give local authorities powers to enter sites and carry out **Emergency Remedial Action** in emergencies, where it is not possible to serve an Enforcement Notice, and to recover their expenses and costs in doing so from the licence holder.
- The Government has decided that all **appeals** on licensing decisions will be to the Residential Property Tribunal.
- The Government intends to introduce a range of new **offences** relating to licensing which on conviction will attract robust financial penalties to deter those in the management of sites from non compliance. We will ask the task force to consider, in light of the options for the licence structure, to advise how offences are to be reported, and which licensing body in relation to which offence should be the prosecuting authority.
- The Government has decided to introduce **licence fees**. The task force will consider, in light of the licensing structure options, what (if any) guidance is required to be given to licensing authorities in connection with licence fees and to advise the Government on this and on connected matters with recommendations.
- The Government intends to introduce a **transitional scheme** to bring within the scope of the new legislation existing sites and their owners and managers. We will ask the task force to assist in the development of a practical cost-effective scheme to do so.

The measures outlined above would require primary legislation.

Communities and Local Government had already issued a consultation paper, *A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*, in May 2008. The Labour Government's response to comments received was published alongside the May 2009 consultation paper on site licensing.<sup>36</sup> The then Minister announced the intention to transfer the jurisdiction on appeals and applications under the 1983 Act from county courts to Residential Property Tribunals (RPTs):

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<sup>36</sup> CLG, *Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation*, 12 May 2009

The aim of the transfer of the jurisdiction is to provide residents of mobile homes (including caravans) and the owners of sites on which they are located with a level playing field in the resolution of disputes, by providing access to a dedicated, low-cost specialist (housing) tribunal, which can deal with cases quickly and without the parties needing to be legally represented.<sup>37</sup>

This paper also included a short consultation on additional measures to protect residents subject to proceedings in relation to the termination of their agreements (see the following section for information on the progress of this consultation exercise).

The proposals contained in both these consultation papers would require primary legislation. In a Written Ministerial Statement issued on 16 December 2009 the then Minister announced that, subject to Parliamentary consent, the Residential Property Tribunal's new jurisdiction would come into force on 6 April 2010.<sup>38</sup> This consent was not obtained prior to the dissolution of Parliament for the General Election however, on 14 July 2010 the new Housing Minister, Grant Shapps, said that he proposed to lay before Parliament the necessary secondary legislation to effect the transfer as soon as possible after summer recess, with a view to transferring jurisdiction to the Residential Property Tribunals by the end of the year.<sup>39</sup> *The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011* was laid on 31 January 2011 and will come into force on 30 April 2011. This Order transfers dispute resolution and other proceedings under the *1983 Mobile Homes Act* from the county courts to residential property tribunals. The only exception to this is in relation to applications to terminate an agreement (see section 3.5 below) – these will remain within the jurisdiction of the county courts.

### 3.5 Termination of agreements

Mobile home owners on sites covered by the 1983 Act have a right to live in their home on the site indefinitely unless the agreement is validly terminated by one of the parties or if the site owner's interest in the land is insufficient to enable him/her to grant the right for an indefinite period, or if there is only limited planning permission to use the land as a protected site. In the latter cases the agreement will only last as long as either the owner's interest in the land or the planning permission.

One of the grounds on which a site owner could apply to court to end an agreement with a park home owner was where, having regard to its age and condition, the mobile home was having a detrimental effect on the amenity of the site or was likely to have such an effect before the end of the next relevant period.<sup>40</sup> The Park Homes Working Group recommended that the 'age' criterion should be deleted and that the 'condition' criterion should only apply to the exterior of the home.

Section 207(2) of the *2004 Housing Act* has removed the 'age' of a mobile home as a relevant factor for the termination of an agreement. A site owner may still apply to court to end an agreement on the basis that the 'condition' of a home is having a detrimental effect on the amenity of the site, or is likely to have such an effect in the next five years (but see below on the transfer of jurisdiction from the county court to Residential Property Tribunals). Section 207(2) also gives discretion to the court to adjourn termination proceedings to give the occupier time to effect repairs if this would be reasonably practicable and if the occupier has indicated that s/he is willing to carry out those repairs.

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<sup>37</sup> HC Deb 12 May 2009 cc43-4WS

<sup>38</sup> HC Deb 16 December 2009 cc135-6WS

<sup>39</sup> HC Deb 14 July 2010 c2WS

<sup>40</sup> Schedule 1(1)(5) of the 1983 Act

In the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, the ODPM set out proposals to amend the terms implied into written statements by the 1983 Act, in relation to the termination of agreements there were proposals to:

Permit site owners to terminate agreements only because the current condition of the home is having a detrimental effect on the amenity of the site without reference to five year 'relevant periods'.

And:

Permit site owners to terminate agreements because the home is no longer the occupier's only or main residence only if the court considers it reasonable to do so.

The *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, implemented these changes.

As noted above, the May 2009 CLG paper, *Dispute resolution under the Mobile Homes Act 1983 (as amended): Summary of responses and further consultation*, included a short consultation on additional measures to protect residents subject to proceedings in relation to the termination of their agreements. The purpose of this consultation was to seek views on whether the fact finding role of county courts in termination cases should be transferred to RPTs.

On 16 December 2009 the outcome of this consultation exercise was published. *Further consultation on termination provisions in the Mobile Homes Act 1983 (as amended): government response*, set out the then Government's decision not to transfer the "fact finding" role of county courts to RPTs in respect of termination cases involving a breach of an agreement, or a claim that the resident of the park home is no longer occupying it as his only or main residence, but to do so in respect of claims relating to the detrimental condition of the home to the amenity of the site.

The Coalition Government has now laid regulations to transfer jurisdiction for disputes under the 1983 Act from the county courts to the residential property tribunal service from 30 April 2011.<sup>41</sup> It has retained the Labour administration's decision not to transfer responsibility for determining applications to terminate an agreement:

The only exception will be applications to terminate an agreement, which will remain within the county courts' jurisdiction. If the ground on which termination is sought is that the home is in disrepair, that fact will, in future, need to be established in the tribunal before the court can be asked whether it is reasonable to terminate the agreement. The tribunal will be able to deal with such matters as pitch fees, any applications for approval of a purchaser of a home that arise after 30 April, the re-siting of homes, the recognition of qualifying residents' associations—a matter of considerable grievance at the moment—and other contractual disputes.<sup>42</sup>

### **3.6 Residents' associations**

The Park Homes Working Group recommended that a procedure should be established for recognising residents' associations which meet specified criteria.

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<sup>41</sup> *The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011*

<sup>42</sup> Sixth Delegated Legislation Committee, 2 March 2011 c4

The July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, contained proposals to amend the terms implied into written statements by the 1983 Act to give occupiers the right to form recognised residents associations in certain circumstances. The issue of resident consultation and involvement was also raised in the January 2005 consultation document on site licensing.

The Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006, which came into force on 1 October 2006, provides:

That the park owner must acknowledge the residents' association if the criteria is met. A resident's association is regarded as being qualifying if:

- It represents the residents on the park who own their home.
- At least 50% of residents are members.
- It has a chairman, secretary and treasurer.
- Decisions of the association are taken by vote, with one vote per home.
- It is independent from the park owner, whose agents and employees are excluded from membership, even if they are park residents.

In calculating the percentage of residents, each home is considered as having 1 occupant. If there is more than one occupant then the first name on the written agreement is used.<sup>43</sup>

The restriction to one vote per home was raised during the debate on the *Draft Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006* on 22 June 2006:

If only one person in each home is allowed voting rights - it will be the stronger person, which is usually, but not necessarily, the man – the woman's rights will, again, be put aside. I simply ask the Minister to consider that.<sup>44</sup>

The then Minister responded:

Only one occupier is counted per caravan for the residents' association. That is standard practice in residents' association membership, and similar provisions are made in other areas of the housing sector. For the purposes of percentages needed to form a residents' association under the clauses, we think that it is appropriate for the relevant unit to be the mobile home rather than the number of people in it.<sup>45</sup>

Further information can be found in the CLG fact-sheet [Park Home Fact Sheet: Qualifying residents' associations](#) (updated April 2009).

### **3.7 Sale of utilities**

The Park Home Working Group recommended that suppliers of all utilities should give price information to consumers. It also recommended the introduction of a new statutory duty to require re-sellers of water and gas to provide information on charges to purchasers and the introduction of a statutory maximum price for the resale of gas supplied by cylinder and bulk tank.

The Labour Government responded thus:

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<sup>43</sup> CLG, Park Homes Fact-sheet 2: <http://www.communities.gov.uk/documents/housing/pdf/151621.pdf>

<sup>44</sup> SC Deb 22 June 2006 c7

<sup>45</sup> *Ibid* c16

The Government accepts in principle that suppliers of all utilities should provide price information to consumers. The Government consulted in November 2000 on proposals for a statutory requirement to provide price information on water resale, and is currently considering the responses received.

The Government will consider the implications of introducing a statutory duty on resellers of gas in cylinders and bulk tanks to provide information on charges to customers. The Government's initial view is that competition in the supply of gas in cylinders and bulk tanks allows customers to choose alternative suppliers, and gain price information from those suppliers.

We will however consider further the circumstances faced by many mobile home residents whose fuel is supplied via their site owner, and who may not be able to choose a different supplier or get the information needed to be able to challenge prices charged by their site owners.

The Office of Gas and Electricity Markets consulted in March 2001 on its proposal to introduce a requirement for resellers of electricity to pass information about electricity purchase prices to their customers, as currently happens for mains gas.

The Government will consider the implications of introducing a statutory resale price for gas supplied by cylinder and bulk tank. As referred to above, the Government's initial view is that competition in the supply of gas in cylinders and bulk tanks allows customers to choose alternative suppliers and benefit from a competitive market. We consider that the consumer is best served by open market competition, although we appreciate that competition can be impeded by restrictions imposed by site owners on the choice of LPG suppliers. Unfair contract terms can in some cases be challenged under the Unfair Terms in Consumer Contracts Regulations. It is open to residents concerned about restrictions on their choice of supplier to approach the Office of Fair Trading with any evidence they have that such restrictions are being imposed in their particular circumstances.

We will consider further the circumstances faced by many mobile home residents whose fuel is supplied via their site owner who may not be able to benefit from effective choice and thus achieve lower fuel costs as a result of competition.

The Office of Water Services introduced maximum resale price arrangements for water with effect from 1 April 2001.

The Government welcomes the discussions that have already begun between industry and home owners' representative bodies about the industry charter. These discussions could include consideration of how good practice on the supply and pricing of utilities should be promoted.

The *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provides that an owner, if requested by an occupier, shall provide documentary evidence in support and explanation of any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement. In addition the owner is responsible for maintaining the supply of these services.

### **3.8 Harassment and illegal eviction**

The Park Homes Working Group recommended the amendment of the *Caravan Sites Act 1968* to follow the terms of the legislation giving protection against harassment and illegal eviction to private rented tenants.

Section 210(2) of the *2004 Housing Act* amended the 1968 Act to give mobile home owners equivalent protection to that given to tenants in conventional housing against harassment and unlawful eviction:

Also we have increased the protection of occupiers of park homes against harassment and illegal eviction. The Act amends the Caravan Sites Act 1968 to mirror the Protection from Eviction Act 1977, the legislation which governs the protection given to occupiers of conventional housing against unlawful eviction and harassment.

The wording relating to the existing offence, where a site owner does "acts **calculated** to interfere with the peace or comfort" of the occupier which cause him to abandon his home, has been relaxed to "acts **likely** to interfere" with such peace or comfort, which is obviously an easier test to satisfy. A new offence has been introduced which does not require "intent" with regard to the harassing actions - it will be sufficient if the site owner or agent knows (or has reasonable cause to believe) that his conduct is likely to result in an occupier abandoning occupation.

This will increase the protection available to occupiers and the chances of successful prosecutions.<sup>46</sup>

### 3.9 Model standards

The Model Standards specify the layout and provision of facilities, services and equipment for caravan sites. They also set out what conditions, if any, a local authority may attach to a site licence and indicate the standards that the authority should have regard to in issuing a licence. Section 5(6) of the *Caravan Sites and Control of Development Act 1960* provides the Secretary of State with a power to specify these Model Standards 'from time to time.'

The Park Homes Working Group recommended that the Government should consider whether to amend the Model Standards to include additional terms. In response the Labour Government said that there was a plan to commission research to inform this process. The Government did not think, subject to the outcome of the research, that 'fundamental changes are likely to be necessary' but noted that, at a minimum, 'the Standards need to reflect current recognised best practice on the provision of services such as gas, electricity, water supply, drainage, sewerage and flood protection.'

The Government wishes to encourage authorities to base the conditions they attach to licences on their own risk assessments of each park, as supported by the Department's recent good practice guidance on site licensing. This should include any necessary emergency arrangements in the event, for example, of flooding or fire, including provisions for early warnings, and evacuation and rescue procedures. The need for guidance on such arrangements in the context of each authority's risk assessment will be considered as part of our proposed review of the Model Standards.

A consultation paper entitled *Revising the Model Standards for Park Homes: Consultation paper on revised standards and guidance* was published by the ODPM on 16 December 2005; the consultation period ended on 13 April 2006.<sup>47</sup> The new Model Standards, which replace those issued in 1989, were published by CLG in April 2008 – they are accessible online at:

<http://www.communities.gov.uk/documents/housing/pdf/modelstandards2008.pdf>

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<sup>46</sup> Housing Act 2004 Factsheet 9: Park Homes

<sup>47</sup> Accessible online at: <http://www.communities.gov.uk/archived/publications/housing/revisingmodel>

When issuing any new licences or reviewing current ones local authorities must have regard to the 2008 Standards in setting or varying any of the conditions attached.

### **3.10 Implied terms: additional amendments**

As noted above, the July 2004 consultation paper, *Park Homes Statutory Instruments: consultation on implied terms and written statements*, contained proposals to amend the terms implied into written statements by the 1983 Act. In addition to the specific proposals that are referred to in sections **3.1-3.8** (above) the *Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006*, which came into force on 1 October 2006, provides:

- In respect of the re-siting of a home, except for essential or emergency works, if the park owner wishes to move the home, they must make an application to the court. The court must be satisfied that the move is reasonable in all cases. In addition, The new pitch must be broadly comparable to the original pitch and the park owner will be liable for any costs incurred during the movement of the home. If a home is to be moved for repairs to the base, the park owner must return the home to its original pitch on completion of the repairs, if the resident requires or the court orders.
- Entitle occupiers to quiet enjoyment of the pitch as an automatic right.
- Site owners will be able to enter a pitch between 9 am and 6pm to deliver written communications, including post and notices, or to read meters for services which they supply or to carry out essential or emergency works; they will have to give as much notice to the resident as is practical. Entry required for any other reason will require the site owner to have given 14 days written notice of the date, time and reason for the visit, unless agreed otherwise.
- The park owner will have to inform the resident or the resident's association of an address in England or Wales at which any notices can be served on them. If the park owner serves a notice for any reason, it must contain the owners name and an address in England or Wales where papers can be served. If the notice does not contain that information then the notice or charge will not be deemed payable, or served, until the information is supplied.
- Residents will have to:
  - Pay the pitch fee and any sums due under the written agreement.
  - Keep the mobile home in a sound state of repair.
  - Maintain the outside of the mobile home and all areas of the pitch for which they are responsible.
  - On request of the owner, provide evidence of expenditure for which they are seeking reimbursement.
- On request site owners will have to:
  - Provide accurate written details of the pitch. These details must be from fixed points. The park owner can charge up to £30 for this to existing residents. At no cost, provide documentary evidence in support of any charge.
  - Repair the base for the mobile home if necessary.
  - Maintain any services which they supply to the mobile home.
  - Maintain and keep clean and tidy parts of the park which are not the responsibility of a resident.
  - Consult on any improvements to the park.
  - When consulting, give at least 28 days notice in writing, outlining how it will affect the park and how representations can be made. These must be taken into account.

## **4 The Coalition Government's approach**

On 14 July 2010, in addition to announcing the intention to proceed with transferring jurisdiction to RPTs, the new Housing Minister said:

I am also announcing my intention to work closely with interested resident and industry partners in developing potential measures for empowering residents to exercise more control over the management of sites, where there are management failings by site owners which significantly impact upon the well-being of the local communities.<sup>48</sup>

Andrew Stunell, Under-Secretary of State at Communities and Local Government, responded to a debate on motion concerning park homes moved by Annette Brooke on 16 December 2010. In the motion Ms Brooke called on the Government to “review the case for establishing a fit and proper person criterion for park home site owners and to bring forward relevant legislation at the earliest opportunity to prevent in particular park home site owners interfering with the sale of a park home without good reason.”<sup>49</sup> In his response Mr Stunell provided an indication of how the Coalition would proceed:

It is important to note some of the themes that have come out of today's debate. We have heard the stories and anecdotes, which I do not dismiss, but Members on both sides of the House have also recognised that there has to be a balance between the powers and responsibilities of site owners on one hand, and of home owners on the other. We need to reflect on the fact that every home owner, in becoming a home owner, will have had the opportunity to look at the terms and conditions of the sale and purchase. I hope that we might also reflect on how we can make those terms and conditions more transparent to prospective purchasers, and ensure that once signed they are adhered to by both sides.

We have heard contributions about the degree to which regulation should be light or tough. My hon. Friend the Member for Eastbourne (Stephen Lloyd), who declared himself to be a deregulatory Liberal, has come to the conclusion that we need to toughen up regulation, and that was the message, I think, from hon. Members throughout the House. I will ensure, therefore, that that view is conveyed clearly to my right hon. Friend the Minister for Housing and Local Government.

The Government are committed to targeted reform that does not place unnecessary burdens on site owners, who ought to be allowed to thrive. We will not solve the problem if we drive well-run sites out of business because of an overburden of regulation or control.

[...]

The motion calls on the Government to review the case for establishing a "fit and proper" licensing system. There is certainly no role in the sector for unscrupulous and criminal operators, but they are a minority. That brings us back to the balance between regulation and the burden of implementation. The Government's general approach is to reduce top-down regulation and minimise the involvement of central Government in local decision making. However, we are committed to protecting the most vulnerable, and I know that some park home residents are among the most vulnerable members of society, as has been well pointed out in this debate. We are not convinced that the protection of park home residents from the minority of unscrupulous site owners requires a complex and costly national licensing system, which would apply across the sector and place burdens on all site owners, good and bad, with that cost ultimately being passed on to residents too. We have to strike a careful balance—one that protects the vulnerable, targets the worst and minimises the regulatory burdens on the law-abiding majority.

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<sup>48</sup> HC Deb 14 July 2010 c2WS

<sup>49</sup> HC Deb 16 December 2010 c1079

On the blocking of sales, I have every sympathy with residents who are unreasonably thwarted when trying to exercise their lawful right to sell their homes. I know that those concerns are shared by my right hon. Friend the Minister of State. The park home justice campaign is to be commended for bringing this important matter to the forefront. Ministers are now well alert-if we were not before-to what the issues are. However, we need to look at what the remedy is. The premise is that unscrupulous site owners might be less likely to make false representations or deter potential buyers if an interview with a prospective purchaser took place in front of a solicitor. However, it is a little hard to see exactly how that would work or who would appoint the solicitor, let alone who would pay for him or her. There is no reason to believe that an unscrupulous owner is likely to be any less dishonest because there is a witness present.

There is also a wider question about whether interviews are required at all, because there is certainly no statutory or legislative reason for them. The Mobile Homes Act 1983 permits the site owner to approve the purchaser, but that could be done in a number of ways, not necessarily through an interview process; for example, by providing relevant documents. If there is no legal requirement for an interview, it would be burdensome to introduce a formal regulatory process for conducting one. However, that is not to say that we believe it acceptable simply to let unreasonable behaviour be tolerated. We see improving access to justice through the residential property tribunal as the first step towards ending abuses in such cases. My right hon. Friend the Minister of State is only too aware of the problems, and he intends to announce in the new year a package of measures that will curb the excesses of the minority of unscrupulous owners, while not placing undue burdens on the majority who manage their sites effectively and in the best interests of the community.<sup>50</sup>

On 10 February 2011 the Housing Minister announced an intention to consult on a further package of measures “in the spring”:

I am also today announcing my intention to consult on a further package of measures that could improve and modernise the licensing regime that applies to caravan and park home sites to enable local authorities to more effectively monitor and enforce licences and, therefore, better protect the many thousands of older households who live in this sector. I intend to consult on giving local authorities powers to charge site owners for their licensing functions and services instead of these being funded by the taxpayer or not provided at all to a satisfactory standard because authorities do not have the resources to do so. I also intend to consult on enabling the courts to impose higher fines for the most serious breaches of licence conditions, and on giving authorities a more effective means of carrying out emergency safety-critical works at the owner's expense where the site owner has refused to do the work himself. I believe these reforms to site licensing will modernise the regime and make it more effective in delivering its objective of ensuring that sites are safe and properly managed.

I am also concerned about what appears to be abuse by some site owners of their role in approving the purchaser when a resident wishes to sell his park home in the open market. It seems clear that a small minority of site owners will routinely block sales for their own financial gain. I intend to consult on measures which would aim to eliminate this unacceptable practice and extend the role of the residential property tribunal in the approval process.<sup>51</sup>

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<sup>50</sup> HC Deb 16 December 2010 cc1113-5

<sup>51</sup> HC Deb 10 February 2011 WS22

